

# UNLIMITED... REALLY?

Are Consumers Adequately Protected?

Final Report on Research Project  
Presented to the Office of Consumer Affairs  
of Innovation, Science and Economic Development Canada



June 2017

Report published by:



7000 Parc avenue, suite 201  
Montreal (Quebec) H2N 1X1

Phone : 514 521-6820  
Toll Free : 1 888 521-6820  
Fax : 514 521-0736

[info@uniondesconsommateurs.ca](mailto:info@uniondesconsommateurs.ca)  
[www.uniondesconsommateurs.ca](http://www.uniondesconsommateurs.ca)

**Members of Union des consommateurs**

ACEF Appalaches – Beauce – Etchemins  
ACEF de l'Est de Montréal  
ACEF de l'Île Jésus  
ACEF du Grand-Portage  
ACEF du Sud-Ouest de Montréal  
ACEF du Nord de Montréal  
ACEF Estrie  
ACEF Lanaudière  
ACEF Montérégie-est  
ACEF Rive-Sud de Québec  
Centre d'éducation financière EBO  
ACQC  
and individual consumers

**Writing of the report**

- Sophy Lambert-Racine

**Editorial management**

- Me Marcel Boucher

**Traduction**

- Caroline Jeannotte, Paragraphe ///

ISBN : 978-2-923405-63-6

*The masculine is used generically in this report.*

Union des consommateurs received funding from Innovation, Science and Economic Development Canada's Contributions Program for Non-profit Consumer and Voluntary Organisations. The views expressed in the report are not necessarily those of Innovation, Science and Economic Development Canada or the Government of Canada.

© Union des consommateurs — 2017

## Table of contents

---

<b>UNION DES CONSOMMATEURS, <i>Strength through Networking</i></b>	<b>5</b>
<b>1 INTRODUCTION</b>	<b>6</b>
<b>2 LITERATURE REVIEW</b>	<b>8</b>
2.1 Consumer usage profile .....	8
2.1.1 A little background on unlimited services .....	11
2.2 Reaffirming net neutrality.....	14
2.3 Consumer complaint summary .....	15
<b>3 OBLIGATIONS SUMMARY</b>	<b>19</b>
3.1 Quebec and Ontario legislation .....	19
3.2 <i>Competition Act</i> .....	20
3.3 <i>Wireless Code</i> .....	20
3.4 Internet Traffic Management Practices regulatory framework .....	20
<b>4 FIELD STUDY</b>	<b>22</b>
4.1 Methodology.....	22
4.1.1 Methodological limits and specificities .....	22
4.2 Highlights.....	23
4.2.1 Analysis of promotional literature .....	24
4.2.2 Policy analysis.....	31
4.2.3 General impression given by the documents .....	49
<b>5 CONSUMER PERSPECTIVES</b>	<b>52</b>
5.1 Methodological summary.....	52
5.2 Main highlights.....	52
5.2.1 Policy #1.....	56
5.2.2 Policy #2.....	56
5.2.3 Policy #3.....	57
<b>6 STUDY OF SOLUTIONS ABROAD</b>	<b>61</b>
6.1 United Kingdom .....	61
6.2 United States .....	63
6.3 Australia.....	67

<b>7</b>	<b>CONSULTATIONS WITH STAKEHOLDERS</b>	<b>72</b>
7.1	Consumer issues regarding information .....	72
7.2	How to provide consumers with better information .....	73
7.3	Possible solutions .....	73
<b>8</b>	<b>CONCLUSIONS</b>	<b>74</b>
<b>9</b>	<b>RECOMMENDATIONS</b>	<b>77</b>
	<b>MEDIAGRAPHY</b>	<b>80</b>

## **ANNEX**

<b>1</b>	<b>Passage Marketing Report, Summaries of consumer responses .....</b>	<b>86</b>
<b>2</b>	<b>Stakeholder questionnaire .....</b>	<b>87</b>

## **UNION DES CONSOMMATEURS, *Strength through Networking***

---

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

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

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

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

## 1 Introduction

---

*Access to broadband Internet service is vital and a basic telecommunication service all Canadians are entitled to receive. [...] All players in the Canadian communications landscape will need to do their part to ensure Canadians have access to the services they need to participate in the digital economy<sup>1</sup>*

The call to order issued in December 2016 by Jean-Pierre Blais, Chairman of the Canadian Radio-television and Telecommunications Commission (CRTC) is a good indication that things turned around in recent years in the world of telecommunications. For the CRTC, this is more than wishful thinking: Despite the necessity for universal high-speed Internet access, the CRTC also raised the upload speed thresholds from 5 to 50 Mb/s which all consumers should have access to. Furthermore, the Commission requires that consumers from all regions receive unlimited Internet access service offers<sup>2</sup>. Telecommunication services, in particular Internet access services, have become more than a simple way of entertainment or communication. We can no longer do without them; they are essential services. It is essentially the conclusion the CRTC came to after extensive consultation on that matter.

Canada has long been a country where download limits were problematic for consumers. For a long time, it was one of the OECD countries where data transfer limits were among the most restrictive. The truth is that data consumption on wireline and mobile wireless Internet keeps rising<sup>3</sup>. Fortunately, the unlimited Internet access service offer has also increased in recent years and the CRTC decision on basic telecommunication services will encourage suppliers to increase even more, offers that are not based on monthly data usage.

Of course, by definition, unlimited services attract more heavy users who want to avoid unpleasant surprises. Unlimited telecommunication service offers, whatever they may be, have generated various types of complaints along the years. Some problems pertaining to provider representations live on just as unilateral contract modifications or unexpected service interruptions. Particular attention should be given to these re-occurring problems to determine if the current measures in place to protect consumers are adequate and sufficient.

---

<sup>1</sup> Government of Canada. CRTC establishes fund to attain new high-speed Internet targets. News Release, December 21, 2016. <http://news.gc.ca/web/article-fr.do?nid=1172599> (page visited on May 17, 2017).

<sup>2</sup> To read all the elements of the decision, see: Telecom Regulatory Policy CRTC 2016-496, December 21, 2016. <http://crtc.gc.ca/eng/archive/2016/2016-496.htm> (page visited on May 9, 2017).

<sup>3</sup> "In 2015, Internet data consumption grew by almost 40% while data traffic over mobile wireless networks increased by 44%." CRTC, Communications Monitoring Report 2016: Executive Summary, Chairman's message, last modification, February 27, 2017 : <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2016/cmrs.htm> (page visited on May 29, 2017).

First, we will conduct a brief literature review to identify the needs and uses of the telecommunication services consumers. Then, we will analyze the content of a few debates that took place in the regulatory environment on the imposed limits pertaining to the services that are known to be unlimited. We will finish with a review of the main sources of complaints on that type of service or practice in recent years.

We will continue with a study on the main obligations of the Federal and Provincial Governments toward the providers of unlimited telecommunication services. The results will determine if the protective measures extended to Canadian consumers are sufficient.

Having identified and described the main obligations for the offer and provision of this type of service in Canada, we will quote the findings of our field study which aimed to verify how the top Canadian providers comply with the obligations identified in the previous section. To do so, we will analyze the promotional material related to a package of telecommunication services advertised as “unlimited” or using similar terms.

We will also look into the terms of service, fair use policy and other similar documents to get acquainted with the conditions that may apply to the use of such services. We will then be able to get a clear picture on the various practices: What are the specified or imposed limits to the services advertised as unlimited? Are the limits undermining the main feature of the service?

We will then report the views of the consumers on the subject. We drew on the practices identified in our field study to address consumers through a Canada-wide online survey on their experience in these services, their expectations on unlimited services and their appreciation on the clarity of disclosed information on the limits that may be imposed by unlimited service providers. We have also sought their opinion on possible solutions to the main problems linked to unlimited services.

Once the issues related to unlimited services are solved, we will go on with an analysis of alternatives adopted by foreign jurisdictions where the market is somehow comparable to the Canadian market on several elements. Our main focus will be on the interventions made by the United States, Australia and the United Kingdom on offers and representations regarding unlimited telecommunication services. We will identify some promising and potentially applicable solutions here in Canada, considering the specific characteristics of these markets.

The last research stage, we have consulted Canadian stakeholders. To do so, we have talked to several legislative and regulatory authorities as well as members of the industry to gain their insights on the highlights of our research. We will report their views on the appropriateness of the Canadian regulation and on the possible solutions resulting from our study on foreign jurisdictions. The point of view of the stakeholders will allow us to consider the advice of various contributors and to refine our recommendations.

This report will highlight it better than this introduction. However, it is important to say that our conclusions highlight the fact that the main problems encountered by Canadians is a shared responsibility. Consumers have the obligation to obtain the full information on the services to which they are subscribing. However, this information has to be accurate and easy to get, and must be provided in a timely manner. Our recommendations will be focused on legislative and regulatory authorities as well as on members of the industry.

## 2 Literature review

---

### 2.1 Consumer usage profile

While consumers generally use fewer and fewer wireline telephone services, a growing number of households are turning to wireless Internet and mobile services; subscribers to those services are considerably outnumbered by wireline telephone subscribers. According to the Statistics Canada survey on household expenses, in 2014, 75.5% of the households were subscribing to a wireline phone service (against 86.6% in 2011) and 85.6% were subscribing to a wireless phone service (against 79.1% in 2011)<sup>4</sup>. Furthermore, 84% of Canadian households would be subscribing to a high-speed Internet access service<sup>5</sup>. Consumers would have increased their spending on Internet access services by 4.3%, and their mobile wireless services by 4.8%. They have also reduced their wireline phone services spending by 6.3%<sup>6</sup>.

Internet access speeds to which consumers are subscribing are increasing. Between 2011 and 2014, subscriptions to 16 Mb/s speed and above are almost six times higher: from 7% in 2011, their proportion increased to 41% in 2014<sup>7</sup>.

The popularity of video streaming (one of the most data and speed consuming use) is still growing. Today, 60% of Quebec adults watch online videos, whereas in 2015, the proportion was 53%<sup>8</sup>. It is, in fact, the most popular activity among Internet users. Subscriptions to paid music and video are also increasing. In five years, traffic generated by video and audio content streaming on the Internet doubled, generating 70% of the total wireline traffic during peak hours<sup>9</sup>. Meanwhile, peer to peer file transfer is still decreasing; cloud computing services are now surpassing P2P uploaded data<sup>10</sup>.

---

<sup>4</sup> CRTC, Communications Monitoring Report 2016, p. 59  
<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> (document consulted on May 11, 2017).

<sup>5</sup> *Idem*, p. 245.

<sup>6</sup> *Idem*, pp. 45-46.

<sup>7</sup> *Idem*, p. 62.

<sup>8</sup> CEFRIO. Les jeunes adultes très friands des services de divertissement en ligne au Québec, Young adults very passionate about online entertainment services in Quebec. (In French only). May 4, 2017.  
<http://www.cefrio.qc.ca/salle-presse/communiqués/les-jeunes-adultes-très-friands-des-services-de-divertissement-en-ligne-au-quebec/> (page consulted on May 10, 2017).

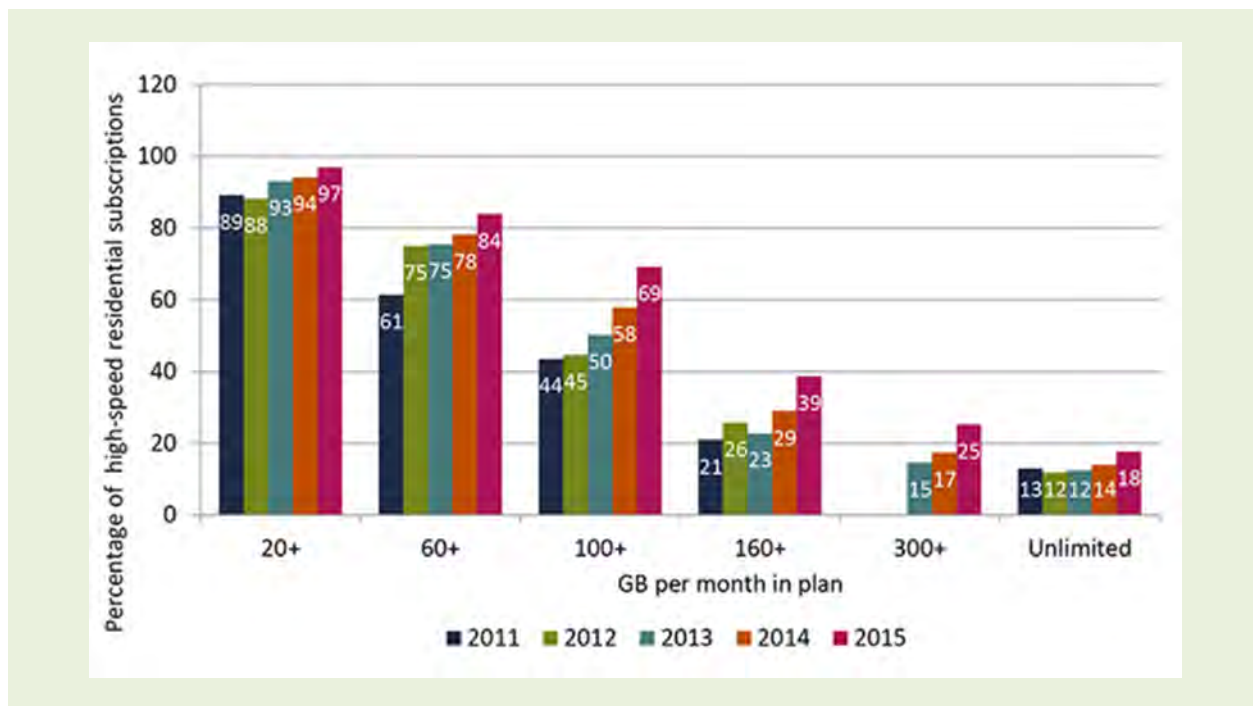
<sup>9</sup> SANDVINE. Over 70% Of North American Traffic Is Now Streaming Video And Audio. Waterloo, Ontario, Canada, s.d. <https://www.sandvine.com/pr/2015/12/7/sandvine-over-70-of-north-american-traffic-is-now-streaming-video-and-audio.html> (page consultée le 11 mai 2017).

<sup>10</sup> SANDVINE. 2016 Global Internet Phenomena Report—North America and Latin America. Waterloo, Ontario, Canada, s.d. <https://www.sandvine.com/resources/global-internet-phenomena/2016/north-america-and-latin-america.html> (page visited on May 11 ; 2017).



All in all, the use of Internet access services and mobile wireless services by Canadians is somehow stepping up; their data consumption confirms it. According to the CRTC, Communications Monitoring Report, the subscribers' monthly average of downloaded data is 93 Go. We thus see a 50% average annual increase of downloaded data over the last five years.

**Table 1**  
**High-speed residential Internet service subscribers, by GB data transfer**  
**(upload/download) capacity included in subscriptions <sup>11</sup>**



Source: CRTC data collection

It is a new situation. It does seem that over several years, offers that didn't limit consumers' monthly usage were rare in Canada. However, download limits in packages offered by providers were decreasing. Between 2008 and 2010, for example, monthly download limits increased from 81 to 74 GB for speeds between 10 and 15 Mb/s, from 54 to 45 GB for speeds between 5 and 9 Mb/s and from 43 to 22 GB for speeds between 1.5 and 4 Mb/s<sup>12</sup>.

<sup>11</sup> *Op. cit.* note 4, CRTC, Communications Monitoring Report 2016, figure 5.3.2

<sup>12</sup> CRTC, Communications Monitoring Report — September 2013, table 5.3.4 (part 2).

<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2013/cmr2013.pdf> (document consulted on May 11, 2017)

More recently, a few negative fluctuations were also observed, this time in all speed segments. In general, it seems that the weighted average use continues to grow. As shown in the tables below, data usage limits are going up and down throughout the years. All speeds, apart from the low speed, have experienced upward and downward trends.

**Table 2**  
**Weighted-average upload and download usage (GBs) of residential high-speed Internet subscribers**<sup>13</sup>

Usage	2011	2012	2013	2014	2015	Growth (%) 2014-2015	CAGR (%) 2011-2015
Download	18.2	28.4	44.8	66.5	93.0	39.9	50.4
Upload	3.8	5.4	6.0	8.6	10.9	26.8	30.2
Total	22.0	33.8	50.8	75.1	104.0	38.4	47.4

Source: CRTC data collection

**Table 3**  
**Weighted-average upload/download limits (GBs) of residential Internet service plans, by advertised download speed**<sup>14</sup>

Advertised download speed	2011	2012	2013	2014	2015
Lite and wideband up to 256 Kbps	-	-	-	-	-
Wideband 300 to 1400 Kbps	14.90	17.89	25.42	27.25	31.23
1.5 to 4 Mbps	69.06	94.93	68.22	52.20	63.24
5 to 9 Mbps	80.81	76.78	48.46	53.36	62.55
10 to 15 Mbps	74.22	106.74	99.84	101.79	110.68
16 to 49 Mbps	176.98	131.50	142.14	159.15	188.50
50 Mbps and higher	236.54	364.80	362.86	283.10	286.34
All tiers	81.11	103.48	99.24	118.27	141.94

Source: CRTC data collection

Evidently, in spite of a growing demand from consumers to have access to more data, up to 50% a year on average, according to the CRTC, the increase of the data transfer thresholds is not guaranteed for all. In short, although, globally, data consumption is increasing and the offer for unlimited services increased over the past few years, numerous consumers are still confronted to monthly usage limits. Furthermore, it is still not possible in Canada have access everywhere to unlimited Internet access services<sup>15</sup>.

<sup>13</sup> *Op. cit.* note 4, CRTC, Communications Monitoring Report 2016, Table 5.3.6

<sup>14</sup> *Op. cit.* 4, CRTC, Communications Monitoring Report 2016, Table 5.3.9

<sup>15</sup> For a deeper analysis of the situation in Canada regarding download limits, regional differences and findings by providers, see the report published by Union des consommateurs (UC) in June 2014: Download limits: the best choice for consumers? 135 pages.

[http://uniondesconsommateurs.ca/docu/rapports2014/38-Limites\\_usage-EN.pdf](http://uniondesconsommateurs.ca/docu/rapports2014/38-Limites_usage-EN.pdf)

### 2.1.1 A little background on unlimited services

Service offers without usage limits have been controversial throughout the years, and Canada was no exception. In 2008, the CRTC has held consultations on the Internet traffic management practices (ITMPs) in a context where Internet services resellers had complained that their wholesale service providers were engaged in traffic shaping on their network for peer-to-peer file-sharing applications<sup>16</sup>. Although the CRTC had ruled in favour of the wholesale providers and allowed these practices, the Commission had also launched a public consultation to determine if special measures were required to ensure that this type of practice complied with the Telecommunication Act.

In that consultation on ITMPs, providers had argued that usage-based pricing should be recognized by the CRTC as an acceptable way to manage network traffic. In addition to this economic measure, the providers indicated that they should be able to impose technical management measures, including, the slowing of traffic over networks during congestion periods<sup>17</sup>.

In its 2009 decision, the Commission recognized that the download limits were one of the clearest ITMPs for consumers and that the conditions were clearly stated in the promotional literature. The Commission also recognized that the providers were allowed to impose technical measures to a limited type of applications<sup>18</sup>. It has also imposed a framework to ensure that the providers' traffic management practices are transparent. We will further discuss these obligations in the next section.

It is clear that the consultations on ITMPs were conducted while some providers were engaged in traffic shaping or had amended their contracts because data usage in Internet contracts, including unlimited services, would have been much higher than expected. During that period, data limits in several types of packages were reduced, as mentioned above. Providers also offered fewer unlimited services.

In fact, during that period, in certain regions, unlimited services have become a practically exclusive purview of independent providers. At the time, several providers stated that increased demand for bandwidth, mainly the one generated by peer-to-peer file-sharing would have been the cause (or was likely to cause) network congestion.

---

<sup>16</sup> For more information, see Telecom Decision CRTC 2008-108; November 20, 2008: <http://www.crtc.gc.ca/eng/archive/2008/dt2008-108.htm> (page visited on March 18, 2017).

<sup>17</sup> Comments from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (the Companies), par. 4, and 6 to 8, note 114 CRTC, "Review of the Internet traffic management practices of Internet service providers", p. 58.

<sup>18</sup> Review of the Internet traffic management practices: Telecom Regulatory Policy CRTC 2009-657, October 21, 2009. <http://www.crtc.gc.ca/eng/archive/2009/2009-657.htm> (page visited on June 16, 2017).

A little more than a year after its 2009 decision on ITMPs, the CRTC reached a decision that could have had a significant effect on independent service providers. It should be remembered that the main providers who own telephone and cable infrastructure have the obligation, in accordance with the policies adopted by the Commission, to offer wholesale services to independent providers. Some rates and conditions are determined by the CRTC depending on cost reviews sent to the Commission by the providers on a confidential basis.

At the request of Bell, the Commission authorized a wholesale usage-based billing model<sup>19</sup>. Such a billing model would have allowed the wholesale providers to force – no more and no less – resellers and competitors to impose data transfer limits on their customers. Since unlimited services are the most common among independents, such a change would have made unlimited monthly data transfer services very rare. This Commission's decision quickly generated popular and media discontent.<sup>20</sup> Following pressure from the federal government, the Commission had to review its policy<sup>21</sup>.

More recently, the Commission announced, on its own initiative, certain decisions which benefit consumers. It has regulated the access to optical fibre services to the customer's premises<sup>22</sup>, which for several years, did not have to be offered to independent service providers thus blocking the access to the highest speeds. The appeal of that decision filed by Bell based on the fact that it would affect its capacity for innovation, an objection that the company incidentally had raised before the CRTC, was also rejected by the federal government<sup>23</sup>.

---

<sup>19</sup> Telecom Decision CRTC 2010-255, May 6, 2010. <http://www.crtc.gc.ca/eng/archive/2010/2010-255.htm> (page visited on May 11, 2017).

<sup>20</sup> A few examples:

IT World Canada. *The fight over usage-based Internet billing*, ITWC, Toronto, s.d.

<http://www.itworldcanada.com/the-fight-over-usage-based-internet-billing>,

BUCKNER, Dianne. *Usage-based billing debate: Bandwidth hogs or business bulls?* CBC news Business, CBC, Montréal, Canada, February 9, 2011. <http://www.cbc.ca/news/business/usage-based-billing-debate-bandwidth-hogs-or-business-bulls-1.1012198> and

STURGEON, Jamie. *Taking fire, Bell insists Internet caps suitable for 'vast majority'*, Financial Post, Toronto, Canada, January 31, 2011. <http://business.financialpost.com/fp-tech-desk/taking-fire-bell-insists-internet-caps-suitable-for-vast-majority> (pages consulted on May 31, 2017).

<sup>21</sup> For more information; see Union des consommateurs report: Download limits, *Op. cit.* note 15, pp. 59 to 62.

<sup>22</sup> Telecom Regulatory Policy CRTC 2015-326, July 22, 2015.

<http://www.crtc.gc.ca/eng/archive/2015/2015-326.htm> (page visited on May 12, 2017).

<sup>23</sup> JACKSON, Emily. *Ottawa upholds CRTC's decision to allow small Internet providers access to high-speed networks*, Financial Post, May 11, 2016. <http://business.financialpost.com/fp-tech-desk/ottawa-upholds-crtcs-decision-to-cap-wholesale-wireless-rates> (page visited on May 11, 2017).

In October 2016, the CRTC dissatisfied with the cost reviews provided by the companies to determine the wholesale pass-through rates, reduced the wholesale pass-through rates on a provisional basis, and asked the providers to submit cost reviews in compliance with regulations<sup>24</sup>. During the following months, some independent providers, in reaction, decreased the prices invoiced to their customers and/or increased their data transfer limits<sup>25</sup>. At time of publication, final pricing has not been determined by the Commission.

In addition to the stated aim of these decisions to stimulate competition, the CRTC has also recently reviewed its regulatory framework on basic telecommunication services, and laid the foundation of its orientation in that field in mid and long term<sup>26</sup>. The Commission recognizes that the future is more dependent on Internet access services and mobile wireless services, making it subject to a new universal service goal. As mentioned in the introduction of this report, the target speed established by the Commission is ambitious: 50 Mb/s, a speed 10 times higher than the one previously established, which was 5 Mb/s. An important fact is that the Commission recognizes that the consumers' needs are not expressed only in speed, but they also relate to data transfer limits. It admits that the services must reflect the consumer needs in terms of data usage. Their yearly data usage is increasing by 50% for downloads and 30% for uploads. It also admits that: "*A lack of sufficient data capacity impedes innovation and productivity in the economy of many rural and remote communities*"<sup>27</sup>. The Commission thus asserts the right of consumers from all regions to have access to at least one unlimited service option. Although all mechanisms that will ensure compliance with these obligations are not yet established, this is a promising road map for the future.

When it comes to phone services, the Commission also admits that they are important, but it is clear that it does not intend to establish the foundation of its regulatory framework on landline phone. Since the access to a phone service offering unlimited local calls has reached geographic universality, the CRTC abolished the basic service objective as previously defined.

---

<sup>24</sup> DOBBY, Christine. Pushing for competitive market, CRTC slashes wholesale fees charged by incumbent ISPs, The Globe and Mail, October 6, 2016. <http://www.theglobeandmail.com/report-on-business/crtc-aims-to-boost-home-internet-competition-with-rate-cut/article32279440/> (page visited on May 11, 2017).

<sup>25</sup> BENESSAIEH, Karim. *Internet: les fournisseurs indépendants passent à l'acte*, La Presse, (in French only), January 16, 2016. <http://www.lapresse.ca/techno/internet/201701/16/01-5059879-internet-les-fournisseurs-independants-passent-a-lacte.php> (page visited on May 11, 2017).

<sup>26</sup> *Op. cit.* Note 2, Telecom Regulatory Policy CRTC 2016-496.

<sup>27</sup> *Idem*, par: 91 to 97.

## 2.2 Reaffirming net neutrality

The CRTC has also been the centre of attention in recent years for other types of unlimited services. Complaints were officially filed against several wireless service providers that had excluded calculations of the use of mobile data used to view video streaming content that they owned. The complaints filed alleged that this practice disadvantaged the services that did not belong to wireless service providers, which was more or less an anti-constitutional practice and an obstruction to net neutrality<sup>28</sup>. In its decision, the Commission concluded that the providers involved “in providing the data connectivity and transport required for consumers to access the mobile TV services at substantially lower costs to those consumers relative to other audiovisual content services, have conferred upon consumers of their services, as well as upon their services, an undue and unreasonable preference, in violation of subsection 27(2) of the *Telecommunications Act*<sup>29</sup>.” Providers have not repeated that practice since.

In a similar situation, the Commission was the subject of a complaint regarding another provider who launched a program that enabled some of its customers to use music streaming services without requiring the measurement of their data usage in their monthly allocation. The issue was more complex this time, and the Commission’s reply less predictable, since the provider had concluded partnerships with companies that did not belong to it, and it did not give preference to its own services. Furthermore, the supplier had stated that any company that wanted to be part of the program could do so upon request. During the consultations, it was established that several months could elapse between a streaming company’s request and its inclusion in a provider’s unlimited data program. It was also established that the request to be included in the program of certain Canadian radio services had not been accepted due to technical specificities. On another note, the service was not offered to the subscribers of all the packages offered by the provider. The offer was for high-demand customers as opposed to those who subscribed to cheaper plans.

For all these reasons, and for many others, the CRTC required corrective measures to ensure that the service offered complied with the *Telecommunications Act*<sup>30</sup>. Consequently, the Commission noted that the benefit offered by the program to some subscribers and some music streaming service providers was an unfair advantage, and hence, prohibited by law since it allowed the provider to control the offer and it was penalizing from an economic point of view, ineligible customers or those who chose a comparable service not included in the program. The Commission therefore introduced new regulations regarding price discrimination practices by Internet service providers. Although this practice is not specifically prohibited, the Commission adopted clear criteria to establish if the providers engaged in this practice are violating the *Telecommunications Act*.

