

THE WIRELESS CODE: Who's the Winner?

Final Project Report
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of Industry Canada



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The masculine is used generically in this report.

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Union des consommateurs, *Strength through Networking*

Union des consommateurs (UC) is a non-profit organization comprised of several ACEFs (*Associations coopératives d'économie familiale*), the *Association des consommateurs pour la qualité dans la construction* (ACQC), and individual members.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in the community.

UC acts mainly at the national level, by representing the interests of consumers before political, regulatory or legal authorities or in public forums. Its priority issues, in terms of research, action and advocacy, include the following: household finances and money management, energy, issues related to telephone services, radio broadcasting, cable television and the Internet, public health, food and biotechnologies, financial products and services, business practices, and social and fiscal policy.

Lastly, in the context of market globalization, UC works in cooperation with several consumer groups in English Canada and abroad. It is a member of *Consumers International* (CI), an organization recognized by the United Nations.

1. Introduction

Just looking around, one cannot help notice the phenomenal number of passers-by with their eyes glued to the screens of their mobile phones, busy browsing the social networks, reading the latest news, texting, or watching the latest video gone viral. Others, with earphones connected to their devices, are listening to music or seem to be talking to themselves out loud.

There is no doubt that cell phone use has become widespread over the last decade; most Canadian consumers now own a cell phone¹, which for many people is obviously more than just a means of communication while in transit. Wireless services are now capable of replacing an entire group of wireline services, with many consumers using only their mobile phones to make calls, and even, in some cases, to go online.

Without even broaching the thorny issue of the state of the competition in this sector, it goes without saying that wireless services are one of consumers' biggest pet peeves if one goes by their many complaints, ranging from billing errors to contract-related misunderstandings.

To mention just a few examples of the type of complaints that have been extensively written about over the last few years is already an indication of the magnitude of the problem: exorbitant cancellation fees, consumers required to provide 30 days prior notice before the contract cancellation is in effect, automatic renewal of fixed-term contracts, systematic device unlocking, four- or five-figure mobile and roaming data charges, etc.

The sources of complaints in the wireless services industry are so numerous that several government authorities have successively intervened in order to regulate certain business practices by wireless service providers. Indeed, several legislative and regulatory amendments have had effects first only on the many contractual problems, whether they consist of better regulating the information provided to consumers before and at the time the contract is entered into, or prohibiting certain business practices considered unfair.

These legislative frameworks were first imposed by various provinces, but the debate was soon carried over to the federal level. In fact, in 2013, the CRTC completed an extensive consultation, which attracted over 5,000 participants, to provide a framework for practices in the wireless services sectors. The purpose of the consultation was to *“ensure that consumers are able to participate in the competitive market in an informed and effective manner, and to fulfill the policy objectives of the Telecommunications Act.”* To do so, the Commission found it necessary to *“develop a mandatory code to address the clarity and content of wireless service contracts”*².

¹ In 2013, the number of wireless service subscribers totalled 28.4 million. **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**. *Communications Monitoring Report 2014*, CRTC, Ottawa, Ontario, Canada, October 2014, 326 pages. See page V.

<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2014/cmr.pdf> (document viewed on April 29, 2015).

² **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**. *Telecom Decision 2012-556: Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services*, CRTC, Ottawa, Ontario, Canada, October 11, 2012.

<http://www.crtc.gc.ca/eng/archive/2012/2012-556.htm> (page viewed on April 29, 2014).

Thus, as various provincial governments have done before it, the CRTC addressed the thorny issue of the regulation of wireless service contracts to ensure that the information provided to consumers is clear and to clean up industry practices. However, unlike the provinces, which have jurisdiction on contractual matters, the Commission's exclusive jurisdiction with respect to telecommunications regulation has enabled it to take action on a number of practices that exceeds the sole issues of the form and content of contracts. The Commission also addressed other problems for which no frameworks had been established until now: in particular, the issue of "bill shocks," caused when the usage limits imposed by service providers are exceeded. The Commission also imposed certain measures intended to facilitate consumer mobility, namely, reduce the length of contract terms, require service providers to provide the option of unlocking devices, as well as trial periods during which consumers can terminate their contract (and return their device, as the case may be) without having to pay any cancellation fees.

These changes, qualified by commentators as a "new era"³, "wallet relief"⁴ and "small steps"⁵, have been written about extensively: the advent of a Wireless Code signaled the adoption of more stringent regulations that would affect the largest number of mobile device users across the country, since it would be applicable in all provinces, including those that had refrained from regulating this sector.

However, although reactions had first been generally positive, concerns relating to the Code were raised in the months following its coming into force such as the Code's impact on contract terms, plan pricing, and cancellation fees⁶. Lastly, the Code was both praised and criticized by both consumers and service providers. Clearly, since the decisions involving the Code reaffirmed the "competitive" nature of wireless services, the rates being charged in this sector remain deregulated, and thus at the industry's full or virtually full discretion.

Despite criticism of the decisions made by the CRTC over what should (or should not) be regulated in the wireless services sector, the Code has clearly brought numerous changes to the Canadian market, if only by standardizing, at least partially, contractual obligations nationwide, and by limiting the damage caused by bill shocks. However, the effectiveness of certain measures is questionable. For instance, although service providers are now obligated to provide device unlocking services, these charges are still inexplicably high (they are rarely under \$50); data overage charges have been capped, but not those resulting from minutes or text messages; trial periods may well be available to consumers, but they are not always adequately advertised; etc.

³ **AUGER, Samuel.** *L'industrie du cellulaire: mutation et prix à la hausse*, Le Soleil, Québec, Canada, October 5, 2013. <http://www.lapresse.ca/le-soleil/affaires/consommation/201310/05/01-4696773-lindustrie-du-cellulaire-mutation-et-prix-a-la-hausse.php> (page viewed on April 29, 2015).

⁴ **NOWAK, Peter.** *New wireless code could hike smartphone price*, CBC News, CBC, Montréal, Québec, Canada, June 4, 2013. <http://www.cbc.ca/news/technology/new-wireless-code-could-hike-smartphone-price-1.1373880> (page viewed on April 29, 2015).

⁵ **DESJARDINS, François.** *Téléphonie sans fil – Le CRTC sonne le glas des contrats de trois ans*, Le Devoir, Montréal, Québec, Canada, June 4, 2013. <http://www.ledevoir.com/economie/actualites-economiques/379787/le-crtc-sonne-le-glas-des-contrats-de-trois-ans> (page viewed on April 29, 2015).

⁶ See in particular:

CBC NEWS, *Wireless carriers hike prices across Canada*, CBC, Montréal, Québec, Canada, March 17, 2014, <http://www.cbc.ca/news/business/wireless-carriers-hike-prices-across-canada-1.2575886> and

DORBY, Christine. *Cellphone carriers lose court challenge over CRTC wireless code*, The Globe and Mail, Toronto, Ontario, Canada, May 19, 2015. <http://www.theglobeandmail.com/report-on-business/wireless-carriers-lose-legal-challenge-of-new-wireless-code/article24501657/> (pages viewed on May 20, 2015).

A review of the situation is therefore needed. In fact, in an effort to avoid affecting a competitive market and to respond to the concerns expressed by all the parties – including the service providers – as part of consultations in this regard, it appears that several requirements in the Code have been devised to enable a range of industry practices when comes time to apply them. Do these various practices adequately reflect the actual objectives sought by the code of conduct? Are there any flaws in the current version of the Wireless Code that would prevent it from attaining all of its objectives? Will the Code adequately protect consumers against business practices which have been the subject of complaints during the consultations? What do the industry players and experts have to say? In the end, will consumers come out the winners in the fight against unseemly practices on the part of service providers?

Through our literature review, we will identify the main sources of consumer complaints concerning wireless services over the years. We will then do an overview of the general measures implemented by provincial and federal authorities to counter these problems. We will examine the arguments that led to the establishment of the Wireless Code by the CRTC, identify the main discussions found during the consultations, identify the priorities put forth by the Commission, and will conclude with an overview of the reactions following the Wireless Code's announcement and coming into force.

We will then do an in-depth analysis of several articles in the Code, in particular those that provide some latitude to the industry. We will analyze, article by article, the specific meaning of these requirements in the Code and their purpose, point out sources of confusion or leeway, depending on the case, in the texts that have been adopted, and will at the same time review how a group of Canadian service providers have complied with them. We will highlight the successes and failures that we will have identified using this analysis.

We submitted a few of the highlights of our analysis to the participants that took part in drawing up the Wireless Code and questioned them on their view of the Code's impact. We will be reporting the opinions that were gathered. We will conclude with a set of conclusions and recommendations. Lastly, we will assess the advances that have been made in relation to consumer protection which the Code has made possible along with the many steps that still must be completed to further cleanse business practices and achieve clarity in contracts, so that the regulations implemented by the Commission aimed at reducing complaints in this sector truly bring about all the effects sought by the regulatory tribunal.

2. Wireless services: An overview of the situation

2.1 Useful services

Virtually all Canadian households subscribe to telephone service. According to the CRTC, the penetration rate has remained relatively stable, i.e. at over 99% since 2008. In 10 years, the penetration rate of wireless services, for its part, has increased by 30 percentage points (58%), from 51.6% in 2002 to 81.4% in 2012. However, the penetration rates by province are not all equal: the penetration rate is 90% in Alberta but only 70.4% in Quebec⁷. Smart phones are used by 62% of Canadians⁸.

Although most users depend on both wireline telephone service at home and wireless services, the report mentions that low-income consumers tend more to choose one service rather than subscribe to both. A change in behaviour has also been noted in consumers, who are increasingly less dependent on traditional services and are choosing cell phones to a greater extent. In fact, whereas in 2002 only 1.7% of the population used wireless services for their telephone communication needs, this figure has grown to 15.7% in 2012, coming increasingly closer to the percentage of consumers who only use wireline telephone service, which is now 17.8% (a drop of 62% in 10 years). Young households tend to use cell phones exclusively, but this trend is also slightly increasing among those 55 years and older⁹.

⁷ *Op. cit.*, Note 1, **CRTC**, 2014 *Communications Monitoring Report*. See pp. 14-15, Table 2.0.8.

⁸ *Id.*, p. 221, Graph 5.5.9.

⁹ **STATISTICS CANADA**. *Residential Telephone Service Survey, 2013*. Statistics Canada, Ottawa, Ontario, Canada, 2013. <http://www.statcan.gc.ca/daily-quotidien/140623/dq140623a-eng.htm> (page viewed on April 29, 2015).

Table 1
Canadian telephone penetration rates
Wireline and mobile wireless subscribers per 100 households¹⁰

Année	Services filaires	Services sans fil mobiles	Services filaires et/ou sans fil mobiles	Filaire seulement	Sans fil mobiles seulement
2002	97,0	51,6	98,7	47,1	1,7
2003	96,3	53,9	98,8	44,9	2,5
2004	96,2	58,9	98,9	40,0	2,7
2005	94,0	s,o,	98,8	s,o,	4,8
2006	93,6	66,8	98,6	31,8	5,0
2007	92,5	71,9	98,8	26,9	6,3
2008	91,1	74,3	99,1	24,8	8,0
2009	89,3	77,2	99,3	22,1	10,0
2010	89,1	78,2	99,3	21,1	10,2
2011	86,5	79,4	99,3	19,9	12,8
2012	83,5	81,4	99,2	17,8	15,7

Sources : Statistique Canada, Abordabilité (2002-2007) et Enquête sur le service téléphonique résidentiel (2008-2012)

It must also be recognized that the usefulness of cell phones has considerably evolved over the years. Whereas the advantage of wireless services in their early days was their portability, the smartphones that are commonly used today, in addition to having even greater portability, are used for more than just voice calls. According to the 2014 CRTC Communications Monitoring Report, most users were also using their device to send text messages (over 90%), browse the Internet (84% English-speaking and 77% French-speaking users), in particular to send e-mails (74% English-speaking and 62% French-speaking users) and use social networks (50%)¹¹. For many, Internet use on mobile phones currently exceeds voice calls¹². Voice services thus now only represent 25% of total mobile service revenues¹³.

Still today, with comparable use, wireline telephone service is generally cheaper than wireless service and usually includes unlimited local calls. However, the cost advantage of wireline service is dwindling, the price of basic services has been increasing over the past few years at a faster rate than the CPI, and prices have gone up by 10% compared to the previous year. In 2011, basic wireline telephone service cost \$38.99 in Canada, compared to \$35.70 for basic wireless services¹⁴.

¹⁰ *Op. cit.*, note 1, CRTC, 2014 Communications Monitoring Report. See pp. 14-15, Table 2.0.8.

¹¹ *Op. cit.*, note 1, CRTC, 2014 Communications Monitoring Report. See p. 224, Graph 5.5.12.

¹² WORTHAM, Jenna. *Cellphones Now Used More for Data Than for Calls*, New York Times, New York, USA, May 13, 2010. http://www.nytimes.com/2010/05/14/technology/personaltech/14talk.html?_r=0 (page viewed on April 29, 2015).

¹³ *Op. cit.*, note 1, CRTC, 2014 Communications Monitoring Report. See p. 223, Graph 5.5.11.

¹⁴ Note that the basic services being compared are very different: 150 minutes of calls per month for the wireless service versus 400 minutes for the wireline service.

As previously mentioned, mobile wireless services have always been considered competitive by the CRTC, which has never, until now and based on this determination, regulated pricing in the sector¹⁵, whereas wireline services, which were previously regulated nation-wide (given that service providers had been granted monopolies), have seen successive waves of deregulation following the federal government's order aimed at stepping up sector deregulation¹⁶. However, the incumbent providers (i.e. the former monopolies) are required to provide wireline service in forborne exchanges, which is not the case for wireless services¹⁷.

In this context of deregulation (or forbearance from regulation), one of the premises reiterated in the decision leading to the establishment of the Code is the fact that the mobile wireless services market is competitive. However, it is also interesting to note that although the competition of retail wireless services did not involve direct questioning by the CRTC, consultations were held in 2014 subsequent to the fact that one of the main wireless service providers gave itself undue preference, which will shortly result in the regulation of rates for wholesale wireless roaming services. In Telecom Decision CRTC 2015-177, the Commission recognized in particular that there are major barriers to entry on the retail market. The news release announcing this decision even states that "The CRTC has found that, under current market conditions, competition in the wireless market is likely not sustainable."¹⁸

2.2 Useful, but pricey

Although the Commission maintains for the time being the premise that retail wireless services in Canada are competitive, a large proportion of consumers do not likely share the same opinion: one need only browse consumer forums or read the blogs or articles of certain specialized columnists or comments in newspaper or magazine articles to see to extent to which the viewpoint stating that Canada's wireless rates are too high¹⁹ is more widespread than that of the CRTC.²⁰

See: **WALL COMMUNICATIONS INC.** *Price Comparison of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions*, Ottawa, Ontario, Canada, March 31, 2014, 96 pages.

<http://www.crtc.gc.ca/eng/publications/reports/rp130422.pdf> (page viewed on April 29, 2015).

¹⁵ The first decision in this respect, made in 1994 (Telecom Decision CRTC 94-15), was upheld on several occasions, the most recent in 2012 (Telecom Decision CRTC 2012-556).

¹⁶ *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007- 0532, archived on Industry Canada's website.

<https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08752.html> (page viewed on April 29, 2015).

¹⁷ Although in forborne exchanges, the obligation to serve can be met through wireless services.

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION. *Telecom Regulatory Policy 2011-291: Obligation to serve and other matters*. CRTC, Ottawa, Ontario, Canada, May 3, 2011.

<http://www.crtc.gc.ca/eng/archive/2011/2011-291.htm> (page viewed on April 29, 2015).

¹⁸ **GOVERNMENT OF CANADA.** *CRTC fosters sustainable competition, innovation and investment in the wireless services market*. News Release, Ottawa-Gatineau, Ontario, Canada, May 5, 2015. http://news.gc.ca/web/article-en.do?nid=970879&_ga=1.107264901.683367090.1438566925 (page viewed on June 19, 2015).

¹⁹ To mention only a few examples:

TRIBE, Laure. *New report shows Canada's wireless rates are (still) among the worst in the world*, rabble.ca, Toronto, Ontario, Canada, June 18, 2015, <http://rabble.ca/blogs/bloggers/openmediaca/2015/06/new-report-shows-canada%E2%80%99s-wireless-rates-are-still-among-worst-wo>

CBC NEWS. *Canadian wireless costs among highest in world, PC Mag finds*, CBC, Montréal, Québec, Canada, September 22, 2014, <http://www.cbc.ca/news/business/canadian-wireless-costs-among-highest-in-world-pc-mag-finds-1.2774553>

Comparative studies of wireless service rates are, if truth be told, never flattering for Canada, which is often among the worst OECD countries in a rate comparison. The 2014 report by Wall Communications Inc., mandated by the CRTC, compares wireless rates in Canada with those of seven other OECD nations. Canada is the worst among all the countries studied with respect to basic services (tier 1); it ranks third out of eight in relation to tier 2 and 3 services (mid-range) and second for tier 4 services, the most costly services²¹. Note, also, that among all these countries, only Canada and the U.S. charge the caller and the party being called for communications, while service providers from other countries only charge the subscriber placing the call, which is an even greater indication of the unflattering track record we and our North American neighbours have.

GEIST, Michael. *OECD Report Confirms What Canadians Have Long Suspected: Wireless Pricing Among Highest in the World*, Blog by Michael Geist, University of Ottawa, Ottawa, Ontario, Canada, July 15, 2013, <http://www.michaelgeist.ca/2013/07/oecd-on-wireless-pricing/> (pages viewed on June 19, 2015).

²⁰ We will come back to consumers' detailed opinions in the section dealing with consultations on the Code.

²¹ For instance:

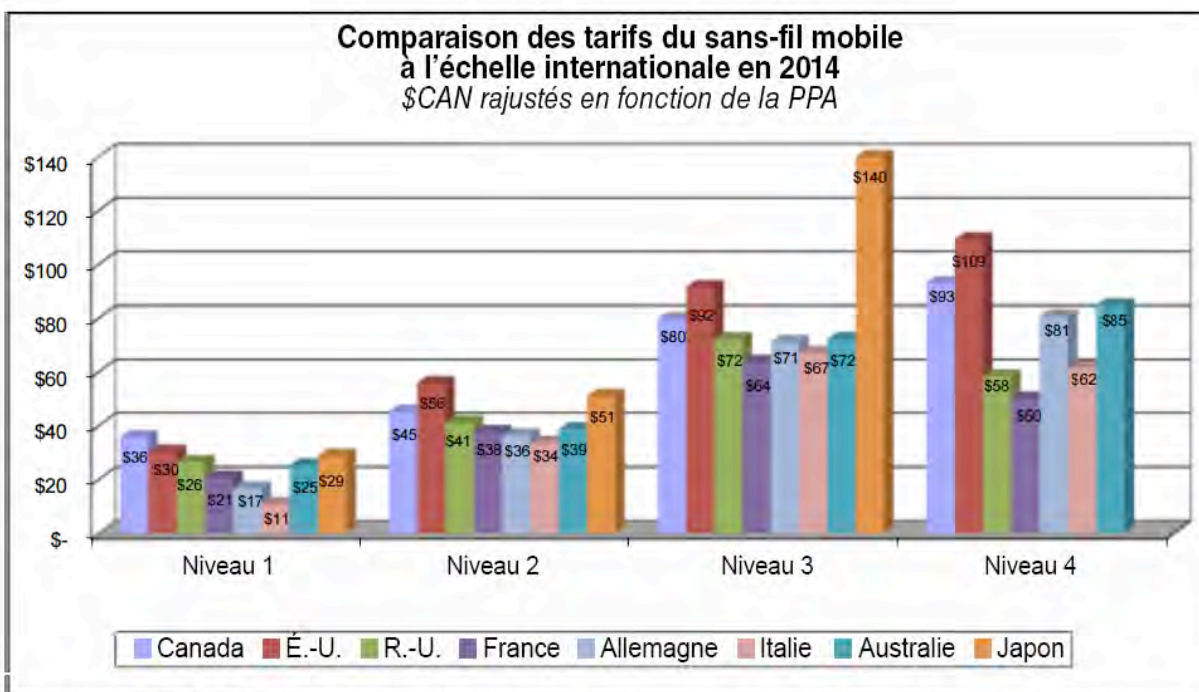
- "Level 1: 150 incoming & outgoing minutes per month, with 10% of outgoing minutes treated as long distance, and no optional features.
- Level 2: 450 incoming & outgoing minutes per month, with 10% of outgoing minutes treated as long distance, two optional features (voice mail and call display), and 300 text messages per month.
- Level 3: 1,200 incoming & outgoing minutes per month, with 15% of outgoing minutes treated as long distance, full set of optional features, 300 text messages and 1 GB data usage per month.
- Level 4: Unlimited nationwide talk and text (no international calling included), voice mail and call display, and 2 GB data usage per month."

Op. cit., Note 14, **WALL.** *Price Comparison of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions.*

See also:

CHAMONTIN, Benoit. *Forfaits mobiles au Canada: toujours dans la moyenne supérieure à l'international*, GEEKS and COM, Montréal, Québec, Canada, July 15, 2014. <http://www.geeksandcom.com/2014/07/15/forfaits-mobiles-canada-dans-moyenne-superieure-a-l-international> (page viewed on June 19, 2015).

Table 2
Mobile wireless rates:
Canada compared to eight other OECD countries²²

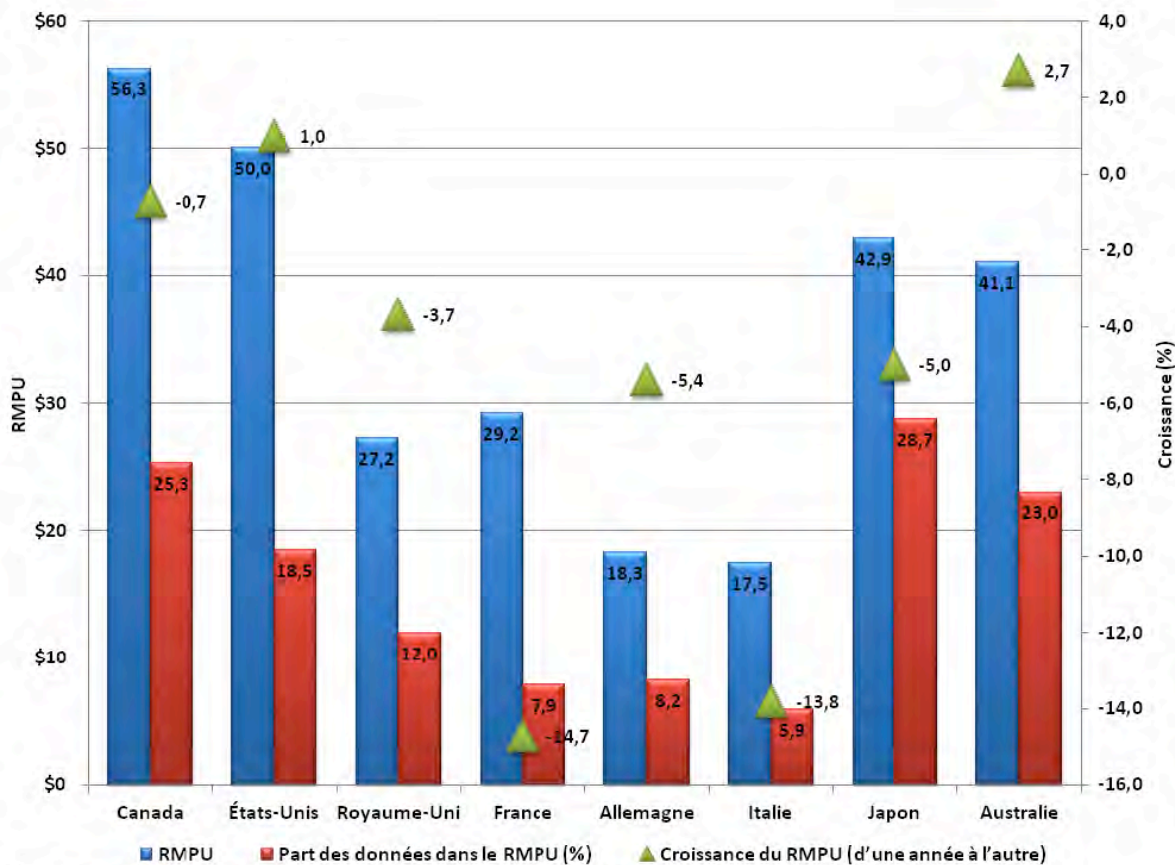


Rapport 2014 de Wall Communications Inc.

Canada also stands out by the average revenue per subscriber, which is extremely high, i.e. more than three times higher than the one found in the lowest-cost models, and several dollars (\$6 to \$7 per month of difference) ahead of its nearest competitor, the U.S.

²² *Op. cit.*, Note 14, **WALL**. *Price Comparison of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions*. See Figure 5, p. 23.

Table 3
Wireless average revenue
per user by country (fourth quarter of 2013)²³



Source : Bank of America Merrill Lynch Global Wireless Matrix 1Q2014, 21 avril 2014

The situation in Canada has been extensively written about over the last few years, in particular with regard to Canada's roaming rates, recognized in 2011 as being among the highest in the world²⁴. Pay-per-use charges are still very high today²⁵. The Commission also reached the conclusion, when asked to study this specific matter, that a Canadian service provider gave itself undue preference in the provision of wholesale roaming services²⁶.

²³ *Op. cit.*, Note 1, **CRTC**, 2014 *Communications Monitoring Report*. See p. 283, Figure 6.0.9.

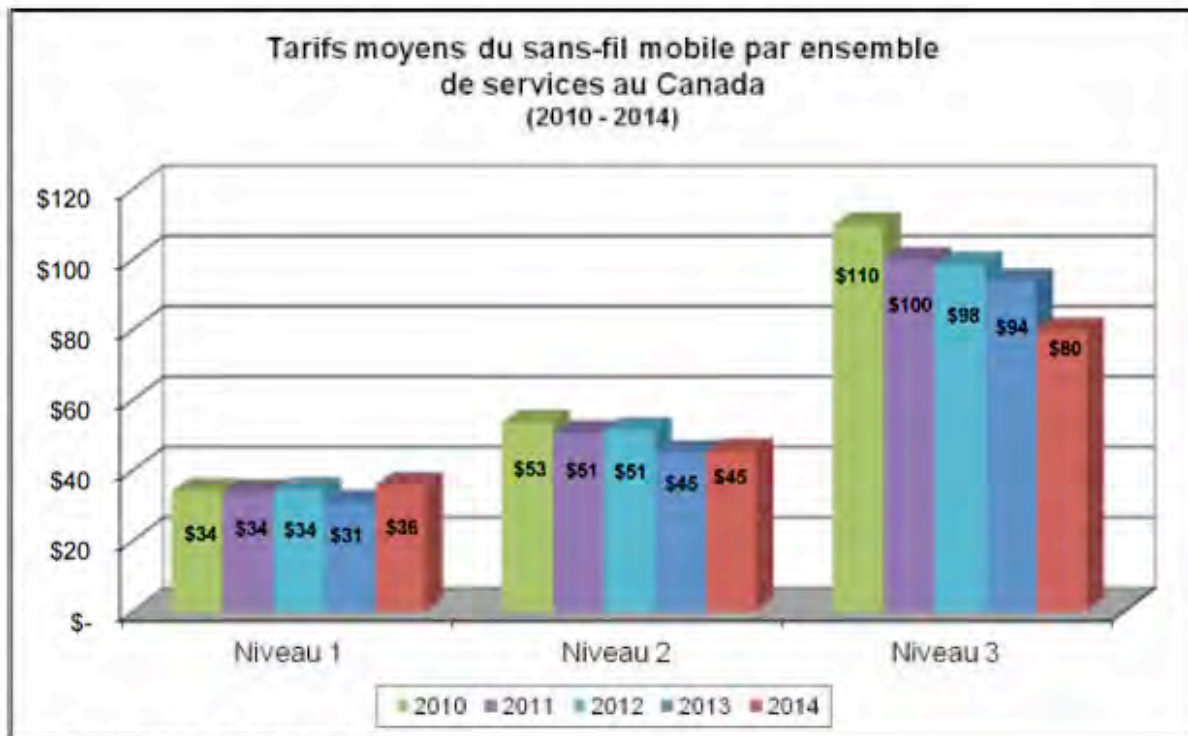
²⁴ **ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT**. *Working Party On Communication Infrastructures And Services Policy: International Mobile Data Roaming*, OCDE, Paris, France, May 30, 35 pages. <http://www.oecd.org/internet/broadband/48127892.pdf> (document viewed on April 29, 2015).

²⁵ For instance, at the time this was being written, Telus's pay-per-use services to the U.S. were still \$1.50 per minute, \$5 per MB, and \$0.60 per text message. For the Dominican Republic, these rates are \$2.50 per minute, \$10 per MB, while text messages are also \$0.60 each.

²⁶ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**. *Telecom Decision CRTC 2014-398: Wholesale mobile wireless roaming in Canada – Unjust discrimination/undue preference*, CRTC, Ottawa, Ontario, Canada, July 31, 2014. <http://www.crtc.gc.ca/eng/archive/2014/2014-398.htm> (page viewed on April 30, 2015).

Nonetheless, it would seem that for certain consumer scenarios, Canada's record has slightly improved between 2010 and 2014, in particular for high-end services, whereas prices for mid-range services have remained stable. On the other hand, prices of lower-priced services have increased.

Table 4
Wireless rates in Canada from 2010 to 2014²⁷



Rapport 2014 de Wall Communications Inc.

2.3 ...and the object of consumers' wrath

Consumer protection agencies have been receiving a large number of complaints regarding telecommunication services for a number of years. The Office de la protection du consommateur (OPC) states that for several years, this sector has been the one for which the most calls have been received in Quebec²⁸. Over the last fiscal year (2013-2014), telecommunication services have involved 4,893 inquiries between April 1 and September 22, 2013, placing this sector in third place among sectors involving the most calls (after used car purchases and home furnishings and services), and 325 formal denouncements to the Office.

²⁷ *Op. cit.*, Note 14, **WALL**. *Price Comparison of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions*. See Figure 3, p. 19.

²⁸ **PROTÉGEZ-VOUS**. *Plaintes en télécoms: la guerre des nerfs*, Éditions Protégez-vous, Montréal, Québec, Canada, December 14, 2011. <http://www.protegez-vous.org/org/medias/communiqué-janvier-2012.html> (page viewed on April 30, 2015).

From September 23 to March 31, there were 2,478 inquiries and 1,087 denouncements and complaints for communication services in general, about half of which were directly related to mobile phone services²⁹.

The Ontario Ministry of Government and Consumer Services also mentions that the telecommunications sector is most often among its top 10 sectors with the greatest number of complaints³⁰. In 2012, there were 989 complaints and inquiries in relation to telephone and/or long-distance services.

In Quebec, the OPC also undertook legal proceedings in relation to certain service providers not complying with the Consumer Protection Act. In its annual report, the OPC mentions having undertaken legal action against Bell Mobility under 305 charges, including having illegal clauses in its contracts, involving, for instance, unilateral changes or cancellation of the contract³¹.

At the federal level, since the creation of the Commissioner for Complaints for Telecommunications Services, wireless services have always involved the highest number of complaints compared to any other telecommunications service. Once again this year, there were more complaints related to wireless services than total complaints for all other services combined, with billing errors and contractual disputes resulting in the highest number of complaints by far.

