



Communications Services :

Are the Recourses Before Disconnection Sufficient ?

June 2019

Final Report of the Research Project presented by Union des consommateurs to the Office of Consumer Affairs of Innovation, Science and Economic Development Canada

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Union des consommateurs, *Strength through Networking*

Union des consommateurs is a non-profit organization comprised of 13 consumer rights groups.

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 their communities.

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

Introduction

Communications services are indispensable nowadays in the daily lives of Canadians: access to emergency and government services, searches for employment and housing, all types of socialization and communication (family, doctor, work, etc.), access to information (news, health, education, etc.) and to entertainment, etc.

Accordingly, it's not surprising that the vast majority of Canadian households subscribe to one or more major communications services (wireless and residential phones, Internet access and cable TV)¹. For those services, they spend thousands of dollars annually, for an average of \$222.83 each month².

For households in the lowest income quintile – with an average annual income of only \$19,559 –, that's a considerable expenditure. It represents almost 10% of their budget³, more than they pay for clothing, health care or education⁴. A survey commissioned by the Public Interest Advocacy Centre (PIAC) in 2015 drew a troubling portrait of the consequences when communications services are unaffordable for low-income households (\$30,000 or less)⁵:

- To pay for communications bills, almost one in five households had to abstain from other essential goods or services, such as medications, food or clothing;
- Household debt related to communications services may constitute up to one-fifth of total indebtedness;
- One in three households ultimately had to cancel its subscription to a communications service due to insufficient financial resources.

Many consumers thus have difficulty paying their communications bill each month. That often results in a series of regrettable situations: reaching a payment arrangement (also called “payment agreement”) they can't comply with, service suspension or disconnection, a negative mark on the credit report, etc.

Each year, the Commission for Complaints for Telecom-television Services (CCTS) receives hundreds of complaints against communications service providers about security deposits they require, their use of customers' credit reports, payment arrangements they propose, and ultimately their service suspension and disconnection procedures. Consumer rights organizations that meet consumers to help them with their personal finances and other consumer issues also witness the many problems faced by households that have difficulty paying for their communications services.

¹ **CRTC**. *Communications Monitoring Report 2018*, p.21, online: <https://crtc.gc.ca/pubs/cm2018-en.pdf> (document consulted on May 4, 2019).

² *Ibid.*, p.28.

³ *Ibid.*, pp.30-31.

⁴ **PIAC**. *No consumer left behind: A Canadian affordability framework for communications services in a digital age*, 2014, pp.18-19, online: <http://www.piac.ca/wp-content/uploads/2015/03/PIAC-No-Consumer-Left-Behind-Final-Report-English.pdf> (document consulted on May 4, 2019).

⁵ **PIAC**. *No consumer left behind part II: Is there a communications affordability problem in Canada?*, July 2016, pp.107-122, online: http://www.piac.ca/wp-content/uploads/2016/09/PIAC_No-Consumer-Left-Behind-Part-II-Website-Version.pdf (document consulted on May 4, 2019).

Our research focuses on problems encountered by consumers of communications services who are in a precarious financial situation or have payment difficulties, in order to verify if those consumers have adequate protections, rights and remedies. More specifically, we will examine the issues related to security deposits, service suspensions or disconnections, payment arrangements, and the processing of subscribers' credit reports.

While the issue of monthly prices for communications services is regularly debated across the country, the issue of affordability and accessibility is much less so. The payment difficulties experienced by certain clienteles are obviously related to the high monthly price of those services, but also to the providers' policies for managing bad debts. Those policies rarely appear suitable for the financial realities of a certain proportion of the clientele. The deposit requirement can prevent some people from access to services. When providers refuse to offer a payment arrangement to consumers with payment difficulties, or are intransigent in negotiating such agreements, the result can be disconnection from essential services.

This report contains six parts. First we will trace the history of measures to protect Canadian consumers of communications services who experience payment difficulties. That history demonstrates the importance attached since the seventies by the Canadian Radio-television and Telecommunications Commission (CRTC or Commission) to telecommunications services, even in cases of payment difficulties, and its recognition that disconnecting subscribers must be treated as serious and exceptional.

We will then study the legislative and regulatory framework currently applicable to security deposits, service suspensions and disconnections, and debt collection procedures of communications service providers in Canada. The current regulations are complex; the protections benefiting a consumer will depend on the service to which he subscribes, and even on the region where he resides. We will also examine some of the Canadian protection measures applicable to remedies regarding credit reports.

Thirdly, in the light of our study of the current legal framework and its history, we will analyse the contractual documentation of various communications service providers in the country, to better understand their policies on security deposits, service suspensions and disconnections, predetermined spending limit plans, payment arrangements, unpaid bill processing, and credit reports.

The report's fourth and fifth parts pertain to the documentation of problems encountered by Canadian consumers in a precarious financial situation or with payment difficulties related to their communications service providers. That description of the problems will be based on an analysis of complaints and problems recorded by the CCTS in its official reports, and on our survey of service providers, budget consultation organizations and consumers themselves. We will report notably the results of a December 2018 survey of Canadian consumers that pertained to the problems encountered and to the knowledge and perception of existing regulations for security deposits, service suspensions and disconnections, payment arrangements and credit report entries.

Our report's sixth and final part will attempt to answer the following question: Are there, abroad or in other Canadian consumer sectors, relevant regulatory initiatives or models that could be transposed to the communications sector? In that regard, we will examine regulations and protections benefiting consumers in financial difficulty with respect to other essential services, i.e. electricity services in Québec and Ontario as well as public utilities

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in the United States. In light of those regulations and protections, we will identify innovative and interesting measures that might inspire the CRTC or federal lawmakers. Moreover, we will study certain regulations and programs developed in France, Australia and Belgium for facilitating access to communications services despite consumers' financial difficulties and for aiding consumers in default of payment.

The summary and conclusions of our research will be followed by our recommendations.

1. The CRTC from 1976 to Now: History of Measures to Protect Consumers of Communications Services Who Have Payment Difficulties

Today's legal and regulatory framework is strongly coloured by the history of protection measures put in place by the CRTC before and after the deregulation of providers' terms of service (and rates) and the opening to competition at the end of the nineties. That history demonstrates, among other things, the importance attached since the seventies by the Canadian Radio-television and Telecommunications Commission (CRTC or Commission) to telecommunications services, even in cases of payment difficulties, and its recognition that disconnecting subscribers must be treated as serious and exceptional.

1.1 Laborious development of limits to disconnection of telephone service

Soon after the CRTC's jurisdiction was broadened to include regulation of telecommunications companies in 1976⁶, the CRTC began examining the disconnection procedures of telephone service providers at the time, and the risks that consumers can incur from providers' unregulated disconnection practices.

The CRTC rendered a first decision in that regard in 1977, whereby providers were prohibited from disconnecting a customer's telephone service without first having taken measures to avoid arriving at that extreme solution. The Commission, aware that divergent interests were at play, but considering that the telephone constitutes a social link that companies cannot deny to users without serious reasons, concluded that:

Disconnection of basic telephone services is an extremely serious action, the adverse effects of which, from an individual subscriber's standpoint, can in many cases far exceed any possible pecuniary return to the company⁷.

Over the thirty following years, The Commission rendered several decisions reaffirming the exceptional nature of disconnecting the telephone service, and attempted to limit providers' discretionary powers in handling the accounts of subscribers struggling with payment difficulties.

⁶ Previously, the CRTC had supervised television services only, for ten years, and telecommunications companies were regulated by the Canadian Transport Commission. **POTTER, J and DUNTON, A D.** *Canadian Radio-television and Telecommunications Commission, The Canadian Encyclopedia*, rev. December 2013, online: <https://www.thecanadianencyclopedia.ca/en/article/canadian-radio-television-and-telecommunications-commission> (page consulted on October 15, 2018).

⁷ **CRTC.** *Telecom Decision CRTC 77-14.*

In 1986, in reviewing the terms of service of then-providers – Bell Canada, BC Tel, Norouestel and Terra Nova –, the Commission decided to add a “disconnection policy,” which included, for the first time, providers’ requirement to give reasonable prior notice before disconnecting the service⁸. That prior notice aims at offering a consumer “an opportunity to remedy the situation or to bring particular circumstances to the attention of the carrier or the Commission⁹.”

Henceforth, the terms of service included certain minimal conditions that overdue accounts must meet to justify disconnection procedures¹⁰. Those conditions, such as a debt of at least \$50 or an account overdue for more than two months, are still the same¹¹, whereas residential telephone services and their monthly prices have since changed considerably.

In addition, given the presence on the market of services other than tariffed basic telephone services (e.g. long distance calls), the terms of service provide that non-payment for “a different class of service” cannot alone lead to disconnection of the tariffed basic telephone service (local calls). That regulation – apparently clear – led until 2004 to several subsequent CRTC decisions, because it had to specify their scope after being confronted by some refractory providers.

In a letter addressed to a Bell representative¹², the Commission warned the provider in 1988 that it could not disconnect its subscribers for non-payment of fees for 976 calls¹³, even if the bills could total thousands of dollars. The Commission reiterated that partial payments made by subscribers must be applied first to maintaining their local phone service:

The Commission reiterates that non-payment of non-tariffed charges cannot result in denial of service. [...] As customers may not differentiate between the payment of tariffed and non-tariffed charges, the Commission directs that, any partial payments are to be applied first to tariffed charges¹⁴.

It should be noted that the “tariffed charges” referred to by the Commission pertain to services of which the terms (including the tariff) are determined by the Commission (it also refers to “tariffed services”). That was then the case for local telephone service, but not for 976 or long distance calls.

Ten years later, the issue was raised again, this time because of the introduction of bundled services from Bell and Telus. The CRTC again repeated that payments must be applied

⁸ **CRTC**. *Telecom Decision CRTC 86-7*, section 4.6, online: <https://crtc.gc.ca/eng/archive/1986/dt86-7.htm>

⁹ **CRTC**. *Telecom Public Notice CRTC 1985-22*, online: <https://crtc.gc.ca/eng/archive/1985/pt85-22.htm>

¹⁰ *Ibid.*; **CRTC**. *Decision 86-7*, section 4.6, *op. cit.* note 8.

¹¹ **CRTC**. *Deposit and Disconnection Code*, sec. 3.1(a), online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/06/Deposit-and-Disconnection-Code.pdf>; see also **CCTS**. *CCTS Annotated Guide to the Deposit and Disconnection Code*, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/06/Annotated-Guide-to-the-DD-Code.pdf>

¹² **CRTC**. *Telecom Letter Decision CRTC 88-4*, online: <https://crtc.gc.ca/eng/archive/1988/lt88-4.htm>

¹³ The 976 service is tariffed per call (its price is set by the service’s providers: adult chat lines, clairvoyant consultations, etc., but billed by the telephone service provider) provided only by Bell Canada in Ontario and Québec: **CRTC**. *Avoiding 900 or 976 Call Fraud*, online: <https://crtc.gc.ca/eng/phone/telemarketing/900.htm> (page consulted on April 13, 2019).

¹⁴ **CRTC**. *Lettre 88-4*, *op. cit.* note 12.

first to local telephone services and other services of which the tariff is regulated, to avoid disconnecting those services, and specified that this rule also applies to bundled services¹⁵.

Despite the regulator's repeated interventions since 1986, the majority of providers were still refusing, almost 20 years later, to apply their subscribers' payments first to services of which the terms are determined by the Commission, and the providers appeared to proceed with disconnections that were not allowed. The Commission recognized this in yet another decision on the subject in 2004:

4. The responses indicated that the current practice of the respondents is to apply customer payments to the oldest outstanding charges first until sufficient amounts have been paid to cover all outstanding charges. These chronological allocations are applied to the charges for both tariffed and non-tariffed services, with no distinction made between the types of service. MTS was the only ILEC to clearly state, in its response to the questions posed by PIAC/ARC, that it was not permitted to disconnect customers' local service, if outstanding charges for non-tariffed services are not paid.

[...]

45. In Decision 77-14 the Commission set out its views on the seriousness of disconnection of customers' local telephone service, noting that local service disconnection should only occur if there was a clear breach of the predecessor provisions to the Terms of Service. The Commission notes that with the subsequent development and use of emergency 9-1-1 access, telephone networks have become an even more important component of public safety. The Commission considers that the views it set out in Decision 77-14 remain relevant to this day.

46. In light of the above, the Commission considers that Bell Canada and other ILECs using Terms of Service that, with regard to this issue, are in all material respects the same as those of Bell Canada, are not permitted to disconnect tariffed services for failure to pay charges for non-tariffed services¹⁶.

¹⁵ **CRTC**. *Telecom Decision CRTC 97-11*, online: <https://crtc.gc.ca/eng/archive/1997/dt97-11.htm>; **CRTC**. *Telecom Decision CRTC 97-12*, online: <https://crtc.gc.ca/eng/archive/1997/dt97-12.htm>; **CRTC**. *Telecom Decision CRTC 98-4*, online: <https://crtc.gc.ca/eng/archive/1998/dt98-4.htm>: "The companies were also required to itemize the tariffed services on the customer's bill and to ensure that payments for bundled services were allocated first to primary exchange services and other tariffed services."

¹⁶ **CRTC**. *Telecom Decision CRTC 2004-31*, online: <https://crtc.gc.ca/eng/archive/2004/dt2004-31.htm>

In tandem with the various decisions rendered by the CRTC regarding partial payments made by subscribers to local telephone service, discussions have taken place about consumers' knowledge of their rights, particularly related to disconnection.

At the request of several consumer rights groups¹⁷, the Commission agreed in 2006 to develop a consumer rights declaration that would present to consumers their rights and protections in a concise and exhaustive manner. The terms of service then in effect, which stated most of those rights, were criticized for being difficult to understand and for not containing in a single section all the regulations on a given subject, thus confusing and frustrating consumers¹⁸.

That declaration, which had to be included in the phonebook, repeated notably the disconnection conditions developed by the Commission and contained in providers' terms of service (minimum overdue amount of \$50 or amount due for more than 2 months, sending reasonable prior notice, situations in which the service cannot be discontinued, etc.)¹⁹.

As this report was being written, almost 15 years later, consumer rights, notably regarding disconnection, have again become scattered, this time in three distinct codes of conduct developed by the CRTC, which use wording and provide regulations that differ depending on the services. The wish that consumer groups have long expressed for consumers to be easily and clearly informed of their rights has thus still not come true.

1.2 Ineffectual implementation of a pilot project to repay bad debts

At the start of 2000, the Commission formed a working committee of providers and consumer group representatives to discuss the affordability of telephone services in the country. That committee, whose primary mandate was to examine various account management tools that could help lower bills and to promote those tools, also had the more general mandate of finding ways to "improve access to telephone service²⁰." According to the CRTC, that service indeed is of primordial importance, particularly for society's most vulnerable people, among other things by improving safety (service 9-1-1), reducing isolation and raising employment prospects²¹.

In spring 2001, the Public Interest Advocacy Centre (PIAC), Action Réseau Consommateur (ARC) and the National Anti-Poverty Organization (NAPO), members of the committee, challenged the other members regarding the intransigence of some providers whose

¹⁷ The requests were made by the following groups: Action Réseau Consommateur (ARC), Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale (FACEF) and National Anti-Poverty Organization. It should be noted that ARC and FACEF merged in 2002 to form Union des consommateurs (UC).

¹⁸ **CRTC**. *Telecom Decision CRTC 2002-34*, paras 787 and 798, online: <https://crtc.gc.ca/eng/archive/2002/dt2002-34.htm>

¹⁹ **CRTC**. *Telecom Decision CRTC 2006-52*, annexe, online: <https://crtc.gc.ca/eng/archive/2006/dt2006-52.htm>

²⁰ **CRTC**. *Telecom Decision CRTC 2005-38*, online: <https://crtc.gc.ca/eng/archive/2005/dt2005-38.htm>

²¹ **CRTC**. *Telecom Decision CRTC 2008-27*, para 14, online: <https://crtc.gc.ca/eng/archive/2008/dt2008-27.htm>

subscribers had payment difficulties²². The three consumer groups complained that many consumers are incapable of resubscribing to the telephone service after being disconnected due to default of payment. The obligation to pay immediately all overdue amounts, pay all reconnection charges or provide a supplementary amount as a security deposit before any reconnection, the impossibility of reaching an agreement to postpone bill payments: Those are some of the inflexible practices for which providers are reproached and that often result, according to consumer groups, in making local telephone service inaccessible to families in need²³.

The committee discussed the nature and scope of problems encountered by consumers and the practices of the committee's provider members. That led to a proposal by the three consumer groups to put in place a pilot project for repaying bad debts by requiring participating providers to offer payment arrangements with regulated terms. The proposed pilot project aimed at limiting the highly arbitrary management of bad debts by providers, which at that time, except for Sasktel, had no written debt repayment policy²⁴.

In approving the pilot project, the Commission made the following observation:

The Commission notes that repayment terms and conditions can be inconsistently applied when they are purely discretionary. The Commission considers that a tariffed BDRP would ensure that all subscribers are treated consistently, and would also facilitate reconnection by easing the financial burden for consumers on low income²⁵.

The terms determined by the Commission in 2005, which are partly modelled on a specific Sasktel program, are the following²⁶:

1. All providers are required to conduct a pilot BDRP [bad debt repayment plan];
2. The pilot project must last 18 months;
3. The pilot project must be limited to a representative sample of 600 former subscribers whose service was disconnected due to bad debts;
4. Participants in the pilot project must have been disconnected beforehand by the provider, against their will (due to non-payment);
5. Participants can subscribe only to local service, with some exceptions;
6. The repayment schedules and monthly instalment amounts prescribed in the providers' BDRP must meet the following conditions:
 - a. Setting a reasonable debt repayment schedule;
 - b. No interest added to amounts due;
 - c. No security deposit required of participants;

²² **ARC et al.** *Contribution by ARC/NAPO/PIAC*, BMT Committee, May 29, 2002, online: <https://crtc.gc.ca/partvii/eng/2001/8638/c12-46.htm> (document consulted on June 2, 2019).

²³ *Ibid.*

²⁴ **CRTC.** *Telecom Decision CRTC 2005-38*, *op. cit.* note 20.

²⁵ *Ibid.*

²⁶ *Ibid.*

- d. Participants' reconnection charges spread over 6 months²⁷.

(our underlined)

1.2.1 EXPLORATION OF THE PILOT PROJECT'S RESULTS

At first sight, the Commission's experiment was somewhat disappointing. The pilot project ended in February 2007 and the Commission decided not to establish that type of framework permanently.

However, it should be noted that views were divided on the project's effectiveness. On one hand, the providers thought that the low subscription rates and the high rates of repayment defaults exposed the project's ineffectiveness in favouring household reconnections²⁸. The providers also criticized the high costs of implementing the program compared to the low ratio of debt collection it generated²⁹. On the other hand, the consumer rights groups strongly criticized the project's implementation and some providers' interpretation of the reasonableness required of proposed payment arrangements³⁰. The consumer groups estimated nevertheless that the subscription and loan default rates were encouraging in the circumstances³¹.

The Commission ultimately qualified the results as inconclusive, since it was incapable of determining whether the benefits of implementing the program permanently would outweigh the costs³². The Commission also estimated that other methods would be more effective and proportional for promoting access to local telephone services, particularly methods that would result in a reduction of disconnections. That view would lead the Commission to adopt the Deposit and Disconnection Code in 2011, which we will discuss below.

Meanwhile, we will focus on the main points of disagreement about the results of the pilot project.

Portrait of the participation

A first subject of disagreement concerns consumers' interest in participating in the program, i.e. in resubscribing to the local telephone service and progressively repaying their debts to the provider.

Several providers stated to the Commission that they had difficulty recruiting the 600 participants required. The disparities between the providers' recruitment percentages are enormous and have remained unexplained. For example, Telus, which finally registered only 140 consumers for its plan, reported having made up to 6,543 participation offers

²⁷ **CRTC**. *Decision 2005-38*, *op. cit.* note 21, para 4.

²⁸ *Ibid.*, para 12.

²⁹ *Ibid.*, para 12 and addressed again by the Commission in para 17.

³⁰ *Ibid.*, para 22.

³¹ *Ibid.*, para 10.

³² *Ibid.*, para 18.

participation³³, for a recruitment rate of only 2.14%. Bell reportedly made 2,851 calls, i.e. less than half of Telus, to recruit 600 participants in its plan – a number four times greater than Telus’s with less than half the participation offers³⁴.

In response to those providers’ theory that consumers were simply not interested in repaying their debts, the consumer groups explained that those numbers could be misleading in the absence of important details that would make analysis possible³⁵. When Telus refers to its “offers,” are they simple letters sent to its former subscribers, who may not even read the letters after moving? When Bell refers to “calls,” was the provider able in every case to speak with potential participants and, if applicable, adequately explain the program to them? In addition to questioning the effectiveness of certain providers’ means of communication, the consumer groups stated that the proposed repayment plans may have been unappealing to some participants. More on that below.

Debt collection

The presentation of the providers’ reports on the amounts collected by the end of the program’s 16 months was also interpreted in divergent ways. First, the amounts at stake were substantial. The participants owed between \$400 and \$500 on average, but up to \$3,300 in some cases³⁶. In the Commission’s view, those amounts were very high, particularly for low-income consumers³⁷.

Moreover, the discrepancies between providers regarding the participants’ decreased total debt are difficult to explain. The table below shows the percentage, then the amount of the recovered debt, the amounts owed by participants at the start of the program, and lastly the new debt accumulated by participants in default of payment.

³³ **TELUS**. *Bill management tools – Debt repayment plans*, letter to the CRTC, September 28, 2006, para 4, online: <https://crtc.gc.ca/public/partvii/2005/8638/telus/674706.pdf> (document consulted on February 4, 2019).

³⁴ **BELL**. *Follow-up to Decision CRTC 2005-38 (results of the pilot project, 18 months)*, October 2, 2006, online: https://crtc.gc.ca/partvii/eng/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

³⁵ **UNION DES CONSOMMATEURS et al.** *Réponses aux demandes de renseignements du Conseil de février 2007*, March 2007, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

³⁶ **CRTC**. *Decision 2008-27*, *op. cit.* note 21, para 27.

³⁷ *Ibid.*, para 27.

Table 1
Result of the program among providers

	% Recovered	\$ Recovered	\$ Due	New Debt
MTS Allstream ³⁸	34%	\$89,984.81	\$264,533.30	n/a ³⁹
Telus ⁴⁰	30%	\$24,830.35	\$82,122.59	\$9,676.33 ⁴¹
Sasktel ⁴²	28%	\$112,467.26	\$368,000	\$20,630.19 ⁴³
Bell Canada ⁴⁴	25%	\$66,634.24	\$261,919.48	\$25,837.25 ⁴⁵
Bell Alliant ⁴⁶	19%	\$11,629.67	\$61,003.66	\$9,657.53 ⁴⁷

It should be noted that the program's participants, in addition to repaying part of their debt each month, paid the instalments of their subscription to local telephone service. According to consumer rights groups, even when the cost of recovering a debt was equal to or slightly greater than the recovered debt, those plans were in the providers' interest due to the additional profits related to subscription renewals⁴⁸.

The consumer groups also criticized the providers' purely mercantile view of the effectiveness of a pilot project that could also have been analysed as a social measure. As Union des consommateurs (UC) mentioned among its observations:

[...] il importe de souligner que les personnes ayant bénéficié du PRMC ont pu avoir le service téléphonique durant la durée de leur participation et payer leur dette, ou une partie de celle-ci, ce qui est doublement positif puisque d'une part cette participation a

³⁸ **MTS Allstream.** Réponses aux demandes de renseignements du Conseil de février 2007, March 2007, doc. No. 101, p.1, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

³⁹ *Ibid.*, doc. No. 106, p.2

⁴⁰ **TELUS.** Réponses aux demandes de renseignements du Conseil de février 2007, March 2007, doc. No. 101, p.1, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁴¹ *Ibid.*, doc. No. 106, p.1.

⁴² **SASKTEL.** Réponses aux demandes de renseignements du Conseil de février 2007, March 2007, doc. No. 201, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁴³ *Ibid.*, doc. No. 206.

⁴⁴ **BELL CANADA.** Réponses aux demandes de renseignements du Conseil de février 2007, March 2007, doc. No. 101 BDRP, p.1, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁴⁵ *Ibid.*, doc. No. 106 BDRP, p.1.

⁴⁶ **BELL ALLIANT.** Réponses aux demandes de renseignements du Conseil de février 2007, March 2007, doc. No. 101, p.1, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁴⁷ *Ibid.*, doc. No. 106, p.3.

⁴⁸ **UNION DES CONSOMMATEURS.** Observations, Follow-up to Telecom Decision CRTC 2005-38, June 2007, online: https://crtc.gc.ca/partvii/eng/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

*favorisé la responsabilisation de l'individu et d'autre part, elle a permis d'éviter d'augmenter la marginalisation de ces personnes*⁴⁹.

If we consider the program's results from that angle, it is impossible to agree with Telus's conclusion that the program is simply less effective than the debt collection procedures of collection agencies⁵⁰.

The providers also pointed out the repayment default rates, which they considered high. While the CRTC indeed concluded that the default rate was high, it noted considerable variations from one provider to another⁵¹:

Table 2

Default rates of the subscribers of providers participating in the program

Telus ⁵²	40%
Bell Canada ⁵³	61%
MTS Allstream ⁵⁴	68%
Sasktel ⁵⁵	69%
Bell Alliant ⁵⁶	81%

The CRTC and the providers attempted no explanation to justify such discrepancies between providers. The consumer rights groups suggested that the unreasonable nature of the agreements offered by some providers was the main cause of defaults.

Unreasonable nature of the proposed agreements

In fact, we think the extent of participants' default rate and the difficulty of some providers to recruit participants for the project must be evaluated in the light of the proposed agreements. If those agreements proposed by providers proved unreasonable due to the financial situation of actual or potential participants, it's not surprising that a high number defaults after a few months or that contacted consumers even refuse to attempt the experience.

⁴⁹ *Ibid.*

⁵⁰ **TELUS**. *Réponses aux demandes de renseignements du Conseil de février 2007*, op. cit. note 40.

⁵¹ **CRTC**. *Decision 2008-27*, op. cit. note 21, para 17.

⁵² **CRTC**. *Telecom Decision CRTC 2008-27*, op. cit. note 21.

⁵³ **BELL**. *Letter of October 2, 2006*, Follow-up to Telecom Decision CRTC 2005-38, section 2.2, table 1, online: https://crtc.gc.ca/partvii/eng/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁵⁴ **MTS ALLSTREAM**. *Letter of October 2, 2006*, Follow-up to Telecom Decision CRTC 2005-38, attachment 1, p.2, online: https://crtc.gc.ca/partvii/eng/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁵⁵ **SASKTEL**. *Letter of October 2, 2006*, Follow-up to Telecom Decision CRTC 2005-38, attachments 1 & 2, online: https://crtc.gc.ca/partvii/eng/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁵⁶ **BELL ALIANT**. *Letter of October 2, 2006*, Follow-up to Telecom Decision CRTC 2005-38, para 10, online: https://crtc.gc.ca/partvii/eng/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

That was the main critique made by consumer rights groups in evaluating the pilot project's "failures." Agreements that should have been reasonable were not, subjectively, according to many consumers, by not taking their economic situation into account:

Bien que le PRMC vise à rebrancher les personnes à faible revenu, le montant réclamé de l'ancien abonné en vertu du projet pilote de PRMC n'est établi qu'en fonction du montant de ses mauvaises créances et ne tient pas compte de ses revenus, c'est-à-dire de sa capacité de payer.

[...] il est évident que le montant mensuel exigé en vertu du PRMC sera un obstacle à la participation de certains anciens abonnés qui savent très bien qu'ils ne seront jamais en mesure d'acquitter une facture de téléphone qui coûte 25 \$ ou 50 \$ de plus par mois. Si le PRMC prévoyait la possibilité que la capacité de paiement de l'ancien abonné soit prise en compte si celui-ci s'avérait incapable de verser le montant établi en vertu du barème de remboursement, cela contribuerait à augmenter le taux de participation⁵⁷.

Given that agreement proposals were limited to a period of three to six months⁵⁸ for repaying amounts due – debts that could reach several hundred dollars⁵⁹ and to which were added a subscriber's monthly charges for local telephone service –, it's not surprising those proposals weren't more popular or that consumers had trouble honouring the agreements.

In some cases, providers even initially offered consumers a repayment period of only one month. Again, the 6-month mandatory repayment period concerned (strangely) only the reconnection charges. The Commission reported that providers proved much more conciliatory when negotiating with a consumer group representative, which would have led to substantial inequalities between agreements entered into by participants.

Despite the criticized providers' denial, the CRTC indeed recognized that all the deferred payment arrangements offered to participants were unreasonable and insufficiently flexible. But that didn't convince the CRTC that the benefits of the program's permanent implementation would outweigh its costs.

1.3 Impact of the progressive deregulation of telephone services on providers' disconnection policies

To illustrate how the rights of communications service consumers have progressed, the following is a brief historical reminder.

Since 1892, the terms and particularly the rates of telephone services – then in a monopoly situation – had been regulated in Canada⁶⁰. That would last until the eighties and especially the nineties – which saw the market opening up to competition –, when communications

⁵⁷ **UNION DES CONSOMMATEURS et al.** *Réponses aux demandes de renseignements du Conseil de février 2007*, op. cit. note 35, pp.4 and 7, online: https://crtc.gc.ca/partvii/fra/2005/8638/c12_200515002.htm (document consulted on February 4, 2019).

⁵⁸ **CRTC.** *Telecom Decision CRTC 2008-27*, op. cit. note 21, para 22.

⁵⁹ *Ibid.*, para 27: "the average debt per involuntarily disconnected consumer ranged from \$400-\$500, with the debts of certain consumers exceeding \$3,300."

⁶⁰ The year of the federal government's adoption of a law prohibiting Bell from increasing its rates without the Governor in Council's approval: **CRTC.** *Canadian Telecommunications Policy Review, Discussion paper*, August 2005, para 24, online: <http://publications.gc.ca/collections/Collection/BC92-58-2005E.pdf>

services gradually started being deregulated (or unregulated⁶¹) by the CRTC (e.g. public telephony, Internet access service)⁶².