---

<sup>28</sup> More details on this concept will be presented in the following chapter.

<sup>29</sup> CRTC. Broadcasting and Telecom Decision CRTC 2015-26, January 29, 2015. <http://crtc.gc.ca/eng/archive/2015/2015-26.htm> (page visited on May 12, 2017).

<sup>30</sup> CRTC. Telecom Decision CRTC 2017-105, April 20, 2017. <http://crtc.gc.ca/eng/archive/2017/2017-105.htm> (page visited on May 12, 2017).



The questions raised by these issues are very interesting, but they pertain more or more directly to net neutrality, and although they are essential to the protection of free speech and free competition on the Internet, they don't pertain to this research project.

*In terms of the problems mentioned above regarding streaming services, there is no consensus on the consumer side: While several informed consumers had known about the net neutrality issue, several others had seen short-term benefits in the unlimited access offer to certain services, given the usage limits imposed by wireless and Internet access services. To address this concern, the Chairperson of the CRTC encouraged the providers, once more, to offer services that better serve consumer needs without giving preference to a specific type of content.*

“Rather than offering its subscribers selected content at different data usage prices, Internet service providers should be offering more data at lower prices. That way, subscribers can choose for themselves what content they want to consume<sup>31</sup>.”

This comment from the Chairperson of the CRTC is fully compatible with the unlimited service offer being subjected to the universal service objective.

## 2.3 Consumer complaint summary

Although several debates on access to affordable and quality services, including unlimited services, more often had to do with Internet access services, the issue was also often raised on other types of services, more precisely on long-distance calls and mobile wireless services. Although consumer debates and complaints on unlimited services are more frequent abroad, more specifically in the United States<sup>32</sup> and in France<sup>33</sup>, countries where unlimited services are more common, at the same time, the issue was also reported in various complaint reports in Canada.

The Commissioner for Complaints for Telecommunications Services (CCTS) has noted several relevant issues regarding this research in his annual reports. For several years in a row, complaints related to misleading disclosures, all services combined, have been the most targeted area of complaint to the Commissioner.

---

<sup>31</sup> Government of Canada. *CRTC strengthens its commitment to net neutrality, consumer choice and free exchange of ideas by citizens*. News Release, April 20, 2017. [https://www.canada.ca/en/radio-television-telecommunications/news/2017/04/crtc\\_strengthensitscommitmenttonetneutralityconsumerchoiceandfre0.html](https://www.canada.ca/en/radio-television-telecommunications/news/2017/04/crtc_strengthensitscommitmenttonetneutralityconsumerchoiceandfre0.html) (page visited on May 12, 2017).

<sup>32</sup> FEDERAL COMMUNICATIONS COMMISSION. DA 16–1125, In the Matter of T-Mobile USA, Inc. October 9, 2016, 21 pages. [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db1019/DA-16-1125A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1019/DA-16-1125A1.pdf) (document accessed on May 11, 2017).

<sup>33</sup> NUMERAMA. *Internet illimité : Orange et SFR assignés pour pratiques commerciales trompeuses*, Paris, France, September 16, 2010. <http://www.numerama.com/magazine/16797-internet-illimite-orange-et-sfr-assignes-pour-pratiques-commerciales-trompeuses.html> (in French only), (page visited on May 11, 2017).

However, a 24% decrease in the number of complaints related to that issue was noted in the Commissioner's 2015-2016 Annual Report <sup>34</sup>. We should bear in mind that the total number of complaints has also decreased in recent years. This decline may be attributable to the entry into force, in 2013, of the *Wireless Code of Conduct*. Wireless services were (and still are) the area generating the highest number of complaints to the Commissioner, so it is reasonable to conclude that a possible crackdown on market practices is leading to a decrease in the total number of complaints.

The situation is not as positive for other telecommunication services. The CCTS referred in its 2014-2015 Annual Report to a 52% increase in the number of complaints related to Internet access services. The report also stated that the percentage of complaints regarding Internet services tends to increase from one year to another; highlighted several issues pertaining to unlimited services; and mentioned that 80 customers had complained about the same supplier that has imposed limitations on wireless services which were advertised as unlimited services (calls, data, text messaging, and roaming in the United States).

*The company informed these customers that their service had been suspended due to "excessive usage" in breach of its Fair Use Policy. Some customers were even charged "overage fees" for their use. Unsatisfied with the provider's explanation, these customers complained to us, stating that they were never made aware that the use of their service, advertised and sold to them as "unlimited," actually had a limit.*

[...]

*The provider's offering of unlimited service did in fact have limits – but they weren't disclosed. What's more, the limits fluctuated based on how much usage the network experienced at a given time. It was therefore impossible for customers to know the limit, to plan for it, and to avoid overage charges<sup>35</sup>.*

In the same report, the Commissioner mentions another case of overage charges related to a service for \$66 per month, with unlimited usage that rose to \$140 per month in the last months of the contract. The provider's explanations for this price increase are not known.<sup>36</sup> Finally, in 2014-2015, 47 breaches of the Wireless Code of Conduct (out of a total of 582) concerned breaches of obligations related to failures to respect unlimited service obligations. The number of breaches of the WC on this subject significantly decreased in 2015-2016.<sup>37</sup>

---

<sup>34</sup> CCTS. *Guidance in a Sea of Change. 2015-2016. Annual Report 2015-2016*, 79 pages, p. 12 <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2015-2016/CCTS-Annual-Report-2015-2016.pdf> (document accessed on May 12, 2017).

<sup>35</sup> CCTS. *Making the Tough Calls. 2014-2015 Annual Report*, 63 pages, p. 13 <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2014-2015/CCTS-Annual-Report-2014-2015.pdf> (document accessed on May 12, 2017).

<sup>36</sup> *Idem*, p. 18.

<sup>37</sup> *Op. cit.* Note 34. CCTS. *2015-2016 Annual Report*. p. 21



The Commissioner had already mentioned the issues related to unlimited services in a previous report. In 2013-2014, he highlighted the case of a customer subscribed to an unlimited data service that was limited without his/her consent.

*In January 2014, the service provider suspended the customer's data service and informed him that he had surpassed his 10 GB data usage cap. The customer disputed the resulting overage charges, stating that he had unlimited service and did not agree to change to a 10 GB cap. The service provider took the position that it was allowed to change the customer's data plan from unlimited to 10 GB without the customer's express consent because the data plan was not a "key term and condition" of the contract but rather was an add-on. We found this odd since the customer was using a data stick and the only service he required for this purpose was data<sup>38</sup>.*

Since the service in question addressed only access to mobile data, the Commissioner rejected the argument provided by the supplier who stated that the usage of data was an optional service that could be subjected to a unilateral change. The complaint was settled in favour of the consumer.

In 2011-2012, the CCTS also reported issues with unlimited services. In particular, the case of a subscriber who had accepted wireless services that included the option of unlimited incoming calls. This option apparently vanished suddenly during the contract<sup>39</sup>. That year, the Commissioner devoted a specific section to unlimited services and gave certain warnings to consumers.

*Consumers should be aware that most unlimited plans are subject to what service providers call a "fair use" or an "acceptable use" policy. If you look closely, you'll probably find a reference to such a policy in the small print at the bottom of an advertisement. [...] If you are attracted by the offer of an unlimited service plan, we urge you to be aware of the potential limitations. Ask the provider whether its unlimited plan is potentially limited, and try to determine how the provider applies its policy<sup>40</sup>.*

In the same report, the CCTS indicated that several complaints had been filed by consumers whose contracts had a \$20 unlimited foreign long-distance call option, but for which that option had been removed unilaterally by the provider who invoiced them according to usage. The provider argued that it was entitled to do so according to its fair use policy. Further investigation by the Commissioner determined that the provider did not have any clearly defined policies on what fair use is nor on what kind of usage would have negative consequences for the consumer.

---

<sup>38</sup> CCTS. *Driving Positive Change. 2013-2014 Annual Report*, 42 pages, p. 20. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2013-2014/CCTS-Annual-Report-2013-2014.pdf> (document accessed on May 12, 2017).

<sup>39</sup> CCTS. *We Listen. We Help. 2011-2012 Annual Report*, 48 pages, p. 15. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2011-2012/CCTS-Annual-Report-2011-2012.pdf> (document accessed on May 12, 2017).

<sup>40</sup> *Idem*, p. 18.

In short, the supplier believed that an unclear mention to its policies entitled it to apply absolute discretionary practices. The CCTS concluded, instead, that the provider's practices were unreasonable and settled the complaints in favour of the consumers.

The CCTS also formulated recommendations to the industry to clean up its marketing practices:

*We urge service providers offering unlimited plans that are subject to usage limits to:*

- a. Inform customers of this before they subscribe to such a plan;*
- b. Explicitly stipulate in their "fair use" policies the amount of use that will trigger the application of the policy; and*
- c. Describe the consequences to a customer should the policy be applied.*

*We also recommend that they establish internal policies and maintain records that will enable them to demonstrate that they apply "fair use" policies reasonably.<sup>41</sup>*

In addition to those found in its official reports, consumer complaints related to unlimited services can be found in certain community forums, particularly with respect to throttling practices.<sup>42</sup>

It is clear that, over the years, several subscribers have faced problems related to unlimited service. When providers justify their practices, from overage charges to service interruption to a unilateral change to a contract, they often refer to contractual documents, in particular their fair use policy. As well, the CCTS has observed that the limits that may be applied by the provider on unlimited services are rarely specifically disclosed to the consumer upon the signature of a contract.

---

<sup>41</sup> *Id.* p. 19.

<sup>42</sup> See: BELL MTS. *Flat rate data plans and Fair Use Policy*. <https://community.mts.ca/mts/topics/unlimited-data-plans-and-excessive-use-policy> and BELL MTS. "Unlimited Data Plans" false advertising claim [https://community.mts.ca/mts/topics/-unlimited-data-plans-false-advertising-claim?topic-reply-list\[settings\]\[filter\\_by\]=all&topic-reply-list\[settings\]\[reply\\_id\]=14957703#reply\\_14957703](https://community.mts.ca/mts/topics/-unlimited-data-plans-false-advertising-claim?topic-reply-list[settings][filter_by]=all&topic-reply-list[settings][reply_id]=14957703#reply_14957703) (pages visited on May 12, 2017).

### 3 Obligations summary

---

In view of the problems encountered by consumers, below we present a brief review of the current obligations pertaining to telecommunications service offers advertised as being unlimited. First, we provide an overview of the obligations related to representations: If some limits apply to unlimited services, what principles must a provider follow to ensure that their promotional documentation, advertisements, and contracts are clear and transparent? Several laws and regulations governing commercial representations are highlighted. We conclude the section with a summary of more technical obligations governing telecommunications services, including the regulatory framework related to Internet traffic management practices to determine the acceptable limits for unlimited service and how to present the concept to consumers.

#### 3.1 Quebec and Ontario legislation

In Quebec, several provisions of the *Consumer Protection Act* (CPA) are relevant to the issue at hand. Section 12, for example, states that no charges may be claimed from the consumer unless the amount is clearly stated in the contract. Unless it is explicitly specified in the contract, a provider cannot apply over-limit charges for usage within a service said to be unlimited. Furthermore, the CPA states that no merchant may make false or misleading representations to a consumer. The Act stipulates that affirmations, behaviours, and omissions constitute representations. It also specifies that the general impression given by a representation, as well as the literal meaning of the terms used may be considered to determine the misleading nature of a representation. Both the *Consumer Protection Act* in Quebec and the legislation in other provinces prohibit concealing an important fact<sup>43</sup>. Hence, a representation to the effect that an unlimited service could probably be considered as misleading, considering the general impression of what the literal meaning of the word “unlimited” is, and this, especially so if the limits are not clearly indicated.

On another note, in the case of ambiguity, Quebec's CPA and *Civil Code* both state that the usage contract must be interpreted in favour of the consumer.

In Ontario, the 2002 *Consumer Protection Act* prohibits false, misleading, deceptive or abusive assertions which are considered to be unfair practices. The Act defines a misleading assertion as an exaggeration, innuendo or ambiguity related to a material fact or the failure to state a material fact, when such use or failure confuses or tends to confuse the consumer<sup>44</sup>.

---

<sup>43</sup> In Quebec: *Consumer Protection Act*, CLRQ, c. P-40.1, sections 12, 17, 216, 218, 219, 228 and *Civil Code*, Section 1432.

<sup>44</sup> 2002 *Consumer Protection Act*, S.O. 2002, c. 30, Schedule A, sections 14, 15 and 17.

### 3.2 Competition Act

The *Competition Act* prohibits the conveying, in any way, of a false or misleading representation of a material fact. To determine a false or misleading representation, the general impression it gives must be taken into consideration. Representations omitting a material fact and hiding charges are considered false or misleading<sup>45</sup>.

### 3.3 Wireless Code

The CRTC *Wireless Code*, which applies only to cellphones, also contains some more specific obligations. In its first part, on clarity, the Code states that all communications between the provider and the customer (the person who subscribes to retail mobile wireless services) must be in plain language. This requirement for clarity also applies to written contracts and their annexes, including the fair use policy.

Furthermore, the Code includes a provision that applies specifically to unlimited services. It specifically prohibits overage charges for unlimited services. The Code also stipulates that, in general, no limit shall be imposed on an unlimited service unless the applicable limits are explained in the service provider's fair use policy<sup>46</sup>.

### 3.4 Internet Traffic Management Practices regulatory framework

The Internet Traffic Management Practices regulatory framework applies specifically to wired Internet access services and mobile wireless Internet services. These regulations include obligations related to the information disclosed to consumers and frameworks on the services that may be subjected to ITMPs.

The primary aim of Internet traffic management practices, in theory, is above all to give providers the necessary flexibility to guarantee the integrity of the network while avoiding congestion. What is called Internet traffic management practices (ITMPs) in regulatory jargon include all providers' practices that allow them to control the amount of bandwidth, upstream and downstream, that flows on the networks to the end user.

The CRTC has identified two types of practices: economic ITMPs and technical ITMPs. The monthly data transfer limits, which include overage charges, were considered by the CRTC as economic ITMPs.

These practices influence the demand for bandwidth according to the economic means of the consumers. Several consumer groups are concerned about the recognition of these practices as being ITMPs<sup>47</sup>.

---

<sup>45</sup> *Competition Act*, L.R., 1985, c. C-34, art. 52(4) and 74.03(5).

<sup>46</sup> CRTC. *The Wireless Code, simplified*, sections A1 and A3

<http://crtc.gc.ca/eng/phone/mobile/codesimpl.htm> (page visited on May 12, 2017).

<sup>47</sup> For more information on this controversy, see UC's research on download limits. *Op. cit.* Note 15.

As for limited services, unlimited services are subject to the possible application of technical ITMPs: They are various measures to control bandwidth flow and should be used to mitigate network congestion or its effects.

First, let's recall the obligations imposed by the regulatory framework on transparency:

The CRTC indicates that the providers should disclose to the consumers, in their relevant documents on the Internet traffic management practices that they apply or may apply:

- *why ITMPs are being introduced;*
- *who is affected by the ITMP;*
- *when the Internet traffic management will occur;*
- *what type of Internet traffic (e.g. application, class of application, protocol) is subject to management; and;*
- *how the ITMP will affect a user's Internet experience, including the specific impact on speeds<sup>48</sup>.*

The CRTC does not clearly specify that providers must establish a ceiling beyond which the ITMP would apply, but it requires the disclosure of information on the moment when this practice will be applied, on the services that will be affected, and on the real impacts on users of the application of this practice.

Given that the CRTC recognizes that ITMPs may be applied to some specific uses, it monitors their application. The CRTC stipulates that ITMPs must have a specific goal and must not grant undue preference, i.e. a benefit that the provider would assign to itself with respect to its customers or other providers. The CRTC also prohibits ITMPs resulting in a noticeable degradation of time-sensitive Internet traffic, which would require prior Commission approval.

Time-sensitive applications include streaming, voice over Internet Protocol, video conferencing, etc. i.e. any application introducing transmission delays that would render the transmission unusable at the immediate time. For example, a significantly slowed-down connection will result in interruptions to video viewing. It may also cause temporary interruptions during a video call or cut off the call completely.

In the case of non-time-sensitive applications, the use of ITMPs is permitted if their application doesn't block the service<sup>49</sup>.

---

<sup>48</sup> *Op. cit.*, Note 18, Telecom Regulatory Policy CRTC 2009-657 (ITMPs), paragraph 60.

<sup>49</sup> *Idem*, Introduction, paragraphs 126-127.

## 4 Field study

---

### 4.1 Methodology

The preliminary study of the key protective measures that apply to advertising and contractual documents or to unlimited services was useful for our field study. Once the existing protective measures were identified, we thought it would be relevant to verify how the telecommunication service providers were applying the main obligations in that matter.

To do so, we analyzed the promotional literature and the policies of several telecommunication service providers chosen according to their market shares on the Canadian market<sup>50</sup>. First, we studied the online promotional literature on unlimited telecommunication services on the providers' websites. Our attention was focused on the promotional literature related to several types of telecommunication services: Internet access services, mobile wireless services, and long-distance calls. For the services to be part of our study, the relevant literature had to use the term "unlimited" or a similar term. We also studied more detailed policies from different providers that can also be found online on their websites, more precisely the terms of service and the acceptable use policies as well as any other similar documents. The analysis of these documents was to collect, in as much depth as possible, the information submitted by the providers on ITMPs or other conditions of service that may constitute a limit to the unlimited. This analysis of two types of documents (advertising and policies) would help generate a broader verification on the way the obligations described in the previous section are applied. Their comparative analysis was to verify if some representations could be misleading.

#### 4.1.1 Methodological limits and specificities

It should be recognized from the outset what our methodology does not allow us to do. Since we did not proceed with an analysis of the full contracts of the telecommunication service providers, it is possible that some points of information on the various providers' policies were missed. However, it would be surprising that this methodological limit would significantly affect the results of the research since the Wireless Code and the regulatory ITMP framework indicate that the information we wish to collect must be in the acceptable use policy and online in the marketing documentation and terms of service<sup>51</sup>, which are the documents we examined. It is worth mentioning that the providers who would not comply with those obligations and would indicate the applicable limits to their unlimited services only in different contractual documents would still represent an offence under the Criminal Code and/or in the framework of the ITMP.

---

<sup>50</sup> We studied promotional literature and policies from the providers used in July 2016, and March and April 2017: Bell, Rogers, Telus, Shaw, MTS, Sasktel, Videotron, Distributel, Teksavvy, and Wind.

<sup>51</sup> See CRTC, Wireless Code (Regulatory Policy 2013-271), article A1, Ottawa, June 3, 2013. <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm> and *Op. cit.* Note 18, Telecom Regulatory Policy CRTC 2009-657 (ITMP), TMP framework.

We proceeded with an initial first data collection from all the providers selected in July 2016, and with a second briefer collection in March and April 2017, to verify if major changes could be observed on the market since our first collection.

It should be emphasized from the outset that the very general nature of some providers' disclosures that we noted, make their analysis somewhat hazardous. But, since limitations should be subjected to clear disclosure, the lack of precision is both a hindrance to our methodology and an interesting finding, in light of certain practices that took place in the past and we noted this in our literature review. Vague policies are not likely to yield a perfect reflection of all the limits that may be imposed by the unlimited services providers.

The regulatory framework that we will study mentions several times that disclosures must be clear. One must recognize that our level of understanding of our readings and the analysis of the documents conducted by readers versed in the analysis of contracts and in regulatory processes may not reflect the average consumer who would be exposed to the documents, and that our reading cannot serve as a benchmark when it comes to assessing the clarity of such texts. We can, however, take for granted that passages that were considered difficult to understand by our team will certainly be difficult for the average consumer as well. Fortunately, we were able to survey consumers on their appreciation of the clarity of certain documents during a survey whose results will be revealed in the next section.

It should also be noted that this research was being conducted by a consumer advocacy group. Our conclusions are not necessarily the same as the ones the relevant regulatory authorities would come up with. Although we can comment on the general compliance status of the market or some providers, and report our findings and make recommendations, the authorities will have to find the right way to solve and analyze the issues we raised.

Finally, we insist on this: the current research does not put the service providers on trial. Its goal is to provide an overview of market practices to determine if the current obligations bring the expected effects and to formulate relevant recommendations.

## **4.2 Highlights**

Here, we present the highlights of our analysis of the service providers' documents. First, we will present, in a descriptive manner, some preliminary findings on the promotional literature in light of the frameworks in terms of representations.

This will be followed by an analysis of the disclosures included in the terms of service and acceptable use policy of the providers and will examine in detail their compliance with the Code and framework of the ITMPs.

We will finish with general findings that include both promotional literature and policies to give an opinion on the general impression of the documentation available to consumers.

For clarity, we will categorize our key results by types of service.

#### 4.2.1 Analysis of promotional literature

##### a) Long-distance

It should be emphasized from the outset that long-distance services seemed to be the least problematic in terms of disclosure, probably because these services are simpler than others. However, it is worth noting that some providers impose a limit to the unlimited service: the restriction applied to certain destinations, i.e. Alaska or Hawaii, in unlimited call plans in the United States, for example, or similar exceptions in unlimited international call plans. In general, these exclusions were not necessarily highlighted in the promotional literature. When we found them, they were mentioned in small print. Most often, the existing mentions were in the acceptable use policy. We will give more details on the disclosures included in the policies in the next section.



## b) Mobile wireless services

First, let's point out that not all providers offer unlimited data services. During our research, some suppliers displayed this type of offer in their promotional literature<sup>52</sup>.

One of the three suppliers explicitly used the term “unlimited”, which is problematic, in our opinion, since this supplier imposes monthly data transfer limits, written in brackets in the promotional literature and its policies. In our opinion, the use of the term “unlimited”, in capitals, moreover, is liable to mislead some gullible customers or those in a hurry. However, this practice is allowed in the Wireless Code, and will be addressed in the next section.

**Table 4**  
Excerpt from a provider's website  
describing the available plans

	Ultimate 65	Ultimate 75	Ultimate 90	Ultimate 105
	\$65 <sup>00</sup> / mo.	\$75 <sup>00</sup> / mo.	\$90 <sup>00</sup> / mo.	\$105 <sup>00</sup> / mo.
	Buy	Buy	Buy	Buy
Daytime minutes**	400	UNLIMITED	UNLIMITED	UNLIMITED
Canada-wide data***	1 GB	10 GB	13 GB	UNLIMITED (speed reduced after 15GB)
Text Picture and Video Messaging****	Unlimited	Unlimited	Unlimited	Unlimited
Voice mail	Mini Mail (\$0.15 per minute for deposit and retrieval).	Mini Mail (\$0.15 per minute for deposit and retrieval).	Enhanced Voice Mail	Enhanced Voice Mail
Call Display	✓	✓	✓	✓
Nationwide minutes PLUS Canada to U.S. calling	-	UNLIMITED	UNLIMITED	UNLIMITED
	\$65 <sup>00</sup> / mo.	\$75 <sup>00</sup> / mo.	\$90 <sup>00</sup> / mo.	\$105 <sup>00</sup> / mo.
	Buy	Buy	Buy	Buy

<sup>52</sup> In particular MTS, Sasktel and Wind (to a certain extent).

The second supplier talks about flat rates to qualify an offer that seems to be for an unlimited service. As opposed to its promotional literature, the provider's policies indicate the limits applicable to this service. In our opinion, this could be misleading a customer in a hurry.

**Table 5**  
**Excerpt from another provider's**  
**website describing the available plans**

Popular MyPlan combinations		
Build your plan or choose from one of our popular plans:		
<p><b>\$35.00</b></p> <p>a month</p> <p>✓ Includes starter essentials</p>	No data	<p><b>100</b></p> <p>Weekday local calling minutes</p>
<p><b>\$60.00</b></p> <p>a month</p> <p>✓ Includes starter essentials</p>	<p><b>1</b></p> <p>GB</p> <p>Canada-wide data with personal mobile hotspot</p>	<p><b>500</b></p> <p>Weekday local calling minutes</p>
<p><b>\$65.00</b></p> <p>a month</p> <p>✓ Includes starter essentials</p>	<p><b>Flat rate</b></p> <p>Canada-wide data</p>	<p><b>200</b></p> <p>Weekday local calling minutes</p>
<p><b>\$72.50</b></p> <p>a month</p> <p>✓ Includes starter essentials</p>	<p><b>5</b></p> <p>GB</p> <p>Canada-wide data with personal mobile hotspot</p>	<p><b>∞</b></p> <p>Unlimited local calling minutes</p>
<p><b>\$86.50</b></p> <p>a month</p> <p>✓ Includes starter essentials</p>	<p><b>Flat rate</b></p> <p>Canada-wide data</p>	<p><b>∞</b></p> <p>Unlimited Canada-wide calling minutes</p>

By indicating “6 GB full-speed data” packages, the third supplier provides more explicit information. Although the service presented in this offer is quite comparable with the two previous providers’, indicating the monthly limit directly in the promotional literature is, in our opinion, a lot more honest of a practice. The offer may be a little less attractive to the less-focused consumer, but it will at least be transparent.

**Table 6**  
**Excerpt from a provider’s website**  
**describing available plans**

The screenshot displays a website titled "Plans" with a header banner stating "Flat monthly fees with more affordable everything." Below the banner, there are two main categories: "PHONE PLANS" and "MOBILE INTERNET PLANS".

**PHONE PLANS**

- Talk & Text Plan**: \$25/mo. Home Network. Unlimited calls to Canada. Unlimited text/MMS to Canada & the U.S. Voicemail+.
- Smartphone Plan**: \$35/mo. Home Network. 2 GB (full-speed data). Unlimited calls to Canada. Unlimited text/MMS to Canada & the U.S. Voicemail+.

**MOBILE INTERNET PLANS**

- Promo 30 Plan**: \$30/mo. Home Network. 1 GB (full-speed data). Unlimited calls to Canada. Unlimited text/MMS to Canada & the U.S.
- Promo 40 Plan**: \$40/mo. Double your data! Get a 3 GB bonus.\* Home Network. **6GB full-speed data (3GB + 3GB bonus\*)**. Unlimited calls to Canada & the U.S. Unlimited global text/MMS. World Saver & World Traveller.

Almost all the mobile wireless service providers we studied offered unlimited call or text messaging options. Although these services are not included in the ITMP framework, they are in the Code and included in the legislation on misleading representations.

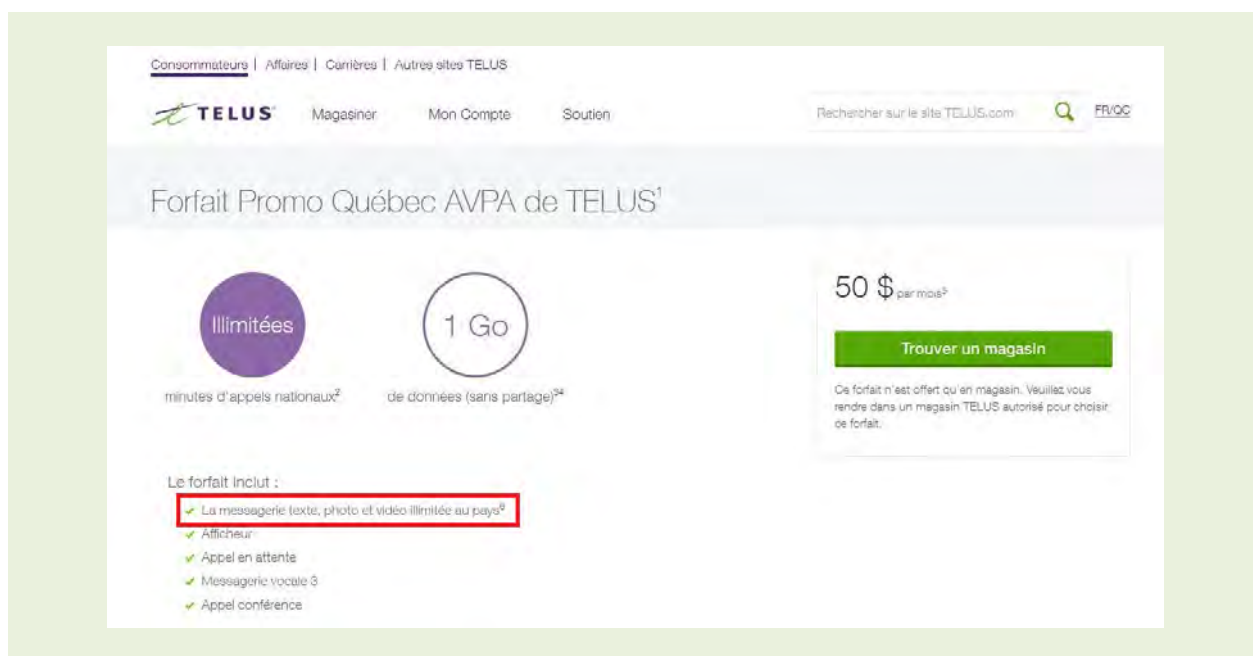
We also found, in these cases, some limits to the unlimited service whose disclosure lacked transparency. A few providers have a tendency to write exclusions for their unlimited text message offers in small print. In some online cases, one must click on a symbol at the bottom of the page to access an additional document, to read all the exclusions. In both cases, the exclusions are focused less on the quantity of calls or text messages than on the origin and destination of the communications.