Table 5
Excerpt from the CCTS's 2013-2014 Annual Report³²

	erreur de facturation	dispute contractuelle	prestation de services*	gestion des crédits	total
services sans fil	4 676	3 379	1 673	439	10 167
accès à internet	1 440	723	1 048	104	3 315
service téléphonique local	1 158	680	834	90	2 762
interurbains	278	88	78	15	459
assistance-annuaire	5	–	–	–	5
téléphonistes	5	–	–	–	5
annuaire des pages blanches	–	1	3	–	4
TOTAL	7 562	4 871	3 636	648	16 717

* (installation, réparation et maintenance)

²⁹ With respect to processing in sections (April/Sept.; Sept./March), the report states (p. 73): "In 2013-2014, the implementation of a new system for receiving and handling complaints introduced an entirely new way of recording information associated with Quebecers' requests. For this reason, the data from April 1 to September 22, 2013 cannot be compared with those from September 23 to March 31, 2014."

OFFICE DE LA PROTECTION DU CONSOMMATEUR. *Rapport annuel de gestion 2013-2014.* OPC, Québec, Québec, Canada, 128 pages. See pp. 73-77. <http://www.opc.gouv.qc.ca/fileadmin/media/documents/a-propos/publication/RapportAnnel2013-2014.pdf> (page viewed on April 30, 2015).

³⁰ http://www.sse.gov.on.ca/mcs/en/Pages/top_Complaints_archive.aspx (page viewed on April 30, 2015).

³¹ *Op. cit.*, Note 29, **OPC.** *Rapport annuel de gestion 2013-2014.* See p. 14.

³² **COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES.** *Driving Positive Change: Annual Report 2013-2014,* CCTS, Ottawa, Ontario, Canada, 52 pages. See p. 10. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2013-2014/CCTS-Annual-Report-2013-2014.pdf> (document consulted on April 30, 2015).

It is important to note that the CCTS registered its first decrease in complaints in 2013-2014 after seeing constant increases since 2007. In fact, 11,340 complaints were accepted for this fiscal year compared to 13,692 for 2012-2013.

Table 6
Number of complaints over the years (2007-2013)³³

année	plaintes acceptées
2012-13	13 692
2011-12	10 838
2010-11	8 007
2009-10	3 747
2008-09	3 214
2007-08	2 226

The Commissioner handled 16,717 problems this year, compared to 19,297 last year. It is noteworthy to look at the areas where the Commissioner had the largest decrease in problems³⁴. In the table of the main differences found below, the issues which were handled in application of the Wireless Code are highlighted. Note that these three categories alone account for a decrease of 1,208 cases of problems, which represents close to half of the total decrease. Out of the 2,580 fewer problems that were reported, the highlights covered by the CCTS only mention 1,888 (listed in the table) – the statistics from the 2013-2014 Annual Report do not show the other categories where there were fewer complaints.

³³ **COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES.** *When You Need Help: Annual Report 2012-2013*, CCTS, Ottawa, Ontario, Canada, 52 pages. p. 7 <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2012-2013/CCTS-Annual-Report-2012-2013.pdf> (document viewed on April 30, 2015).

³⁴ Whereas the statistics most often reported by the Commissioner involve the number of “complaints,” the annual report also mentions “problems” reported by consumers. In fact, the same complaint can result in several problems. Hence, the number of reported problems is always greater than the number of complaints.

Table 7

Review of decrease in problems handled by the CPRST ³⁵				
Types of problems	2013-2014	2012-2013		% decrease
Incorrect charge	1854	2224	(-370)	- 16.6%
Intermittent/inadequate quality of service	1250	1518	(-268)	- 17.7%
30-day cancellation policy	1167	1835	(-668)	- 36.4%
Legitimacy/amount of early cancellation fees	1144	1490	(-346)	- 23.2%
Credit reporting	569	611	(-42)	- 6.9%
Roaming charges	527	721	(-194)	- 26.9%

It would therefore appear that a significant proportion of the reasons for the complaints that have significantly decreased concern issues covered in the Wireless Code. However, it is entirely possible that this decrease in the number of such complaints reflects the first positive effects of the Code, which, over the period covered by the CCTS report, has only been in effect for eight months³⁶.

However, all is not rosy in the CCTS's latest annual report. As the Commissioner mentions in his introductory message, "We have also used the Code report to focus attention on Code provisions that we have been required to interpret. We also highlight areas of the Code which we believe may be ambiguous or unclear³⁷."

Note, in addition, that complaints related to non-disclosure or misleading disclosure of the terms of service increased by 74.4% over the previous year.

Furthermore, the CCTS's role of administering the Wireless Code seems to be no walk in the park. A total of 762 complaints received by the Commissioner last year involved alleged breaches of the Wireless Code, with a total of 30 confirmed breaches. This number exploded in the CCTS's first mid-year report: between August 2014 and January 2015, the CCTS had to deal with 901 alleged breaches, with over one-third (328) being confirmed following the CCTS's assessment. Among the confirmed breaches, 92 involved failure to give the consumer the contract or a contract that complied with the Code's requirements, 86 involved disconnection notice non-compliance, 50 were related to changes to the contract's main terms and conditions without the customer's informed and express consent, and 27 involved overage charges billed in a contract involving unlimited services³⁸.

³⁵ Trends excerpted from the Commissioner's most recent annual report.

Op. cit., Note 32, **CCTS. 2013-2014 Annual Report**. See p. 11.

³⁶ The Commissioner in fact states: "This year we provide our first report on the CRTC's Wireless Code. The Code came into effect on December 2, 2013 so our report covers only Code issues that arose in complaints we concluded between that date and July 31, 2014."

Op. cit., Note 32, **CCTS. 2013-2014 Annual Report**. See p. 3.

³⁷ *Ibid.*

³⁸ **COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES. Mid-Year Report, August 1, 2014 – January 31, 2015**, CCTS, Ottawa, Ontario, Canada, 4 pages. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2014-2015/CCTS-Mid-Year-Report-2014-2015.pdf> (document consulted on April 30, 2015).

2.4 Chronological account: application of remedies

2.4.1 Changes by provincial legislators

a) Quebec

Provincial authorities were the first to take action to deal with the large number of complaints involving the telecommunications sector, especially wireless services. Quebec got the ball rolling with Bill 60, which came into force in 2010 and amended the Consumer Protection Act, to address this issue in particular. Although a group of issues were covered by these changes, it would be the new provisions on *contracts involving sequential performance for a service provided at a distance*³⁹, along with the new regulatory framework for clauses involving unilateral changes, that would have the greatest impact on communications services in general, whether they consist of cell phone service, wireline telephone service, Internet connection service, cable TV or alarm systems.

The purpose of these targeted legislative changes was, in particular, to clarify the information provided in contracts, requiring merchants to clearly inform consumers of the type of service being provided, the price and duration. The automatic-renewal clauses, under the same terms and conditions, of fixed-term contracts have been prohibited, with contract renewals and changes now requiring that prior notice be sent and, unless expressly agreed-to by the consumer, a contract of more than 60 days can only be renewed for an indeterminate period.

The legislation also caps early cancellation fees, which may not exceed, when the consumer has received an economic inducement, the value associated solely with such a “rebate granted” on the device as part of the contract. Cancellation fees must be reduced in a linear manner during the contract proportionately with the number of months elapsed, but over a period not exceeding 36 months. Cancellation fees are also capped for fixed-term contracts for which no rebate was granted; the ceiling is set at \$50, or an amount equivalent to 10% of the price of the services stipulated in the contract which have not been provided, if said amount is lower. Cancellation fees are also capped, based on the same principle, for indeterminate-term contracts for which a rebate was granted on the device, although the amortization period can extend up to 48 months. No cancellation fees may be charged when no device was provided. The merchant may not charge the customer for the services while a device that the merchant provided is being repaired.

To counter the use of contract clauses under which merchants (and particularly communications service providers) claim to reserve the right to make any changes to a current contract at their discretion, Quebec’s legislature has adopted new rules, of general application, that require that the elements likely to involve changes be indicated when such clauses are used⁴⁰. The Consumer Protection Act now requires that notifications be sent by the merchant before any

³⁹ *Consumer Protection Act*, CQLR, c. P-40.1, sections 214.1 to 214.11
http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/P_40_1/P40_1.html
(page viewed on April 30, 2015).

⁴⁰ *Consumer Protection Act*, CQLR, c. P-40.1, section 11.2. See also: **PERRON, Stéphanie**, *Fini les frais abusifs dans les télécommunications*, Protégez-vous, Montréal, Québec, Canada, June 17, 2010. <http://www.protegez-vous.ca/affaires-et-societe/reformelpc.html> (page viewed on April 30, 2015).

changes are made, and indicates the rights of consumers who intend to refuse the change. If the effect of the change is to reduce the service provider's obligations or increase those of the consumer, the latter can refuse the change and cancel the contract without penalty. The changes which the merchant is reserving the right to make can never, in a fixed-term contract, pertain to essential elements of the contract. Changes made in violation of this section will simply be unenforceable against the consumer.

At the time, several industry representatives had cried foul, predicting that such changes would result in exorbitant costs for service providers, which should be passed on to subscribers, and that changes to the Consumer Protection Act would therefore have a major negative impact on rates⁴¹. We now know that this is not the case. As the CRTC's statistics indicate in this regard, wireless service rates in 2010 in Quebec have instead decreased⁴² (however, it is true that the coming into force of the legislation coincided with new competition on the market).

b) Manitoba

The Manitoba government followed Quebec's lead with Bill 35, *Consumer Protection Amendment Act (Cell Phone Contracts)*, which came into force in September 2012. However, the Manitoba legislative amendments only pertain to cell phone contracts. The Manitoba *Consumer Protection Act*⁴³ now also limits unilateral changes to a contract and requires that a notice be sent before a contract is automatically renewed. Early cancellation fees are also capped; for fixed-term contracts, calculation methods similar to those in Quebec have been adopted. The law requires that the contract be sent before the start of service delivery, prohibits automatic contract renewal for a new fixed term, requires that advertising states minimum monthly service charges, and requires the disclosure of all applicable service charges and terms and conditions. The service provider may also no longer charge the customer for wireless services when the device is being repaired and no replacement device is provided. Although the changes brought by Manitoba legislators initially only involved wireless services, the regulatory framework for cell phones has been extended in 2014 to include all distance communication services (telephone, radio and television, Internet, remote monitoring)⁴⁴.

⁴¹ LAROCQUE, Sylvain. *Les consommateurs québécois seront mieux protégés*, La Presse, Montréal, Québec, Canada, June 29, 2010. <http://affaires.lapresse.ca/economie/quebec/201006/29/01-4294253-les-consommateurs-quebecois-seront-mieux-protoges.php> (page viewed on April 30, 2015).

⁴² *Op. cit.*, Note 1, CRTC, *2014 Communications Monitoring Report*. See Table 5.5.7.

⁴³ *The Consumer Protection Amendment Act*, CCSM c C200, Part XXII – Contracts for Cell Phone Services (sect. 180 ss.) <http://web2.gov.mb.ca/laws/statutes/2011/c02511e.php>. See also: MANITOBA, *Fairer Cellphone Rules for Manitobans*, <http://www.gov.mb.ca/cca/cpo/cellphonelaws.html> and SIM, Peter, *New Cellphone Contract Rules*, September 13, 2012. <http://www.tdslaw.com/knowledge-center/new-cellphone-contract-rules/> (pages viewed on April 30, 2015).

⁴⁴ Part XXII of the Consumer Protection Act, CCSM c C200, Contracts for Cell Phone Services, has been amended. It is now called "Contracts for Distance Communication Services." See: *The Consumer Protection Amendment Act (Contracts for Distance Communication Services)*, S.M. 2014, c. 28. <https://web2.gov.mb.ca/laws/statutes/2014/c02814e.php> (page viewed on April 30, 2015).

c) Newfoundland and Labrador

In September 2012, legislative changes also came into force in the province of Newfoundland and Labrador for general communication services, regulating, in particular, the mandatory information that must be found in contracts, which must be clear, concise, written in plain language and provided on paper⁴⁵. Legislative changes also include the capping of early cancellation fees and the regulation of unilateral changes in contracts and security deposits.

d) Nova Scotia

Nova Scotia came on board with Bill 65, *An Act to Amend [...] the Consumer Protection Act, to Ensure Fairness in Cellular Telephone Contracts*. The legislative changes came into force on May 1, 2013. Just as with the other provinces above, their purpose was to cap early cancellation fees and regulate unilateral changes and automatic contract renewals. The Act now also requires service providers to display the minimum monthly service charges on their ads⁴⁶. The legislative changes adopted in Nova Scotia only pertain to wireless telephone service.

e) Ontario

To date, Ontario is the last province to have adopted similar legislative changes. The version that was adopted, the *Wireless Services Agreements Act*⁴⁷, contains several provisions similar to those found in the other provinces, although with a few specific additions, no doubt inspired by consultations on the Code. There are provisions aimed at clarifying the information in the contract that require the service provider to indicate: the minimum monthly service charges; a list of service inclusions and information on their usage limits; the method used to calculate overage charges; a description of the other additional fees; whether the device is locked or not; the procedure for cancelling the contract, etc. A particular right was conferred to consumers in connection with these constraints imposed on the service provider: if the latter does not conform to its information disclosure obligations, the consumer can cancel the contract in the first year and receive a full refund (provided that he return, upon request, the device that may have been provided as part of the contract).

Fixed-term contracts can only be changed by the service provider if the consumer explicitly consents to it. With regard to early cancellation fees, the Ontario legislation basically includes the same text as in the other provinces, but it explicitly stipulates that no cancellation fees may be charged after 24 months, which is very similar to a provision in the Wireless Code. The

⁴⁵ Bill 6 – *An Act To Amend the Consumer Protection and Business Practices Act*, First Session, 47th General Assembly, 61 Elizabeth II, 2012 <http://www.assembly.nl.ca/business/bills/Bill1206.htm>

See also:

ANTLE, Rob. *N.L. law targets cell, internet and cable contracts*, CBC News, CBC, Montréal, Québec, Canada, February 19, 2013. <http://www.cbc.ca/news/canada/newfoundland-labrador/n-l-law-targets-cell-internet-and-cable-contracts-1.1319526> (page viewed on April 30, 2015).

⁴⁶ *An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act, to Ensure Fairness in Cellular Telephone Contracts*. http://nslegislature.ca/legc/bills/61st_4th/3rd_read/b065.htm

⁴⁷ Bill 60, *Wireless Services Agreements Act*, 2013, S.O. 2013 C.8.

http://ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2781. See also: **CONSUMER PROTECTION ONTARIO**, *Your rights when signing a wireless service contract*. <http://www.ontario.ca/consumers/your-rights-when-signing-wireless-service-contract> (page viewed on April 30, 2015).

legislation limits fees while the device is being repaired during the warranty period: if a device is provided as part of the contract, the service provider may only charge for the service if it provides the consumer with a free replacement device for the duration of the repairs. A consumer whose device is lost or stolen must continue paying the regular service charges, but is not subject to any additional charges for calls made by a third party. The legislation also requires that service providers indicate any additional charges (such as activation fees) in their advertising.

When this bill was introduced, the Canadian Wireless Telecommunications Association once again opposed it, arguing this time that the CRTC was already striving to implement the Wireless Code and that the legislation was unnecessary, since what legislators were looking to institute was already common practice in the industry⁴⁸. However, industry members were not unanimously opposed to the bill: Mobilicity stated that it fully supported the legislation.⁴⁹

The legislative changes came into force in Ontario on April 1, 2014, a few months after the Wireless Code.

f) New Brunswick

Lastly, Bill 35, the Cellular Phone Contracts Act, which was also tabled in New Brunswick in 2012, died on the order paper after the First Reading⁵⁰.

⁴⁸ **DOBBY, Christine.** *Ontario plans new law to make cellphone contracts more consumer friendly*, Financial Post, Toronto, Ontario, Canada, April 25, 2013. http://business.financialpost.com/2013/04/25/ontario-plans-new-law-to-make-cellphone-contracts-more-consumer-friendly/?_lsa=362f-c1f3 (page viewed on April 30, 2015).

⁴⁹ "We stand united with Mr. Oraziotti in his unwavering pursuit of protecting Ontario consumers from unfair wireless practices, such as excessive early contract termination fees. It's time to stop putting Ontarians at the mercy of oppressive, expensive wireless contracts and give them the freedom they deserve."

MOBILICITY. *Mobilicity supports Ontario Bill 5 and wireless consumer protection laws*, Press Release, CNW-Telbec website, Montreal, Quebec, Canada, November 29, 2011. <http://www.newswire.ca/en/story/886361/mobilicity-supports-ontario-bill-5-and-wireless-consumer-protection-laws> (page viewed on April 30, 2015).

⁵⁰ **NEW BRUNSWICK.** *Bill 35, Cellular Phone Contracts Act, Read First Time: May 9, 2012.* <http://www.gnb.ca/legis/bill/pdf/57/2/Bill-35.pdf> (page viewed on April 30, 2015).

2.4.2 Federal measures

a) *Commissioner for Complaints for Telecommunications Services*

Various federal government agencies also intervened over the years to attempt to reduce the problems experienced by consumers in the telecommunications sector.

Although not consisting of protection measures per se but rather of a question of remedy, it would be appropriate to briefly mention the creation of the Commissioner for Complaints for Telecommunications Services, an ombuds office that plays a key role in resolving complaints by wireless service users. In fact, the final report by the Telecommunications Policy Review Panel, submitted in 2006⁵¹, proposed the creation of a telecommunications consumer agency whose role would be to streamline the process of resolving complaints by customers against telecommunications service providers in a competitive environment:

A properly designed ombuds office should be less intimidating to customers and should resolve disputes in a less formal and less time-consuming manner than current arrangements. Over time, it could develop an expertise not found in the courts. Unlike the CRTC, the TCA could focus on specific complaints from individuals and small business retail customers. In addition, the TCA's mandate could include unregulated telecommunications and telecommunications services offered by entities that are not subject to CRTC jurisdiction⁵².

In addition to the creation of an agency responsible for handling complaints in view of resolving billing and contract disputes, among other matters, the agency would also be in charge of reporting each year to the Commission any systemic problems that it may have detected⁵³. Having favourably received these suggestions for such an agency, Industry Canada issued an order stating that “an independent agency with a mandate to resolve complaints from individual and small business retail customers [...] should be an integral component of a deregulated telecommunications market⁵⁴.” Several industry players then set about creating the basis of what would become the Commissioner for Complaints for Telecommunications Services (CCTS), the structure of which would be later approved by the CRTC⁵⁵.

The CCTS Procedural Code stipulates that the CCTS must handle complaints “with a view to determining whether the Participating Service Provider reasonably performed its obligations pursuant to the applicable contract and followed its usual policies and operating procedures in its dealings with the Customer.” In addition to using the contract as a basis “in making this determination, or when the contract is silent on an issue, the Commissioner will consider

⁵¹ **TELECOMMUNICATIONS POLICY REVIEW PANEL** (GECRT) – *Final Report*, Industry Canada, Ottawa, Ontario, Canada, March 2006. [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapi/tprr-final-report-2006.pdf/\\$FILE/tprr-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapi/tprr-final-report-2006.pdf/$FILE/tprr-final-report-2006.pdf) (document consulted on April 30, 2015).

⁵² *Ibid.* See Chapter 6: Social Regulation, page 8.

⁵³ *Ibid.* See Chapter 6: Social Regulation, page 11.

⁵⁴ *Order Requiring the Canadian Radio-television and Telecommunications Commission to report to the Governor in Council on Consumer Complaints*, C.P. 2007-533. April 4, 2007. <http://web.archive.org/web/20130523101038/http://www.gazette.gc.ca/archives/p1/2007/2007-05-26/html/order-decret-fra.html> (page viewed on April 30, 2015).

⁵⁵ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**. *Telecom Decision CRTC 2007-130*, CRTC, Ottawa, Ontario, Canada, December 20, 2007. <http://www.crtc.gc.ca/eng/archive/2007/dt2007-130.htm> (page viewed on April 30, 2015).

general principles of law, good industry practice, any relevant codes of conduct or practice, and what is fair and reasonable in the circumstances of the Complaint⁵⁶.”

Hence, the Commissioner's mandate is to deal with complaints first by examining the contract that binds the service provider to the consumer; the CCTS must determine whether the service provider's actions adhere to the contract, and not, for instance, whether certain clauses in the contract are valid. Although it can “consider general principles of law,” it is clear that it is not the CCTS's mandate to apply the consumer protection laws in force in the various provinces.

The CCTS's complaint resolution process includes a first stage, which consists in attempting to resolve the problem in an informal manner between the consumer and the service provider; several cases are resolved at this initial stage, before an investigation is conducted by the Commissioner. The CCTS thus represents a free and user friendly channel that is available to help consumers resolve complaints, but the consumer will never be guaranteed that all of his rights, in particular those that he has under provincial consumer protection laws, will be respected or recognized.

2.5 The Wireless Code

As the previous section demonstrated, certain industry members have consistently opposed the adoption by the provinces of special provisions aimed at regulating their practices. They have successively expressed threats of possible price hikes or confusion for consumers as a result of several protection plans related to wireless services. They also naturally argued that the provinces were not entitled to regulate businesses whose activities fell under federal jurisdiction. It seems likely that the adoption of several provincial laws each with specific characteristics may be an irritant for companies that operate coast to coast. This section will show that the pressures to create a federal code of conduct aimed at protecting consumers have resulted from demands made both by certain consumer protection groups and by industry members.

2.5.1 Chronological account

In December 2011, the Public Interest Advocacy Centre (PIAC) filed a complaint with the CRTC regarding a current industry practice that consisted in requiring consumers wishing to cancel their services to provide one month's notice, and therefore the payment of 30 additional days of service starting from the date of the cancellation request, even after a fixed-term contract had expired⁵⁷, a practice that had been denounced in the CCTS's 2009-2010 annual report but which was still in use on the Canadian market a year later⁵⁸. PIAC was asking the Commission

⁵⁶ **COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES.** *Procedural Code*, CCTS, Ottawa, Ontario, Canada (Amended and Restated June 1, 2010). Last Amended January 18, 2012, 11 pages. <http://www.cts-cprst.ca/wp-content/uploads/2012/01/CCTS-Procedural-Code-Jan-2012.pdf> (document consulted on April 30, 2015).

⁵⁷ Remember that this practice was already prohibited in Quebec at the time through sections 214.6 and following of the *Consumer Protection Act*.

⁵⁸ **PUBLIC INTEREST ADVOCACY CENTRE (PIAC).** *Application regarding certain billing practices of the Wireless Service Providers which contravene Section 27(2) of the Telecommunications Act* – December 22, 2011. http://www.crtc.gc.ca/part1/eng/2011/8661/p8_201116807.htm (page viewed on April 30, 2015).

to use its power under Section 24 of the Telecommunications Act⁵⁹ to have this practice stopped. In response to this application, Telus, which reports that it does not use this practice, proposed that the Commission hold larger proceedings and deal with problems related to transparency in the offering and provision of wireless services⁶⁰. TELUS for instance mentions the fact that service providers' obligations differ from one province to another, which results in a loss of efficiency that takes the form of additional costs, which are then passed on to consumers.

16. [...] TELUS considers that the Commission should nonetheless hold a public consultation and determine what national standards apply with respect to a number of transparency-oriented issues relating to the provision of consumer wireless telecommunications services, including cancellation notice periods.

17. TELUS considers that consumers across Canada should benefit from the same baseline standards regarding wireless services, and that the Commission is best positioned to determine those standards.

18. TELUS and other wireless service providers ("WSPs") that operate nationally face the prospect of multiple, conflicting standards for a range of marketing, contracting, and billing matters depending on the province where they operate. This causes TELUS significant concern because complying with a patchwork of standards and requirements across the country would create inefficiencies and additional costs that would ultimately have to be borne by our clients.

Some of the issues that Telus is proposing the CRTC address in such a public consultation include: information disclosure in relation to the contract; obligations regarding unilateral changes to the contract; obligations to send a notice for automatic control renewal; reasons for cancellation; early cancellation fees; obligations related to security deposits; rules on device unlocking; expiration of prepaid cards; consumer's obligations when the device is under repair; obligations of disclosure regarding rates and mobile data usage limits; obligation to provide a paper invoice; notices sent to consumers when they are about to reach their usage limits or when they have moved into a different rate bracket; notifications on the manufacturer's warranty.

In a reply dated February 20, 2012, PIAC concurred, stating that the adoption of national standards on issues that have a direct impact on consumers would benefit them.

An application would then be filed by Rogers asking the CRTC to set up a committee for the creation of a national consumer protection code. Rogers mentions the proliferation of legislative measures in various provinces which, although they benefit consumers, create a veritable "patchwork" of regulations applicable to service providers, resulting in certain disparities that may make contracts longer rather than simplify them. Rogers's application thus concerns the

⁵⁹ *Telecommunications Act* (S.C. 1993, c. 38), section 24: "The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission." <http://laws-lois.justice.gc.ca/eng/acts/t-3.4/page-8.html> (page viewed on April 30, 2015).

⁶⁰ **TELUS**. *Answer filed on February 8, 2012*. Document available on the CRTC's website: <https://services.crtc.gc.ca/pub/ListeInterventionList/Documents.aspx?ID=163074&en=2011-1680-7&dt=ar&S=C&PA=t&PT=pt1&PST=a> (page viewed on May 1, 2015).

establishment of a national code that would eliminate the need for provincial regulations. Rogers has proposed that the code be established by the CRTC Interconnection Steering Committee⁶¹.

The formula proposed by Rogers has been criticized by many. The CRTC still retained the comments of many stakeholders in favour of the establishment of a national wireless services code, and suspended proceedings related to the applications by PIAC and Rogers in order to start proceedings to determine whether market conditions had “*changed sufficiently to warrant Commission intervention in the development of a national retail wireless services consumer code*”⁶².

Following a consultation involving close to 1000 participants (stakeholders and the public), and during which the CRTC will gather comments on such aspects as wireless rates, contract clarity, contract terms and conditions, accuracy of advertised prices, device unlocking, stolen phones, quality of service or customer service, the Commission in its decision summarized as follows the many complaints related to the market and the surprising determination of the stakeholders:

*5. Parties were nearly unanimous in the view that, irrespective of whether the conditions for forbearance in the mobile wireless market have changed, the Commission should intervene in the development of a new code for mobile wireless services.*⁶³

On questions related to competitiveness, the Commission noted that:

*[M]arket indicators demonstrate that consumers have a choice of competitive service providers and a range of rates and payment options for mobile wireless services. [...] [N]ew entrants in the mobile wireless market continue to increase their market share and coverage. Companies continue to invest in new infrastructure to bring new innovative services to more Canadians. Moreover, the average cost per month for mobile wireless services has remained relatively stable.*⁶⁴

The Commission therefore finds that “there is no evidence that the conditions for forbearance have changed sufficiently to warrant Commission intervention with respect to mobile wireless service rates or competitiveness in the mobile wireless market⁶⁵,” but that its regulatory power under section 24 of the Act to impose conditions on the supply and demand of telecommunications services *can be used regardless of the state of competitiveness as the means* of achieving the telecommunications policy objectives set out in the Act.

⁶¹ **ROGERS.** *Part 1 Application by Rogers Communications Partnership to implement a National Wireless Services Consumer Protection Code.* Document available at the CRTC website:

http://www.crtc.gc.ca/public/part1/2012/8620/r28_201202598/1683667.pdf (document viewed on May 1, 2015).

⁶² **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Telecom Notice of Consultation CRTC 2012-206 – Proceeding to consider whether conditions in the Canadian wireless market have changed sufficiently to warrant Commission intervention with respect to retail wireless services.* CRTC, Ottawa, Ontario, Canada, April 4, 2012. <http://www.crtc.gc.ca/eng/archive/2012/2012-206.htm> (page viewed on May 1, 2015).

⁶³ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Telecom Decision CRTC 2012-556 – Decision on whether conditions in the Canadian wireless market have changed sufficiently to warrant Commission intervention with respect to retail wireless services.* CRTC, Ottawa, Ontario, Canada, October 11, 2012. www.crtc.gc.ca/eng/archive/2012/2012-556.htm (page viewed on May 1, 2015).

⁶⁴ *Id.*, par. 19 and 20.

⁶⁵ *Id.*, par. 21

The Commission reports the position by certain parties who consider that “*regulations that vary from province to province will add to customer confusion and increase compliance costs and inefficiencies for the mobile wireless industry.*”⁶⁶ Some provinces have stated to the CRTC that, if national measures were to be adopted, such protection measures should at least be equivalent to existing provincial measures; the government of Quebec, for its part, mentioned that regardless of what happens, it would maintain its legislative authority with regard to matters involving consumer protection.

Lastly, the Commission states that “clarity around contract terms is a significant source of consumer complaints,” and mentions the significant number of complaints filed with the Commissioner for this type of service, while acknowledging that the CCTS is “*mandated to address adherence to contract terms, [and] is not mandated to address the clarity or content of the contracts*”⁶⁷.

The Commission finally concludes that “*the development of a code for mobile wireless services is efficient and proportionate to its purpose, and minimally interferes with market forces. In this regard, the Commission considers that the most efficient, least intrusive way of achieving the objective of ensuring consumers understand their rights and responsibilities with respect to mobile wireless services is the development of a code*”⁶⁸.

2.5.2 Debate highlights

The consultation on the Wireless Code resulted in over 5,000 interventions⁶⁹. Certain highlights will be mentioned given the scope of the deliberations.

As previously noted, many industry interventions were centered on the need to standardize consumer protection standards nation-wide⁷⁰. Not all industry members were in favour of this approach, with several smaller service providers wanting to consider different scenarios that would not require systematically asking the CRTC to strike down provincial consumer protection legislation or declare it to be unenforceable, which is what certain stakeholders clearly wanted the CRTC to do⁷¹. Service providers also argued in favour of the Code providing them with some leeway so that they could differentiate their products and services to enable the various companies to stand out from one another⁷².

This consultation by the CRTC inaugurated a new form of intervention: it was the first consultation for which consumers were directly involved through an online forum. A large number of users gave their opinion on the state of service rates in Canada, deplored the lack of

⁶⁶ *Id.*, par. 10

⁶⁷ *Id.*, par. 24

⁶⁸ *Id.*, par. 33

⁶⁹ See Telecom Notice of Consultation CRTC 2012-557 – Proceeding to establish a mandatory code for mobile wireless services. http://crtc.gc.ca/eng/archive/2012/2012-557.htm?_ga=1.96208921.446189916.1432738165 (page viewed on April 30, 2015).

⁷⁰ See, in particular, the submissions by Rogers and the CWTA. The interventions on record can be found on the CRTC's website under section 2012-557. <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?S=C&PA=T&PT=NC&PST=A>

⁷¹ See, in particular, the submissions by Vidéotron and Mobilicity.

⁷² See, in particular, the submission by Bell.

transparency, in particular with respect to the service rates compared to the cost of the subsidized device, argued in favour of shorter contract terms, complained about exorbitant cancellation fees, or made comments on device unlocking⁷³.

Several stakeholders, including the Competition Bureau and various consumer groups, were asking for an outright ban on device locking, while others recommended that unlocking fees be capped, in accordance with what was suggested in the draft Wireless Code that served as a model and the basis for deliberations during the public hearings. The CRTC chairman in fact allowed himself to make a truly explosive comment during the hearings by responding tit for tat to the Canadian Wireless Telecommunications Association that, with respect to device unlocking, the free market was clearly not working⁷⁴.