Then in 2006, the government issued a shocking decree requiring the Commission to use its regulatory power by giving the market free rein, “in order to deregulate the retail local telephone market in a more timely manner⁶³.” The decree greatly simplified the required conditions for deregulating a sector and obliged the Commission to defer as much as possible to market forces, thus transforming what was a presumption of market regulation into a presumption of non-regulation⁶⁴. Deregulation of local telephone services then accelerated considerably. Nowadays, communications zones covered by such regulations are rare.

But in the face of that rush to deregulation, an important question is raised about the status of consumer rights. Given that consumer protections offered in case of disconnection were mainly contained in the terms of service imposed on providers as part of the regulation of rates, what happens to those protections when the service is only governed by market forces?

Despite the theory that market forces should suffice to “balance” the conditions imposed by providers on their subscribers, a few exceptions were raised by the Commission and the government⁶⁵. This is the case for service disconnection and deposit rules required of some consumers, and considered by the Commission to be directly related to the objectives of telephone service affordability and access⁶⁶.

⁶¹ As opposed to the services of which the Commission has gradually deregulated the terms and rates, certain services have never had their terms and rates regulated because the Commission abstained from the outset to regulate them. This is the case, for example, of Internet access services: **CRTC**. *Internet Forbearance, Telecom Decision CRTC 99-4*, online: <https://crtc.gc.ca/eng/archive/1999/dt99-4.htm>

⁶² **LONGFORD, G, MOLL, M and REGAN SHADE, L.** *From the “Right to Communicate” to “Consumer Right of Access”*: *Telecom Policy Vision from 1970 to 2007* in *For Sale to the Highest Bidder: Telecom Policy in Canada*. Ottawa: Canadian Centre for Policy Alternatives, 2008, p.18; **CRTC**. *Telecom Decision CRTC 2006-15*, para 2, online: <https://crtc.gc.ca/eng/archive/2006/dt2006-15.htm>

⁶³ **GOVERNMENT OF CANADA**. *Order Varying Telecom Decision CRTC 2006-15*, SOR/2007-71, online: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08752.html>; see the explanations of **LYSECKI, S and SUTTON, N.** *CRTC introduces deregulation agenda for local markets*, *Computing Canada*, vol. 32, No. 6, April 2006.

⁶⁴ **GOVERNMENT OF CANADA**, *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation: SOR/2019-22*; **LONGFORD, MOLL and REGAN SHADE.** *From the “Right to Communicate” to “Consumer Right of Access”*, *op. cit.* note 62, p.22.

It should be noted that the government will adopt a second order to change elements of a CRTC Decision rendered before the development of new guidelines: **GOVERNMENT OF CANADA.** *Order Varying Telecom Decision CRTC 2006-15*, *op. cit.* note 63.

⁶⁵ **CRTC.** *Telecom Decision CRTC 2006-15*, para 390, online: <https://crtc.gc.ca/eng/archive/2006/dt2006-15.htm> - It should be noted that this part of the Order has not been changed by the *Order Varying Telecom Decision CRTC 2006-15*: “This Order does not vary social and safety obligations. All providers will remain obligated to provide safety requirements found in the existing local telephony regulatory regime, such as the provision of 911 emergency services. Social regulations will remain in place for the incumbents' local telephone service after the criteria to end retail price regulation have been met.”: **GOVERNMENT OF CANADA.** *Order Varying Telecom Decision CRTC 2006-15 C.P. 2007- 0532 - Regulatory Impact Analysis Statement*, online: <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08752.html>

⁶⁶ **CRTC.** *Telecom Decision CRTC 2006-15*, *op. cit.* note 65, paras 391 and 396.

Given that the Commission “is not convinced that the operation of market forces in a forborne market will result in such protections being maintained⁶⁷,” those rules would henceforth be included in the “market conditions” governing all Canadian companies offering telecommunications services⁶⁸, whether or not those services’ rates are regulated.

At the providers’ request, the CRTC still accepted, in 2009, to simplify disconnection and deposit rules, and retained only the following aspects:

- Reasonable notice prior to disconnection;
- No disconnection when charges are legitimately challenged;
- Reasonable maximum deposit amount;
- Reasonable deposit return timeframe;
- Reasonable rate of interest on deposits⁶⁹.

To survive the deregulation of telephone services, the framework gradually adopted by the CRTC for disconnections and security deposits was moved to other tools, from terms of service (general fees) to marketing conditions (imposed under section 24 of the Telecommunications Act), and ended up in the multiple codes of conduct adopted by the CRTC, to be analysed in the next subsection.

Nevertheless, in deregulating providers’ rates, the Commission also ended its control of late payment charges and non-sufficient funds charges levied by providers⁷⁰, although those charges could also be associated with service access and affordability objectives, particularly for low-income households⁷¹.

1.4 Development of providers’ codes of conduct

Following the deregulation of local telephone services, the Commission, which still considered that “policies regarding disconnections and deposits are required for regulated markets, since market forces are generally minimal or non-existent in these areas⁷²” and that “market forces alone are insufficient in forborne and regulated markets to achieve the purpose of the disconnection and deposit policies⁷³,” proposed self-regulation.

The Commission for Complaints for Telecom-television services (CCTS⁷⁴) thus became responsible for developing various mandatory codes addressing various subjects in a more or less detailed manner, including providers’ deposit and disconnection policies in

⁶⁷ *Ibid.*, para 410.

⁶⁸ Telecommunications Act, SC 1993, c. 38, sec. 24; **CRTC**. *Telecom Decision CRTC 2006-15*, *op. cit.* note 65, para 393.

⁶⁹ **CRTC**. *Telecom Regulatory Policy CRTC 2009-424*, paras 15-16, online: <https://crtc.gc.ca/eng/archive/2009/2009-424.htm>

⁷⁰ *Ibid.*, paras 40 and 43. The Commission nevertheless adopted a regulation prohibiting providers from charging higher fees for their newly deregulated local telephone service than for their already non-tariffed services.

⁷¹ **CRTC**. *Telecom Regulatory Policy CRTC 2009-424*, *op. cit.* note 69, para 41.

⁷² *Ibid.*, para 14.

⁷³ *Ibid.*

⁷⁴ It should be noted that the CCTS was formally the Commissioner for Complaints for Telecommunications Services. For the sake of simplicity, we will always refer to the CCTS and the Commission, despite the organization’s former name.

unregulated (“forborne”) markets. Meanwhile, the CRTC maintained the disconnection and deposit policies in regulated markets, but also in unregulated markets until the CRTC’s implementation of the Deposit and Disconnection Code⁷⁵.

1.4.1 THE DEPOSIT AND DISCONNECTION CODE

In 2010, the CCTS informed the CRTC of its failure to reach a consensus on the field of application, the scope and even the style of the draft code⁷⁶. The Commission therefore assigned to a working group the task of developing the expected code.

A working group of the CRTC Steering Committee then produced the Deposit and Disconnection Code, which the Commission ratified in 2011⁷⁷, and which still applies today to residential telephone services. The details of that framework are discussed in the next section (applicable legal framework), but it should be noted that most of its rules are strongly similar to the rules initially provided for the terms of regulated local telephone services.

Despite that, regarding the issue of including one of the policy’s elements, i.e. the processing of partial payments and the allocation of funds to the various communications services to which consumers subscribe (television, Internet access, optional phone services (long distance calls, 1-900 fees, etc.)), no consensus could be reached within the working group.

On one hand, the consumer rights groups involved wanted a codification of the Commission’s past decisions to the effect that a provider could not suspend or disconnect the local telephone service of a consumer who doesn’t pay his bill in full (a bill that includes several services), but whose instalments cover the cost of that service⁷⁸. In other words, partial payments should be allocated in priority to paying the basic service, in order to avoid disconnection of that service (or at least to ensure that the service is the last to be disconnected, as the case may be).

The providers countered that such a rule would hinder their flexibility in a competitive market, that they already offered payment terms taking into account consumers’ individual needs, and that protecting local telephone service above all didn’t necessarily match the personal preferences of all consumers⁷⁹. That concern expressed by the providers is surprising, since they don’t usually consult consumers to obtain their view on the allocation of partial payments to their bills’ different amounts.

⁷⁵ **CRTC**. *Telecom Regulatory Policy CRTC 2009-424*, *op. cit.* note 69, paras 17-18.

⁷⁶ **CRTC**. *Telecom Decision CRTC 2011-702*, November 14, 2011, para 4, online: <https://crtc.gc.ca/eng/archive/2011/2011-702.htm>

⁷⁷ *Ibid.*, para 32. The working group was granted that mandate under *Telecom Regulatory Policy CRTC 2009-424*, *op. cit.* note 69, paras 43-44.

⁷⁸ **PIAC**. *Contribution from PIAC before the CISC Deposit and Disconnection Code Development Ad Hoc Committee*, June 2011, online: <https://crtc.gc.ca/cisc/fra/cisf4jc.htm> (document consulted on June 20, 2019).

⁷⁹ **CISC DEPOSIT AND DISCONNECTION CODE DEVELOPMENT AD-HOC COMMITTEE**. *DRAFT Deposit and Disconnection Code. Consensus Report to the CRTC*, July 2011, online: <https://crtc.gc.ca/cisc/eng/cisf4jd.htm> (document consulted on June 20, 2019).

Some have noted that the stakeholders' positions were quite similar to those presented to the Commission in 2004 as part of a consultation on the issue. At the time, the Commission had rejected the practice of several providers, which consisted of allocating partial payments to bills incurred in chronological order, whatever the service. The Commission's position in 2011? It rejected instead the demand of consumer groups and the CCTS for such a prohibition to be included in the new Code.

What explains that change of course, whereas, as the PIAC recalled, "the only difference between 2004 and now is that the Commission has allowed the market to set the prices in forborne markets [...] the crucial nature of telephone service, and the danger upon its disconnection, is unchanged⁸⁰?"

The Commission explained that it had not received any evidence that maintaining that regulation was necessary to protect consumer interests in the unregulated markets, "in which competitive alternatives are available⁸¹." We may question that decision's consistency with the Commission's positions two years earlier, which stated that "market forces are generally minimal or non-existent in these areas [disconnection and deposit policies]⁸²."

The Commission also stated a second reason – just as dubious, in our view: Such a rule would impose an excessively heavy burden on providers:

The Commission further considers that it could be onerous and expensive for CLECs to implement a partial payment provision, and that it might not be technically feasible for other companies, such as certain VoIP providers, to implement it⁸³.

Considering that the rule in question was developed in its essence as early as 1977, we think the "onerous" adaptations of providers' systems should have been, by 2011, long since completed and paid for.

Following that decision, several groups, including Union des consommateurs, stated that "du point de vue de la protection du consommateur, les préoccupations de l'industrie [avaient pris] une place exagérée dans la décision finale du Conseil⁸⁴."

1.4.2 THE WIRELESS CODE

After the adoption of the Deposit and Disconnection Code in 2011, the PIAC asked the CRTC to intervene with wireless telephone service providers regarding their contracts'

⁸⁰ **PIAC**. *Contribution from PIAC before the CISC Deposit and Disconnection Code Development Ad Hoc Committee, op. cit.*, 78.

⁸¹ **CRTC**. *Telecom Decision CRTC 2011-702, op. cit.* note 76, para 23.

⁸² **CRTC**. *Telecom Regulatory Policy CRTC 2009-424, op. cit.* note 69, para 14.

⁸³ **CRTC**. *Telecom Decision CRTC 2011-702, op. cit.* note 76, para 24.

⁸⁴ **UNION DES CONSOMMATEURS**. *Written observations presented to the CRTC, Notice of Consultation 2012-557, para 23.*

termination conditions, considered unfair (30-day termination notice period, amount of termination charges, etc.)⁸⁵.

Several providers, including Telus and Rogers, took that occasion to request that the CRTC address the overall regulatory framework for wireless services. The providers' avowed objective was to block the consumer protection measures adopted by the provinces from being applied to communications service providers; those measures created, in their view, a patchwork generating inequality between consumers and administrative difficulties for the industry⁸⁶.

Those demands ultimately led to the adoption of the Wireless Code in 2013⁸⁷. Strangely, while the issue of deposits and disconnections was central to the code covering fixed telephone services, it was minimally addressed in the development of the Wireless Code.

Regarding security deposits, the only aspect addressed by the 2013-271 regulatory policy concerns the capping of their amount. Consumer rights groups argued that low-income consumers risked being excluded from the market of postpaid wireless services⁸⁸, but the Commission refused to set a ceiling, although that was the case for residential telephone services⁸⁹. In fact, the Commission invoked that very risk of exclusion to justify its refusal:

The Commission notes that setting a maximum security deposit amount could lead to potential customers being refused service. [...] By the same token, the WSP is motivated to sign up customers. The Commission therefore considers it appropriate to rely on market forces regarding security deposit amounts⁹⁰.

The Commission's position on disconnections in the Wireless Code resembles more the one developed two years earlier in the code covering residential telephone services. In its 2013-271 decision, the Commission recalled that a great many Canadians use wireless phones exclusively and emphasized the latter's benefits in terms Canadians' access to information (work, family, health care, etc.)⁹¹. But the Commission refused the request of certain groups that the disconnection policies of wireless service providers be regulated more strictly in view of the much greater frequency of disconnections for wireless services than residential services⁹².

⁸⁵ **PIAC**. *Application regarding certain billing practices of the Wireless Service Providers which contravene Section 27(2) of the Telecommunications Act*, December 2011, online: http://www.crtc.gc.ca/part1/eng/2011/8661/p8_201116807.htm (document consulted on May 2, 2019).

⁸⁶ **TELUS, ROGERS, BELL and PIAC**. *Shared Position Statement*, Telecom Notice of Consultation CRTC 2012-206, Appendix 1, paras 3, 4 and 7.

⁸⁷ **CRTC**. *Telecom Regulatory Policy CRTC 2013-271*, June 3, 2013, online: <https://crtc.gc.ca/eng/archive/2013/2013-271.htm>; a simplified version of the *Wireless Code* online: <https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>

⁸⁸ *Ibid.*, para 281; **PIAC et al.** *Intervention of the Public Interest Advocacy Centre, Consumers' Association of Canada, Council of Senior Citizens' Organizations of British Columbia*, Telecom Notice of Consultation CRTC 2012-557, para 166, online: https://www.piac.ca/wp-content/uploads/2014/11/piac_cac_cosco_intervention_wirelesscode_abridged.pdf (document consulted on May 2, 2019); **UNION DES CONSOMMATEURS**. *Written observations presented to the CRTC* [2012-557], *op. cit.* note 84, para 25.

⁸⁹ **CRTC**. *Telecom Regulatory Policy CRTC 2013-271*, *op. cit.* note 87, paras 283-286.

⁹⁰ *Ibid.*, para 285.

⁹¹ *Ibid.*, para 293.

⁹² *Ibid.*, paras 291 and 294.

A revision that lacks teeth

The Wireless Code was revised in 2016, three years after its adoption. Once again, disconnections and deposits were hardly addressed by the Commission, despite evidence that providers were not complying with the rules in place, or at least their spirit or rationale.

While in its initial regulatory policy, the Commission presented the Wireless Code as a means notably to improve transparency and clarity for consumers regarding wireless providers' security deposit requirements⁹³, a field study conducted by the University of Ottawa and submitted to the Commission during its revision reported the sellers' constant silence on the subject:

The security and credit checks would have applied to all twelve mystery shopper visits, since in both scenarios we were looking at a post-paid two-year contract. Not a single provider out of twelve visits mentioned security deposit. [...] One provider out of twelve visits mentioned credit checks⁹⁴.

Similarly, a study of provider contracts that was conducted in 2015 by Union des consommateurs and submitted to the CRTC noted that providers' contracts generally lacked the information required by the Code regarding security deposits:

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 deposits⁹⁵.

Despite those worrisome findings, the Commission made no change to the Code regarding security deposits⁹⁶. Nor did the Commission mention the two studies – expressly filed in the public record – in its final decision on the Code's revision.

1.4.3 THE OTHER CODES

The Commission also established a third code in 2015, this time on television services⁹⁷. Very laconic about disconnections of television services due to non-payment, the Code provides no information requirement for the provider to describe its (unregulated)

⁹³ *Ibid.*, para 294.

⁹⁴ PAVLOVIC, M et al. *Intervention of Marina Pavlović, Mary Cavanagh, Sean Grassie, and Lora Hamilton*, Notice of Consultation 2016-293, October 2016, para 23.

⁹⁵ UNION DES CONSOMMATEURS, *The Wireless Code: Who's the Winner?*, 2015, p.96, online: <http://www.uniondesconsommateurs.ca/wp-content/uploads/2015/11/R31-UC-Code-SSF-MEF-rapport-F-EngV2b.pdf>

⁹⁶ CRTC. *Telecom Regulatory Policy CRTC 2017-200*, June 15, 2017, paras 408, 412 and 416, online: <https://crtc.gc.ca/eng/archive/2017/2017-200.htm> - It should be noted that the Commission nevertheless requested information from providers on this subject during the review. The requested information was filed to the CRTC mainly on the basis of confidentiality, so it's impossible for us to know the justifications, if any, provided by providers: CRTC. *Telecom Commission Letter Addressed to the Distribution List*, October 20, 2016, Appendix 2, online: <https://crtc.gc.ca/eng/archive/2016/lt161020.htm>

⁹⁷ CRTC. *The Television Service Provider Code, simplified*, Broadcasting Regulatory Policy CRTC 2016-1, online: <https://crtc.gc.ca/eng/television/services/codesimpl.htm>

disconnection policy in the contract⁹⁸. An overview of the debates held during the development of this code confirms in fact that regulation of deposits and disconnections was barely addressed by the participants⁹⁹.

The Commission offered no explanation for the very limited consideration of disconnections in that code for television services. The provider Shaw offered the most likely answer: “While it may be appropriate to restrict sudden disconnection of voice services with access to 911, broadcasting services are not critical services¹⁰⁰.”

As the present study was being produced, the Commission held hearings to put in place a (possible) Internet Access Code¹⁰¹. We don’t know how the issues of disconnection and deposit will be ultimately addressed there. The working paper presented by the Commission proposes rules very similar to those of the Wireless Code¹⁰². So does the Commission estimate that Internet services are as essential as telephone services, of which sudden and/or unreasonable disconnection or interruption would be unacceptable for public safety, social inclusion, etc.? To be continued.

⁹⁸ *Ibid.*, section XIV(1).

⁹⁹ One of the rare requests on this subject came from providers who wanted a reversal of the CCTS’s Wireless Code Decision concerning the application of disconnection regulations to situations of suspension. The Commission did not accede to that request.

¹⁰⁰ **SHAW**. *Comments on the Code Working Document*, Broadcasting Notice of Consultation CRTC 2015-105, May 25, 2015, para 48.

¹⁰¹ **CRTC**. *Telecom Notice of Consultation CRTC 2018-422*, November 9, 2018, online:

<https://crtc.gc.ca/eng/archive/2018/2018-422.htm>

¹⁰² *Ibid.*, Internet Code Working Document, Appendix 1.

2. The Applicable Legal Framework: Confusing

As described above, the regulation of providers' deposit and disconnection practices has taken several forms over time: terms of service, CRTC regulatory decisions and policies, and codes of conduct.

Residential telephone rates and terms of service remain today applicable to a few remote or low-density regions, but generally, the contracts and business practices of communications service providers are henceforth regulated by the CRTC's three codes of conduct.

To those codes providing different rules depending on the services – and at times using different wording to describe similar situations – are added certain common technical rules set up by the CRTC Interconnection Steering Committee and relevant to the analysis of the regulatory framework for service suspension and disconnection.

Legislation has also been enacted in some provinces, providing supplementary or complementary rules for the contracts and practices of providers of communications services (in Québec and Newfoundland-and-Labrador) or solely of wireless phone services (in Manitoba and Ontario)¹⁰³.

In short, the rules for a provider's disconnection and deposit practices depend on a subscriber's communications service and area of residence. That creates a particularly complex situation.

The table below illustrates where and to what the various existing legislative and regulatory documents apply to regulate communications services more specifically and address the issues of deposits and/or disconnections.

¹⁰³ It should be noted that provincial consumer protection laws, even when they don't provide specific regulations for communications service contracts, nevertheless contain more-general regulations that can apply to consumer-provider relations (guarantees, misleading representations, distance contract, etc.). We will not discuss this further in this report because these other regulations don't pertain to the deposit or disconnection policies of communications service providers.

Table 3
Regulated services and territories covered

Services Legislative or Regulatory Texts (and Subject)	Wireless Telephony	Residential Telephony	Cable TV	Internet Access
Federal				
Deposit and Disconnection Code (deposit and disconnection)	N/A	Applies across the country	N/A	N/A
Wireless Code (deposit and disconnection)	Applies across the country	N/A	N/A	N/A
Television Service Provider Code (deposit)	N/A	N/A	Applies across the country	N/A
Internet Code (<i>under development</i>) (deposit and disconnection)	N/A	N/A	N/A	Will apply across the country
Rules of the CRTC Interconnection Steering Committee – guidelines for local Canadian orders (deposit)	Applies across the country	Applies across the country	Applies across the country	Applies across the country
Rates and terms of regulated services offered by some providers (deposit and disconnection)	N/A	Applies in some remote or sparsely populated regions	N/A	N/A
Provincial				
Consumer Protection and Business Practices Act, SNL 2009, c C-31.1 - part V, division 3 (deposit)	Newfoundland-and-Labrador only	Newfoundland-and-Labrador only	Newfoundland-and-Labrador only	Newfoundland-and-Labrador only
Consumer Protection Act, CQLR c P-40.1 — title I, chapter III, section VII (deposit)	Québec only	Québec only	Québec only	Québec only
Consumer Protection Act, CCSM c C200 — part XXII (deposit)	Manitoba only	N/A	N/A	N/A
Wireless Services Agreements Act, 2013, S.O. 2013, chap. 8 (deposit)	Ontario only	N/A	N/A	N/A

The fact that the various communications services are regulated by different tools (federally) or that the regulations apply to only one of those services (provincially) illustrates the confusion, in terms of understanding as well as application, confronting consumers and, often, the organizations responsible for applying those regulations. The various services are not as distinct and autonomous as previously; today they're complementary, even overlapping.

Consumers indeed have a marked tendency – encouraged by providers' offers – to group in “bundles” several communications services with the same provider. In its 2017 annual Communications Monitoring Report, the CRTC assessed at no less than 9.6 million the number of Canadians subscribing to bundled communications services¹⁰⁴.

Those subscribers thus receive a single bill and pay each month an amount for all the services. What happens if they don't pay the amount in full? To what service(s) are the amounts paid allocated? For what service(s) is the consumer in default of payment? What protection measures will apply to an eventual disconnection?

The Commission for Complaints for Telecom-television Services (CCTS) recently reported the administrative difficulties caused by the multiplicity of codes that provide different rules depending on the services and use different wording to describe similar situations¹⁰⁵. The organization also mentioned the growing confusion entailed among some consumers by that situation:

*As the body responsible for handling unresolved customer complaints, something we are noticing in our handling of customer complaints is that the lines between services are blurring from the customer perspective. Customers consume audio-visual content over the Internet, or make phone calls using applications, or surf the Internet on their television set [...]*¹⁰⁶

2.1 Study of the regulation of security deposits

2.1.1 RULES COMMON TO ALL SERVICES (IN SOME PROVINCES)

Some Canadian provinces have adopted or integrated, in their consumer protection laws, rules for security deposits paid by consumers of communications services. That is the case for Québec and Newfoundland-and-Labrador. Those rules apply to all communications service contracts concluded in those provinces.

We will examine below whether a specific legal framework for deposits regarding telephone service contracts also exists, established notably by the CRTC and applicable across the country. That pan-Canadian framework is added, as the case may be, to provincial frameworks. But it should be understood that concerning television and Internet access,

¹⁰⁴ **CRTC**. *Communications Monitoring Report 2017*, pp.44-45, online:

<https://crtc.gc.ca/eng/publications/reports/policymonitoring/2017/index.htm>

¹⁰⁵ **CCTS**. *Intervention of CCTS*, Telecom Notice of Consultation CRTC 2018-422, December 19, 2018, para 53.

¹⁰⁶ *Ibid.*, para 30.

the providers' requirement of a security deposit and its related conditions are specifically regulated only in two Canadian provinces.

It should be noted that if provincial laws are not mentioned in some sections, it's because the provinces have adopted no regulation on the subject.

Use of the deposit for paying outstanding amounts

Québec and Newfoundland laws provide that if a communications service provider uses the security deposit, in full or in part, when a consumer is in default of payment, it must notify the consumer who has provided the deposit¹⁰⁷. The provider is also specifically prohibited from terminating a communications service contract due to default of payment if the amounts due don't exceed the amount of the deposit in the provider's possession¹⁰⁸.

A first difficulty arises here regarding the wording chosen. Provincial laws refer to termination ("cancellation") due to default of payment. As we will see below, the CRTC defines "disconnection" as a termination of services. However, providers commonly first "suspend" the service, i.e. interrupt it temporarily, before proceeding with disconnection¹⁰⁹. That suspension isn't equivalent to a contract termination, since the customer's obligations are maintained and the service can be reactivated without the necessity of concluding a new contract. Thus, the protection granted by provincial laws against termination due to default of payment when a security deposit would suffice to cover the outstanding amount may be useful only at the second stage of service interruption by the provider, and the consumer may still be deprived of the service even though his security deposit would suffice to cover his default of payment¹¹⁰.

2.1.2 RULES SPECIFIC TO TELEPHONE SERVICES

The security deposits of telephone service consumers are more strictly regulated. The regulation of security deposits will vary whether a wireless telephone service or a wireline telephone service is used, and depending on the province where the service contract was concluded.

As mentioned above, the legal frameworks of Québec and Newfoundland-and-Labrador cover all communications services.

¹⁰⁷ *Consumer Protection Act* [CPA], CQLR c P-40.1, sec. 214.10; *Consumer Protection and Business Practices Act* [CPBPA], SNL 2009, c C-31.1, sec. 35.11(3).

¹⁰⁸ CPA, *op. cit.* note 107, sec. 214.9; CPBPA, *op. cit.* note 107, sec. 35.11(2).

¹⁰⁹ **CRTC**. *Wireless Code*, *op. cit.* note 87.

¹¹⁰ We observe, however, that this appears to contradict the Québec lawmakers' intention. During the adoption of section 214.9 in 2009, the Minister responsible for the Bill, Kathleen Weil, stated that the provision's objective was to "de permettre au consommateur de ne pas être privé des services qui font l'objet du contrat en raison d'un défaut de paiement alors que des sommes lui appartenant sont dans les coffres de l'entreprise": **QUÉBEC NATIONAL ASSEMBLY**. *Étude détaillée du projet de loi n° 60 - Loi modifiant la Loi sur la protection du consommateur and d'autres dispositions législatives*, *Journal des débats de la Commission des relations avec les citoyens*, 39th Legislature, 1st session, November 10, 2009 - Vol. 41 No. 12, online: <http://www.assnat.qc.ca/en/travaux-parlementaires/commissions/CRC-39-1/journal-debats/CRC-091110.html#Page00009>

Wireless services are specifically covered by the CRTC's Wireless Code, applicable across Canada, and by Ontario's law on wireless service agreements and Manitoba's Consumer Protection Act, which includes a chapter focusing on cell phone service contracts.

As for residential telephone services, regulations for security deposits are provided by the CRTC's Deposit and Disconnection Code, applicable across Canada in markets lacking regulation.

Mention of the deposit in the contract

The Wireless Code provides that the contracts of wireless service providers must present clearly, when applicable, the security deposit amount that a customer must provide and the terms related to it, such as return conditions¹¹¹. Strangely, the Deposit and Disconnection Code, which sets the rules for residential telephone services, is silent on this subject.

It should be noted that the Wireless Code expressly limits that disclosure requirement in postpaid wireless telephone service contracts, i.e. those that are billed in whole or in part after usage and that are subject to overage charges¹¹².

Conditions of a deposit requirement

A provider of wireless or residential telephone services that requires a consumer to make a security deposit has the obligation to justify its requirement. It must also state its justifications in the customer's file¹¹³.

In the case of a residential telephone service, the total amount of the deposit required of a consumer is regulated by the Deposit and Disconnection Code. That amount cannot exceed the total value of equipment provided to the customer for using the service, or an amount equivalent to three months' service charges¹¹⁴.

No similar limit applies to wireless telephone services which, we recall, are much more expensive and popular among Canadian consumers than wireline telephone services¹¹⁵.

¹¹¹ **CRTC**. *Wireless Code*, *op. cit.* note 87, sections B(1)iii)l) and H(a)i)c). A similar regulation exists in the **CRTC**. *Television Service Provider Code*, *op. cit.* note 97, sec. VII(4)l). This is the only regulation pertaining specifically to security deposits prescribed by a fixed-term television service contract.

¹¹² The Code offers the following full definition: "Wireless services that may be billed all or in part after use, for example in a monthly bill, and for which overage charges can be incurred. For greater clarity, any pay-in-advance plan where the service provider may bill the customer for some or all charges after use or where the customer may incur overage charges beyond the prepaid balance is treated as a postpaid plan for the purposes of the Code.": **CRTC**. *Wireless Code*, *op. cit.* note 87, definition.

¹¹³ **CRTC**. *Wireless Code*, *op. cit.* note 87, section H(i)b); **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.2.

¹¹⁴ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.1.

¹¹⁵ **CRTC**. *Communications Monitoring Report 2018*, *op. cit.* note 1, graphic 1.2 – subscriptions to wireline and mobile telephone services (per 100 households).

Deposit return conditions

CRTC codes covering telephone services require providers holding a security deposit to evaluate its necessity periodically. But the “review period” varies according to the type of telephone service.

For a wireless service, the provider must review at least once a year the relevance of maintaining a deposit¹¹⁶. For a residential telephone service, that review must be done twice a year, i.e. every six months¹¹⁷. That difference is difficult to explain, especially since without caps to the security deposit amounts that can be required of wireless service subscribers, and given the generally higher monthly cost of wireless services, the required deposits are likely greater for wireless than for residential telephony and thus will more seriously affect the consumer’s pocketbook¹¹⁸.