Certain exclusions will sometimes be applied to certain calls, but since local calls and calls to Canada are mentioned directly in the offer on a regular basis, the risk of confusion seems smaller than for text messages, where specifications are less systematic.

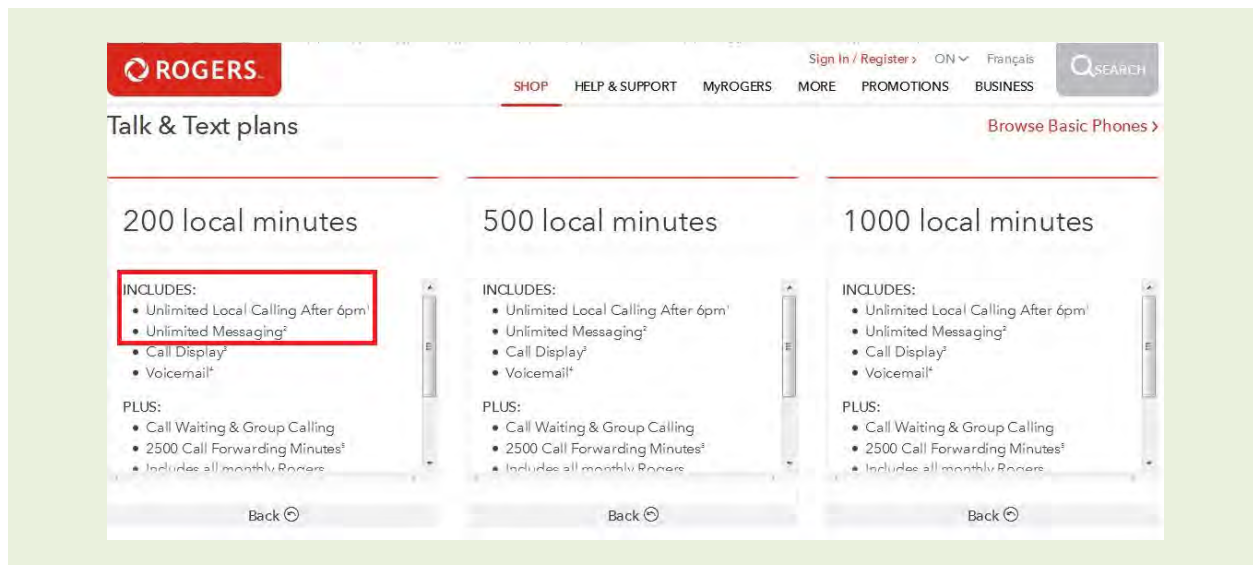
Although the fact that text messages including pictures are excluded from the unlimited text message offer is not a dramatic issue, we can, however, ask ourselves: why didn't all the providers use the same clarity for text messages and for local calls?

Here are two examples of disclosure, the first one is relatively transparent and the second one is rather poor since it is not visibly mentioning that messaging with attachments going abroad is excluded:

**Table 7**  
Excerpt from a provider's website  
describing available plans



**Table 8**  
Excerpt from a provider's website  
describing available plans



### c) Internet access services

In our opinion, this is the type of service where unlimited limits are the most difficult to identify for the consumer. Most often, the providers who offer Internet access services without usage limits bring out the “unlimited” nature of the service. If some offer unlimited services by default, others will offer them as an additional option. Charges for this option may vary according to the type of initial subscription or according to the number of subscribed services from the same provider.

Most of the time, the providers will mention only in the small print footnotes that the services are subject to the terms of service or to the acceptable use policy, which in itself reveals little on the existence, the nature or the scope of the limits that may be applied. The consumers will, thus, only know about those limits when they read the said policies. Sometimes, the providers don't even mention the acceptable use policy in the footnotes.

The following table is a typical example. On the top of the page, a small reference note, the “1” we circled, refers the consumer to the relevant small print.

**Table 9**  
**Extract of a page which describes the unlimited service option**

Les services Bell Internet sont accessibles au 6226 ST HUBERT  
MONTREAL, QC, H2S2M2. [Faire une autre vérification](#)

Forfaits

Choisissez la vitesse qui vous convient.

Vitesse	Prix
Jusqu'à 5 Mbit/s	à partir de 45,95 \$ /mois
Jusqu'à 15 Mbit/s	à partir de 43,95 \$ /mois
Jusqu'à 25 Mbit/s	à partir de 48,95 \$ /mois

Ajoutez Télé Fibe à votre service Internet et profitez de l'option suivante :

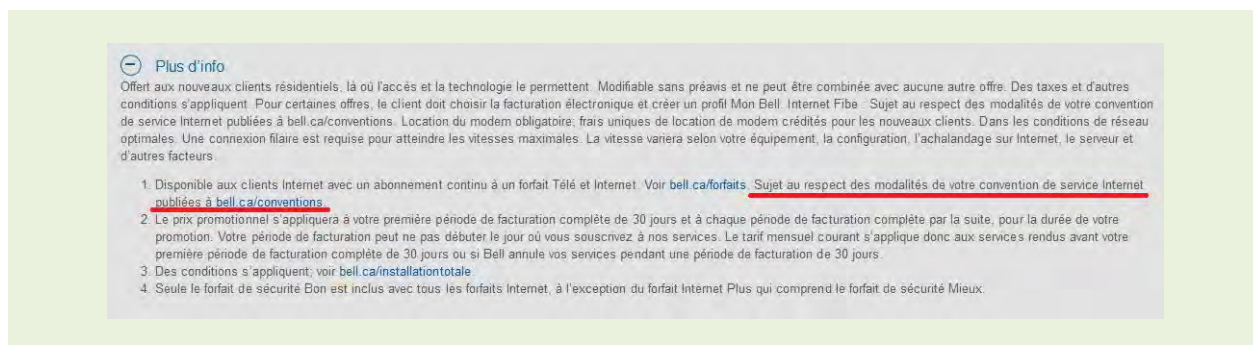
**L'utilisation illimitée**  
seulement 15 \$ de plus par mois

[Forfaits : voir nos offres](#)



Then, at the bottom of the page, after clicking on “more info”

**Table 10**  
**Excerpt from a page that gives more info**



Since no provider has included information on the ITMPs or discloses other limits in the promotional literature, trying to find the best model of transparency would be futile.

In other words, the review of the promotional literature in itself does not allow us to determine if the limits that may be imposed to the service justify corrective measures. The review of the providers' policies, in the following pages, will thus be particularly useful to evaluate the transparency of the promotional literature that relates to the unlimited Internet access services.

## 4.2.2 Policy analysis

### a) Long-distance services

Since long-distance services are subject to fewer frameworks, we will be brief. Contrary to residential Internet access services and mobile wireless services, long-distance services are not included in the ITMPs and are not subjected to the Wireless Code unless they are an option within wireless services.

In all cases, the acceptable use policies pertaining to long-distance services are rather rare among the providers examined. These services may be subject to general provisions in the terms of service including provisions that aim to discourage the consumer to misuse the service, without, however, having to quantify what is misuse. One provider specifies that a large volume of calls abroad may constitute misuse and may be subjected to measures implemented by the provider, without, however, disclosing the destination or the amount of use in question. Evidently, regarding the providers examined, mentions (often in small print) in the promotional literature give more details on the specific limits to unlimited services than in the providers' policies.

## **b) Mobile wireless services**

Since the regulatory ITMP framework and the provisions of the Wireless Code apply to mobile wireless services, we used the key obligations that apply to unlimited services as a guide in our search for relevant mentions, which allowed us to make a general assessment of the compliance of the providers with their obligations coming from the CRTC policies.

### ***Assessment according to the Wireless Code (WC)***

It may be an effect of the WC which stipulates that limits to unlimited services must be specified in the acceptable use policy, but we acknowledge it is for that type of service that a wider number of providers stipulate clear limits to their unlimited services in their acceptable use policies. We studied the unlimited services offered by six providers and three of them, the same ones we discussed in the previous section regarding promotional literature, explicitly disclose their limits in their policies. In all three cases, the providers indicate a monthly usage level beyond which the services may be subjected to ITMPs. We will return to the assessment of those practices in the next section. One of the three providers also disclosed limits in its policy, expressed in terms of duration, on roaming calls.

An interesting fact: a fourth provider included in its terms of service a 25 GB monthly limit if it does not offer unlimited wireless services. The consequences that could result from usage limit overrun are difficult to determine since the policy indicates that the services may “be suspended, interrupted, modified or restricted, or the data transmission speed could be reduced to 16 kbps.” We shall return to this point later.

Since the Wireless Code indicates that the information must be provided in plain language, we will formulate a few comments, here.

In general, acceptable use policies (AUP) are documents that are shorter than the terms of service. The AUP explains specifically what is fair use, whereas the terms of service are legal “catch-all” documents in which we can find information on various types of services and on acceptable use, but also on a wide range of other legal information, specifically illegal uses, invoicing policies, privacy policies, account management and bad accounts, device purchasing policies, warranties, contract change and cancellation conditions, etc.

Among the providers we examined, half directly referred to documents that included acceptable use policies and the other half regrouped all the legal information in the terms of service. It seemed a lot easier for us to understand the information on acceptable use policies. On another note, the information contained in the terms of service was usually less specific, which was detrimental to clarity to such an extent that it may be difficult for consumers to know how they may comply with the vague criteria mentioned in them.



Here are a few examples of provider policies that offer at least unlimited components and may help illustrate what we mean.

The first supplier indicated in its terms of service that some uses may lead to a service interruption or “to all such other protection as may be appropriate,” and lists in paragraph e) the uses that may lead to overage charges. Paragraph g) indicates a specific monthly ceiling for data usage, and indicates that the service, if the limited is exceeded, will be, at the provider’s discretion, suspended, modified, restricted or significantly slowed down. In brief, here is an example of particularly opaque terms of service.

*Bell may immediately suspend, restrict, change or cancel all or part of your Services and modify or deactivate your Device without notice or take other necessary protective measures if Bell has reasonable grounds to believe there is a breach of any of these provisions. For example, you are prohibited from:*

*[...]*

*(e) using any Bell Service for the purpose of reselling, remarketing, transferring, sharing or receiving any charge or other benefit for the use of any Bell Service, or for continuous data transmission or broadcasts (including multimedia streaming, automatic data feeds, automated machine to machine connections or peer-to-peer file sharing, voice over Internet protocol or any other application that is not made available to you by Bell which uses excessive network capacity), or to provide a substitute or back-up for private lines or dedicated data connections such as DSL and/or to operate any server system. If you engage in any of these activities, you will pay in full all charges billed to you at a rate which will be the greater of the in-market rate or \$30 per megabyte plus applicable taxes, regardless of the total amount due;*

*[...]*

*(g) excessive use of Bell Services. Bell considers that data usage in excess of 25 GB per billing cycle is disproportionate and excessive for network management purposes. Customers whose wireless usage exceeds this threshold may, in Bell's sole discretion, their Services suspended, disconnected, changed or restricted, including having data speeds reduced to as low as 16 kbps<sup>53</sup>;*

*[Our underlined]*

---

<sup>53</sup> Bell. Bell Mobility Terms of Service: Responsible use of Bell Services, s.d.  
[http://www.bell.ca/Bell\\_Mobility\\_Terms\\_of\\_service](http://www.bell.ca/Bell_Mobility_Terms_of_service) (page visited on May 15, 2017)

Here is an excerpt from an acceptable use policy from a provider that indicated, by type of usage, a monthly ceiling on unlimited data services and the consequences resulting from a usage limit overrun. According to our reading, this text is relatively clear, because the consequences of the ceiling overrun are clear, it gives an idea of how certain apps will be affected, and specifies the duration of the management measure.

*Our Data Fair Usage Policy specifies that if you exceed the data usage levels in this policy for your type of plan or add-on, we may slow your speed so that all WIND customers can better share the network and enjoy quality access to the Internet.*

USAGE	TYPE OF PLAN AND ADD-ON	WIND Home Data Usage Within Your Billing Cycle	US Roaming Data Usage Within Your Billing Cycle
Smartphone	Unlimited Smartphone Data Plans and Add-Ons	5GB	—
	With Premium Data Add-On	10GB	—
Mobile Internet	Unlimited Mobile Internet Plans	10GB	—
Smartphone Mobile Internet	Unlimited Roaming Add-On	—	1GB

*Given the rate at which most of our customers consume data, you are unlikely to exceed the data usage levels specified in this policy in any given billing cycle unless you use file sharing applications or download large files from the Internet. If we elect to slow your speeds when your data usage first exceeds the thresholds outlined above, we will slow your speed to a speed of 256 kilobits per second for downloads and 128 kilobits per second for uploads. This should not affect any applications that require less than 256 kilobits-per-second of download bandwidth or 128 kilobits-per-second of upload bandwidth (such as browsing, email, voice over IP or voice streaming applications), but could affect the performance of applications that normally require greater bandwidth (e.g. video streaming or peer-to-peer file sharing). In extreme cases, and if your data usage levels within the applicable billing cycle continue to be high and to exceed the usage levels specified in this policy, we reserve the right to slow your speed down to a maximum of 32 kilobits-per-second of download bandwidth and 16 kilobits-per-second of upload bandwidth. At this rate only Internet applications that do not require significant bandwidth nor real time streaming performance (such as: web browsing, email, instant messaging) will continue to work— but at a slower speed. If we elect to slow your speeds, we will do so only until the end of the applicable billing cycle.<sup>54</sup>*

<sup>54</sup> WIND Mobile Data Fair Usage Policy, policy so called in force for contracts concluded before April 9, 2015.

This being said, even among those who develop acceptable use policies, some limits may also be arbitrary, for example, this provider who determines data ceilings for its unlimited services, and imposes additional restrictions when the majority of the data is transmitted while roaming outside the boundaries of the province (Saskatchewan). Hence, users may maintain their data transfer well below the ceilings, but they may be subjected to ITMPs for the simple fact that their use outside of the province exceeds 50% of their total usage. The exact consequences of the proportional rule overrun remain uncertain, as the choice between multiple sanctions seems to be at the discretion of the provider.

*With the exception of customers who use more than half of their data outside of Saskatchewan (see below), your data usage limits anywhere in Canada are the same as when you are on the SaskTel network:*

- 10 GB per billing period for plans that include unlimited data.
- 15 GB per billing period for the Ultimate 100 plan, the Ultimate 105 plan, and the VIP 85 plan.

[...]

*Primary data use outside of Saskatchewan - SaskTel wireless data services are meant to be used primarily within Saskatchewan. If a majority of your data usage on an ongoing basis is occurring outside of Saskatchewan, we reserve the right to limit your data speeds, the amount of data transferred, deny, suspend or terminate the service or any part, component or feature thereof, without notice, to anyone believed to be using any SaskTel provided wireless data service or feature in any manner that adversely impacts SaskTel. This reservation applies to all data plans and will affect all of your wireless Internet and data services.<sup>55</sup>*

In short, it seems that up to now, limits applicable to the wireless services are the ones that are the clearest in the acceptable use policies. Nevertheless, it is too bad that so-called “unlimited” services, or those using similar terms include limits. Consumers have at least one way to consult those limits with some providers: policies which, in theory, provide that not everything be left to arbitrary decisions. Since the Wireless Code prohibits the use of the term “unlimited” unless the limits are clearly disclosed, we may attribute this relative transparency to the Code. However, the possibility left to the providers to use terms other than “unlimited” while suggesting that the service should actually be unlimited, creates a grey area. Should the obligation to clearly disclose the limits in the promotional literature and policies be applied? If the advertisement does not clearly mention the limits that apply to the offered services, it is unlikely that consumers will take the time to read about those limits before subscribing.

---

<sup>55</sup> SaskTel's Wireless Data Fair Use Policy, policy in force on November 25, 2015.

In our opinion, providers still have a lot to do to meet the obligation of plain language imposed by the WC. If some use graphic elements to facilitate the identification of acceptable limits linked to some services, several still use long texts including sentences comprised of technical, complicated, and unsympathetic language.

### ***Assessment according to the ITMP framework***

The obligations imposed on suppliers by the WC pertaining to unlimited services are very restricted. Essentially: if a so-called “unlimited” service is available, the Code prohibits any overage charges, and the applicable limits must be clearly stated in the fair use policy. Since the obligations imposed by the ITMP framework are much more specific on the disclosure of technical management practices, we will assess, one point at a time, how the providers complied with the main obligations of transparency.

We will go on with a brief assessment of the general compliance to the regulatory framework while examining the types of applications to which the ITMPs may be subjected. We will also evaluate if the effects of the application of these practices respect both the letter and the spirit of the regulatory framework.

#### ***i) Transparency obligations***

##### ***Justification of the application of the ITMPs***

The providers must reveal the reasons that may lead them to apply some traffic management measures. In the providers’ documents, we see that the reasons they give for applying the ITMPs are often vague and unspecific. The consumer’s share of responsibility is often mentioned in the terms of service. Thus, several providers reserve the right to impose traffic management measures if the consumers access illegal, defamatory or obscene content, if their use has a negative effect on the network, if they use their service for commercial purposes, if they don’t read the terms of service (!) or if they simply use the service in an excessive way.

Others mention on a more general basis that management measures may be required to guarantee the quality of the service for all consumers, or to ensure a satisfactory delivery of time-sensitive applications.

Several providers may refer to monthly mobile data usage limits, and in rare cases, to the quantity of roaming call minutes; excessive usage may lead to the application of management measures.

In the great majority of cases, the providers declare that it is some of the subscribers' behaviours or uses that lead to the application of management measures. These actions are sometimes described quite specifically, but may also be described vaguely, which may distort predictability. If the overage of a clearly defined or quantified use may be a clear trigger for the consumer, one wonders how easy it is for subscribers to determine the threshold at which personal use may affect their neighbours or have a negative effect on the network.

In other words, suppliers factually give reasons to justify the application of traffic management practices, but they are more or less clear or specific. The information is never easy to understand. The fact that the regulatory obligations required by the CRTC are mixed with other issues that are not at all related to the regulatory obligations may confuse users instead of guiding them. If suppliers apply the same type of measures to manage Internet traffic to ensure network integrity and also to protect, for example, copyrights (illegal contents) or morality (obscene contents), the obligation of disclosing information imposed by the CRTC is thus hidden among other elements that, if they aren't intended to ensure the integrity of the network, shall probably be prohibited by the CRTC or declared in violation of the regulatory framework.

### ***Is it a specific objective?***

The long enumerations made by some providers point out that, for example, preventing illegal uses is one of the objectives of certain measures that they reserve the right to impose. But, in our opinion, even though this is a specific objective, anticipating the application of traffic management measures to counter potentially illegal uses may be a distraction from the intention of the regulation authority on the matter.

Referring to the protection of the quality of the service for other users or to guarantee a uniform experience does not constitute an acceptable level of precision. However, we must give a positive mark to the provider who mentioned the necessity to ensure an appropriate access to time-sensitive applications, a clarification that gives at least an idea why some uses may be slowed down.

### ***Uses affected***

Some providers don't specify which uses or applications will be affected, but indicate the possibility of reducing traffic for usage in general, which could mean that the ITMPs will not discriminate between the various applications. While not discriminating certain types of traffic over others is not itself a problem, one may wonder about the clarity and the validity of the information provided to consumers.

The following example was taken from a provider who does not advertise unlimited mobile Internet services, but in our opinion, it is still worthwhile to highlight those policies that seem to raise a question with the regulatory ITMP framework.

*Bell may immediately suspend, restrict, change or cancel all or part of your Services and modify or deactivate your Device without notice or take other necessary protective measures if Bell has reasonable grounds to believe there is a breach of any of these provisions. For example, you are prohibited from:*

*[...]*

*(e) using any Bell Service for the purpose of reselling, remarketing, transferring, sharing or receiving any charge or other benefit for the use of any Bell Service, or for continuous data transmission or broadcasts (including multimedia streaming, automatic data feeds, automated machine to machine connections or peer-to-peer file sharing, voice over Internet protocol or any other application that is not made available to you by Bell which uses excessive network capacity), or to provide a substitute or back-up for private lines or dedicated data connections such as DSL and/or to operate any server system. If you engage in any of these activities, you will pay in full all charges billed to you at a rate which will be the greater of the in-market rate or \$30 per megabyte plus applicable taxes, regardless of the total amount due;*

*[...]*

*(g) excessive use of Bell Services. Bell considers that data usage in excess of 25 GB per billing cycle is disproportionate and excessive for network management purposes. Customers whose wireless usage exceeds this threshold may, in Bell's sole discretion, have their Services suspended, disconnected, changed or restricted, including having data speeds reduced to as low as 16 kbps;*

We will come back briefly on this passage in the section on the influence on user experience. Let's immediately point out, however, that the link made by the provider between a pre-established amount of data and its excessive nature for network management purposes, is in our opinion, fictitious or even worse, disinformation more than acceptable justification. The provider also seems to leave all possible room for discretionary practices in terms of uses that may be affected by its ITMPs, and the same can be said for the description of its ITMPs: it states a possible downturn to 16 kbps, but the services could also be suspended, interrupted, modified or restricted.

We also noticed that the terms of service from certain providers applied to all their services without any distinction between the management practices that may apply to wireless services and Internet access services. Although it also does not offer unlimited mobile Internet services, here is an example taken from one of these all-purpose policies<sup>56</sup>:

*We reserve the right to manage our networks in order to optimize their efficiency for the benefit of our subscribers, including, without limitation, by way of the following: rate limiting (speed), rejection or removal of spam or otherwise unsolicited bulk email, anti-virus mechanisms, and protocol filtering. We may take any other action we deem appropriate in order to help ensure the integrity of the network experience for all subscribers. For details on our network management practices, visit <http://www.rogers.com/networkpolicy>*<sup>57</sup>

Other providers among those who offer so-called “unlimited” services or use other similar terms sometimes provide more precise information on the uses that may be impacted by ITMPs, but for several of them, it was unfortunately necessary to read many documents to get the full picture of all their practices. We will return to certain mentions that seem to indicate situations that may not comply with the technical requirements of the ITMP framework. In fact, the above quotation implies that some time-sensitive applications could be affected<sup>58</sup>.

*[...] If you are an HSPA/LTE user, this should not affect any applications that require less than 512 kilobits of download bandwidth or 512 kilobits of upload bandwidth (such as browsing and email), but could affect the performance of applications that normally require greater bandwidth*<sup>59</sup>.

Even for specific explanations, one has to be vigilant as to which ITMP applies in various situations; they may seem contradictory. The following excerpt indicates, first, that video streaming applications may be affected by ITMPs, but it is specified that P2P transfer would be controlled to allow quality access to time-sensitive applications.

---

<sup>56</sup> Rogers Terms of Service and Other Important Information, dated from 2016.

<sup>57</sup> The hyperlink that was supposed to give access to the provider's policies was not working during a part of our research. However, it now seems to be up and running again, but the mentions included in this policy seem only to apply to residential Internet access services.

<sup>58</sup> Time-sensitive applications include streaming, voice over Internet Protocol, video conferencing, etc. It is any application that introduces delays that would render it unusable.

<sup>59</sup> MTS Wireless Data Usage FAQs, screenshot taken on July 26, 2016.



The following excerpt is from the acceptable use policy...

*Given the rate at which most of our customers consume data, you are unlikely to exceed the data usage levels specified in this policy in any given billing cycle unless you use file sharing applications or download large files from the Internet. If we elect to slow your speeds when your data usage first exceeds the thresholds outlined above, we will slow your speed to a speed of 256 kilobits per second for downloads and 128 kilobits per second for uploads. This should not affect any applications that require less than 256 kilobits-per-second of download bandwidth or 128 kilobits-per-second of upload bandwidth (such as browsing, email, voice over IP or voice streaming applications), but could affect the performance of applications that normally require greater bandwidth (e.g. video streaming or peer-to-peer file sharing)<sup>60</sup>.*

... seems in contradiction with this excerpt from the Network Management Policy of the same provider:

*We use Deep Packet Inspection technology on all Internet traffic to determine its type (but not its content). High-volume and low time-sensitive traffic (such as P2P/file sharing) is managed on our network to make sure all Freedom Mobile customers have the best possible experience when using Internet services with time-sensitive applications. This just means that we might slow down the speed of the managed Internet traffic (apps), but won't interrupt it<sup>61</sup>.*

### ***Moment of application***

All providers who impose a monthly data usage limit in their acceptable use policy state that the ITMPs may be applied once the limit is reached. For those who don't impose monthly limits, the measures may be applied if the consumer engages in prohibited practices mentioned in the policy (if the list is long and unspecific, it may be difficult to determine what triggered the application of the measure). Otherwise, except for those who seem to apply strict monthly limits, there seems to be enough room left at the discretion of the provider.

### ***Type of traffic affected***

Most providers don't discriminate between the types of traffic that may be affected by their practices. Some state the management practices they apply to peer-to-peer file sharing, but it remains an exception.

---

<sup>60</sup> Freedom mobile Fair Usage Policy in force for contracts signed before April 9, 2015 vs. Freedom Mobile Internet Traffic Management Policy (screen shot done on March 24, 2017).

<sup>61</sup> Freedom Mobile Internet Traffic Management Policy (screen shot done on March 24, 2017).



### ***Influence on the user experience***

It was very difficult to determine, with some providers, what effect the application of the management measures would have on users since the choice between the various measures that may be imposed seems to be at the discretion of the providers. Bell is the only one who indicated in various sections of its policies the possibility to charge overages if the service is used for commercial purposes or in an excessive way, but the provider also indicates that it may deactivate access to the device, or interrupt, suspend or slow down the service to 16 kbps. Rogers mentions the reduction in speed as a possible practice, but reserves the right to apply other necessary measures to maintain “the integrity of the network experience for all subscribers<sup>62</sup>”. Telus mentions downturns as a possibility, and mentions the compression of streaming videos in two distinct documents<sup>63</sup>:

MTS was among the providers whose explanations on the impacts of the ITMPs seemed clearer:

*Controlled speeds should not affect low bandwidth applications like sending emails, streaming music, browsing and instant messaging. The reduced speeds may affect the performance and time required for applications that need more bandwidth such as streaming video services.*<sup>64</sup>

Freedom Mobile’s policies were also a little clearer than average:

*...This should not affect any applications that require less than 256 kilobits-per-second of download bandwidth or 128 kilobits-per-second of upload bandwidth (such as browsing, email, voice over IP or voice streaming applications), but could affect the performance of applications that normally require greater bandwidth (e.g. video streaming or peer-to-peer file sharing). In extreme cases, and if your data usage levels within the applicable billing cycle continue to be high and to exceed the usage levels specified in this policy, we reserve the right to slow your speed down to a maximum of 32 kilobits-per-second of download bandwidth and 16 kilobits-per-second of upload bandwidth. At this rate only Internet applications that do not require significant bandwidth nor real time streaming performance (such as: web browsing, email, instant messaging) will continue to work– but at a slower speed. If we elect to slow your speeds, we will do so only until the end of the applicable billing cycle.*<sup>65</sup>

---

<sup>62</sup> We may take any other actions we deem appropriate in order to help ensure the integrity of the network experience for all subscribers.