During the course of observations and representations by stakeholders, several questions regarding contracts, which had been the subject of debate within various provinces, as well as other issues, were the subject of complaints. Examples include the requirement by service providers of 30 days advance notice to terminate the contract, automatic contract renewal, exorbitant overage charges, pay-per-use mobile data charges, additional charges for text messages, etc.,⁷⁵ not to mention contract terms, unfair use of external clauses⁷⁶, clarity in general⁷⁷, expiration of prepaid credits⁷⁸, rapid device obsolescence⁷⁹, etc.

2.5.3 Announcement of the Code

The Code, announced with great fanfare in June 2013, introduces a few key measures: the right for consumers to terminate a two-year contract without having to pay cancellation fees, a cap on overage charges associated with the use of mobile data at \$50 per month (and \$100 for international roaming), the requirement for all service providers to provide device unlocking three months after subsidized devices have been in use or immediately for non-subsidized

⁷³ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Online Consultation: Help Develop a Wireless Code – Phase 1 Comments.* CRTC, Ottawa, Ontario, Canada, December 4, 2012. <http://www.crtc.gc.ca/telecom/eng/hearings/2012/2012-206oc1.htm> and Online Consultation: Help Develop a Wireless Code – Phase 1 Comments <http://www.crtc.gc.ca/telecom/eng/hearings/2012/2012-206oc1.htm> and Phase 2 Comments, <http://www.crtc.gc.ca/telecom/eng/hearings/2012/2012-206oc2.htm> and <http://www.crtc.gc.ca/telecom/eng/hearings/2012/2012-206oc2.htm> (pages viewed on May 12, 2015).

⁷⁴ “1045 THE CHAIRPERSON: On unlocking, you said it's a marketplace solution. Who's offering, at this time, unlocked phones that aren't CDMA's?”

1046 MR. EBY: I don't – from what was filed, I don't believe any of the carriers are offering unlocked phones, but they all have – there are – there's a variety of unlocking policies once you have the phone.

1047 THE CHAIRPERSON: You see, that's where I'm having difficulty with your approach saying, well, let the market. The market's not working.

1048 Are you making the point that if somebody wants that now that the market will deal with it?

1049 It's a very theoretical market. If nobody's there doing it now, that means it's not working.”

CRTC, *Proceeding to establish a wireless code for consumers Telecom Notice of Consultation CRTC 2012-557, 2012-557-1, 2012-557-2, 2012-557-3 and 2012-557-4 – TRANSCRIPTION OF PROCEEDINGS BEFORE THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION*, Volume 1, February 11, 2013. <http://www.crtc.gc.ca/eng/transcripts/2013/tt0211.html> (page viewed on May 12, 2015).

⁷⁵ See the submission by CIPPIC and PIAC.

⁷⁶ See the submissions by SPIC.

⁷⁷ See the submissions by CCC.

⁷⁸ See the submissions by PIAC.

⁷⁹ See the submissions by CCC.

devices, and the requirement for service providers to provide a 15-day trial period during which consumers can return the device and cancel the service agreement without any cancellation fees⁸⁰. The Commission would in fact maintain that *"the wireless code will contribute to a more dynamic marketplace"*⁸¹.

The Code also includes other new aspects, including the fact of requiring the service provider to give the customer, at the same time as a copy of the wireless services agreement and related documents, a summary of the critical information of the contract; the obligation for service providers to send customers notifications on roaming charges when the customer is travelling abroad with his device; no charges for a device or service which the customer has not specifically purchased; the requirement to suspend service charges when the device is being repaired⁸²; the requirement for the service provider to suspend services if the device is stolen⁸³; the application of certain measures of the Code regarding disconnection and security deposits⁸⁴; a grace period of seven extra days to retrieve the balance of an active prepaid service; etc.

In addition to these new measures, the Code also includes part of the legal obligations in force in several provinces and applicable to wireless service contracts only or to all contracts involving sequential performance for a service provided at a distance, namely: no automatic renewal of fixed-term contracts other than on an indeterminate basis, the right for consumers to terminate the contract when they choose (and in so doing, end the 30-day advance notice required by some service providers), limitation of cancellation fees based on the value of the device being subsidized as part of the contract, at an amount established on the basis of the determination of the gradual systematic reduction in the value of the economic inducement, or when no device is part of the contract, at offsetting amounts that are substantially reduced, the restriction of the right to make unilateral changes, the right to terminate the distance contract if it does not comply with the service provider's representations or if the written contract was simply not provided, etc.

Reactions to the announcement of the contents of the Code were for the most part positive. The federal government supported the CRTC's initiative to take the side of consumers. According to Treasury Board President Tony Clement, who acknowledges the limitations of competition in the sector: "Even if I am in favour of a free market, there are three or four major players who are

⁸⁰ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Wireless code to help Canadians make informed choices and contribute to a dynamic marketplace*, News release, CRTC, Ottawa, Ontario, Canada, June 3, 2013. <http://www.crtc.gc.ca/eng/com100/2013/r130603.htm> (page viewed on May 13, 2015).

⁸¹ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *CRTC wireless code comes into force: Canadians can cancel their contracts without penalty after two years*, News release, CRTC, Ottawa, Ontario, Canada, December 2, 2013. <http://www.crtc.gc.ca/eng/com100/2013/r131202.htm> (page viewed on May 15, 2015).

⁸² There is a long list of required conditions for taking advantage of such protection: the device must be repaired by the service provider, it must be covered by a manufacturer's warranty or an extended warranty from the service provider, and the contract must be subject to cancellation fees if the customer decides to end the service agreement early. The subscriber is not exempt from having to pay service fees if the service provider provides a replacement device free of charge during the repairs.

⁸³ Suspending service prevents the consumer from having to pay overage charges for which he is not liable, but regular service fees continue to apply, whether the consumer has purchased a new device or not.

⁸⁴ Excluding, for instance, capping the amount of the deposit which may be required by the service provider.

controlling everything, so I believe that it is perfectly reasonable to support the consumer, and this is exactly what the CRTC is doing⁸⁵.”

Some industry members have seen this as an opportunity to once again argue that provincial laws do not apply. Consumer groups, for their part, would have a generally positive reaction, albeit with some reservations, in particular because the final version of the Wireless Code will not be as progressive as some propositions in the draft were indicating.

2.5.4 The aftermath...

Despite the positive reactions following the announcement of the Wireless Code, the months that followed proved that all is not so rosy in the wireless services world and that the Code would not be able to solve every problem.

The changes made to the contract terms arising from no early cancellation fees being charged after 24 months were perceived by consumers as a fee increase given that certain service providers' monthly payments had increased⁸⁶. Some media reported that consumers were likely getting a better deal before the Code came into force, although the data in the CRTC Communications Monitoring Report seem to show that the change in amortization based on the price of the devices was the main reason to account for the increase in entry-level service fees, while mid-range service fees remained stable and the price of higher-cost services decreased⁸⁷, but it is unlikely too early to definitely link these rate changes and their imbalance with the coming into force of the Code. Some service providers saw a drop in revenues, which would on a few occasions be associated with the effects of the Wireless Code, and in particular the reduction in the contract term and the end of the mandatory 30-day notices before the cancellation of services, which resulted in implementation costs and a reduction in barriers to mobility⁸⁸.

Several companies submitted applications, namely requests to clarify certain aspects of the Wireless Code. TELUS and Rogers got the ball rolling by requesting clarifications on the amortization models that would likely meet the Code's requirements, Vidéotron also submitted an application to amend the Code to clarify the effective date for the application of measures to indeterminate-term contracts, Sasktel submitted an application related to its delays in implementing caps for overage charges. TELUS submitted a new application, this time on the

⁸⁵ **DESJARDINS, François.** *Téléphonie sans fil – Le CRTC sonne le glas des contrats de trois ans*, Le Devoir, Montréal, Québec, Canada, June 4, 2013. <http://www.ledevoir.com/economie/actualites-economiques/379787/le-crtc-sonne-le-glas-des-contrats-de-trois-ans> (page viewed on May 15, 2015).

⁸⁶ See: *Op. cit.* Note 3, **AUGER.** *L'industrie du cellulaire: mutation et prix à la hausse*, and **CBC NEWS.** *Wireless carriers hike prices across Canada*, CBC, Montreal, Québec, Canada, March 17, 2014. <http://www.cbc.ca/news/business/wireless-carriers-hike-prices-across-canada-1.2575886> (pages viewed on May 15, 2015).

⁸⁷ As shown in Table 4 of our literature review.

⁸⁸ See:

MUNGER, Michel. *L'achat d'Astral et le code de sans-fil plombent Bell*, Argent, Groupe Quebecor, Montréal, Québec, Canada, November 7, 2013. <http://argent.canoe.ca/nouvelles/canada/bce-diminue-ses-profits-de-35-7112013> and

DOBBY, Christine. *Rogers blames hockey, CRTC as profit falls*, The Globe and Mail, Toronto, Ontario, Canada, April 20, 2015. <http://www.theglobeandmail.com/report-on-business/rogers-profits-drop-17-per-cent-in-first-quarter/article24036854/> (pages viewed on May 15, 2015).

application of the Code to big business. And this does not include several complaints submitted by various organizations on the possible non-compliance of certain service providers with requirements stipulated in the Code.

Besides these various applications submitted directly to the Commission, most of the service providers were also contesting the validity and applicability of the second deadline set in the Code, making it applicable, as of June 3, 2015, to all contracts, regardless of the date they are entered into⁸⁹. Service providers argued on behalf of grandfathering and mentioned the detrimental impact of such a measure on projected revenues associated with early cancellation fees. This challenge would ultimately be rejected by the Federal Court of Appeal.

The Commission was thus led by various parties to define certain principles in the Wireless Code. It may well be required to do so again. The CRTC's decision in fact included the requirement for service providers to confirm, through detailed reports, their compliance with the new regulations and requirements imposed by the Code. Service providers were therefore required, in the month following the coming into effect of the Code, to fill out a questionnaire prepared by the Commission. Their compliance reports sometimes provide very detailed information on their field practices, especially when the topics in question involve a specific question on the Commission's part. This is the case, namely, for the methods used to transmit notifications of changes to the contract, notifications on mobile data caps, notices when consumers are entering roaming areas, and also measures taken to promote the Wireless Code. Virtually all the aspects of the Code, i.e. those for which service providers had to confirm their compliance without having to respond to a specific question by the Commission, were given very brief treatment. And the responses from the service providers at times seemed not to consider their practices; at least this is what our examination of the service providers' contract documents, which we will be presenting in the next chapter, reveals.

Service providers were also required to provide the CRTC with sample contracts that they use; we noted some fairly frequent inconsistencies between the contracts that we obtained from the field and those sent to the Commission. We also noted that in their reports, service providers would often merely refer the Commission to their sample contract to establish compliance without necessarily explaining in detail how these practices comply with the Code. With respect to the requirements respecting clarity in particular, as we will see further on, service providers still have much work to do to ensure that their service agreements can be understood by consumers.

Subsequent to the service providers' representations, the Commission enquired about certain business practices in order to more precisely determine how they comply with the Code. The Commission in fact asked Rogers about early cancellation fees⁹⁰ and commented on the lack of clarity in the service provider's explanations. Rogers reassured the CRTC by saying that it had

⁸⁹ **COTTENDIN, Thomas.** *Télécoms: le code du sans fil du CRTC passera en Cour d'appel*, Les Affaires, Montréal, Québec, Canada, October 4, 2013. <http://www.lesaffaires.com/secteurs-d-activite/medias-et-telecommunications/telecoms-le-code-du-sans-fil-du-crtc-passera-en-cour-d-appel/562160> (page viewed on May 15, 2015).

⁹⁰ Rogers stated that it had abandoned the concept of "Additional Device Savings Recovery Fee."
CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION. *Letter - Re: Wireless Code Implementation – Compliance Reports*, CRTC, Ottawa, Ontario, Canada, May 22, 2014. <http://www.crtc.gc.ca/eng/archive/2014/lt140522j.htm> (page viewed on June 3, 2015).

no longer been using its early cancellation fees model since May 2014⁹¹. Our examination of two contracts entered into after Rogers sent its response to the CRTC revealed that Fido was still mentioning this type of early cancellation fee. Did Rogers's response only pertain to the Rogers part of its operations and was blithely disregarding Fido's activities?

The CRTC also asked Rogers about its disconnection notices – for which the Commission would in fact require corrections to be made – and on the limitations and restrictions it imposes on its trial periods. TELUS, Vidéotron, MTS and Bell were also asked about usage levels that preclude consumers from exercising their right to return the device within 15 days after the contract is entered into.

Regarding the trial periods, which should not involve any charges, the Commission also asked Bell and Sasktel about the restocking fees they were charging. The Commission in fact ordered them to stop this practice⁹². The CRTC also questioned Sasktel, whose critical information summary does not include the required information on the elements included in the contract⁹³.

TELUS was questioned about the clarity and completeness of the sample contract that it sent and on the critical information summary, in particular on the explanations contained in it regarding early cancellation fees⁹⁴.

MTS was specifically questioned about its international roaming notifications.

At the time this is being written (about one year after the start of the audits), the Commission was still in the process of conducting compliance audits with some service providers.

⁹¹ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Letter - Re: Wireless Code Implementation – Compliance Reports*, CRTC, Ottawa, Ontario, Canada, June 6, 2014. <http://www.crtc.gc.ca/eng/archive/2014/lt140606d.htm> (page viewed on June 3, 2015).

⁹² **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Telecom Commission Letter Addressed to Robert Hersche (Saskatchewan Telecommunications)*, CRTC, Ottawa, Ontario, Canada, August 18, 2014. <http://www.crtc.gc.ca/eng/archive/2014/lt140814c.htm> (page viewed on June 3, 2015).

⁹³ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Letter - Re: Wireless Code Implementation – Compliance Reports*, CRTC, Ottawa, Ontario, Canada, May 22, 2014. <http://www.crtc.gc.ca/eng/archive/2014/lt140522k.htm> (page viewed on June 3, 2015).

⁹⁴ *ibid.*

3. Effects of the Wireless Code

As seen in the previous chapter, the coming into force of the Wireless Code did not please everyone. The changes made to the device amortization term, for instance, seem to have annoyed certain consumers, while some service providers have accused the Code of being responsible for a drop in their revenues. With its Code, the Commission appears to have attempted to reconcile the interests of consumers with those of the industry using measures aimed at reducing the prevalence of various exorbitant fees charged to consumers and to increase their mobility. The Commission seemed, on some points, to avoid deviating from its usual approach, which is to exercise its role as market regulator in the least intrusive manner possible, in accordance with the 2006 direction, which requires the Commission to:

(i) rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and

(ii) when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives⁹⁵.

It goes without saying that the final version of the Wireless code, introduced during public hearings as a code “for consumers,” also takes service providers’ interests into account.

The Commission in fact admits in its decision that although the promises for tighter regulations hinted at in the Draft Code were not kept, this was to avoid imposing an overly heavy burden on service providers:

363. The Commission notes, however, that the more onerous elements of the requirements proposed in the Draft Code have not been imposed as part of the Wireless Code, considerably lessening the burden on WSPs and the time they would need to implement these requirements⁹⁶.

In fact, when the Code was announced, UC had deplored certain choices made by the CRTC, which clearly seemed only designed to “split the difference” by granting half-measures, addressing serious issues without truly attempting to resolve the core problem. For instance, in response to consumers’ complaints about device locking, the Commission decided to force all service providers to provide unlocking services; however, the Commission failed to limit the fees that service providers can charge, and also requires service providers to only provide the service, in case of a subsidized device, three months after the start of the contract.

The Commission requires service providers to provide a trial period to consumers during which consumers can learn about the detailed terms and conditions of their contract and try out the

⁹⁵ **GOVERNMENT OF CANADA.** *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355. <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-355/page-1.html> (page viewed on May 18, 2015).

⁹⁶ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Telecom Regulatory Policy CRTC 2013-271- The Wireless Code*. CRTC, Ottawa, Ontario, Canada, June 3, 2013. <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm> (page viewed on June 3, 2015).

service. However, the Code stipulates that service providers can impose “reasonable limits [on use]” which, if they are exceeded, will result in the consumer losing his right to cancel the contract at no cost, leaving entire discretion to the service providers to determine what they consider to be reasonable.

In addition, the Commission agrees that monthly usage limits can be imposed on mobile services qualified as “unlimited” by service providers and advertised as such, on the sole condition that such limits do not result in overage charges. In our opinion, the CRTC is supporting a practice that we consider to be absolutely indefensible; how can any reasonable person accept such a contradictory statement – acceptable limits for unlimited service – which borders on misleading representation?

The Code only provides minimal gains for prepaid wireless services, which the CRTC has exempted from an impressive number of requirements, to the point of casting doubt on the obligation to have a written contract (which is in fact required by most provincial legislation). Several stakeholders argued in favour of abolishing the expiration dates which service providers imposed on prepaid services, which cause consumers to lose the credits accumulated in their accounts or require them to constantly replenish the accounts, even when the credit balance already exceeds what was likely used. The CRTC, first refusing to address the problem head on, decided to intervene only on one fairly secondary aspect of the issue, by giving consumers a seven-day period during which they can keep their balance – meaning that they will only lose the balance seven days later, or will have time to add funds to their account to keep the unused minutes.

Given the flexibility allotted to the wireless services industry, which has a wide margin of discretion in how it will comply with several requirements in the Wireless Code, we attempted to check how certain provisions in the Code are applied by service providers in order to determine whether this flexibility prevents the Code's objectives from being attained and adversely impacts consumers' interests. Note that the Code was introduced as a tool designed to ensure that consumers can obtain contract-related information more easily, make sure that certain standards are in place within the industry, and favour the establishment of a more dynamic marketplace. Do consumers really have the means to be better informed about their services since the Wireless Code came into effect? Do the measures that have been implemented truly allow for a more dynamic marketplace? This is what we will seek to determine.

3.1 Methodology

To see which measures were taken by service providers to comply with their obligations under the Wireless Code, we agreed to study the practices of a group of Canadian service providers based on an examination of their contract documents, namely, the permanent copy of the contract and of the service terms and conditions, and all the other related documents to which the agreements that can be entered into with these service providers refer⁹⁷.

⁹⁷ Unless specified otherwise, throughout our analysis, the term “contract documents” refers to all the documents that contain the rights and obligations that are shared by the service provider and consumer, which include the permanent copy of the contract, the service terms and conditions (whether or not they are given to the consumer at the same time as the contract), and any other related documents to which the parties are bound. The term “contract” will be used as a synonym for “permanent copy of the contract.” With respect to the service terms and conditions, we will

To do so, we gathered relevant information on the Internet, called on our network to collect an assortment of contracts that had been entered into after the Code came into force, reviewed the copies of the contracts that had been submitted to the CRTC by service providers in their compliance reports, and also signed a few service agreements in stores.

We examined the documents from a number of major service providers, namely Bell, Virgin, Rogers, Fido, Telus, Koodo, Vidéotron, Sasktel and MTS⁹⁸. Given the large sums that may be required from customers if they cancel the contract when a subsidized device is involved, and the considerable popularity of this business model across Canada, we decided, for the purposes of our study, to gather information for postpaid service contracts with a subsidized device, a scenario that is especially prevalent across Canada.

Obviously, not all the requirements in the Code necessarily result in a requirement for information disclosure in the contract documents; our study was therefore limited to the information that could be found in the contract documents, and therefore, the impacts of all the articles of the Code were not determined. Here are the Code's requirements that were retained for our detailed analysis:

- Clarity: we examined the scope and application of article A1 (plain language) and article A3 (unlimited services);
- Requirements for disclosure of information in the contracts and related documents for postpaid services (article B1 iv) (an analysis on which the assessment of the quality of the disclosures related to several of the following articles was based);
- All the requirements related to the critical information summary (article C1) ;
- Requirements related to bill management tools (including articles E1 – international roaming notifications, E2 – caps for roaming charges and E3 – caps for data overage charges);
- Requirements related to device unlocking (article F);
- Early cancellation fees – subsidized device (article G2);
- Requirements related to the trial period (article G4);
- Requirements related to contract renewals (article G6);
- Requirements related to security deposits (article H1).

3.1.1 Clarifications and limitations of the methodology

Use by service providers of the leeway granted to them by the Code constitutes the core of our study. Some articles of the Code have therefore been omitted from our analysis since they provide no flexibility to service providers. Other requirements in the Code have been partially or completely excluded since the sole study of the contract documents, which is the methodology we chose to apply, can simply not result in an efficient examination. Hence, we have not assessed the quality of the notices sent to consumers when unilateral changes to the contract

specify, when relevant, whether they have been given to the customer at the same time as the permanent copy of the contract.

⁹⁸ These choices were made namely based on the service providers' market share and the relevance of having a range of service providers operating in different parts of the country.

are made or the contract is renewed, or the notices dealing with roaming charges, notifications sent before a cap on overage charges is applied, etc.

Evidently, an examination of the elements in the contract could possibly not provide an accurate picture of a company's actual practices in the event the company does not fully comply with what is stated in the contract. Hence, we did not examine the application, for instance, of caps on overage charges or the fair use policy; our study is limited to what is stated in the contract. We therefore assumed, in our analysis, that service providers are doing everything that is stated in the contract, but we also assumed that they do no more than that.

Note that this study was not intended to be a compliance review. The objective was not to determine whether or not all the contract documents of a given supplier complied with the Code. Rather, our goal was to determine the Code's impact, and more specifically the impact of the leeway allowed by the Code on the overall services provided to consumers, and on their new rights as set out in the Code. We were nonetheless faced with the fact that many of the contracts that we had an opportunity to examine may, in our opinion, simply not comply with the Code's requirements, flexibility or not. In fact, in applying the Code's requirements to the letter, we came to the conclusion that none of the contracts that we reviewed fully complied with the Code's requirements. We may therefore at times – although this was not the purpose of our study – issue an opinion on the compliance of certain practices. Furthermore, any opinion related to compliance may possibly not reflect all of a service provider's recent practices. In fact, there were situations when we examined several contracts from a given supplier and noted that the practices could vary depending on the type of contract and when the contract was entered into⁹⁹.

It is also important to note that the invariably limited sample of documents used in our study may not be representative of industry practices as a whole. However, the documents overall gave us an excellent overview of current industry practices and enabled us to pinpoint several weaknesses in the Code, which we will come back to in greater detail in this chapter.

The issues related to the Wireless Code are clearly so numerous that there is certainly room for further studies on this topic, in particular on all the articles that are not covered by our study.

3.1.2 Point-by-point analysis

Our analysis was complex given the large number of elements to be identified and examined in all the contract documents. Given that the purpose of our study was not to do a compliance assessment and identify the transgressors, but rather to study the elements that provided leeway in the Code and the manner in which the requirements are applied for which the Code provides such leeway in order to determine the practices that may run counter to the Code's objectives or consumer interests, we will be present our analysis by topic, while going through each of the elements of the Code that were covered in the study.

⁹⁹ For instance, we noted that certain contracts which had been entered into just after the Code came into force seem to comply less with certain requirements than other contracts entered into more than one year later. The reason for this may be the follow-up measures used by the Commission, which we covered in the previous chapter.

In our presentation of each element, we will begin with an analysis of the meaning of each relevant article – analysis of the text, our interpretation and the intents expressed by the Commission in its decision on the Code – and will point out ambiguous elements in the articles that were reviewed or the elements that give the industry some leeway.

We will continue with a brief summary of the application of these provisions by the industry, pointing out what we found to be the most beneficial practices (or the least beneficial, based on a general overview of the situation) for consumers, and we will conclude with a few examples of the worst practices. These cases will be mainly grouped into two categories: clarity and business practices. In fact, given that the Code requires that service providers draft contract documents in clear and plain language, we will first comment on the clarity of the information provided to consumers, by topic, and will then continue with comments on practices that are beneficial or not to consumers.

3.2 Analysis results

a) Clarity and plain language

The concept of clarity is a key element of the Code. In fact, one of the concerns that have been voiced that led the Commission to establish the Code was the problem consumers have in obtaining information on wireless services. The requirement of clarity is in fact one of the first concepts outlined in the Code and one of the premises: clarity must be found throughout the service provider's communication and documents. This is why the question of clarity will be sporadically addressed in relation to several other more targeted obligations. It is therefore appropriate to begin our analysis, as does the Code, with the article that specifically deals with this requirement.

b) A Clarity (A1. Plain language)

Analysis of the Code

Article A1 of the Wireless Code, entitled "Plain language," deals with the manner in which service providers provide information to customers in their communication and documents. The article reads as follows:

A. Clarity

1. Plain language

- (i) *A service provider must communicate with customers using plain language.*
- (ii) *A service provider must ensure that its written contracts and related documents (such as privacy policies and fair use policies) are written in a way that is clear and easy for customers to read and understand.* (Our underlining)

From the outset, there are two requirements in Article 1: plain language and clarity. All communication with the customer must be done using plain language – a concept that is not explicitly defined in the Code. The contract and related documents, for their part, must be

written in clear language; the Code indicates that the language must be easy to read and understand.

The proliferation of terms and their categorizations is just plain confusing: it is impossible to determine whether plain language and clarity are supposed to be interchangeable terms. The fact that plain language and clarity are found in two related articles under the heading "Clarity" and the subheading "Plain language" is in no way helpful.

The definitions or guidelines for applying these principles of plain language and clarity are not specifically found in the Code's articles. However, some paragraphs in the regulatory policy present a few indications on the context and intent of the regulatory authority when these principles were adopted. In fact, section B of Decision 2013-271, "Content and clarity of contracts," provides a few explanations:

B. Content of the Wireless Code

1. Content and clarity of contracts

Positions of parties

32. *Consumers were concerned that written contracts related to wireless services were overly long, complex, and difficult to understand, and that important information was hard to find or hidden in the fine print.*

33. *Consumers submitted that they needed clearer information about specific aspects of their wireless services, such as which services might cause them to incur additional charges, how early cancellation fees apply, and what impact upgrading their device would have on their wireless contract.*

34. *Consumer groups and WSPs generally agreed that written contracts should be clear, use plain language, and contain all the information necessary for consumers to understand the associated terms and conditions of their contracts.*

[...]

38. *Parties generally agreed that the Commission should require WSPs to ensure that written contracts and policies governing the terms and conditions or use of wireless services, such as privacy and fair use policies (related documents), use plain language and are presented in a clear and easy-to-read format.*

[...]

44. *The evidence from this proceeding shows that despite improvements to the form of contracts by several WSPs, customers continue to be surprised by elements of their contract that they were unaware of, either because the information was hidden in small print, contained in a separate document, or otherwise not brought to their attention.*

45. *The Commission considers that, even though consumers have a duty to inform themselves about their rights and obligations and have the responsibility to ensure that they protect their economic interests in the wireless marketplace, all contracts should be easy for consumers to read and understand. The Commission further considers that, in order to facilitate*

consumers' understanding of their contracts with WSPs, certain information should be required to be included in all written wireless service contracts¹⁰⁰. (Our underlining)

The summary by the Commission of the parties' positions on issues of contract content and clarity includes a whole array of concepts that exceeds the sole requirements of plain or clear language. In fact, the Commission has retained numerous comments on consumers' need to have access to comprehensive information on the services, a requirement which the Commission will attempt to meet in certain later articles of the Code. The Commission also retained comments on the concept of legibility: font size, length or layout of documents, use of separate documents. Out of all of this, the Commission therefore chose to retain the requirement of plain language (which it is imposing for WSPs' communication, whereas the parties were proposing it for the documents (par. 34 and 38) and that of clear language. The choice of the term "language" in both instances appears to exclude any concern with form (document structure, size (and variations in size) of text, etc.), whereas its summary of the interventions indicated a broader concern (all contracts should be easy to read and understand by consumers), that extends beyond the mere question of the language that is used.

It is therefore very difficult to determine whether the concepts of clear language, plain language, or general clarity are properly applied by the industry given the vague definitions of these concepts and the many points of view and possible determination of what is clear and plain. However, it can be seen in these passages of the Code that the Commission considers small font size, long documents and the misuse of external clauses to be hindrances to the general requirements of clarity, just like the use of language that would be difficult to understand for the average person, an eminently subjective concept given that literacy levels can vary widely from one consumer to another. Hence, given the lack of clear criteria that would enable practices to be objectively assessed to determine whether they follow the principles of clear and plain language, our own comments relative to clarity may be somewhat subjective and coloured by our own perceptions.

Industry practices

Given that the actual requirements, for lack of criteria, leave a lot of room for subjectivity, given also that the clarity of the information provided varies considerably from one service provider to another, even from one topic to another, and lastly, given that a general assessment of all the contract documents may ignore the essential elements, we will instead comment on the issue of the clarity of information that is disclosed as we cover the various articles of the Code and their application by the WSPs.

Suffice to say here that no clear trends emerged from our examination of the contract documents as to clarity in general. In the pages that follow, we will see many examples that reveal that the clarity of information in the contracts is an issue.

¹⁰⁰ *Op. cit.*, Note 96, **CRTC**, *Telecom Regulatory Policy 2013-271*.

c) A Clarity (A3. Unlimited services)

Analysis of the Code

During consultations on wireless services, consumers complained about practices that they related to misleading representations by service providers, in particular with respect to unlimited services. In fact, some consumers had at times been billed for overage charges for services that had been advertised as “unlimited.”

Business models differ across the country, and some service providers, in particular new entrants, had been offering services advertised as unlimited, but for which a usage limit was still indicated in the WSP's fair use policy; exceeding this limit stipulated in the policy would result in data speed being reduced.

Several stakeholders (including Telus and the Competition Bureau¹⁰¹) had expressed their opinion to the CRTC that the services which the service provider was advertising as being unlimited should clearly not be subject to any limits, since this would be contradictory.

In its analysis of the issue, the Commission concedes that “if a customer agrees to pay for an unlimited plan, that customer should not be subject to any usage limitations beyond those necessary for network management purposes, and these limitations should be clearly disclosed¹⁰².” (Our underlining)

However, a shift seems to have occurred between the target objective and the wording of the Code regarding unlimited services, which is found in the chapter on clarity (A):

A. Clarity

3. Unlimited services

- (i) *A service provider must not charge a customer any overage charge for services purchased on an unlimited basis.*
- (ii) *A service provider must not limit the use of a service purchased on an unlimited basis unless these limits are clearly explained in the fair use policy.* (Our underlining)

The CRTC, in its analysis, appears to agree that unlimited service cannot be limited contractually, unless of course the management of the network is at stake (and that, understandably, network security or a high risk of congestion that would justify network management measures is involved). However, the Code is more permissive: the CRTC in fact authorizes that limits be imposed not only when needed for network management purposes, but when one of the documents related to the contract, that deals with issues regarding network management, indicates such a limit.

¹⁰¹ *Ibid.* See par. 316 and section B of the Bureau's submission: *Submission by the Commissioner of Competition*, February 6, 2013. <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03531.html> (page viewed on June 22, 2015).

¹⁰² *Ibid.* See par. 320.

Admittedly, the Commission requires service providers to clearly explain in the *fair use policy* what these limits will consist of, and prohibits that overage charges be billed to a customer who has purchased unlimited services¹⁰³. The fact remains that the wording chosen by the Commission intentionally gives full discretion to service providers to slow down the data speed of unlimited services after a given monthly limit has been attained, provided the limit is mentioned (or explained) in the *fair use policy*, regardless of whether or not it is needed for network management.