The deposit amount must be returned to the consumer when it is no longer required, when the contract’s deposit return terms have been fulfilled, or when the contract is cancelled by either party. The Wireless Code prescribes a period of at most 30 calendar days for that deposit return¹¹⁹. The Deposit and Disconnection Code is vaguer, by only obliging the residential telephone service provider to reimburse the consumer “promptly.”¹²⁰

Provincial laws clarify the situation a little about returning a deposit after cancellation of a contract, but provide nothing for returns during the term of a contract. The Québec and Newfoundland-and-Labrador laws, which cover all communications services, require that the deposit be returned within 30 days following expiry or cancellation of the contract¹²¹. In Manitoba, the return period is also 30 days, but pertains only to contracts for wireless telephone services¹²². In Ontario, no period is prescribed, but wireless service providers are also required to reimburse the deposit at the end of the contract¹²³.

Moreover, when the deposit is returned, providers are required to add interest. Again, the rules differ for wireless and residential telephone services, for some mysterious reason.

Interest, determined on a monthly basis, is calculated according to the Bank of Canada’s overnight rate, plus 1% for wireless services¹²⁴ and plus 1.25% for wireline services¹²⁵. For the latter, the provider also has the option to calculate interest according to the rate

¹¹⁶ **CRTC**. *Wireless Code*, *op. cit.* note 87, section H(i)d).

¹¹⁷ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.3.

¹¹⁸ The CRTC does not often request information from providers about the deposits they require of certain subscribers. When requested, providers almost always file that information confidentially with the CRTC. Without access to that information and in the absence of other public information on the subject, we must assume that the deposit amounts are higher for wireless telephone services than for residential telephone services, given the higher monthly cost of wireless services. Thus, in 2016, expenses for wireless telephone services represent 41% of households’ average monthly expenses on communications services, vs. only 12% for residential telephone services: **CRTC**. *Communications Monitoring Report 2018*, *op. cit.* note 1, Infographic 1.4.

¹¹⁹ **CRTC**. *Wireless Code*, *op. cit.* note 87, section H(i)e).

¹²⁰ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.3.

¹²¹ CPA, *op. cit.* note 107, sec. 214.11; CPBPA, *op. cit.* note 107, sec. 35.11(1).

¹²² Consumer Protection Act [CCSM], CCSM c C200, sec. 203.

¹²³ Wireless Services Agreements Act, 2013 [L2013O], S.O. 2013, sec. 18(1).

¹²⁴ **CRTC**. *Wireless Code*, *op. cit.* note 87, section H(ii).

¹²⁵ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.4(a).

applicable to deposits for regulated wireline services, if it also offers such services¹²⁶. For example, at Videotron, the CRTC-approved interest rate for regulated services is rather the preferential rate of the Toronto Dominion Bank¹²⁷. At Telus, the CRTC-approved interest rate is that of the Bank of Canada plus only 1%¹²⁸.

This entanglement of interest calculations is even more complicated with the addition of Ontario's regulations applying its Wireless Services Agreements Act, as well as the Québec and Manitoba consumer protection acts. Those three laws require the security deposit to be returned to a wireless service consumer at the rates prescribed by regulation¹²⁹. What are those rates? To date, no regulation has been adopted in Ontario or Manitoba under those provisions. In Québec, the prescribed interest rate is the central bank rate plus 1%¹³⁰.

Security deposit use

As opposed to provincial laws, the Wireless Code explicitly allows a provider to use the security deposit to recover any outstanding amount¹³¹. In that event, the provider is explicitly allowed to require the consumer to reconstitute the security deposit as a condition for continuing to receive the service¹³². Still, as mentioned above, if the provider makes such a demand, it must again justify it to the consumer.

2.2 Study of regulations for suspensions and disconnections

As mentioned above, a provider has two ways to interrupt a customer's service: suspension and disconnection.

A service suspension is temporary. The customer no longer has access to the service, but his account remains open during the suspension period and his contract with the provider is maintained¹³³.

A service disconnection has permanent consequences. It is in effect the provider's termination of the contract¹³⁴.

With exceptions, the provider, in the escalation of means at its disposal within a process leading to disconnection, will first suspend the service. As Rogers reported to the CRTC in

¹²⁶ *Ibid.*, sec. 2.4(b).

¹²⁷ **VIDEOTRON**. *General Tariff*, CRTC 26 950, Part A, section 101(6)6,4), online: https://www.quebecor.com/documents/20143/47347/PartieA_2.pdf/47061c46-72c7-7598-cd13-da464b4fb188 (document consulted on March 5, 2019).

¹²⁸ **TELUS**. *General Tariff*, CRTC 25080, section 1.02.06(e), online: <https://www.telusquebec.com/pdf/25080.pdf> (document consulted on 5 mars 2019).

¹²⁹ L2013O, *op. cit.* note 123, sec. 18(2); CCSM, *op. cit.* note 122, sec. 203; CPA, *op. cit.* note 107, sec. 214.11.

¹³⁰ Regulation respecting the application of the Consumer Protection Act, CQLR c P-40.1, r 3, sec. 79.12(1).

¹³¹ **CRTC**. *Wireless Code*, *op. cit.* note 87, sec. H(iii).

¹³² *Ibid.*

¹³³ *Ibid.*, definition.

¹³⁴ *Ibid.*

2015, several suspensions can occur before the provider ultimately disconnects the service:

When a customer fails to pay their wireless bill, RCP suspends their service. During the suspension, the customer may be offered the option to enter into a promise-to-pay agreement. If they enter into such an agreement, RCP reactivates their service. If the customer fails to pay as promised, service may be resuspended and ultimately disconnected¹³⁵.

Given that the CRTC's various codes provide "disconnection" regulations, the CCTS had to decide quickly on applicable protections during a suspension. Finding that from the consumer's viewpoint, a suspension and a disconnection produce the same result, i.e. loss of service, the CCTS determined that the disconnection regulations provided in the CRTC's codes should be interpreted as applying also to suspensions:

In deciding how to apply these definitions in the context of the complaints we have received, we examined the regulatory decision that established TWC [the Wireless Code]. In that decision the CRTC points out that its policy objective was to ensure that customers receive notification before they lose their wireless services ("service interruptions"), given the importance of those services to Canadians. In light of that objective, and to prevent service providers from suspending customers indefinitely (thus depriving them of notice and the opportunity to cure their default), as well as the direction in TWC to decide any ambiguities in favour of the customer, we have decided to apply TWC's disconnection provisions to any action taken by a provider to cease providing service to a customer.

INTERPRETATION: To conform to TWC, a service provider that ceases to provide service has effectively disconnected the customer, and the provider is required to follow the rules relating to disconnection of wireless services before interrupting the customer's service... even if it calls it a suspension rather than a disconnection¹³⁶.

The regulations described below thus apply to all suspension and disconnection procedures initiated by providers when a customer is in default of payment.

2.2.1 RULES SPECIFIC TO TELEVISION SERVICES

Although the offer and contracts of television services are regulated by the CRTC through the Television Service Provider Code, we observe that the subject of disconnection by the provider is almost absent there. The Disconnection section only states that the provider's contract (or related documents) must provide explanations of its disconnection policy, and must include, at least, information on the following:

- a. *the grounds for disconnection;*

¹³⁵ CRTC. *Telecom Decision CRTC 2015-376*, August 14, 2015, para 12, online: <https://crtc.gc.ca/eng/archive/2015/2015-376.htm>

¹³⁶ CCTS. *Annual Report 2013-14 – Driving Positive Change*, p.22, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2013-2014.pdf> (document consulted on June 2, 2019).

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- b. *when and how disconnection may occur;*
- c. *what notice will be provided before disconnection occurs;*
- d. *when a customer can and cannot be disconnected when disputing charges;*
- e. *when a customer's account may be referred to a collection agency for missed payment; and*
- f. *the cost to reconnect the service, if applicable*¹³⁷.

It should be noted that although the CRTC doesn't clearly offer a regulatory framework for television providers' disconnection policy – as opposed to what it does for telephone service providers –, it remains that in the above list, it requires providers to offer consumers certain minimal protections. For example, regarding the terms for giving notice prior to disconnection, the provider has full discretion as to the notice's content, when the notice is sent, etc., but at least the Code makes sending prior notice mandatory.

2.2.2 RULES SPECIFIC TO TELEPHONE SERVICES

Grounds for suspension or disconnection

The Wireless Code (TWC) and the Deposit and Disconnection Code (applicable only to deregulated residential telephone services) provide three situations where a provider may disconnect service due to a consumer's default of payment¹³⁸:

1. When a consumer fails to pay an overdue account and the amount due exceeds \$50 or has been due for more than two months;
2. When a consumer fails to make a security deposit as agreed, or to maintain that deposit, or to offer a reasonable alternative to the deposit;
3. When a consumer does not meet the terms of an agreement reached with the provider to pay instalments.

Regarding that third situation, the Wireless Code, adopted several years after the Deposit and Disconnection Code, clarifies the procedure in case of violation of a payment arrangement.

When a provider reaches a payment arrangement with a consumer, it must notify him of the consequences of not meeting the terms of the agreement, particularly with respect to possible suspension or disconnection¹³⁹.

The Wireless Code also provides explicitly that entering into a payment arrangement (and the consumer's initial compliance with it) entails a new cycle for disconnection conditions; the provider must again follow the steps prior to suspending or disconnecting a service¹⁴⁰.

¹³⁷ **CRTC**. *Television Service Provider Code*, *op. cit.* note 97, section XIV(1).

¹³⁸ **CRTC**. *Wireless Code*, *op. cit.* note 87, section I(1)i); **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 3.1.

¹³⁹ **CRTC**. *Wireless Code*, *op. cit.* note 87, section I(2)iv)

¹⁴⁰ *Ibid.*, section I(2)v).

Should the subscriber fail to honour the agreement, the provider must therefore send a new notice prior to disconnection.

Although those rules are not explicit in the code applicable to disconnection of residential telephone services, it's highly likely that the CCTS will handle non-compliance with a payment arrangement in the same manner, if it is called upon to apply that code to a dispute.

Notice prior to suspension or disconnection

Telephone service providers are obliged to notify a consumer at least 14 days before disconnection. That obligation applies to all initial cases of suspension in a disconnection cycle¹⁴¹. The provider's notice must contain the following information:

- The grounds for disconnection and the amount due;
- The scheduled date of disconnection;
- The availability of a deferred payment plan;
- The cost to reconnect the service (if applicable);
- The contact information of a service provider's representative whom the customer can contact about the disconnection¹⁴².

None of the codes provides a specific way to send the notice (letter, call, text message, email, etc.). But the Deposit and Disconnection Code states that a provider who would want to send a disconnection notice to a customer's electronic address must have received his consent to receive such a notice in that way¹⁴³.

A second notice must also be sent to the consumer at least 24 hours before disconnection or suspension, to inform him that service interruption is imminent¹⁴⁴. If the initial and repeated efforts to notify the customer have failed, a provider may decide not to send that second notice¹⁴⁵.

In certain situations, a provider may proceed with disconnection without even sending the first notice or complying with the 14-day period. Those (limited) situations are independent of a consumer's non-payment:

- If the provider must proceed with disconnection to protect its network¹⁴⁶;
- If the provider has reasonable grounds for believing that a fraud has been, is being or is likely to be committed "with respect to customer's Services"¹⁴⁷;

¹⁴¹ *Ibid.*, section I(2)ii); **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.2(1).

¹⁴² **CRTC. Wireless Code**, *op. cit.* note 87, section I(2)ii); **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.2(1).

¹⁴³ **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.2(2).

¹⁴⁴ **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.3; **CRTC. Wireless Code**, *op. cit.* note 87, section I(2)iii).

¹⁴⁵ **CRTC. Wireless Code**, *op. cit.* note 87, section I(2)iii)a); **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.3(1)a).

¹⁴⁶ **CRTC. Wireless Code**, *op. cit.* note 87, sections I(2)i)a) and I(2)iii)b); **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.3(1)b).

¹⁴⁷ **CRTC. Wireless Code**, *op. cit.* note 87, sections I(2)i)b) and I(2)iii)c); **CRTC. Deposit and Disconnection Code**, *op. cit.* note 11, sec. 3.3(1)c).

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- If the customer is participating in a credit-limited spending program and has reached a pre-set spending limit, while already having been advised of that limit¹⁴⁸.

Suspension or disconnection hours

The two codes determine the hours when a telephone service provider can disconnect or suspend a customer. Barring exceptional circumstances or a customer's express consent, the service can be interrupted only between 8 a.m. and 5 p.m. on weekdays and between 9 a.m. and 5 p.m. on weekends. If a day of interruption precedes a legal holiday, the interruption can only occur before noon. It should be noted that those hours appear to have been maintained by the CRTC because they better correspond to the service's (minimal) hours of availability to the clientele of certain providers, so that the subscriber whose service was interrupted can still contact the company immediately in an attempt to resolve the problem.

Challenging the suspension or disconnection

The two codes prohibit a provider to suspend or disconnect a customer's service – despite a default of payment – if he disputes the unpaid amounts, has paid all undisputed amounts, if applicable, and the provider has no reasonable grounds to believe that the challenge is intended solely to avoid or delay the payments¹⁴⁹.

Suspension or disconnection errors

It can happen that a provider disconnects or suspends a client by mistake. The two codes impose a pre-set response time on a provider that discovers the error or is notified of it by the affected customer.

The provider must reinstate the connection at the latest one working day after it has been apprised of the problem, unless "exceptional circumstances" prevent the provider from doing so. That exception, explicitly applicable for wireline telephone services without being defined, is not textually found in the Wireless Code, although it is likely implicit (e.g. a force majeure situation).

Telephone service providers are explicitly prohibited from claiming reconnection fees when a disconnection or suspension has occurred in error. Because the codes contain such a regulation, of which the justification seems self-evident, it can be argued that a television or Internet service provider would be free to charge such fees, since the express prohibition doesn't apply to those services.

¹⁴⁸ **CRTC**. *Wireless Code*, *op. cit.* note 87, section I(2)iii)c).

¹⁴⁹ *Ibid.*, section I(3)i); **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 3.6.

2.2.3 SPECIFIC CASE: CONTRACT CANCELLATION IF SERVICES ARE SUSPENDED OR DISCONNECTED

The provisions of provincial laws pertaining specifically to communications services (all services in some provinces, only wireless telephone services in others) reaffirm consumers' right to cancel their contract at any time¹⁵⁰ and contain certain more specific terms – notices, deadlines, penalties – to limit certain provider practices that many critics considered unfair. Québec's Consumer Protection Act asserts, for example, that "The consumer may, at any time and at his discretion, cancel the contract by sending the form provided for in section 190 or another written notice to that effect to the merchant¹⁵¹." Similar regulations also exist in the Wireless Code¹⁵².

Due to the obstacles or technical difficulties involved in changing one's providers, the CRTC Interconnection Steering Committee (CISC) and its Business Process Working Group (BPWG) put in place interconnection rules added to those of the CRTC codes¹⁵³. Those rules notably regulate the process of transferring customers between providers. To facilitate as much as possible the steps a consumer must take to change providers (while increasing competition) and reduce service interruptions and disputes to a minimum¹⁵⁴, a customer may authorize his future provider to cancel on his behalf the communications services to which he is subscribing with a competitor¹⁵⁵. But coordination between providers is required for, among other things, access to indoor cabling of Internet access services and for the portability of phone numbers.

Those guidelines are of interest in an examination of protections offered to consumers with payment difficulties, because they grant providers a rather surprising right in cases of suspension for default of payment.

Thus a provider, who previously suspended service for default of payment, can refuse a request to transfer a phone number and even a request to cancel a contract, if a competitor makes those requests:

The working status of a telephone number at the time that the current local service provider receives a request determines whether or not the telephone number can be ported or disconnected [...] If the telephone number is not working at the time that the current local service provider receives a request to port or disconnect it,

¹⁵⁰ CPA, *op. cit.* note 107, sec. 214.6; LTNL, *op. cit.* note 107, sec. 35.8; L2013O, *op. cit.* note 123, c 8, sec. 16; CCSM, *op. cit.* note 122, sec. 196.

¹⁵¹ CPA, *op. cit.* note 107, sec. 214.

¹⁵² CRTC. *Wireless Code*, *op. cit.* note 87, section G(5)i).

¹⁵³ CRTC - BUSINESS PROCESS WORKING GROUP. *Local Service Ordering Overview. Canadian Local Ordering Guidelines*, section 1, version 6.2, February 2017, online: <https://crtc.gc.ca/cisc/fra/cisf3e0j.htm> (document consulted on June 2, 2019). These rules were developed by the working group, who files a report with the Steering Committee, who approves and then forwards it to the CRTC for final examination and approval: CRTC. *Telecom Decision CRTC 2002-15*, March 13, 2002, online: <https://crtc.gc.ca/eng/archive/2002/dt2002-15.htm>

¹⁵⁴ CRTC. *Telecom Decision CRTC 2009-538*, August 28, 2009, paras 14-15, online: <https://crtc.gc.ca/eng/archive/2009/2009-538.htm>; CRTC. *Politique réglementaire de radiodiffusion and de télécom CRTC 2011-191*, March 18, 2011, para 24, online: <https://crtc.gc.ca/eng/archive/2011/2011-191.htm>

¹⁵⁵ CRTC. *Broadcasting and Telecom Regulatory Policy CRTC 2011-191*, *op. cit.* note 154, para 27: "Additionally, the Commission imposes a condition of service pursuant to section 24 of the *Telecommunications Act* to the offering and provision of telecommunications services by Canadian carriers, including wireless carriers, to accept a customer cancellation request from a prospective new service provider, on behalf of a customer."

*the current local service provider may reject the request. To reject a request, the suspension / disconnection process must be fully completed (e.g. disabled in the service provider's switch)*¹⁵⁶.

*When Internet or TV service has been suspended at the initiation of the service provider, the current service provider may reject the request to disconnect the service*¹⁵⁷.

It should be noted that the guidelines don't allow the current provider to refuse a cancellation request that is made directly by a customer, but only a request made by the customer's future provider, mandated by him to do so on his behalf. As opposed to the limits on requests for transferring phone numbers – limits that can be explained by technical considerations –, we cannot understand why consumers' right to a simplified cancellation/change procedure can be set aside in cases of non-payment. The guidelines thus appear to address at once two issues that appear very different to us:

- Transferring a phone number
- Cancelling a contract (or changing providers)

A request to transfer a phone number is associated with consumers' right to the portability of their phone numbers. But during a period when telephone service is suspended or disconnected, the associated phone number loses its status of "active number" and is no longer associated with the customer in the system¹⁵⁸.

Inversely, a consumer's cancellation right suffers no technical restriction of this type. In fact, we tend to think that the interconnection rules' restrictions mainly constitute a (supplementary) means providers have been granted to pressure (for collecting payments and retaining customers) their customer in default of payment, since, of course, neither cancelling the contract nor changing providers free the customer from his debt to the provider¹⁵⁹.

Moreover, the first working group mandated in 2000 to handle customer transfer procedures in cases of suspension or disconnection made no mention of any limit that would be imposed on contract cancellation¹⁶⁰.

¹⁵⁶ **CRTC - BUSINESS PROCESS WORKING GROUP**. *Local Service Ordering Overview*, op. cit. note 153, sec. 218.2.

¹⁵⁷ *Ibid.*

¹⁵⁸ It should be noted that discussions were held within the working group about a customer's loss of his phone number. Norigen Communications rather believed that a simple service suspension, as opposed to disconnection, would not entirely end the link between customer and phone number: **NORIGEN COMMUNICATIONS**. *Contribution - Porting of Disconnected Numbers*, Business Process Working Group, doc. No. BPCO026a, May 2001, online: https://crtc.gc.ca/cisc/eng/cisf3e0_8.htm (document consulted on June 2, 2019).

¹⁵⁹ On this subject, the Commission stated that it "acknowledges" the view of certain providers that this procedure for changing providers "prevents customers from benefitting from retention offers and from being properly informed of contractual obligations by their current service providers": **CRTC**. *Broadcasting and Telecom Regulatory Policy CRTC 2011-191*, op. cit. note 154, para 40.

¹⁶⁰ **BUSINESS PROCESS WORKING GROUP**. *Disconnected Numbers*, report, December 2011, online: https://crtc.gc.ca/cisc/eng/cisf3e0_8.htm (document consulted on June 2, 2019).

2.2.4 REGULATIONS FOR DISCONNECTION BETWEEN PROVIDERS

Some communications service providers present on the market are called “resellers.” Given that those companies don’t own or operate the necessary facilities for providing communications services, they depend on infrastructure providers, in exchange for rental/user fees¹⁶¹.

As with consumers, it can happen that those reseller providers, generally companies of more modest size, encounter financial difficulties and cannot pay the owner provider the amounts due for using the facilities. The owner provider will then ultimately disconnect the reseller provider, and by the same token all of the latter’s customers.

Given that those consumers are not disconnected by their own provider, the above rules don’t apply¹⁶².

Following several such situations, in which consumers thus disconnected without prior notice (including one instance involving some 27,000 Canadian consumers¹⁶³), the CRTC established in 2017 certain measures to protect consumers involuntarily involved in those conflicts between providers.

To establish those measures, the CRTC took into account what infrastructure owner providers described to it as the common practice, i.e. sending reseller providers numerous prior notices of disconnection, followed by very rare disconnections¹⁶⁴. So the CRTC imposed unfortunately very minimal “protection measures.”

A reseller provider notified of imminent disconnection by the provider on which it depends for providing services must send its customers a written notice at least four working days before disconnection¹⁶⁵. The notice must indicate the services involved and, when a telephone service is affected, the repercussions on consumers’ ability to reach 9-1-1 services¹⁶⁶. Advised of the situation, a consumer may quickly change providers, according to the CRTC¹⁶⁷.

However, during the CRTC’s prior consultation on the subject, the CCTS had raised a major problem, which the CRTC ended up not addressing in the measures established. The organization that receives complaints from Canadian consumers of communications services expressed concern for consumers affected by this type of disconnection: Although those consumers are not responsible for the disconnection and their accounts are not in arrears, they lose the possibility of having their phone number transferred to another provider¹⁶⁸, an operation that absolutely must be performed before disconnection.

¹⁶¹ **CRTC**. *Non-Facilities-Based Providers. Responsibilities and Regulatory Obligations*, October 2018, online: <https://crtc.gc.ca/eng/comm/telecom/responon.htm>

¹⁶² **CRTC**. *Telecom Regulatory Policy CRTC 2017-235*, July 6, 2017, para 19, online: <https://crtc.gc.ca/eng/archive/2017/2017-235.htm>

¹⁶³ **CRTC**. *Telecom Commission Letter Addressed to Samer Bishay (Iristel Inc.) and Nicholas Kyriakides*, June 8, 2016, online: <https://crtc.gc.ca/eng/archive/2016/lt160608.htm>

¹⁶⁴ **CRTC**. *Telecom Regulatory Policy CRTC 2017-235*, *op. cit.* note 162, para 42.

¹⁶⁵ *Ibid.*, para 15.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*, para 17.

¹⁶⁸ **CCTS**. *Observations*, CRTC 2017-235, para 17.

2.3 Study of the regulation of debt collection procedures

2.3.1 PAYMENT ARRANGEMENTS

As described in the preceding chapter, rules for payment arrangements and repayment plans were put in place in 2005 by the CRTC as part of a pilot project, but were not maintained when the project expired¹⁶⁹.

When addressing the right of providers to suspend or disconnect a subscriber's service, the various codes since developed by the CRTC make a few allusions to non-compliance with payment arrangements¹⁷⁰. However, we find no regulation for payment arrangements between providers and consumers with payment difficulties.

The codes covering wireless and residential telephone services only provide the obligation to indicate, in a notice prior to disconnection, a consumer's option to make instalments, to the extent that the provider actually offers that option¹⁷¹. Providers thus retain the discretion to negotiate payment arrangements or not and to determine the latter's terms. Our study of providers' contracts offers little additional information on this subject; providers remain very discreet about the possibility of reaching payment arrangements, and even more so about the framework for those agreements, if applicable.

2.3.2 OTHER TYPES OF DEBT COLLECTION

When no payment arrangement is reached – or when an agreement fails – and the service is ultimately disconnected, providers generally do business with collection agencies to collect unpaid amounts from their former customers.

Since the issue of debt collection exceeds the scope of this report¹⁷², we note simply that there are no specific rules in this regard in the communications service sector. However, the Television Service Provider Code requires providers to indicate in the contract or related documents the moment “when a customer's account may be referred to a collection agency for missed payment¹⁷³.”

¹⁶⁹ **CRTC**. *Telecom Decision CRTC 2008-27*, *op. cit.* note 21.

¹⁷⁰ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 3.1(1)c); **CRTC**. *Wireless Code*, *op. cit.* note 87, section I(1)i)c).

¹⁷¹ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 3.2(1)c); **CRTC**. *Wireless Code*, *op. cit.* note 87, section I(2)ii)c).

¹⁷² For more information on debt collection practices in Canada, see **PIAC**. *All Along the Watch Tower: A Review of the Canadian Consumer Debt Collection Industry*, 2014, online: <http://www.piac.ca/wp-content/uploads/2016/03/All-Along-the-Watchtower-A-Review-of-the-Canadian-Consumer-Debt-Collection-Industry-ENGLISH-March-30-2015.pdf> (document consulted on June 20, 2019).

¹⁷³ **CRTC**. *Television Service Provider Code*, *op. cit.* note 97, section XIV(1)e).

Generally, the provincial framework for debt collection prohibits certain behaviours (threats, harassment, lies, etc.¹⁷⁴), but leaves a wide margin of manoeuvre to collection agencies, which engage in regularly denounced practices¹⁷⁵.

2.4 Study of protection measures applicable to credit report entries

The CRTC has shown very little interest to date in the practices of communications service providers regarding their subscribers' credit reports, although that was an inescapable aspect of providers' management of "bad debts."

The credit reports developed by credit rating agencies¹⁷⁶ regularly service providers when the time comes to evaluate the solvency of consumers who want to subscribe to providers' services¹⁷⁷. Canadian consumers' credit reports occasionally contain information on their telecommunications accounts¹⁷⁸, and providers (and collection agencies) are able to report to credit rating agencies any late payments and bad debts.

Because they exercise activities under federal legislative jurisdiction, communications service providers are a priori subject to the federal Personal Information Protection and Electronic Documents Act (PIPEDA)¹⁷⁹. That law establishes several principles that providers must apply when collecting, accessing, using or communicating their subscribers' personal information, such as that recorded in their credit report¹⁸⁰.

Several provinces, including Québec, have similar personal information protection laws¹⁸¹, that should be applied when a provider exercises an activity not under federal jurisdiction. As opposed to collecting and using personal information in view of offering services, we doubt that communicating information to a credit rating agency after a default of payment is actually related to the provision of communications services, an activity under federal jurisdiction.

¹⁷⁴ See for example in Québec: *Act respecting the collection of certain debts*, R-2.2, sec. 3; in British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2, sec. 114; in Newfoundland-and-Labrador: *Collections Regulations under the Collections Act*, CNLR 986/96; in the Northwest Territories: *Debt Collection Practices Regulations*, NWT Reg 049-2003, sec. 7; in Alberta: *Collection and Debt Repayment Practices Regulation*, Alta Reg 194/1999, sec. 12(1)i), ii) and j).

¹⁷⁵ See for example: **ALLALI, F.** *Agences de recouvrement: arrêter les abus*, Journal de Montréal, February 15, 2017, online: <https://www.journaldemontreal.com/2017/02/15/agences-de-recouvrement-arreter-les-abus> (article consulted on March 15, 2019); **RADIO-CANADA.** *Pratiques illégales chez des agences de recouvrement*, November 1, 2012, online: <https://ici.radio-canada.ca/nouvelle/585508/agences-recouvrement-harcelement> (article consulted on March 15, 2019); **LA FACTURE.** *Les agences de recouvrement*, part 1, 2004, online: https://ici.radio-canada.ca/actualite/v2/lafacture/niveau2_1714.shtml (page consulted on March 15, 2019).

¹⁷⁶ More commonly called "credit bureaus" or "credit agencies" or "credit reference agencies" (included among "personal information agents" in Québec (*Act respecting the protection of personal information in the private sector*, CQLR c P-39.1). In Canada, that essentially means Equifax and TransUnion.

¹⁷⁷ **CRTC.** *Telecom Regulatory Policy CRTC 2017-200*, op. cit. note 96, para 301.

¹⁷⁸ **FINANCIAL CONSUMER AGENCY OF CANADA.** *Understanding Your Credit Report and Credit Score*, August 2012, p.10, online: http://publications.gc.ca/collections/collection_2012/acfc-fcac/FC5-8-25-2012-eng.pdf (document consulted on April 15, 2019).

¹⁷⁹ *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, sec. 30(1).

¹⁸⁰ *Ibid.*, sec. 5(1).

¹⁸¹ *Act respecting the protection of personal information in the private sector*, op. cit. note 176.

2.4.1 CONSULTATION AND USE OF CONSUMERS' CREDIT REPORTS

A core principle of the PIPEDA concerns the purposes of information collection and use, and those purposes must be “appropriate in the circumstances,” in the view of a reasonable person¹⁸².

In practice, as we will see in the analysis of providers' contracts, providers collect and use credit report information to verify the solvency of future/new customers, in order to determine if a credit limit or security deposit might be required. Following an investigation, the Office of the Privacy Commissioner of Canada concluded in 2002 that collecting information to facilitate a credit check was acceptable in the context of subscription to a communications service¹⁸³.

In addition to a legitimate purpose, the PIPEDA states that the collection and use can take place only with the prior consent of the person whose personal information is sought¹⁸⁴.

The Act does not dictate how that consent must be obtained; the required consent form will vary according to the circumstances and the nature of the information¹⁸⁵; more-sensitive information requires more-explicit consent¹⁸⁶. We think the information contained in the credit report is sensitive information, as is that contained in the medical file or pertaining to a person's income, two examples provided by the PIPEDA¹⁸⁷. Requiring implicit consent or opt-out consent¹⁸⁸ would therefore likely not be appropriate for collecting and using information on consumer solvency.