<sup>63</sup> Like Bell and Rogers, Telus doesn’t seem to offer unlimited mobile Internet, however, we still studied its ITMPs since the framework applies to all services, unlimited or not.

<sup>64</sup> MTS Wireless Data Usage FAQs, screen shot taken on July 26, 2016.

<sup>65</sup> Freedom mobile Fair Usage Policy in force for contracts signed before April 9, 2015.

**ii) Technical obligations**

***Are some applications blocked?***

Among the provider policies we studied, none mentioned that they block certain applications more than others. However, some provided general wording which insinuated that access to the whole service (in this case, mobile Internet) may be slowed down or blocked. In rare cases, providers were so vague that one could guess that some ITMPs could be applied, but without knowing which one, which is obviously not helpful in understanding the impacts on the application of the network management practices.

On some occasions, providers reserve the right to slow down their speeds to 16 kbps, an extremely slow speed, even for a low flow. Some of them mention that a service affected by such a downturn will not allow access to all uses. The last quote that we presented is a flagrant example where the provider indicates that the worst case scenario of downturn would be that only some services demanding less bandwidth, like Web surfing, email and instant messaging, will still work at a lower speed. Although the applications are not slowed down, strictly speaking, several applications are thus rendered unusable by such a downturn.

***Are time-sensitive applications affected?***

Most providers' policies did not offer detailed explanations on the way their practices may specifically affect some time-sensitive applications. For example, some providers indicated that downturns could be applied without specifying their scope, the exact target speed, or the applications that may be affected by these downturns. Others indicated the target speed of the downturn without explaining the impact of that slower speed on general use. Finally, some providers specify what uses may be affected by the downturn: it could be P2P file-sharing, but video streaming was mentioned a few times (in cases where the downturn affected the whole service).

A provider indicated that it reserves the right to compress video streaming on mobile devices, but that practice is not supposed to influence the users' experience.

In general, providers may also specify the uses that will remain unaffected, such as instant messaging or music streaming, without specifying the uses that may be affected. Following the examination of the various providers' policies, it seems that time-sensitive applications may be affected just or nearly the same as other applications. However, providers do not always disclose detailed information on that subject, but one may infer them by reading certain rights that providers reserve. The fact that some providers mention that possibility in the conditions also seem to indicate that this is a real market practice.

**c) Internet access services**

**Assessment according to the ITMPs framework**

As we did for the mobile wireless service (the section on mobile Internet), we will evaluate the compliance of providers with the ITMP regulatory framework regarding their Internet access services. (It should be noted that this only concerns the CRTC regulatory framework applicable to Internet services, the Wireless Code does not apply to that type of service.) We will begin with the obligations on transparency that are included in the framework and will finish with a highlight on the technical obligations that apply to retail customers.

**i) Obligations on transparency**

***Justification of the application of the ITMPs***

The providers examined generally did not include monthly limits in their acceptable use policy on unlimited mobile Internet, contrary to the current practice related to mobile wireless services. In general, they do not associate a specific level of use to a ceiling which if overrun would be considered as an excessive use.

The other motives that may lead to the application of traffic management measures are often similar to the ones that we outlined for mobile wireless services. In general, suppliers invoke several rules that users must respect: they expect, for example, that the use of the service is legal and that the service may never be used for commercial purposes or for server operation. Several providers' policies state that the use made by the consumer should not disturb other users or that their ITMPs are necessary to ensure the quality of the service for all the providers' customers. Some providers simply say that the consumer should "make a fair and proportionate use of the service", without more specific detail, apparently using considerable discretionary power in determining what fair and proportionate use should be.

Some providers give their own definition of the term "unlimited" and reserve the right to, apparently, put any conditions or limits to any Internet services, including a ceiling:

*3.8 The Customer agrees that the TELUS Internet service and its so-called unlimited use only refers to usage time and is based on intermittent service. Notwithstanding any provision to the contrary, TELUS reserves the right to impose certain conditions and reasonable limits to the use of any Internet services by TELUS customers, including the total of monthly gigabytes upstream and downstream.<sup>66</sup>*

---

<sup>66</sup> Terms and conditions of TELUS wireline products and services, in force on May 23, 2015.

Some rare providers offer precise details on their ITMPs. For example, MTS provides details on the type of use that may be considered as excessive and that may lead to the application of traffic management measures:

*By way of example and not limitation, the following are considered by MTS to be outside of an ordinary range of use thereby consuming excessive network capacity:*

- *Prolonged continuous use of high bandwidth applications such as multimedia streaming, voice over Internet protocol or LBS (location based services) or any other similar applications.*
- *Operation (i.e. hosting) of servers for services such as email, web, news, chat or other similar services*
- *Resale, transfer or distribution of the unlimited use service for commercial purposes*
- *Sharing the unlimited use service with an unauthorized party*
- *Engaging in or allowing any alteration, copying, reproduction of or tampering with electronic serial numbers or other identification, signaling or transmission functions or components of the device used with the service*<sup>67</sup>

Without being perfectly precise on the uses that may motivate actions on its part, Distributel also offers several explanations on the fact that the company has a system to ensure that the various categories of time-sensitive applications are prioritized in the attribution of the bandwidth. We will come back on that in “affected uses” section.

### ***Is it a specific objective?***

Since the ITMPs are generally not clearly defined, we did not see many mentions of the specific objectives that justify these practices, unless, of course, the maintenance of the quality of service for all customers may be considered as equivalent to a specific objective, which in our opinion, is not the case. We estimate that if the terms of use stated by the provider are so numerous and vague that it is difficult for the consumer to understand what circumstances or uses may lead to the application of an ITMP, then the obligation imposed to the providers does not reach its objective.

This excerpt from a Videotron policy summarizes well the typical specific objective evoked by several providers:

*... uses traffic management measures to prevent some modems from slowing down the service, even momentarily*<sup>68</sup>

Some providers, Bell and Rogers, for example, specifically state an objective of upholding the law in their policies. We can see that this objective, i.e. preventing illegal uses, clearly stands out more than several other objectives of their policies. As mentioned above, the CRTC undertook work to supervise the use of the ITMPs so that providers are able to use the necessary tools to ensure network integrity. Should the use of ITMPs that do not aim to ensure network integrity be prohibited by the CRTC, or declared a violation of the regulatory framework?

---

<sup>67</sup> MTS Fair Use Policy, screen shot taken on April 10, 2017.

<sup>68</sup> Videotron, Internet Traffic Management Policy, screen shot taken on July 21, 2016.

### **Affected uses**

As demonstrated by the language used in the multiple excerpts we have quoted to date, not only is it difficult to access the information researched, it is also difficult to understand the information when it is available.

Of course, when the providers lack precision on the type of applicable measures or on the reasons why they may impose their ITMPs, usually, little information may be found on the uses that may be affected. On occasion, information may be found written in less cryptic language. Let's quote, for example, this excerpt from the Distributel policy:

*Normally all Internet traffic will be delivered at full speed. During congestion periods, Customers should see no change in the quality of their Internet experience when using time-sensitive Internet applications. Customers using less time-sensitive applications may notice a decrease in their download/upload speeds until the temporary network congestion has passed.*

Although the following explanation is not necessarily as precise as one would like, Distributel tries at least to be clearer in the way it prioritizes, if necessary, the various possible uses of the network.

*Normally no prioritization of traffic occurs as the network capacity is more than sufficient to handle the traffic volume. However during congestion periods, delivery of the more time-sensitive traffic will be prioritized to ensure an overall high quality Internet experience for the most users possible.*

*Internet traffic is identified and, if necessary, prioritized based on four groups. The highest priority is given to applications that are very time-sensitive, such as gaming and VoIP. The second and third priority groups consists of traffic that is also sensitive to congestion, such as web browsing, social networking and video streaming. The fourth group includes applications that are traditionally less popular with our customer base as a whole.*

*Normally all internet traffic will be delivered at full speed. During congestion periods, Customers should see no change in the quality of their Internet experience when using time-sensitive Internet applications. Customers using less time-sensitive applications may notice a decrease in their download/upload speeds until the temporary network congestion has passed.<sup>69</sup>*

Similarly, Teksavvy prioritizes some time-sensitive uses like streaming and VoIP services.

---

<sup>69</sup> Distributel, Acceptable Use Policy, last modification, October 1, 2014.

### **Moment of application**

With some notable exceptions, little details are given by providers on the time of day when the traffic management measures may be applied. Teksavvy makes this effort, although the time slot announced is quite vague:

*Traffic management will only take place during the ordinary download day of 8 a.m. to 2 a.m. and, within that period, only when a network is congested. In those circumstances, first to be affected will be the use of less-real-time protocols, by those who have made the greatest use of shared network resources that day. We do not expect anyone to be significantly affected: but that is the sequence in which it will occur.*<sup>70</sup>

It is also unclear what the provider refers to when it mentions “shared Internet resources”; the term is not particularly instinctive, in particular for the consumer.

Some providers simply refer to the possibility of ITMP application when there is any kind of congestion on the network, whatever the time. Since several providers structured their policies according to prohibited uses, we may also deduct that actions may be taken when the supplier notes a prohibited use by one of its customers, whether congestion is expected or not.

Videotron gives information on the duration of the terms of application of the management measures:

*Every 15 minutes, a system verifies the traffic rate of each upstream channel (typically, one upstream channel serves a few dozen modems). If the traffic rate exceeds the threshold above which congestion occurs, [...] The upload capacity of these modems is then given a low-priority rating. However, if the congestion persists or increases, then the upload speed of these modems may slow down.*<sup>71</sup>

### **Types of affected traffic**

Some suppliers offer specifications on the type of traffic impacted by the ITMPs. Videotron, for example, states that it will only apply ITMPs on the upstream traffic of certain services with speeds that are very high (services above 100 mbps).

In its policy, Rogers states that it ended the measures applied to P2P file sharing in 2012.

As indicated above, some providers say they prioritize time-sensitive applications to avoid a degradation of the services.

---

<sup>70</sup> Teksavvy, Shared Internet Resources Policy (“SIR” Policy) Web screenshot taken on July 21, 2016.

<sup>71</sup> Videotron, Internet Traffic Management Policy, screenshot taken on July 16, 2016.

Several providers do not clearly specify the types of traffic affected by their network management practices. However, some providers identify certain time-sensitive applications as being potentially responsible for excessive use (and, consequently, a risk of congestion). Hence, it seems possible that some providers do not prioritize the use of that type of application when they impose ITMPs.

We saw on occasion mentions that indicated that the traffic that may be affected by ITMPs will be for applications that require large data consumption and/or that are not time-sensitive, such as P2P file sharing.

### ***Influence on the user experience***

A larger number of providers seem to have tried to comply with the ITMP regulatory framework's obligation to mention the influence of the application of the ITMPs on user experience more than they have tried to comply with the other disclosure obligations. Although one sometimes has to refer to their actions, as explained in the previous elements, to assume the impacts on their users, several providers have, however, given directions.

In fact, from one supplier to the other, the consequences disclosed are extremely diverse. On the one hand, there are providers that reserve extreme rights – here's an example:

*Abuse or misuse of Bell Services impacts all Customers and is something Bell takes very seriously and which could result in the termination of your Agreement with Bell, or lead to criminal or civil charges. Don't forget that Bell services include Bell Equipment. If the Customer fails to comply with these regulations, Bell may modify, delete or deactivate the software used by your Equipment (as defined in Article 44) so that your equipment will no longer be usable.<sup>72</sup>*

Evidently, putting together the consequences related to abusive use and the ones related to illegal use does not help consumers to understand which consequences may apply more concretely in an unlimited service context.

---

<sup>72</sup> Bell, Terms of service, document in force on February 21, 2016.



Several providers foreseeing less extreme measures seem, however, to minimize the negative impacts that the ITMPs may have on some users, they even promote their benefits to the global user experience:

*We expect that it will improve most end-users' experiences, allow us to stabilize pricing, and lower the cost of most unlimited packages.*

*The SIR Policy calls for traffic management only when there is congestion on a network during the 8 a.m. to 2 a.m. period. Even then, the traffic management affects only those who have made the heaviest use of the network over the course of that day. And even then, the traffic management seen by those users is further restricted to the least-real-time traffic that is least sensitive to millisecond timing. None of these measures involves any rate-limiting or speed caps.*

*For most end-users, those changes will mean better access to shared Internet resources for real-time applications like voice-over-IP and streaming media. A very small subset of our user base will ever experience traffic management – and many of them are not likely to notice it.<sup>73</sup>*

This provider, who makes efforts to provide clear information, does not want to mention the possible impacts of its practices on time-sensitive applications:

*When a customer is experiencing controlled speeds, the reduced speeds should not affect low bandwidth applications like sending emails, website browsing, and instant messaging applications. Reduced speeds will likely affect the performance and length of time required for applications that can require greater bandwidth like peer-to-peer file sharing.<sup>74</sup>*

Finally, the following excerpt from the policy may potentially comply with the obligation imposed by the CRTC, both for disclosure and for technical obligations:

*Normally all internet traffic will be delivered at full speed. During congestion periods, Customers should see no change in the quality of their Internet experience when using time-sensitive Internet applications. Customers using less time-sensitive applications may notice a decrease in their download/upload speeds until the temporary network congestion has passed.<sup>75</sup>*

---

<sup>73</sup> Teksavvy, Shared Internet Resources Policy ("SIR" Policy) Web screenshot taken on July 21, 2016

<sup>74</sup> MTS Internet Data Use FAQs, screenshot taken on July 28, 2016.

<sup>75</sup> Distributel, Acceptable Use Policy, last modification, October 1, 2014.

**ii) Technical obligations**

***Are applications blocked?***

A few suppliers mentioned that, in case of negligence from consumers to various aspects of their policies, the services may be interrupted, suspended, or terminated. This information seems to be more of a warning on the effective possible blockage of a service. In fact, no provider indicates in its policies the blockage of specific applications. A few providers indicated that they reserve the right to slow down speeds in certain situations, in particular in case of congestion, but nothing in the documentation indicates that this downturn is a blockage. To that effect, Internet access service providers are a little better than wireless service providers.

***Are fast delivery applications affected?***

They are probably not the majority, but some providers do not appear to exclude in their policies that applications requiring fast delivery may be affected by certain practices of network management. This could be the case for video playback in transit, given this is greedy data usage, and that some suppliers indicated that their practices could affect uses that require a lot of bandwidth. However, we saw no clear mention indicating, black and white, that some practices had a negative effect on videos in transit. The omission, by some suppliers, of videos in transit in the list of applications that would continue to be functional suggests that this could be the case.

Inversely, a few providers specified that they would give priority to time-sensitive applications in the application of their management measures and that their ITMPs would not affect them. Hence, it seems possible to guarantee the good functioning of these uses while managing the network.

### **4.2.3 General impression given by the documents**

Up until now, we have examined the promotional literature separately from the policies of various providers, which would not allow us, in the section on promotional literature, to confront the general impressions they left to the reality of the providers' practices. Following the examination of the denounced practices of providers, the time has come to report some of our observations.

We had indicated above that several of the providers who offer unlimited services only indicated that these are being subjected to their terms of service in the small print sections at the bottom of their Web pages. For several providers, the content of the so-called policies was not directly in contradiction with the promotional literature (or the general impression they left). We, however, noted a few exceptions that are worth mentioning here.

One of the providers offered unlimited services without, however, promoting it aggressively. That option was found in the promotional literature, but it was not particularly evident. It remains true that the inclusion to the following discharge responsibilities is problematic in the framework of the unlimited service offer:

*3.8 The Customer agrees that the TELUS Internet service and its so-called unlimited use only refers to usage time and is based on intermittent service. Notwithstanding any provision to the contrary, TELUS reserves the right to impose certain conditions and reasonable limits to the use of any Internet services by TELUS customers, including the total of monthly gigabytes upstream and downstream<sup>76</sup>.*

In our opinion, this is not what consumers expect of so-called “unlimited” services, which should be fully respected and not only in terms of time. In our opinion, a supplier cannot offer unlimited services and redefine, in its policies, the meaning or the scope of this term. Allowing such a practice would be in flagrant contradiction with the prohibition of making misleading representations included within consumer protection laws, the qualification of the nature of the representations resting on the general impression and on the literal sense of the terms.

We saw on two occasions, providers that seemed to invoke in their policies the possibility to impose overages related to an unlimited service; once for wireless services and another time for Internet access services. Although Internet access services are not subjected to the Wireless Code, which prohibits such a practice (i.e. the imposition of overage charges for an unlimited service) for wireless services, nevertheless, such a practice may, in our opinion, be contested since there is an apparent contradiction with the various obligations related to representations. If charges may be invoiced for a significant use, in our opinion, we no longer respect the general impression reflected by the promotional literature regarding the unlimited nature of the service, no more than the literal sense of the term. The possibility that the provider reserves the right to impose overage charges for a service advertised as being unlimited also seems to us as sufficiently significant information to blame the provider if it is omitted in any representations.

Fortunately, it does not seem to be a particularly widespread practice on the market; but instead of being rare, it simply should not occur. Of course, it is difficult to know if the providers engaged in the practices stated in their policies, but, nevertheless, the simple fact of including mentions that they reserve the right to do so is worrying.

Furthermore, although several providers reserve the right to slow down their service to manage excessive uses or to ensure good network management, their disclosures do not allow us to clearly determine in each case if the market practices represent significant unlimited limits. The announcement of some downturns to a level as low as 16 kbps leads us to believe that there might be a real problem. A few providers indicate that some applications may not be usable after a downturn.

In contrast, providers who reserve the right to slow down the network do not all use the term “unlimited”. Similar terms, in some cases, that may seem a little less misleading are sometimes used by the providers, which could be less problematic in terms of the general impression given.

---

<sup>76</sup> Terms and conditions of TELUS wireline products and services, in force on May 23, 2015.

We must highlight that it is particularly difficult to render a decision beyond a shadow of a doubt on the quality of the representations by providers given that several of them regroup the acceptable use policies and terms of service, including all the policies that may be applied, whether or not they relate to ITMPs and excessive use. All subjects covered (illegal, defamatory use, etc.) should ideally not be covered in the same sections as the ones on ITMPs. In addition, general traffic management measures and the one targeting consumers according to their use should be in separate sections so that consumers may know precisely what provisions or measures apply to the various uses.

So: What should we think about the providers' representations? Are these flagrantly misleading representations? It is difficult to answer these questions in a simple way.

The question is not linked simply to the representations.

Better compliance with the obligations of transparency intended in the ITMP regulatory framework may help consumers to better know and understand their services' limits, and the relevant authorities to identify more easily the problematic technical practices in clear policies.

As things stand, we disagree with the wide discretionary powers that some members of the industry appear to have, but as long as consumers don't complain on that subject, it will be difficult to confirm if some market practices need an intervention or not.

It goes without saying that including the possibility to generate downturns that adversely affect the use of some applications may, in our opinion, be problematic. These are limits that should never be subjected to so-called "unlimited" services.

Hence, the market provides a wide range of grey areas. If, in several cases, it is difficult to determine if a provider's representations are honest or not, room for improvement remains.

## **5 Consumer perspectives**

---

### **5.1 Methodological summary**

An analysis of the providers' promotional literature and their policies presented online provided us with a good overview of the way unlimited services are advertised and of the type of terms that apply to such services. However, to obtain a more detailed picture of the opinion and experience of consumers, we decided to conduct a consumer survey.

To do so, we collaborated with Passages Marketing, a specialized firm, to conduct an online survey of 1,000 Canadian consumers, half from Ontario and the other half from Quebec. The sample of respondents between 18 and 74 years of age who subscribed to telecommunication services, was representative of the population, and rendered a margin of error of 3.1%, 19 times out of 20. The survey was conducted in April 2017. The median time of completion was 8 minutes.

The objective of this exercise was to ask consumers if they were aware of some of the problems that had been encountered in our field study—for example, that some providers may apply overage charges to unlimited services, and that throttling related or not to usage, as well as interruptions, could be applied to their service. We also asked them if they had encountered such problems with their unlimited services.

We also questioned them on their level of knowledge and understanding of fair use policies. Then, we presented them with excerpts from such policies and asked them to evaluate their clarity. The firm's report on the survey is appended to this document.

### **5.2 Main highlights**

First, we would like to point out that we were quite surprised by the responses to some of the questions.

Our most significant surprise was that 86% of the respondents indicated that they were subscribed to at least one unlimited service or option among the three services mentioned in the survey (Internet access services, wireless services and long-distance plans).

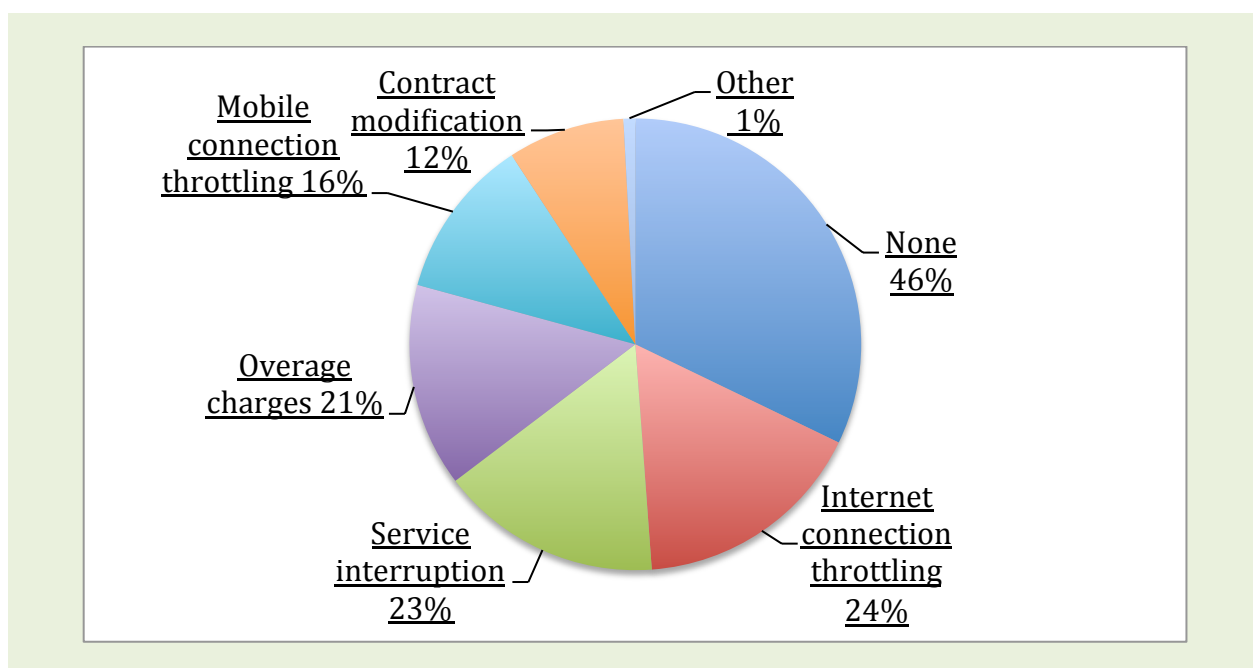
Although a large proportion of wireless service subscribers may be subscribing to at least one unlimited option, given the popularity of call options and text messaging without usage limits, positive answers were more prevalent among Internet access service subscribers, for which 61.5% of the respondents said they were subscribing to an unlimited service. This percentage is not consistent with data from the CRTC Communications Monitoring Report, which indicates that only 18% of Canadian households subscribe to such unlimited services.

We can only try and guess the cause of such a statistical gap. Are unlimited Internet subscribers really that underrepresented in the group of candidates who agreed to fill out the online survey? Or, are the respondents so ill-informed of the services they have contracted? Is the usage limit provided for in their contract so high compared to what they really use that they never give it a thought? Do subscribers think that they have an unlimited service only because they have never been invoiced for overage? All of these speculations must, unfortunately, remain unconfirmed. However, the most plausible answer is that consumers are not knowledgeable about either the concept of unlimited services or the nature of the services they subscribe to. This same explanation was given by the polling firm when we informed them of this significant statistical gap.

We were also surprised to see that most of the respondents did not know that unlimited services can be subjected to limits (only 35% of the respondents said that they knew this). However, among those who said they had read their provider's fair use policy, the overrepresentation of respondents who knew about these potential limits did not surprise us.

Despite their unawareness of the kinds of limits that may apply to their services, according to their providers' policies, more than half of the respondents, 54%, said they had experienced this kind of problem with their unlimited services. The respondents also mentioned throttling, service interruptions (with double the proportion in Ontario), overage charges, unilateral changes in the contracts, etc. According to Passages Marketing, the apparent contradiction "is explained in part by the lack of interest among consumers in reading providers' contracts, as well as to a certain degree of complexity, and even considerable vagueness inherent in these contracts."

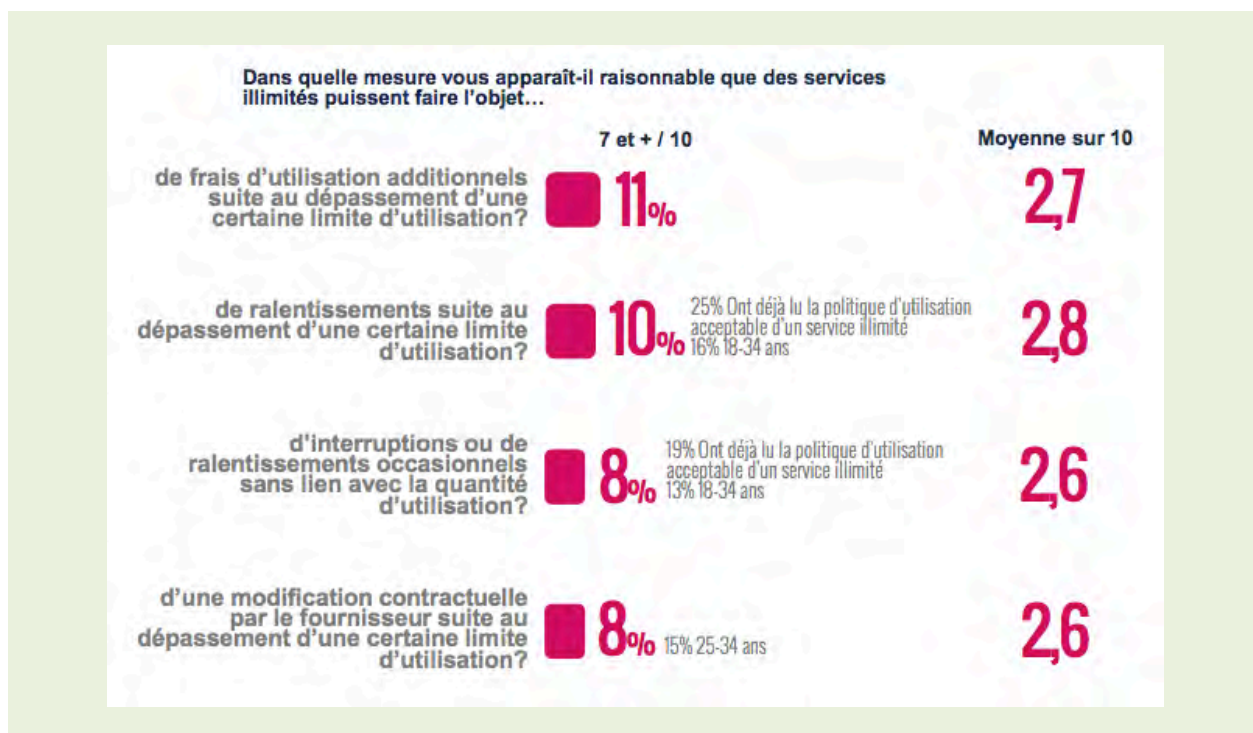
**Table 11**  
**Percentage of consumers**  
**who encountered problems with**  
**their unlimited services**



Of course, this data should be taken lightly since it is difficult to rely on the data related to their type of subscription. The fact that more than half of respondents, all subscribing to telecommunications services, encountered these kinds of problems is revealing and this proportion, in and of itself, is a cause for concern.