We should mention that although the Code does not state it, an external clause cannot be enforceable against a consumer in Quebec if it has not been expressly brought to the consumer's attention¹⁰⁴. The mere mention (or explanation) in a related document could therefore not justify the limits imposed to an unlimited service in this province. Obviously, the primary aim of this study was not to assess the validity, under the laws of each province, of the many clauses (both internal and external) found in each wireless services contract. We will basically limit ourselves to making comments on industry practices based on the requirements stipulated in the Code; however, the fact remains that, as indicated by the example, minimal application of all the requirements in the Code will not ensure that all of a service provider's practices will comply with all the legislation the WSP is required to conform to.

Industry practices

Although some service providers in fact indicate limits in their so-called "acceptable use" policy which, if exceeded, will result in the application of Internet Traffic Management Practices (ITMPs), an examination of the explanations that service providers must provide enabled us to determine that there was a problem with clarity on the part of a large number of WSPs. About half of service providers stated imposing monthly usage limits, while the other half mentioned being able to slow down access speeds in some cases, for which extremely vague explanations were sometimes given, not likely to be understood by consumers. We noted that when service providers indicated a limit on monthly usage, such a limit was disclosed fairly clearly, while WSPs that do not limit capacity (read: available speed) other than for network management purposes, had a much harder time clearly describing the circumstances that would lead to a slowdown or interruption in service, the speed at which services would be slowed down to, and for how long.

¹⁰³ The Wireless Code does not make any mention of the requirements arising from its regulatory framework on ITMPs (which has been extended to wireless services), which stipulates that service providers must inform consumers of the following:

- *Reasons for adopting ITMPs;*
- *Persons affected by ITMPs;*
- *Time when Internet traffic management will occur;*
- *Type of Internet traffic (e.g. application, application category, protocol) that will be subject to management;*
- *How ITMPs will impact the user's Internet experience, in particular their effect on speed.*

See **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**. *Telecom Regulatory Policy CRTC 2009-657 – Review of the Internet traffic management practices of Internet service providers*, CRTC, Ottawa, Ontario, Canada, par. 60. <http://www.crtc.gc.ca/eng/archive/2009/2009-657.htm> (page viewed on June 22).

¹⁰⁴ Civil Code of Québec, CQLR c C-1991, article 1435.

Note that in most cases, the *acceptable use policy* is far from being the contract document which consumers have the easiest access to. We noted on a few occasions that this policy was merely mentioned in the contract without clearly stating what it consisted of (and often without the policy being provided at the time the agreement is entered into, despite Article B.1 of the Code, which requires that the fair use policy and privacy policy be provided at the same time as a permanent copy of the contract), and without even any hyperlink in the contract that would allow consumers to access it more easily. Thus, although such examples of non-compliance were not the aim of our study, it is difficult to not mention them. The Commission should, in our opinion, carefully monitor whether service providers are observing this requirement in the Code, for which there appears to be a fairly low level of compliance.

Let's now look at a few examples of specific practices revealed by our investigation.

Clarity

Under the Code, the limits applied to an unlimited service must be explained in the *acceptable use policy*. Rather than “best industry practices,” unfortunately in this case we will be referring to “least bad” practices, since none of the *fair use policies* in our opinion gets full marks with respect to clarity of information. A few rare service providers made an effort to provide somewhat more detailed information on how their usage limits work. Sasktel, for instance, in its “Wireless Data Fair Use Policy” provides more detailed information than the average service provider by clearly mentioning the amount of usage which, when exceeded, will cause a slowdown along with the consequences of attaining the data usage limits.

The current Wireless Fair Use Policy data usage limits are:

- 10 GB or 15GB per billing period while in Canada, depending on your rate plan.
- 200 MB per billing period while roaming outside of Canada (this limit is increased to 10 GB in the United States if you subscribe to a United States Data Travel Add-On).

[...]

If you exceed the Wireless Data Fair Use Policy usage limits, your wireless data service will be slowed (up to 256 Kbps download speed and 128 Kbps upload speed) for the remainder of your billing period.

Please be assured this slowdown will still allow you to access web browsing, email & instant message. However, it will impact high bandwidth consuming applications such as high definition video like Netflix¹⁰⁵.

Although there is a question whether these usage levels are fully understandable for consumers who are unaware what network they are on, to make it easier to understand the effects of the limits, the service provider provides an indication of the uses that will still be available after the services are slowed down (low bandwidth applications).

¹⁰⁵ As the company referred to it itself in its policy at the time of our study.

In addition, although the mention of the existence of an acceptable use policy is particularly terse in the contract (a mention that in no way can be considered to be an *explanation*), it is still found on page two, with a functional hyperlink.

Some service providers are much less clear: often, it is those without a predetermined monthly usage limit in their service. For instance, Fido, which mentions its acceptable use policy on page 10 of its contract on its website (although without a hyperlink), states that:

*We reserve the right to manage our networks in order to optimize their efficiency for the benefit of our subscribers, including, without limitation, by way of the following: rate limiting (speed), rejection or removal of spam or otherwise unsolicited bulk e-mail, anti-virus mechanisms, and protocol filtering. We may take any other action we deem appropriate in order to help ensure the integrity of the network experience for all subscribers*¹⁰⁶.

One can hardly consider how this mention *clearly explains* any type of limit that can be imposed on an unlimited service.

The Rogers contract had additional problems in terms of clarity. It includes a clause (among several others) which the customer has to initial, stipulating that he “*acknowledges having received a copy of the Rogers’ Terms of Service, Acceptable Use Policy and Privacy Policy, which are an integral part of this agreement or these Terms, and having read, understood and accepted them,*” whereas in reality the customer received none of these documents. The existence of these policies is mentioned in the contract, but no hyperlink is provided that would allow them to be quickly located. In addition, when they are found on the Rogers website, the acceptable use policy seems to refer to incomplete documents. The paragraph that mentions it is the same as the one from Fido (quoted above), but includes a hyperlink¹⁰⁷ that supposedly leads to more detailed information (this link did not work when we were conducting our study).

We were able to examine a Vidéotron contract signed in-store for services that included local calls and unlimited text messaging, to which the *Terms of Services* were attached, i.e. a 13-page legal document, in narrow columns, that includes several parts related to network management, but in which it was very difficult to differentiate the parts that applied to Internet access services from those applying to mobile wireless services, since the terms of service appeared to apply to all the communication services provided by Vidéotron.

¹⁰⁶ **FIDO.** *Fido Terms & Conditions.* Fido.ca, Montréal, Québec, Canada, no date.
http://www.fido.ca/web/Fido.portal?_nfpb=true&_pageLabel=gct_siteMap&template=terms&sub_template=acceptable_use_policy&lang=en (page viewed on March 19, 2015).

¹⁰⁷ <http://www.rogers.com/politiqueresseau> Reference taken from the online *Acceptable Use Policy* at http://www.rogers.com/cms/pdf/en/Unified_AUP_Eng.pdf (document viewed on April 15, 2015). The acceptable use policy itself refers to other documents that could not be accessed.

It becomes especially confusing for the consumer to make sense of it all when a service provider talks about data transfer caps in a section that seems to apply to residential Internet access services and which mentions wireless Internet services in the text. It becomes very difficult to determine whether these passages apply to mobile services.

18. If you subscribe to the Wireless Internet plan, the service-related activities include usage of the bandwidth for data transfer of 10 gigabytes of combined downloaded data (from the Internet to you) and uploaded data (from you to the Internet) per month.

19. Internet accesses may be subject to traffic management practices. For more details, see: <http://support.videotron.com/residential/internet/traffic-management>.¹⁰⁸

However, further on in the terms of service, it is mentioned that a few paragraphs apply specifically to mobile services. These are replete (as are other sections of the contract) with long sentences that are virtually impossible to understand by the average person, and which clearly have not been adapted to this target audience. For instance:

46. You acknowledge that MOT and some of the MOT-related Services are available only when the Equipment is within operating range of Videotron's or the Carriers' mobile network and that MOT may be refused, interrupted or limited temporarily due to: (i) limitations of Videotron's and/or the Carriers' mobile network, such as capacity limitations; (ii) transmission limitations caused by atmospheric conditions, topographical features, radio interference and other factors beyond the control of Videotron and/or the Carriers; (iii) modifications, upgrades, relocations, repairs and other activities of a similar nature to Videotron's and/or the Carriers' equipment necessary for the efficient or improved operation of the MOT; (iv) failure of third parties' communications facilities interconnected to Videotron's and/or the Carriers' facilities; or (v) during the transfer from the Videotron network to a Carrier's network. Your calls may be disconnected temporarily for a variety of reasons, including, without limitation, atmospheric conditions, topographical features, weak batteries, system over-capacity, movement outside a service area where MOT is available and gaps in the geographical location within which MOT is available¹⁰⁹.

Business practices

Let's now step away from concerns related to clarity and instead examine the type of business practices that are found. In this respect, Sasktel stands out by virtue of the fact that it is the service provider, among those that indicate slowing down speeds after a certain monthly amount of use has been attained, that uses the least dramatic slowdown, i.e. 256 kbps. Although this is a speed from a bygone era, it still allows for certain basic uses (Bell and Virgin, for instance, state that they slow down services to 16 kbps once the monthly limit of 25 GB has been attained), which is all expressly stated on page 15 of the standard contract that we were given.

Obviously, it could be argued that all service providers that do not indicate any slowdown of services after a certain monthly usage has been attained (and thus who take action, one assumes, only when the network is congested or is compromised for security reasons) could theoretically present an advantage, but given the flagrant lack of clarity in most of these policies,

¹⁰⁸ **VIDEOTRON.** Residential Services, Schedule A, Terms and Conditions.

¹⁰⁹ *Ibid.*

their application method seems quite unpredictable. However, this is an issue that exceeds the specific requirements of the Wireless Code, as questions regarding speed caps are covered in Telecom Regulatory Policy 2009-657¹¹⁰. Note that the obligations imposed on ISPs in the previous decision have been also extended to mobile services in Telecom Decision CRTC 2010-445¹¹¹.

d) B 1. iv Contracts and related documents (Key contract terms and conditions and other aspects of the contract)

Analysis of the Code

As previously mentioned, the decision on the Code clearly shows that one of the key objectives of the initiative is to improve the information available to consumers so that they can make informed choices. In the introduction, the Code clearly states:

The CRTC has created the Wireless Code so that consumers of retail mobile wireless voice and data services will be better informed of their rights and obligations contained in their contracts with wireless service providers.

To ensure that adequate information is provided to consumers, the CRTC has drawn up a list of the components that must be found in the information in the contract, which must be confirmed in writing, with a permanent copy being given to the customer.

Here is the above list as it appears in the Code:

B. Contracts and related documents

1. Postpaid service contracts

(iv) Postpaid service contracts must clearly indicate all the following information (items a. to m.):

Key contract terms and conditions:

- a. *The services included in the contract and any limits on the use of those services that could trigger overage charges or additional fees;*
- b. *The minimum monthly charge for services included in the contract;*
- c. *The commitment period, including the end date of the contract;*
- d. *If applicable:*
 - i. *The total early cancellation fee;*
 - ii. *The amount by which the early cancellation fee will decrease each month;*
 - iii. *The date on which the customer will no longer be subject to the early cancellation fee;*
- e. *If a subsidized device is provided as part of the contract:*
 - i. *The retail price of the device, which is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract;*
 - ii. *The amount the customer paid for the device;*
 - iii. *The fee to unlock the device, if any;*

¹¹⁰ *Op. cit.*, Note 103, CRTC, Telecom Regulatory Policy CRTC 2009-657. See par. 60.

¹¹¹ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION. Telecom Decision CRTC 2010-445 – Modifications to forbearance framework for mobile wireless data services. CRTC, Ottawa, Ontario, Canada, June 30, 2010. <http://www.crtc.gc.ca/eng/archive/2010/2010-445.htm> (page viewed on May 20, 2015).

Other aspects of the contract

- f. An explanation of all related documents, including privacy policies and fair use policies;
- g. All one-time costs, itemized separately;
- h. The trial period for the contract, including the associated limits on use;
- i. Rates for optional services selected by the customer at the time the contract is agreed to;
- j. Whether the contract will be extended automatically on a month-to-month basis when it expires, and if so, starting on what date;
- k. Whether upgrading the device or otherwise amending a contract term or condition would extend the customer's commitment period or change any other aspect of the contract;
- l. If applicable, the amount of any security deposit and any applicable conditions, including the conditions for return of the deposit;
- m. Where customers can find information about:
 - i. Rates for optional and pay-per-use services;
 - ii. The device manufacturer's warranty;
 - iii. Tools to help customers manage their bills, including notifications on data usage and roaming, data caps, and usage monitoring tools;
 - iv. The service provider's service coverage area, including how to access complete service coverage maps;
 - v. How to contact the service provider's customer service department;
 - vi. How to make a complaint about wireless services, including contact information for the Commissioner for Complaints for Telecommunications Services Inc. (CCTS);
 - vii. The Wireless Code. (Our underlining)

Although the list appears long and seems to include everything so that consumers are well informed about what the contracting parties' obligations are, it would seem that several of the elements described in the list include some ambiguity that is likely to affect the quality of the information that will be found in the contract. The elements that we underlined in the list present, in our opinion, some ambiguity or leave some room for interpretation or latitude to service providers on the manner to inform consumers. We will cover each item separately below.

B.1.(iv) a. [Contracts must clearly indicate]...the limits on the use of the [services included in the contract] that could trigger overage charges or additional fees;

Based on Article A3, the Commission only requires disclosure in the permanent copy of the contract of the usage limits that are likely to result in additional fees, thus making it acceptable for usage limits that the service provider may impose, but which do not result in additional fees, to only be disclosed in the acceptable use policy, a related document.

Although the Code allowing certain usage limits to fall through the cracks is surprising, the fact that the amount of said overage charges or additional fees, once the usage limits that could result in them are mentioned, does not need to be included in the contract is puzzling.

Article B.1 in fact requires the disclosure of a variety of fees: the minimum monthly charge; the total early cancellation fee; all one-time costs; rates for optional services selected by the customer; and where customers can find information on rates for optional and pay-per-use services, but nothing specific on additional fees or on how to find out about these fees. This despite the fact that additional fees have been the subject of so many complaints that the Commission has imposed a cap on data overage charges.

The Code requires the disclosure in the contract of the "Minimum monthly charge," for which a definition is provided:

Minimum monthly charge:

The minimum amount that customers will have to pay for wireless services each month if they do not use optional services or incur any additional fees or overage charges. This charge may be subject to taxes, as set out in the contract.

Although the idea of disclosing the minimum monthly charge seems sensible, including this information in the contract may, however, be confusing for consumers, since it is the "total monthly charges" (not defined in the Code) that will be disclosed in the Critical Information Summary (C). In addition, note that the monthly charges required to pay off the subsidized device are not part of the exclusions in the definition. This suggests that these fees are part of the *minimum amount that customers are required to pay for wireless services, despite the fact that the device charges are not service charges.*

The Code requires the disclosure in the contract of fees that may be applicable in the event of early cancellation by the customer, and the method of calculating how these fees will decrease over the term of the contract:

B.1.(iv) d. If applicable:

- i. The total early cancellation fee;*
- ii. The amount by which the early cancellation fee will decrease each month;*
- iii. The date on which the customer will no longer be subject to the early cancellation fee;*

We have no comments to make regarding this requirement per se. However, as we will see later on in the section on certain articles specifically dealing with early cancellation fees (articles G2 and G3), the leeway that the Commission has allotted on the way to amortize the early cancellation fees has a definite impact on the clarity of the information.

The idea of requiring the service provider to indicate the price of the device, either the lesser of the retail price at which it is selling the device and the manufacturer's suggested retail price, is commendable, and this indication will be useful when the time comes to calculate any cancellation fees.

B.1.(iv)e. If a subsidized device is provided as part of the contract:

- i. The retail price of the device, which is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract;*

This being said, the indication by the service provider of the lowest price can, as we will see further on, be especially difficult to check. We will see that indications of the device's retail price can be most cryptic, and that none of the contracts we examined refers to the manufacturer's suggested retail price.

The service provider must give the customer, when the contract is entered into, a *permanent copy* of the contract and of the related documents. The contract must still provide an "explanation" of these related documents:

B.1.(iv)f. *An explanation of all related documents, including privacy policies and fair use policies;*

Given the context, we consider this requirement, as worded, to be particularly vague. What should an “explanation” of related documents consist of? The choice of the term “explanation” clearly involves more than just stating what the documents are; merely listing the documents or mentioning that they will form an integral part of the contract will not suffice. Should the contract summarize the content of these documents? Specifically mention certain key clauses?

The Code also requires that information on the security deposit be included in the contract:

B.1.(iv)l. *If applicable, the amount of any security deposit and any applicable conditions, including the conditions for return of the deposit;*

Unfortunately, it is difficult to determine precisely what these “applicable conditions” consist of. Unless they are specifically listed, they run the risk of being defined in the most subjective way by the main interested parties.

The list of requirements for the disclosure of information in the contract concludes with the requirement to inform customers on “where [they] can find information” (B.1.(iv) l.) on seven different questions. This requirement gives total freedom to service providers: not only does it allow them to not include the information on these questions directly in the contract, but its overly vague wording opens the door to general references that will not inform the consumer and will therefore not allow the Code’s objectives to be met. For instance, would a reference to the manufacturer’s website (“You can find information on the warranty at the manufacturer’s website”) meet this information requirement? Since the Code does not mention that these topics must be specifically indicated, would a clause stating “For additional information, please see our website” be suitable? What would happen, when the contract only refers the consumer to the manner in which information can be obtained, if, for instance, the conditions that appear on a website change during the term of the contract? How will the consumer know, when reviewing the information, which conditions were in effect when the contract was signed?

In short, the elements in Article B.1.(iv)m. are treated in a vague manner regarding their inclusion in the contract. In fact, some information is found for which service providers need only provide references on how to access it, while some of this information should, in our opinion, form an integral part of the contract (such as optional and pay-per-use services).

Industry practices

Since several topics that require mandatory disclosure in contracts will be covered in the next sections, it would be redundant to include here each of the issues covered in this article individually. We will therefore limit our statements to certain information elements that will not be subsequently covered. When relevant, we will present examples of industry practices to support our contentions.

Limits on use

B.1.(iv) a. “[Contracts must clearly indicate] ...any limits on the use of [the services included in the contract] that could trigger overage charges or additional fees...”

It is important to note here that despite the fact that this article requires disclosure of the limits that could result in additional fees, it does not include (nor any under article B.1.(iv), in fact) the disclosure of whether or not overage charges are applicable, or even what such overage charges are. And yet, the practices of numerous service providers appear to indicate that they consider these additional fees important: very few make no mention of them in the contract, just as few also provide any detailed information on such fees. Some provide explicit warnings that exceeding usage limits can result in additional fees (such as Virgin below), but not all service providers always indicate the fees that may apply to exceeded limits.

The Virgin contract, for instance, shows the applicable limits, along with a general warning that states that overages may result in additional fees. Subscribers must refer to the website (the address of which is provided) to view said fees, which can also change at any time. Although Virgin provides a little more information than the Code requires, this indication in the contract is still not enough to clearly inform customers about the charges that apply for exceeding usage limits.

Here is an excerpt from the contract:



VOTRE FORFAIT

Forfait : Argent Appels 30	Frais mensuels minimums : 30,00 \$
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- 100 minutes en tout temps
- monMonde
- Messagerie texte et photo illimitée au Canada et aux É.-U.
- Textos entrants illimités
- Afficheur inclus
- L'appel en attente et la conférence à trois
- Soirs et weekends illimités dès 17 h
- Appels partout au Canada
- Illimités Mess. texte international
- Données à la carte
- Boîte vocale 3 incluse

Si vous dépassez l'utilisation incluse dans votre forfait ou si vous modifiez votre forfait, des frais supplémentaires peuvent s'appliquer. Les frais d'utilisation excédentaire peuvent être modifiés en tout temps. Pour les détails et frais des forfaits actuels, visitez le vm.ca/forfaits.

Rogers was one of the rare service providers to include, along with the disclosure of usage limits in the contract, a list of additional usage charges, although these could have been much clearer, with the wording (description of overage) somewhat affecting the clarity of the text.

Here is an excerpt of the document:

Inclus dans le forfait	
<ul style="list-style-type: none">• 200 minutes locales de jour• Soirs et week-ends locaux illimités (18 h à 7 h)• Messages sortants et entrants illimités (texte, photo et vidéo)• Affichage des appels et Messagerie vocale• 2 500 minutes de Renvoi d'appel• Conférence téléphonique• Appel en attente	
Description de l'utilisation excédentaire	Tarif d'utilisation excédentaire
Temps d'antenne (la minute) Jour Sem	0,45\$
<hr/>	
Appel interurbain au Canada (la minute)	0,55\$
Appel interurbain aux États-Unis (la minute)	0,55\$
Renvoi sur occupation W-end	0,10\$
Renvoi d'appels W-end	0,10\$
Renvoi sur non-réponse W-end	0,10\$
Renvoi d'appel (la minute) W-end	0,10\$

The TELUS contract that we examined did not list the rates for additional usage, but indicated a hyperlink for pay-per-use services.

The Fido contracts that we studied clearly indicate the additional usage charges in the contract (at least the additional call minutes), but not the usage limits, even though these must be disclosed in the permanent copy of the contract.

In fact, certain service providers indicate in their contracts the rates for pay-per-use services (whereas the Code only requires them to indicate how to obtain information on these charges), but not overage charges, which is to some extent ironic.

Koodo, for instance, indicates certain roaming charges in the contract as well as additional usage charges for mobile data, but nothing on charges for exceeding local minutes. And the usage limits for mobile data are so low that we are seriously wondering whether there may have been a typo when the contract was made.

Excerpt of Koodo contract:

Mon forfait mensuel :
CAN Min et txt 100min 29\$
Minutes d'appel local en tout temps : 100
Données incluses :
Données au Canada: 250 KB

In summary, we can see that the latitude allowed by the Code, which requires that the usage limits be indicated without having to state the overage charges, is most often used by service providers to only provide the minimum amount of information in the contract, at times in a somewhat unstructured manner.

Retail price of the device

B.1.(iv)e. If a subsidized device is provided as part of the contract:

- i. *The retail price of the device, which is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the WSP without a contract prix;*

If a subsidized device is provided as part of the contract, the retail price of the device is generally clearly indicated. However, some indications in the contract may be confusing. For instance, despite the fact that Fido indicates the “no-term price” for the device at the start of the contract, the following excerpt, which appears to refer to the establishment of the device's retail price, is somewhat confusing:

The amount of the Total Economic Inducement is deducted from the Fido no-term price in order to determine the suggested cost of the Rogers device. The cost of the device does not include the additional in-store discounts offered by the sales representative.

However, the Code is clear on this point: the retail price or suggested retail price of the device is what must be indicated in the contract, not some complicated calculations to determine the suggested retail price, and not the price less the discounts, the retail price or the manufacturer's suggested price.

Amount the customer paid for the device

B.1.(iv)e. If a subsidized device is provided as part of the contract:

- ii. *The amount the customer paid for the device;*

While the Code requires that service providers indicate the amount the customer paid for the device and not the manner in which said amount is calculated, certain contracts require consumers to do the calculation themselves (retail price of device – discount).

Explanation of related documents

B.1.(iv)f. *An explanation of all related documents, including privacy policies and fair use policies;*

Practices vary considerably from one service provider to another with respect to the explanation of related documents.

Some service providers, rather than explain the documents, as required by the Code, instead summarize part of their content in the contract and highlight key elements of their privacy and fair use policies. Contracts by Bell and Virgin, for instance, include an explanation of several elements of their privacy policy, while others only mention that these policies exist and refer consumers to an external document, at times in an extremely vague manner (title of document only, without any hyperlinks, for instance) while making sure, however, to clearly state that the customer is bound by these documents.

In addition, as previously mentioned, we have seen contracts that include a clause which the consumer must sign or initial when the contract is drawn up, that confirms that the consumer has read these related documents. However, it may happen that, despite the clause or paragraph, the consumer has in fact never had the opportunity to read any of these related documents¹¹², which were not given to him at the point of sale¹¹³, despite the fact that the Code requires that a permanent copy of these documents be given to the consumer. Here is an example in which we highlighted the problem clause.

¹¹² This is what happened in some cases for which we examined the contracts.

¹¹³ The Vidéotron contracts that we reviewed referred to an Appendix B, which was never given to the customer (this document was apparently referred to in the contract as "Statement of consumer cancellation rights and cancellation form"). Similarly, the Rogers contract that we examined required that the consumer initial a clause where he acknowledges, at the time the contract is made, having read the related documents (a clause buried among many others), while the documents were never directly handed to him.

En signant ci-dessous, vous :

- autorisez Rogers à obtenir des renseignements concernant vos antécédents de crédit et reconnaissez que Rogers pourra fournir des renseignements à d'autres concernant votre expérience de crédit auprès de Rogers (ne s'applique pas au service prépayé);
- autorisez Rogers à recueillir et à utiliser vos données de localisation personnelles courantes et historiques associées à tout appareil que vous utilisez aux termes de la présente Entente de service ou des présentes Ententes de service pour vous fournir des services de géolocalisation, étant entendu que vous pouvez vous désabonner de ces services en tout temps;
- acceptez que les renseignements relatifs à votre compte peuvent, à l'occasion, être communiqués à d'autres membres de l'organisation Rogers Communications inc. ainsi qu'à nos mandataires et concessionnaires autorisés afin de vous servir, de répondre à vos questions et de faire du télémarketing (y compris en utilisant des dispositifs de composition et d'annonce automatiques) afin de vous proposer d'autres produits et services de l'organisation Rogers susceptibles de vous intéresser. Si vous ne souhaitez pas recevoir d'offres ni de renseignements de sociétés de Rogers, consultez rogers.com/consentement ou communiquez avec le Service à la clientèle de Rogers en écrivant au 300 6815, 8e rue N.-E., Calgary (Alberta) T2E 7H7; ou au 40, rue Weber E., 5e étage, Kitchener (Ontario) N2H 6R3; ou au 6315, chemin de la Côte-de-Liesse, Saint-Laurent (Québec) H4T 1E5; ou en composant *611 sur votre téléphone sans fil;
- confirmez par la présente que, si vous demandez le transfert de tout numéro de téléphone mentionné ci-dessus d'un autre fournisseur de service, vous êtes le titulaire du compte associé à ce numéro de téléphone ou son mandataire autorisé. Vous autorisez Rogers à communiquer avec votre fournisseur de service actuel afin de transférer le numéro chez Rogers;
- acceptez d'être tenu responsable du paiement de tous les frais exigibles et des autres obligations en vertu de votre Entente ou de vos Ententes de service;
- acceptez de recevoir les documents que nous vous fournissons en format électronique;
- reconnaissez avoir reçu une copie des Modalités de service, de la Politique d'utilisation acceptable et de la Politique de protection de la vie privée de Rogers qui font partie intégrante de la présente entente ou des présentes ententes de service et les avoir lues, comprises et acceptées.

The explanation of related documents is clearly a requirement that is added to the one consisting of providing a permanent copy of these documents, and that reading the explanation is not equivalent to reading, understanding and accepting the company's policies nor, obviously, to handing out the documents. Initials or no initials.

One-time costs

B.1.(iv)g. All one-time costs, itemized separately;

The quality of the information provided on one-time costs varies enormously from one service provider to another. Some service providers indicate the few one-time costs that are applicable, while others refer the consumer to a web page that contains all the possible one-time costs (most of which seem to be unrelated to the service the consumer is subscribed to). Obviously, referring the consumer to a website where the information is found is not equivalent to clearly indicating the required elements in the contract. A referral is not a clear and detailed list (especially when the hyperlink is not functional)¹¹⁴.

Although the Code requires that information be presented clearly, it is difficult to comprehend that the mention of certain fees found in the required list, when included in the contract, truly contributes to the consumer's understanding: some lists, for instance, mention "*un temps frais*," (a comical, somewhat lazy, but certainly not accurate translation of "one-time fee"), and others,

¹¹⁴ We are referring here to an indication in the Koodo contract on one-time fees.

the meaning or purpose of which is not understood: "administration fees," "OCC-Activation Fee Data," "Network Access" (which appears twice in the same list in the Sasktel contract), etc.

Rates for optional services selected by the customer

B.1.(iv)i. Rates for optional services selected by the customer at the time the contract is agreed to;

Several contracts we examined did not include optional services. Therefore, we were limited in our capacity to check the information appearing in the contract in this regard.

This is not the purpose of our study, but the rates for optional services selected by the customer at the time the contract is entered into are generally disclosed. The biggest issues we noted concern the clarity of the information: the language that was used or the location chosen to disclose the information in no way contributes to the consumer's reading and understanding of the information.

Based on what we observed, the optional services selected by the customer may at times be mentioned in somewhat cryptic fashion, such as in the Fido contract ("Monthly Charges for Monthly Services"). It is assumed, since these fees are indicated below the "Monthly Charge for the Term Service," that they consist of the rates for the optional services selected by the customer. Thus, there is in fact a category used to indicate the rate, but clarity is sorely lacking.

Rates for other optional services

B.1.(iv)m. Where customers can find information about:

i. Rates for optional and pay-per-use services;

Service providers often refer customers to their websites for information on optional and pay-per-use services, sometimes without providing a specific (or functional) hyperlink. Customers sometimes have to refer to the terms and conditions. On occasion, a service provider basically provided no information in this respect in the contract. Although such indications can be found in most permanent copies of the contract, they do not necessarily allow consumers to easily locate the information.

Warranty provided by the device manufacturer

B.1.(iv)m. Where customers can find information about:

ii. The device manufacturer's warranty;

Contracts usually refer to a manufacturer's warranty, but not always in a prominent manner; in other words, this is the type of information that is easily lost in the maze that consists of "other contract information." In addition, the manufacturer's warranty is not necessarily identified as such in the contracts.

Service Providers most often refer customers to brochures or hyperlinks that take them to websites where they can find more information. These references are sometimes found in the terms and conditions rather than in the permanent copy of the contract.

Service coverage area

B.1.(iv)m. Where customers can find information about:

- iv. The service provider's service coverage area, including how to access complete service coverage maps;*

Most service providers indicate the URL of a website that contains their service coverage area, while others only refer to the website, without any hyperlinks. In short, once again, although this way of complying with the requirement in the Code is correct, whether it is the most convenient way of doing so is questionable. However, roaming charges when the customer is outside the service coverage area are not always clearly indicated.

Service provider's customer service department

B.1.(iv)m. Where customers can find information about:

- v. How to contact the service provider's customer service department;*

Service providers obviously always indicate in the contract how they can be reached, but the completeness of the method of communication and the location of the information are not always consistent from one contract to another. However, consistency in this respect is not a requirement in the Code. Some service providers refer the consumer to a hyperlink, which they provide, for full contact information.

How to make a complaint

B.1.(iv)m. Where customers can find information about:

- vi. How to make a complaint about wireless services, including contact information for the Commissioner for Complaints for Telecommunications Services Inc. (CCTS); and*
- vii. The Wireless Code.*

Information on how to make a complaint is usually found next to the service provider's contact information. The completeness of information on the CCTS varies: the contact information is at times complete, but sometimes only a hyperlink is found. This is a minimalist approach aimed at complying with the Code that only requires an indication on how to find information.