Consent must be obtained while taking into account another PIPEDA principle – transparency:

The principle requires “knowledge and consent”. Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed¹⁸⁹.

¹⁸² *Personal Information Protection and Electronic Documents Act, op. cit.* note 179, sec. 5(3).

¹⁸³ **OFFICE OF THE PRIVACY COMMISSIONER OF CANADA**, *PIPEDA Case Summary #2002-94*, December 2002, online: <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2002/pipeda-2002-094/>

¹⁸⁴ *Personal Information Protection and Electronic Documents Act, op. cit.* note 179, Principle 4.3. Some exceptions are provided, but do not apply to communications service providers' collection or use of personal information contained in credit reports.

¹⁸⁵ *Ibid.*, Principle 4.3.4.

¹⁸⁶ *Ibid.*, Principle 4.3.6.

¹⁸⁷ *Ibid.*, Principle 4.3.4.

¹⁸⁸ On this subject, see the conditions developed by the Office of the Privacy Commissioner of Canada; a provider must meet those conditions to justify using opt-out consent: **OFFICE OF THE PRIVACY COMMISSIONER OF CANADA**, *PIPEDA Case Summary #2003-207*, August 2003, online: <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2003/pipeda-2003-207/>

¹⁸⁹ *Personal Information Protection and Electronic Documents Act, op. cit.* note 179, Principle 4.3.2

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Providers must document the purposes for which personal information is collected, but may specify those purposes verbally or in writing to the person concerned, depending on the circumstances¹⁹⁰.

Lastly, the courts mentioned an important point regarding the concept of informed consent for adhesion contracts. On the basis of what the Federal Court of Appeal states is a compromise between the right to privacy and the needs of businesses, it was determined that “A consent is not informed if the person allegedly giving it is not aware at the time of giving it that he or she had the possibility to opt out¹⁹¹.”

2.4.2 ENTERING INFORMATION IN THE CONSUMER’S CREDIT REPORT

Communications service companies are also allowed to enter information in their subscribers’ credit reports¹⁹²: unpaid accounts, bad debts, bills being collected¹⁹³.

Here again, because personal information is communicated to a third party, providers must obtain consumers’ prior consent¹⁹⁴.

¹⁹⁰ *Ibid.*, Principles 4.2.1 and 4.2.3.

¹⁹¹ *Englander v. Telus Communications Inc.*, 2004 CAF 387, para 67.

¹⁹² **COMMISSION D’ACCÈS À L’INFORMATION DU QUÉBEC**. *Le dossier de crédit*, January 2016, p.2, online: http://www.cai.gouv.qc.ca/documents/CAI_FI_dossier_credit.pdf (document consulted on June 20, 2019).

¹⁹³ **ACEF LANAUDIÈRE**, *Dossier de crédit*, 2019, online: <http://www.consommateur.qc.ca/acef-lan/intervention-budget-endettement/dossier-de-credit/> (page consulted on April 15, 2019).

¹⁹⁴ *Personal Information Protection and Electronic Documents Act*, *op. cit.* note 179, Principle 4.3; *Act respecting the protection of personal information in the private sector*, *op. cit.* note 176, sec. 13.

3. Study of Providers' Practices

After examining the applicable legal framework, we focused on the policies of several providers to verify how they apply that framework.

Due to the multitude of communications service providers on the Canadian market, we chose to limit our analysis to five providers that obtain the large majority of total revenues in the telecommunications services sector (Bell, Telus, Rogers, Videotron¹⁹⁵) or that are of special interest regarding bad debt management (Sasktel¹⁹⁶).

Moreover, the providers chosen also offer a variety of communications services (telephone, television, Internet access), covered differently by the CRTC codes (some of those services are not specifically regulated in certain provinces). We will thus be able to see how the providers address that complexity of the current legal framework.

It should be recalled that this analysis is performed by a consumer rights group; while the data are objective, our findings and conclusions are not necessarily those that the regulatory authorities would spontaneously reach. So although we can comment on the overall level of compliance by the market or certain providers, and can make recommendations, those authorities are responsible for determining how the problems we raise should be addressed, and for interpreting and applying relevant regulations.

3.1 Main aspects of security deposit policies

Given that some provinces' regulations pertain only to sending a deposit notice and to returning the deposit after the contract's expiry or cancellation, we will study providers' policies on security deposits in the light of CRTC codes providing regulations for deposit requirements and for mentioning the deposits in contracts.

In 2014, in a report on the Code's application to wireless services, Videotron stated that it didn't require a security deposit from its customers¹⁹⁷. A representative of the provider confirmed to us, in 2019, that the provider was still not requiring a deposit, at least in the usual sense of the term. In fact, a "prepayment" may be required of a customer, in an amount that can vary according to the services chosen, but not according to an assessment of the customer's solvency. That amount charged to the consumer at the moment of concluding the contract will serve to pay the customer's first bill(s).

Despite the provider's way of proceeding, its contract mentions that a consumer may be required to make a security deposit covering an eventual default of payment. So we will study that contract, as well as the others, in light of the CRTC codes' deposit requirements.

¹⁹⁵ With Shaw, those four providers represented 87% of total revenues in 2017: **CRTC**. *Communications Monitoring Report 2018*, *op. cit.* note 1, p.5.

¹⁹⁶ Sasktel's payment arrangement program served as an example for the CRTC during the development and implementation of the pilot project on bad debt repayment programs.

¹⁹⁷ **VIDEOTRON**. *Compliance Report - Application of the Wireless Code*, January 15, 2014, p.5.

3.1.1 SITUATIONS LEADING TO A DEPOSIT REQUIREMENT

A wireless or wireline telephone service provider that requires a security deposit of a consumer must justify that requirement, and indicate in the customer's file the grounds for the deposit requirement¹⁹⁸. However, nothing obliges the provider to mention in its contractual (or precontractual) documents the grounds likely to be invoked in support of a deposit requirement. Bell's terms of service are limited, for example, to stating that "Bell may require a security deposit and will provide you with the reason for requiring a deposit"¹⁹⁹.

Other providers do mention various reasons – including some that are more or less clear – that can lead to a deposit requirement:

- No evidence or insufficient information for evaluating solvency (Videotron²⁰⁰, Telus²⁰¹) – this situation refers mainly to cases where a consumer refuses to authorize the provider to access his credit report;
- No credit history (Telus²⁰²);
- Unsatisfactory credit rating (Telus²⁰³);
- "Financial risk" (Videotron²⁰⁴) or "abnormal risk of loss" (Telus²⁰⁵).

3.1.2 DEPOSIT AMOUNTS CHARGED

As we have seen, it's not only for residential telephone services that a legal framework – the Deposit and Disconnection Code – sets the amount that may be charged as a security deposit. The cap represents the total value of equipment provided to the customer for using the service, or an amount equivalent to three months' service charges²⁰⁶. This is generally found in providers' contracts for that service.

Regarding other communications services, providers' contracts are very vague on the deposit amounts that may be charged. For example, Sasktel's contracts simply mention

¹⁹⁸ **CRTC**. *Wireless Code*, *op. cit.* note 87, section H(i)b); **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.2.

¹⁹⁹ **BELL**. *Bell Mobility Terms of Service*, sec. 49, online: https://www.bell.ca/Bell_Mobility_Terms_of_service (page consulted on June 20, 2019); **BELL**. *Bell Terms of Service*, sec. 24, online: https://www.bell.ca/Styles/common/all_languages/all_regions/pdfs/Bell_terms_of_service.pdf (document consulted on June 20, 2019).

²⁰⁰ **VIDEOTRON**. *Terms and Conditions – Communications Service Contracts*, Part 2, sec. 13.1(3), online: <https://support.videotron.com/residential/terms-conditions> (page consulted on June 20, 2019): "At the time your service contracts are made, you authorize us to obtain, from financial institutions and other relevant information agencies, the necessary personal information to verify if you represent a financial risk."

²⁰¹ **TELUS**. *Internet Access Service Terms* [BC], online: <https://www.telus.com/fr/bc/support/article/internet-access-service-terms> (page consulted on June 20, 2019), arts 9(i), (ii) and (iii); **TELUS**. *Unregulated Local Telephone Service Terms* [BC], online: <https://www.telus.com/fr/qc/support/article/unregulated-local-telephone-service-terms> (page consulted on June 20, 2019), para g.

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ **VIDEOTRON**. *Terms and conditions*, *op. cit.* note 200, sec. 13.1(3).

²⁰⁵ **TELUS**. *Internet Access Service Terms*, *op. cit.* note 201, sec. 9(i), (ii) and (iii); **TELUS**. *Unregulated Local Telephone Service Terms*, *op. cit.* note 201, para g(i) à (iii).

²⁰⁶ **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 2.1.

Source : BELL. Part 1 Application by Rogers Communications (“Rogers”) Requesting Clarification of Telecom Regulatory Policy CRTC 2013-271 – The Wireless Code (“the Policy”), File No. 8633-R28-201501586, p.3²¹⁷.

The various CRTC codes – but not the provincial laws – still require providers at least to disclose the main points of their suspension and disconnection policies regarding their telephone and television services. Those policies are regulated with regard to residential and wireless telephone services.

Moreover, probably to avoid administrative difficulties in the case of bundled service subscriptions, several providers apply in a general way to other communications services the more restrictive rules established for telephone services. But not all the providers studied do so; some actually offer clearly weaker consumer protections, if any, when the regulatory framework expressly allows it or is silent on the subject.

3.2.1 SITUATIONS THAT CAN LEAD TO SUSPENSION OR DISCONNECTION

Under the wireless codes and disconnection and deposit policies, providers can suspend or disconnect a telephone service only if a customer fails to pay an overdue account exceeding \$50, or if an account has been overdue for more than two months, or if the subscriber doesn’t honour a payment arrangement reached with the provider²¹⁸.

Sasktel and Telus mention those three grounds for suspension and disconnection in their contractual documents²¹⁹. Bell also does, but only for telephone services²²⁰, i.e. those for which codes limit the acceptable grounds. Bell’s television and Internet access services provide instead that any failure to pay Bell according to a contract or a payment arrangement constitutes a valid reason for suspension or disconnection²²¹.

Similarly, Videotron and Rogers are content with indicating that a service may be suspended if one of the contractual commitments is not met, and give the example of an

²¹⁷ According to Bell, this type of information “is highly sensitive and, if disclosed, would provide competitors with strategic information about our collection strategies as well as the effectiveness of these strategies not otherwise available, from which they could develop more effective customer service and collection strategies. Moreover, the public release of this information would enable consumers who are, or may be, a credit risk to better understand how we prioritize the collection of past due accounts, which could reasonably cause greater numbers of customers to game the system by delaying their payments to the absolute latest possible opportunity.”

²¹⁸ **CRTC**. *Wireless Code*, *op. cit.* note 87, section I(1)i); **CRTC**. *Deposit and Disconnection Code*, *op. cit.* note 11, sec. 3.1.

²¹⁹ **TELUS**. *Service Terms between You and TELUS* [BC], sec. 36, online: <https://www.telus.com/fr/bc/support/article/service-terms-between-you-and-telus> (page consulted on June 20, 2019); **SASKTEL**. *SaskTel Wireless Service Terms of Service*, 2017, sec. 4.3, online: <https://www.sasktel.com/wps/wcm/connect/sasktel/04e0ec7c-3ad7-48dd-9b96-70528d41b15a/nt-wireless-service-terms-of-service.pdf?MOD=AJPERES&CVID=IPQ89JY&CVID=IPQ89JY> (document consulted on June 20, 2019); **SASKTEL**. *maxTV Terms of Service*, 2018, p.635, online: <https://www.sasktel.com/wps/wcm/connect/d54ebeebe-e399-4f8c-981e-5174ac12687e/nt-maxtv2017.pdf?MOD=AJPERES&CVID=mnDW.UR&CVID=IUqZffl&CVID=IUqZffl&CVID=IUqZffl&CVID=IUqZffl> (document consulted on June 20, 2019).

²²⁰ **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 61.

²²¹ **BELL**. *Bell Terms of Service*, *op. cit.* note 199, sec. 66(1)a).

unpaid bill²²². We don't know whether providers' internal policies set a floor beyond which suspension or disconnection procedures may be initiated, and if that is the case, if that floor complies with what the relevant CRTC codes stipulate.

We have noted that Bell and Rogers grant the right to suspend the service of a customer who is not in default of payment if he owes amounts to another company belonging to the provider²²³.

Rogers's contract doesn't mention what companies fall into the category of "a related Rogers entity²²⁴." In practice, it's highly unlikely that a consumer knows the extent of the Rogers Communications Inc. empire or its companies' identities (e.g. Fido, Chatr, PLUS, Toronto Blue Jays, Maclean's, Chatelaine, Today's Parent, and Hello! Canada, Rogers Platinum MasterCard, Fido MasterCard²²⁵).

Bell lists elsewhere in the contract the other companies targeted:

What if I owe money to another Bell company? If your account with Bell Canada, Bell Aliant, Bell Mobility (including Virgin Mobile), Bell ExpressVu (each a "Bell Company") is in arrears, Bell may invoice you for, collect or set off any amounts owed to these Bell Companies. Bell may also refuse to provide you with any Bell Services if you do not pay amounts owed to these Bell Companies²²⁶.

3.2.2 THE PROCEDURE PRIOR TO SUSPENSION OR DISCONNECTION

Under the wireless codes and the disconnection and deposit policies, providers are required to send a consumer notices before suspending or disconnecting a telephone service. The CRTC codes set deadlines for sending notices and the information that must accompany them. We would have expected in this regard that providers cite the codes' requirements almost verbatim in their telephone service contracts.

That is the case for Sasktel and Bell, the former applying those regulations to all its services²²⁷, whereas Bell applies them only to its telephone services²²⁸.

As for Videotron, the contract applicable to all its services contains no mention that a consumer will be informed of a suspension or disconnection 14 days in advance²²⁹. The

²²² **VIDEOTRON**. *Terms Conditions, op. cit.* note 200, sec. 15.5(2); **ROGERS**. *Rogers Terms of Service, op. cit.* note 213, sec. 2(i)1)i).

²²³ Notably, Bell reserves that right in its television and Internet access services, whereas Rogers reserves that right in all its contracts, whatever the service: **BELL**. *Bell Terms of Service, op. cit.* note 199, sec. 66(1)a); **ROGERS**. *Rogers Terms of Service, op. cit.* note 213, sec. 2(l)2)ii).

²²⁴ **ROGERS**. *Rogers Terms of Service, op. cit.* note 213, sec. 2(l)2)ii).

²²⁵ **ROGERS**. *Make more possible*, 2018 Annual Report, p.19, online: http://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_RCI_2018.pdf (document consulted on June 20, 2019).

²²⁶ **BELL**. *Bell Terms of Service, op. cit.* note 199, sec. 25.

²²⁷ **SASKTEL**. *SaskTel Wireless Service Terms of Service, op. cit.* note 219, sec. 4.3; **SASKTEL**. *maxTV Terms of Service, op. cit.* note 219, p.635.

²²⁸ **BELL**. *Bell Mobility Terms of Service, op. cit.* note 199, sec. 61.

²²⁹ **VIDEOTRON**. *Terms and Conditions, op. cit.* note 200, sec. 15.5(2).

contract doesn't specify that a second notice must generally be sent 24 hours before an interruption.

Telus's contract is even more incomplete on the matter, in only indicating situations in which a suspension or disconnection notice is not required. A consumer thus will thus have to deduce that in contrast, a notice will be sent to him before suspension or disconnection due to default of payment, since that information doesn't appear on the list²³⁰. No detail is given on the notice(s).

As opposed to Telus, Sasktel and Videotron, Bell has different suspension and disconnection rules for its Internet access and television services. As mentioned above, Internet access service is still not covered by any CRTC code, and the television service code contains no substantive regulation on suspension or disconnection, given that the provider's sole obligation is to notify consumers of its policy in that regard. Here is how Bell describes its policy in the contract:

*(...) at any time Bell can, without notice and for cause, suspend or cancel Bell Services in whole or in part (including blocking numbers or area codes or disconnecting your access to Programming), or disable Bell Equipment. Cause includes the situations listed below: you breach or fail to comply with any part of the Contract, including if (i) you fail to pay Bell in accordance with this Contract, you are late paying any deferred amounts under any payment arrangements with Bell, or you have previous past due amounts owing to Bell or a Bell company*²³¹.

(our underlined)

No prior notice, no minimum debt leading to service suspension or disconnection, no grace period enabling a consumer to correct his default. In the absence of legal regulations, Bell has sole discretion. However, in 2008, the provider had argued before the CRTC – successfully – that no regulation was required to ensure that providers don't engage in abusive disconnection activities²³². Certainly, the wording of the above provision is not reassuring.

Like Bell, Rogers reserves the right to suspend or disconnect a service without prior notice. However, as opposed to Bell, Rogers reserves that right in all its contracts, thus disregarding the regulations contained in the codes for wireless services and for disconnection and deposit policies:

We may restrict, suspend, block, disconnect or cancel any or all of your Services, Equipment, accounts or identifiers in any way, including 9-1-1 service, without notice or liability to you, if:

you are in breach of an Agreement, including for non-payment;

*[...] you agree to a deferred payment arrangement with us and fail to comply with its term*²³³.

²³⁰ **TELUS.** *Service Terms between You and Telus*, op. cit. note 219, sec. 36.

²³¹ **BELL.** *Bell Terms of Service*, op. cit. note 199, sec. 66(1)a).

²³² **BELL.** *Reply comments on the issues raised in PN 2008-16*, 2008-12-18, paras 20-23, online: https://crtc.gc.ca/partvii/fra/2008/8663/c12_200814740.htm (document consulted on June 2, 2019).

²³³ **ROGERS.** *Rogers Terms of Service*, op. cit. note 213, arts 2(i)1)i) and 2(i)1)iv).

(our underlined)

Lastly, we have few details about the possible forms of providers' notices, if applicable. No provider we studied indicated in its contracts the preferred means of communication. In representations before the CRTC, Bell argued that it generally contacted its customers with calls or text messages. In fact, the provider considered the latter method as most effective and quick²³⁴. For its part, Telus referred to voice messages and letters sent to its customers²³⁵.

Rogers's representations before the CRTC draw the most complete portrait of the provider's interactions with its customers in default of payment:

*All Rogers' customers have a grace period once their invoice is issued to make a payment, however, if no payment is received once this period has elapsed accounts go into the collection path and multiple attempts are made to reach the customer and obtain a payment. This includes, several attempts via automatic dialer; followed by a letter; email attempts; more attempts to reach the customer again by automatic dialer; followed by text message; automatic dialer again, and eventual suspension. Once a customer's account is suspended, collection attempts continue, including several email attempts if there is an email address on the customer's account; several letters; and several attempts to reach the customer at an alternative telephone number via automatic dialer*²³⁶.

(our underlined)

3.2.3 THE ACCOUNT STATUS DURING SUSPENSION OR FOLLOWING DISCONNECTION

Billing of suspended services

The contracts of Bell, Telus, Rogers and Sasktel provide that customers whose service is suspended (and not disconnected) remain responsible for paying monthly fees for the service (not provided)²³⁷.

Videotron's contract is silent on this subject, but a representative of the provider confirmed to us that a subscriber whose service is suspended is billed monthly so long as he doesn't contact Videotron to reach a payment arrangement or that his service is not ultimately disconnected (at his request or following receipt of multiple notices)²³⁸.

²³⁴ **BELL**. *Intervention of Bell - Part 1 Application by Rogers Communications Requesting Clarification of Telecom Regulatory Policy CRTC 2013-271 – The Wireless Code*, file No. 8633-R28-201501586, 2015.

²³⁵ **TELUS**. *Application of Rogers Communications Partnership for Clarification Under Telecom Regulatory Policy CRTC 2013-271 – The Wireless Code – Intervention of TELUS Communications Company*, 2015, para 26.

²³⁶ **ROGERS**. *Part I Application by Rogers Communications for Clarification Under Telecom Regulatory Policy CRTC 2013-271 – The Wireless Code*, file No. 8665-C12-2012-12448, 2015.

²³⁷ **SASKTEL**. *SaskTel Non-Tariffed Terms of Service*, *op. cit.* note 207, sec. 14.4; **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, sec. 2(i)2)v) and 2(i)2)vi); **TELUS**. *Service Terms between You and Telus*, *op. cit.* note 219, sec. 36; **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 64; **BELL**. *Bell Terms of Service*, *op. cit.* note 199, sec. 68.

²³⁸ Relevant excerpts from an exchange with a Videotron representative on its chat platform:

We find it highly problematic, of course, that a provider unilaterally deciding to interrupt the service still requires its co-contractor to meet his correlative obligation in full.

That practice seems to us all the more unfair that not all suspension situations necessarily require regular payment of service charges. A consumer who voluntarily suspends his service (because he will travel for several months, for example) won't pay regular monthly charges for the suspended service during that period. With Bell, Videotron and Sasktel, he will pay no service charges, but only a single administrative fee (\$30 to \$59, depending on the provider and the service concerned) to obtain a temporary suspension²³⁹. Telus and Rogers instead charge reduced bills during a voluntary suspension: \$10 to \$30 per month depending on the Telus bundle²⁴⁰ and \$5 per month with Rogers²⁴¹.

The disconnection procedure

In addition to the amounts billed to consumers monthly during suspension of their service, several providers charge fees to end a service suspension, i.e. to reinstate the service that a consumer has not received, but for which he never stopped being billed. Those fees are \$49.95 with Bell and \$35 with Telus and Rogers²⁴². The Sasktel and Videotron contracts don't specify the amount, but indicate that the customer whose service is suspended is responsible for paying service reinstatement fees²⁴³. Questioned about those fees, a Videotron customer service representative told us that it was on a "case by case basis," but that such fees could indeed be charged occasionally.

“Q : (...) Est-ce que Vidéotron continue à facturer les services lorsqu'ils sont suspendus pour défaut de paiement ?

R : Oui; jusqu'à ce que la personne nous contacte pour prendre une entente de paiement.

Q : Il n'y a aucune durée limite ? Tant que la personne ne contactera pas Vidéotron, le service sera suspendu and facturé ?

R : Non. Éventuellement il sera simplement débranché. Bien entendu, le tout est précédé de multiples avis.”

²³⁹ All the providers studied offer this possibility to voluntarily suspend the service for a maximum period of 3 to 8 months per year, depending on the provider: **BELL**. *How to activate a temporary suspension for Bell Fibe and Satellite TV*, online: https://support.bell.ca/billing-and-accounts/mybell/how_to_activate_a_temporary_suspension_for_your (page consulted on June 20, 2019); **VIDEOTRON**. *Everything you need to know about temporary service suspension*, forum, online: <https://forum.videotron.com/t5/News/Everything-you-need-to-know-about-temporary-service-suspension/ba-p/3852> (page consulted on June 20, 2019); **SASKTEL**. *Turning off service temporarily (seasonal disconnect)*, online: https://support.sasktel.com/app/answers/detail/a_id/23383/~/turning-off-service-temporarily-%28seasonal-disconnect%29 (page consulted on June 20, 2019) – It should be noted that exceptionally, suspension of Internet access service does require payment of \$15/month.

²⁴⁰ **TELUS**. *TELUS Home Service Vacation Suspension*, forum, online: <https://forum.telus.com/t5/tkb/articleprintpage/tkb-id/Mobility/article-id/365> (page consulted on May 20, 2019).

²⁴¹ **ROGERS**. *Vacation suspension of Internet/TV service*, forum, online: <https://communityforums.rogers.com/t5/Account-Support/Re-Vacation-suspension-of-Internet-TV-service/td-p/431685> (page consulted on June 20, 2019).

²⁴² **BELL**. *Bell Terms of Service*, op. cit. note 199, sec. 22 and annexe A; **ROGERS**. *Rogers Terms of Service*, op. cit. note 213, sec. 3(e)2 and **ROGERS**. *Rogers Administrative Charges*, online: <https://www.rogers.com/cms/pdf/Rogers-Administrative-Charges.pdf> (document consulted on June 20, 2019); **TELUS**. *Service Terms between You and Telus*, op. cit. note 219, sec. 36 and **TELUS**. *Payment options for overdue mobility fees*, online: <https://www.telus.com/en/qc/support/article/payment-options-overdue-mobility-fees> (page consulted on June 20, 2019).

²⁴³ **SASKTEL**. *SaskTel Wireless Service Terms of Service*, op. cit. note 200, sec. 4.3 in fine; **VIDEOTRON**. *Terms and Conditions*, op. cit. note 200, sec. 15.5(5).

Are those *service reinstatement, reactivation and reconnection* fees charged due to the consumer's failure to meet an obligation, i.e. payment of his bills? This question is important because it's generally prohibited, in Québec, to charge fees, penalties or damages to a consumer who doesn't meet an obligation, with the exception of interest incurred on outstanding amounts²⁴⁴.

Likely in response to that Québec regulation, Bell and Rogers contracts state that those fees will not be applicable to Québec residents²⁴⁵. No such exemption is found in Telus and Videotron contracts²⁴⁶.

3.2.4 SERVICE CANCELLATION DURING A SUSPENSION OR DISCONNECTION PERIOD

As we indicated in a previous section pertaining to an analysis of the applicable legal framework, providers may refuse a competitor's request (mandated by a consumer) to end the subscription and transfer a phone number, if applicable, when the service is suspended due to default of payment. But we found no regulation allowing them to refuse a cancellation request that would be made to them directly by the subscriber, whatever the status of the service or account in question.

All the provider contracts we studied also asserted that a customer can terminate his contract at any time by contacting a customer service representative. They also specify that early cancellation or termination fees may apply and that the consumer remains responsible for outstanding amounts.

3.3 Main aspects of pre-set spending limit plans

Several providers also offer another mechanism for customers who represent, according to the providers, a non-payment risk: mandatory participation in a spending or credit limit plan.

As part of that plan, a consumer's account is imposed a cap that cannot be exceeded by amounts due to the provider, including monthly service charges and all other additional charges incurred.

Except for a few aspects we will discuss below, those plans are not regulated by the CRTC. Generally, the plans enable consumers to subscribe to services without having to pay a security deposit. However, the plans entail a risk of "surprise suspension," since providers don't have to notify consumers before suspending the service once the limit is reached.

With the exception of Videotron, all the providers studied had such a plan.

²⁴⁴ CPA, *op. cit.* note 107, sec. 13. This provision of general application does not apply to auto-related credit agreements, sales contracts or long-term leases, which are subject to specific regulations.

²⁴⁵ **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, sec. 3(e)2) and **ROGERS**. *Rogers Administrative Charges*, *op. cit.* note 242; **BELL**. *Bell Terms of Service*, *op. cit.* note 199, sec. 22 and Appendix A *in fine*.

²⁴⁶ The question does not arise for contracts with Sasktel, which does not service Québec.

3.3.1 THE OPERATION OF SPENDING LIMIT PLANS

The CRTC has not set credit caps that providers can impose. Generally, the latter indicate in their contract or website that the amount is set according to an evaluation of the consumer's solvency²⁴⁷. At Bell, that limit will be set at an amount of \$200 to \$300²⁴⁸. At Sasktel, the limit imposed on the customer's account will be \$150 to \$500²⁴⁹.

Sasktel is alone in applying a spending cap to all its wireless service customers; the result of their solvency evaluation by the provider will not determine if a limit must be imposed, but only the amount of that limit²⁵⁰.

The credit limit set by providers is generally applied to customer accounts when customers first subscribe, but it can also be imposed or changed, upwards or downwards, during the subscription. In its contractual documentation, Rogers, for example, states that it reserves the right to set or change a customer's credit limit at any time while sending him a notice to that effect²⁵¹.

For their part, Telus and Bell allow their customers to have their credit limit withdrawn if all their payments have been made on time for 6 consecutive months and, at Telus, if their account has not been suspended due to non-payment in the 12 previous months²⁵². In its contractual documentation, Rogers doesn't provide details on the credit limit period or on its subscribers' possibility of having that limit withdrawn.

3.3.2 REDUCED PROTECTIONS AGAINST SUSPENSIONS OR DISCONNECTIONS

If a spending cap has been set on a subscriber's account, wireless service providers are not required to send a notice prior to suspension, and thus to wait 14 days before proceeding with it²⁵³. Why? According to the CRTC, those customers "*already know that a limit exists on their account, and they understand that in order to continue receiving service, they must not exceed their limits. As such, these informed customers do not need additional notice prior to a service suspension*"²⁵⁴.

²⁴⁷ **TELUS**. *Service Terms between YOU and TELUS*, *op. cit.* note 219, sec. 13(1); **ROGERS**. *Credit Limit Monitoring*, online: <https://www.rogers.com/customer/support/article/credit-limit-monitoring?setLanguage=fr> (page consulted on June 20, 2019); **SASKTEL**. *Wireless Spending Limit*, online: <https://www.sasktel.com/wps/wcm/connect/content/home/wireless/wireless-spending-limit> (page consulted on June 20, 2019).

²⁴⁸ **BELL**. *What is the credit limit program?*, online: <https://support.bell.ca/billing-and-accounts/billing/what-is-the-spending-cap-program> (page consulted on June 20, 2019).

²⁴⁹ **SASKTEL**. *Managing your wireless spending limit*, online: https://support.sasktel.com/app/answers/detail/a_id/17240 (page consulted on June 20, 2019).

²⁵⁰ **SASKTEL**. *Wireless Spending Limit*, *op. cit.* note 247.

²⁵¹ **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, sec. 4(d).

²⁵² **TELUS**. *Credit options from TELUS*, online: <https://www.telus.com/en/qc/support/article/telus-credit-limit-program> (page consulted on June 20, 2019); **BELL**. *What is the credit limit program?*, *op. cit.* note 248.

²⁵³ **CRTC**. *Wireless Code*, *op. cit.* note 87, section 1)2)i)c).

²⁵⁴ **CCTS**. *CCTS Annotated Guide to the CRTC Wireless Code*, *op. cit.* note 87, p.53, explaining: **CRTC**. *Telecom Decision CRTC 2015-376*, *op. cit.* note 135, para 28.