An unsurprising result: A strong majority of respondents considered it as being unreasonable that unlimited services may be subjected to limits like those mentioned above. We asked them to assess, on a scale of 1 to 10, the reasonable nature of various measures that would apply after exceeding various usage limits in an unlimited service. At least 70% of the respondents ranked them between 1 and 3, which represented, "not at all reasonable." On the average, the reasonableness marks ranged from 2.6 to 2.8. The polling firm told us that it is "relatively rare to see such polarized results in an opinion survey."

**Table 12**  
**Levels of acceptability of the limits<sup>77</sup>**



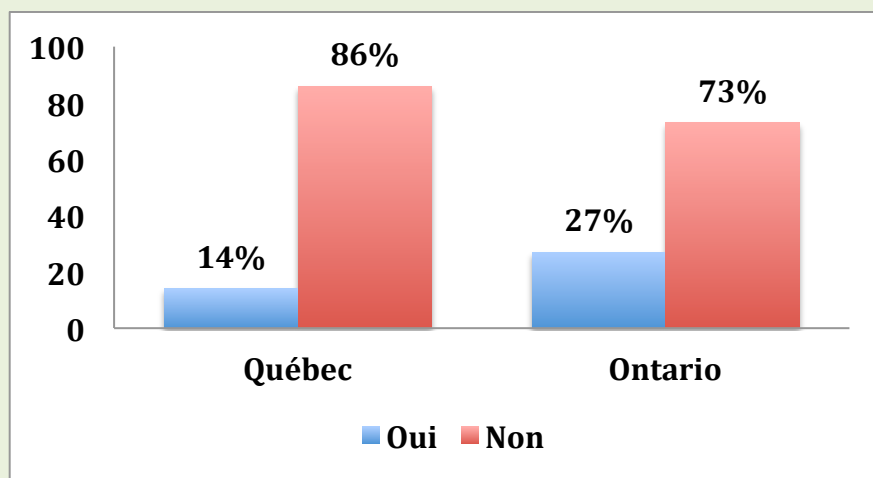
The next section of our survey is certainly the one that was most of interest to us, because it is directly related to the fair use policies of service providers. It is in these policies that providers most often disclose the limits to their services. As seen previously, the CRTC also subjected the providers to disclosure obligations in their policies, explicitly the Wireless Code and implicitly, in the regulatory framework on ITMPs.

<sup>77</sup> Excerpt from the Passages Marketing Report.



First, we asked the consumers if they knew what a fair use policy was for a service provider. Close to 80% of all the respondents answered in the negative, the proportion being even higher in Quebec with 86%. This suggests that the existence of these policies is virtually unknown by Quebecers.

**Table 13**  
**Level of knowledge on the fair use policy**



It does not seem out-of-line to extrapolate: even if these policies are generally available on the providers' websites, few consumers know about them and read them prior or even after concluding a contract.

Those who said they knew about these policies were asked if they had read them: 55% said they had not read the documents. In other words, barely 9% of the respondents are aware of these policies and have read them.

Reading these policies is one thing, but understanding them is another. Respondents were presented with excerpts from three different fair use policies and asked to assess their clarity on a scale from 1 to 10, and to tell us if they would know how to comply with them. We did our best to include excerpts that were detailed and others that were less so from policies which, according to our reading, were not clear and others which, to the contrary, appeared clearer than average. We also included an excerpt in the form of a table explaining the limits applicable to its mobile Internet services.

Below are the excerpts that were chosen for the assessment. Each respondent was presented the three excerpts from two different policies, and was given instructions to rate each segment and to also assess in each case his/her capacity to comply with it. Excerpts from the same policy were regrouped to facilitate understanding by the respondents.

## 5.2.1 Policy #1

### Excerpt 1

*[The provider's] residential Internet Service is designed for personal use. The Customer may not use the Service for commercial purposes. To ensure fair and proportional access to its network by all customers, The Customer may not run disproportionately high-bandwidth or high-load servers or applications in connection with the Service.*

### Excerpt 2

*[The provider] may levy usage surcharges of up to one hundred dollars (\$100.00) per billing period. [...] Where applicable, The Customer must comply with the current data storage and other limitations on the Service. [The provider] reserves the right to change the Service plan's data transfer speeds or data transfer thresholds upon notice.*

### Excerpt 3

*In addition, The Customer must ensure that his activities do not restrict, disrupt, inhibit, degrade or impede [of the provider's] ability to deliver the Services and monitor the Services, backbone, network nodes, and/or other network services.*

## 5.2.2 Policy #2

### Excerpt 1

USAGE	TYPE DE PLAN ET COMPLÉMENT	USAGE DOMESTIQUE DES DONNÉES DANS UN CYCLE DE FACTURATION	USAGE DES DONNÉES EN ITINÉRAIRE DANS UN CYCLE DE FACTURATION
Téléphone intelligent	Illimité	5GB	—
	Données téléphone intelligent		—
	Plans et compléments		
	Avec compléments premium	10 GB	
Internet mobile	Plans Internet mobile illimités	10 GB	—
Téléphone intelligent Internet mobile	Complément itinérance illimitée	—	1 000

**Excerpt 2**

*Compte tenu du taux auquel la plupart de nos clients consomment des données, il est peu probable que vous dépassiez les niveaux d'utilisation des données spécifiés dans cette politique dans un cycle de facturation donné, sauf si vous utilisez des applications de partage de fichiers ou téléchargez des fichiers volumineux sur Internet. Si nous choisissons de ralentir votre vitesse lorsque votre utilisation de données dépasse pour la première fois les seuils décrits ci-dessus, nous la ralentirons à une vitesse de 256 kilobits par seconde pour les téléchargements et 128 kilobits par seconde pour les téléversements. Cela ne devrait pas affecter les applications nécessitant moins de 256 kilobits par seconde de bande passante en téléchargement ou 128 kilobits par seconde en téléversement (telles que la navigation sur le Web, le courrier électronique, la voix sur IP ou les applications de transmission vocale), mais pourrait affecter les performances des applications qui nécessitent normalement une plus grande bande passante (par exemple: Streaming vidéo ou partage de fichiers peer-to-peer).*

**Excerpt 3**

*Dans les cas extrêmes, et si vos niveaux d'utilisation des données dans le cycle de facturation applicable continuent d'être élevés et de dépasser les niveaux d'utilisation spécifiés dans cette politique, nous nous réservons le droit de ralentir votre vitesse jusqu'à un maximum de 32 kilobits par seconde en téléchargement et 16 kilobits par seconde en téléversement. À ces vitesses, seules les applications Internet qui ne nécessitent pas l'usage de beaucoup de bande passante ni de performances de diffusion en temps réel (par exemple: la navigation sur le Web, courrier électronique, messagerie instantanée) continueront de fonctionner, mais à une vitesse plus lente. Si nous choisissons de ralentir votre vitesse, nous ne le ferons que jusqu'à la fin du cycle de facturation applicable.*

### 5.2.3 Policy #3

**Excerpt 1**

*The Customer agrees to make fair and reasonable use of the Services, and consents to [the supplier] limiting the use of the Services, as needed.*

**Excerpt 2**

*The Customer agrees that the [provider's] Internet service and its so-called unlimited use only refer to usage time and is based on intermittent service. Notwithstanding any provisions to the contrary, [the provider] reserves the right to impose certain conditions and reasonable limitations on the use of any Internet service by [the provider] customers, including the total number of gigabytes billed per month in uploads and downloads.*

**Excerpt 3**

*The Customer is responsible for complying with all applicable legislation, including copyright laws, when browsing on the Internet. More specifically, the Customer shall:*

- refrain from using the Internet service inappropriately or without authorization;*
- refrain from using the Internet service in such a manner as to restrict, prevent, interfere, degrade or undermine [the provider's] ability to provide the service.*

To our surprise, the general average of the ratings attributed to each policy does not vary a great deal, as revealed in the following table. The presentation of more specific information or the use of tables did not seem to help respondents better understand the excerpts from the policies submitted to them. In general, the clarity average is somewhat low, around 5 out of 10, and the respondents know even less than they should do to comply with the various policies. Fortunately, the assessments of clarity and the ability to comply with the various policies follow proportional curves. Despite the general difficulty of doing so, respondents felt that it would be easier to comply with clearer policies. It is also of note that the various degrees of difficulty we endeavoured to represent with our choices did not create the expected gap in the respondents' understanding of the various excerpts.

**Table 14**  
Average of ratings given to the various excerpts submitted to the respondents<sup>78</sup>

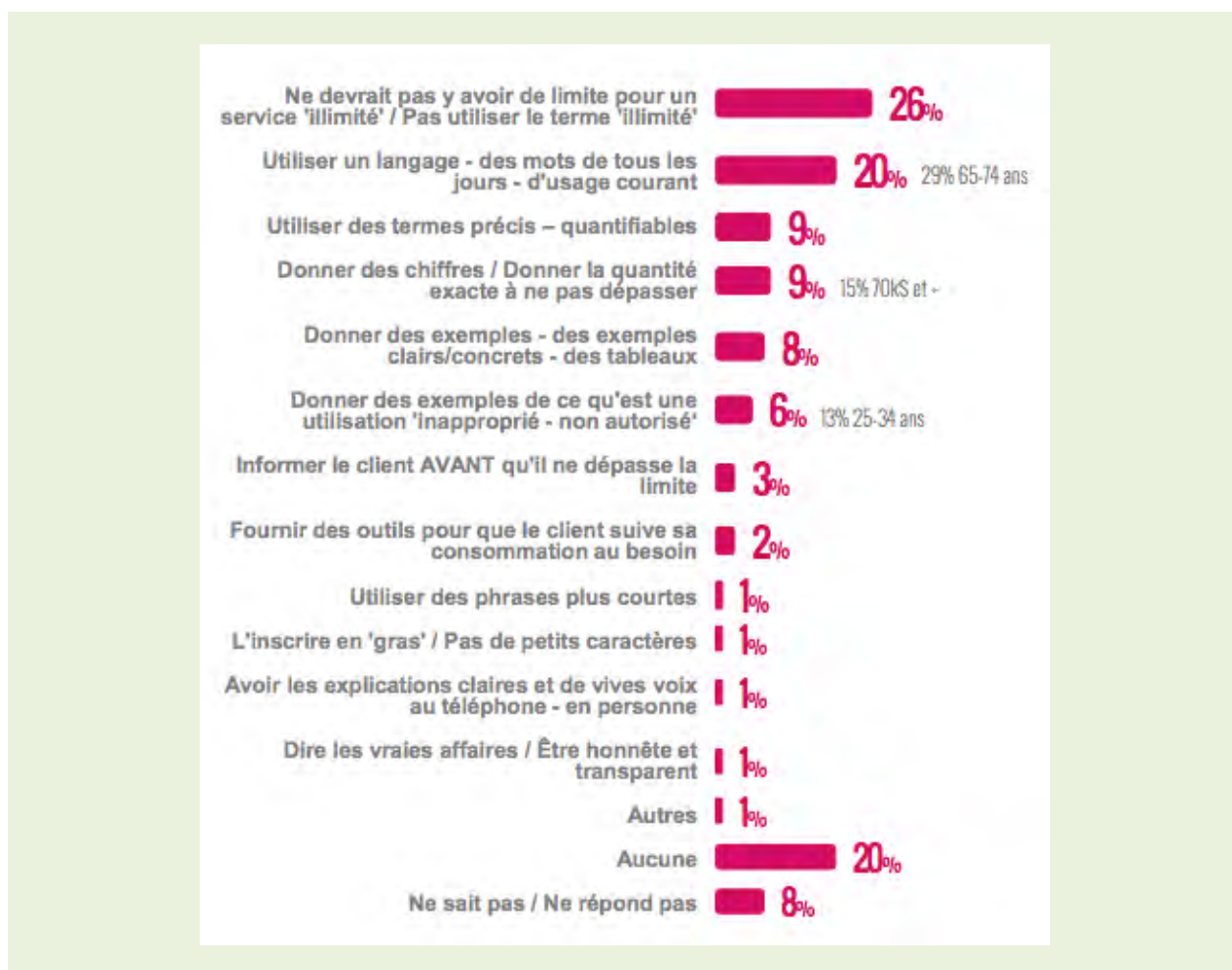
	<b>Vous apparaît-il clair?</b>	<b>Sauriez-vous comment respecter les conditions?</b>
<b>Moyenne des Politiques #1, #2, #3</b>	<b>5,25 / 10</b>	<b>4,71 / 10</b>
<b>Moyenne de la politique #1</b>	<b>5,28</b>	<b>4,81</b>
Politique #1, Extrait #1	5,98	5,60
Politique #1, Extrait #2	5,41	4,73
Politique #1, Extrait #3	4,45	4,09
<b>Moyenne de la politique #2</b>	<b>5,38</b>	<b>4,90</b>
Politique #2, Extrait #1	5,11	4,84
Politique #2, Extrait #2	5,43	4,90
Politique #2, Extrait #3	5,61	4,94
<b>Moyenne de la politique #3</b>	<b>5,09</b>	<b>4,45</b>
Politique #3, Extrait #1	5,23	4,32
Politique #3, Extrait #2	4,55	3,95
Politique #3, Extrait #3	5,50	5,07

<sup>78</sup> Excerpt from the Passages Marketing Report.

Given these results, it can only be concluded that something is wrong with those policies, but it is difficult to determine what could be done to improve them. We had posed the question to the respondents. At the end of the survey, we asked them if they had suggestions to clarify the conditions applicable to unlimited services.

From among all those we received (the level of non-response to that open question was 59%<sup>79</sup>). The most popular answer was the comment that a service advertised as being unlimited should not be subjected to limits (26% of the respondents). The remaining suggestions dealt primarily with the clarity of the policies. This was the focus of the next five most popular or specific responses (definition, numbers, tables).

**Table 15**  
**Do you have suggestions on how to clarify**  
**the limits imposed on unlimited services?**



<sup>79</sup> If we include in the non-responses, those who answered the open question saying that they had no suggestions.

In brief, several conclusions can be drawn from this survey. First, a high number of respondents seemed to be confused about the services and applicable policies. If consumers, as the respondents' answers seem to indicate, are barely aware of the features that determine their packages, it will obviously be difficult for them to understand the limits, often expressed in an abstract technical manner, which may be imposed on services they believed were unlimited. The respondents' assessment of policy clarity is an eloquent demonstration of the fact that these documents are difficult to comprehend by ordinary people. Even the documents that seemed relatively clear to us were not viewed as so by the consumers surveyed.

Given our results, we seriously wonder whether it is relevant to regulate the current way the information is provided to the consumers in the fair use policies, the terms of service, and other online contractual documents. Based on the survey answers given, a strong majority of consumers are not aware of the providers' policies, and it is easy to envision that among those who are aware of them, very few will read them. In short, it cannot be expected that the information in the providers' policies, which is useful and vital in making informed choices, will be known by consumers before the conclusion of a contract. In our opinion, it is important to ensure that the important information is disclosed in the promotional literature so that customers in a hurry will be much more likely to pay attention to it.

Furthermore, notwithstanding their level of confusion, consumers don't expect their provider to reserve the right to impose limits on their unlimited services. To the question that asked for suggestions to find a clearer way to present the limits, a significant portion of respondents indicated, instead, that the unlimited services should simply not be limited that way. No current limits on the market were considered acceptable by our respondents. The term "unlimited" means just that to consumers, and its use should not be used lightly or contrary to the literal and currently understood meaning of the term.



## 6 Study of solutions abroad

---

Problems related to unlimited services are not unique to Canada. Quite a few consumers abroad have had to deal with situations similar to the ones encountered by Canadians, which has prompted a number of regulatory authorities and those responsible for law application to act quickly. Although there are other jurisdictions with such problems where the source of these problems has been managed by authorities, we will focus principally on examples from the United Kingdom, the United States, and Australia.

### 6.1 United Kingdom

Consumers in the United Kingdom have experienced several problems with their telecommunications services. The overall transparency of the offers, and more specifically, the unlimited telecommunications service offers were ever-prevalent reasons for complaint.

The country recently modernized its consumer protection laws by regrouping three of its former laws in a single one, the *Consumer Rights Act 2015*<sup>80</sup>, which came into effect on October 1, 2015. This general law covers a broad range of aspects, including product quality, the return of goods, repairs, provisions with respect to digital goods, etc. In a section on general application are provisions that force merchants to ensure that the key terms and conditions of the contract are sufficiently visible. In addition, consumers have recourse in the event that providers try to hide charges or key terms and conditions in small print.<sup>81</sup>

Furthermore, the same law states that the information provided to the consumer before the conclusion of the contract is also an integral part of the said contract.<sup>82</sup>

---

<sup>80</sup> The *Consumer Rights Act 2015*, 2015 c.15, replaces the *Sale of Goods Act*, the *Unfair Terms in Consumer Contracts Regulations*, and the *Supply of Goods and Services Act*. On its website, the consumer-based advocacy organization Which? presents highlights of the key provisions of the law. <http://www.which.co.uk/consumer-rights/regulation/consumer-rights-act>. The full text of the law can be viewed on the British Government's website.

<http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted> (pages visited on June 12, 2017).

<sup>81</sup> JACKSON, Mark. "Consumer Rights Act 2015 Could Aid Clarity on Broadband Prices," *ISPreview*, United Kingdom, October 1, 2015 <http://www.ispreview.co.uk/index.php/2015/10/consumer-rights-act-2015-could-aid-clarity-on-broadband-prices.html>. This provision should be read in conjunction with the one that makes unfair terms non-binding. See: Waller, Rob. "The Consumer Rights Act 2015: the end of small print?" Simplification Centre, London, United Kingdom, October 5, 2015. <http://www.simplificationcentre.org.uk/2015/10/the-consumer-rights-act-2015-the-end-of-small-print/> (pages visited on June 12, 2017).

<sup>82</sup> *Consumer Rights Act 2015*, 2015 c.15, article 11 (4): Any information that is provided by the trader about the goods and is information mentioned in paragraph (a) of Schedule 1 or 2 to the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* (SI 2013/3134) (main characteristics of goods) is to be treated as included as a term of the contract, and article 12 (2): Where regulation 9, 10 or 13 of the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* (SI 2013/3134) required the trader to provide information to the consumer before the contract became binding, any of that information that was provided by the trader other than information about the goods and mentioned in paragraph (a) of Schedule 1 or 2 to the Regulations (main characteristics of goods) is to be treated as included as a term of the contract.



Problems related to references to Internet access speeds have reoccurred a few times in this country. Even today, disclosure standards seem not to be able to adequately protect consumers. The initiatives taken to date by Ofcom (the UK's communications regulator), which has been trying to convince members of the industry to respect a voluntary code, have been criticized<sup>83</sup>.

The Advertising Standards Authority (ASA), which manages the *Advertising Code*, has stated that it is aware of the problem, and that following a study on access service offers to a speed "up to" x and on consumer expectations, it may consider addressing this issue<sup>84</sup>. Existing measures have been strongly criticized, by the Minister of Culture included, since they seem to authorize, to a certain extent, misleading practices<sup>85</sup>.

On a more positive note, however, measures taken in 2011 to address the problems related to speeds advertised as "up to", and to unlimited services were more successful on this second question. Guidelines from the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP) may help to control, to a certain extent, the quality of the representations related to unlimited services and the types of services offered based on these representations. If providers choose to use the term "unlimited," from now on, they cannot charge overage fees or suspend their service based on the amount of data used by the subscriber. Should they decide to do so, they risk being accused of misrepresentation, in violation of the *Advertising Code*. Providers can no longer use Internet traffic management practices that may unduly affect the consumer's service when the contract is for unlimited services<sup>86</sup>.

---

<sup>83</sup> BBC. *Broadband speed advertising misleading, say MPs*, BBC News, United Kingdom, April 16, 2016. <http://www.bbc.com/news/uk-politics-36060369> (page visited on June 2, 2017).

<sup>84</sup> DAVIS, Jamie. *UK broadband advertising is 'up to' no good*, Telecoms.com, London, United Kingdom, November 17, 2016. <http://telecoms.com/477526/broadband-advertising-claims-to-come-under-scrutiny/> (page visited on June 2, 2017).

<sup>85</sup> SWENEY, Mark. "Broadband ad rules are 'a complete and utter joke,' says culture minister," *The Guardian*, London, United Kingdom, April 14, 2016. <https://www.theguardian.com/media/2016/apr/14/broadband-speed-ads-culture-minister-ed-vaizey> (page visited on June 2, 2017).

<sup>86</sup> ADVERTISING STANDARDS AUTHORITY LTD. (ASA). *Changes in advertising of 'unlimited' and broadband speed claims*, ASA / Committee of Advertising Practice (CAP), London, United Kingdom, September 29, 2011. <https://www.asa.org.uk/news/changes-in-advertising-of-unlimited-and-broadband-speed-claims.html> (page visited on June 2, 2017).

### **Criteria for the use of an “unlimited” claim**

*“Unlimited” claims are likely to be acceptable provided that:*

- *The legitimate user incurs no additional charge or suspension of service as a consequence of exceeding any usage threshold associated with an FUP [fair usage policy], traffic management policy or the like; and*
- *Provider-imposed limitations that affect the speed or usage of the service are moderate only and are clearly explained in the marketing communication.*

*Provided that they meet these criteria, limitations such as those that fall into the following categories are likely to be acceptable for services advertised as “unlimited”: subscriber-based and application-based traffic management policies, network-wide traffic management policies, and traffic management mechanisms that are under the auspices of a FUP<sup>87</sup>.*

## **6.2 United States**

American federal regulations provide a fairly complete framework regarding representations and network management practices. The 2015 order from the Federal Communications Commission (FCC), which manages net neutrality (*Open Internet Order*<sup>88</sup>) contains several interesting provisions, including some transparency obligations for service providers.

The FCC’s most recent regulation revisits several aspects of the first Open Internet Order adopted in 2010, which had unfortunately been contested by members of the industry on the basis that the status of Internet access services, at the time, did not allow the regulatory authority to impose such strict terms of service on providers. The Court of Appeal had ruled in favour of the providers with respect to their legal argument, without, however, questioning the adequacy of the regulation adopted by the FCC. In its decision, the Court even gave some advice to the regulatory authority on how to ensure greater legal stability to its regulatory document, affirming at the same time, the FCC’s jurisdiction over Internet regulations<sup>89</sup>. The FCC, hence, came back with a new regulation in 2015.

---

<sup>87</sup> COMMITTEE OF ADVERTISING PRACTICE. *Unlimited ads— Advertising Guidance*, London, United Kingdom, September 2011, 7 pages.

<https://www.asa.org.uk/asset/BDF28A2D%2D27EC%2D4B7B%2DBF3EEA62A7C52830.E4C3F929%2D9CEB%2D4EF3%2D9A1D1A8729EABCC0/> (document accessed on June 2, 2017).

<sup>88</sup> FCC. *Releases Open Internet Report and Order on Remand, Declaratory Ruling, and Order*, Federal Communications Commission, Washington, DC, United States, March 12, 2015. <https://www.fcc.gov/document/fcc-releases-open-internet-order/wheeler-statement> (page visited on June 14, 2017).

<sup>89</sup> WYATT, Edward, *Rebuffing F.C.C. in ‘Net Neutrality’ Case, Court Allows Streaming Deals*, New York Times, New York, United States, January 14, 2014. <https://www.nytimes.com/2014/01/15/technology/appeals-court-rejects-fcc-rules-on-internet-service-providers.html> (page visited on June 5, 2017).

Notwithstanding the threat of a legislative context and new executives supporting the free enterprise system more than net neutrality, these rules are still in force. These regulations, along with the very principle of net neutrality, could be rigorously challenged over the medium-term<sup>90</sup>.

The 2015 regulation was structured in accordance with three guiding principles:

**No Blocking:** *A person engaged in the provision of broadband Internet access service shall not block lawful content;*

**No Throttling:** *A person engaged in the provision of broadband Internet access service, shall not impair or degrade lawful Internet traffic;*

**No Paid Prioritization:** *A person engaged in the provision of broadband Internet access service shall not directly or indirectly provide certain content or services for money. Contrary to the two other principles, by definition, there can be no exception in terms of network management.*

A downside with respect to the exceptions to the second principle, is that, blocking and throttling may be tolerated by the regulatory authority if these practices are reasonable network management practices. As defined by these rules, it is understood that the sole purpose of a network management practice is to technically manage the network; it cannot simply be a trade practice. A network management practice is deemed reasonable if it allows the network to be legitimately managed based on the features of its architecture<sup>91</sup>. No throttling practice is thus considered as being reasonable and authorized. Verizon, for example, which was trying to justify as “reasonable network management,” a practice that consisted of slowing down the speed of the unlimited service subscribers to encourage them switch to a package offering less generous data capacities, had to back off and stop this practice<sup>92</sup>.

---

<sup>90</sup> See: BAKKE, Gretchen. *Fight over net neutrality already may be over*, The Gazette, Montréal, January 4, 2017. <http://www.thegazette.com/subject/news/business/fight-over-net-neutrality-already-may-be-over-20170603>

GRANADOS, Nelson. *The Net Neutrality Debate: Why There Is No Simple Solution*, Forbes, New York, United States, May 31, 2017; <https://www.forbes.com/sites/nelsongranados/2017/05/31/the-net-neutrality-debate-why-there-is-no-simple-solution/#523a1c1e5c67> and

DUNN, Jeff. *The new FCC boss has taken his latest shot at today's open-internet laws*, Business Insider, New York, February 23, 2017. <http://www.businessinsider.com/fcc-transparency-rules-small-isp-net-neutrality-order-2017-2> (pages visited on June 5, 2017).

<sup>91</sup> FCC. In the Matter of Protecting and Promoting the Open Internet—GN Docket No. 14–28; REPORT AND ORDER ON REMAND, DECLARATORY RULING, AND ORDER Adopted: February 26, 2015, FCC, Washington, DC, United States, March 12, 2015, 400 pages, par. 32.

[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf) (document accessed on June 5, 2017).

<sup>92</sup> *Idem*, par. 33 “Recently, significant concern has arisen when mobile providers’ have attempted to justify certain practices as reasonable network management practices, such as applying speed reductions to customers using “unlimited data plans” in ways that effectively force them to switch to price plans with less generous data allowances. For example, in the summer of 2014, Verizon announced a change to its “unlimited” data plan for LTE customers, which would have limited the speeds of LTE customers using grandfathered “unlimited” plans once they reached a certain level of usage each month. Verizon briefly described this change as within the scope of “reasonable network management,” before changing course and withdrawing the change.”

## a) Transparency

Beside these three principles, the Commission also adopted stricter rules on the transparency of service offers. Consumers were reporting that it was difficult to find the causes of throttling, which did not allow them to determine whether changing providers would improve their network access. Another problem: Some consumers who were subscribing to unlimited services had not been adequately informed of the speed limitation policies applied by some providers beyond a certain level of use. The consumers are often confused when their access is slowed down or interrupted based on some pretence of excessive use<sup>93</sup>.

To solve some of the problems reported, the FCC will order proper disclosure of pricing, including promotional fares, their duration, and date of expiry. The FCC will also order disclosure of all other costs applicable to consumers, along with their definitions of terms. Furthermore, it will order adequate disclosures on data ceilings and limits allowed<sup>94</sup>.

More precisely, in terms of network performance, the regulatory text reiterates the provider's obligations to disclose a description of the service, including its technology, the expected speed, as well as information on latency, and the appropriate nature of the service for the use of time-sensitive applications. The FCC has added to its 2015 decision an obligation to disclose packet loss. It has, furthermore, specified that the service description must be identical to what services the consumers may receive in their region of residence and that the information be based on a use spread over a reasonable timeline, including use during peak times. Furthermore, disclosures on mobile services must be personalized according to the technologies<sup>95</sup>.