The Code is never contained in the contracts. Typically, service providers will mention that it exists and will provide a hyperlink to the CRTC website so that consumers can access it. However, we did see one contract that made no mention of it.

e) C1 Critical Information Summary

Analysis of the Code

In its decision related to the Wireless Code, the Commission considered that the obligation for service providers to provide a critical information summary would be an efficient measure for improving the quality of the information provided to consumers:

68. The requirements set out in paragraphs 53 to 61 regarding the content and clarity of contracts are necessary but not sufficient to ensure that consumers have clear and concise information about important aspects of their wireless services.

69. A requirement to provide a Critical Information Summary – a one- or two-page summary of a contract – would greatly help consumers to quickly understand the fundamental aspects of their contracts.¹¹⁵

Although the need for consumers to access contract-related information as easily as possible did not raise any opposition or controversy, the question regarding the appropriate time to communicate the critical information summary incited more debate. Most consumers were of the opinion that the critical information summary should be available before the contract is agreed to in order to make it easier to compare wireless services among the various service providers, and would allow consumers to more precisely know, before entering into the contract, what the parties' commitments were. Industry members, for their part, basically argued that the production of such documents to be handed out before the contract is entered into would be excessively costly. Service providers added that WSPs should be able to customize the structure and content of the document as well as the presentation of the information, and that the Code should not be overly prescriptive¹¹⁶.

The Commission will finally rule that the critical information summary should be provided to consumers when the contract is entered into – with the service provider being free to hand it out before this time, if it so wishes – and that service providers will be free to customize it as they see fit, provided they include the information required by the Code and display said information prominently. Here is the text that appears in the Code:

C. Critical Information Summary

1. Critical Information Summary

- (i) A service provider must provide a Critical Information Summary to customers when they provide a permanent copy of the contract for postpaid services. This document summarizes the most important elements of the contract for the customer.*
- (ii) A service provider must ensure that the Critical Information Summary contains all of the following:*
 - a. A complete description of all key contract terms and conditions (see item B. 1. (iv) a-e listed above);*
 - b. The total monthly charge, including rates for optional services selected by the customer at the time the contract is agreed to;*

¹¹⁵ *Op. cit.*, Note 17, **CRTC**, *Telecom Regulatory Policy 2011-291*.

¹¹⁶ *Ibid.* par. 64-65.

- c. Information on all one-time charges and additional fees;
 - d. Information on how to complain about the service provider's wireless services, including how to contact the service provider's customer service department and the CCTS.
- (iii) A service provider must ensure that the Critical Information Summary:
- a. Accurately reflects the content of the contract;
 - b. Is either provided as a separate document from the written contract or included prominently on the first two pages of the written contract;
 - c. Is clear and concise (does not exceed two pages), uses plain language, and is in an easily readable font. (Our underlining)

Once again, the elements that we underlined are, in our opinion, the passages that are somewhat ambiguous, caused by a lack of specificity, or that give some leeway to the industry in the application of the Code. In addition, note that the CCTS, at the service providers' suggestion, gave them considerable leeway with respect to the structure and content of the document, as well as the manner in which the information is presented.

For instance, with respect to the total monthly charge, it can be seen that, besides the requirement to include the amounts of the optional services selected by the customer, the Code does not indicate how other elements should be handled, such as the charges that can be allotted to the monthly amortization of the financing of the subsidized device, or the taxes (although Article A.2 states that the service provider must stipulate whether the price indicated in the contract includes the taxes). Does the total monthly charge simply consist of the sum of the *minimum monthly charge* and the rates for optional services selected by the customer at the time the contract is agreed to? Does the total monthly charge consist of the actual predictable amount which the consumer will be required to pay each month?

The critical information summary should include "information" on all one-time costs and additional fees. The choice of the term "information" gives service providers the freedom to choose any method they desire to inform consumers on these charges, or to choose which information they consider important to provide. Should the summary contain information on overage charges? Does the information required by this provision have to include the amount of all these charges?

There is also some latitude with respect to the form the critical information summary can take: it can be a separate document or "included prominently on the first two pages of the written contract." We will see further on that some service providers have been especially creative in applying guidelines which are nevertheless simple.

The Commission is very insistent about clarity requirements: like the contract, the summary must be clear and written in plain language. Although some service providers appear to have attempted to provide straightforward information in their summary, obscure terms abound.

The Commission has added a legibility requirement to that of clarity, requiring the use of an "easily readable font." Note that font and font size are two separate things; the Commission should have emphasized the font size rather than the actual font.

Industry practices

The Code states that the critical information summary must include the “Key contract terms and conditions” (the elements mentioned in Article B 1. (iv), from a to e, namely: the services and associated limits, the minimum monthly charge, the commitment period, including the end date of the contract, details on cancellation fees and the subsidized device fees, the total monthly charge, the one-time costs, the additional fees, and how to make a complaint. However, not one of the contracts that we examined fully meets all the requirements stipulated by the Commission with regard to the mandatory summary, although some come close to being complete.

Some service providers seem to have made errors in interpretation (by indicating, for instance, methods for determining the end-of-contract date or the date starting from which cancellation fees will no longer apply rather than the final information, which is the actual date), while others forgot to include key information, such as the services included in the plan, their limits of use, or all the additional fees that are applicable. Some service providers include information that is not mandatory, while others include indications that seem to promote their services (we saw two regarding mobile TV services), whereas all the information required by the Commission has not been included. Some summaries slightly exceed two pages; the font is mostly legible and the information well spaced out, although such efforts are not consistent throughout the industry.

The critical information summary is sometimes found at the start of the contract and other times a few pages later. It is sometimes difficult to distinguish the information summary from the rest of the contract. We saw a Fido contract with a confirmation page presented before the summary that included information that should have been found in a summary. A Sasktel contract had a page with all the details of the plan right after the critical information summary.

The clarity of the information is often lacking. The use of abbreviations is common, just like the use of certain terms that will not have much meaning to consumers. Here are a few examples of some incomprehensible inclusions found in various contracts:

“Minutes d’inter. suppl. (Cnd),” “Renvoi d’appels (PAU accès),” “Affichage numéro sortant actif,” “Renvoi d’appels pay. à l’util,” “First 150 LD mins FREE in Cda,” “LD within Cda to Cda or USA \$0.45/min,” “Uni calls to cells from Canada,” “LD within Cda to Cda or USA \$0.45/min,” “monMonde,” etc.

A few examples

Each critical information summary that we examined had some strengths and weaknesses.

The form adopted by Rogers for its critical information summary gives it some clarity: already on the first page, it contains several key items of information (term, start date and end of the contract, monthly charges – although not the total monthly charge), and a list of what is included in the plan, with virtually no listing that would affect the clarity of the information...

Here is an excerpt of the critical information summary:

FORFAIT(S) ET OPTION(S) VOIX/DONNÉES	
Détails du forfait sans-fil	
Numéro du forfait	CON24202F
Nom du forfait	Forfait Appels et textos appels et textos
Catégorie de forfait	
Frais de service mensuels	35,00\$
Entente de service	24 mois(s)
Date de début de l'entente	04/14/15
Date d'échéance de l'entente	04/14/17
Inclus dans le forfait	
<ul style="list-style-type: none"> • 200 minutes locales de jour • Soirs et week-ends locaux illimités (18 h à 7 h) • Messages sortants et entrants illimités (texte, photo et vidéo) • Affichage des appels et Messagerie vocale • 2 500 minutes de Renvoi d'appel • Conférence téléphonique • Appel en attente 	
<ul style="list-style-type: none"> • Renvoi d'app/non-rep/occ - Comprend 2 500 minutes de Renvoi d'appel local par mois. Utilisation excédentaire du Renvoi d'appel : 0,10 \$ la minute (ainsi que les frais d'interurbain, s'il y a lieu). • Appels en soirées dès 18 h - Comprend les appels en soirée à partir de 18 h les jours de semaine. 	
Description de l'utilisation excédentaire	Tarif d'utilisation excédentaire
Temps d'antenne (la minute) Jour Sem	0,45\$

It is interesting to note that this summary mentions overage rates, despite the fact that the Code does not clearly require it.

However, the second page of the critical information summary mentions "Promotions/Discounts" for certain services that seemed to be included in the plan. We are at a loss to explain the relevance of including such information in the critical information summary.

PROMOTIONS / RABAIS			
Description	Montant	Date de début	Date de fin
Renv d'appel et transf d'appel	100%	04/14/15	
Gestion des appels	100%	04/14/15	
Serv. Appels manqués	100%	04/14/15	

Lastly, it is especially ironic, given that the Commission advocates using a font that is easy to read, especially for the critical information summary, to see that Rogers used a Times 8-point font for its summary while the rest of the contract was in Helvetica 10.5 points. The summary also does not comply with the length stipulated by the CRTC (2 pages maximum).

Rogers, however, was not the worst transgressor where font size was concerned. Telus came out the winner in that respect, with the body of the contract (including the critical information summary) in Arial 7.5 points, with the service provider contact information being repeated at the bottom of the page in 5.5-point size. Ironically, the Telus contract slightly exceeds the maximum length, but the first page contains a substantial amount of empty space. In both cases, we had to scan the contracts and increase their size so that we could study the information found in a small font.

TELUS presents certain explanations that are relatively clear, in particular with respect to warranties, that mention, among other information, the legal warranty – a rare occurrence and one that is unfortunately not required by the Code:

Is my device covered by a manufacturer's warranty?

Yes. If you bought a new device under this service agreement, this device is not only covered by a legal warranty that covers normal use of the device for a reasonable length of time, but also by the manufacturer's warranty, which you will find in your device's packaging. Each manufacturer has its own warranty, but they generally cover repairs required to fix defects for up to one year.

However, information on the amortization of the device or cancellation fees is simply incomprehensible, even misleading. We will come back to this a little later on. In fact, information on cancellation fees and their monthly reduction are often especially poorly rendered in layman's terms by service providers.

Among the worst examples of critical information summaries is the one by Fido, which places the summary on the third page of the contract (if we exclude the transaction invoice), with the first two pages being taken up by a confirmation of the transaction which contains some information, including the fees and requirements, which should be found in the critical information summary (and which will not all be repeated there). These confirmation pages mention, for instance, the value of the device being provided under the contract, the amount of the plan ("Monthly charges for fixed-term services"), the fees ("Monthly charges for the monthly services"), which, we assume, represent the optional services, as well as the rates for voice calls that exceed the usage limit.

The terms used in what appears to be the critical information summary (this section of the document that begins on page 4, if we include the invoice in the document, and is not identified as being said summary – it appears, however, to have several characteristics of what the critical information summary should be) are not any more descriptive; these are the pages where the service provider uses the expression "*Un temps frais*" in French to refer to one-time costs. In addition, it must be noted that nowhere in the contract documents (or in the transaction confirmation, the summary or the rest of the documents) is information provided on what is included in the plan, even though this seems to be some of the most important information for the consumer.

The information on economic inducements is not only very difficult to understand but also does not comply with some of the most rudimentary rules of the French language. We will come back to this later in the section on cancellation fees. It was also impossible, in Fido's case, to determine with certainty the precise page on which the summary ends.

Vidéotron's critical information summary also presents a problem with respect to the quality of the information being provided. One of the contracts that we examined was drawn up in-store and some parts were handwritten. The summary does not even clearly indicate which device was selected by the customer (several devices are listed with their price and monthly reduction in cancellation fees, but none of them is the device the customer finally chose), nor does it provide information on the monthly reduction in cancellation fees (since the contract does not show which device was chosen by the customer). The critical information summary is also much more than two pages long, with several of these pages consisting of a blank form and thus without any relevant content for the consumer.

Another Vidéotron contract (a distance contract) contained a much clearer critical information summary; the previous contract is possibly an isolated case, but it is impossible to disregard it.

Sasktel's critical information summary is also especially dry with respect to form; the information is not presented in a particularly intuitive manner, and the summary has the same delimitation problem as Fido's summary (difficult to know where it begins and ends), and its layout leads one to believe that the information on the plan's inclusions is only found after the critical information summary. A page following the critical information summary but with a different heading shows a lot of information that should clearly be part of the critical information summary.

f) E1, 2 and 3: International roaming notification, cap on data roaming charges, and cap on data overage charges

Analysis of the Code

The bill shock caused by mobile data use, whether in Canada or abroad, was often mentioned during consultations as a major problem with wireless services, which the Commission is acknowledging in its decision. In its analysis, the CRTC mentions that the record of the proceeding indicates that "*data usage is less intuitive for consumers than voice and text usage,*" and the Commission thus considers that "*the average consumer may not be able to fully understand the implications of their use of online services on the amount of data they are using and how these services relate to the data limits of their wireless service plan.*"¹¹⁷ The Commission also considers that "*consumers need additional tools that will notify them when they are roaming internationally, and that will help them manage their domestic data overage charges and their international data roaming charges.*"¹¹⁸

¹¹⁷ *Op. cit.*, Note 96, **CRTC**, *Telecom Regulatory Policy CRTC 2013-271*. See par. 114.

¹¹⁸ *Ibid.* par. 116.

Regarding the specific issue of data overage charges, the Commission acknowledges that not enough information on services is available to protect consumers' interests.

122. Both usage notifications and usage monitoring tools require action and active monitoring from consumers to prevent bill shock. [...] As a result, receipt of usage notifications or the availability of usage monitoring tools, while useful for consumers, does not target the fundamental solution to bill shock, namely providing consumers with cost certainty when using data services.

The Commission has therefore included the following provisions in the Code:

E. Bill management

1. International roaming notification

- (i) *A service provider must notify the customer, at no charge, when their device is roaming in another country. The notification must clearly explain the associated rates for voice, text messaging, and data services.*
- (ii) *Customers may opt out of receiving these notifications at any time.*

2. Cap on data roaming charges

- (i) *A service provider must suspend national and international data roaming charges once they reach \$100 within a single monthly billing cycle, unless the customer expressly consents to pay additional charges.*
- (ii) *A service provider must provide this cap at no charge.*

3. Cap on data overage charges

- (i) *A service provider must suspend data overage charges once they reach \$50 within a single monthly billing cycle, unless the customer expressly consents to pay additional charges.*
- (ii) *A service provider must provide this cap at no charge. (Our underlining)*

There is little ambiguity in these articles, but service providers are given some latitude as to the method for providing the roaming-related information. Note that the assessment of the quality of the information provided in these notifications is beyond the scope of this study.

Although the Code provides no latitude to service providers with regard to the transmission of roaming notifications or suspending charges once data overage charges and data roaming charges have reached \$50 and \$100, respectively, service providers are permitted to not send such notifications or to exceed the caps if the customer expressly agrees to this. The Commission does not provide any specific guidelines on how such consent is to be obtained from the consumer, not does it prohibit service providers from asking for it or bargaining.

Industry practices

We noted that complete information on all the usage monitoring tools was only occasionally available directly in the contract documents; in the permanent copies of the contracts, service providers often direct consumers wishing to obtain more information to their websites. Note that under Article B 1 (iv), the only information the service provider is required to provide in the contract in this respect regards how the customer is to obtain information on bill management tools, usage and roaming notifications, etc.

In general, information on these tools (or on how to obtain information on the tools) is not prominently displayed in the contract. Service providers may possibly only provide information on one of the tools. Indications on the topic of usage management tools are sometimes so vague that it is impossible to know what the service provider is referring to exactly. It can be assumed that consumers will be looking for information the day they receive a notification or their service is blocked because they reached the cap on data roaming or overage charges.

Note that several service providers fail to provide information or references of any kind on roaming notifications.

A few examples

Some service providers nonetheless provide relatively comprehensive information in the contract documents. Others limit themselves to just the Code's requirements.

Fido briefly mentions the topic on page 10 of its contract: *"Bill management. To find out about the tools to help you manage your bill, namely notifications on data usage and roaming, data caps, and usage monitoring tools, go to fido.ca or open a session in your Fido account for details on your actual usage."*

Rogers's strategy is very similar: Rogers refers the consumer to its website (without any specific hyperlink), where consumers will be able to find more information on the topic, but only if specifically searching for it.

We only found a very brief mention of the topic by Vidéotron on page 8 of the terms and conditions appended to the contract: *"You will also find on this website coverage area and some tools to, among others, manage your usage and set up notifications."*

TELUS provides somewhat more detailed information in the permanent copy of the contract on data caps and the process that allows consumers to exceed the cap:

All of us at times exceed our data cap. This is why as soon as an account subscriber is nearing the data cap, TELUS sends him/her a text message. The following cap applies:

- \$50 in data transmission charges in Canada for data that exceed the amount included in the plan (or included in the last tier in the event of a flexible plan);*
- \$100 in roaming charges for data that exceed the amount the amount included in the plan (or in any roaming data block).*

In addition, when a subscriber reaches the applicable cap, TELUS sends him/her another text message which the subscriber can reply to in order to continue using data on a pay-per-use basis applicable to his/her plan and options. If the subscriber does not respond to the text message, data usage will remain blocked until the next billing cycle.

However, we cannot help notice that some of the information is needlessly laboured and can hinder reading: "data transmission charges in Canada exceed the amount included in the plan," "pay-per-use fees apply to any use that exceeds your plan or add-ons."

Note, also, that the indication on flexible data is worrisome, especially if the service provider reserves the right to change the limits for its "flexible data" during the contract. This type of rates model does not allow consumers to obtain the most predictable information on the charges they will be billed for use of the data in the plan.

TELUS's contract documents contain nothing on data roaming notifications, the permanent copy of the contract or the terms and conditions; we found no hyperlink or URL where such information could be found.

Koodo also provides enough information on caps on data overages, but there is no information on notifications regarding international roaming charges.

Your plan gives you unlimited access to services, but pay-per-use fees apply to any use that exceeds your plan or add-ons. However, Koodo provides you with tools to cap data overages.

Each month, Koodo sends a text message to each phone where data overage charges in Canada have attained \$50, and to each phone where international roaming overage charges have attained \$100. Subscribers can then continue using the data services if they respond by text message that they agree to exceed the cap. These charges are billed at the pay-per-use rate applicable to the subscriber's plan and add-ons. For international roaming, overage charges are calculated starting from the time the data included in the plan and add-ons have been used up.

Once again, the text is not very explicit: "... billed at the pay-per-use rate applicable to the subscriber's plan and add-ons," "calculated from the time the data included in the plan or the add-ons have been used up."

Other service providers give information on international roaming notifications. Bell, for instance, has an indication in the terms and conditions appended to the contract: *"If you enable this function and enter an international roaming area, you will be advised that you are roaming internationally and be provided with details on your roaming rate Charges."*

Although one can assume that the "function" that a subscriber has to activate is international roaming, and not some function that gives access to notifications, this section could have been clearer.

The requirements in the Wireless Code in this regard have been interpreted very broadly. Bell and Virgin, for instance, mention caps for overage charges, as required by the Code, but, given the type of available subscription, impose caps for charges that are apparently combined... or not... The information in the contract is unfortunately not clear on this point.

Bell will notify you (or other subscribers on your account) at or before you (or they) reach Additional Usage Charges for data of \$50 per subscriber on your account, per billing cycle. If you (or they) wish to continue to incur Additional Usage Charges after this notice, then you (or they) will be given the opportunity to expressly consent to continued Additional Usage Charges. If you (or they) do not expressly consent to such Additional Usage Charges, then your (or their) ability to access data Services will be suspended.

Note that the repeated use of parentheses does not contribute to the flow and clarity of the writing, nor do the needlessly long and dry phrases (“Additional Usage Charges for data of \$50 per subscriber on your account”). But the greatest problem is the fact that it is impossible to determine precisely when the notification will be sent, since this can occur before or when the limit is reached. Given the excessive use of “or,” it can be understood that the warning can be sent to the person who reached the limit, and/or any other person sharing the data, that the person who exceeded the limit of \$50 or anyone subscribing to the same plan has the power to accept or refuse the billing of additional charges. It is further impossible to know when reading the text whether the interruption in service will only pertain to the person who did not agree to pay additional charges, or all the subscribers.

We basically found no mention in the Sasktel contract documents on caps for overage charges; it should be noted that the company had submitted an application to the Commission (which accepted it) to defer the application of this measure until June 30, 2014, and that the contract which we were examining was prior to this date.

We saw that some service providers inform consumers that they can exceed the limits by responding to the service provider’s text message notifying them that they have reached said limit.

We came across a disturbing practice in a Vidéotron contract, namely, a waiver clause prior to the application of caps (see points E and F in the reproduction of the contract that follows) which the consumer is asked to initial, after several others, just before signing the contract.

9 SIGNATURE ET ATTESTATION (le cas échéant)

A) Je reconnais avoir reçu une copie de l'Annexe A du contrat, modalités et conditions, avant d'avoir apposé ma signature au Contrat. Dans le cas d'une vente itinérante (porte-à-porte), je reconnais avoir reçu une copie de l'Annexe B du Contrat, Énoncé des droits de résolutions du consommateur et formulaire de résolution, avant d'avoir apposé ma signature au Contrat. initiales du client
[redacted]

B) **Achat d'une garantie prolongée** : Je reconnais que l'on m'a lu et remis le texte prescrit par la Loi sur la protection du consommateur concernant la garantie légale. initiales du client
[redacted]

C) **Téléphonie résidentielle et/ou téléphonie mobile** : J'autorise Vidéotron à communiquer avec mon fournisseur actuel afin d'obtenir les informations nécessaires à la transférabilité de mon numéro de téléphone. initiales du client
[redacted]

D) **Enquête de crédit** : J'autorise Vidéotron à faire une vérification de mon dossier de crédit, le tout assujéti à la politique de confidentialité de Vidéotron. initiales du client
[redacted]

E) **Transfert de données** : Je consens à payer les transferts de données au-delà de 50 \$ de frais supplémentaires par cycle de facturation mensuel. initiales du client
[redacted]

F) **Transfert de données en itinérance** : Je consens à payer les transferts de données en itinérance au-delà de 100 \$ de frais supplémentaires par cycle de facturation mensuel. initiales du client
[redacted]

G) **Communication** : Veuillez cocher votre consentement pour l'envoi de futures communications et avis de Vidéotron :

De façon électronique.

Ou

Par la poste.

Conclu à [redacted] le 10 e jour de Juin 2014

[redacted] [redacted]

We checked directly with the consumer who signed and initialed this contract, who claimed to be very surprised to have agreed to such a contract clause...

We cannot help but notice that this practice is not consistent with what Vidéotron stated to the Commission in its compliance report.

During a telephone call with Vidéotron, the latter informed us that several models of contracts are currently in circulation. We examined another Vidéotron contract in which we found no similar clause. Nonetheless, several customers may well have been taken in by such a standard contract and waived protection which the Commission considered important enough to include in the Code.

The consumer's initials may well be considered as an indication of consent, and the Code does not state when such consent by the consumer can be received by the service provider. Such a clause may therefore not contravene the text of the Code, but it likely violates its spirit if the consumer's consent was not informed. This is a flagrant example of the potential inappropriate use by a service provider of the latitude granted by the Code regarding the application of some of its requirements.

g) F1 Device unlocking

Analysis of the Code

As previously mentioned, device locking by a large proportion of Canadian wireless service providers has created much frustration among consumers; the Commission even considered this issue to be one of the major sources of frustration heard during the public consultations, while consumers noted that *“device locking makes it difficult to take advantage of competitive offers available in the Canadian marketplace and limits their ability to avoid roaming charges while travelling abroad because it prevents them from using another WSP's services.”*¹¹⁹

The solution devised by the Commission is described in the Code as follows:

F. Mobile device issues

1. Unlocking

- (i) *A service provider that provides a locked device to the customer as part of a contract must:*
 - a. *for subsidized devices: unlock the device, or give the customer the means to unlock the device, upon request, at the rate specified by the service provider, no later than 90 calendar days after the contract start date;*
 - b. *for unsubsidized devices: unlock the device, or give the customer the means to unlock the device, at the rate specified by the service provider, upon request. (Our underlining)*

¹¹⁹ *ibid.* par. 152-153.

A major source of ambiguity is found when the Code mentions that the service provider has to “unlock [...] no later than 90 calendar days after the contract start date.” Although it is clear to us that the Commission merely wanted to grant the industry’s request to allow them to wait three months, after the contract ended, before providing the unlocking service to consumers, the article instead states that unlocking must be done “within 90 days.”

Besides this ambiguity in the wording of the article, the requirement that was adopted unfortunately also lacks “teeth.” The Commission gives several options to service providers, who will likely not be simply and graciously unlocking a consumer’s device “upon request,” while the Commission is explicitly allowing them to have consumers wait up to three months while the device is financed under the contract, and to charge them fees set at the service provider’s discretion. Given that these charges do not have a cap, contrary to what the Commission was initially proposing (or are prohibited, as suggested by the Competition Bureau¹²⁰), there is a risk, of course, that the rates that are set do not favour customers. In addition, the fact that an unlocking procedure, rather than an unlocking service, is one of the options that service providers can offer consumers could potentially present a problem for certain users; the level of complexity involved in the unlocking process can vary depending on the device and consumers could theoretically be paying to obtain a method which they can have trouble performing on their own.¹²¹

Contrary to information on bill management tools, information on unlocking fees must be contained in the contract as well as in the critical information summary, thus making it very prominent in the contract documents from the outset. However, it can be expected that merely mentioning the unlocking fees in the critical information summary does not ensure that consumers will understand what is involved.

Industry practices

Information on unlocking fees was accessible and clear in the contracts and the critical information summaries that were examined, especially when the contract included a subsidized device.

The Code has generated some of the expected impacts: all service providers now offer device unlocking, but there are many conditions under which a consumer wishing to use his device with another service provider can exercise his rights.

Several service providers obviously take advantage of the fact that they can make the consumer wait 90 calendar days before providing the service. The price most often charged for unlocking is around \$50, which, in the case of certain service providers, could surprisingly constitute a

¹²⁰ “The Bureau believes that device locking should be prohibited in the marketplace, and that service providers should be required to unlock any previously locked devices free of charge.”

COMPETITION BUREAU. *Submission by the Commissioner of Competition*, BC Ottawa, Ontario, Canada, February 6, 2013. <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03531.html> (page viewed on June 22, 2015).

¹²¹ Certain problems were reported with regard to unlocking a device with a code obtained from the service provider, as evidenced on certain forums. <http://forums.androidcentral.com/samsung-galaxy-s4-active/367321-network-sim-unlock-fail.html> (page viewed on June 26, 2015).

decrease in relation to the charges billed before the Wireless Code came into effect.¹²² The lowest unlocking fees among the service providers we reviewed were \$35, but we also saw charges of \$150 applicable in some cases, namely when the consumer was required to provide a security deposit or when the account had a credit limit. It is difficult to see the need to apply prohibitive charges if the consumer is already required to provide a deposit in an amount that is entirely at the service provider's discretion.

By including the disclosure of unlocking fees in the key contract terms and conditions (B.1 (iv) e)), and by indicating that the device must be unlocked "at the rate specified by the service provider" (F.1 (i) a)), was the CRTC truly authorizing variable unlocking fees for a given service provider? The fact of imposing a double standard could potentially constitute a breach of the spirit of the Code.

Lastly, some service providers appear to allow device unlocking only when the consumer is a subscriber to their services; a consumer who terminates his services before asking for the device to be unlocked may well be turned down by the service provider (even if the consumer is willing to pay the fees). The Code, it should be recalled, governs relations between service providers and their customers, and not with consumers (or former customers). The new service provider is also not required to unlock another service provider's device: the requirement in the Code in fact applies to a service provider that provides a locked device to the customer.

We also often encountered the following type of clause: "If you attempt to unlock your device it may become permanently unusable and may violate the software licence agreement for your device." Clauses stating that unlocking the device invalidates the manufacturer's warranty have also been seen. This type of clause could obviously discourage consumers from dealing with companies other than their service provider, even though such companies may provide service at a competitive rate.

Some specific examples

The service providers' performance is obviously highly variable where clarity is concerned. Whereas the applicable 90-day period is mentioned in several contracts without any other type of clarification, TELUS does state in its terms of service that the device can be immediately unlocked if no subsidized device is provided under the contract.

¹²² The Commission reports in its decision that "WIND submitted that it charges \$10 for its unlocking service while Bell Canada et al. submitted that they charge \$75."

See:

- *Op. cit.*, Note 103, **CRTC**, Telecom Regulatory Policy CRTC 2009-657. See par. 159.
- **NG Gary**. *Bell's Unlocking Policy Changes, Now \$50 for your iPhone [DETAILS]*, *iPhoneinCanada.ca*, Canada, September 18, 2013. <http://www.iphoneincanada.ca/carriers/bell/bell-unlocking-policy-50-iphone/>
- **NG Gary**. *New Rogers Cellphone Unlocking Policy Starts March 28th*, *iPhoneinCanada.ca*, Canada, March 5, 2013. <http://www.iphoneincanada.ca/carriers/rogers/new-rogers-cellphone-unlocking-policy-starts-march-28th/>
- **NG Gary**. *TELUS Unlocking Fee Drops to \$35 for the iPhone and Other Devices*, *iPhoneinCanada.ca*, Canada, October 15, 2012, <http://www.iphoneincanada.ca/carriers/telus/telus-unlocking-fee-drops-to-35-for-the-iphone-and-other-devices/> (pages viewed on May 22, 2015).

TELUS's explanations:

Can my device be unlocked?

Each new device that you purchase from TELUS can only be used with TELUS's services. However, your device can be unlocked for a fee of \$35 provided you have been a TELUS customer for 90 days and your account is in good standing. However, if you have paid for your device in full, it can be unlocked immediately for the same fees.

Note, however, that there is nothing in the Wireless Code to suggest that the service provider can require that the account be in good standing to provide the unlocking service.

In general, we noted that it can be difficult to find out about the conditions, among several service providers, that apply to device unlocking given that unlocking fees are most often only mentioned in the summary, with the general conditions required to benefit from the service being indicated further on in the contract.

This is the case with a Virgin contract: the unlocking fee is found on page 1 of the critical information summary, but the full terms and conditions are only found on page 6.

Compare the various service provider practices with respect to unlocking fees and conditions. If your Phone was provided at a discount as part of this Agreement and your account is in good standing and your Phone is eligible, you can unlock your Phone after a minimum of 90 calendar days if you pay an unlocking Fee (plus applicable taxes) of \$50, or \$150 if your account carries a security deposit or is subject to a credit limit. If your Phone was purchased from Virgin Mobile at full retail price or you brought your own Phone (originally purchased from Virgin Mobile), your Phone can be unlocked upon request and payment of an unlocking Fee of \$50, plus applicable taxes. If your account is past due, your Phone will not be unlocked until your account balance is paid in full using a credit card. Visit virginmobile.ca/unlock for details.

Once again, we are questioning the practice that consists of imposing conditions to consumers whose accounts are past due. Does this additional condition truly comply with the requirements of the Code, which specifically states that the device must be unlocked upon request?

h) G2 and G 3 Early cancellation fees

Analysis of the Code

Early cancellation fees are another issue for which there was a particularly high number of complaints by consumers during consultations on the Wireless Code. Note that at the time of the consultations, several provincial legislative changes already had the effect of capping the cancellation fees applicable for consumers in Quebec, Manitoba, Newfoundland and Labrador, and Nova Scotia. Draft bills had been initiated in Ontario, but have yet to be adopted. A large number of Canadian consumers were therefore still having to pay exorbitant early cancellation fees, as shown by the record of the proceeding. Just like the contract term, this issue had involved many complaints, which the Commission would respond to in its decision.

202. Many consumers submitted that three-year contracts (i) prevent them from taking advantage of the competitive market; (ii) are a barrier to keeping pace with technological progress; and (iii) are not consistent with the two-year contracts that are generally found in other countries.