In practice, providers still appear – when technology permits it²⁵⁵ – to send notices to their customers before their balance reaches the credit limit imposed and/or before suspending the service. Telus sends two free text messages when the customer reaches 70% and then 85% of the limit²⁵⁶ (but no notice of suspension). Sasktel sends a first text messages when the customer reaches 80% of his limit, and a second message when he reaches 100%²⁵⁷. That second notice specifies the suspended services, because as opposed to other providers, Sasktel doesn't necessarily suspend all the services to which a consumer subscribes:

*If you reach your spending limit, we'll turn off services that would incur additional usage or overage charges, such as pay-per-use text messaging or data over the amount included in your plan. You'll still be able to make and receive calls, check your voice mail, and use services that are included with your plan, such as unlimited texting and your allotted amount of data*²⁵⁸.

Fortunately, suspensions due to attainment of a spending limit prove less costly to consumers than suspensions for non-payment, at least with certain providers. Rogers and Bell require in fact no processing or reinstatement fees on an account that was suspended for reaching the spending limit²⁵⁹. However, as with suspensions for non-payment, monthly service charges continue to be billed to consumers whose credit limit is reached, even if all services are suspended²⁶⁰.

3.4 Main aspects of payment arrangement policies

As mentioned in our chapter on the applicable legal framework, no regulations specifically cover payment arrangements between providers and customers who have payment difficulties.

A consumer's possibility of negotiating such an agreement and its terms are thus at the provider's entire discretion. The provider's negotiating power is obviously much greater than the consumer's, who risks disconnection, credit report blemishes, his debt being entrusted to a collection agency, etc.

The study of providers' practices in this regard offers few details on procedures and the types of agreements the providers accept. The majority of providers studied don't even mention in their contractual documents the existence of those possible payment arrangements²⁶¹.

²⁵⁵ Sasktel, for example, provides the following: "Tablets and mobile Internet sticks cannot receive text messages, so users won't receive any notice before they reach their spending limit.": **SASKTEL**. *Wireless Spending Limit*, *op. cit.* note 247.

²⁵⁶ **TELUS**. *Credit options from TELUS*, *op. cit.* note 252.

²⁵⁷ **SASKTEL**. *Wireless Spending Limit*, *op. cit.* note 247.

²⁵⁸ *Ibid.*

²⁵⁹ **ROGERS**. *Credit Limit Monitoring*, *op. cit.* note 247; **BELL**. *Bell Terms of Service*, *op. cit.* note 199, Appendix A, *a contrario*.

²⁶⁰ **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, sec. 4(d); **BELL**. *Bell Terms of Service*, *op. cit.* note 199, sec. 68 and annexe A *in fine*.

²⁶¹ Only Bell's contracts mentioned payment arrangements, and then indirectly, while stating that a customer could be disconnected without prior notice if such a payment arrangement is not honoured: **BELL**. *Bell Terms*

However, the websites or forums of Sasktel, Telus and Rogers indicate the possibility of contacting provider representatives in an attempt to reach payment arrangements²⁶². No details are disclosed publicly on the terms that may be offered by the providers. To have the service reconnected, must one pay in full the amounts due? Over what period can payments be spread? Can the amounts due be reduced after a period of regular payments? Is the customer's ability to pay taken into account when repayment terms are set? The lack of information on providers' practices clearly makes any informed negotiation difficult for a consumer with financial difficulties.

The regulation is stricter for telephone services of which the rates are still regulated by the CRTC. A company can't suspend or terminate the service "where the customer is prepared to enter into and honour a reasonable deferred payment arrangement²⁶³." How to determine that an agreement is reasonable? The rate terms don't answer that question, except for Sasktel, which has long had a "Bad Debt Repayment Plan," approved by the Commission:

- Monthly repayment of \$10.00 for a debt of \$249.99 or less
- Monthly repayment of \$25.00 for a debt of \$250.00 to \$999.99
- Monthly repayment of \$50.00 for a debt of \$1,000.00 or over²⁶⁴

Again, the monthly repayment amount is added to the monthly rate for the service to which the consumer subscribes. And yet, the reasonableness of payment arrangements is evaluated according to the amounts charged each month in light of the total debt and not of the consumer's ability to pay.

We don't know whether the provider also uses those repayment rates with consumers subscribing to unregulated services, or whether similar rates have been adopted by other providers in the country.

3.5 Main aspects of policies for handling unpaid bills

3.5.1 INTEREST ON UNPAID AMOUNTS

Providers have long opposed CRTC regulations on late fees, by arguing that the free market guaranteed adequate protection to consumers in default of payment²⁶⁵. According

of Service, *op. cit.* note 199, sec. 66(1)a) and **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 61(1)c).

²⁶² **TELUS**. *Payment options for overdue Mobility fees*, online:

<https://www.telus.com/en/qc/support/article/payment-options-overdue-mobility-fees> (page consulted on June 20, 2019); **ROGERS**. *Payment Arrangements*, online:

<https://www.rogers.com/customer/support/article/payment-issues#heading-grouped-accordion-4-0> (page consulted on June 20, 2019); **SASKTEL**. *Paying your SaskTel bill*, online:

https://support.sasktel.com/app/answers/detail/a_id/15429/-/paying-your-sasktel-bill (page consulted on June 20, 2019).

²⁶³ **BELL**. *General tariff / tarif général*, *op. cit.* note 208, sec. 22.2(c); **SASKTEL**. *General tariff*, *op. cit.* note 210, arts 65.4(1)c) and 65.5(1)e).

²⁶⁴ **SASKTEL**. *General tariff – basic services- Bad Debt Repayment Plan*, sec. 170.10(4), online:

<https://www.sasktel.com/wps/wcm/connect/fcdca333-7af6-4e95-b298-e94a1def9284/170.10.pdf?MOD=AJPERES&CVID> (document consulted on June 20, 2019).

²⁶⁵ **BELL**. *Comments, review of various customer account management regulatory measures - Telecom public notice CRTC 2008-16*, December 4, 2008, paras 22-23.

to providers, an offer of reasonable rates would be in their own interest, by encouraging customer loyalty in a competitive market. In 2009, the Commission, bowing to the providers' arguments, decided to abstain from regulating "late payment charges²⁶⁶." The CRTC justified its decision notably by invoking then-stable interest rates "within the norms established for all industries in Canada" in both regulated and forborne markets (less than 2% per month)²⁶⁷.

However, despite the representations of providers, including Bell, assuring that interest rates would remain stable even in forborne markets²⁶⁸, annual late payment charges, less than a year later, i.e. as of June 2010, jumped from 26.82% to 42.586% at Bell²⁶⁹. That high rate is now also the one set in Rogers and Sasktel contracts²⁷⁰.

In reality, an overview of the various interest rates applied by Canadian providers to outstanding balances rather tends to demonstrate that "free market forces" certainly don't offer the protections so loudly advertised. With few exceptions, the greater a provider's market shares, the higher its late payment charges.

As shown in the table below, four out of the five providers that obtain around 85% of the total revenues of communications in 2017²⁷¹ are at the high end of interest rates charged to outstanding accounts. Additionally, the annual interest rate imposed by Bell, Rogers and Sasktel is more than double that of certain reseller/independent providers (without facilities, and obtaining only 3.6% of total revenues in the communications services market²⁷².

Table 5
Interest rates charged to outstanding accounts
by communications service providers

Providers	Interest Rates (Monthly / Annual)	Market Share
BELL ²⁷³	3% / 42.586%	Top 5
ROGERS ²⁷⁴	3% / 42.58%	Top 5
SASKTEL ²⁷⁵	3% / 42.58%	Major regional player

²⁶⁶ CRTC. Telecom Regulatory Policy CRTC 2009-424, *op. cit.* note 69, para 40.

²⁶⁷ *Ibid.*, para 38.

²⁶⁸ BELL. *Comments, review of various customer account management regulatory measures*, *op. cit.* note 265, para 23: "The Companies note their competitors charge LPCs on an unregulated basis and the LPC rate has remained within industry norms that do not materially impact the affordability of service. Similarly, the Companies themselves charge LPCs on an unregulated basis with respect to many forborne services (such as forborne business telecommunications services, wireless service and Internet service) and the prevailing rates are generally at or below 2% per month on a compounded basis, a level that reflects industry norms and does not adversely affect affordability."

²⁶⁹ Trudel v. Bell Canada, 2011 QCCS 6750, paras 15 to 17.

²⁷⁰ SASKTEL. *SaskTel Wireless Service Terms of Service*, *op. cit.* note 219, sec. 3.2; ROGERS. *Rogers Terms of Service*, *op. cit.* note 213, sec. 3(c).

²⁷¹ CRTC. *Communications Monitoring Report 2018*, *op. cit.* note 1, p.10.

²⁷² *Ibid.*, p.5.

²⁷³ BELL. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 41(1)a); BELL. *Bell Terms of Service*, *op. cit.* note 199, Appendix A.

²⁷⁴ ROGERS. *Rogers Terms of Service*, *op. cit.* note 207, sec. 3(c).

²⁷⁵ SASKTEL. *SaskTel Non-Tariffed Terms of Service*, *op. cit.* note 207, sec. 10.3.

Communications services: Are the recourses before disconnection sufficient?

TELUS ²⁷⁶	2% / 26.82%	Top 5
SHAW ²⁷⁷	2% / 26.82%	Top 5
COGECO ²⁷⁸	2% / 26.82%	Major regional player
XPLORNET ²⁷⁹	2% / 26.82%	Major regional player
EASTLINK ²⁸⁰	2% / 26.8%	Major regional player
EBOX ²⁸¹	2% / 26.82%	Independent
TEKSAVVY ²⁸²	2% / 26.82%	Independent
COMWAVE ²⁸³	2% / 24%	Independent
PRIMUS ²⁸⁴	2% / 24%	Independent
VIDÉOTRON ²⁸⁵	1.5% / 19.56%	Top 5
IRISTEL ²⁸⁶	1.5% / 18%	Independent
B2B2C ²⁸⁷	1.5% / 18%	Independent
DISTRIBUTEL ²⁸⁸	1.25% / 16.07%	Independent
ACANAC ²⁸⁹	1.25% / 16.07%	Independent
ORICOM ²⁹⁰	1.2% / 15.38%	Independent

²⁷⁶ **TELUS**. *Service Terms between You and Telus*, op. cit. note 219, sec. 23; **TELUS**. *Internet Access Service Terms*, op. cit. note 201, section f.

²⁷⁷ **SHAW**. *Joint terms of service*, p.4, online: https://www.shaw.ca/uploadedFiles/Terms_of_Use/terms_of_service.pdf (document consulted on June 20, 2019).

²⁷⁸ **COGECO**. *General Terms and Conditions*, sec. 6, online: https://www.cogeco.ca/sites/default/files/pdf/Legal/201905_terms-conditions-qc-en.pdf (document consulted on June 20, 2019).

²⁷⁹ **XPLORNET**. *Xplornet End User Agreement*, sec. 10, online: <https://www.xplornet.com/legal/end-user-agreement/> (page consulted on June 20, 2019).

²⁸⁰ **EASTLINK**. *EastLink Long Distance Savings Plan Terms of Service*, online: <https://www.eastlink.ca/portals/0/telephone/ellongdistancetermsandconditions.pdf> (page consulted on June 20, 2019).

²⁸¹ **EBOX**. *Terms and Conditions*, online: <https://www.ebox.ca/en/terms-and-conditions/> (page consulted on June 20, 2019).

²⁸² **TEKSAVVY**. *Terms of Service*, sec. 8.8, online: <https://teksavvy.com/policies/legal-stuff/terms-conditions/> (page consulted on June 20, 2019).

²⁸³ **COMWAVE**. *Terms & Conditions*, sec. 2.02, online: http://www.comwave.net/legals/#legal_content (page consulted on June 20, 2019).

²⁸⁴ **PRIMUS**. *Terms of Use*, sec. 10(c), online: https://primus.ca/index.php/ont_en/terms-of-use/ (page consulted on June 20, 2019).

²⁸⁵ **VIDÉOTRON**. *Terms and Conditions*, op. cit. note 200, sec. 4.3(2).

²⁸⁶ **IRISTEL**. *Wireline Terms of Service*, sec. 5(a)4, online: <https://www.iristel.com/terms> (page consulted on June 20, 2019).

²⁸⁷ **B2B2C**. *Residential Service Contract*, sec. 3(2), online: <https://www.b2b2c.ca/en/legal-en/residential-service-contract/> (page consulted on June 20, 2019).

²⁸⁸ **DISTRIBUTEL**. *Terms & Conditions*, sec. 2(1), online: <https://www.distributel.ca/terms-and-conditions/> (page consulted on June 20, 2019).

²⁸⁹ **ACANAC**, *Terms & Conditions*, sec. 2(1), online: <https://www.acanac.com/terms-conditions/> (page consulted on June 20, 2019).

²⁹⁰ **ORICOM**. *Terms and Conditions*, sec. 3.5, online: https://www.oricom.ca/media/71502/terms_and_conditions.pdf (document consulted on June 20, 2019).

Does that mean the competition isn't strong enough to adequately "control" the major providers' interest rates? We think so.

It should be noted that in 2011, a class action was authorized in Quebec against Bell Canada and Bell Mobility regarding the monthly interest rate of 3% applied to their customers' outstanding accounts²⁹¹. The petitioner argued that this rate was unfair and unconscionable under the Civil Code of Québec and the Consumer Protection Act²⁹². No decision on the matter has yet been rendered.

3.5.2 FORWARDING A CUSTOMER FILE TO A COLLECTION AGENCY

Providers offer little information on their collection practices in their contracts and related documents.

Generally, all declare that they reserve the right to send their customers' personal information to a representative – a collection agency – mandated to collect amounts due²⁹³.

The moment when providers send outstanding accounts to those agencies varies considerably. Rogers's contract states that a file can be sent to a collection agency 25 days after an account is closed due to non-payment²⁹⁴ (again, that closure generally follows one or more suspension periods). In 2005, Bell told the CRTC that it sent customer files to a collection agency at least 90 days after closing an account²⁹⁵. We don't know that is still Bell's practice.

At Videotron, using a collection agency is reportedly not limited to accounts closed due to non-payment; the contract states that a customer file can be sent to a collection agency 50 days after the date indicated on an unpaid invoice²⁹⁶.

For their part, Telus and Sasktel offer absolutely no indication, in their contractual documents or on their website, about their collection practices.

Some providers charge fees for collection procedures: \$35 from Rogers²⁹⁷ and \$15.50 from Bell²⁹⁸, which specify that those fees are not applicable to Québec residents. As mentioned above, Québec providers are not allowed to charge a consumer, for not meeting an obligation, any fees, penalties or damages other than incurred interest²⁹⁹. But that prohibition does not prevent some independent providers operating in the province to state in their contracts that they charge those fees to customers in default of payment³⁰⁰.

²⁹¹ Trudel v. Bell Canada, 2011 QCCS 6750 (Aka-Trudel case).

²⁹² Bell Canada v. Aka-Trudel, 2017 QCCA 64, para 3.

²⁹³ **TELUS**. *Service Terms between You and Telus*, op. cit. note 219, sec. 31; **BELL**. *Bell Terms of Service*, op. cit. note 199, sec. 14; **BELL**. *Bell Mobility Terms of Service*, op. cit. note 199, sec. 4; **VIDEOTRON**. *Terms and Conditions*, op. cit. note 200, art 4.3(4); **ROGERS**. *Rogers Terms of Service*, op. cit. note 213, pp.28-33.

²⁹⁴ **ROGERS**. *Rogers Terms of Service*, op. cit. note 213, sec. 3(d).

²⁹⁵ **CRTC**. *Telecom Decision CRTC 2005-38*, op. cit. note 20.

²⁹⁶ **VIDEOTRON**. *Terms and Conditions*, op. cit. note 200, sec. 4.3(4).

²⁹⁷ **ROGERS**. *Rogers Administrative Charges*, op. cit. note 242.

²⁹⁸ **BELL**. *Bell Terms of Service*, op. cit. note 199, sec. 22 and Appendix A.

²⁹⁹ CPA, op. cit. note 107, sec. 13(1).

³⁰⁰ See for example: **COMWAVE**. *Terms & Conditions*, op. cit. note 283, sec. 2.0; **V MEDIA**. *Service Agreement – Terms & Conditions*, sec. 7(c), online: <https://www.vmedia.ca/en/support/policy-csa> (page consulted on June 20, 2019); **BRAVO TELECOM**. *Agreement on the Terms and Conditions Relating to*

3.6 Main aspects of policies regarding customers' credit reports

3.6.1 CONSULTING AND USING A CONSUMER'S CREDIT REPORT

As mentioned above, the PIPEDA provides that prior consent from the person concerned by the personal information is required for its collection and use. For consent to be informed, the provider must tell the consumer what information it wants to collect, who will collect that information, whether it is a third party, and how that information will be used. In practice, providers' contracts do mention those aspects, more or less clearly and completely.

As for using credit rating agencies and a consumer's credit history³⁰¹, all the providers indicate – in more or less specific wording – that the purpose of collecting that information is to verify or evaluate his solvency. Rogers draws the most detailed portrait of the reasons for its collection of information, i.e. "to manage credit and business risks; collect an outstanding debt; detect, prevent, manage, and investigate fraud or other unauthorized or illegal activity³⁰²." Inversely, Telus remains very vague, about a collection to "establish and maintain a commercial relationship with you and provide ongoing service³⁰³."

Providers are also very vague about the moment when personal information is collected or used. Bell's contract mentions, for example, that it collects such information "from time to time³⁰⁴." Worse, other providers, such as Videotron³⁰⁵ and Rogers³⁰⁶, simply offer no details about the period when personal information is collected or used.

Since all providers state in their contracts that they will collect information on their subscribers' solvency, by signing the contract the consumer agrees, at least theoretically, to his provider's practice. Several providers still say more explicitly that entering into the contract constitutes approval of their request to collect and use such information:

- Bell contracts use the following formulation: "by accepting this agreement you consent to our [...]"³⁰⁷
- Telus contracts use the following formulations: "You also authorize Telus to [...]"³⁰⁸ and "By using the Services and incurring charges for such use, you authorize TELUS [...]"³⁰⁹

Bravo Telecom's Services, sec. 12, online: <https://www.bravotelecom.com/en/terms-of-use/> (page consulted on June 20, 2019).

³⁰¹ See for example: **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note, sec. 4; **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, p.28; **SASKTEL**. *SaskTel Non-Tariffed Terms of Service*, *op. cit.* note 207, sec. 19.4; **VIDEOTRON**. *Terms and Conditions*, *op. cit.* note 200, sec. 13.1.

³⁰² **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, p.28.

³⁰³ The contract refers to para 2.1 of TELUS's privacy policy: "Subject to the above, you agree that TELUS may collect, use and disclose personal information about you for the purposes identified in the TELUS Privacy Commitment. You can view this commitment at telusmobility.com/privacy." **TELUS**. *Service Terms between You and Telus*, *op. cit.* note 219, sec. 31.

³⁰⁴ **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 4.

³⁰⁵ **VIDEOTRON**. *Terms and Conditions*, *op. cit.* note 200, section 13 *a contrario*.

³⁰⁶ **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, pp.28-33 *a contrario*.

³⁰⁷ **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 4.

³⁰⁸ **TELUS**. *Service Terms between You and Telus*, *op. cit.* note 219, sec. 31.

³⁰⁹ **TELUS**. *Satellite TV Service Terms*, *op. cit.* note 211, sec. 8.

Communications services: Are the recourses before disconnection sufficient?

- Videotron's contracts state: "At the time your service contracts are made, you authorize us to obtain [...]"³¹⁰

Given that communications service contracts are adhesion contracts³¹¹, we may question a consumer's possibility of refusing the collection of information on his solvency, while still subscribing with the provider.

Only two of the five major providers studied mentioned that possibility in their contracts. Bell very clearly offers options to a consumer who would refuse the collection and use of information on his solvency:

*A security deposit may be required to determine your eligibility for Services should you decline a credit check upon activation (see Section 24)*³¹².

*Prepaid services are available without a credit check*³¹³.

More generally, Rogers's contract simply mentions that a refusal could limit the provider's ability to offer products, services or offers to the consumer³¹⁴.

The other providers' contracts are silent on the possibility or consequences of a refusal. However, except for residential telephone services of which the rates are still regulated (in remote or sparsely populated areas), providers have no obligation to provide services, i.e. they can refuse to provide services to a consumer³¹⁵.

3.6.2 ENTERING INFORMATION IN A CONSUMER'S CREDIT REPORT

As with the right to collect and use personal information on their subscribers' solvency, the right of providers to enter notes in subscribers' credit reports is included in the contracts of all the providers.

By signing the contract, consumers "consent" to that disclosure of their personal information to third parties, i.e. credit rating agencies.

³¹⁰ **VIDEOTRON**. *Terms and Conditions*, *op. cit.* note 200, sec. 13.1.

³¹¹ I.e., contracts of which the essential stipulations are imposed by the provider and that cannot be freely negotiated by consumers, to paraphrase the definition presented in the Civil Code of Québec, chapter CCQ-1991, sec. 1379.

³¹² **BELL**. *Bell Terms of Service*, *op. cit.* note 199, sec. 14.

³¹³ **BELL**. *Bell Mobility Terms of Service*, *op. cit.* note 199, sec. 4.

³¹⁴ **ROGERS**. *Rogers Terms of Service*, *op. cit.* note 213, p.29.

³¹⁵ **CRTC**. *Telecom Regulatory Policy CRTC 2016-496*, paras 3 and 5 *a contrario*, online: <https://crtc.gc.ca/eng/archive/2016/2016-496.htm>

4. Portrait of the Main Problems Encountered by Consumers in a Precarious Financial Situation, as Reported to the CCTS

In this section, we will analyse problems reported to the CCTS about providers' practices regarding security deposits, credit ratings, disconnection and suspension, and payment arrangements.

The Commission for Complaints for Telecom-television Services (CCTS) is an organization responsible for settling complaints made by individuals and small businesses against telecommunications and television service providers. When the CCTS investigates complaints, it applies the rules provided by the three CRTC codes described above, i.e. the Deposit and Disconnection Code, the Wireless code and the Television Service Provider Code, and ensures compliance with contracts between providers and consumers. The organization has existed since 2007 and its mandate has been broadened several times since its creation (services included and participating providers)³¹⁶.

In its first years of existence, the CCTS identified problems reported by consumers according to very broad categories ("contractual dispute," "service delivery," etc.). So we cannot distinguish what problems specific to this report were complained about at that time.

4.1. Problems related to security deposits

The CCTS receives few complaints about security deposits that providers require of certain consumers. Among complaints received in this regard, the great majority concern non-return of that deposit to the consumer, as shown in Table 3 below.

³¹⁶ CCTS. *About CCTS – A short history*, 2019, online: <https://www.ccts-cprst.ca/about-ccts/overview/a-short-history/> (page consulted on April 22, 2019).

Table 6
Problems related to security deposits as recorded by the CCTS

Years	Problems Related to Security Deposits		
	Total Problems (number)	Problems Related to Non- Return of Deposits (number)	Percentage of Non- Return of Deposits (%)
2011-2012 ³¹⁷	36	23	64%
2012-2013 ³¹⁸	122	98	80%
2014-2015 ³¹⁹	98	75	77%
2015-2016 ³²⁰	93	69	74%
2016-2017 ³²¹	87	61	70%
2017-2018 ³²²	111	90	81%

As we have seen, the conditions for returning and reviewing security deposits were very frequently absent from the contracts analysed in chapter 3 of this study, despite obligations to that effect imposed on telephone service providers.

4.2 Problems related to service disconnections/suspensions

Complaints made to the CCTS about service disconnections and suspensions are much more frequent.

The majority of disconnection and suspension problems reported to the organization in recent years concern wireless telephone service, which isn't surprising since this is the most expensive communications service in the country; it represents on average 41% of household expenditures for their communications services³²³. Internet access services

³¹⁷ CCTS. *Annual Report 2011-2012 - We listen. We help.*, p.35, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2011-2012.pdf> (document consulted on June 2, 2019).

³¹⁸ CCTS. *Annual Report 2012-2013 - When You Need Help*, p.37, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2012-2013.pdf> (document consulted on June 2, 2019).

³¹⁹ CCTS. *Annual Report 2014-2015 – Making the Tough Calls*, Appendix B, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2014-2015.pdf> (document consulted on June 2, 2019).

³²⁰ CCTS. *Annual Report 2015-2016 – Guidance in a Sea of Change*, Appendix B, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/06/CCTS-Annual-Report-2015-2016.pdf> (document consulted on June 2, 2019).

³²¹ CCTS. *Annual Report 2016-2017*, Appendix B, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/11/CCTS-Annual-Report-2016-2017.pdf> (document consulted on June 2, 2019).

³²² CCTS. *Annual Report 2017-2018 – Helping Canadians for 10+ Years*, Appendix B, online: <https://www.ccts-cprst.ca/wp-content/uploads/2018/11/CCTS-Annual-Report-2017-2018.pdf> (document consulted on June 2, 2019).

³²³ CRTC. *Communications Monitoring Report 2018*, *op. cit.* note 1, p.27.

come in second place, with slightly more than 20% of disconnection and suspension problems identified by the CCTS.

Table 7
Problems related to service disconnections, as recorded by the CCTS

Years	Problems Related to Disconnections and Suspensions		
	Total Problems (number)	Problems Related to Wireless Service (number)	Percentage Related to Wireless Service (%)
2012-2013 ³²⁴	284	158	56%
2014-2015 ³²⁵	428	266	62%
2015-2016 ³²⁶	378	226	60%
2016-2017 ³²⁷	345	200	58%
2017-2018 ³²⁸	522	281	54%

* The 2013-2014 data are not found at the **CCTS. Annual Report 2013-2014**, *op. cit.* note 136.

Among specific problems identified by the organization, we observe the absence of a notice prior to disconnection or suspension, and sending a notice within a period not in compliance with the codes' requirements³²⁹. In July 2016, a manager of the organization indicated to a La Presse journalist that "l'interruption de service sans avoir fourni un préavis convenable rest[ait] le sujet de litige le plus fréquent"³³⁰.

For example, whereas the telephone service codes require that a notice be sent at least 14 days before disconnection or suspension, the CCTS reported, in its 2013-2014 annual report, the case of a consumer notified on the same day:

A home phone customer was paying for her service through automatic payments on her credit card. In August 2013, her credit card expired and her payment could not be processed. As a result, the customer's service was suspended in September. The customer submitted a complaint to CCTS indicating that she was not aware that her credit card had expired and that she did not receive notice from her provider that her account was overdue, nor that her services would be

³²⁴ **CCTS. Annual Report 2012-2013**, *op. cit.* note 318, p.36.

³²⁵ **CCTS. Annual Report 2014-2015**, *op. cit.* note 319, Appendix B.

³²⁶ **CCTS. Annual Report 2015-2016**, *op. cit.* note 320, Appendix B.

³²⁷ **CCTS. Annual Report 2016-2017**, *op. cit.* note 321, Appendix B.

³²⁸ **CCTS. Annual Report 2017-2018**, *op. cit.* note 322, Appendix B.

³²⁹ See for example: **CCTS. Annual Report 2013-2014**, *op. cit.* note 136, p.23.

³³⁰ **GRAMMOND, S. Avant qu'on vous coupe le téléphone**, La Presse, July 27, 2016, online: http://plus.lapresse.ca/screens/be944e7a-91fd-4af4-b73a-c1709c6be145_7C_0.html (page consulted on April 2, 2019).

*disconnected. During the course of our investigation, the service provider gave us a copy of the email notification that it claims it provided to the customer. Upon review of the email, we noted that it was dated the same date that the disconnection of the service occurred*³³¹.

In total, one-third of Wireless Code violations confirmed by the CCTS concerned notices prior to disconnection or suspension (sending, period, content) last year³³². As mentioned above, that Code addresses a wide variety of other subjects (contractual clauses, prepaid, roaming charges, unlocking, etc.). Disconnection regulations only figure in one of the document's ten sections.

We also observe consumer problems reported to the CCTS about an invoice following disconnection or suspension. Those cases are unfortunately poorly documented by the organization. In 2008-2009, it reported for example that they still represented 7% of all reported billing problems³³³. Some, if not the majority, of those complaints likely concern billing of monthly fees during the suspension period following non-payment, or excessive bills for service reconnection or reinstatement – problematic aspects identified in our examination of providers' contractual documents.

Lastly, although the practice is not widespread, it's appropriate to report the case of a provider that used disconnection as a reprisal after a customer filed a complaint before the CCTS in 2010. The CCTS of course intervened with the provider to make it understand that such a practice would not be tolerated³³⁴.

4.3 Problems related to payment arrangements/difficulties

The CCTS identifies less problems with payment arrangements than with service disconnections and suspensions. In 2017-2018, it recorded only 158 complaints about a "payment arrangement dispute"³³⁵. It appears that one of the most frequent problems in this regard pertains to providers' quickness in suspending services due to non-compliance with a payment arrangement³³⁶. Under the CRTC codes, providers are not required to give a new notice before disconnection if a notice was already given before the arrangements were made and if the consumer has never honoured those arrangements.

While providers are already allowed to proceed quickly in such a situation, some of the situations reported by the CCTS expose providers' excessive rigidity in that regard, their discounting of situations beyond consumers' control, such as bank processing times³³⁷.

³³¹ CCTS. *Annual Report 2013-2014*, *op. cit.* note 136, p.23.

³³² CCTS. *Mid-Year Report August 1, 2018 to January 31, 2019*, online: <https://www.ccts-cprst.ca/wp-content/uploads/2018/04/CCTS-Mid-Year-Report-2017-2018.pdf> (document consulted on June 2, 2019).

³³³ CCTS. *Annual Report 2008-2009*, p.21, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2008-2009.pdf> (document consulted on June 2, 2019).

³³⁴ CCTS. *Annual Report 2010-2011 – Restoring Connections*, p.30, online: <https://www.ccts-cprst.ca/wp-content/uploads/2017/07/CCTS-Annual-Report-2011.pdf> (document consulted on June 2, 2019).

³³⁵ CCTS. *Annual Report 2017-2018*, *op. cit.* note 322, p.68.