The FCC requires that these disclosures be posted on providers' websites and in their outlets. It has included, however, a new obligation that the provider inform consumers when their level of personal use risks the application of ITMPs, to give them the opportunity to adjust their use accordingly<sup>96</sup>.

## b) Intervention of the regulatory authorities

Both the FCC and the Federal Trade Commission (FTC), the "watchdogs" for the protection of the consumers and competition in the United States, have intervened to ensure the application of some of these principles (and others) in so-called "unlimited" service offers advertised by providers.

Among these interventions, we note the investigation undertaken by the FCC on T-Mobile for infractions to transparency obligations stipulated in the 2015 *Open Internet Order*. The provider had imposed a practice to slow down the access of the 3% of consumers that were using the greatest amount of data. In a matter of a few months, the FCC had received hundreds of complaints from consumers who were saying that they did not have the unlimited access for which they were paying. Following its enquiry, the FCC concluded that the provider's throttling

---

<sup>93</sup> *Idem*, par. 81 and 163.

<sup>94</sup> *Idem*, par. 164.

<sup>95</sup> *Idem*, par. 65-166.

<sup>96</sup> *Idem*, par. 171.

policy had not been adequately disclosed to consumers with the result that it was impossible for them to make an informed choice.

The regulatory authority and T-Mobile reached an agreement in this case, the provider making a commitment to change several of its practices. The provider was committed to post its policies clearly on its website under its terms of service and in the documents provided in its outlets. In addition, the provider could not describe its services as being “unlimited” if throttling measures were imposed on the consumers after a certain usage threshold. The provider also committed to cease the throttling measures on the unlimited services subscribers and to adjust its throttling practices so that consumers were not prevented from accessing expected speeds. The information provided on the speeds available also had to be modified to take into account the provider’s throttling practices. This provider would also have to inform its consumers when they were about to be subjected to throttling. T-Mobile would also have to provide \$35 million in discounts to its unlimited service consumers. The provider was also compelled to increase the data usage limit of consumers subscribing to a mobile Internet option. Furthermore, T-Mobile had to pay \$7.5 million in penalties: the provider, hence, also had to pay \$5 million toward homework assistance programs in underprivileged neighbourhoods<sup>97</sup>.

In another case using similar practices, in 2014, the FTC engaged in legal proceedings against AT&T for throttling services, advertised as “unlimited.” The FTC alleged that the company had not informed its customers that their access could be throttled after reaching a certain usage ceiling that could be as low as 2 gigabytes within one billing period.

Throttling could be very severe. Consumer complaints reported speeds as low as 80% to 90% of the initial speed specified in their subscriptions. The company had throttled its services to 3.5 million individual consumers more than 25 million times.<sup>98</sup> In theory, the FTC had the jurisdiction to intervene within a legal framework more general than the FCC’s because an unfair business practice was involved<sup>99</sup>.

---

<sup>97</sup> FCC. In the Matter of T-Mobile USA, Inc. - File No.: EB-IHD-15-00018093. Adopted: October 19, 2016, DA 16-1125, FCC, Washington, DC, United States, October 19, 2016, 21 pages, pp. 2-3.

[https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1125A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1125A1.pdf) (document accessed on June 6, 2017).

<sup>98</sup> Federal Trade Commission, *FTC Says AT&T Has Misled Millions of Consumers with ‘Unlimited’ Data Promises*, FTC, Washington, DC, United States, October 28, 2014. <https://www.ftc.gov/news-events/press-releases/2014/10/ftc-says-att-has-misled-millions-consumers-unlimited-data> (page visited on June 6, 2017).

<sup>99</sup> “*The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except ... common carriers subject to the Acts to regulate commerce ... from using.... unfair or deceptive acts or practices in or affecting commerce.*”

FTC. *Federal Trade Commission Act*, 15 U.S.C. § 45(a)(2), Washington, DC, United States, 49 pages. [https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc\\_act\\_incorporatingus\\_safe\\_web\\_act.pdf](https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc_act_incorporatingus_safe_web_act.pdf)

At this time, the regulatory authority has been a little less successful than the FCC: its legal proceedings have been dismissed, just as the class action suit on the same issue has been because of the existence, in the contracts, of an arbitral clause forcing consumers to settle their disputes with the provider individually through arbitration<sup>100</sup>. The FCC case was rejected by the court for jurisdictional issues stating that the FCC, instead of the FTC, would have had jurisdiction to intervene on that complaint since the telecommunications company has “common carrier” status.<sup>101</sup> This decision has been appealed and the case seems to be following a complex path; a new hearing is scheduled before the Court of Appeal in the fall of 2017<sup>102</sup>. The company is not immune from further prosecution, which is good news for consumers, given the uncertainty in the air related to the future of the FCC rules on net neutrality over the midterm.

### 6.3 Australia

Australia’s regulatory framework is probably the most similar to Canada’s. Australia has a Code of Conduct from the communications authority to regulate several commercial practices, including service providers’ representations and their contracts. The country also has legislation on representation that may be applied by the authority responsible for the application of advertising laws. First, we will examine the Code of Conduct. Then, we will discuss a few interventions related to the application of the law.

#### a) Telecommunications Consumer Protections Code

A few years ago, the Australian telecommunications regulatory authority, the Australian Communications and Media Authority (ACMA), held consultations and encouraged the industry to improve its Code of Conduct, the *Telecommunications Consumer Protections Code* (TCPC)<sup>103</sup>. In theory, this Code is applied on a voluntary basis, but compliance to it is monitored both by the ACMA, the Telecommunications Industry Ombudsman (TIO), and an industry

---

<sup>100</sup> BRODKIN, Jon., *AT&T defeats class action in unlimited data throttling case*, Ars Technica, Cambridge, Massachusetts, United States, March 14, 2016. <https://arstechnica.com/tech-policy/2016/03/att-defeats-class-action-in-unlimited-data-throttling-case/> (page visited on June 6, 2017).

<sup>101</sup> FTC v. At&T Mobility LLC, United States District Court, California, United States, March 31, 2015, 23 pages. <https://buckleysandler.com/sites/default/files/Buckley%20Sandler%20InfoBytes%20-%20FTC%20v.%20AT%26T%20Mobility%20-%20Order%20Denying%20Defs%20Motion%20to%20Dismiss%202015.03.31.pdf> (document accessed on June 24, 2017).

<sup>102</sup> BUCKLEY SANDLER, LLP. *Ninth Circuit Grants Petition to Hear FTC v. AT&T Appeal En Banc*, Lexology, London, United Kingdom, May 19, 2017 <http://www.lexology.com/library/detail.aspx?g=b5b9dce1-4f69-462d-b5c4-48d0403925ba> (page visited on June 6, 2017).

<sup>103</sup> AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ACMA). *Telecommunications Consumer Protections Code*, C628:2015, Incorporating Variation No.1/2016, Communication Alliance, ACMA, Sydney, Australia, February 2016, 101 pages. [http://www.acma.gov.au/~media/Networks/Regulation/pdf/C628\\_2015%20Telecommunications%20Consumer%20Protections%20Code%20pdf.pdf](http://www.acma.gov.au/~media/Networks/Regulation/pdf/C628_2015%20Telecommunications%20Consumer%20Protections%20Code%20pdf.pdf) (document accessed on June 6, 2017).



monitoring unit: the *Communications Compliance*. The Code is complementary to other consumer protection measures, notably the *Australian Consumer Law*<sup>104</sup>.

A comparison of the TCPC to the CRTC's Wireless Code (which was inspired by Australia's code) would right away reveal that the scope of the Australian Code is a little broader since it covers not only business practices and contracts, but also representations and customer service. Furthermore, the TCPC's measures cover all telecommunication services, not only mobile phone services (which is what the CRTC Code is limited to). We could, however, argue that some protective measures contained in the Code are less specific or progressive than some contained in the CRTC WC (Wireless Code). For example, there are no provisions on unlocking, trial periods, or on limits to the period during which an early termination fee may be imposed.

Some provisions in the Australian Code go a little farther, in particular on unlimited service offers, the Wireless Code only briefly addressing that issue. Although the Code as a whole is pertinent, our interest, here, is only in the provisions that are directly related to this type of service.

Like in the WC, the TCPC has a general provision aimed at imposing clarity in the communications:

*3.2 Quality of information 3.2.1 A Supplier must provide accurate, relevant and current information to Consumers in a timely manner.*

In our opinion, the TCPC chose the proper approach by targeting not only the accuracy of the information, but also its relevance and the time of transmission: The consumer needs the information to be transmitted in a timely manner.

On a more specific question also related to that obligation to provide information in a timely manner, any advertisement must include service limitations.

*Advertising 4.2.1 Content of Advertising: A Supplier must include any important conditions, limitations, qualifications or restrictions about an Offer in its Advertising of the Offer, to allow Consumers to make informed choices and to avoid Consumers being misled.*

This provision does not specify the method of transmission of this information. We note that to ensure that this obligation is respected, the information must be easily accessible in all forms of advertising by the provider, so that consumers can read it before choosing not only their services, but also their provider.

---

<sup>104</sup> ACMA, *The TCP Code*, Communication Alliance, ACMA, Sydney, Australia, April 15, 2016. <http://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/the-tcp-code-telecommunications-consumer-protections-code-acma> (page visited on June 6, 2016)



To ensure the Code attains its objectives to help the consumers make informed choices and to prevent any confusion in the message, the Code reminds providers of the importance of the general impression of an advertisement, and states that it should not contain any contradictory messages, not even in the small print...

*A Supplier must take the following actions to enable this outcome:*

*(a) Clarity: ensure the principal message and the main terms are captured in the body of the Advertising;*

*(b) Detail: ensure that use of any disclaimers does not negate the principal message and main terms of the Advertising; and*

*(c) Format: take into account the typical amount of time that Consumers are able to view the particular Advertising in deciding how much information to include in the Advertising.*

More specifically, in terms of unlimited services, the Code prohibits the use of the term “unlimited” if any limits are imposed on the service:

*A Supplier must not engage in the following practices to enable this outcome:*

*[...]*

*(b) Unlimited: use the term ‘unlimited’ or an equivalent term in an unqualified manner when referring to usage, unless the ordinary use of the service in Australia is genuinely unlimited and not subject to exclusions, including exclusions for various types of calls or usage, or selected parts of the network;*

One must say that including “ordinary use” in the definition is somewhat puzzling, since such a restriction may in fact be confusing. Is a consumer able to know in advance what the provider means by ordinary use? Can the provider have its own definition in a related document? At least, the Australian Code does not explicitly endorse the inclusion of systematic limits to its unlimited services. In fact, this provision instead aims to forbid it.

## **b) Intervention of regulatory authorities**

The Australian Competition and Consumer Commission (ACCC), which is the Australian authority responsible for the application of competition and consumer protection laws, has intervened several times to clean up market practices related to promotional information intended for consumers.

Although this does not apply directly to the nature of unlimited services, the authority published an information document in 2010 to clarify how information on Internet access speeds should be advertised to consumers. The authority states that the information on service performance must be relevant and accurate, and provided in the promotional literature and service outlets.

The ACCC also stresses the importance of the general impression that an advertising message portrays and also of the fact that any disclosure of service limits must not conflict with the key advertising message. Specific, easily accessible information on data transfer speed must be provided clearly in any advertisement. The general impression given by advertising must not be contradicted by a disclosure that is less visible. The authority also recommends not using small print in advertisements, or placing it as closely as possible to the most important information elements to which it adds details, and ensuring that the formulation is clear to enable consumers to be fully informed<sup>105</sup>.

Apart from this information document, the ACCC also intervened a few times to stop market practices that did not respect the legislation principles it has the mandate to apply. For example, in 2011, it took action against Optus, a company which had advertised so-called unlimited, high-speed Internet access services, wireless services, and phone services<sup>106</sup>. Yet, the phone services were subjected to exclusions, and the Internet access service was throttled after a monthly use of 15 or 30 gigabytes, and that, at 256 kbps, a speed that rendered several uses inoperative, e.g., video downloads, video streaming, and video calls. The ACCC found that the company was in violation of the *2010 Competition and Consumer Act*.

The ACCC president was firm:

*It is simply unacceptable to make bold headline claims like 'unlimited' and then to bury important conditions or qualifications in the fine print as Optus did in this case. Further, simply disclosing the existence of a condition may not be enough. In this case, the Act also required Optus to explain to consumers the effect of the condition on the functionality of the service being provided*<sup>107</sup>.

The Federal Court of Australia ruled in favour of the ACCC and held that this business practice was misleading. The provider, which had stopped publishing the advertisement before the judgment was rendered, did not contest the decision<sup>108</sup>.

---

<sup>105</sup> AUSTRALIAN COMPETITION & CONSUMER COMMISSION (ACCC), *HFC and Optical Fibre Broadband "Speed" Claims and the Competition and Consumer Act 2010 – An ACCC Information Paper*, ACCC, Sydney, Australia, July 2011, 13 pages. See par. 2.12, 2.32, 2.33 et 2.37.

<https://www.accc.gov.au/system/files/HFC%20and%20Optical%20Fibre%20Broadband%20Speed%20Claims%20and%20the%20CCA%20-%20Information%20Paper.pdf> (document accessed on June 7, 2017)

<sup>106</sup> CORRS CHAMBERS WESTGARTH. *Accc V Singtel Optus PTY Ltd.* [2011] Fca 87, in CORRS in Brief, CORRS, Sydney, Australia, February 2011, 2 pages.  
[http://www.corrs.com.au/assets/thinking/downloads/5761837\\_InBrief\\_LT\\_ACCC\\_v\\_Singtel\\_Optus\\_Feb\\_1\\_1.pdf](http://www.corrs.com.au/assets/thinking/downloads/5761837_InBrief_LT_ACCC_v_Singtel_Optus_Feb_1_1.pdf) (document accessed on June 7, 2017).

<sup>107</sup> ACCC. *Optus "unlimited" advertisements declared misleading and deceptive*, ACCC, Sydney, Australia, February 4, 2011. <https://www.accc.gov.au/media-release/optus-unlimited-advertisements-declared-misleading-and-deceptive> (page visited on June 7, 2017).

<sup>108</sup> COMPUTERWORLD STAFF (Computerworld). *Optus loses unlimited broadband dispute*, Computer World, North Sydney, Australia, February 4, 2011.  
[https://www.computerworld.com.au/article/376550/optus\\_loses\\_unlimited\\_broadband\\_dispute/](https://www.computerworld.com.au/article/376550/optus_loses_unlimited_broadband_dispute/) (page visited on June 7, 2017).

More recently, a judgment was rendered following another law suit by the ACCC against TPG, a company that offered a so-called unlimited Internet access service. The decision pointed out some of the key principles from Australian laws and regulations, specifically, the weight of the general impression of the advertisement and the importance of placing relevant details next to the general information in an advertisement. Instead of the unlimited nature of the service, it was the price this time that particularly caused the problem. In fact, the price advertised was only available to those subscribing to bundled services<sup>109</sup>.

### c) Conclusion

Several standards abroad commonly have the fact that the general impression of advertising must be considered to assess if we are facing misrepresentation or not. Since this principle exists in Canada laws, it is a little surprising that some business practices here are not subjected to the same level of intervention from the competent protection authorities.

Furthermore, the practice of degrading or throttling the service so that some applications are no longer usable is unacceptable to the regulation authorities of several countries. A service referred to as “unlimited” must be unlimited in its nature. To prohibit the imposition of overage charges is not sufficient. Internet traffic management practices must not restrict access to any applications that consumers may want to use. In general, these protection authorities tolerate no limits: If a service has limits, the provider cannot use the term “unlimited” to promote it.

It is also worth mentioning that in cases when some limits are acceptable, all of the jurisdictions studied insist that certain principles and methods be respected, with the aim to ensure that consumers are informed of their limits and of the ITMPs that may be applicable to their services. These measures are, to a small extent, based on a fair use policy, but more on the importance that promotional literature be honest and complete. In addition, the information must be provided in outlets. Obligations that force providers to be proactive also exist, particularly in the United States where providers must inform consumers when imposing an ITMP that is caused by their use.

In short, although regulatory authorities are generally sensitive to the need to leave a certain degree of autonomy to providers with regard to network traffic management, one principle remains: An unlimited service must not be subjected to major limits. Authorities have found several solutions to conciliate the interests of both companies and consumers, and they have taken action on a regular basis when companies have not respected the rules. Several protective measures that have been adopted and actions that have been taken by the authorities may serve as an inspiration in Canada, since the problems related to unlimited services are quite similar from country to country.

---

<sup>109</sup> BATTERSBY, Matthew & Kirsten WEBB. *Advertising and the ACL: Fine print couldn't save TPG Internet in the High Court*, Clayton UTZ, Sydney, Australia, December 19, 2013.  
<https://www.claytonutz.com/knowledge/2013/december/advertising-and-the-acl-fine-print-couldn-t-save-tpg-internet-in-the-high-court> (page visited on June 7, 2017).

## 7 Consultations with stakeholders

---

Upon completion of our research project, we would like to refine our recommendations through a stakeholder survey. To do so, we have written a document including a few highlights from our field survey, our consumer survey and our search for solutions abroad. We presented this information to put things into context in various sections in our questionnaire. The summary deck is annexed to this report<sup>110</sup>.

To have access to a set of perspectives, we have consulted the leading telecommunications companies in Canada, the telecommunications, competition and complaint handling regulatory authorities, and the consumer protection provincial authorities<sup>111</sup>. We sent them an invitation along with our questionnaire and have followed up with them.

We had already made such consultation exercises in the past, but the completion rate is somewhat variable from year to year and from topic to topic. Unfortunately, the turnaround was very low: no member of the industry or federal regulatory authority agreed to answer our questions. Only a few consumer protection authorities replied to some sections of our questionnaire: Alberta, Saskatchewan, New Brunswick, and Nunavut. Two provinces said they could not respond to the questionnaire because they did not collect enough information on complaints pertaining to unlimited services<sup>112</sup>.

Most consumer protection authorities who replied provided very brief information on their perspectives. In short, this stage of our research provided little additional insight.

Here, we summarize a few elements collected within the framework of this enquiry.

### 7.1 Consumer issues regarding information

We asked the respondents if, in their opinion, the information provided on the market helped consumers to make informed choices about unlimited services.

Responses were quite brief since in general, the consumer protection authorities don't receive many complaints specific to the unlimited nature of telecommunications services. Some encourage consumers to access federal remedies, specifically the CCTS, and admitted that they did not always complete an in-depth analysis of the complaints, especially when they come from another entity.

Nunavut recalled the lack of competition in its region and the severe monthly limits applied on data transfer.

---

<sup>110</sup> See schedule 2.

<sup>111</sup> An invitation was sent to Bell, TELUS, Rogers, Videotron, Sasktel, MTS, Freedom Mobile, Distributel, Teksavvy, Eastlink, Cogeco, the CNOC, the Independent Telecommunications Providers Association, the CRTC, the CCTS, the Competition Bureau as well as to all provincial and territorial Consumers' Bureaus.

<sup>112</sup> Quebec and Ontario.

## 7.2 How to provide consumers with better information

We asked the respondents how one could ensure that the information provided to consumers is clear.

New Brunswick recalls the importance to clearly disclose the terms of service included in contracts and promotional literature, and suggests that the limits of unlimited service, just as other contractual conditions, are disclosed before the conclusion of a contract. Saskatchewan makes a similar recommendation, which is that the main terms of a contract should include the signed initials of the consumer to indicate their understanding of the terms at the conclusion of the contract.

Nunavut insists on the necessity to make the information available through several methods: brochures, websites, social media, etc.

Alberta indicates that key elements of information must be written in plain language and texts have to be brief. It also adds that notices have to be given in due course; for example, when consumers are about to reach their service limits. Advertising must be accurate and the main terms of service in the contract must also be disclosed upon the conclusion of the agreement.

Since we did not get any answer from the industry, we don't have any additional information on the ITMPs used and on the reasons why they are applied; those questions were part of our enquiry. A provider directed us to its website for more information without any other details.

## 7.3 Possible solutions

Lastly, respondents were questioned about possible solutions inspired from the measures taken by foreign jurisdictions.

Consumer protection authorities that have answered our questionnaire were favourable to several solutions like to have the information on ITMPs more accessible and inform the consumers before an ITMP is applied. Respondents also agreed that the use of the term "unlimited" should be controlled in service offers, because if limits are actually applied, one could talk about misleading commercial practices. Another possible solution is to ensure that small prints in promotional literature don't contradict the general impression they reflect.

Alberta only notes that the use of the term unlimited in a context where the service is not, as well as the use of small prints that contradict the general impression of the advertisement are already regulated in the province. Furthermore, the Alberta Consumer Bureau states that any regulation pertaining to ITMPs would rather be under federal jurisdiction.

Although the stakeholders who took part in the consultation have few specific information on the issues reported by consumers in regard to unlimited services, they are all generally favourable to the measures that foster the accuracy of the information provided in a timely manner. They are also all favourable to commercial practices that foster transparency.

## 8 Conclusions

---

Unlimited telecommunication services are not essential to all consumers: some may easily be satisfied with limited access, an option often offered at a more affordable price. For others, unlimited services provide more certainty: no surprise charges, no worries, the possibility to use the service at will any time of the month. The CRTC even recognized the right of all Canadian consumers to have access to an unlimited service offer. The development of telecommunication networks, and particularly the growth of optical fibre, allowed for a significant increase in network capacities. Given that networks now make it possible that demand exists, and that this type of offer delivers a very competitive edge in the eyes of some types of users, this type of service will most likely grow in the years to come.

In the current state of affairs, when such services are offered, they regularly raise complaints: the CRTC Wireless Code now prohibits overage charges on an unlimited service, but consumers report that the providers don't live up to their promises, that they are modifying their services without their consent, sometimes pretexting that the policies included in cryptic legal documents give them carte blanche in terms of service control, that they program downturns, etc. Our literature review demonstrated that on several occasions, unlimited service contracts were modified without the consumer's consent, based on stipulations in an acceptable use policy or on service terms that would be at the sole discretion of the providers. Yet, those documents did not always clearly outline the limits that may apply to an unlimited service, no more than the moment when those limits would be applied.

Our field study revealed that there are various grey areas in the providers' offers, both in the promotional content and in their policies. The use of small print policies remains widespread. Redefinitions of terms that seemed clear are also found.

However, we have seen some wireless service promotional offers that avoided the use of the term "unlimited" or indicated the applicable limits in a relatively visible way. This evolution may be linked to the Wireless Code, which regulates the information and the use of the term "unlimited". Only with time will we be able to judge if the latest practices are intended to provide greater transparency or whether they are a way for providers to circumvent the rules applicable to the term. In fact, its use may not be essential if the general impression is that the service will be unlimited...

We did not notice such positive examples in regard to Internet access services: on a regular basis, the providers mention only in small print the existence of their policies, without mentioning their content. The existence, the application rules, the scope, and the effects of the limits that will be applied to the so-called unlimited service could very well be known only when they are applied, to the user's surprise

We noticed the application of a few exclusions for unlimited long-distance call services, but they were provided on a regular basis in the promotional literature.



The terms of service appeared to be particularly problematic. It often consists in a legal catch-all document in which providers regroup provisions on excessive use, illegal use (obscene and defamatory content, cyber attacks), commercial use, etc. Not only are the passages relevant to usage limits difficult to find, but when they are found, one often finds out that the useful information is buried under other irrelevant information, or written in a language difficult to understand. Exclusions on wireless services are sometimes easy to identify, but this is certainly not always the case for residential Internet access services, whose policies leave the providers with a significant margin of discretion, both in the determination of the moment when the control practices are applied and in the choice of practices.

The level of compliance with the regulatory framework of the ITMPs is not optimal for the overall information that providers are required to disclose to consumers. Finding an answer to each question surrounding the regulatory framework is similar to looking for a needle in a haystack. With a few exceptions, providers don't give clear answers to each of the questions within the regulatory framework and in many cases, certain elements of information must be deduced from the provider's provisions. Some providers visibly made an effort to explain their policies to the final users, but it is not the case for all. Furthermore, the fact that both the information on ITMPs, which are practices that should only be used to manage traffic to maintain the integrity of networks, as well as the information on the control measures related to subscriber uses is discussed in the same sections can only create even more confusion for consumers.

Some omissions in the documents also bring concern about technical compliance issues. We must read between the lines: Some providers list the applications that remain unaffected by ITMPs, but omit information on certain time-sensitive applications. Does that mean that they will be downgraded, in which case we would effectively be dealing with a compliance issue? Furthermore, downturn practices on mobile wireless services could not only affect some applications (which already seems unacceptable within an unlimited service), but also make them totally inoperable. On occasions, the service is slowed down to extremely slow speeds: 32 or even 16 kbps. It would not be unreasonable for the CRTC to conduct a compliance investigation to verify if the ITMPs disclosed in the terms of service may really slow down time-sensitive applications, and then interfere diligently if necessary.

We were surprised by the consumer survey: consumers are still having more difficulty than we expected in understanding the information pertaining to their services. The survey results lead us to believe that many consumers don't exactly know what is included in their services and think that their services are unlimited when in fact, they are not. Imposing disclosure obligations, but allowing this mandatory information to be hidden in the providers' legal documents is a very bad idea: the vast majority of consumers don't even know what an acceptable use policy is, although those documents contain the information on the possible limits to unlimited services. Among the consumers who know about the existence of such documents, only a few will actually read the policies; our survey showed that those who had read them were proportionally more aware of the fact that limits could be applied to unlimited service. It is therefore not pointless to provide this information to consumers, but it would be useful to reconsider the location of the information that is deemed important for consumers.



We have submitted excerpts from the providers' policies to the consumers who participated in our survey: the respondents did not feel that the texts were clear and they also admitted that they would not know how to comply with the policies based on these texts. When providers remain cryptic and use terms as vague as "reasonable use", consumers are particularly confused. To our great surprise, however, even when the providers use clear and focused information (for example, using a table describing the limits applicable per service), the respondents did not give a more positive assessment of their understanding or ability to comply with the policies. Clearly, providers will have to make an effort to popularize as much as possible the information submitted to consumers. Furthermore, on an open question, respondents indicated that it was unacceptable for services advertised as being "unlimited" to be subjected to limitations.

Our study on solutions used abroad allowed us to find several interesting potential solutions. It seems like several authorities don't rely on acceptable use policies as much as the CRTC does to inform consumers: mandatory information is required to be provided in outlets directly to the consumers. The information also has to be included in the promotional literature, and no policy may contradict the general impression that the advertising may give. Informing the consumer that the promotional literature contains a policy is also not sufficient to ensure that consumers are adequately informed. The fact that some applications are made unusable because of a downturn is also a practice prohibited by several regulatory authorities.

The few stakeholders who participated in our consultation agreed, in general, with the principle of transparency and one of their recommendations is to ensure that consumers are notified about limits in a timely manner. We noted that some of the solutions found abroad already have an equivalent in Canada.

These highlights don't allow us to offer miracle solutions, but rather a set of measures which will balance the rights of providers and the rights of consumers when it comes to unlimited limits, and to clarify the information provided to the consumers who can't, at this time, understand all the information provided to them, and to understand it in a timely manner. Thus, qualifying a service as "unlimited" (or suggesting that it is) should not be that easy: providers have the obligation to provide consumers with a complete service at all times, and to be proactive in the way they inform consumers on the conditions applicable to their services. Furthermore, information disclosures in Canada may certainly be updated.

The measures we are presenting all have a common goal: to put an end to a maze of contractual provisions that elude expectations of consumers who just want to have access to the services that they purchased under the conditions they understood.