Consumers also expressed concern that device performance often degrades rapidly after two years, and that manufacturers' warranties often last only one year.

[...]

205. Many consumers submitted that high early cancellation fees lock them into disadvantageous commitments and limit their ability to switch WSPs. The Competition Bureau submitted that high cancellation fees create a significant switching cost for consumers, which in turn harms competition and reduces consumer welfare.¹²³

The Commission also noted that it considers high cancellation fees to be a bigger problem for consumers than three-year contracts since it is in fact these charges that prevent consumers from easily switching to another service provider. The Commission would therefore decide to not prohibit three-year contracts but to instead forbid the charging of early cancellation fees after 24 months. Nonetheless, as a direct impact of this measure, contracts of more than two years would virtually disappear from the market.

The Commission chose to impose, with respect to information on early cancellation fees, disclosure requirements that would oblige service providers to display such information by including, in the contract and in the critical information summary, information on the total early cancellation fees, the amount by which such charges are reduced each month, and the date on which the charges no longer apply.

Note also that the Commission, given that "*calculating early cancellation fees is confusing*" for consumers, will attempt, through this inclusion in the Code, to settle this information problem: "222. The Commission considers that a clear, standard, and transparent formula for early cancellation fees will improve clarity for consumers"¹²⁴ (Our underlining)

Here is the text that was determined by the Commission for the Code:

G. Contract cancellation and extension

2. Early cancellation fees – Subsidized device

- (i) *When a subsidized device is provided as part of the contract:*
 - a. *for fixed-term contracts: The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, for the lesser of 24 months or the total number of months in the contract term, such that the early cancellation fee is reduced to \$0 by the end of the period.*
 - b. *for indeterminate contracts: The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, over a maximum of 24 months, such that the early cancellation fee is reduced to \$0 by the end of the period.*
- (ii) *When calculating the early cancellation fee:*
 - a. *the value of the device subsidy is the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to; and*

¹²³ *Op. cit.*, Note 103, **CRTC**, Telecom Regulatory Policy CRTC 2009-657.

¹²⁴ *Idem.*

- b. the retail price of the device is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract.

3. Early cancellation fees – No subsidized device

- (i) When a subsidized device is not provided as part of the contract:
 - a. for fixed-term contracts: The early cancellation fee must not exceed the lesser of \$50 or 10 percent of the minimum monthly charge for the remaining months of the contract, up to a maximum of 24 months. The early cancellation fee must be reduced to \$0 by the end of the period.
 - b. for indeterminate contracts: A service provider must not charge an early cancellation fee.

Hence, information on cancellation fees should not merely be mentioned, but must be detailed.

232. *The Commission considers that the inclusion of a clear description of any early cancellation fees in the written contract and the Critical Information Summary will increase transparency and clarity regarding device pricing. As noted above, the written contract and Critical Information Summary must clearly indicate the retail price of the device and the early cancellation fee, as well as how these relate to the value of the subsidized device provided as part of the contract.*¹²⁵

Although the formula for reducing cancellation fees at first appears to be clear and straightforward, a decision by the Commission, Telecom Regulatory Policy CRTC 2013-586, arising from various applications submitted by TELUS and Rogers, would specify its intentions regarding cancellation fees and the flexibility allotted to service providers with respect to the application of this requirement.

In fact, one of the service providers' submissions to the Commission was to determine whether tab contracts, which provide for a variable amortization of the device supplied under the contract, complied with the Code. In its submission, TELUS referred to the business model of its subsidiary, Koodo, under which the reduction in cancellation fees is based on the customer's service charges and includes a fixed component and a variable component. TELUS namely suggested that the fixed component of the amortization ensures that the device will be repaid within 24 months, while the variable portion can only accelerate repayment of the device. The practice was approved by the Commission.

Rogers inquired about the reverse scenario, namely one that allows for a variable amortization of the device and that can be lower than one twenty-fourth of the subsidy granted to the consumer, provided that all the cancellation fees are reduced to zero when the contract term reaches 24 months. The Commission also approved this practice, which was criticized by many consumer groups since it allows customers to be retained as long as possible in a two-year contract while maintaining higher cancellation fees for most of the contract term¹²⁶. Note also that such a variable-amortization model does not comply with provincial legislation regulating

¹²⁵ *Id.*

¹²⁶ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION.** *Telecom Regulatory Policy CRTC 2013-586 – Requests for clarification on how the Wireless Code applies to tab contracts*, CRTC, Ottawa, Ontario, Canada, October 31, 2013. <http://www.crtc.gc.ca/eng/archive/2013/2013-586.htm> (page viewed on May 22, 2015).

early cancellation fees for contracts involving sequential performance for a service provided at a distance, which require regular amortization and give service providers no latitude in this matter.

Lastly, TELUS also obtained the Commission's permission to use a special formula in the contract to indicate that the contract date is in fact the final contract end date¹²⁷.

In the next section, we will see how this leeway given by the CRTC to service providers takes form in practice.

Industry practices

All the contracts that we examined indicated the applicable early cancellation fees, if any, as required by the Code. The amount by which the cancellation fees are reduced each month and the contract end date (although not always explicitly indicated as being the date on which the customer will no longer be required to pay cancellation fees) were indicated, with variable clarity.

The terms used by service providers to refer to cancellation fees vary and do not always allow consumers to immediately understand what they involve: some service providers talk about "Tab balance," others of "Maximum Device Savings Recovery Fee," "Additional Device Savings Recovery Fee," or "Total Economic Inducement." We do not get a sense that any major effort was made at clarity or transparency. Other terms are more intuitive: "early cancellation fees," "*frais de résiliation*," "*frais d'annulation anticipée*."

Explanations on the amortization of the value of the device can also lack clarity, but we will come back to them in more detail with a few specific examples below.

Although Telecom Regulatory Policy CRTC 2013-586 allows for the fees related to the subsidized device to be amortized in different ways, the fact remains that, although the Koodo amortization model, which allows for a faster reduction in the early cancellation fees, was observed in the field, the contract documents that we had did not enable us to identify any business models that replicate the one described by Rogers, namely, a monthly amortization below the one resulting from a linear reduction of the amounts.

A few specific examples

Unfortunately, based on the contract documents that we were given to examine, there are a lot more poor rather than good examples of applications of requirements related to early cancellation fees.

In general, the link between the total early cancellation fees and the monthly reduction in amortization for the value of the device is relatively clear. The relevant information is often found together on the first page of the critical information summary.

¹²⁷ The contract can indicate that the customer's cancellation fees will reach \$0 no later than the date indicated. *Op. cit.*, Note 126. **CRTC**, *Telecom Regulatory Policy CRTC 2013-586*. See par. 43.

For instance, the Sasktel contract is both clear in its presentation and the language it uses, although the paragraph that applies to the reduction of cancellation fees for contracts without a subsidized device is confusing due to the fact that the contract actually indicated that a device would be provided. Here is an excerpt of page 1 of the contract:

7. (a) Early Cancellation Fee: \$491.00.
(b) Monthly Early Cancellation Fee Reduction: \$20.45 per month.
(c) Date Early Cancellation Fee no longer applies: 13-Dec-2015
(d) Early Cancellation Fee (non-subsidized device): Lesser of \$50.00 or 10% of the minimum monthly charge for the Service Plan selected by you for the number of months remaining in your Service Plan at the time of termination.

Unfortunately, although the location of the information is rarely a problem with regard to information on cancellation fees, problems with terminology abound. In fact, many service providers use terms that appear to suggest that a subsidized device provided as part of a contract constitutes a rebate, or a gift, rather than the financing amount which the consumer is required to repay on a monthly basis.

TELUS, for instance, uses terms that may be confusing: if the balance corresponds to the “full sales price,” has no rebate on the price been granted? If the price paid is \$0 (given the rebate), why are 24 monthly payments needed to repay it?

Votre nouvel appareil :
Appareil : HTC DESIRE 510 ANDROID LTE
N° série : _____

Votre entente :

Prix de détail intégral :	200,00 \$
Escompte sur votre appareil :	-200,00 \$
Prix que vous payez :	0,00 \$*

Le solde de l'appareil équivaut au prix de détail intégral de **200,00 \$**. Ce solde à rembourser sera réduit de **8,33 \$*** chaque mois et ainsi ramené à **0 \$** au terme de votre durée d'engagement de **24 mois**. (Si vous profitez du programme de paiements faciles TELUS, ce montant sera ajouté à votre facture chaque mois).

At the very least, the information on the gradual reduction of cancellation fees is clear. However, qualifying the amount that the consumer will be paying in full during the contract as a “rebate” is at the very least questionable, as is the fact of indicating that the amount being paid is zero, while the payment is only spread out over 24 months.

Several service providers use similar terms. Fido, for example, talks about a “hardware rebate” Virgin of an “agreement rebate,” and Koodo of “the initial Tab balance.” The fact that certain provincial legislation, namely the Quebec Consumer Protection Act, mentions an “economic inducement” in order to establish the right for service providers to charge certain cancellation fees and the basis for their calculation, could potentially contribute to maintaining some confusion in this respect. This being said, merchants are in no way obligated to use legalese in communications with consumers that must be clear. Although the “economic inducement” consists of spreading out the price of the device over 24 months, there is nothing that allows it to be qualified as a “rebate,” “discount” or to suggest it is a gift.

The situation begins to sour when we look at the quality of the explanations on the monthly reduction in cancellation fees. In fact, although the text is not devoid of meaning, the use of technical jargon and long sentences can certainly create confusion on a number of fronts. Here are some examples of especially arduous passages:

Excerpted from Fido's contract documents: the service provider appears to be saying, rather than basing the amount of the reimbursement on the price of the device, the “suggested price” of the device is determined by subtracting the “no Fido agreement” price and the total Economic Inducement (?!).

Le montant du Bénéfice économique total est déduit du prix sans abonnement de Fido afin de déterminer le coût suggéré de l'appareil de Rogers. Le coût de l'appareil ne comprend pas les rabais additionnels offerts par le représentant des ventes en magasin.

BÉNÉFICE ÉCONOMIQUE
Seule la valeur du bénéfice économique (comme défini ci-dessous) servira au calcul des frais de récupération des économies réalisées sur l'appareil et des frais de récupération des économies additionnelles réalisées sur l'appareil, conformément aux dispositions qui suivent.

Bénéfice économique	200,00 \$
Frais de récupération des économies maximales réalisées sur l'appareil/frais de récupération des économies additionnelles réalisées sur l'appareil	200,00 \$
Les frais de récupération des économies réalisées sur l'appareil et les frais de récupération des économies additionnelles réalisées sur l'appareil diminueront chaque mois au cours de votre abonnement à durée terminée	8,33 \$

Vous n'aurez plus à payer de frais de récupération des économies réalisées sur l'appareil et de frais de récupération des économies additionnelles réalisées sur l'appareil à la date de fin de votre abonnement à durée déterminée.

3.3. Device Savings Recovery Fee (applicable only to Term Services for all new terms starting on January 22, 2012). A Device Savings Recovery Fee (DSRF) applies if you were given an economic inducement when you agreed to your new term, and if, for any reason, your wireless service or your new term is terminated prior to the end of the term of your Service Agreement (Service Agreement Term). The DSRF is equal to the economic inducement multiplied by the number of months remaining in your Service Agreement Term divided by the total number of

months of your Service Agreement Term (plus applicable taxes). In other words, DSRF = Economic Inducement x # months left in your Service Agreement Term ÷ Total # months in your Service Agreement Term + applicable taxes.

As you can see, many different expressions are used, ones that are not very clear, which can certainly be confusing. The length of the sentences and expressions do not help at all toward general understanding. And logic is strained when talking about the service provider recovering the savings realized by the consumer... We repeat: payment in instalments does not constitute "device savings recovery" and, in our opinion, service providers should be prohibited from presenting it as such.

Regarding the Koodo contract documents, although the explanations of the reduction of early cancellation fees are relatively clear in the first section (although, as we were saying, if the balance must be paid, even in part, in instalments, the cost of the device is not really \$200, and we find such an indication misleading), the situation takes a turn for the worse in the paragraphs that follow.

Coût de votre téléphone :	
Prix de détail intégral :	500,00 \$
Solde initial de la Balance :	<u>-300,00</u>
Coût de votre téléphone :	200,00 \$
Solde de votre Balance :	
Nouveau solde de votre Balance :	-300,00
Période max. pour le remb. de la Balance :	24 mois
Réduction moyenne minimale de la Balance :	12,50 \$
Grâce à cette réduction mensuelle, le solde de votre balance sera ramené à zéro au plus tard le [date de début + 24 mois].	

- 1) Your plan includes a Tab charge of \$5.00 per month, which contributes to reducing your Tab balance.
- 2) In addition, each month, Koodo's contribution reduces your Tab balance by an amount that is equal to 15% of the service fees billed to your account during the month in question (excluding taxes, late payment fees, administrative fees and the Tab charge).
- 3) If the amount of the Tab charge and Koodo's contribution of 15% are below the average Tab reduction indicated on the left, Koodo shall make up the difference.
- 4) Once your Tab balance is at zero, the Tab charge no longer applies. Your Tab balance, which is now a positive amount, will increase over time, and can be used to purchase your next Koodo phone.
- 5) You can see your Tab balance online in the Koodo Self Serve section.

As we mentioned, the Commission, in Telecom Regulatory Policy CRTC 2013-586, considers that TELUS's interpretation complies with the Code's principles and objectives, "as it would ensure that the cancellation fee (a) never exceeds the maximum permitted by the Wireless

Code, (b) is reduced to \$0 in 24 months or less, and (c) is reduced each month in a way that is clear, transparent, and predictable for the customer¹²⁸.”

The compliance of Koodo's services may be questionable on the last point, namely the clarity of the device's amortization model. The contract, which explains two methods of amortization (one involving a fixed amount and variable balance, with an indexation that ensures that the minimum amount will correspond to a linear amortization of the device) is complicated in itself, and this is reflected in the service provider's explanations.

Let's now look at another service provider. Although the terms and expressions used by Vidéotron contribute to the clarity of the explanations when referring to the “monthly reduction in cancellation fees,” note that we were unable to match, in the contract that we examined, the early cancellation fees with the appropriate plan, as the store salesperson used the section intended for that purpose to calculate the potential cancellation fees for several devices, none of which was finally chosen by the consumer. We thus found it virtually impossible to obtain accurate information in this respect solely through the contract.

¹²⁸ *Op. cit.*, Note 126. **CRTC**, *Telecom Regulatory Policy CRTC 2013-586*. See par. 22.

With regard to detailed explanations, the following is found in Vidéotron's Terms and Conditions:

8.4 Si vous résiliez le Contrat et que vous avez obtenu, en considération du Contrat ainsi résilié, un bénéfice économique ou un rabais lors de l'achat d'un Équipement, vous devrez payer l'indemnité de résiliation suivante :

- (a) Si le Contrat résilié est un contrat à durée déterminée, l'indemnité payable sera équivalente au bénéfice économique indiqué au Contrat, moins le produit obtenu en multipliant ce bénéfice par la fraction que constitue la période écoulée depuis l'entrée en vigueur du Contrat par rapport au nombre total de mois du Contrat en question.
- (b) Si le Contrat résilié est un contrat à durée indéterminée, l'indemnité payable sera équivalente au rabais consenti sur le prix de vente de l'Équipement acquis, moins le produit obtenu en multipliant ce rabais par la fraction que constitue la période écoulée depuis l'entrée en vigueur du Contrat par rapport au nombre total de mois jusqu'à la fin de la période d'acquisition du rabais consenti indiquée au Contrat.

8.5 Si le Contrat résilié a été conclu le ou avant le 30 juin 2010 et que vous avez choisi une durée fixe d'abonnement afin de bénéficier d'un Prix réduit pour ce Service (12, 24 ou 36 mois), vous devrez payer à Vidéotron, à titre d'indemnité de résiliation, ce qui suit :

Date de résiliation du Contrat	Indemnité Engagement de 36 mois*	Indemnité Engagement de 24 mois*	Indemnité Engagement de 12 mois*
Entre le 1 ^{er} et le 12 ^e mois	300 \$	200 \$	120 \$
Entre le 13 ^e et le 24 ^e mois	200 \$	120 \$	S/O
Entre le 25 ^e et le 36 ^e mois	120 \$	S/O	S/O

The moral of the story: avoid trying to explain mathematical formulas in the form of continuous text.

Regarding the date starting from which early cancellation fees no longer apply for the customer, we could not help noticing the considerable latitude that Koodo gives itself with regard to the contract end date, which appears to largely exceed what is allowed in Telecom Regulatory Policy 2013-586: "With this monthly reduction, your Tab balance will be brought down to zero by [start date + 24 months]." The regulatory policy was less permissive¹²⁹.

¹²⁹ "As such, the contract could indicate that the customer's cancellation fee would reach \$0 no later than a specific date." See: *Op. cit.*, Note 126. **CRTC**, *Telecom Regulatory Policy CRTC 2013-586*. See par. 22.

Cases that exceed the scope of the Code

We observed a practice that was not the subject of any specific discussions when the Code was established, but which could raise some concerns. In fact, we were able to see that a few service providers mentioned charging a type of early cancellation fee in the event the consumer, before the end of a contract that includes a subsidized device, would like to switch to a less expensive plan than the one selected when the initial contract was entered into. Rogers, for instance, mentions a “Price Plan Downgrade,” and explains, in another instance of a mathematical formula in the form of continuous context, the fees that such a downgrade will entail:

If, for any reason, you downgrade to a lower tier plan category during your term, then you will be charged a one-time price plan downgrade fee as set out in your service agreement. The downgrade fee corresponds to the amount of the downgrade indicated below (if applicable) multiplied by the number of months remaining in your term at the time of the downgrade (plus applicable taxes). The downgrade fees are calculated based on the difference between the Economic Inducement associated with your service and the Economic Inducement in effect as part of lower tier plan categories at the time you subscribed to your initial plan. If you are required to pay downgrade fees, the amount of such fees will be deducted from the Economic Inducement indicated in your most recent service agreement for purposes of calculating the Device Savings Recovery Fee in relation to the device.

We have seen similar types of clauses with other service providers, including TELUS. Although we understand the service provider's interest in such a measure – the financing of the subsidized device being proportional to the economic value of the chosen plan – its lack of clarity in the contract worries us. Besides clearer explanations on how the downgrade fees are calculated, it may be appropriate to require that such fees be disclosed before the initial contract is entered into in order to avoid unpleasant surprises and needless barriers for consumers wishing to change plans and control expenses by choosing a less costly plan following the purchase of a higher-priced device.

On another note, although these fees do not consist of early cancellation fees per se, we are questioning the legitimacy of a practice that consists in applying a positive balance to the consumer's account, once the device has been fully amortized as part of the contract, using the amount of monthly charges that were used to pay for the device, solely to have the consumer benefit from a rebate in the event he would like to change devices; if the contract ends or is terminated, the customer is not reimbursed for these amounts on his account. Certain service providers, including Koodo and Virgin, have adopted this practice:

Koodo: *A positive Balance has no cash value, is non-transferable and will be cancelled by Koodo (without any compensation) when Koodo or you cancel the service.*

Virgin: *If you are a Legacy SuperTab Member, remember that a positive Virgin Mobile SuperTab credit balance has no monetary value and is non-transferable. It will be cancelled by Virgin Mobile (without compensation to you) when you cancel your Services.*

The loss of these amounts will not create a rate shock for consumers (as was the case with unregulated cancellation fees); however, does this not constitute a type of barrier to mobility? The impact of such business practices should probably be examined in greater depth.

In fact, our criticism is not aimed at the principle of a rebate; we believe, however, that it should be very clear for consumers who subscribe to such services which may involve the above-mentioned positive balances that part of the amount that is billed to the consumer is set aside for the potential purchase of a new device from the same service provider, so that those wishing to benefit from this option can do so, while those that prefer a monthly discount on their service and/or changing service providers can also benefit from this option.

i) G4 Trial period

Analysis of the Code

The requirement for service providers to offer a trial period to a customer who agrees to a contract that includes early cancellation fees is another key measure of the Wireless Code. This protection, contrary to the requirements associated with unilateral changes and cancellation fees, for instance, has not been included in provincial legislation.

The Commission considered that such a measure was appropriate for a number of reasons: a trial period would allow consumers time to read the contract, try out the device and the network, which would prevent them from being stuck for several years with a phone or services that do not meet their needs¹³⁰. However, once again, this was not done without also taking into account the service providers' interests, as shown in the wording chosen by the Commission for the Code.

G. Contract cancellation and extension

4. Trial period

- (i) When a customer agrees to a contract through which they are subject to an early cancellation fee, a service provider must offer the customer a trial period lasting a minimum of 15 calendar days to enable the customer to determine whether the service meets their needs.*
- (ii) The trial period must start on the date on which service begins.*
- (iii) A service provider may establish reasonable limits on the use of voice, text, and data services for the trial period.*
- (iv) During the trial period, customers may cancel their contract without penalty or early cancellation fee if they have:
 - a. used less than the permitted usage; and*
 - b. returned any device provided by the service provider, in near-new condition, including original packaging.**
- (v) If a customer self-identifies as a person with a disability, the service provider must extend the trial period to at least 30 calendar days, and the permitted usage amounts must be at least double the service provider's general usage amounts for the trial period. (Our underlining)*

¹³⁰ *Op. cit.*, Note 96. **CRTC**, *Telecom Regulatory Policy CRTC 2013-271*. See par. 249.

The part which, in our opinion, is the most ambiguous is found under sub-article iv, which states that the customer does not have to pay a penalty. What constitutes a penalty, exactly? Does this mean that the service provider cannot charge any amounts to a consumer who is cancelling the contract during the trial period? Or can other fees be charged, provided they do not consist of penalties? We will see later on how this was interpreted by the industry.

The other passages we underlined are not ambiguous; however, given the lack of any guidelines, they provide full discretion to service providers, who can determine the limits of use which, if exceeded, will invalidate the consumer's right to cancel the contract. A few months after the Code came into effect, questions by the Commission to several service providers on the chosen limits seem, however, to indicate that the Commission is keeping an eye on the possible consequences of such discretion given to the industry on the limits associated with the trial period.

Note that article B 1 (iv) h) requires that the service provider mention in the contract that a trial period is available, including the associated limits of use, but the Code does not require that this information be included in the critical information summary, meaning that the information therefore does not have to be included in the first eight pages of the contract.

Industry practices

The trial periods by the service providers in the study most often involve fairly low limits (around 30 minutes of calls), and often barely 50 MB of data (sometimes 50 text messages). But we occasionally came across higher limits: 250 MB of data and 100 minutes of call with Sasktel.

Bell and Virgin require higher limits: only two devices are refundable under the agreement. This is surprising given that shared data plans were advertised at the time of the study (and still are at the time this is being written) by several service providers.¹³¹ What happens if the contract includes more than two subsidized devices?

Remember that the only limitations the Code seems to allow are those associated with the use of the services and the return condition of the device (in near-new condition, including original packaging). Any other conditions that would permit the service provider to refuse to grant the consumer the right to a trial period and cancellation of the contract appear to us to contravene the spirit and content of the Code.

Contracts usually reiterate the condition associated with the state of the device which the Commission decided to include in the Code: the device provided by the service provider must be returned in near-new condition, with the original packaging. We did not note other conditions that were more specific in the contract. During our study, we exercised our right to a trial period on two occasions. Each time, the device and all the accessories were very carefully examined by the staff, who were intent on finding the slightest mark and who carefully checked with company personnel by phone how much of the service had been used.

¹³¹ Bell and Rogers are both currently offering two data plans that can be shared among 10 devices. TELUS is also offering this type of shared-data plan.

Nonetheless, in one case we had positive results and the contract was cancelled in less than 10 minutes, in a courteous and calm manner. The other case quickly turned into a nightmare. We were interrogated for roughly four minutes by the salesperson (on why we wanted to cancel the service, with extensive time needed to check the use of the device with the company by phone); the salesperson accused us of using 1 GB of data in just a day and a half (even though access to mobile data had not yet even been activated on the device), etc. Meanwhile, all along, the staff was becoming less and less courteous by the minute.

It should also be mentioned that the right to a trial period is not without cost for the consumer. Some of the costs incurred at the time the contract is agreed to are non-refundable, including activation fees (if applicable), the cost of the SIM card, and the monthly fees incurred until the date the service is stopped¹³². We also noted in the contracts we examined that some service providers were charging restocking fees for the device that was returned; these fees are in fact stated in the Sasktel contract: \$25 for a standard cell phone and \$50 for a smartphone. Despite being indicated by the service providers, these fees could easily be considered as penalties, which, incidentally, are strictly prohibited by the Code.

The contracts that were examined do not systematically contain any warning on specific fees that may be incurred by the consumer when cancelling the contract while exercising their right to the trial period. It would thus appear that the only guarantee they are entitled to is the one of not being charged early cancellation fees or “penalties” if they choose to exercise this right, provided they have made very little (and extremely careful) use of the device, kept the original packaging, and made sure to have sufficient patience and determination.

Regarding the information found in the contract, although we have no detailed comments to make on its clarity, we consider that it is instead the replacement of the information that was most concerning during our examination. The trial period is currently mentioned much later in the contract. Fido mentions it on the invoice, but in a ridiculously small font (the information is also found on page 8 of the contract). Like Rogers, Bell places the information on page 5 of the terms of service, in a 14-page appendix provided with the contract. Vidéotron chose the same strategy, having placed the information in an appendix in a section with a somewhat confusing heading (“SERVICE AND EQUIPMENT WARRANTY”); they can still be given one star for having extended the trial period to thirty days (although with a limit of 30 minutes of calls). Koodo, for its part, provides information in this respect on page 4, the last page of the paper contract.

In the end, the legibility of numerous clauses regarding trial periods is questionable¹³³.

¹³² However, one of the two service providers spontaneously offered to cancel these fees when we contacted them by phone.

¹³³ The Supreme Court, citing Quebec legal doctrine, explains the scope that must be given to the notion of “illegible clause”: “... whereas the notion of the external clause (art. 1435 C.C.Q.) traditionally concerns contract clauses that are physically separate from the main document, that of the illegible clause (art. 1436 C.C.Q.) concerns clauses that are not separate from the main document but are, owing to their physical presentation, illegible for a reasonable person. Thus, a clause that is [TRANSLATION] “buried among a large number of other clauses” because of its location in the contract is characterized as illegible: D. Lluelles and B. Moore, *Droit des obligations* (2006), at p. 897; B. Lefebvre, “Le contrat d’adhésion” (2003), 105 *R. du N.* 439, at p. 479.” *Dell Computer Corp. v. Union des consommateurs*, [2007] 2 S.C.R. 801, 2007 SCC 34, par 90. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2374/index.do> (page viewed on May 25, 2015).

j) G6 Contract extension

Analysis of the Code

Several requirements regarding the extension of contracts have been adopted in the Wireless Code. The reasons were the same as those invoked during equivalent provincial legislative changes, namely, to prevent contracts from being renewed with restrictive clauses, without the consumers' knowledge, and that consumers are unable to benefit from the competition's offers. As seen in the previous chapter, the automatic renewal of fixed-term contracts has been the subject of numerous complaints over the years. The Commission would confirm these concerns in its decision.

273. The lack of transparency regarding contract extensions is a key concern for consumers. This lack of transparency can be detrimental to a dynamic market since it acts as a barrier to switching WSPs by locking consumers into another contract term when they may not wish this to happen.

274. The Commission considers that consumers require greater clarity regarding what will trigger contract extensions, particularly, whether device upgrades will trigger a contract extension. The practice of automatically extending a contract for another commitment period at upon contract expiry is an unreasonable barrier for consumers to switching WSPs. However, the Commission considers that automatic contract extension on a month-to-month basis upon contract expiry provides clear benefits to consumers.¹³⁴

Hence, the Commission has solved the problem of the renewal of fixed-term contracts by using the same solution as the one that had been adopted in several provincial consumer protection laws. Here are the articles that were included in the Code on contract extensions.

G. Contract cancellation and extension

6. Contract extension

- (i) To ensure that customers are not disconnected at the end of the commitment period, a service provider may extend a contract, with the same rates, terms and conditions, on a month-to-month basis.*
- (ii) A service provider must notify a customer on a fixed-term contract at least 90 calendar days before the end of their initial commitment period whether or not the contract will be automatically extended.*
- (iii) At the time that a service provider offers a customer a device upgrade, the service provider must clearly explain to the customer any changes to the existing contract terms caused by accepting the new device, including any extension to the commitment period. (Our underlining)*

The first underlined part allows for some discretion, which the Commission likely thought about to avoid conflict with certain provincial consumer protection laws. In fact, some industry members, in particular Bell, had argued that the patchwork of provincial laws would create a situation where the Commission would have no other choice than to adopt a Code that would be in conflict with a provincial law or other legislation. Bell in fact noted that most provinces that

¹³⁴ *Op. cit.*, Note 96. **CRTC**, *Telecom Regulatory Policy CRTC 2013-271*.

adopted legislation in this respect had authorized automatic contract renewals, but only for indeterminate-term contracts, whereas legislative amendments adopted in Nova Scotia have outright prohibited any form of automatic renewal¹³⁵.

The second obligation mentioned in this article, which involves notifying the customer before the contract ends, was not covered in our study; there is no requirement on the mandatory disclosure of such information in the contract.

Article B.1 (iv), in paragraphs j) and k), requires service providers to include information on these renewal issues in the contract. We therefore delved a little further into how service providers have informed consumers on the reasons that could lead to a contract extension, in particular upgrading the device. Note that this information, like the information on the automatic renewal of the service agreement after the current agreement ends, must be contained in the contract, but does not have to be included in the critical information summary. It is also important to note that Telecom Regulatory Policy CRTC 2013-586 has made clarifications to the consequences of an early device upgrade on contractual obligations:

*Allowing customers to upgrade their device without clearly concluding their current contract and device relationship could reduce the certainty that this requirement was meant to provide. At all times, customers must be aware that an upgrade represents a completely new contract with new obligations, rather than a continuation or extension of their original agreement.*¹³⁶

Hence, part of the ambiguity inherent in this article has been reduced by the clarification made by the Commission. If the consumer upgrades his device before the end of the contract, a new contract must be entered into, and the service provider must comply with all the applicable information disclosure requirements.

Industry practices

Automatic renewal

Although automatic-renewal information is generally communicated in a way so that it can be understood, it is found equally on the first page as at the end of the document, or even in an external clause that can be accessed via a hyperlink.

¹³⁵ Bell's testimony at the public hearings. "6982 We sympathize with the difficult position that the Commission finds itself in. No matter which option is selected on the automatic contract renewal issue, the national Code will conflict with one or more provincial codes. For example, if your Code provides that contracts renew automatically at the end of a term contract, this will conflict with Nova Scotia's legislation. If your Code provides that contracts do not renew automatically at the end of a term contract, this will conflict with Quebec's legislation."

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION. *Transcription, Proceeding to establish a wireless code for consumers*, CRTC, Gatineau, Québec, Canada, February 14, 2013.

www.crtc.gc.ca/eng/transcripts/2013/tt0213.html (page viewed on May 24, 2015).

¹³⁶ *Op. cit.*, Note 126. **CRTC**, *Telecom Regulatory Policy CRTC 2013-586*. See par. 52.

Here are some typical examples of automatic renewals...