³³⁶ CCTS. *Annual Report 2014-2015*, *op. cit.* note 319, p.17.

³³⁷ *Ibid.*

Again, it's with wireless services that we find the great majority of disputes reported to the CCTS about payment arrangements³³⁸.

4.4 Problems related to credit reports

According to the CCTS's most recent annual report, credit rating problems ranked 10th among all problems reported³³⁹. The organization had received 900 complaints about that in 2017-2018³⁴⁰. However, it gives very few details or examples of specific situations reported to it.

In fact, from what we know of credit rating problems, most of them concern wireless telephone services, here again³⁴¹. Moreover, credit rating was the most important problem reported about some wireless service providers³⁴².

The CCTS doesn't report complaints about providers' entries in credit reports after a default of payment.

³³⁸ **CCTS. Annual Report 2014-2015**, *op. cit.* note 320, Appendix B; **CCTS. Annual Report 2015-2016**, *op. cit.* note 320, Appendix B; **CCTS. Annual Report 2016-2017**, *op. cit.* note 321, Appendix B; **CCTS. Annual Report 2017-2018**, *op. cit.* note 322, Appendix B.

³³⁹ **CCTS. Annual Report 2017-2018**, *op. cit.* note 322, p.16.

³⁴⁰ *Ibid.*, p.71.

³⁴¹ 51% in 2017-2018: **CCTS. Annual Report 2017-2018**, *op. cit.* note 322, Appendix B; **CCTS. Annual Report 2011-2012**, *op. cit.* note 317, p.35; **CCTS. Annual Report 2012-2013**, *op. cit.* note 318, p.37.

³⁴² See for example Koodo: **CCTS. Annual Report 2013-2014**, *op. cit.* note 136, p.30; **CCTS. Annual Report 2015-2016**, *op. cit.* note 320, p.33; **CCTS. Annual Report 2016-2017**, *op. cit.* note 321, p.36.

5. Consultation of Key Actors

To offer a more in-depth description of the situation (given that CCTS data provide few details), we wanted to consult a variety of stakeholders:

- Budget consultation organizations that directly work among consumers with financial difficulties, to detail certain problems facing communications service consumers who have payment difficulties, and to learn the stakeholders' impressions of providers' practices in that regard;
- Consumers, to draw a portrait of the type and scope of problems encountered and to evaluate consumers' knowledge of the regulations in place on the subject;
- Communications service providers, to learn their views on the existing legal framework and on our observations of their practices when consumers experience payment difficulties.

In the following pages, we report the results of those consultations³⁴³.

5.1 Consultation of budget consultation organizations

We asked consumer rights organization members of Union des consommateurs to answer a few questions about problems that consumers with payment difficulties may encounter with their communications service providers³⁴⁴. Those organizations work daily among consumers in the context of budget consultations, workshops on a variety of subjects related to personal finances (debt, taxes, savings, etc.) and other interventions to assist and inform consumers (including, occasionally, help in negotiating payment arrangements).

Given the context, it's not surprising that the comments we received pertain mainly to payment arrangements proposed by providers. The comments expose several problems with "negotiating" those agreements and with their terms.

The organizations report to us that the agreements offered by communications service providers are not adapted to consumers' ability to pay. Those agreements are generally spread over periods of only four to six weeks – a period much too short for most consumers who consult budget advisors; that clientele in financial difficulty lacks resources and must often try to reconcile several creditors at once.

³⁴³ It should be noted that we also contacted the CRTC and the CCTS in May 2019, to better identify the problems consumers report to them, and to obtain the two organizations' comments about our conclusions on current regulations. Those organizations did not answer our questionnaire.

³⁴⁴ The organizations contacted are: ACEF du Nord de Montréal, ACEF du Sud-Ouest de Montréal, ACEF Estrie, ACEF Lanaudière, ACEF Montérégie-Est, ACEF Appalaches – Beauce – Etchemins, ACEF de l'Est de Montréal, ACEF de l'île-Jésus, ACEF du Grand-Portage, ACEF Rive-Sud de Québec, Centre d'éducation financière EBO and CIBES de la Mauricie. Union des consommateurs works daily with those organizations. In the course of this study, they were informally emailed and asked their general comments on deposits, disconnections and suspensions, payment arrangements and providers' credit report management. Afterward, we contacted them again with more-specific questions about aspects some of them had identified during the first consultation stage and in previous discussions.

Some budget advisors also reported to us several cases of consumers who, despite reaching a payment arrangement with their service provider, found their service suspended even before the scheduled date of payment. Those consumers were told that no payment arrangement was entered in their file and that they also had to pay reconnection fees. The providers' haphazard and cavalier management of those agreements appears questionable at best.

The organizations also mention consumers' difficulties when they try to reduce their communications service bills after a default on payment. Cornered by a payment arrangement they likely can't honour, some consumers attempt to modify their subscription, choose less-expensive bundles while reducing their debt to the provider, and "retake control" of their personal finances. But sometimes that's impossible; some providers refuse to modify subscriptions until the debt is fully repaid, which risks keeping the consumer in a cycle of non-payments.

The organizations also confirm to us that customers of communications service providers are confused by security deposit terms (conditions for return, use, etc.). After a certain time, many consumers forget having provided a security deposit. In some cases handled by the budget consultation organizations, the providers also appear to have forgotten the initial deposit; in those circumstances, it's not surprising that deposit non-return is the problem most often reported to the CCTS regarding those deposits.

5.2 Survey of consumers

We then mandated a specialized firm to conduct a survey of 2,011 Canadian residents subscribing to a communications service³⁴⁵. The survey aimed at drawing a portrait of the types and scope of problems experienced by communications service consumers with payment difficulties, and to determine their knowledge of regulations for security deposits, service disconnections and interruptions, payment arrangements, and providers' use of their credit report.

³⁴⁵ The survey was conducted by the firm Passage Communications. The firm recruited the respondents and they answered the online questionnaire from December 12 to 19, 2018. The maximum margin of error for a probabilistic sample of that size is $\pm 2.2\%$ (19 times out of 20).

The 2,011 respondents had the following characteristics:

- They came from Western Canada provinces (623 respondents), Ontario (773 respondents), Québec (481 respondents) and the Atlantic provinces (133 respondents);
- Men and women were almost equally represented (51% women and 49% men);
- All age groups were represented (13% for 18-24-year-olds, 18% for 25-34-year-olds, 19% for 35-44-year-olds, 22% for 45-54-year-olds, 18% for 55-64-year-olds and 10% for 65-year-olds);
- The respondents' completed levels of education were distributed as follows: 2% at the elementary/primary level, 26% at the secondary/high school level, 31% at the college level and 41% at the university level;
- 62% of the respondents work (full or part time).

5.2.2 MAIN RESULTS OF THE SURVEY

Problems encountered by consumers

To describe the various problems experienced by consumers with payment difficulties, we first asked the survey respondents if they had faced, in their relations with their communications service provider, any of the following situations: 1) Reaching (or trying to reach) such a payment arrangement; 2) Service disconnection or suspension; 3) A security deposit requirement; 4) An entry in the credit report after a default of payment.

All those situations presented to respondents obtained relatively high percentages, particularly the situation regarding payment arrangements, which concerned almost 30% of the consumers surveyed. It should be noted that reaching (or trying to reach) a payment arrangement was even more frequent (40%) among consumers 18 to 34 years of age. Younger consumers are in fact over-represented in all the situations presented, as shown in Table 8 below.

Table 8
Situations experienced by consumers
with their communications service provider

Situations Experienced	Percentage of All Respondents	Percentage of Respondents 18-34 Years of Age
Payment arrangement (reached or attempted)	29%	40%
Security deposit required	25%	40%*
Credit report entry (following payment default)	22%	31%
Service disconnection or suspension	17%	26%
TOTAL: (encountered at least one situation)	47%	61%

* It should be noted that for the question about security deposit requirements, the percentage mainly represents respondents 18-24 years of age.

It's quite surprising to find that almost one in two consumers has already faced at least one of the situations mentioned on our list. And it's of concern that 44% of consumers who have already faced at least one of those situations report having encountered one or more problems with them.

Indeed, while service interruptions or disconnections are not the situations most often experienced by the respondents, those situations are the ones in which the respondents have most often encountered a problem (62% of all respondents having experienced that situation, and 68% of 18-24 year-olds). In order of frequency of problems encountered in the different situations, we find: credit report inscriptions (45%), payment arrangements (37%) and security deposits (31%).

We will next examine in greater detail those problems faced by respondents to our survey. For this part of our survey, only respondents who report having experienced a problem in one of the above situations were questioned.

Regarding service disconnections and suspensions

Unsurprisingly, the most important problem concerns the lack of notice prior to service suspension or disconnection. Almost half of consumers questioned say they received no notice, whereas such a notice is required by the two CRTC codes for telephone services. One in five respondents received a notice but could not meet the deadline imposed by

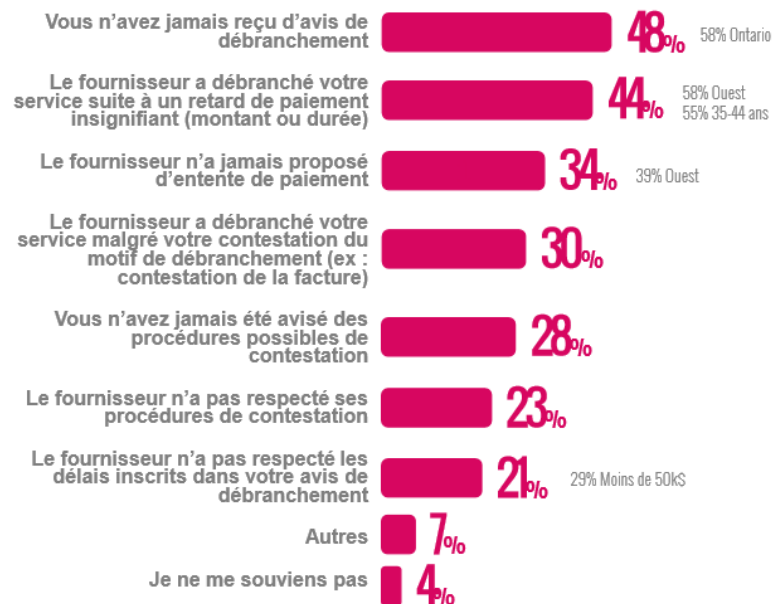
those codes, thus seriously hindering the notice’s usefulness. And yet, the 14-day period prescribed by the codes is intended to enable a consumer to remedy his default or make arrangements with the provider without losing his service.

Many respondents (44%) also reproach providers for suspending or disconnecting service in response to an “insignificant payment delay” of only a few days or for a minimal amount due.

Additionally, one-third of respondents whose services were suspended or disconnected due to default of payment never reportedly had the option to reach a payment arrangement – a sign that the absence of providers’ obligation to offer a payment arrangement is not without consequence. Some consumers who had their service suspended or disconnected would likely have been able to pay their bill thanks to specific arrangements. So can we really refer to those suspensions or disconnections as exceptional measures of last recourse, as the CRTC initially thought? One in four consumers was also not notified of the existence of challenge proceedings before or after suspension or disconnection.

Table 9

Problems encountered with service suspension or disconnection



Source: Report from the firm Passage Communications to Union des consommateurs, February 27, 2019.

Regarding credit report inscriptions

The first source of discontent among consumers whose provider entered a note in their credit report concerns the absence of a notice to that effect (40%). While providers must indicate in the contracts their right to forward their customer’s information to credit rating agencies (to obtain the subscriber’s “consent”), they have no obligation to notify him when the time comes. Considering the credit report’s importance nowadays in consumers’ daily

lives (access to credit, housing, certain jobs, etc.), it would seem reasonable to notify them of a new entry in their credit report.

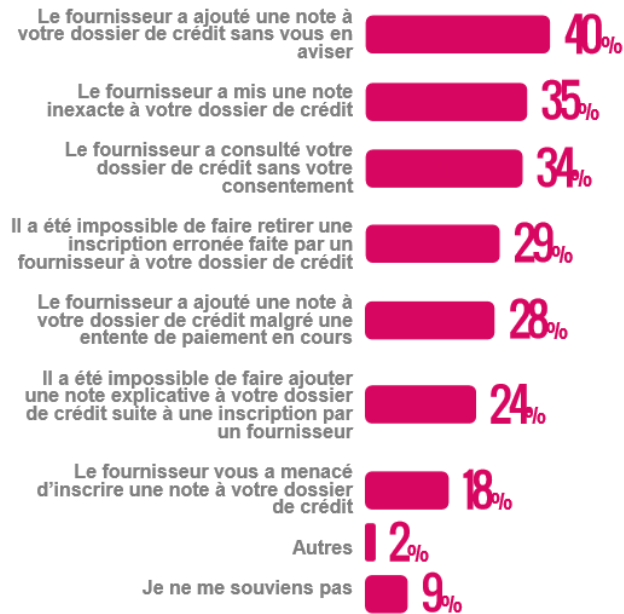
One reason such notification of a new entry should be given is that, contrary to what many think, communications service providers can influence their credit report. Many consumers don't read the contracts they sign, and even less the entire contracts. But providers' privacy policies (including for sharing information to third parties) are generally written at the end of abundant contractual information. Additionally, communications service providers don't resemble the usual organizations that influence a credit report. According to the definition of the Financial Consumer Agency of Canada, "Your credit report is a summary of your credit history³⁴⁶." But the providers don't offer credit; even their postpaid services are in practice almost always prepaid (a month in advance).

Another reason such notification of a new entry should be given is that errors and inaccurate entries are extraordinarily frequent in credit reports³⁴⁷. It's thus in the consumer's interest to find out quickly about an entry put in his credit report at a provider's request, so that he may verify the entry's accuracy and be able to take necessary steps, if applicable. Indeed, problems involving credit report errors (inaccurate entry, difficulty getting such an entry removed or having an explanatory note included) are among the other problems most often raised by our respondents.

³⁴⁶ **FINANCIAL CONSUMER AGENCY OF CANADA**. *Credit report and score basics*, July 2018, online: <https://www.canada.ca/en/financial-consumer-agency/services/credit-reports-score/credit-report-score-basics.html> (page consulted on June 10, 2019).

³⁴⁷ The Federal Trade Commission determines that one out of five credit reports contains errors: **FEDERAL TRADE COMMISSION**. *Section 319 of the Fair and Accurate Credit Transactions Act of 2003: Fifth Interim Federal Trade Commission Report to Congress Concerning the Accuracy of Information in Credit Reports*, December 2012, online: <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf> (document consulted on June 10, 2019); **KLEIN, A.** *The real problem with credit reports is the astounding number of errors*, CNBC, September 2017, online: <https://www.cnbc.com/2017/09/27/the-real-problem-with-credit-reports-is-the-astounding-number-of-errors-equifax-commentary.html> (page consulted on June 10, 2019).

Table 10
Problems encountered with the credit report



Source: Report from the firm Passage Communications to Union des consommateurs, February 27, 2019.

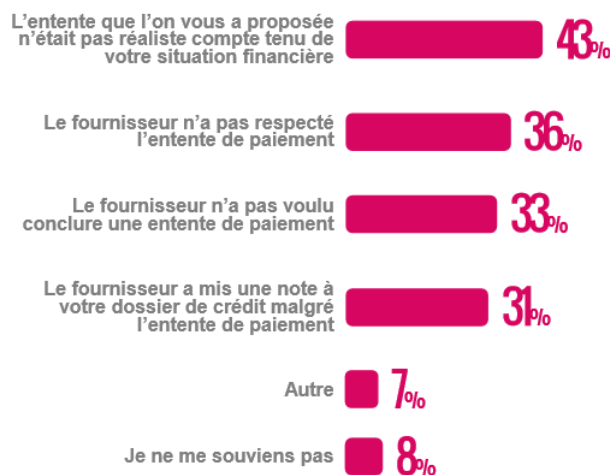
Regarding payment arrangements

Like the budget advisors consulted, many (43%) of the consumers we surveyed find that in light of their financial situation, the payment arrangements proposed by providers are unrealistic.

More surprisingly, over one-third of respondents who entered into a payment arrangement report that the provider didn't honour it. As mentioned above, the budget advisors we consulted also reported incomplete customer files and/or payment arrangements broken by providers.

Table 11

Problems encountered with a payment arrangement



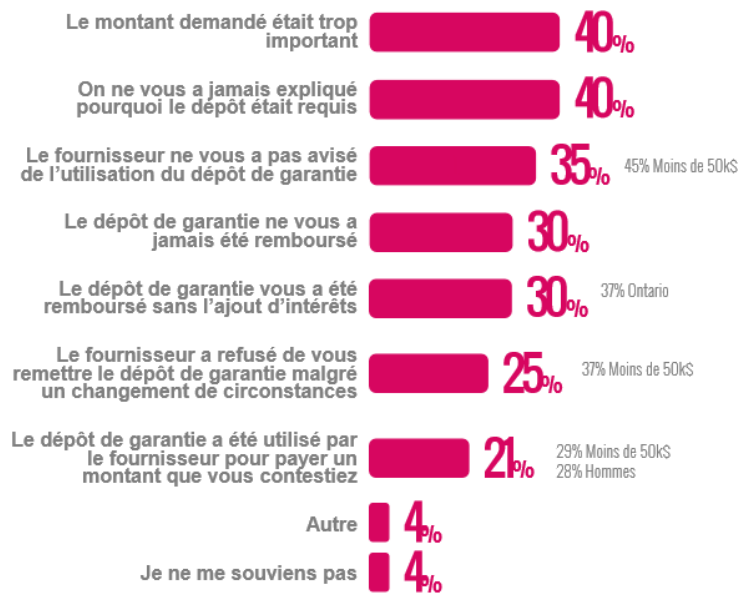
Source: Report from the firm Passage Communications to Union des consommateurs, February 27, 2019.

Regarding security deposits

Lastly, regarding deposits, the two problems most frequently mentioned by respondents (40%) concern the (excessive) amount of the required deposit and the absence of explanations about that deposit requirement. Again, with the exception of residential telephone services, providers are not subject to any limit on the amounts they can require as a security deposit. Moreover, when they are obliged to justify their deposit requirement to consumers, the reasons invoked are often very vague (e.g.: “financial risk”), as demonstrated by our study of the contractual documents of some providers.

All the other problems reported by the consumers surveyed concern the deposit's use (without notice) and non-return. So while the deposit amount seems too high to consumers, they also have difficulty reclaiming it, even after entirely meeting their contractual obligations. As mentioned above, this is the main source of complaints to the CCTS regarding security deposits.

Table 12
Problems encountered with a security deposit



Source: Report from the firm Passage Communications to Union des consommateurs, February 27, 2019.

Knowledge of legal frameworks

We also asked all survey respondents about their knowledge of the various legal frameworks for security deposits, service disconnections and suspensions, payment arrangements and credit report entries.

First, we observe that many respondents – 35% to 44% – don't know whether or not the various aspects presented to them are regulated.

Few of the other respondents believe the various aspects we questioned them about are actually regulated. Only service suspension and disconnection stand out. Over two in five consumers think there are regulations in this regard, which is the case.

On average, consumers who have experienced a problem with a payment arrangement, a service disconnection or suspension, a security deposit requirement or a credit report entry after a default of payment are more aware (by a margin of (8% to 10%)) of a regulatory framework's existence. Respondents 18 to 34 years of age also tend more on average (by a margin of 9% to 19%) to think providers' practices in this regard are regulated. But in many cases, those respondents are wrong.

Moreover, few respondents know of the very existence of regulations applicable to communications service providers regarding deposits disconnections and suspensions, payment arrangements and credit reports. Even fewer can identify specific regulations or their objects.

And many think certain unregulated aspects are regulated. For example, 57% of those who think payment arrangements are regulated also think those regulations cover the terms of those agreements (payment schedule, monthly debt percentage to be repaid, etc.), whereas those aspects are left to providers' entire discretion. Another 48% falsely believe the regulations also provide eligibility criteria for payment arrangements.

Perception of regulations' strictness and adequacy

Respondents who thought the various aspects (security deposit, service suspension and disconnection, payment arrangements and credit report entries) were regulated were then questioned on their perception of those regulations' strictness.

Whatever the service about which they were questioned (mobile phone, Internet, residential phone or television), the various aspects examined were, according to the majority of respondents, regulated strictly enough. But given that a large proportion of those respondents falsely believe in the existence or the objects of certain regulations, that assessment of the regulations' strictness is dubious.

However, the survey results don't indicate whether respondents believe the regulations are the same for all services, or whether they only believe the regulations are sufficiently strict but possibly different depending on the services.

We also asked those respondents whether existing regulations were sufficient in their view. Between 65% (regarding credit reports) and 69% (regarding security deposits and suspensions or disconnections) of those respondents estimate that the regulations are sufficient. But that apparent conviction should be taken with the greatest reservation. As mentioned above, those respondents (who falsely believed in the existence of certain regulations) represent only around one-third of all respondents, and their knowledge of those regulations is vague and very often inaccurate.

The ideal regulatory framework

We also asked the other respondents – those who didn't know or believe regulations existed and those who thought existing regulations were insufficient – what aspects they thought should be regulated, or should be better regulated if they believed regulations already existed.

The aspects (from a list provided) for which those respondents expressed a greater need for regulations are summarized in the table below.

Table 13
Aspects that should be (better) regulated

Situations	Aspects of Potential Regulations	Percentage of Respondents in Favour
Regarding security deposits	Reasons for a deposit requirement	61%
	Deposit amount that can be required	59%
	Period for returning a deposit to the consumer	56%
	Mention of the deposit in the contract	56%
Regarding disconnections or suspensions	Obligation to send a notice before suspension or disconnection	69%
	Late payment grace period before service suspension or disconnection	59%
	Possible disconnection fees	55%
Regarding payment arrangements	Agreement benchmarks (payment schedule, monthly debt percentage to be repaid, etc.)	55%
	Administration fees related to payment arrangements	54%
	Consequences if a consumer does not honour the payment arrangement	46%
Regarding credit reports	Informing the customer that a provider has made an entry in his credit report	58%
	The customer's possibility of having a provider's entry in his credit report removed or explained	57%
	Period during which the entry will remain in the credit report	56%
	Reasons allowing a credit report entry	56%

5.2.3 CONCILIATION OF SURVEY RESULTS AND CCTS DATA

The survey of Canadian consumers of communications services thus reveals that service suspensions or disconnections, payment arrangements, security deposit requirements or credit report entries are much more frequent than one might think. The same goes for the problems experienced by consumers in any of those situations.

And yet, CCTS data show that complaints regarding those situations remain relatively few, very far below complaints against false or misleading representations, billing errors or early cancellation fees. How to reconcile those two results?

We think the CCTS numbers should be examined while keeping in mind, among other things, the federal organization's relatively young age and low notoriety.

A survey commissioned by the CRTC in fall 2016 about consumer complaints regarding wireless services demonstrated indeed Canadians' poor knowledge of the CCTS: of the 17% of participants who had complained in the twelve months before the survey, 97% did so to their service provider, but only then did so to the CCTS³⁴⁸. And yet, only one in four complainants said he was satisfied with his complaint's settlement³⁴⁹. Why did the dissatisfied not pursue their representations and complained to the CCTS? Almost 70% of respondents reported not knowing that the organization existed. Among respondents 18 to 34 years of age, that percentage rose to 84%³⁵⁰. And barely 7% of consumers had been informed by their provider of their right to complain before the CCTS³⁵¹.

It also appears that many consumers (even if they know of the CCTS's existence) are less inclined to complain against their provider because the situation mainly results (generally) from their default of payment. Moreover, many consumers ignore the existence of regulations applicable to providers taking steps to recover amounts due (payment arrangements, suspension, credit report entries, etc.). Those consumers are thus unaware of rights they can assert despite their default of payment.

Lastly, many consumers simply never file a complaint anywhere about a problem. For example, a study of the retail market reported that only 6% of dissatisfied consumers contacted a merchant afterward³⁵². They tended more to discuss the matter with their entourage and to stop doing business with the merchant than to complain to the latter.

5.3 Survey of communications service providers

To better understand the position of communications service providers on the legal frameworks in effect and on their payment arrangement practices, we approached some of them directly, i.e. the main providers and a sample of resellers offering those services in the country.

In May 2019, we thus sent, to the five providers³⁵³ of which we examined the contractual documents and to two resellers³⁵⁴, a brief questionnaire preceded by a presentation of the project and by summaries of certain problems identified in the course of our research³⁵⁵. Our questions pertained notably to payment arrangements (agreement offer, complaints about agreements, etc.) and to regulations in place in that regard.

A single company, Rogers, gave us its comments, which we will summarize in the following paragraphs.

³⁴⁸ **KANTAR TNS**, *Wireless Code Public Opinion Research – Fall 2016*, research prepared for the CRTC, November 18, 2016, pp.36-37, online: <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2016/027-16-e/report.pdf> (document consulted on May 20, 2019).

³⁴⁹ *Ibid.*, p.39.

³⁵⁰ *Ibid.*, p.37.

³⁵¹ *Ibid.*, p.36.

³⁵² **WHARTON, UNIVERSITY OF PENNSYLVANIA**. *Beware of Dissatisfied Consumers: They Like to Blab*, March 2006, online: <http://knowledge.wharton.upenn.edu/article/beware-of-dissatisfiedconsumers-they-like-to-blab/> (page consulted on June 5, 2019).

³⁵³ Rogers, Quebecor, Bell, SaskTel and Telus.

³⁵⁴ EBox and TekSavvy.

³⁵⁵ The questionnaire is appended to this study.

REGARDING THE REGULATORY FRAMEWORK IN EFFECT

First, that provider states that the country's current regulatory framework is adequate and sufficient. For example, it cites consumers' right to receive a notice from the provider before a disconnection or suspension procedure.

Regarding the disparate nature of current regulations – distinct according to the services, scattered amid the Commission's different codes and other documents and amid the provinces' different legislations, etc. –, the provider thinks this way of doing things is appropriate:

We further believe that it is entirely appropriate that the protections are contained in separate frameworks and that variations exist among them, given the different natures of the communications services.

According to the provider, it's important to regulate differently according to the services involved. The (stricter) regulations for disconnecting and suspending telephone services are explained by consumers' necessity of being able to contact emergency services. The provider estimates there is no similar reason to similarly regulate television service disconnections and suspensions. The provider doesn't mention Internet access services, likely because the CRTC code on the subject is still being developed.

The provider also refers to other wireless telephone service regulations that it thinks adequately help consumers with payment difficulties, i.e. regulations to reduce surprise bills by managing overage and roaming charges. The provider described to us the various tools it makes available to its subscribers. It estimates that with access to those tools and the CRTC's regulations for suspensions and disconnections, consumers of wireless telephone services are adequately protected.

We think these types of innovative and customer-friendly tools are an important part of helping consumers manage their payments. Rather than considering regulations that require providers to conclude payment arrangements with customers, service providers should be encouraged to offer these tools. In our view, market forces will continue to ensure that they do so.

And the provider asserts that the consumer has his share of responsibility. It's up to him to ensure he can pay for the services to which he subscribes:

Consumers also have the ability to make personal choices to prevent themselves from getting into situations where payments become difficult. Specifically, all service providers – whether wireless, wireline or television – provide a variety of product and service levels for different budgets. One of the best solutions for individuals with payment challenges is a prepaid service, whereby you pay in advance only for services you can afford at the time.

On that last point, we observe that it can be particularly difficult for low-income consumers to make that "responsible choice" when subscribing to one or more communications services, considering the high prices of those services in this country. We also note that a default of payment can result in a sudden change of situation that a consumer could not

foresee when first subscribing; many are those who live from paycheque to paycheque, with no margin of manoeuvre, nor any savings³⁵⁶.

REGARDING PAYMENT ARRANGEMENTS

Payment arrangements constitute the only aspect studied that is not subject to any regulation, whatever the communications service concerned; and according to the survey's results, many consumers estimate that the payment arrangements proposed or reached with their provider are unreasonable and unsuitable for their financial reality. Therefore, we further questioned the provider about its practices in this regard.

The provider said it was aware of the payment difficulties some of its customers experienced. It stated that it had detailed internal policies describing how outstanding customer accounts should be handled, but it gave no specifics on those policies. It also mentioned its credit evaluation, credit limit and security deposit policies, intended to reduce the risks that a consumer would not be able to pay his bills and that it would thus suffer losses (more specifically, it refers to the subsidies granted with the purchase of cell phones and with the rental of television equipment).

At Rogers, we have internal policies that help ensure that customers are not acquiring products and services they are incapable of paying for and we work with customers who do fall past due on their accounts to resolve payment issues. We expect that other service providers have such policies as well. It is in no company's interest to allow its customers to over-extend themselves and be in a position where they cannot fulfill their payment obligations.

As for the possibility of the CRTC establishing minimal regulations for providers' payment arrangements, the provider thinks it would not be appropriate that providers be obliged to offer payment arrangements or be imposed certain agreement terms. To justify its opposition, the provider makes the following points:

1. There is no evidence that such regulations are necessary (the receipt of complaints by the CCTS about this are normal, given the organization's mandate);
2. The CCTS has the necessary tools for settling consumer complaints about payment arrangements;
3. The protections currently in place are sufficient in providing consumers with remedies prior to service suspension and disconnection, and limit the risks of surprise billing (control of overage charges);
4. Implementing new regulations for providers would be complex and inevitably entail costs eventually transferred to consumers through higher service prices.

It seems appropriate to examine some of the above arguments.

³⁵⁶ See for example: **BÉRUBÉ, G.** *Les ménages ont de plus en plus mal à leur dette*, Le Devoir, March 2019, online: <https://www.ledevoir.com/economie/549225/les-menages-ont-de-plus-en-plus-mal-a-leur-dette> (page consulted on June 5, 2019); *Le tiers des Québécois n'arrivent pas à subvenir à ses besoins*, Les Affaires, October 2018, online: <https://www.lesaffaires.com/mes-finances/planification/le-tiers-des-quebecois-n-arrivent-pas-a-subvenir-a-ses-besoins/605601> (page consulted on June 5, 2019).