## 9 Recommendations

---

- Whereas the monthly data use of consumers is constantly on the rise;
- Whereas the proportion of subscribers to unlimited Internet access services has increased;
- Whereas the CRTC recognized the right for all consumers to have access to unlimited telecommunication service offers;
- Whereas the CRTC and CCTS received several complaints over the years on unlimited telecommunication services;
- Whereas our field study revealed that the level of clarity regarding the limits that may be imposed on unlimited services in the promotional literature could be greatly improved;
- Whereas our field study revealed flagrant compliance issues within the regulatory framework of the Internet traffic management policies (ITMPs) and a few obvious compliance issues with the Wireless Code;
- Whereas our field study and our survey revealed serious problems related to clarity in the terms of service and *acceptable use policies*;
- Whereas the ITMP regulatory framework has not been reviewed since 2009, while the market practices and features of telecommunication networks have changed;
- Whereas consumers have reported several problems with their telecommunication services;
- Whereas consumers disagree with the fact that some limits may be imposed on unlimited services;
- Whereas consumers were not aware about an acceptable use policy and that the majority of consumers will not read it;
- Whereas several measures were adopted abroad to regulate the use of ITMPs and to clarify the promotional literature;

### **Union des consommateurs recommends that the CRTC:**

1. Update the ITMP regulatory framework, ensuring that the information that is relevant for the end user is sufficiently visible and clear in the promotional literature;
2. Look into the ITMPs applied on unlimited services offered on the market to ensure compliance, and take action against providers whose practices may block access to some applications or deteriorate the service;
3. Consult consumers to find the best ways to provide them with clear information;
4. Ensure that the information on the general ITMPs, the technical measures that are applied to some users according to their use, as well as the limits that may apply, but that are not related to Internet traffic management is presented distinctly;

- Whereas promotional literature frequently advertises unlimited services without mentioning the limitations provided in the AUP;
- Whereas the general impression given by some promotional documents suggests that the services are unlimited;
- Whereas several advertising regulatory authorities abroad intervened to ensure that the advertising provided to the consumers on unlimited service is clear;

**Union des consommateurs recommends that consumer protection authorities and that the Competition Bureau:**

5. Ensure that the general impression of the representations given by telecommunication service providers on unlimited services is not misleading;
6. Require corrective measures for these representations if limits are provided in the providers' AUPs;
7. Prohibit formally in the advertising, illegible or incomplete small print, or small prints that distort the message given by the general impression of the document;

- Whereas a growing number of providers offer unlimited telecommunication services;
- Whereas some providers also offer, without expressly qualifying them as being “unlimited”, services without overage charges;
- Whereas several Internet traffic management practices applied by Canadian providers may be judged unacceptable in foreign jurisdictions;
- Whereas that fact that, under the guise of ITMP, speed downturns make some applications unusable or deteriorate the service and shall therefore be formally prohibited;
- Whereas the survey results seem to confirm that not all consumers are aware of the limits applicable to unlimited services, and that, in general, it is difficult for them to understand legal documents;
- Whereas the only mention in documents such as acceptable use policies, which are difficult to access for the consumer, of the conditions that should be brought to the consumer's attention is not likely to give them the adequate information;
- Whereas consumers don't want to and should not be imposed limits on so-called unlimited services;

**Union des consommateurs recommends that service providers:**

8. Stop using the term “unlimited” for services subject to limits other than ITMPs;
9. Limit the use of ITMPs to their only acceptable function, which is to avoid or to limit sporadic congestion of networks;
10. Stop using only or giving priority to terms of service or acceptable use policies to inform consumers of the terms and conditions that should be brought to their attention;
11. Find innovative ways to inform consumers of the terms and conditions applicable to their contract, including limits to their services, using, for example, notices during use;
12. Review the structure of the documents and their language to make them accessible and understandable to the average consumer;

- Whereas consumers don't seem to be aware of the specific characteristics of their services;
- Whereas the majority of consumers don't know what an acceptable use policy is;
- Whereas it is difficult for consumers to understand the current policies when they read some excerpts;

**Union des consommateurs recommends that consumers:**

13. Become familiar with the characteristics of their service to ensure that they are well suited to their needs and that they match the offer they have accepted;
14. Exercise extreme caution before subscribing to a service advertised as being unlimited, by obtaining information directly from the provider, for example, to learn about the limits that may be applicable;
15. Complain to competent authorities, more specifically to the CCTS and provincial consumer protection agencies, if after entering the contract, they discover that the service does not comply with what was advertised.

## Mediagraphy

---

**AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (ACMA).** Communication Alliance, Sydney, Australia,

Telecommunications Consumer Protections Code, C628:2015, Incorporating Variation No.1/2016, February 2016, 101 pages.

[http://www.acma.gov.au/~media/Networks/Regulation/pdf/C628\\_2015%20Telecommunications%20Consumer%20Protections%20Code%20pdf.pdf](http://www.acma.gov.au/~media/Networks/Regulation/pdf/C628_2015%20Telecommunications%20Consumer%20Protections%20Code%20pdf.pdf)

*The TCP Code*, April 15, 2016. <http://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/the-tcp-code-telecommunications-consumer-protections-code-acma>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION (ACCC).** Sydney, Australia

*HFC and Optical Fibre Broadband "Speed" Claims and the Competition and Consumer Act 2010 – An ACCC Information Paper*, ACCC, Sydney, Australia, July 2011, 13 pages.

<https://www.accc.gov.au/system/files/HFC%20and%20Optical%20Fibre%20Broadband%20Speed%20Claims%20and%20the%20CCA%20-%20Information%20Paper.pdf>

*Optus "unlimited" advertisements declared misleading and deceptive*, February 4, 2011. <https://www.accc.gov.au/media-release/optus-unlimited-advertisements-declared-misleading-and-deceptive>

**BAKKE, Gretchen.** *Fight over net neutrality already may be over*, The Gazette, Montréal, January 4, 2017. <http://www.thegazette.com/subject/news/business/fight-over-net-neutrality-already-may-be-over-20170603>

**BATTERSBY, Matthew & Kirsten WEBB.** *Advertising and the ACL: Fine print couldn't save TPG Internet in the High Court*, Clayton UTZ, Sydney, Australia, December 19, 2013.

<https://www.claytonutz.com/knowledge/2013/december/advertising-and-the-acl-fine-print-couldn-t-save-tpg-internet-in-the-high-court>

**BBC,** BBC News, United Kingdom

*Broadband speed advertising misleading, say MPs*, April 16, 2016.

<http://www.bbc.com/news/uk-politics-36060369>

*Changes in advertising of 'unlimited' and broadband speed claims*, Advertising Standards Authority (ASA) / Committees of Advertising Practice (CAP), London, United Kingdom, September 29, 2011. <https://www.asa.org.uk/news/changes-in-advertising-of-unlimited-and-broadband-speed-claims.html>

**BELL.** Bell Mobility Terms of Service, Schedule B: Responsible use of Bell services, s.d.

[http://www.bell.ca/Bell\\_Mobility\\_Terms\\_of\\_service](http://www.bell.ca/Bell_Mobility_Terms_of_service)

**BELL MTS.**

*"Unlimited Data Plans" false advertising claim* [https://community.mts.ca/mts/topics/-unlimited-data-plans-false-advertising-claim?topic-reply-list\[settings\]\[filter\\_by\]=all&topic-reply-list\[settings\]\[reply\\_id\]=14957703#reply\\_14957703](https://community.mts.ca/mts/topics/-unlimited-data-plans-false-advertising-claim?topic-reply-list[settings][filter_by]=all&topic-reply-list[settings][reply_id]=14957703#reply_14957703)

*Flat rate data plans and Fair Use Policy.* <https://community.mts.ca/mts/topics/unlimited-data-plans-and-excessive-use-policy>

**BENESSAIEH, Karim.** *Internet: les fournisseurs indépendants passent à l'acte*, La Presse, January 16, 2016. <http://www.lapresse.ca/techno/internet/201701/16/01-5059879-internet-les-fournisseurs-independants-passent-a-lacte.php>

**BRODKIN, Jon.** *AT&T defeats class action in unlimited data throttling case*, Ars Technica, Cambridge, Massachusetts, United States, March 14, 2016. <https://arstechnica.com/tech-policy/2016/03/att-defeats-class-action-in-unlimited-data-throttling-case/>

**BUCKLEY SANDLER, LLP.** *Ninth Circuit Grants Petition to Hear FTC v. AT&T Appeal En Banc*, Lexology, London, United Kingdom, May 19, 2017. <http://www.lexology.com/library/detail.aspx?g=b5b9dce1-4f69-462d-b5c4-48d0403925ba>

**BUCKNER, Dianne.** *Usage-based billing debate: Bandwidth hogs or business bulls?*, CBC news Business, CBC, Montréal, Canada, February 9, 2011. <http://www.cbc.ca/news/business/usage-based-billing-debate-bandwidth-hogs-or-business-bulls-1.1012198>

**CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC),** Ottawa, Canada.

*Wireless Code (Regulatory Policy 2013-271)*, June 3, 2013. <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm>

*Broadcasting and Telecom Decision 2015-26*, January 29, 2015. <http://crtc.gc.ca/eng/archive/2015/2015-26.htm>

*Telecom Decision CRTC 2010-255*, May 6, 2010. <http://www.crtc.gc.ca/eng/archive/2010/2010-255.htm>

*Telecom Decision CRTC 2017-105*, April 20, 2017. <http://crtc.gc.ca/eng/archive/2017/2017-105.htm>

*Telecom Decision CRTC 2008-108*, November 20, 2008. <http://www.crtc.gc.ca/eng/archive/2008/dt2008-108.htm>

*Telecom Regulatory Policy CRTC 2009-657*, CRTC, October 21, 2009. [www.crtc.gc.ca/eng/archive/2008/dt2008-108.htm](http://www.crtc.gc.ca/eng/archive/2008/dt2008-108.htm)

*The Wireless Code, simplified*, sec. A1 and A3. <http://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>

*Telecom Regulatory Policy CRTC 2015-326*, CRTC, July 22, 2015.  
<http://www.crtc.gc.ca/eng/archive/2015/2015-326.htm>

*Telecom Regulatory Policy CRTC 2016-496*, December 21, 2016.  
<http://crtc.gc.ca/eng/archive/2016/2016-496.htm>

*Communications Monitoring Report*, September 2013, 268 pages.  
<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2013/cmr2013.pdf>

*Communications Monitoring Report 2016: Executive Summary*, last modification February 27, 2017. <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2016/cmrs.htm>

*Communications Monitoring Report 2016*, s.d., 379 pages.  
<http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf>

**CEFRIQ.** Les jeunes adultes très friands des services de divertissement en ligne au Québec. May 4, 2017. <http://www.cefrio.qc.ca/salle-presse/communiqués/les-jeunes-adultes-tres-friands-des-services-de-divertissement-en-ligne-au-quebec/>

**COMMITTEE OF ADVERTISING PRACTICE.** *Unlimited ads— Advertising Guidance*, London, United Kingdom, September 2011, 7 pages.  
<https://www.asa.org.uk/asset/BDF28A2D%2D27EC%2D4B7B%2DBF3EEA62A7C52830.E4C3F929%2D9CEB%2D4EF3%2D9A1D1A8729EABCC0/>

**COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES (CCTS)**, Ottawa, Canada.

*Making the tough calls. Annual Report 2014-15*, 54 pages. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2014-2015/CCTS-Annual-Report-2014-2015.pdf>

*Driving positive change. Annual Report 2013-14*, 42 pages. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2013-2014/CCTS-Annual-Report-2013-2014.pdf>

*We listen. We help. Annual Report 2011-12*, 48 pages. <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2011-2012/CCTS-Annual-Report-2011-2012.pdf>

*Guidance in a sea of change. Annual Report 2015-16*, 79 pages. <https://www.ccts-cprst.ca/documents/annual-reports/2015-2016>

**COMPUTERWORLD STAFF** (Computerworld). *Optus loses unlimited broadband dispute*, Computer World, North Sydney, Australia, February 4, 2011.  
[https://www.computerworld.com.au/article/376550/optus\\_loses\\_unlimited\\_broadband\\_dispute/](https://www.computerworld.com.au/article/376550/optus_loses_unlimited_broadband_dispute/)

**CORRS CHAMBERS WESTGARTH.** *Accc V Singtel Optus PTY Ltd.* [2011] Fca 87, in CORRS in Brief, CORRS, Sydney, Australia, February 2011, 2 pages.  
[http://www.corrs.com.au/assets/thinking/downloads/5761837\\_InBrief\\_LT\\_ACCC\\_v\\_Singtel\\_Optus\\_Feb\\_11.pdf](http://www.corrs.com.au/assets/thinking/downloads/5761837_InBrief_LT_ACCC_v_Singtel_Optus_Feb_11.pdf)



**DAVIS, Jamie.** *UK broadband advertising is 'up to' no good*, Telecoms.com, London, United Kingdom, November 17, 2016. <http://telecoms.com/477526/broadband-advertising-claims-to-come-under-scrutiny/>

**DOBBY, Christine.** Pushing for competitive market, CRTC slashes wholesale fees charged by incumbent ISPs, The Globe and Mail, October 6, 2016. <http://www.theglobeandmail.com/report-on-business/crtc-aims-to-boost-home-internet-competition-with-rate-cut/article32279440/>

**DUNN, Jeff.** *The new FCC boss has taken his latest shot at today's open-internet laws*, Business Insider, New York, February 23, 2017. <http://www.businessinsider.com/fcc-transparency-rules-small-isp-net-neutrality-order-2017-2>

**FEDERAL COMMUNICATIONS COMMISSION (FCC).** Washington, DC, United States.  
*In the Matter of Protecting and Promoting the Open Internet*—GN Docket No. 14–28; REPORT AND ORDER ON REMAND, DECLARATORY RULING, AND ORDER Adopted: February 26, 2015, March 12, 2015, 400 pages.  
[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf)

*In the Matter of T-Mobile USA, Inc. - File No.:* EB-IHD-15-00018093. Adopted: October 19, 2016, DA 16–1125, October 19, 2016, 21 pages.  
[https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1125A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1125A1.pdf)

*Releases Open Internet Report and Order on Remand, Declaratory Ruling, and Order*, March 12, 2015. <https://www.fcc.gov/document/fcc-releases-open-internet-order/wheeler-statement>

*In the Matter of T-Mobile USA, Inc.* DA 16–1125, October 9, 2016, 21 pages.  
[http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db1019/DA-16-1125A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1019/DA-16-1125A1.pdf)

**FEDERAL TRADE COMMISSION (FTC).** California, United States.  
*FTC Says AT&T Has Misled Millions of Consumers with 'Unlimited' Data Promises*, October 28, 2014. <https://www.ftc.gov/news-events/press-releases/2014/10/ftc-says-att-has-misled-millions-consumers-unlimited-data>

*FTC v. At&T Mobility LLC*, United States District Court, March 31, 2015, 23 pages.  
<https://buckleysandler.com/sites/default/files/Buckley%20Sandler%20InfoBytes%20-%20FTC%20v.%20AT%26T%20Mobility%20-%20Order%20Denying%20Defs%20Motion%20to%20Dismiss%202015.03.31.pdf>

*Federal Trade Commission Act*, 15 U.S.C. § 45(a)(2), 49 pages.  
[https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc\\_act\\_incorporatingus\\_safe\\_web\\_act.pdf](https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc_act_incorporatingus_safe_web_act.pdf)

**GOUVERNEMENT OF CANADA. Ottawa, Canada.**

*CRTC strengthens its commitment to net neutrality, consumer choice and free exchange of ideas by citizens.* News release, April 20, 2017. [https://www.canada.ca/en/radio-television-telecommunications/news/2017/04/crtc\\_strengthensitscommitmenttonetneutralityconsumercchoiceandfre0.html](https://www.canada.ca/en/radio-television-telecommunications/news/2017/04/crtc_strengthensitscommitmenttonetneutralityconsumercchoiceandfre0.html)

*CRTC establishes fund to attain new high-speed Internet targets.* News release, December 21, 2016. <https://www.canada.ca/en/radio-television-telecommunications/news/2016/12/crtc-establishes-fund-attain-new-high-speed-internet-targets.html>

**GRANADOS, Nelson.** *The Net Neutrality Debate: Why There Is No Simple Solution*, Forbes, New York, United States, May 31, 2017. <https://www.forbes.com/sites/nelsongranados/2017/05/31/the-net-neutrality-debate-why-there-is-no-simple-solution/#523a1c1e5c67>  
<http://www.crtc.gc.ca/fra/archive/2008/dt2008-108.htm>

**IT World Canada.** The fight over usage-based Internet billing, ITWC, Toronto, s.d. <http://www.itworldcanada.com/the-fight-over-usage-based-internet-billing>

**JACKSON, Emily.** Ottawa upholds CRTC's decision to allow small Internet providers access to high-speed networks, Financial Post, May 11, 2016. <http://business.financialpost.com/fp-tech-desk/ottawa-upholds-crtcs-decision-to-cap-wholesale-wireless-rates>

**JACKSON, Mark.** Consumer Rights Act 2015 Could Aid Clarity on Broadband Prices, ISPreview, London, United Kingdom, October 1, 2015. <http://www.ispreview.co.uk/index.php/2015/10/consumer-rights-act-2015-could-aid-clarity-on-broadband-prices.html>

**NUMERAMA.** *Internet illimité : Orange et SFR assignés pour pratiques commerciales trompeuses*, Paris, France, September 16, 2010. <http://www.numerama.com/magazine/16797-internet-illimite-orange-et-sfr-assignes-pour-pratiques-commerciales-trompeuses.html>

**SANDVINE.** Waterloo, Ontario, Canada.

*2016 Global Internet Phenomena Report—North America and Latin America*, s.d. 2016. <https://www.sandvine.com/resources/global-internet-phenomena/2016/north-america-and-latin-america.html>

*Over 70% Of North American Traffic Is Now Streaming Video And Audio*, December 7, 2015. <https://www.sandvine.com/pr/2015/12/7/sandvine-over-70-of-north-american-traffic-is-now-streaming-video-and-audio.html>

**STURGEON, Jamie.** Taking fire, Bell insists Internet caps suitable for 'vast majority', Financial Post, Toronto, Canada, January 31, 2011. <http://business.financialpost.com/fp-tech-desk/taking-fire-bell-insists-internet-caps-suitable-for-vast-majority>

**SWENEY, Mark.** *Broadband ad rules are 'complete and utter joke', says culture minister*, The Guardian, London, United Kingdom, April 14, 2016.

<https://www.theguardian.com/media/2016/apr/14/broadband-speed-ads-culture-minister-ed-vaizey>

**UNION DES CONSOMMATEURS (UC)** Download limits: The best choice for consumers?, June 2014, 135 pages. [http://uniondesconsommateurs.ca/docu/rapports2014/38-Limites\\_usage-FR.pdf](http://uniondesconsommateurs.ca/docu/rapports2014/38-Limites_usage-FR.pdf)

**WALLER, Rob.** The Consumer Rights Act 2015: the end of small print?, Simplification Center, London, United Kingdom, October 5, 2015. <http://www.simplificationcentre.org.uk/2015/10/the-consumer-rights-act-2015-the-end-of-small-print/>

**WHICH?** La *Consumer Rights Act 2015*, 2015 c.15, WHICH, London, United Kingdom, s.d. <http://www.which.co.uk/consumer-rights/regulation/consumer-rights-act>

**WYATT, Edward,** *Rebuffing F.C.C. in 'Net Neutrality' Case, Court Allows Streaming Deals*, New York Times, New York, United States, January 14, 2014. <https://www.nytimes.com/2014/01/15/technology/appeals-court-rejects-fcc-rules-on-internet-service-providers.html>

## Laws and regulations listed

*Code civil du Québec* art. 1432.

Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A, sec. 14, 15 and 17

Competition Act (R.S.C., 1985, c. C-34), sec. 52(4) and 74.03(5).

*Loi sur la protection du consommateur*, RLRQ c P-40.1, art. 12, 17, 216, 218, 219, 228.

## **ANNEX 1**

---

### **Passage Marketing Report, Summaries of consumer responses**



# Services illimités – Sondage web

Rapport de recherche

Présenté à  
le 10 mai 2017

**union**  
des consommateurs

# Table des matières

3

Contexte et  
objectifs

5

Méthodologie

7

Sommaire  
exécutif

10

Résultats

22

Annexes



**CONTEXTE ET  
OBJECTIFS**



# Sonder les consommateurs québécois et ontariens

- Derrière l'appellation «service illimité» se cachent parfois certaines restrictions liées au niveau d'utilisation qu'en font les consommateurs. Ainsi, en réalité, les services Internet et de téléphonie mobile et résidentielle vendus comme étant «illimités» ne le sont pas toujours.
- Union des consommateurs souhaitait mesurer la notoriété du phénomène auprès des consommateurs québécois et ontariens. Qui plus est, elle désirait connaître l'incidence des situations problématiques vécues avec les fournisseurs et de mesurer le niveau d'acceptabilité perçue des différentes mesures pouvant être prises par ces derniers.
- Finalement, Union des consommateurs était désireuse d'exposer les répondants à des extraits de politiques de fournisseurs afin d'en sonder la clarté perçue, de même que de jauger la capacité présumée des consommateurs à se conformer aux différentes conditions.
- Le présent rapport recense les principaux enseignements de cette étude, réalisée par l'entremise d'un sondage web.



# MÉTHODOLOGIE





# Méthodologie



Méthode de collecte

**Sondage web**



Groupe cible

**Populations québécoise et ontarienne d'âge adulte**



Critères d'admissibilité

**18 à 74 ans**

**Résidents du Québec ou de l'Ontario**



Taille de l'échantillon

**1000 répondants** (500 au Québec, 500 en Ontario)



Marge d'erreur statistique maximale pour un échantillon probabiliste de cette taille

**+/- 3,1%** (19 fois sur 20)



Dates de la collecte de données

**25 avril au 1<sup>er</sup> mai 2017**



Temps médian de complétion

**Environ 8 minutes**

# SOMMAIRE EXÉCUTIF



# Sommaire exécutif

- Une forte majorité de consommateurs québécois et ontariens sont touchés par la problématique à laquelle s'intéresse Union des consommateurs.
  - En effet, 86% des répondants déclarent détenir un abonnement illimité à au moins un des trois services évoqués dans ce sondage (Internet, téléphonie mobile, téléphonie résidentielle). Autrement dit, il s'agit d'une question relativement universelle ou, à tout le moins, d'une tendance très prégnante.
- De manière générale, il semble exister une certaine candeur par rapport à la notion de «service illimité» chez les Québécois et les Ontariens.
  - Ces derniers connaissent en effet très peu les limitations potentiellement imposées par les fournisseurs, et ce, en dépit du fait que plus d'un répondant sur deux ait déjà vécu une situation problématique liée à un service illimité.
  - En effet, lorsque l'on expose les consommateurs aux différentes mesures que peuvent prendre les fournisseurs afin de limiter ou d'encadrer la consommation des services vendus comme étant «illimités», plus d'un consommateur sondé sur deux affirme avoir déjà expérimenté l'une de celles-ci avec l'un ou l'autre de leurs fournisseurs de services illimités.

# Sommaire exécutif (suite)

- Les Québécois et les Ontariens désapprouvent de manière presque unanime les différentes mesures que peuvent prendre les fournisseurs de services illimités.
  - En effet, de très faibles proportions de consommateurs perçoivent ces mesures comme étant raisonnables. Il est d'ailleurs relativement rare de constater des résultats aussi polarisés dans des enquêtes d'opinions.
- Les différents extraits auxquels les participants ont été exposés sont manifestement très peu clairs aux yeux de ceux-ci.
  - Cette confusion pourrait avoir des impacts sur le plan comportemental et, incidemment, des conséquences financières, dans la mesure où très peu de répondants avouent qu'ils sauraient comment se conformer aux différentes conditions citées dans ces extraits.



# RÉSULTATS





# Une question universelle

Q1-4-i. Abonnement à au moins un service / à au moins un service illimité, Total, n=1000

99,5%

des consommateurs sont abonnés à au moins un service (Internet, téléphonie mobile ou téléphonie résidentielle).

86%

sont abonnés à au moins un service illimité parmi les trois (Internet, téléphonie mobile ou téléphonie résidentielle).

96% 35-44 ans  
91% 18-34 ans

Un peu moins de neuf consommateurs québécois et ontariens sur dix sont abonnés à au moins un service illimité.

Cette nette majorité renforce la pertinence de s'intéresser à la problématique des contrats afférents aux services illimités et aux conditions / restrictions y étant incluses.

Q1. Êtes-vous **présentement** abonné à un service...

Q2. À votre connaissance, votre service internet est-il **illimité**?

Q3. À votre connaissance, votre service de téléphonie mobile inclut-il des caractéristiques dont l'utilisation est **illimitée** (ex. textos, appels entrants, appels sortants, accès à Internet, transfert de données, appels interurbains, données en itinérance)?

Q4. À votre connaissance, votre service de téléphonie résidentielle inclut-il un forfait d'appels interurbains **illimités**?

# De manière plus spécifique

Q1-4-i. Abonnement à différents services, Total, n=1000

Abonnés actuels  
(illimité ou non)  
n=1000

97%

Internet

91%

97% 18-34 ans

Téléphonie  
mobile

63%

83% 55-74 ans  
69% Québec  
68% 70k\$ et +

Téléphonie  
résidentielle

Abonnés actuels, illimité

59%

67% 35-44 ans  
77% Ont déjà lu la politique  
d'utilisation acceptable d'un  
service illimité

57%

73% 18-34 ans  
71% Non abonnés au tél. rés.  
68% 35-44 ans  
64% Français

25%

35% 55-74 ans  
32% Ont déjà vécu une situation  
problématique en lien avec un  
service illimité  
30% 70k\$ et +

Ex-abonnés, illimité

10%

15% 18-34 ans  
15% Non abonnés au tél. rés.

7%

17%

26% Non abonnés au tél. rés.  
23% 35-44 ans  
22% Ont déjà vécu une  
situation problématique en  
lien avec un service illimité

Une majorité claire des abonnés aux différents services testés déclare avoir accès à un service illimité.

Si on considère exclusivement Internet, c'est plus des deux tiers des consommateurs (69%) qui sont actuellement abonnés ou qui ont déjà été abonnés à un service illimité. Cette proportion passe à 64% pour la téléphonie mobile et à 42% pour la téléphonie résidentielle.

Q1. Êtes-vous **présentement** abonné à un service...

Q2. À votre connaissance, votre service internet est-il **illimité**?

Q3. À votre connaissance, votre service de téléphonie mobile inclut-il des caractéristiques dont l'utilisation est **illimitée** (ex. textos, appels entrants, appels sortants, accès à Internet, transfert de données, appels interurbains, données en itinérance)?

Q4. À votre connaissance, votre service de téléphonie résidentielle inclut-il un forfait d'appels interurbains **illimités**?

# Des pratiques peu connues

Q5-6. Notoriété des politiques et limites applicables aux services illimités, Total, n=1000

**35%** 40% 18-34 ans  
n=1000

savent que les politiques des fournisseurs peuvent prévoir des limites d'utilisation applicables aux services illimités

De manière générale, seul un peu plus du tiers des répondants savait que les politiques des fournisseurs peuvent prévoir des limites d'utilisation applicables aux services illimités.

Saviez-vous que les services illimités peuvent faire l'objet...

de frais additionnels?



**39%**

69% Ont déjà lu la politique d'utilisation acceptable d'un service illimité  
51% 18-24 ans

de ralentissements de la vitesse de la connexion Internet selon le taux d'utilisation?



**39%**

73% Ont déjà lu la politique d'utilisation acceptable d'un service illimité  
46% Hommes

d'interruptions de service?



**37%**

49% Ontario  
44% Ont déjà vécu une situation problématique en lien avec un service illimité

de modifications du contrat par le fournisseur?