Service Period: Your contract begins 14-Dec-2013 and ends 13-Dec-2015. At the end of this period, your service will automatically be on a month-to-month basis¹³⁷.

Commitment period: 24 months Start date: November 28, 2014 End date: November 27, 2016. Your service will be provided on a month-by-month basis after the above end date¹³⁸.

Some are more difficult to decipher than others:

At the end of your Commitment Period, your Service will automatically default to a monthly plan. Fido may contact you at any time to propose a renewal of your plan. If you do not wish to renew your plan when Fido contacts you, you will keep your current plan and agreement, as is, until those are changed or the plan terminated in accordance with the terms of that Agreement.¹³⁹

It cannot be said that the above text is clear, especially for the layperson.

Change in device

Some service providers indicate the effect in the contract of changing devices during the contract, but not most. Under the circumstances, the stated practices comply with the Code and Telecom Regulatory Policy 2013-586, namely that the consumer must pay the remaining balance on the device before being able to change devices.

However, the terms that are used vary (there are references to early cancellation or upgrades, etc.), and the effect on the contract is not necessarily clearly indicated: several service providers use the conditional tense. The information is sometimes only found through an online link.

Here are some examples that clearly explain the impact of changing devices on cancellation fees, though not necessarily on the contract; in short, only TELUS is entirely straightforward on the effect of such a procedure on the contract and on the amounts charged to the consumer.

Here is what TELUS has to say (on the second page of the contract):

Can I replace my device at any time?

Of course. You can replace your device at any time provided your account is in good standing. You first need to pay off the balance for your device at the end of the last full month following the start of your service agreement, or since your last replacement, and then select a new device and sign up for a new commitment period. (Our underlining)

With Bell:

What happens if I want to upgrade my Device?

You can always login to your self-serve profile on bell.ca/MyBell to see if you are eligible for a Device upgrade. You will be required to enter into a new Agreement with Bell at the time of the

¹³⁷ Excerpt from Sasktel's contract.

¹³⁸ Excerpt from Bell's contract.

¹³⁹ Excerpt from Fido's contract.

Device upgrade. Early upgrade Fees may apply. Discounted Device upgrade offers are made available at Bell's sole discretion and may be withdrawn at any time.

In Koodo's case, the information can only be found in an external clause online:

Can I replace my phone with a better one at any time?

Yes, if your account is in good standing. By signing a service agreement with a discount upon purchasing the phone, your Tab balance is displayed on your monthly bill. Your Tab balance initially reflects the discount you were given, then decreases over the months, during the service period. Repaying the Tab balance entitles you to upgrade your phone.

k) H1 Security deposits

Analysis of the Code

Discussion on the obligations related to security deposits has been relatively brief, as evidenced by Regulatory Policy 2013-271, which only covers the question of maximum security deposit amounts. However, disconnection and security deposit issues are much more complex than just the deposit amounts that may be required from consumers, as shown by the regulations adopted on these issues with regard to wireline telephone service.

The Commission has ruled on the issue of maximum security deposit amounts while taking into account the industry's arguments, stating that:

[A] maximum security deposit amount could lead to potential customers being refused service. [...] Nevertheless, the Commission considers that information relating to the security deposit, including the reasons for requesting it, as well as the conditions for reviewing the appropriateness of the deposit and conditions for its return, must be clearly communicated to consumers. The Commission will monitor security deposit-related complaints to the CCTS to ensure that security deposits do not become a barrier for consumers to access to wireless services¹⁴⁰.

Here is the text adopted in the Code on the issue of security deposits, as formulated by the Commission.

H. Security deposits

1. Requesting, reviewing, and returning a security deposit

- (i) *If a service provider requires a security deposit from a customer, the service provider must:*
 - a. *inform the customer of the reasons for requesting the deposit;*
 - b. *keep a record of those reasons for as long as the service provider holds the deposit;*
 - c. *specify in the written contract the conditions for the return of the security deposit;*
 - d. *review the continued appropriateness of retaining the deposit at least once per year;*
 - e. *return the security deposit with interest to the customer, retaining only any amount owed by the customer, no more than 30 calendar days after:*
 - *the contract is terminated by either the customer or the service provider; or*
 - *the service provider determines that the conditions for the return of the security deposit have been met.*

¹⁴⁰ *Op. cit.*, Note 96. **CRTC**, *Telecom Regulatory Policy CRTC 2013-271*. See par. 285.

- (ii) *A service provider must calculate interest on security deposits using the Bank of Canada's overnight rate in effect at the time, plus at minimum one percent, on the basis of the actual number of days in a year, accruing on a monthly basis.*
- (iii) *A service provider may apply the security deposit toward any amount past due and may require customers to replenish the security deposit after such use in order to continue providing service. (Our underlining)*

The underlined passages are not ambiguous, but show the full latitude given to service providers for the application of these policies on security deposits. The reasons for requesting the deposit, the conditions for returning the deposit, the reasons justifying retaining the deposit, and the conditions for requiring a replenishment of the deposit are entirely at the service provider's discretion, and the information disclosure requirements are sometimes vague: the Code never explicitly requires that the reasons for the deposit request be indicated in the contract (the service provider could tell them to the customer in person, for instance). The situation is the same for the conditions for reviewing the continued appropriateness of retaining the deposit.

This information on deposits and "associated terms and conditions" must therefore be disclosed in the contract (B.1 (iv) l.) but not in the critical information summary. As the associated terms and conditions are not specified, it is up to the service provider to interpret the scope of the disclosure requirement (besides the one indicating the deposit amount – since the contract is involved, the amount in question will be that of the deposit provided by the customer).

Industry practices

We did not have any contracts that required that a security deposit be paid. None of the contract documents we examined mentioned in detail all the conditions related to the deposit that appear in the code. Even the conditions for the return of the deposit, which must be disclosed in the contract, were sometimes missing from the contract sections on security deposits¹⁴¹. Several service providers indicate that the deposit will be reimbursed in the form of a service credit, while neglecting to mention whether the amount will accrue interest based on the Bank of Canada rate, as required by the Code. This practice, which replaces the "return of the security deposit" with a credit, appears to impose an additional condition not stipulated in the Code; we would be surprised if the CRTC had intended the substitution of a credit to be one of the "conditions for the return of the security deposit."

We noted that the requirements regarding the return of the deposit can be especially restrictive. Furthermore, the information on deposits is sometimes only found in an external clause.

Note, lastly, that although the possibility of requiring a deposit is often mentioned, the disconnection terms and conditions are not systematically indicated or clearly explained in the contract documents, most likely because the Code does not have a disclosure requirement in this respect.

¹⁴¹ Since our study did not include a field investigation, we were unable to determine whether this information was provided in any other manner.

Among the most straightforward disclosures, there is the one by Bell:

Does Bell require a security deposit?

Bell may require a security deposit and will provide you with the reason for requiring a deposit. Deposits will earn simple interest based on a rate of 1% above the Bank of Canada's Target for the Overnight Rate in effect, calculated monthly on the last day of your monthly billing cycle, prorated for any partial month Bell holds the security deposit. When the Bell Services are cancelled or the conditions justifying the security deposit no longer apply (typically when you make six (6) consecutive monthly bill payments in full and on time), Bell will apply the security deposit and any earned interest against any outstanding amount owing, then refund you the balance of the deposit, if any, within 30 calendar days. Accounts with multiple subscribers will have the security deposit refunded on the earlier of when all subscribers on the account have cancelled Services or after six (6) months from the last subscriber being added to the account and the account remaining in good standing. Accounts for which a security deposit is required are not eligible for the "Bell One Bill" option. (Our underlining)

Note, however, that these same service providers (Bell and Virgin) impose other particularly restrictive conditions to customers, from whom they have requested a deposit, in particular for unlocking fees, which can be as high as \$150 for customers required to pay a deposit.

Sasktel's policies often contain fairly restrictive clauses, in particular regarding service reconnection or the application of the security deposit toward amounts that are past due. Sasktel's no-refund policy even appears to be clearly unfair, and may well be in breach of the content and spirit of the Code, which specifically stipulates that the deposit must be returned if the contract is terminated.

4.3 If you fail to pay any amount owing to us for the Service, we can decide to suspend or disconnect your service, provided:

- a) your account exceeds \$50 or has been past due for more than two months;*
- b) you fail to provide us with a security deposit or other reasonable alternative when we have requested you to do so; or*
- c) you previously agreed to a deferred payment arrangement with us and have not complied with the terms of that arrangement.*

(...)

11. The charge to re-connect your service after it has been suspended is \$35.

11.1 We may require you at any time to provide a deposit in an amount satisfactory to us to be held and applied as we may see fit to outstanding amounts that you owe us. In the event this Agreement is cancelled because of your default, we may keep your deposit as a genuine pre-estimate of damages and not as a penalty. Upon cancellation of your Service, your deposit will be returned to you when your account with us for the Service has been paid in full, or it may be applied by us toward payment of any outstanding balance on your account.

(...)

...If you have signed up for the SaskTel Pre-Authorized Payment (PAP) plan for your service and a payment is missed, not honoured for any reason, or if the banking information is not correct when your PAP plan is set up, your service will be suspended. If your account is suspended, there are NSF fees, service reconnection fees, cancellation fees and other charges that apply, including your obligation to pay for the service you have used. If your service is suspended in these circumstances, SaskTel will require a \$250 to \$500 deposit in order to continue your service. Your service will be suspended until a deposit is provided.

Certain service providers, in particular Vidéotron, also have specific requirements regarding payment methods, which could prove to be a problem for low-income consumers.

3.6 Videotron may, where circumstances warrant, demand the advance payment of certain Services, an interim payment before the normal billing date or a guarantee in the following cases: (i) you have no credit history with Videotron and you either cannot or refuse to provide satisfactory information on your solvency, (ii) you have an unsatisfactory payment history with Videotron, or (iii) you present an abnormal loss risk due to your financial situation or your use of the Services. Videotron shall inform you of the specific grounds for this requirement and any applicable conditions. In the case of interim payment, any amount you are required to pay shall be considered overdue 3 days after having been undertaken or 3 days after Videotron demands payment thereof, whichever is the latest of the two. Should you fail to make an advance payment, an interim payment or provide a guarantee, as the case may be, Videotron may demand the immediate payment of any amount owing.

Detailed or not, the explanations related to deposit and service disconnection practices are still generally so technical that some clauses could certainly be qualified as incomprehensible¹⁴², in addition to being potentially unjustified.

¹⁴² The Supreme Court explains the scope that needs to be given to the notion of “incomprehensible clause” in Quebec law: “An incomprehensible clause (art. 1436 C.C.Q.) is one that is drafted so poorly that its content is unintelligible or excessively ambiguous.” *Dell Computer Corp. v. Union des consommateurs*, [2007] 2 S.C.R. 801, 2007 SCC 34, par 90. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2374/index.do> (page viewed on May 29, 2015).

4. Stakeholders' Perspective

To obtain impressions on the application of the Wireless Code and on how it should be applied, we contacted a number of stakeholders who had taken part in the Code's establishment as part of the CRTC's consultations. We sent them a questionnaire to gather their opinions on the matter. We also sent them a summary of the highlights of our field study in order to obtain their reaction to some of the results of our research that illustrate the impacts of some ambiguous aspects or flexibility measures found in the Code.

To obtain the names and contact information of those who participated in the CRTC hearings, we retrieved the information from the mailing list used by the Commission to contact stakeholders as part of the consultations related to the Code. Our survey was sent to 17 Canadian telecommunications companies¹⁴³ and to about 30 stakeholders from other sectors, including various associations, such as wireless service providers associations, consumer groups, university experts, and various provincial government agencies or departments that also took part in the consultations¹⁴⁴.

Several agreed to participate. From the industry side: TELUS and Mobilicity responded to our survey and Rogers provided a few summary information items on the subject. Among the remaining stakeholders, we obtained responses from various consumer protection and public interest groups: Service de protection et d'information du consommateur (SPIC), the Public Interest Advocacy Centre (PIAC) and the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC). In terms of university researchers, we obtained responses from Dr. Tamara Shepherd and brief responses from Dr. Catherine Middleton (both from the Ted Rogers School of Information Technology Management, Ryerson University). Journalist Daniel AJ Sokolov also agreed to respond to our survey, as did the Commissioner for Complaints for Telecommunications Services (CCTS) and the Office of the Privacy Commissioner of Canada (OPCC).

There were slight differences in the questionnaires that were sent to industry members and the other stakeholders, but they were similar enough so that we were able to group the key points of their responses by major theme.

In general, a significant number of stakeholders agree that the Wireless Code has in some respects led to an improvement in consumers' experiences. Several non-industry respondents nonetheless mentioned ongoing problems due to the leeway granted to certain measures, or the

¹⁴³ Bell, Eastlink, Hay Communications, Hurontel, Mobilicity, Mornington, MTS, Nexicom, Northwestel, Quadro, Québecor, Rogers, Sasktel, Sogetel, Tbaytel, Telus and Wind.

¹⁴⁴ Canadian Wireless Telecommunications Association, Ministère de la culture et des communications du Québec, Ministère de la justice du Québec, Office of the Privacy Commissioner of Canada, Media Access Canada, Government of Alberta, professors Catherine Middleton, Tamara Shepherd and Julia Shidoi from Ryerson University, DiversityCanada Foundation, Competition Bureau, Daniel AJ Sokolov, Government of Manitoba, Government of Ontario, New Democratic Party member Glenn Thibeault, Commissioner for Complaints for Telecommunications Services (CCTS), Vaxination Informatique, Public Interest Advocacy Center (PIAC), Leslie Shade from the University of Toronto, Government of the Northwest Territories, Government of Yukon, Carleton University, Service de protection et d'information du consommateur (SPIC), the Canadian Internet Policy and Public Interest Clinic (Cippic), and the Consumers Council of Canada.

fact that certain issues were simply not covered by the Commission as part of the consultation, in particular the general state of the competition in retail services. We thought it important to present the main responses that were received¹⁴⁵.

4.1 Effects of the Code

4.4.1 On information clarity

There were occasionally contradictory comments on the effects of the Code on the clarity of the information provided to consumers. We asked industry members how they make sure that their contracts properly inform consumers of their rights and obligations.

Service providers placed considerable emphasis on the fact that they are complying with the requirements of the Wireless Code.

TELUS had implemented "Clear and Simple" contract terms. As a result, TELUS' contracts were already consistent with the Wireless Code's requirements about use of plain language when the Wireless Code came into force (...) TELUS provides in-person, telephone and online support to field customers' inquiries about their rights and obligations. TELUS also provides direct support for customers through its Learning Centres where customers can ask questions about their wireless services.

Rogers' consumer contracts meet the requirements of the Wireless Code. We strive for these consumer agreements to be clear and easy-to-understand, while recognizing that it is a legal document. (...) The key consideration when developing wireless phone contracts is that all the critical elements of the contract are disclosed in an understandable manner. Consumers are most concerned about the monthly recurring fees, the length of their fixed term commitment and its expiry date, as well as what usage is included. It is also important that the customer understands details of any economic incentive that will be used for calculating early cancellation fees. Rogers has ensured that these key elements are clearly laid out at the start of our consumer agreements...

We asked all the other types of participants for their impressions on the clarity, completeness and accuracy of the information provided by the service providers to consumers. The level of satisfaction they expressed varied. Some improvement, albeit relative, was noted; it was mentioned that the information provided in person had improved, but the written information was still not clear and complete. Some said that the results vary widely in the field from one service provider to another, based on how the industry interprets the Code. In short, the observations were generally positive but qualified.

Dr. Shepherd has a fairly representative point of view in this regard:

Dr. Shepherd: I think there has been a notable improvement in the way carriers inform consumers about their rights since the introduction of the Wireless Code — something I've noticed particularly in face-to-face interactions with sales staff. However, as the UC study points out, the written documentation in wireless contracts is still not always clear or complete.

¹⁴⁵ We are presenting excerpts of what we consider to be the most relevant responses, based on the main themes of the survey. Some paragraphs contain several responses to questions on common themes.

[...]

The lack of clarity in contracts is a difficult element to resolve fully, since the language of contracts is inherently jargon-filled. The issue raised in UC's findings about the use of various abbreviations for service and term, however, is something that could easily be remedied by carriers.

[...]

While the completeness and clarity may be lacking, I don't think the information provided in itself is wholly inaccurate. I think carriers have been trying to comply with the Wireless Code (more or less).

CIPPIC: *Information is far more complete than it was before the Code came into effect, and the standardization provided by the critical information summary is useful.*

[...]

Clarity has improved, but there is still room for further improvement, which will hopefully come as the Code is applied to more situations over time.

[...]

There seem to be serious shortcomings in customer notification around specific issues, such as the availability of trial restrictions, and the extensive use of hyperlinks to provide important information, as identified in the report, indicates individuals are not well aware of their rights [...]. Additionally, there have been concerns that customers are not adequately notified of their right of recourse to the CCTS in the context of disputes with their service providers. Service providers should be notifying customers of the availability of CCTS recourse at each stage of their internal complaints-handling protocol.

PIAC: *Progress in this area has been substantial recently, likely due to the development and implementation of the Wireless Code. However, recent CCTS Annual Reports show an increase in wireless complaints about "non-disclosure/misleading terms,"*

[...]

This indicates, it seems, [...] that even with the clarity provided by the Code the front line staff of carriers may still be facing other pressures (likely marketing scripts and quotas) which may lead to exaggerations or unclear statements that result in complaints of the "non-disclosure/misleading terms" type.

The OPCC provided a few interesting items of information on its interpretation of some of the disclosure obligations found in the Wireless Code with respect to privacy.

OPCC *While the Code notes that changes to "key contract terms and conditions" (for postpaid wireless contracts) requires informed and express consent, these "key terms and conditions" appear to be related to service fees and charges, which may be beyond issues related to the collection, use and disclosure of personal information.*

[...]

The Code does note though that there are "other aspects of the contract," of which are privacy policies. Changes to privacy policies require wireless service providers to provide at least 30 calendar days notice to customers before such changes are made. In addition, wireless service providers must explain the change and when it will take effect.

In fact, our study enabled us to see that the requirements related to privacy are handled in such a way that does not seem to be a priority for service providers. The policy in question is not even given to the customer when the contract is entered into (despite the fact that the Code requires that customers be given the related documents (B.1 (i)), in which the privacy policy is found (according to A.1 (ii)).

4.4.2 On business practices

We asked respondents about service providers' business practices, and in particular whether they thought the Code's measures allow consumers to more easily benefit from the products and services available on the market. Industry members, in particular TELUS, were fairly cautious in their responses, while other types of stakeholders were rather critical.

*TELUS: Consumers can now obtain an unlocked device from any provider, so that allows them to take their current device to a different provider, should they desire.
[...]*

The wireless services marketplace in Canada has always had a tremendous amount of competition, with all providers competing on daily basis to obtain, retain and win customers. This existed well before the Wireless Code came into force...

The Code's effect on contract terms was brought up by several respondents.

PIAC contends the reduction in contract term offered by wireless service providers enables greater flexibility for consumers when choosing wireless service. In addition, the prohibition of termination fees above those calculated on the formulas in the Wireless Code allow consumers to evaluate other services and to change providers without undue penalty. The vehemence of the carriers in challenging the proposed ultimate limitation date for contracts in the Federal Court of Appeal, and preparations for the "double cohort" of consumers that will be freed from contract terms in June 2015 also supports the theory that the Wireless Code has indeed had its intended effect of increasing consumer power and competition in this area.

CIPPIC: The critical info summaries, the availability of unlocking (which some providers did not offer at all prior to the Code), the limit on contractual term restrictions to 24 months in lieu of the prevalent 3-4 years that were there before, the limits on exit penalties, the imposition of a hard cut-off for roaming data usage – all of these measures have improved customer's ability to benefit from offers. It has led to somewhat lower prices and improved clarity already.

We next asked them whether the Code, as it currently stands, has achieved its objectives.

Industry members did not provide any detailed comments in response to this question, but other respondents had more to say.

The positions are at times positive, but often critical.

PIAC's position is that the introduction of the Wireless Code set the stage for the immediate or near term resolution of a series of consumer irritants that were identified and included within the Code (reducing and standardizing early termination fees, removing one month termination notice, roaming and data overage charge caps, phone unlocking). Subsequently, when service providers

business practices were conducted in adherence to the Wireless Code, they allowed the Code mostly to achieve these objectives.

Various respondents noted that the Code was ambiguous on a few points, in particular with respect to information on trial periods, which is not always clearly disclosed at the point of sale. On the same topic, low usage during the trial period was deplored.

***CIPPIC:** Restrictive conditions (30 call minutes, 50 MB usage) on usage during trial periods were regrettably envisioned by the Code. Service providers argued that such restrictions were necessary in order to retain the warranty and resale value of the phone. The argument was that phone use beyond this threshold would render a phone 'used' and no longer re-sellable as 'new.' However, the report's suggestion that some providers offer less restrictive usage limitations during trial periods suggests that it is possible to allow more latitude for usage without rendering a device 'used.'*

Also deplored was the charging of unlocking fees, which constitutes another type of barrier to mobility, with fees that are difficult to justify given the minimal cost involved in unlocking a device.

Comments were also made with regard to caps on overage fees, with the Code not being particularly clear on to whom these notifications should be sent. Lastly, comments were also made on the monthly reduction of cancellation fees, as the latitude given by the Code could potentially create transparency problems regarding the reduction of fees for consumers.

4.4.3 Successes

We asked respondents what they considered were the Wireless Code's main successes. The eclectic responses seem to confirm that, although the Code has some failings, its coming into force has nonetheless generally served consumers' interests. Respondents also mentioned that the Code consists of a group of national and minimal consumer protection measures that compel service providers to review their business practices.

***TELUS:** The Wireless Code has ensured that all wireless service providers provide their customers with contracts in plain language, and to highlight key terms in the Critical Information Summary. Consumers also benefit from a trial period and bill management tools, such as data caps and notifications when they are roaming.*

As the Code's greatest success, the SPIC notes an improvement in practices with respect to penalties in the event of a unilateral cancellation by the consumer, while the CIPPIC, for its part, mentions the reduction of the contract term to two years.

***CIPPIC:** ...it has already established positive baselines for customer comparisons, some important limits on how service providers can negatively impact on their customers, how easily they can re-enter the market if they are upset with their provider, and provided a much stronger basis for customer protection in CCTS dispute resolution. [...]*

The ability to more easily re-enter the market will, over time, make it possible for other competition-enhancing initiatives to be fully realized in a manner [that] will ultimately lead to a far more competitive landscape.

PIAC: Without the implementation of the Wireless Code, debates regarding caps on roaming and data overage fees, regulated early cancellation fees and the extra 30 day charge would remain outstanding. [...]

In short, while the Wireless Code is not perfect, it does compel wireless providers to behave in a more professional manner.

4.4.4 Failures

We obviously also enquired about what stakeholders considered to be the Code's main failures. The ambiguous wording of certain parts was mentioned, along with the problems involved in applying the code of conduct, from a standpoint where it can be a complex task for regulators to strike a balance between the rights and interests of consumers and those of service providers. It is also worth mentioning that the shorter contract term, considered by many respondents as a success, is instead seen by TELUS as a problem.

TELUS: Limiting the early cancellation fee reduction to a 24 month period was unnecessary. [...]

The 36 month term option was an option many customers desired because it reduced the amount the customer had to pay to obtain a new device at the beginning of a term contract. Removal of this option has, of course, caused an increase in prices that customers must pay for a new device, because the size of the device subsidy is smaller in a 24 month contract term.

Mobilicity, for its part, is more cautious and seems to suggest that perhaps it is too early to determine the Code's effectiveness given that certain behaviours are rooted in consumer habits.

Mobilicity: Canadian consumers had experienced decades of punitive termination fees and other maltreatment from the oligopoly carriers prior to the introduction of the Code. [...]

We believe the Code will be most effective when consumers' decade long expectations and behaviour change.

Some specific problems were mentioned: for instance, in PIAC's opinion, measures on unlocking policies could be more stringent, with the main shortcoming being that of allowing service providers to charge whatever device unlocking fees they choose, which "invalidates the effect of requiring device unlocking for consumers." Daniel Sokolov brings up the additional fees regarding text messages, a bane for consumers who are being charged for services they have never requested. He mentions that this service should be turned off by default, and the option of subscribing to such services be authorized only after the customer expressly consents to them.

CIPPIC has commented on the application of the Wireless Code by the CCTS:

CIPPIC: ...perhaps the Code's greatest current shortcoming is the inaccessibility of data regarding its on-the-ground application. The CCTS has some of this data, and will hopefully place it on the public record soon through its annual report, but these only highlight a few indicative trends. Ideally, all CCTS Code-related decisions should be published (without naming specific implicated service providers, if that is a concern) so that everyone can see where the Code is succeeding and failing on the ground. [...]

In addition, there needs to be better reporting of service provider's internal complaints processing. The bulk of complaints will be handled internally by companies. How is the Code being applied by companies to internal complaints? Are customers made aware of relevant Code provisions when a complaint arises? Are they made aware of the CCTS? We do not know.

4.4.5 On cancellation fees

Given that Regulatory Policy CRTC 2013-586 grants some latitude with respect to this requirement, we asked respondents what they thought about the models for reducing variable-amount early cancellation fees.

TELUS, which uses such a business model for the services of its Koodo subsidiary, is taking refuge behind the Commission's position, which has found these amortization models to be beneficial for consumers.

Although certain respondents consider that the approaches used in this sector are at times creative, the fact of allowing greater differentiation among service providers could be considered an advantage for consumers. However, PIAC and CIPPIC have expressed concerns regarding these amortization models.

***PIAC:** [...] a Wireless Code-compliant tab contract could be designed under the current rules, which would allow the consumer to leave the service provider without penalty or charge after 24 months. However, the CRTC should be vigilant, and the CCTS collect complaints on any Tab or other contractual arrangements that appear to hold the customer to higher fees at times where they should be able to change providers easily.*

***CIPPIC:** We agree that the practice of varying monthly amortization is inherently confusing unless it is clearly tied to a set parameter (\$100 reduced monthly by 'x% of your monthly bill' or \$100 reduced monthly by '\$x per month'). Without such clarity, it is difficult for customers to understand what obligations they are undertaking, as well as to compare competing offers provided on varying amortization bases. [...]*

The report's identification of customer confusion arising from variable monthly amortization rates appears to be a question of application as the Code requires amortization to occur in equal monthly increments AND that services be provided in clear and transparent ways. It would seem that a clearer application of the Code to these situations would obligate providers to change the manner in which their amortization schemes are presented or structured.

4.4.6 Thorny issue of using hyperlinks as an external clause

We surveyed all the respondents in order to obtain their opinion on the widespread use of external clauses to which consumers are directed through hyperlinks in the contract. We asked them whether they thought this method of transmitting information presented any advantages for consumers.

***TELUS:** By referencing to these external documents, providers are able to cover the most critical information while keeping the customer agreement concise. [...]*

As a result, it also ensures the customer always has access to the most up to date information.

Tamara Shepherd: I think the hyperlink solution is preferable to producing longer contracts.

OPCC: ...depending on how this is implemented, there could be benefits for individuals.

PIAC and Daniel Sokolov simply responded in the negative.

SPIC: Virtually none (advantages), especially when the hyperlinks are in a paper document. In addition to the problem of retrieving the information, there is the possibility that the service provider could change the documents at will, and delete prior versions.

CIPPIC: ...hyperlinks can be useful as a means of indicating for customers the location of resources (i.e. online content) or individuals who can provide them with more information about a particular practice or policy. However, this cannot act as a substitute for providing comprehensive and meaningful information in the primary document. It is that document, not the linked content, that will provide the basis for the customer's initial – and most vital – assessment of the service being offered. [...]

[R]elevant parameters of the agreement must be spelt out clearly, explicitly and comprehensively within the contract itself, while linked content should only be seen as a means of acquiring further (but non-binding) information.

We also asked them whether this information is an integral part of the contract. Responses varied greatly. In fact, although the Commission attempted to prioritize certain documents based on their importance, a significant portion of the information must always be contained in the permanent copy of the contract; however, the manner in which information considered less important is to be handled is, to say the least, unclear.

TELUS: Sections B.(1)(f-m) of the Wireless Code permit wireless service providers to use a reference in their contracts to show customers where they can get information on “other aspects” of their services contract. The CRTC correctly recognized that forcing wireless service providers to include these other aspects directly in a customer's service agreement would cause large and unwieldy service agreement documents, causing frustration of the customer.

Tamara Shepherd: ...if contracts are to be simplified, it makes sense that hyperlinks would be used to clarify certain points. Otherwise, contracts will be back to being overly long for the average consumer to digest.

PIAC does not share this opinion.

PIAC: In our view the Wireless Code decision requires a single written (paper) or electronic copy that does NOT rely upon links to be understood. In other words, the electronic copy should be complete in one file, as it would be for a paper contract.

PIAC is referring to paragraph 51 of Telecom Regulatory Policy CRTC 2013-271.¹⁴⁶

¹⁴⁶ “Many consumers maintain electronic records and conduct much of their business online. For these consumers, an electronic copy of the written contract and related documents may be more convenient, as long as the copy still acts as a permanent record and does not rely on links to websites that can be changed by the WSP. The Commission considers that a permanent copy can be a paper copy or an electronic copy, as long as the electronic

Note that the Code also states in article B1 that a permanent copy of the contract, including the related documents, must be provided to the consumer when the contract is entered into (a related document that includes, according to the Commission, the acceptable use and privacy policies).

CIPPIC has a lot to say on the disadvantages from using of hyperlinks in the contract:

CIPPIC: *Such information is not accessible at time of purchase. It is therefore not reviewable by customers at the time when they are seeking to assess the offer they are locking in to. Moreover, relevant content is often not directly linked, leaving it ambiguous what is being referenced and adding difficulties to any customers seeking to track down and read additional terms, conditions and information. Additionally, the use of hyperlinks allows providers to expand the amount of information included in a customer contract exponentially. While this may be appropriate for complex commercial agreements, it is unreasonable (as well as inefficient) to expect customers to track down and read exhaustive amounts of information prior to agreeing to a service contract. [...]*

This is problematic because even those customers who track down and review linked content can never be certain they continue to operate under the conditions as described at the time this review occurred...

Daniel Sokolov also deplores, as do SPIC and CIPPIC, the fact that the website can be changed at any time, thus increasing the risk that the information could be changed (or moved) without the customer being adequately notified. This is why the information should be stored in a central database where it cannot be changed.

The Office of the Privacy Commissioner of Canada (OPCC) is a little more qualified in its response, but provides comments based on its area of expertise.

OPCC: *This would have to be reviewed on a case-by case basis. A number of factors may have to be considered, for example: How are individuals referred to the information? Are individuals able to acquire this information without unreasonable effort? Is the information available in a form that is generally understandable? [...]*

"Guidelines for Online Consent": The document specifically notes that "organizations should have a clear, descriptive and accessible privacy policy and, as circumstances warrant, dynamic privacy explanations, in the course of the user experience." [...]

Privacy policies should: i) have a full description of what information is collected, for what purposes it is used, and with whom it is shared and ii) be easily accessible, simple to read, and accurate.

copy cannot be altered and can be easily read by the customer." (Our underlining) *Op. cit.*, Note 96. **CRTC**, *Telecom Regulatory Policy CRTC 2013-271*.

4.4.7 Protection for consumers and wireless services: some suggestions

When we asked stakeholders how the Wireless Code could be improved to maximize its chances of attaining its objectives, and what should the Commission's priorities be with respect to the next Code revision, industry members did not have much to say about the improvements that could be made, unlike the other respondents.