This report exposes several highly problematic aspects of payment arrangements: impressive frequency of this type of agreements, total absence of regulation, unequal balance of power, unrealistic agreements, low-income consumers submitted to providers' discretion (agreement terms, agreement change or rejection along the way, etc.). So as opposed to the provider, we think the necessity to adopt certain regulations for the payment arrangements of communications service providers is well established.

Regarding the costs that would be entailed by new regulations for payment arrangements, we think the importance for consumers of access to communications services, particularly the essential services of telephony and Internet access, should take precedence over the purely economic considerations of private companies. It is not a matter of forcing providers to offer their services free of charge, but simply of recognizing the needs of some consumers with payment difficulties. Moreover, as mentioned above, maintaining those subscribers' connection also maintains a source of income for providers, since in the absence of adequate payment arrangements those consumers must eventually cancel their service or see it suspended and then disconnected. In addition, threats of price increases due to the "regulatory burden" – the providers' perpetual leitmotiv – have often proved clearly exaggerated in the past³⁵⁷.

³⁵⁷ See for example the alarmist comments that providers made when the Consumer Protection Act was amended in 2009, and that proved inaccurate: at the time, several industry representatives loudly protested that the announced amendments would entail exorbitant costs that would have to be recovered from subscribers through service price increases (particularly for wireless services). In reality, wireless service prices fell the following year (it should also be mentioned that the amendments came into effect as new competitors entered the market): **CRTC**. *Communications Monitoring Report 2014*, table 5.5.7, online: <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2014/cmr.htm>; **LAROCQUE, S.** *Les consommateurs québécois seront mieux protégés*, June 2010, La Presse, online: <https://www.lapresse.ca/affaires/economie/quebec/201006/29/01-4294253-les-consommateurs-quebecois-seront-mieux-protectes.php> (page consulted on April 14, 2019).

6. Exploration of Canadian and Foreign Initiatives: Potential Solutions to the Problems of Communications Service Consumers in financial Difficulty

Our study of the various problems facing Canadian consumers facing a precarious financial situation or payment difficulties with their communications service providers begs the following question: In foreign jurisdictions or in other Canadian consumer sectors, are there relevant initiatives or regulatory models that could be transposable to the communications sector?

In this final chapter, we will try to answer that question by examining regulations and programs for the Canadian sector of electricity, the American public utilities and the French, Australian and Belgian communications sectors. We chose those initiatives because they address or might address some of the problems identified in this study.

- Concerning some consumers' difficulties in providing the substantial amount of the security deposit required, or in obtaining its prompt return if consumers continually meet their obligations, might we find inspiration in:
 - Limits imposed on Hydro-Québec and Hydro One regarding deposit requirements (criteria and amounts)?
 - Deposit requirement exemptions for certain categories of public utility subscribers in the United States?
- Concerning the offer and conclusion of payment arrangements that don't take into account the financial reality of households with payment difficulties, might we find inspiration in:
 - Payment arrangement terms offered by Hydro-Québec and Hydro One, particularly for low-income households?
 - The obligation of Australian providers of communications services to have a policy regarding financial difficulties, and the guiding principles developed by Australia's Telecommunications Industry Ombudsman in this regard?
- Concerning the quick suspension of services – telephony and Internet access – that nowadays are indispensable for social inclusion and public safety, might we find inspiration in:
 - The maintenance of reduced services after a default of payment in France and Belgium?
- Concerning the excessively high fees charge to consumers in default of payment, might we find inspiration in:
 - The caps imposed on those fees in Belgium?

Before attempting to answer those questions, we think it relevant to explain how the regulations adopted in sectors other than communications (energy and public utilities) are relevant to this study.

Communications and electricity services are, as public interest services or public utilities, considered essential to society:

At the broadest level, the services provided have been long been denominated according to the essential services they perform (Glaeser 1957): (1) public transportation, (2) communication services, (3) energy for light, heat and refrigeration services, (4) water, wastewater, drainage, flood protection, and irrigation, and (5) resource conservation through solid and hazardous waste collection and disposal. [...] In brief, these are the organizations and institutions that build and maintain the nation's critical infrastructure while providing the essential services necessary for modern civilization. [...] Regardless of their form of ownership, to be regarded as a public utility the entities providing the service utilities are organizations that are affected with a public interest³⁵⁸.

(our underlined)

It should be kept in mind that the electricity providers of which we will study the terms of service are state-owned corporations, as opposed to communications service providers, which are private companies. Nevertheless, the regulation of those state-owned corporations meets (or attempts to meet) similar objectives: to reproduce, to the extent possible, the benefits of a competitive market or at least to minimize the impacts of market shortcomings³⁵⁹.

Electricity companies have traditionally been strictly regulated because they operate in a situation of natural monopoly, due notably to the substantial costs of energy production and distribution. For their part, communications service providers, some of which are former state-owned companies (or former monopolies), are in a situation of oligopoly. For several reasons, including some of those providers' history and the high costs of developing the infrastructure they use, a few players still overwhelmingly dominate the Canadian market³⁶⁰.

In this context, and given the evident limitations of the "free market" in the communications sector with regard to protections offered to consumers facing financial difficulties – limitations confirmed by the CRTC itself and by this study –, it appears perfectly appropriate to consider a transposition of certain protections offered in the energy sector.

6.1 Canada: treatment of consumers with payment difficulties in the energy sector

Energy is another sector, with communications, where consumers, for whom the service is essential and offers little flexibility, regularly encounter payment difficulties. We observe that electricity providers are subject to much stricter regulations for security deposits that may be required of subscribers, for payment arrangements they offer and conclude, and for service suspension and disconnection practices. Compared to the measures that apply

³⁵⁸ **MCNABB, D E.** *Public Utilities*, 2nd ed, Elgar Online, p.4, available online:

<https://www.elgaronline.com/view/9781785365522/chapter01.xhtml>

³⁵⁹ **CLARK, R and LEACH, A.** *La réglementation de l'énergie au Québec*, Cirano, December 2005, p.6, online: <https://www.cirano.qc.ca/files/publications/2005RB-04.pdf> (document consulted on June 19, 2019).

³⁶⁰ "[In 2017] Canada's communications services market is dominated by a small number of large ownership groups. The top five groups (Bell, Quebecor, Rogers, Shaw, and TELUS) accounted for approximately 85% of total industry revenues. The next five largest groups/entities accounted for approximately 8%, and all remaining groups/entities accounted for 8%." : **CRTC.** *Communications Monitoring Report 2018*, op. cit. note 1.

to the communications sector and the policies of those services' providers, the ones described below seem clearly innovative.

We will focus our study on the two most populous Canadian provinces, Québec and Ontario, and on the terms of service applicable to their main providers, i.e. Hydro-Québec and Hydro One. The terms of service of those two state-owned corporations are submitted to the Régie de l'énergie³⁶¹ and the Ontario Energy Board³⁶², respectively.

6.1.1 RESTRICTIONS TO SECURITY DEPOSIT REQUIREMENTS OF HYDRO-QUÉBEC AND HYDRO ONE

The two corporations' terms of service provide the circumstances in which they are allowed to require a security deposit from their subscribers (domestic use category).

In both cases, the electricity providers, as opposed to communications service providers, are not allowed to make such a requirement simply because a consumer has a blemished credit report, or poses a "financial risk." Only if the consumer has negative credit report entries specifically with the provider may the latter require a deposit, i.e.:

- If he has received a late payment notice from Hydro-Québec in the last 24 months³⁶³;
- If he has received more than one service suspension notice in the last 12 months³⁶⁴;
- If his service has been suspended by Hydro One in the last 12 months³⁶⁵;
- If he has been in default of payment for insufficient funds on a cheque or a preauthorized payment in the last 12 months³⁶⁶.

It should be noted that Hydro-Québec's terms still offer the possibility of requiring a security deposit from a consumer who has declared bankruptcy in the last 24 months³⁶⁷.

³⁶¹ See Decision D-2019-037 rendered by the Régie de l'énergie, which has exclusive jurisdiction for setting or changing, following public hearings, Hydro-Québec's terms of service: **RÉGIE DE L'ÉNERGIE**, D-2019-037, R-4057-2018, March 2019, online: http://publicsde.regie-energie.qc.ca/projets/469/DocPrj/R-4057-2018-A-0094-Dec-Dec-2019_03_22.pdf (document consulted on May 22, 2019).

³⁶² **HYDRO ONE**. *Conditions of service for Hydro One Networks Inc. Distribution Customers*, doc. No. HONI2019, March 2019, p.8, online: https://www.hydroone.com/abouthydroone/conditionsofservice_/Documents/Hydro%20One%20Conditions%20of%20Service%20-%20DRAFT_March%202019%20V1.pdf (document consulted on June 15, 2019).

³⁶³ **HYDRO-QUÉBEC**. *Conditions of Service*, edition of April 1, 2019, sec. 6.1.1(a), online: <http://www.hydroquebec.com/data/documents-donnees/pdf/conditions-service-en.pdf> (document consulted on June 15, 2018).

³⁶⁴ **HYDRO ONE**. *Conditions of service for Hydro One Networks Inc. Distribution Customers*, doc. No. HONI2019, March 2019, sec. 2.4.3(a)1, online: https://www.hydroone.com/abouthydroone/conditionsofservice_/Documents/Hydro%20One%20Conditions%20of%20Service%20-%20DRAFT_March%202019%20V1.pdf (document consulted on June 15, 2019).

³⁶⁵ *Ibid.*, sec. 2.4.3(a)2).

³⁶⁶ *Ibid.*, sec. 2.4.3(a)3).

³⁶⁷ **HYDRO-QUÉBEC**. *Conditions of Service*, *op. cit.* note 363, sec. 6.1.1(b).

6.1.2 REGULATION OF PAYMENT ARRANGEMENTS OFFERED BY HYDRO-QUÉBEC AND HYDRO ONE

Payment arrangements are very common in the energy sector. In 2017, Hydro-Québec concluded around 366,800 of them³⁶⁸. Those agreements don't necessarily follow a service interruption notice. Moreover, just as with communications services, it's possible for a consumer to reach a payment arrangement before being in default of payment, if he foresees not being able to pay a bill on time.

Both Hydro-Québec and Hydro One propose different agreements depending on what type of household in default of payment or in financial difficulty is requesting an agreement³⁶⁹. Verification of household income (and of the number of persons in the household) will influence the period during which the debt amount will be spread out, as opposed to the procedure in the communications sector, which to our knowledge establishes the repayment period only according to the amount at stake.

The table below summarizes the terms for spreading out the debt's repayment that are offered to customers, depending on their financial situation:

³⁶⁸ **HYDRO-QUÉBEC**. *Rapport de suivi du bilan 2017 des dossiers d'ententes de paiement (clientèle résidentielle) pour lesquels le client a demandé la révision*, follow-up of Decision D-2002-261, 2017, p.7, online: http://www.regie-energie.qc.ca/audiences/Suivis/SuiviD-2001-259_D-2002-261/HQD_BilanPlainteEntentePaiement_2017_17mai2019.pdf (document consulted on June 16, 2019).

³⁶⁹ **HYDRO-QUÉBEC**. *Conditions of Service*, *op. cit.* note 363, sec. 7.2.2.

Table 14

Payment arrangement terms offered by Hydro-Québec and Hydro One depending on the type of residential customers

	Hydro-Québec	Hydro One
Regular customer	<ul style="list-style-type: none"> - Possibility of delaying a payment to the next bill or of spreading out payments over a period of up to twelve months - Charging interest on outstanding amounts³⁷⁰ 	<ul style="list-style-type: none"> - No information available on the minimum or maximum duration of proposed arrangements - Payment of an initial deposit of up to 15% of the total unpaid balance.
Low-income customer	<p><i>Households with an income not exceeding by more than 20% the low income cutoffs used by Hydro-Québec³⁷¹.</i></p> <ul style="list-style-type: none"> - Spreading out the debt over a period of up to 48 months. - Charging no administrative fees (interest rate) on outstanding amounts³⁷² 	<p><i>All households having obtained assistance from an Ontario Energy Board program (described in section 6.1.4)</i></p> <ul style="list-style-type: none"> - Spreading out the debt over at least 8 months if the amount due is less than double an average monthly bill. - Spreading out the debt over at least 12 months if the amount due is greater than double an average monthly bill, but less than five times the amount of an average monthly bill. - Spreading the debt over at least 16 months if the amount due is greater than five times the average monthly bill³⁷³ - Initial instalment of a deposit that can reach 10% of arrears on the bill - Charging no fees for non-payment, payment interruption and collection of amounts due³⁷⁴

³⁷⁰ **HYDRO-QUÉBEC.** *Rapport de suivi du bilan 2017 des dossiers d'ententes de paiement*, op. cit. note 368, p.5.

³⁷¹ **HYDRO-QUÉBEC.** *Help center for low-income households*, table of low-income cut-offs 2018 - 2019 (before taxes and deductions), online: <http://www.hydroquebec.com/residentiel/espace-clients/paiement/menages-faible-revenu.html#> (page consulted on June 19, 2019).

³⁷² **COMMISSION D'ACCÈS À L'INFORMATION.** *Plainte à l'endroit d'Hydro-Québec*, January 2017, p.2, online: http://www.cai.gouv.qc.ca/documents/CAI_DSV_1009399.pdf (document consulted on June 19, 2019).

³⁷³ **ONTARIO ENERGY BOARD.** *Low-income Energy Assistance Program*, online: <https://www.oeb.ca/rates-and-your-bill/help-low-income-consumers/low-income-energy-assistance-program> (page consulted on June 16, 2019).

³⁷⁴ **HYDRO ONE.** *Conditions of service for Hydro One*, op. cit. note 362, sec. 2.4.7(b).

It should be noted that Hydro-Québec also offers a low-income consumer the possibility of concluding a personalized arrangement, i.e. an arrangement that falls outside the scale set by the system (according to the consumer's income and debt). Those arrangements also differ in allowing part of the consumer's debt to be cancelled if he meets the terms of the personalized arrangement. There are two types of such agreements³⁷⁵:

- A "debt support" personalized arrangement (type A): progressive write-off of the debt if the agreement is honoured.
- A "debt and consumption support" personalized arrangement (type B): progressive write-off of the debt if the arrangement is honoured, and financial support for part of the cost of current energy consumption (for customers with even less ability to pay). Some of those arrangements can prescribe a progressive increase in the instalments made by the customer ("gateway agreements").

In total, slightly more than 28% of payment arrangements concluded by Hydro-Québec in 2017 involved low-income households³⁷⁶.

We also observe the ease with which payment arrangements can be reached by consumers confronted by financial difficulties. In addition to the possibility of appealing (as in the communications sector), Hydro-Québec subscribers can, with some exceptions, directly enter into a payment agreement online simply by filling out a form. And the consumer will receive emails afterward as an instalment nears³⁷⁷.

6.1.3 FINANCIAL ASSISTANCE TO LOW-INCOME CONSUMERS OF ELECTRICITY IN ONTARIO

Another interesting measure specific to Ontario's energy sector is intended to maintain consumers' access to energy despite their financial difficulties.

The Ontario Energy Board is in charge of Ontario's Low-Income Energy Assistance Program (LEAP)³⁷⁸. That program, intended for low-income consumers, offers them, if needed, emergency assistance to pay their electricity bills. A household that wants to benefit from the program has to apply and meet the following eligibility conditions:

- Be a low-income household (according to a scale taking into account the income and the number of persons in the household);
- Be in default of payment on the electricity bill;
- Be at risk of electricity service disconnection.

If an application is approved, the program will directly pay the provider the amount of the outstanding bill, up to \$500.

³⁷⁵ HYDRO-QUÉBEC. *Rapport de suivi du bilan 2017 des dossiers d'ententes de paiement*, op. cit. note 368, p.6.

³⁷⁶ *Ibid.*, p.7.

³⁷⁷ HYDRO-QUÉBEC. *Payment Arrangement*, online: <http://www.hydroquebec.com/residential/customer-space/payment/payment-arrangement.html> (page consulted on June 16, 2019).

³⁷⁸ ONTARIO ENERGY BOARD. *Low-income Energy Assistance Program*, op. cit. note 373.

The LEAD program doesn't provide recurrent assistance for bill payment, but exceptional assistance.

The Ontario Electricity Support Program (OESP)³⁷⁹, also under the responsibility of the Ontario Energy Board, offers continuous financial assistance to low-income households, through monthly credit on the electricity bill.

6.1.4 SPECIFIC PROTECTIONS FOR LOW-INCOME HOUSEHOLDS

In addition to financial assistance offered by the various programs of the Ontario Energy Board, low-income households (that have been approved for one of those programs or have been identified as such by a local social service organization) are eligible for protection measures added to the protections mentioned above regarding deposits and payment arrangements³⁸⁰:

- The right to an exemption following the provider's demand for a security deposit;
- The right to return of a security deposit already provided to the provider;
- Extension of payment periods for the outstanding account after a payment arrangement is signed (described in section 6.1.3);
- Non-payment of fees for disconnection, reconnection and non-payment after disconnection due to default of payment.

To benefit from those additional protections, a local social service organization or the household itself must disclose the situation to Hydro One.

6.2 United States

6.2.1 REGULATION OF DEPOSIT REQUIREMENTS MADE BY PUBLIC UTILITIES

In the United States, public utilities (natural gas, electricity, water, public transportation) are offered by private and public companies, and rates and terms of service are regulated by state-owned corporations called the Public Utility Commission (PUC) and the Public Service Commission (PSC).

The conditions under which utility companies can require a security deposit are strictly regulated in the US, again in stark contrast with the situation of Canadian communications service providers, which have few restrictions when requiring a security deposit from a subscriber.

The exact conditions and restrictions vary depending on the states, but may cover a variety of aspects related to security deposits, as reported by the National Consumer Law Center:

If the utility is regulated by the state public utility commission, there will likely be specific rules for the amount of the deposit and under what circumstances a deposit

³⁷⁹ **ONTARIO ENERGY BOARD.** *Ontario Electricity Support Program*, online: <https://ontarioelectricitysupport.ca/?lang=en> (page consulted on June 16, 2019).

³⁸⁰ **ONTARIO ENERGY BOARD.** *Low-income Energy Assistance Program*, *op. cit.* note 373.

can be required. Some state public utility regulations provide alternative measures of creditworthiness in lieu of a deposit. These alternatives include allowing the customer to provide a guarantor who promises to pay the utility bill if the customer fails to pay, a good payment record with the utility, proof of home ownership or full-time employment for a set period of time. Some states limit the ability of a utility to require a deposit at certain times of the year (for example during the winter) or as applied to certain low-income or elderly customers³⁸¹.

(our underlined)

For example, the following consumer categories cannot be required by a public utility to provide a security deposit in certain states:

- A household with an income equal to or less than 200% of federal poverty guidelines (e.g.: Wisconsin³⁸²)
- A consumer 60-65 years of age or over who has no outstanding account (e.g.: Texas³⁸³, Maryland³⁸⁴, Michigan³⁸⁵)
- A (recognized) victim of domestic violence (e.g.: Texas³⁸⁶, Louisiana³⁸⁷)

Some states also have regulations for facilitating the payment of deposits by low-income households, including the possibility of spreading out that payment over several instalments³⁸⁸.

In addition to the conditions imposed by the PUCs and PSCs of various American states, the Federal Trade Commission has established measures protecting public utility consumers and applicable across the country. One of those measures is the regulation

³⁸¹ **NATIONAL CONSUMER LAW CENTER.** *Facts for older consumers – Dealing with utility companies*, 2010, online:
http://www.nclc.org/images/pdf/older_consumers/consumer_facts/cf_dealing_with_utility_companies.pdf
(document consulted on June 16, 2019).

³⁸² **PSC OF WISCONSIN.** *Utility Customer Bill of Rights*, April 2018, online:
<https://psc.wi.gov/Documents/Brochures/Your%20Bill%20of%20Rights.pdf> (document consulted on June 16, 2019).

³⁸³ **PUBLIC UTILITY COMMISSION OF TEXAS.** *Utili-Facts - Electric Deposit Payment Options*, online:
<https://www.puc.texas.gov/consumer/facts/factsheets/elecfacts/Deppoptions.pdf> (document consulted on June 16, 2019).

³⁸⁴ **MARYLAND OFFICE OF PEOPLE'S COUNSEL.** *Fact sheets: Consumer information about gas and electric utility service*, April 2011, p.2, online:
<https://dhs.maryland.gov/documents/Temporary%20Disability%20Insurance%20Programs/Fact+Sheets.pdf>
(document consulted on June 16, 2019).

³⁸⁵ **PUBLIC SERVICE COMMISSION [MICHIGAN].** *Consumer standards and billing practices for electric and natural gas service*, 2017, section R 460.109(9)2a), online:
https://dmbinternet.state.mi.us/DMB/ORRDocs/AdminCode/1365_2014-038LR_AdminCode.pdf (document consulted on June 16, 2019).

³⁸⁶ **PUBLIC UTILITY COMMISSION OF TEXAS.** *Utili-Facts - Electric Deposit Payment Options*, *op. cit.* note 383.

³⁸⁷ **LOUISIANA PUBLIC SERVICE COMMISSION.** *General order - Credit and Deposit Requirements for Victims of Family Violence*, docket No. R-29900, 2007, online:
http://www.lpsc.louisiana.gov/docs/orders/GeneralOrder2-28-07_R-29900.pdf (document consulted on June 16, 2019).

³⁸⁸ See for example: **PUBLIC UTILITY COMMISSION OF TEXAS.** *Utili-Facts - Electric Deposit Payment Options*, *op. cit.* note 383: "If you are required to pay a deposit, you may be eligible to pay a deposit over \$50 in two installments if you are a low-income customer."

prohibiting public utilities from requiring a deposit from a new customer unless they require it of all new customers³⁸⁹.

6.3 France

6.3.1 FINANCIAL ASSISTANCE TO POOR HOUSEHOLDS FOR MAINTENANCE OF COMMUNICATIONS SERVICES DESPITE A DEFAULT OF PAYMENT

In France, access to telecommunications services is directly associated with exercising the right to housing. The *Code français de l'action sociale et des familles* contains, in its chapter on the fight against poverty and social exclusions, right-to-housing provisions that include the right of access to water, energy and two telecommunications services, i.e. residential telephony and Internet access service³⁹⁰.

Considering the fundamental nature of the right to housing³⁹¹, a consumer who experiences difficulties in paying for his telecommunications services can apply for financial assistance from the Fonds de solidarité logement in his region. He must apply within two months following the date of an unpaid bill. If the assistance is granted, the household may be eligible for debt forgiveness of up to 100 euros over a period of one year³⁹². It should be noted that telecommunications services are much less costly in France than in Canada³⁹³. That assistance amount is thus considerable and illustrates how important France considers access to those services even for households in financial difficulty.

While his application for financial assistance is being processed, a consumer is entitled to minimal maintenance of his telecommunications services:

En cas de non-paiement des factures, la fourniture d'énergie et d'eau, un service téléphonique et un service d'accès à internet sont maintenus jusqu'à ce qu'il ait été statué sur la demande d'aide. Le service téléphonique maintenu peut être restreint par l'opérateur, sous réserve de préserver la possibilité de recevoir des appels ainsi que de passer des communications locales et vers les numéros gratuits et d'urgence. Le débit du service d'accès à internet maintenu peut être restreint par

³⁸⁹ **FEDERAL TRADE COMMISSION.** *Utility Services*, online: <https://www.consumer.ftc.gov/articles/0220-utility-services> (page consulted on June 18, 2019).

³⁹⁰ **FRANCE.** *Code de l'action sociale et des familles*, sec. L115-3, online: https://www.legifrance.gouv.fr/affichCode.do?sessionId=05C8ECBE4CAE23213BA6E6BB33563937.tplgfr31s_2?idSectionTA=LEGISCTA000006157555&cidTexte=LEGITEXT000006074069&dateTexte=20190531

³⁹¹ This is a constitutional right in France and results from paragraphs 10 and 11 of the preamble of the French Constitution of 1946: **DIRECTION DE L'INFORMATION LÉGALE ET ADMINISTRATIVE.** *La défense du droit au logement*, <https://www.vie-publique.fr/politiques-publiques/logement-social/droit-logement/> (page consulted on June 4, 2019); **CONSEIL CONSTITUTIONNEL.** *Constitution de 1946*, IVe République, online: <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1946-ive-republique>

³⁹² **FARGE, A.** *Droit au maintien de la connexion Internet : encore trop peu d'effets*, La Gazette des communes, October 2017, <https://www.lagazettedescommunes.com/531090/droit-au-maintien-de-la-connexion-internet-encore-trop-peu-deffets/> (page consulted on June 4, 2019).

³⁹³ Pour une comparaison du prix des différents services au Canada and en France : **NORDICITY.** *Étude 2017 de comparaison des tarifs des services de télécommunication offerts au Canada and à l'étranger*, October 2017, [https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Nordicity2017FR.pdf/\\$file/Nordicity2017FR.pdf](https://www.ic.gc.ca/eic/site/693.nsf/vwapi/Nordicity2017FR.pdf/$file/Nordicity2017FR.pdf) (document consulted on June 4, 2019).

*l'opérateur, sous réserve de préserver un accès fonctionnel aux services de communication au public en ligne et aux services de courrier électronique*³⁹⁴.

Those regulations initially concerned only residential telephone service. The application of regulations for Internet access service was added to legislation as part of the new *Loi pour une République numérique* adopted in 2016³⁹⁵ and intended, among other things, to facilitate citizens' access to digital technology³⁹⁶.

The 2016 law includes Internet access service but is being implemented progressively. The regulations' application to that service is currently at the experimental stage. One-year pilot projects were launched in three French departments (Seine-Saint-Denis, Marne and Haute-Saône) in 2017³⁹⁷. Although the exact terms vary depending on the regions, those projects are generally intended for low-income households³⁹⁸.

Unfortunately, we have few details on the projects results. The French government's full evaluation is still underway and should serve to determine whether the regulations' implementation for Internet access services will be extended to the entire country. Still, we note the critique of a person working at the Fonds de solidarité logement de la Haute-Saône, regarding a specific aspect of the new regulations: the two-month period established for submitting an application for government assistance:

*Les personnes ont tendance à faire l'autruche. Le temps que les travailleurs sociaux se saisissent du dossier, il est arrivé au service contentieux et la ligne a déjà été résiliée*³⁹⁹

6.4 Australia

6.4.1 MANDATORY ESTABLISHMENT OF PROVIDER PRACTICES REGARDING SUBSCRIBERS' PAYMENT DIFFICULTIES

Among the protections benefiting Australian users of telecommunications services is the *Telecommunications Consumer Protection (TCP) Code*⁴⁰⁰. Created by the Australian telecommunications industry in consultation with regulatory organizations, consumer

³⁹⁴ FRANCE. *Code de l'action sociale and des familles*, sec. L115-3(2), online:

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069>

³⁹⁵ FRANCE. *Loi n° 2016-1321 du 7 octobre 2016 pour une République numérique*, sec. 108, online:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&categorieLien=id#JORFSCITA000033202939>

³⁹⁶ <https://www.gouvernement.fr/action/pour-une-republique-numerique>

³⁹⁷ FARGE, A. *Droit au maintien de la connexion Internet : encore trop peu d'effets*, op. cit. note 392;

MINISTÈRE DE L'ÉCONOMIE, DES FINANCES, DE L'ACTION ET DES COMPTES PUBLICS. *Première expérimentation de l'aide au maintien de la connexion internet*, October 2016, online:

<https://www.economie.gouv.fr/premiere-experimentation-droit-au-maintien-de-la-connexion-internet> (page consulted on June 20, 2019).

³⁹⁸ See for example: HENRY, C. *Haute-Saône : plus de coupure d'internet pour les précaires*, L'Est Républicain, October 2016, online: <https://www.estrepublicain.fr/edition-de-vesoul-haute-saone/2016/10/26/la-haute-saone-experimente-le-droit-a-la-connexion> (page consulted on June 3, 2019).

³⁹⁹ FARGE, A. *Droit au maintien de la connexion Internet : encore trop peu d'effets*, op. cit. note 392.

⁴⁰⁰ COMMUNICATIONS ALLIANCE. *Telecommunications Consumer Protections Code*, C628:2015, online: https://www.commsalliance.com.au/_data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf

groups and other stakeholders, that code of conduct aims at offering consumers guarantees regarding sales, services, billing credit and debt management, provider changes and complaint handling⁴⁰¹.

The Code is registered with the *Australian Communications and Media Authority (ACMA)* – Australia’s equivalent of the CRTC –, which has the powers to enforce it. The Telecommunications Industry Ombudsman (TIO) – Australia’s equivalent of the CCTS – receives consumer complaints against violations of the Code. The TIO can also provide advice and guiding principles to providers for the application of the Code’s regulations, and has done so about their policies regarding customers’ financial difficulties.

The Code attaches special importance to protecting vulnerable or poor customers. The providers’ adoption of appropriate policies and practices in that regard is expressly prescribed among the Code’s key commitments⁴⁰². The Code devotes a full chapter to credit and debt management.

The Code provides that providers are obliged, before interrupting or disconnecting a service due to default of payment, to give a notice, but also to take reasonable means for ensuring that the consumer has received the notice and understands its implications⁴⁰³. Providers must also inform the consumer of the existence of their “Financial Hardship policy,” the name given to payment difficulty policies⁴⁰⁴.

The Australian regulation of those policies regarding subscribers’ financial difficulties deserves further study. There is no Canadian equivalent. Our study of Canadian providers’ contracts demonstrates that they offer very few details on unpaid bill management and payment arrangements. Even in the implementation of those agreements, a consumer’s actual payment difficulties seem rarely taken into account. And yet, almost one-third of consumers have reportedly concluded or tried to conclude a payment arrangement with their service provider in the past, according to our survey’s results.

Under the Australian Code, each provider must have such a policy regarding financial difficulties⁴⁰⁵:

Financial Hardship means a situation where:

- a) *a Customer is unable to discharge the financial obligations owed by the Customer under their Customer Contract or otherwise discharge the financial obligations owed by the Customer to a Supplier, due to illness, unemployment, being the victim of domestic or family violence, or other reasonable cause; and*
- b) *the Customer believes that they are able to discharge those obligations if the relevant payment arrangements or other arrangements relating to the supply*

⁴⁰¹ *Ibid.*

⁴⁰² *Ibid.*, introductory statement.