***Mobilicity** appreciates the difficulties associated with changing decades' long business practices and consumer habits and behaviour. [...]*

Restrains with respect to termination fees empowers consumers the freedom to switch carriers and thus should be the main focus of the next review.

***TELUS:** It appears that the Wireless Code as written has already been implemented by all providers. There is no reason to change any of the provisions at this time. [...]*

The CRTC should consider implementing a resource centre where questions can be asked to Commission staff with respect to the Wireless Code implementation and staff opinions could be issued regarding whether or not practices are consistent with the Code. Customers and service providers would be able to use the resource centre to determine whether certain marketing and business practices conform to the Wireless Code, and if further CRTC clarification of any Wireless Code provisions are necessary.

CIPPIC's suggestion runs somewhat counter to that of TELUS: the organization in fact appears to be advocating quite the opposite of what TELUS is proposing, by asking for more transparency with regard to CCTS proceedings to allow consumer groups to examine them, rather than on-demand clarifications. CIPPIC mentions various suggestions: "Systemic issues such as enforcement measures, mechanisms for placing Code interpretations on the public record, a clear appeal path for CCTS Code disagreements to the CRTC, and a mechanism for public interest interveners to weigh in directly on Code interpretation disagreements at the CCTS level."

***SPIC:** Most likely we especially need to specify elements, based on the survey of practices through which service providers systematically attempt to benefit from grey areas. We also need to increase monitoring and implementation, which are currently largely based on complaints which consumers may submit. Although they need to be familiar with the Code and the CCTS [...]*

The Code does not regulate clauses on the exclusion of responsibility. It should also remind stakeholders that the clauses through which service providers are seeking to control content are illegal. [...]

Another problem is that the Code mainly focuses on information, which must enable consumers to make informed choices; however, consumers do not read contracts, and we are therefore using the wrong tool. The critical information summaries should help, but they are barely more understandable and do not always reflect what is found in the contract.

Catherine Middleton also submitted a suggestion on the critical information summary:

***Dr. Middleton:** ...the requirement to provide critical information summaries only after a contract is signed reduces the potential value of these summaries. As my colleagues and I argued when the code was being developed, critical information summaries are more valuable when they can be*

used to compare providers' offerings before a contract is signed. The code has not made it easier to compare provider offerings.

The ambiguity of certain measures in the Code leaves the door open to a host of interpretations by industry members. A clarification of the measures that may lack clarity could ensure that the Code more easily attain its objectives, according to certain respondents. Providing minimal measures for the requirements that allow for some latitude – in particular unlocking fees, the trial period and unlimited services – would be preferable in particular for the purpose of clarifying its requirements, according to Dr. Tamara Shepherd.

Dr. Shepherd: An international comparison of services would help with future revisions of the Wireless Code and would show how the Canadian marketplace could be better aligned with other models globally in view of ensuring that consumers are treated fairly.

PIAC also insists on the need to make treatment of the Code by the CCTS more efficient. The organization is first inviting industry members to cooperate more so that the Code can more easily reach its objectives.

PIAC: *Wireless service providers could voluntarily consult with the CCTS on a new or existing business practice to ensure wireless code compliance. Moreover, providers could accept the rulings of the CCTS without resorting to making appeals to other bodies.*

Finally, PIAC is suggesting that certain measures be tightened, including unlocking, and that enough resources are provided to enforce the Code.

PIAC: *Some provisions should be tightened, including unlocking. In addition, the CRTC should ensure sufficient resources exist to enforce the Code effectively. This means requiring carriers to properly fund CCTS.*

Lastly, Daniel Sokolov suggests that the information regarding services be regulated other than through mandatory information disclosure in the contract.

Sokolov: The focus on bureaucratic elements like even longer printouts of various pricing details for customers is misguided. Operators should be required to file their price plans and other contractual elements with the CRTC, where they are entered in a public database. Everybody could look it up there, even years later, when they can't find the printout they may have received once upon a time.

5. Conclusion

The time when wireless service subscribers who encountered problems were left to fend for themselves is now over. There have been years of struggling to make contractual relations between consumers and wireless service providers more fair. The efforts, first initiated by provincial legislators and continued, at some level, by the CRTC, appeared to have borne fruit. The number of complaints received by certain consumer protection agencies, in particular in Quebec, seem to have levelled off. Their relative importance compared to other problematic consumer sectors has decreased. The CCTS has also seen its very first decrease in the number of complaints since its inception. Is this as a result of the coming into force of the Wireless Code? The situation will most likely have to be monitored in the years to come to confirm this.

However, there are still unresolved matters related to cell phone use. Even though they have decreased, complaints still abound and the number of complaints regarding misleading representations are on the rise.

The Wireless Code is in fact a new complex set of requirements aimed at regulating the business practices of a service that is just as complex, based on the contract documents that we reviewed. The Code is also the result of consultations during which the interests of a large number of parties were in opposition, which is reflected in certain measures of the Code. In fact, although the Code has put an end to certain indefensible business practices, including having customers who wish to terminate their contract pay for 30 days additional service, has put a cap on early cancellation fees and contract terms, and reduced the prevalence of four- or five-figure bills caused by mobile Internet use, more can still be done to make the marketplace healthier. The Code's measures which, in their application, give latitude to service suppliers are rarely applied in a way that serves consumers' best interests. An example is unlocking fees, which are still prohibitively high, and trial periods, which we consider to be applied in rather cavalier fashion by some industry members.

Several flaws in the application of the Code do not reflect flexible measures, but are rather the perverse effect of certain ambiguities that made their way into the Code. Contracts are not always as complete as the Code requires, and they do not necessarily allow consumers to easily understand the rates and conditions applicable to the services as a whole. We found the situation to be even worse for the critical information summary, the form of which varies considerably throughout the industry, depending on the service provider. This mandatory summary can be difficult to distinguish from the rest of the contract documents, and often does not meet the requirements of brevity, clarity, completeness and accuracy. The situation with regard to related documents is simply appalling: many service providers refer consumers to acceptable use policies and privacy policies that are only available online, while summarizing the key points in the contract as best they can, whereas the Code requires that these related documents be given to the consumer along with the permanent copy of the contract.

In short, the results of our study have revealed that compliance with the Wireless Code is far from being achieved. To do so, the necessary resources would likely have to be deployed to end the cases of non-compliance that limit the Code's effectiveness.

However, it is difficult to cast all the blame on the industry. The Code, which was first intended to be a set of rules that were clear and easy to understand by consumers, is at times written so cryptically that even the industry does not manage to make sense of it. We have no doubt that the administration and enforcement of the rules set out in a document with so many vague elements can present a major challenge for the CCTS and CRTC, all the more so as the Commissioner's decisions may be contested before the Commission, which could delay the resolution of certain situations, which likely in no way serves consumers' interests. As many stakeholders mentioned, besides the imposition of minimum reasonable standards for the use by the industry of the latitude enabled by certain measures and the clarification of vague or ambiguous clauses, the CCTS's decisions (and even more information on the handling of complaints, even if the case is settled before a decision is rendered) could also be made public and released in an appropriate manner to enable various stakeholders to obtain detailed information on problems related to the application of the Code and make relevant recommendations.

Despite all of these enforcement problems, the current version of the Code has already enabled Canadian consumers to benefit from new measures of protection and recourses by providing a minimum standard for wireless services that protects consumers from all provinces on certain contract-related issues. Several additional measures, including the reduction of contract terms, device unlocking requirements, the trial period, caps for early cancellation fees and data overage charges, could potentially "clean up" business practices, but it is still too early to fully assess their impact on consumer habits.

So the question is, what conclusions should be drawn in relation to the Wireless Code? Who will emerge the winner? Unfortunately, there is no clear-cut answer. There is no doubt that many measures could potentially increase consumer mobility. There are drawbacks in virtually each case: there have already been criticism of the fact that reducing the device amortization period has resulted in an increase in plan prices (which, based on the associated data, could unfortunately be the case for lower-priced tiers of services). Although, to our knowledge, this system is not currently found on the market, the 2013-586 clarification policy would theoretically allow service providers to maintain artificially high cancellation fees until the end of the contract (rather than apply an equal systematic decrease). Trial periods are still not being disclosed clearly, and the limitations imposed by service providers to the exercise of this right, which the CRTC has allowed WSPs free rein to set as they wish, are very restrictive. Lastly, the elements in the contract pertaining to device unlocking do not necessarily serve consumers' interests (pay a lot to unlock your device or cancel your manufacturer's warranty!).

This is evidenced by the leeway the CRTC gives service providers in applying certain measures, as well as by some others which only go half-way toward meeting the objectives: service providers have also scored points with the Wireless Code. Already, the mere fact that the Code only protects *customers* and not consumers is a clear indication that the CRTC was not intending to go all the way when it stated that consumers have to be well informed: how, then, can consumers take advantage of competing offers if the sole requirements of clear,

transparent and complete information required by the CRTC only apply once the contract has been entered into?

In short, in our opinion, this may turn out to be a draw: consumers have new protection measures, but none of it is as beneficial as may have been hoped, or, given the importance of wireless services in the world today, an imbalance between service providers and consumers and poor state of the competition would have been needed.

The Commission must make sure to make up for the Wireless Code's problems of clarity as quickly as possible and limit, to some extent and regarding certain aspects, the latitude the Code gives service providers. In fact, a simple interpretative clause assumed to give victory to consumers is not enough to ensure that the anticipated benefits are realized. Consumers would benefit much more from a clear code of conduct, one that is as specific as possible, and which from the outset favours consumers in the way it is worded and in its scope. The Commission's follow-up policies seem to show that it is aware of the negative effects of putting trust solely in a competitive market to ensure that its measures are applied with consumers' best interests in mind. Let's hope that the next round of consultation will result in a resounding and unequivocal victory for consumers.

6. Recommendations

Based on the main results of our field study, here are our determinations and recommendations in view of initiating discussion on ways to make the Wireless Code more effective.

- Whereas the Wireless Code is important to all consumers in Canada and industry members;
- Whereas the Code is revised every three years;
- Whereas the Code already appears to have resulted in a number of benefits, in particular with respect to user mobility, by reducing the contract term and the many rules applicable to early cancellation by customers;
- Whereas the complaints in this sector appear to be levelling off, which could indicate the market is becoming healthier;
- Whereas our field study revealed certain business practices that may not comply with the Code, and in particular with the requirements related to clarity, which apply to all contract documents and more specifically to certain information;
- Whereas certain information that should be disclosed in the contract is only made available to consumers via hyperlinks;
- Whereas despite the Commission's monitoring, industry members are delaying making changes;
- Whereas certain field data that were gathered during our investigation raised doubts as to the accuracy of the compliance reports sent to the Commission by industry members;
- Whereas these compliance issues prevent the Code from attaining all its objectives;

Union des consommateurs is recommending that the CRTC

1. Use all the means at its disposal, pan-Canadian field surveys or other means, to determine cases of non-compliance by the industry other than through statements of compliance by the service providers themselves;
2. Use every means available, including its power to issue orders and impose fines, to stop cases of non-compliance with the Code and to suppress obliging statements by service providers as to their compliance.

- Whereas some ambiguity or lack of specificity in the writing prevents the Code from attaining all its objectives;
- Whereas our investigation of WSP contracts revealed awkward terms and vague or incomplete explanations, in particular on the issue of early cancellation fees and other service-related fees;
- Whereas industry members continue using documents that are overly long and very small font sizes;
- Whereas the Code has no requirements regarding clear information on overage charges;
- Whereas the simple requirement of explaining the related documents and its observance by service providers results in significant lack of clarity in information that should appear in the permanent copy of the contract;
- Whereas the requirements regarding clarity in the Wireless Code have not yielded optimal results;

- Whereas the latitude given to service providers in applying certain provisions of the Code is often used to impose terms to consumers that are prohibitive or overly and needlessly restrictive;
- Whereas certain service providers are using this latitude to impose additional conditions to consumers which the Code prohibits;
- Whereas these unfair conditions have the effect of preventing consumers from fully benefiting from the advantages provided by the Code;
- Whereas certain applications by service providers of the Code's requirements seem to disregard the Commission's regulatory policies;

Union des consommateurs is recommending that the CRTC

3. Clarify the Code to eliminate sources of ambiguity and limit the industry's leeway in applying it;
4. Define the concept of clarity more precisely in the Code and, when requirements of clarity are associated with any obligations, define what constitutes clear and legible disclosure, namely:
 - Forbid contracts containing clauses that apply to a group of services that do not correspond to those selected by the consumer;
 - Forbid the use of incomprehensible abbreviations and acronyms;
 - Regulate font size (determine a minimum size) to increase legibility;
 - Establish guidelines on the use of external clauses in wireless services contracts;
5. Indicate in the Code the additional fees that must be contained in the contract, and require that the amount of these fees be indicated in the contract: namely, include the publication of overage charges that should be displayed near the service usage limits;
6. Formally prohibit service providers to add, regarding rights granted to consumers, conditions that are not stipulated in the Code.

- Whereas the Code allows service providers to impose certain limits to so-called "unlimited" services;
- Whereas the only limits allowed are those found in the service provider's fair use policy;
- Whereas outrageously low limits on speed are sometimes imposed under fair use policies after a certain monthly amount of use has been attained;
- Whereas there are obvious clarity problems in the Internet traffic management practices reported by service providers;
- Whereas certain management practices, although indicated in the fair use policies, appear to not comply with CRTC regulatory policy on ITMPs;

Union des consommateurs is recommending that the CRTC impose new requirements in relation to the application of fair use policies, namely:

7. Ensure that all usage limits, regardless of whether or not they are likely to result in overage charges, be fully and clearly disclosed in the permanent copy of the contract;
8. Update the regulatory framework on ITMPs to make sure that there is clear information on network management practices, and to ensure that the limitations on amounts and speeds that the Code allows to be imposed are not excessive;
9. Ensure the entire industry's compliance with the regulatory policy on ITMPs.

- Whereas the Commission, in its regulatory policy, emphasized the usefulness of the “critical information summary” in view of clarifying the information provided to consumers on the services;
- Whereas some of the summaries that we were able to examine presented particularly dry information;
- Whereas the critical information summaries may not be displayed prominently, easily distinguishable within the contracts, or easy to distinguish from the rest of the document;
- Whereas these critical information summaries are an ideal way to allow consumers to compare and choose services and their service provider in an informed manner, as proposed by the Code;
- Whereas the usefulness of these summaries is considerably diminished given that they are provided only after the contract has been entered into;
- Whereas most of the critical information summaries that were examined during the course of our investigation were not complete;

Union des consommateurs is recommending that the CRTC

10. Require service providers to give consumers, before the contract is entered into, a critical information summary relating to the contract in question;
11. Draw up a model for the critical information summary that includes definitions for the total monthly charges, additional fees, requirements relating to the length and layout of the summaries, requirements on fonts, etc., and to require that it be used.

- Whereas the information in the contract on international roaming notifications and caps on data overage charges is often/generally missing or is not clear;
- Whereas some service providers provide very vague information on who is to receive the notifications when data plans are shared;
- Whereas certain service providers circumvent the requirement of “express consent” to overage charges that exceed the caps by inciting customers to waive the cap ahead of time through a clause in the contract which the customer initials;

Union des consommateurs is recommending that the CRTC

12. Require service providers to obtain express consent each time before charging additional fees, and to only turn off caps and notifications if expressly requested by the consumer;
13. Examine the impacts on consumers of imposing caps for shared data by namely obtaining the complaints received by the CCTS on this subject.

- Whereas device unlocking fees are generally exorbitantly high;
- Whereas certain service providers charge unlocking fees that are three times higher to customers from whom a security deposit is required;
- Whereas certain service providers impose additional conditions to consumers for device unlocking that are not stipulated in the Code;
- Whereas the wording of the device unlocking requirement in the Code has the effect of not binding either the previous service provider (because the consumer is no longer a customer) or the new one (because the latter WSP did not sell the device to the customer);

- Whereas device unlocking is unwarranted as soon as the device becomes the consumer's property;

Union des consommateurs is recommending that the CRTC

14. Prohibit the locking of devices owned by consumers;

15. Alternatively:

- Set a cap for the maximum amount that can be paid for device unlocking;
- Require service providers to provide device unlocking, even when the consumer's service has been cancelled;

16. Prohibit service providers from imposing device unlocking conditions which do not appear in the Code, namely those related to the consumer's credit history or a past due amount.

- Whereas one of the main means used by the CRTC to improve consumer mobility and stimulate competition was to include requirements in the Code on early cancellation fees and service providers' obligations in this regard;
- Whereas the information on the amortization of early cancellation fees is rarely presented in a clear manner, and the directives, clarification policy and submission by the Commission did not result in making all the information related to cancellation fees in the contract perfectly clear;
- Whereas practices related to "device downgrade fees" and non-refundable positive balances constitute barriers to mobility for consumers;

Union des consommateurs is recommending that the CRTC

17. Clarify the information which WSPs must provide to consumers regarding the reduction of early cancellation fees, based on the various models authorized in the marketplace;

Union des consommateurs is recommending that the CRTC and provincial legislators

18. Investigate the negative impacts which device downgrade fees and a tab balance can have on consumers;

- Whereas the "trial period" which the CRTC requires service providers to offer consumers was intended to help consumers make informed choices before entering into a contract, and to foster innovation and competition among service providers;
- Whereas the right to the trial period is advertised poorly or not at all by several service providers;
- Whereas the information on the right to cancel the contract at no charge within a 15-day period is regularly hidden in sections of the contract that are not very visible;
- Whereas service providers impose, under trial periods, extremely restrictive usage limits that are not reflective of the reasonable use a consumer may wish to make of the service involved;
- Whereas the right to the trial period rarely involves zero costs, despite the Code's provisions;

Union des consommateurs is recommending that the CRTC

19. Define and cap the "reasonable limits" authorized for the trial period at a level corresponding to normal use of the plan which the customer has subscribed to;
20. Prohibit any fees from being charged when the contract is cancelled by the customer during the trial period;
21. Ensure that the information on the trial period provided to consumers is clear and is contained in the critical information summary;
22. Prohibit service providers from imposing any additional conditions other than those found in the Code to consumers wishing to exercise their right to a trial period.

- Whereas the CRTC has given the CCTS the mandate to handle complaints related to the Wireless Code;
- Whereas, while handling the complaints, the CCTS must interpret the Wireless Code and contracts and resolve ambiguities in the interests of consumers;
- Whereas the CCTS's decisions are not systematically published;
- Whereas the CCTS was created to be a neutral body for settling disputes between consumers and service providers;
- Whereas the CCTS will have a key role to play in monitoring service providers' business practices;

Union des consommateurs is recommending to the CRTC

23. To make sure that the Commissioner has sufficient resources and power to carry out his mandate;
24. That all the CCTS's decisions and recommendations to the Commission (in relation with the systemic problems) be made public.

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APPENDIX 1: Questionnaires Given to Participants

a) Questionnaire to service providers – French version



QUESTIONNAIRE
Les effets du Code sur les services sans fil¹

Le code sur les ssf a notamment pour objectifs de...

«...permettre aux particuliers (...) d'obtenir plus facilement des renseignements sur leurs contrats avec les fournisseurs de services sans fil et sur leurs droits et obligations connexes; d'établir des normes relatives à la conduite de l'industrie; de favoriser l'établissement d'un marché plus dynamique.»

Par ailleurs, les exigences du Code visent à :

«(i) s'assurer que les consommateurs reçoivent l'information nécessaire pour prendre des décisions éclairées quant (à leur service) ;
(ii) (faire) en sorte que les consommateurs puissent plus facilement profiter d'offres concurrentielles.»

L'annexe 1 du code prévoit en outre que :

«Si une partie du Code ou du contrat du client est ambiguë, ou si l'application des modalités du Code ou du contrat n'est pas claire, le Code et le contrat doivent être interprétés en faveur du client.»

1. **De quelle manière assurez-vous que vos contrats informent correctement les consommateurs de leurs droits et obligations?**

2. **À votre avis, les consommateurs peuvent-ils profiter plus facilement des offres sur le marché qu'ils ne le pouvaient avant l'entrée en vigueur du Code?**

Oui Non Ne sait pas

Pourquoi:

À la lumière des faits saillants de notre enquête, qui mentionnent notamment certaines pratiques particulières relativement aux périodes d'essai, au déverrouillage des appareils ou à la renonciation aux plafonds de frais de données excédentaires ...

3. **Les pratiques commerciales des fournisseurs permettent-elles au Code d'atteindre ses objectifs?**

Oui Non Ne sait pas

Pourquoi:

¹ Nous vous invitons à consulter le «sommaire des faits saillants», ci-joint, pour plus de détails sur notre analyse.



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4. **Comment pourrait-on faciliter l'atteinte des objectifs du Code? Devrait-on simplifier certaines exigences ou, au contraire, en préciser ou ajouter certaines?**
5. **À votre avis, quelles sont les principales réussites du Code?**
6. **À votre avis, quelles sont les principales ratées du Code?**
7. **Quelles devraient être les priorités du CRTC lors de la révision du Code?**

Dans la politique réglementaire du CRTC 2013-586, une certaine souplesse a été permise par le Conseil, en ce qui a trait à la réduction mensuelle des frais de résiliation anticipée. Le Conseil a estimé que l'amortissement mensuel peut être inférieur ou supérieur au montant équivalent à une réduction linéaire des frais de résiliation anticipée, dans la mesure où ces frais égalent 0 \$ après 24 mois.

8. **La méthode de réduction mensuelle des frais de résiliation anticipée de vos clients est-elle linéaire, ou souple?**
 - Réduction linéaire
 - Réduction souple
 - Réduction linéaire et souple
9. **Pouvez-vous nous expliquer en détail de quelle façon vous réduisez chaque mois les frais de résiliation anticipée de vos clients?**
10. **Pourquoi cette méthode a-t-elle été choisie?**
11. **Est-ce que les différentes méthodes de réduction des frais de résiliation peuvent être considérées comme découlant d'une interprétation et d'une application du Code qui avantagent le consommateur?**

La force d'un réseau

La majorité des contrats que nous avons étudiés font un usage massif d'hyperliens pour référer les consommateurs à des renseignements additionnels.

12. Selon vous, les renseignements qui sont offerts aux consommateurs sur un site Internet auquel réfère ou dirige le contrat font-ils partie intégrante du contrat?

Oui Non

Pourquoi :

13. Selon vous, cette façon de communiquer des renseignements au consommateur présente-t-elle pour lui quelque avantage?

14. Comment portez-vous expressément à la connaissance du consommateur, lors de la conclusion du contrat, le contenu de ces documents externes auxquels fait référence le contrat?

15. Avez-vous des commentaires à formuler sur les résultats préliminaires de notre étude terrain?

Nous vous remercions de votre collaboration
et vous invitons à retourner le questionnaire complété d'ici le **28 avril 2015** à :

Sophy Lambert-Racine

C : SLambert-Racine@uniondesconsommateurs.ca

La force d'un réseau

b) Questionnaire to service providers – English version



QUESTIONNAIRE
The Effects of the Wireless Code¹

The Wireless Code's main objectives are to...

"...make it easier for individual and small business consumers to get information about their contracts with wireless service providers and about their associated rights and responsibilities, establish standards for industry behaviour, and contribute to a more dynamic marketplace."

The purpose of the Code's requirements is to:

*"(i) ensure that consumers are empowered to make informed decisions about wireless services; and
(ii) contribute to a more dynamic marketplace by making it easier for consumers to take advantage of competitive offers."*

Appendix 1 of the Code also provides that:

"If any part of the Code or the customer's contract is ambiguous, or if it is unclear how the terms of the Code or the contract are to be applied, then the Code and the contract must be interpreted in a manner that is favourable to the customer."

1. **How do you ensure that your contracts correctly inform consumers of their rights and obligations?**

2. **Do you think consumers can benefit more easily from offers on the market than they could before the Code took effect?**

Yes No Don't know

Why:

In light of the key findings of our research, which mentions certain specific practices regarding trial period, unlocking and surcharge caps...

3. **Do the service providers' business practices allow the Code to achieve its objectives?**

Yes No Don't know

Why:

¹ We invite you to consult the attached "Summary of Our Analysis" for more details.

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4. **How could it be made easier to meet the Code's objectives? Should certain requirements be simplified, or rather should some be made more specific or others added?**
5. **In your view, what are the Code's main successes?**
6. **In your view, what are the Code's main failures?**
7. **What should the CRTC's priorities be when the Code is reviewed?**

Under regulatory policy CRTC 2013-586, the CRTC has allowed a certain flexibility in the monthly reduction of early cancellation fees. The CRTC has stipulated that each monthly cancellation fee reduction may be less or more than the amount of the monthly reduction based on a straight line amortization, as long as those fees equal \$0 after 24 months.

8. **Is the reduction of your customers' early cancellation fees based on a straight line or a flexible method?**
 - Straight line method
 - Flexible method
 - Straight line and flexible methods
9. **Can you explain in detail how you reduce your customers' early cancellation fees each month?**
10. **Why was this method chosen?**
11. **Can the different methods of reducing early cancellation fees be considered as resulting from an interpretation and application of the Code to the advantage of customers?**

La force d'un réseau

The majority of the contracts we studied use hyperlinks profusely in referring consumers to additional information.

12. In your view, is consumer information provided on a website to which the contract refers or directs an integral part of the contract?

Yes No

Why:

13. In your view, does this way of informing consumers offer them some benefit?

14. How do you expressly inform a consumer, when concluding the contract, about the content of those external documents to which the contract refers?

15. Do you have comments to make on the preliminary findings of our field study?

Thank you for your cooperation.
Please return the completed questionnaire by **April 28th** to:

Sophy Lambert-Racine
E-mail: SLambert-Racine@uniondesconsommateurs.ca

La force d'un réseau

c) Questionnaire for others – French version



QUESTIONNAIRE
Les effets du Code sur les services sans fil¹

Le code sur les ssf a notamment pour objectifs de...

«...permettre aux particuliers (...) d'obtenir plus facilement des renseignements sur leurs contrats avec les fournisseurs de services sans fil et sur leurs droits et obligations connexes; d'établir des normes relatives à la conduite de l'industrie; de favoriser l'établissement d'un marché plus dynamique.»

Par ailleurs, les exigences du Code visent à :

«(i) s'assurer que les consommateurs reçoivent l'information nécessaire pour prendre des décisions éclairées quant à leur service);
(ii) (faire) en sorte que les consommateurs puissent plus facilement profiter d'offres concurrentielles.»

L'annexe 1 du code prévoit en outre que :

«Si une partie du Code ou du contrat du client est ambiguë, ou si l'application des modalités du Code ou du contrat n'est pas claire, le Code et le contrat doivent être interprétés en faveur du client.»

1. À la lumière de votre connaissance des services offerts et des faits saillants de notre enquête, estimez-vous que les consommateurs sont correctement informés de leurs droits et obligations par les fournisseurs?

Oui Non Ne sait pas

Pourquoi :

2. L'information fournie est-elle complète?

Oui Non Ne sait pas

Pourquoi :

3. L'information fournie est-elle claire?

Oui Non Ne sait pas

Pourquoi :

¹ Nous vous invitons à consulter le «sommaire des faits saillants», ci-joint, pour plus de détails sur notre analyse.

La force d'un réseau

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4. **L'information fournie est-elle exacte?**
Oui Non Ne sait pas

Pourquoi :

5. **À votre avis, les consommateurs peuvent-ils profiter plus facilement des offres sur le marché qu'ils ne le pouvaient avant l'entrée en vigueur du Code?**
Oui Non Ne sait pas

Pourquoi:

À la lumière des faits saillants de notre enquête, qui mentionnent notamment certaines pratiques particulières relativement aux périodes d'essai, au déverrouillage des appareils ou à la renonciation aux plafonds de frais de données excédentaires ...

6. **Les pratiques commerciales des fournisseurs permettent-elles au Code d'atteindre ses objectifs?**
Oui Non Ne sait pas

Pourquoi:

7. **Comment pourrait-on faciliter l'atteinte des objectifs du Code? Devrait-on simplifier certaines exigences ou, au contraire, en préciser ou ajouter certaines?**

8. **À votre avis, quelles sont les principales réussites du Code?**

9. **À votre avis, quelles sont les principales ratées du Code?**

10. **Quelles devraient être les priorités du CRTC lors de la révision du Code?**

La force d'un réseau

Dans la politique réglementaire du CRTC 2013-586, une certaine souplesse a été permise par le Conseil, en ce qui a trait à la réduction mensuelle des frais de résiliation anticipée. Le Conseil a estimé que l'amortissement mensuel peut être inférieur ou supérieur au montant équivalent à une réduction linéaire des frais de résiliation anticipée, dans la mesure où ces frais égalent 0 \$ après 24 mois.

11. **Est-ce que les différentes méthodes de réduction des frais de résiliation peuvent être considérées comme découlant d'une interprétation et d'une application du Code qui avantagent le consommateur?**

La majorité des contrats que nous avons étudiés font un usage massif d'hyperliens pour référer les consommateurs à des renseignements additionnels.

12. **Selon vous, les renseignements qui sont offerts aux consommateurs sur un site Internet auquel réfère ou dirige le contrat font-ils partie intégrante du contrat?**

Oui Non

Pourquoi :

13. **Selon vous, cette façon de communiquer des renseignements au consommateur présente-t-elle pour lui quelque avantage?**

14. **Avez-vous des commentaires à formuler sur les résultats préliminaires de notre étude terrain?**

**Nous vous remercions de votre collaboration
et vous invitons à retourner le questionnaire complété d'ici le **28 avril 2015** à :**

Sophy Lambert-Racine
C : SLambert-Racine@uniondesconsommateurs.ca

La force d'un réseau

d) Questionnaire for others – English version



QUESTIONNAIRE
The Effects of the Wireless Code¹

The Wireless Code's main objectives are to...

"...make it easier for individual and small business consumers to get information about their contracts with wireless service providers and about their associated rights and responsibilities, establish standards for industry behaviour, and contribute to a more dynamic marketplace."

The purpose of the Code's requirements is to:

*"(i) ensure that consumers are empowered to make informed decisions about wireless services; and
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Appendix 1 of the Code also provides that:

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1. In the light of your knowledge of the services offered and of our survey's highlights, do you think providers correctly inform consumers of their rights and obligations?

Yes No Don't know

Why:

2. Is the information provided complete?

Yes No Don't know

Why:

3. Is the information provided clear?

Yes No Don't know

Why:

4. Is the information provided accurate?

¹ We invite you to consult the attached "Summary of Our Analysis" for more details.

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Nos membres associatifs

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Yes No Don't know

Why:

5. Do you think consumers can benefit more easily from offers on the market than they could before the Code took effect?

Yes No Don't know

Why:

In light of the key findings of our research, which mentions certain specific practices regarding trial period, unlocking and surcharge caps...

6. Do the service providers' business practices allow the Code to achieve its objectives?

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Why:

7. How could it be made easier to meet the Code's objectives? Should certain requirements be simplified, or rather should some be made more specific or others added?

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La force d'un réseau

cancellation fee reduction may be less or more than the amount of the monthly reduction based on a straight line amortization, as long as those fees equal \$0 after 24 months.

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Why:

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14. **Do you have comments to make on the preliminary findings of our field study?**

**Thank you for your cooperation.
Please return the completed questionnaire by **April 28th** to:**

Sophy Lambert-Racine
E-mail: SLambert-Racine@uniondesconsommateurs.ca