⁴⁰³ *Ibid.*, sec. 6.7.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *Ibid.*, sec. 6.11.

*of Telecommunications Products by the Supplier to the Customer are changed*⁴⁰⁶.

At first sight, we might think that policy only applies when a customer experiences a mishap affecting his financial situation, but the TIO has broadened that definition in its guide to providers, so that more consumers are included as suffering financial difficulties. To ensure that consumers can easily learn about the policy, providers are required to make it entirely accessible on their website and to offer a summary to a consumer claiming financial difficulty who may be eligible for such a payment arrangement⁴⁰⁷ or who simply applies for it⁴⁰⁸. To help the consumer more broadly, a provider must also indicate in its policy one or more sources “at which the Consumer or former Customer can locate contact details of community financial counsellors or consumer advocates who deal with financial difficulty matters⁴⁰⁹.”

It thus appears that payment defaults of communications service consumers, and even situations likely to entail payment defaults, are integrated within a broader vision of Australian consumers’ “financial health.” This approach is perfectly logical given that Australia recognizes the essential nature of telecommunications services on the basis of social considerations.

The Code requires providers to assess consumers’ eligibility for assistance under its policy regarding financial difficulties⁴¹⁰. If a consumer is eligible, he may have several options, including entering into a payment arrangement⁴¹¹.

While the Code does not provide specific criteria for the content of those agreements, the TIO has developed a set of guiding principles – several of which concern payment arrangements offered – for providers’ development and implementation of policies regarding financial difficulties. Those principles also guide the Ombudsman in his management of consumer complaints in this regard.

According to the TIO, providers’ policies must be intended above all to enable customers in financial difficulty to retain access to their essential communications services⁴¹². Among the principles identified by the Ombudsman are:

- Developing personalized payment arrangements adapted to consumers’ economic and social reality:

⁴⁰⁶ *Ibid.*, sec. 2.1.

⁴⁰⁷ In its guide for providers, the TIO recalls that “vulnerable customers may have barriers to self-identification of financial hardship” and that it is desirable to establish “supplier-initiated practices that may serve to identify customers who may be in financial hardship”: **TELECOMMUNICATIONS INDUSTRY OMBUDSMAN. *Assisting and responding to customers in financial hardship - Principles and practices – guide for telecommunications providers***, 2017, p.7, online: <https://www.tio.com.au/guidance-notes/financial-hardship> (document consulted on May 20, 2019).

⁴⁰⁸ **COMMUNICATIONS ALLIANCE. *Telecommunications Consumer Protections Code***, *op. cit.* note 400, art. 6.11.1(a).

⁴⁰⁹ *Ibid.*, sec. 6.11.1(d).

⁴¹⁰ *Ibid.*, sec. 6.12.

⁴¹¹ *Ibid.*, sec. 6.12.1(f).

⁴¹² **TELECOMMUNICATIONS INDUSTRY OMBUDSMAN. *Assisting and responding to customers in financial hardship Principles and practices***, *op. cit.* note 407, pp.7 and 5.

Given the range of circumstances in which a customer may find themselves in financial hardship, supplier financial hardship policies ideally offer a response that can be tailored to meet these circumstances and the repayment capacity of individual customers⁴¹³.

Supplier financial hardship policies ensure that the response to a customer who is experiencing financial hardship is proportionate, and commensurate with matters such as the degree of vulnerability and the customer's capacity to meet their financial obligations. This includes taking steps to ensure customers are only offered repayment options and ongoing services that they can afford⁴¹⁴.

- Offering a variety of potential terms for a payment arrangement, including:
 - a) *providing an extension of time to make a payment;*
 - b) *making available payment arrangements, including payment by instalments or over an extended period of time;*
 - c) *offering incentives (such as reduced payments and partial debt waiver) for meeting payment obligations;*
 - d) *providing payment vouchers to financial counselling or other community services, to give directly to consumers who are in financial hardship; [...]*
 - e) *j) releasing a customer in financial hardship from their contract and providing a waiver of debt when financial hardship is entrenched or the debt arose as a result of family violence⁴¹⁵.*

- Maintaining continuous collaboration between providers, organizations protecting consumers in financial difficulty, and local financial advisors:
 - 1. *Maintain regular contact with financial counselling organisations and relevant agencies to identify emerging issues.*
 - 2. *Assist financial counsellors to keep abreast of supplier financial hardship policies, through mechanisms such as newsletters and other direct communications.*
 - 3. *Appoint a liaison officer as a point of contact with financial counsellors.*
 - 4. *Develop and communicate (e.g. via newsletters) a dedicated contact number and/or email address for financial counsellors that is regularly monitored⁴¹⁶.*

6.4.2 REGULATION OF CREDIT REPORT ENTRIES

Australian consumers are also protected regarding a communications service provider's disclosure of payment defaults to a credit bureau.

⁴¹³ *Ibid.*, p.7.

⁴¹⁴ *Ibid.*

⁴¹⁵ *Ibid.*, p.10.

⁴¹⁶ *Ibid.*, p.12.

The *Privacy Act 1988*⁴¹⁷ and the *Credit Reporting Code 2014*⁴¹⁸ contain regulations regarding the minimum outstanding amount, notices to consumers, and periods for registering a default in a credit report.

First, providers may not enter all payment defaults in their subscribers' credit reports: the outstanding amount must be at least \$150 and must have been past due for at least 60 days⁴¹⁹.

If a provider wants to enter a payment default in the credit report of a current or former subscriber, it must send him at least two notices: one informing him that a balance is outstanding, and a second one at least 30 days later indicating that information on the payment default will be disclosed to a credit bureau. If the amounts are still outstanding 14 days after that second notice is sent, the provider may then make an entry in the credit report⁴²⁰.

If the debt is repaid in full (or in part, following an agreement with the provider) after the credit report entry, the provider must "update" the payment default information at the credit bureau within 3 days⁴²¹.

It is notable that those Australian regulations respond precisely to the criticisms that the Canadian consumers surveyed in this study expressed about providers' credit report entries. The absence of a notice prior to such entries, and the difficulty in including an explanatory note in the report (notably concerning a payment made after a credit report entry), were at the top of the consumers' list of grievances.

6.5 Belgium

6.5.1 RESTRICTION OF CHARGES RELATED TO PAYMENT DEFAULTS

The CRTC no longer intervenes concerning payment default charges imposed by Canadian service providers. It wrongly thinks the free market will guarantee that consumers are adequately protected. Belgian lawmakers have adopted a very different approach.

The Belgian law with respect to electronic communications provides regulations for fees that may be charged by communications service providers in case of a customer's payment default⁴²².

⁴¹⁷ **AUSTRALIA.** *Privacy Act 1988*, No. 119, 1988, online:

<https://www.legislation.gov.au/Details/C2019C00025>

⁴¹⁸ **AUSTRALIA.** *Credit Reporting Code 2014*, code register under subsection 26T(5)(b) of the *Privacy Act*, online: <https://www.oaic.gov.au/privacy-law/privacy-archive/privacy-codes-archive/privacy-credit-reporting-code-2014-version-1-2-archived>; See also the correlation table: **AUSTRALIA.** *Federal Register of Legislation. Privacy (Credit Reporting) Code 2014 (Version 2)*, online:

<https://www.legislation.gov.au/Details/F2018L00925> (page consulted on June 4, 2019).

⁴¹⁹ *Privacy Act*, *op. cit.* note 417, sec 6Q; *Credit Reporting Code*, *op. cit.* note 418, sec. 9.

⁴²⁰ *Credit Reporting Code*, *op. cit.* note 418, sec. 9.3.

⁴²¹ *Privacy Act*, *op. cit.* note 417, sec 6T; *Credit Reporting Code*, *op. cit.* note 418, sec. 10.2.

⁴²² **BELGIUM.** *Loi relative aux communications électroniques*, no 2005011238, online:

http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?

Five types of fees are regulated as follows:

- *Le taux d'intérêt applicable aux soldes en souffrance:*
The law restricts to the legal interest rate that which providers may apply to customer accounts for outstanding amounts⁴²³.
- *Les frais relatifs à l'envoi de rappels écrits de l'expiration de l'échéance d'une facture:*
The law states that a provider may remind a consumer in writing that a bill payment is overdue and enjoin him to pay it. If a provider sends such a notice, it may not charge fees for having sent a first reminder and may not claim higher fees than 10 euros for subsequent reminders⁴²⁴.
- *Les frais relatifs à l'envoi d'avertissements écrits avant l'interruption du service pour défaut de paiement:*
The law prohibits those fees from exceeding 10 euros⁴²⁵.
- *Les frais liés à l'interruption du service:*
The law states that service interruption is free of charge⁴²⁶, i.e. that a provider may not charge interruption fees and may not charge monthly fees for the service during the interruption.
- *Les frais de réactivation des services suivant une interruption pour défaut de paiement:*
The law prohibits a provider from charging more than 30 euros for the reactivation⁴²⁷.

If a provider still charges higher fees than those indicated in the law, "tous les coûts ainsi que les intérêts facturés à l'abonné sont caducs et l'abonné a droit, le cas échéant, à une réactivation gratuite du service"⁴²⁸.

6.5.2 REDUCTION RATHER THAN SUSPENSION OF TELECOMMUNICATIONS SERVICES

The Belgian law also provides an intermediary step between sending a written notice before interrupting service due to payment default and completely interrupting the service. That step applies only to subscribers in default of payment for the first time in the last twelve months⁴²⁹, which likely includes consumers facing unforeseen financial difficulties.

If a subscriber doesn't follow up on the provider's notice (if he disputes the unpaid amount or subscribes to a plan of discharge), the provider may limit his telephone and Internet access services; the services must remain usable for certain daily essential functions or applications (emergency services, email, etc.):

⁴²³ *Ibid.*, sec. 119(2).

⁴²⁴ *Ibid.*

⁴²⁵ *Ibid.*, sec. 119(3).

⁴²⁶ *Ibid.*, sec. 119(10).

⁴²⁷ *Ibid.*, sec. 119(10).

⁴²⁸ *Ibid.*, sec. 119(11).

⁴²⁹ *Ibid.*, sec. 119(§11)2).

un service minimum est un service dans le cadre duquel l'utilisateur final dispose au moins encore de la possibilité d'appeler les services d'urgence et d'accéder à un Internet fixe à une vitesse de chargement et de téléchargement qui soit aussi élevée que la vitesse que l'abonné reçoit encore lorsque le volume Internet compris dans son abonnement est épuisé ou, si une telle poursuite de l'accès à Internet n'est pas prévue dans sa formule d'abonnement, à une vitesse de chargement et de téléchargement supérieure à 256 kbps.⁴³⁰

(our underlined)

The provider must send a second notice after setting up the minimal service and must again grant the subscriber a period for remedying his situation before it completely interrupts the unpaid service⁴³¹.

It should be noted that those regulations were implemented following service interruption abuses committed by providers trying to put pressure on delinquent payers⁴³².

⁴³⁰ *Ibid.*, sec. 119(§4)2).

⁴³¹ *Ibid.*, sec. 119(§6).

⁴³² **CHAMBRE DES REPRÉSENTANTS DE BELGIQUE.** *Rapport relatif au projet de loi portant des dispositions diverses en matière de communications électroniques*, July 2017, doc. No. 54 2558/003, p.3, online: <http://www.lachambre.be/FLWB/pdf/54/2558/54K2558003.pdf> (document consulted on June 15, 2019).

Conclusion

The CRTC recognizes residential and wireless telephone services and broadband access service as basic services in line with the goal of universal service⁴³³. To communications services is added (cable or satellite) television service. The latter is not as essential, but is still important in the daily lives of many Canadian consumers; around three-quarters of households subscribe to television service⁴³⁴.

While the issue of the monthly price for those communications services is regularly debated in the country, the issue of their accessibility and affordability, although closely related to the price issue, is much less debated. Providers' practices regarding bad debt management and the "financial risk" represented by some consumers likely imperil the universal access aspired to. While providers, as private companies, can legitimately see profits as a priority, the special (read: essential) status of those services should also be taken into account when providers manage bad debts (suspension, disconnection, payment arrangement, credit report entry, etc.).

This study has drawn a portrait of the current regulatory framework for providers' practices in terms of disconnection and suspension, security deposits, payment arrangements and credit report entries. It turns out that the protections benefiting a consumer in those circumstances will vary considerably depending on the service to which he subscribes and even depending on the region in which he resides. While some of the differences can be explained, others appear totally arbitrary, even unjustifiable. Those differences are all the more incomprehensible in this context of progressive disappearance of distinctions between the different services, which have become complementary and most often sold by the same provider in a bundle of two, three or even four services.

It may be acceptable for the regulation of television service suspension or disconnection due to payment default to be less strict than for telephone service suspension or disconnection; the latter service has primordial importance for safety (9-1-1 service), reduction of isolation, and improvement of employment prospects, as recognized by the CRTC. However, television services are important in the daily lives of a great many consumers, and their suspension should be better regulated or, in reality, should become regulated.

It is much less justifiable that different regulations and protections apply according to the type of telephone services. Why is the security deposit amount that a provider can require limited for residential telephone services but not for wireless telephone services (although the latter are more expensive)? Why is providers' mandatory review of the appropriateness of retaining a security deposit required only every 12 months for wireless telephone services, but every six months for residential telephone services?

It is also incomprehensible that the CRTC has tolerated for years an absence of protections for Internet access service subscribers who have payment difficulties or are in a difficult financial situation. This is one of the most essential services nowadays (access to

⁴³³ CRTC. *Telecom Regulatory Policy CRTC 2016-496*, op. cit. note 315.

⁴³⁴ CRTC. *Communications Monitoring Report 2018*, op. cit. note 1, p.21.

government services, access to information – news, health, education, etc. –, employment and housing searches).

While the regulatory framework in place is inconsistent, it tolerates certain provider practices that appear clearly unfair. Is it acceptable that a consumer who already has financial difficulties is charged monthly bills for a service to which he no longer has access because it has been suspended by the provider due to payment default? Is it acceptable that a provider of such essential services as telephony or Internet access charges (annual interest of 42.58% on outstanding accounts, in addition to charging all kinds of other fees (for collection, disconnection, reconnection, etc.)? Is it acceptable that a consumer of whom a security deposit is required, most likely because he is in a more precarious financial situation, is not entitled to a bundling discount, whereas all other subscribers with the same provider are?

Faced with this piecemeal, incomplete and occasionally lax regulatory framework, how can one claim that free market forces offer sufficient protections to more-vulnerable consumers – those who have difficulty paying for their communications services and for whom providers looking for additional customers are certainly not competing? The free market's limitations are obvious in this regard; the examples taken from contractual documentation abound:

- In the absence of regulations regarding the suspension of Internet access services, the contractual documentation offers no minimal protection (prior notice, grace period, minimum amount, etc.), as opposed to providers' mandatory protection for telephone services;
- Providers reserve the right to suspend the service of a customer who is not in default of payment with them, but with other companies (of communications or not) that belong to them;
- Some providers doubled the interest rate for outstanding accounts just a few months after the CRTC decided to refrain from regulating it, after those providers made representations before the CRTC to the effect that market forces would ensure that the interest rate would remain stable;
- Providers offer payment arrangements completely unsuitable for the financial reality of subscribers experiencing payment difficulties;
- Etc.

The situation of payment arrangements is particularly concerning and deserves a few additional comments. The results of the survey conducted as part of our study reveal that 29% of respondents have already concluded or tried to conclude a payment arrangement in the past. That number jumps to 40% among consumers 18-34 years of age. The conclusion of payment arrangements is thus commonplace and essential for many Canadian consumers. And yet, there is absolutely no regulation on the subject. Providers are free to offer those agreements or not and to decide their terms by applying the criteria of their choice. In the light of the survey's results and the testimonials of the budget advisors we questioned, we are sorry to observe that those criteria don't include the concerned consumers' financial situation and ability to pay. How to expect a consumer to make the required payments if his budget doesn't allow it? A series of regrettable situations follows:

new payment default, service suspension, continual increase of the debt (interest, fees and billing of the suspended monthly service), credit report blemish, etc. But those are communications services to which access is essential and should, according to the CRTC itself, be restricted only very exceptionally. At this moment, too many consumers are deprived of those services because they can't negotiate or conclude reasonable payment arrangements. And yet, many would likely have been able to pay for the services and progressively repay outstanding amounts, if providers had demonstrated more flexibility and considered more accommodations.

Nor do market forces appear to guarantee observance of the (weak) existing regulations. Each year, the CCTS receives hundreds of complaints about providers' practices regarding security deposits, service suspensions and disconnections, credit report entries, etc. Those complaints pertain disproportionately to wireless telephone service, although it is more strictly regulated (though still insufficiently). The consumers surveyed in the course of this study also have their lot of problems to report. Almost half of those who say they have experienced a service suspension or disconnection reportedly did not receive the mandatory prior notice. Almost one-third of consumers who had to pay a security deposit have never seen again the colour of their money, even though they met their obligations. Those situations are unacceptable.

That leads us to the following question: In these circumstances, how to ensure that Canadian consumers of communications services benefit from adequate protections, rights and remedies vis-à-vis their communications service provider when finding themselves in a precarious financial situation or in payment difficulty? The regulations must imperatively be tightened. It's important to stop believing that consumers called "delinquent payers" are adequately protected by market forces, and to opt rather for establishing formal protection measures that recognize the importance of access to communications services despite consumers' financial difficulties.

Our examination of the practices of major energy providers in Québec and Ontario, and of a sample of foreign legislations, revealed a number of appropriate and at times innovative measures. Those measures point the way to developing desirable protection measures for Canadian communications services with regard to disconnections, payment arrangements, credit report entries and security deposits.

Those regulations and programs described in chapter 6 of this study have proven results. They also have the benefit of establishing a necessary balance between the market's economic concerns and the social concerns raised by access to essential services and the assistance consumers in difficult financial situations may need. The CRTC could and should consider those models in view of adopting a rational regulatory framework.

Recommendations

Whereas access to communications services is indispensable nowadays in the daily lives of Canadians;

Whereas the wide majority of Canadians households subscribe to one or more of the major communications services (wireless telephony, residential telephony, Internet access and television services);

Whereas the CRTC has recognized the essential nature of residential and wireless telephone services and Internet access service;

Whereas many consumers have difficulty paying their communications services bill in full each month;

Whereas the current regulatory framework for providers' debt management practices is inadequate, particularly because:

- It is scattered among the CRTC's three distinct codes of conduct (and other CRTC regulations) that contain different provisions and use different wording;
- Several differences between regulations that apply to the various services are arbitrary and should not be, particularly between residential and wireless telephone services;
- Some of the providers' unfair practices are tolerated, notably concerning fees charged to consumers who experience financial difficulties (interest rates, multiple disconnection and reconnection fees, services billed despite a suspension, etc.);
- Television services are subject to very weak protections;
- Internet access services are not always covered;

Whereas the CCTS has pointed out the administrative difficulties caused by the multiplicity of existing codes and regulatory frameworks;

Whereas in the absence of consumer protections or specific regulations, providers regularly adopt practices that are unfair or do not take into account the essential nature of communications services;

Whereas market forces do not provide necessary protections to consumers who experience payment difficulties;

Whereas our survey's results reveal that many consumers are unaware of the very existence of regulations applicable to communications service providers in terms of deposits, disconnections and suspensions, payment arrangements and credit reports, and that many also wrongly believe that certain unregulated aspects are regulated:

Union des consommateurs recommends that the CRTC:

1. Regulate providers' bad debt management practices, harmonize applicable regulations and group them within a single document or code;

2. Provide a high level of protection with regard to all communications services, by adapting, where necessary, specific terms to the essential nature of those services, for the benefit of consumers who encounter financial difficulties and have difficulty paying their communications services' bills;
3. Ensure that the unified code is easily accessible and understandable to consumers, so that they can learn about the protections to which they are entitled and can benefit from the code's measures.

REGARDING SECURITY DEPOSITS

Whereas consumers required to provide a deposit are generally in a more precarious financial situation (insufficient or blemished credit history);

Whereas no cap is imposed on the security deposit amount that providers can require for wireless telephone services, television services and Internet access;

Whereas deposit requirements made of consumers are commonplace (25% of consumers surveyed – and 40% of 18-24 year-olds – have already been required by a service provider to provide a security deposit);

Whereas the main problems encountered by consumers regarding security deposits are:

- The excessive amount of the required deposit;
- Non-return of the deposit;

Whereas existing regulations for reviewing and for returning a security deposit to the consumer differ, inexplicably, depending on the type of telephone service;

Whereas the CRTC's current regulations for the review and return of deposits does not apply to television and Internet access services;

Whereas the vast majority of complaints received by the CCTS about security deposits concern the non-return of those deposits to the consumer;

Whereas the conditions for returning and reviewing security deposits are very frequently absent in providers' contractual documentation;

Whereas the consumer's provision of a security deposit prevents him at times from benefiting from certain providers' promotions, including discounts for service bundles;

Whereas our survey's results indicate that a majority of consumers favour regulation of the deposit amount that can be required and of the period for returning the deposit;

Whereas the terms of energy service providers provide an exact calculation of deposit amounts required of consumers;

Whereas the terms of service of the public utilities of some American states exempt certain consumer categories from providing a security deposit;

Union des consommateurs recommends that the CRTC:

4. Impose caps, with regard to all communications services, on security deposits that providers can require of consumers;
5. Determine precisely in what circumstances a deposit may and may not be required;
6. Require providers to offer alternative options to consumers incapable of providing a deposit;
7. Provide exemptions to deposit requirements for certain categories of vulnerable consumers (low income, elderly, etc.);
8. Prohibit providers from penalizing a consumer – for example, by limiting his access to certain bundles or promotions – who provides a security deposit;
9. Provide uniform regulations for all the services with regard to providers' review and return of security deposits.

REGARDING SERVICE SUSPENSIONS AND DISCONNECTIONS

Whereas disconnections and suspensions are not the exceptions they should be (17% of the consumers surveyed – and 26% of 18-34 year-olds – have experienced a suspension or disconnection of communications services);

Whereas no threshold is imposed on providers for the amount or the payment delay that must be exceeded before they are authorized to suspend or disconnect an Internet access or television service;

Whereas the absence of a prior notice constitutes the problem most frequently reported to the CCTS regarding service suspension or disconnection;

Whereas the main problems encountered by consumers regarding suspension and disconnection are:

- The absence of a prior notice;
- Service suspension or disconnection for an insignificant payment or delay;
- Service suspension or disconnection despite a payment arrangement having been reached;

Whereas our survey's results indicate that a majority of consumers favour requiring providers to send a notice before suspending a service due to payment default, and also favour imposing a minimum payment delay before service suspension or disconnection;

Whereas other jurisdictions, such as France and Belgium, provide mitigation measures, for example reducing essential communications services (uses, speeds, etc.), instead of or before fully suspending a service due to payment default;

Communications services: Are the recourses before disconnection sufficient?

Whereas providers charge consumers a variety of other fees (for disconnection, reconnection, collection, etc.);

Whereas providers currently bill a consumer monthly fees for a service to which he no longer has access because it was suspended due to payment default;

Whereas other jurisdictions, such as Belgium, have regulated the amounts that can be charged to consumers in default;

Union des consommateurs recommends that the CRTC:

10. Require communications service providers to meet thresholds, i.e. a minimum amount specific to each communications service and a minimum payment delay, below which they would be prohibited from proceeding with suspension or disconnection due to payment default;
11. Require providers of all communications services to send notices prior to any service suspension or disconnection;
12. Ensure that providers strictly meet their existing obligations regarding notices prior to telephone service suspension or disconnection;
13. Encourage providers to put in place mitigation measures, and to provide consumers in default of payment with services reduced to their essential functions (uses, speeds, etc.) rather than suspending those services immediately;
14. Regulate and cap fees that providers can charge consumers in case of service suspension or disconnection due to payment default;
15. To that end, use as models the caps that foreign jurisdictions have imposed on the multiple fees that providers can charge;
16. Prohibit providers from billing monthly fees for a service that has been suspended due to payment default.

REGARDING PAYMENT ARRANGEMENTS

Whereas the need for payment arrangements with service providers is considerable (29% of consumers surveyed – and 40% of 18-34 year-olds – have reached or tried to reach a payment arrangement with their communications service provider);

Whereas a consumer's possibility of negotiating a payment arrangement, and the terms and conditions of such an agreement, are at the entire discretion of providers;

Whereas a majority of the studied providers' contractual documents indicated neither the possibility of concluding a payment arrangement nor the parameters used by providers to determine the possibility or the terms of such an agreement;

Whereas the main problems encountered by consumers regarding payment arrangements are:

Communications services: Are the recourses before disconnection sufficient?

- The offer or conclusion of an unrealistic payment arrangement, given the consumer's financial situation (period too short, monthly instalments too high, lack of flexibility, etc.);
- A provider's refusal to conclude a payment arrangement;
- Service suspension or disconnection despite the conclusion of a payment arrangement;

Whereas agreements that don't take into account a consumer's budget situation or financial ability are destined to fail and likely will lead to new defaults by the consumer;

Whereas one of the payment arrangement problems most frequently reported to the CCTS concerns providers' quickness in suspending services if the consumer doesn't honour the agreement;

Whereas our survey's results indicate that a majority of consumers favour the establishment of arrangement thresholds;

Whereas the major energy providers in Québec and Ontario offer payment arrangements adapted to the situation and income of households;

Whereas the major energy providers in Québec and Ontario also offer low-income households personalized payment arrangements that spread debt instalments over a longer period and that even allow progressive debt forgiveness;

Whereas Australia's Telecommunications Industry Ombudsman has developed a set of guiding principles for the providers' policies regarding subscribers with payment difficulties, and that several of those principles pertain to the development of personalized arrangements adapted to the economic and social reality of consumers;

Union des consommateurs recommends that the CRTC:

17. Require communications service providers to offer consumers with payment difficulties the possibility of concluding a payment arrangement;
18. Require providers to be proactive in reaching payment arrangements with consumers experiencing financial difficulties and in promoting the existence of such agreements (websites, invoices, etc.);
19. Establish criteria that providers must take into account in developing both their standard and personalized payment arrangements, such as a consumer's ability to pay and his particular vulnerabilities;
20. Provide in the codes (or in a unified code) reparations to consumers whose provider has failed to meet its commitments resulting from a payment arrangement.

REGARDING THE HANDLING OF UNPAID BILLS

Communications services: Are the recourses before disconnection sufficient?

Whereas providers currently charge interest rates of up to 40% annually on unpaid amounts;

Whereas providers charge consumers a variety of other fees (late fees, collection fees, etc.);

Whereas generally, the greater a provider's market share, the higher the late fees charged by that provider;

Whereas other jurisdictions, such as Belgium, have regulated the amounts that can be required of consumers in default;

Union des consommateurs recommends that the CRTC:

21. Regulate and cap the fees that providers may charge consumers in payment default, including interest rates on outstanding amounts;
22. Emulate, to that end, foreign jurisdictions that have capped the amounts of fees that providers may charge.

Appendix Questionnaire Submitted to Service Providers

Research Project Funded by the Office of Consumer Affairs
(Innovation, Science and Economic Development Canada)
May 2019

QUESTIONNAIRE

Presentation of the organization

Union des consommateurs is a non-profit organization comprised of 13 consumer rights groups. UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households.

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

Presentation of the project

Union des consommateurs is currently conducting a research project on protections that should benefit telecommunications service customers encountering payment difficulties, to help those customers pay their debts before sustaining adverse consequences. The project, titled *Communications Services: Are the Recourses before Disconnection Sufficient?*, is funded by the Office of Consumer Affairs of Innovation, Science and Economic Development Canada.

In this research project, we have attempted to assess the regulatory frameworks and the practices of providers with regard to deposits and their management, notices of non-payment, circumstances of disconnection, payment arrangements and credit file management.

We have also drawn a portrait of problems faced by consumers of those services who have payment difficulties. To that end, we reviewed the literature and CCTS reports and we conducted a survey of 2,011 Canadians over the age of 18 who subscribe to a communications service. That survey, conducted by a specialized firm, addressed the problems those Canadians may have encountered, and their general knowledge of the existing regulatory framework in this regard. To complete the documentation of problems experienced by consumers, we consulted budget advisors working in consumer rights organizations that are Union des consommateurs members.

On the basis of the problems and best practices observed in Canada and elsewhere, notably regarding public utilities (such as electricity), we want to propose solutions to better protect the economically vulnerable clientele of communications services.

Context and questions

Here are issues addressed by our research and on which we seek your views.

Scattered regulations

The review of the literature, the consultation of budget advisors and the consumer survey revealed that economically vulnerable clienteles encounter numerous problems with communications service providers. An examination of the various regulatory frameworks demonstrated that consumer protections are uneven depending on the different services (landline telephony, cellular telephony, Internet service and cable television). In addition, the frameworks are scattered in a multitude of disparate documents, mainly due to the different terminologies used.

What do you generally think of the current state of regulations to protect communications service consumers who have payment difficulties?

In your view, is it appropriate that the various services are subject to deposit and disconnection policies that occasionally differ greatly?

Payment arrangements

Many communications service customers and budget advisors report problems with payment arrangements, particularly those that don't take into account people's capacity to pay. Indeed, each year, the CCTS receives thousands of complaints about communications service providers, regarding security deposits, payment arrangements, collection procedures, and the use of customers' credit files. And yet, there are no specific regulations for payment arrangements between service providers and customers with payment difficulties.

Do you receive a lot of complaints about payment arrangements entered into by your customers?

Do you systematically offer payment arrangements to customers with payment difficulties?

Should legislation compel communications service companies to conclude payment arrangements with their customers?

Do you think it would be appropriate to regulate the terms of payment arrangements concluded between communications service providers with their customers (duration, refund amount percentage, consequence of defaulting on an agreement, etc.)?

Communications services: Are the recourses before disconnection sufficient?

Thank you for your collaboration.
We invite you to return the completed questionnaire by **Friday, May 24, 2019 to:**

Sophie Roussin

Email: sroussin@uniondesconsommateurs.ca