**35%**

63% Ont déjà lu la politique d'utilisation acceptable d'un service illimité  
40% 35-44 ans

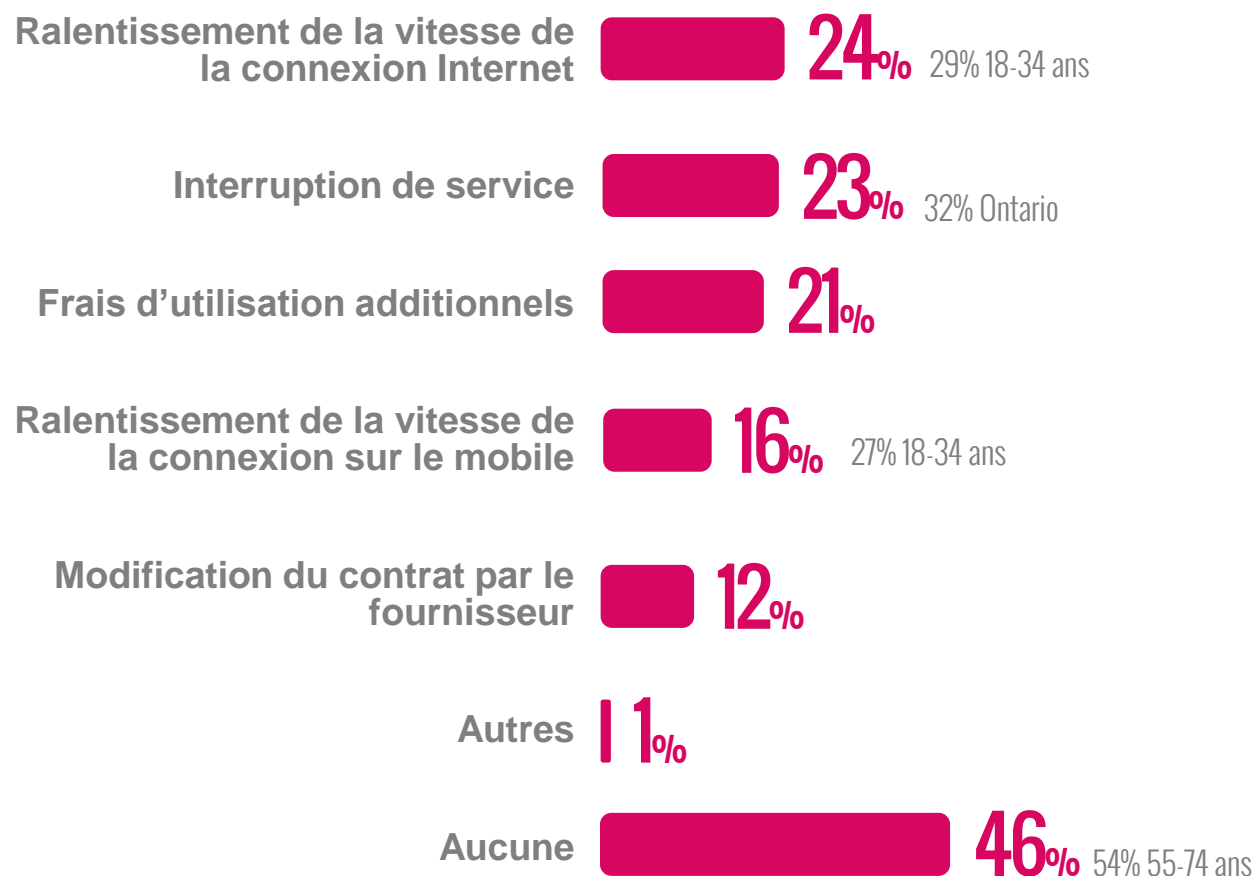
Lorsqu'on les questionne sur les mesures plus spécifiques que peuvent prendre les fournisseurs, les taux de notoriété oscillent entre 35% et 40%.

Dans tous les cas de figure, on peut donc affirmer que cette question est relativement méconnue des Québécois et des Ontariens. On peut avancer à ce sujet qu'il existe une certaine candeur par rapport à la notion de «service illimité».

# Plus d'un abonné sur deux

Q7. Situations problématiques vécues en lien avec les services illimités, Abonnés ou ex-abonnés à au moins un service illimité, n=906

## Situations problématiques vécues



Plus d'un abonné ou ex-abonné à un service illimité sur deux a déjà vécu au moins l'une des situations négatives liées à l'utilisation de l'un de leurs services illimités.

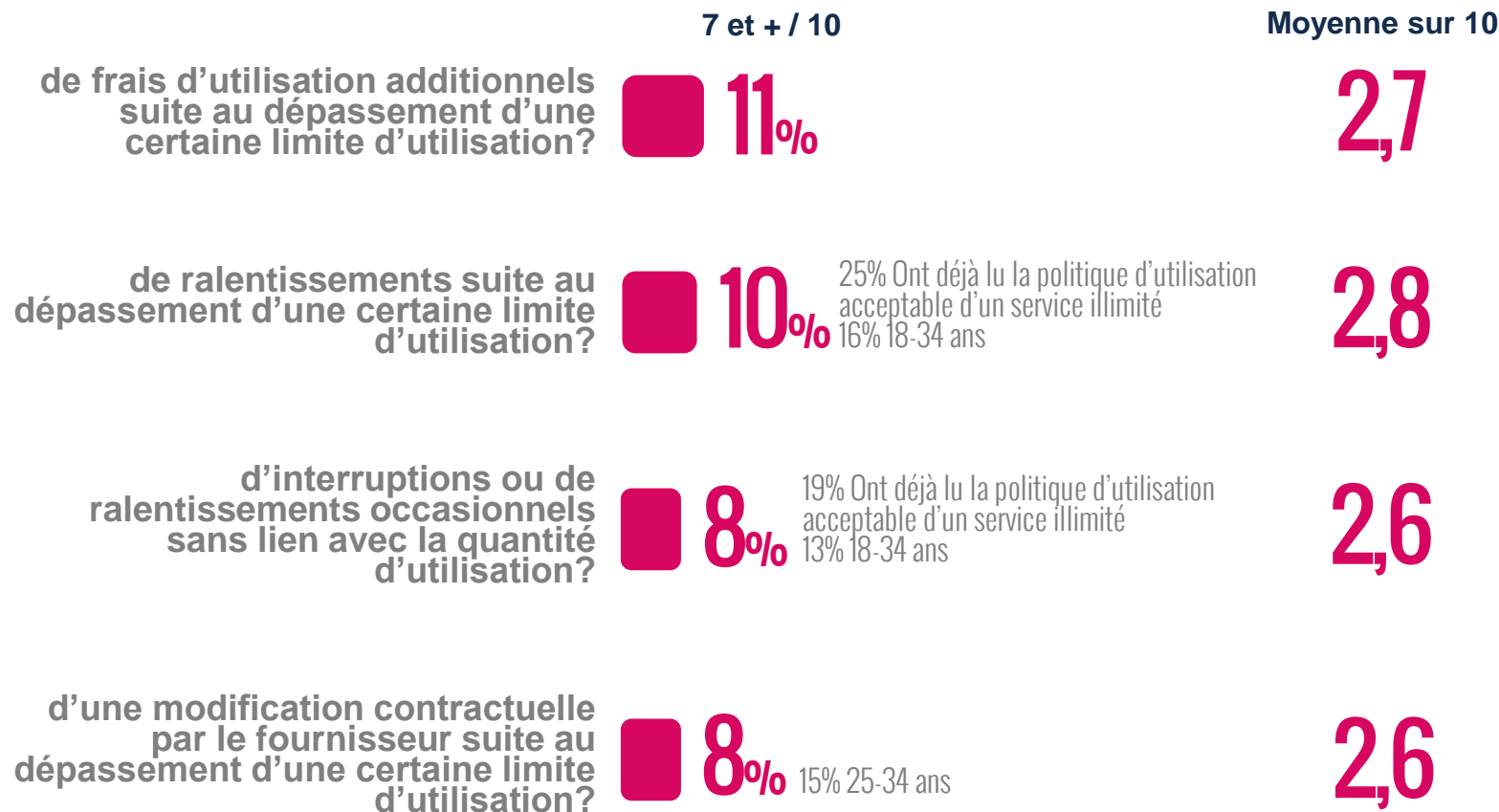
On peut se surprendre que cette proportion (54%) dépasse largement la notoriété de la possibilité que leurs fournisseurs prévoient des limites d'utilisation applicables aux services illimités (35%, voir page précédente).

Ce différentiel trouve en partie son explication dans le manque d'intérêt des consommateurs à l'égard de la lecture des contrats avec les fournisseurs, mais également à une certaine complexité, voire un certain flou, inhérente à ceux-ci.

# Une très faible légitimité

Q8. Acceptabilité perçue des différentes mesures potentiellement prises par les fournisseurs de services illimités, notes de 7+/10, Total, n=1000

Dans quelle mesure vous apparaît-il raisonnable que des services illimités puissent faire l'objet...



De manière presque consensuelle, les Québécois et les Ontariens considèrent que les différentes mesures que peuvent prendre les fournisseurs de services illimités ne sont pas raisonnables.

En effet, seuls les frais d'utilisation additionnels suite au dépassement d'une certaine limite d'utilisation parviennent à franchir le seuil d'«acceptabilité perçue» de 10% (11%).

Ces scores sont donc sans appel. À ce sujet, il convient de souligner qu'il est plutôt rare d'observer des résultats aussi polarisés.

# Une «politique» très peu connue

Q9-10. Notoriété et taux de lecture de la «politique d'utilisation acceptable» d'au moins un fournisseur, Abonnés ou ex-abonnés à un service, n=999

**20%**  
n=1000

26% Ontario  
26% Hommes  
25% 18-34 ans  
25% Ont déjà vécu une situation  
problématique en lien avec un  
service illimité

**Connaissent la «politique  
d'utilisation acceptable»  
en ce qui concerne un  
fournisseur de services.**

**45%**  
n=203

53% Ontario

**de ces 20% ont déjà lu la  
«politique d'utilisation  
acceptable» d'au moins  
un de leurs fournisseurs  
de services.**

La «politique d'utilisation acceptable» est virtuellement inconnue des Ontariens et surtout des Québécois.

Un peu moins de la moitié de ceux se disant familiers avec cette politique affirment l'avoir déjà consultée pour au moins l'un de leurs fournisseurs.

Tout considéré, il s'agit d'une pratique relativement peu répandue au sein de la population, dans la mesure où seuls 9% des répondants (45% de 20%) s'y sont déjà adonnés par le passé.

# Un flou manifeste

Q11. Compréhension des extraits de politiques utilisées par des fournisseurs de services illimités, notes de 7+/10, Total, n=626 \*

Clarté  
perçue de  
l'extrait

Sauraient comment  
respecter les conditions  
mentionnées

## Politique #1

47%

42%

47% 25-44 ans

1

*Le service Internet résidentiel [du fournisseur] est conçu pour un usage personnel. Le Client ne doit pas utiliser le Service à des fins commerciales. Afin d'assurer un accès juste et proportionnel de son réseau par tous les clients, le Client ne doit pas exploiter de serveurs ou applications à bande passante ou à capacité de charge disproportionnellement élevée en lien avec le Service.*

2

*Advenant une utilisation disproportionnellement élevée des ressources du réseau [du fournisseur] par le Client, [le fournisseur] pourrait imposer des frais de surutilisation pouvant atteindre cent dollars (100.00 \$) par période de facturation. [...]  
S'il y a lieu, le Client doit se conformer aux normes actuelles de stockage de données et aux autres limitations du Service. [Le fournisseur] se réserve le droit de modifier les vitesses de transfert de données du Service et les seuils relatifs au transfert de données du forfait sur avis.*

3

*En outre, le Client est tenu d'éviter que ses activités restreignent, perturbent, gênent, dégradent ou entravent la capacité [du fournisseur] à fournir ses Services et à surveiller les Services, la dorsale, les nœuds de réseau ou tout autre service du réseau.*

39%

29%

35% 35-44 ans  
34% 18-34 ans

27%

34% 18-34 ans  
33% Ontario

24%

30% 18-34 ans  
30% 35-44 ans

Aucun des extraits présentés ne parvient à franchir le seuil de 50% en ce qui a trait à sa clarté perçue.

En outre, le taux de répondants se montrant sûrs de savoir comment se conformer aux conditions mentionnées est systématiquement plus faible que la clarté perçue.

Ces constats sont transversaux à l'ensemble des extraits auxquels les répondants ont été exposés.

Dans le cas de cet extrait en particulier, le troisième paragraphe génère manifestement beaucoup de confusion.

\* Afin de limiter la durée moyenne du questionnaire, chaque répondant était aléatoirement exposé à deux textes sur trois.

Q11. Dans quelle mesure ce passage vous apparaît-il clair? (1= Pas du tout clair 10= Très clair)

Q11. Dans quelle mesure avez-vous l'impression que vous sauriez comment respecter les conditions mentionnées dans ce passage ? (1= Pas du tout 10 = Tout à fait)



# Un tableau qui crée de la confusion

Q12. Compréhension des extraits de politiques utilisées par des fournisseurs de services illimités, notes de 7+/10, Total, n=686 \*

Clarté  
perçue de  
l'extrait

34%

44% 18-34 ans  
42% Ontario

Sauraient comment  
respecter les conditions  
mentionnées

30%

39% 18-34 ans  
38% Ontario

40%

52% 18-34 ans  
46% 35-44 ans

34%

43% 18-34 ans  
41% Anglais

42%

55% 18-34 ans  
47% 35-44 ans

32%

40% 18-34 ans  
38% Ontario

## Politique #2

1

USAGE	TYPE DE PLAN ET COMPLÉMENT	USAGE DOMESTIQUE DES DONNÉES DANS UN CYCLE DE FACTURATION	USAGE DES DONNÉES EN ITINÉRAIRE DANS UN CYCLE DE FACTURATION
Téléphone intelligent	Illimité	5GB	-
	Données téléphone intelligent		
	Plans et compléments		
	Avec compléments premium	10 GB	-
Internet mobile	Plans Internet mobile illimités	10 GB	-
Téléphone intelligent Internet mobile	Complément itinérance illimitée	-	1 GB

2

Compte tenu du taux auquel la plupart de nos clients consomment des données, il est peu probable que vous dépassiez les niveaux d'utilisation des données spécifiés dans cette politique dans un cycle de facturation donné, sauf si vous utilisez des applications de partage de fichiers ou téléchargez des fichiers volumineux sur Internet. Si nous choisissons de ralentir votre vitesse lorsque votre utilisation de données dépasse pour la première fois les seuils décrits ci-dessus, nous la ralentirons à une vitesse de 256 kilobits par seconde pour les téléchargements et 128 kilobits par seconde pour les téléversements. Cela ne devrait pas affecter les applications nécessitant moins de 256 kilobits par seconde de bande passante en téléchargement ou 128 kilobits par seconde en téléversement (telles que la navigation sur le Web, le courrier électronique, la voix sur IP ou les applications de transmission vocale), mais pourrait affecter les performances des applications qui nécessitent normalement une plus grande bande passante (par exemple: Streaming vidéo ou partage de fichiers peer-to-peer).

3

Dans les cas extrêmes, et si vos niveaux d'utilisation des données dans le cycle de facturation applicable continuent d'être élevés et de dépasser les niveaux d'utilisation spécifiés dans cette politique, nous nous réservons le droit de ralentir votre vitesse jusqu'à un maximum de 32 kilobits par seconde en téléchargement et 16 kilobits par seconde en téléversement. À ces vitesses, seules les applications Internet qui ne nécessitent pas l'usage de beaucoup de bande passante ni de performances de diffusion en temps réel (par exemple: la navigation sur le Web, courrier électronique, messagerie instantanée) continueront de fonctionner, mais à une vitesse plus lente. Si nous choisissons de ralentir votre vitesse, nous ne le ferons que jusqu'à la fin du cycle de facturation applicable.

Les consommateurs apprécient habituellement la présence de tableaux synthèses, car ils considèrent qu'ils ont pour qualité de rendre l'information plus facile à comprendre.

Or, la présence du tableau dans le deuxième extrait ne parvient manifestement pas à clarifier l'information, dans la mesure où il s'agit de l'extrait générant les scores de compréhension les plus faibles.

\* Afin de limiter la durée moyenne du questionnaire, chaque répondant était aléatoirement exposé à deux textes sur trois.

Q12. Dans quelle mesure ce passage vous apparaît-il clair? (1= Pas du tout clair 10= Très clair)

Q12. Dans quelle mesure avez-vous l'impression que vous sauriez comment respecter les conditions mentionnées dans ce passage ? (1= Pas du tout 10 = Tout à fait)

# La quantification pour la clarification

Q13. Compréhension des extraits de politiques utilisées par des fournisseurs de services illimités, notes de 7+/10, Total, n=689 \*

Clarté  
perçue de  
l'extrait

Sauraient comment  
respecter les conditions  
mentionnées

## Politique #3

36%

=42% Ontario

26%

31% 18-34 ans

26%

37% 25-34 ans

21%

32% 25-34 ans

40%

52% 25-34 ans

37%

45% 18-34 ans

1

*Le Client s'engage à faire un usage juste et proportionné des Services et il consent à ce que [le fournisseur] limite l'utilisation de ses Services, au besoin.*

2

*Le Client convient que les services Internet [du fournisseur] et l'utilisation de ces services de façon dite « illimitée » réfèrent seulement au temps d'utilisation et sont fondés sur une utilisation intermittente. Malgré toute disposition à l'effet contraire, [le fournisseur] se réserve le droit d'imposer certaines conditions et limites raisonnables à l'utilisation de l'un ou l'autre des services Internet par la clientèle [du fournisseur], notamment en ce qui a trait au total combiné de gigaoctets par mois en amont et en aval.*

3

*Il incombe au Client de se conformer à toutes les lois applicables lorsqu'il navigue dans le réseau Internet, y compris celles relatives au droit d'auteur. Le Client doit notamment :*

- *s'abstenir de faire un usage inapproprié ou non autorisé du service d'accès Internet;*
- *s'abstenir de faire un usage de son service Internet qui restreint, empêche, perturbe, dégrade ou compromet la capacité [du fournisseur] à fournir le service.*

Le deuxième paragraphe apparaît comme étant très peu clair aux yeux des répondants.

On peut avancer que l'emploi de l'expression « limites raisonnables » contribue largement à ce phénomène.

D'ailleurs, à ce sujet, on constate que seul le quart des consommateurs sondés saurait comment se conformer aux conditions du premier paragraphe, qui aborde la question d'un « usage juste et proportionné ».

\* Afin de limiter la durée moyenne du questionnaire, chaque répondant était aléatoirement exposé à deux textes sur trois.

Q13. Dans quelle mesure ce passage vous apparaît-il clair? (1= Pas du tout clair 10= Très clair)

Q13. Dans quelle mesure avez-vous l'impression que vous sauriez comment respecter les conditions mentionnées dans ce passage ? (1= Pas du tout 10 = Tout à fait)

# En résumé...

Q11-13. Compréhension des extraits de politiques utilisées par des fournisseurs de services illimités, Total, n=variés

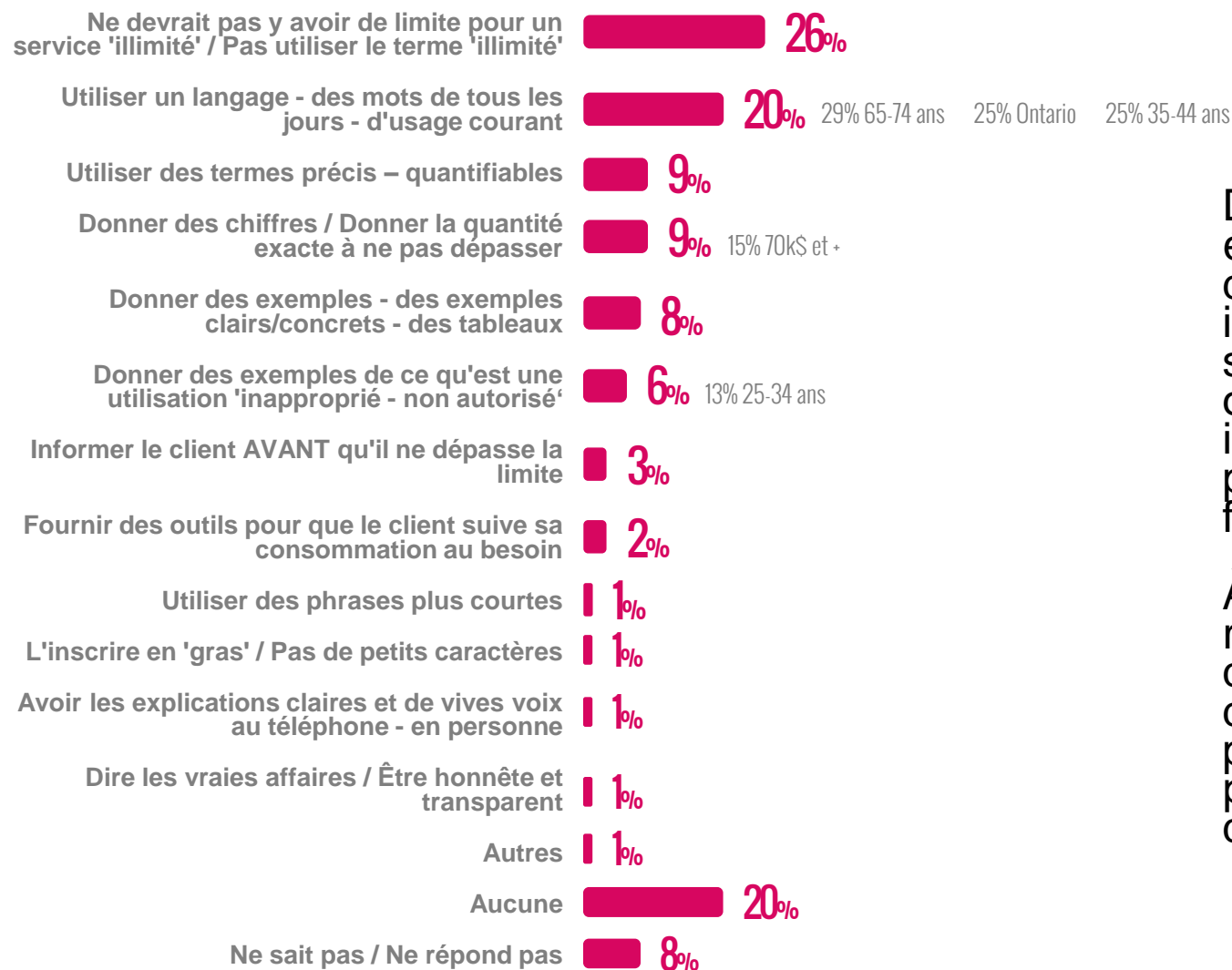
	Vous apparaît-il clair?	Sauriez-vous comment respecter les conditions?
<b>Moyenne des Politiques #1, #2, #3</b>	<b>5,25 / 10</b>	<b>4,71 / 10</b>
<b>Moyenne de la politique #1</b>	<b>5,28</b>	<b>4,81</b>
Politique #1, Extrait #1	5,98	5,60
Politique #1, Extrait #2	5,41	4,73
Politique #1, Extrait #3	4,45	4,09
<b>Moyenne de la politique #2</b>	<b>5,38</b>	<b>4,90</b>
Politique #2, Extrait #1	5,11	4,84
Politique #2, Extrait #2	5,43	4,90
Politique #2, Extrait #3	5,61	4,94
<b>Moyenne de la politique #3</b>	<b>5,09</b>	<b>4,45</b>
Politique #3, Extrait #1	5,23	4,32
Politique #3, Extrait #2	4,55	3,95
Politique #3, Extrait #3	5,50	5,07

Le tableau ci-contre reconfirme la relative opacité des extraits présentés aux consommateurs.

D'ailleurs, à ce sujet, notre expérience nous porte à croire que les répondants ont sans doute légèrement surévalué la clarté perçue et leur compréhension des dispositions à prendre afin de respecter les conditions par volonté de désirabilité sociale. Autrement dit, les répondants hésitent souvent à admettre qu'ils ne comprennent pas un phénomène ou un stimulus qui leur est présenté.

# Pour une plus grande transparence

Q14. Suggestions pour la clarification des limites aux services illimités (question facultative), Total, n=511



De manière générale, les suggestions émises par les répondants sur la manière de clarifier les limites aux services illimités sont relativement éparses et souvent assez convenues. Plusieurs d'entre elles peuvent d'ailleurs être incluses sous la grande thématique de la plus grande transparence des fournisseurs.

À ce sujet, on peut croire que les répondants, déjà peut-être informés sur la question, peinent à imaginer (et encore davantage à verbaliser) une solution à un problème dont ils ignoraient pour la plupart l'existence avant de répondre au questionnaire.





**ANNEXES**

# Profil des répondants



51%



49%

FR  
AN

43%  
57%



Aucun / Primaire  
Secondaire  
Collégial  
Universitaire

<1%  
23%  
36%  
41%



18-24 ans  
25-34 ans  
35-44 ans  
45-54 ans  
55-64 ans  
65-74 ans

13%  
18%  
18%  
22%  
17%  
12%



Travail, t. plein  
Travail, t. partiel  
Chômage/Recherche  
Retraité  
Au foyer t. plein  
Étudiant

52%  
10%  
5%  
18%  
7%  
8%



Ontario  
Québec

50%  
50%



Ménage

< 30k\$  
30-49k\$  
50-69k\$  
70-99k\$  
100-149k\$  
≥ 150k\$

16%  
18%  
20%  
20%  
17%  
9%



1 adulte  
2 adultes  
3 adultes  
≥ 4 adultes

25%  
52%  
13%  
10%



Aucun enfant  
1 enfant  
2 enfants  
≥ 3 enfants

71%  
13%  
12%  
4%

**STIMULER**

**LA CONNAISSANCE**

**LES INTERACTIONS**

**LES RÉSULTATS**



## **ANNEX 2**

---

### **Stakeholder questionnaire**

## QUESTIONNAIRE FOR STAKEHOLDERS

Our field survey revealed that limits applicable to unlimited services are indicated in documents such as service terms or fair usage policies and are only occasionally mentioned in advertisements and promotional documents.

Reasonable usage information is usually buried in a pile of other information, notably on downloading illegal content or sending defamatory or obscene content.

Moreover, many providers don't indicate quantifiable limits to what would constitute reasonable usage that when exceeded could lead to imposition of an ITMP (controlled slowdown or interruption) with an impact on service quality. We have also occasionally found warnings that additional charges could apply or that the provider reserves the right to modify the service.

**1. In your view, do current market practices enable consumers to be informed adequately of all applicable terms for unlimited services?**

Yes

☐

No

☐

Why:

The results of a survey we commissioned indicate that 54% of respondents who say they subscribe to an unlimited service have had a problem with the unlimited nature of their service.

About 80% of respondents currently subscribing to unlimited services don't know what constitutes a fair usage policy. Of those who say they know, more than half admit never having read it.

When we showed respondents excerpts of those types of policies and asked them to evaluate their quality on a scale of 1 to 10, with 1 indicating "Not clear at all," 1 was the answer most often selected.

**2. In your view, what are the best ways to ensure that consumer information is clear?**

**3. How to ensure that consumers will learn about those types of policies in a timely manner?**

*La force d'un réseau*

**Nos membres associatifs**

ACEF Appalaches – Beauce – Etchemins  
ACEF de l'Est de Montréal  
ACEF de l'Île-Jésus  
ACEF du Grand-Portage

ACEF du Nord de Montréal  
ACEF du Sud-Ouest de Montréal  
ACEF Estrie  
ACEF Lanaudière

ACEF Montérégie-Est  
ACEF Rive-Sud de Québec  
ACQC  
Centre d'éducation financière EBO

7000, avenue du Parc, bureau 201, Montréal (Qc) H3N 1X1

T : 514 521 6820 | Sans frais : 1 888 521 6820 | F : 514 521 0736

info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

Our field survey indicates that many applications requiring a lot of bandwidth can be subject to Internet traffic management practices (ITMPs): peer-to-peer file transfers, of course, but also streaming, VoIP services, i.e. applications requiring fast delivery to avoid service degradation.

**4. a) Do you impose ITMPs when providing an unlimited telecommunications service?**

Yes

☐

No

☐

Why:

**b) Are those ITMPs likely to have an effect on the user experience?**

Yes

☐

No

☐

Why:

**5. What is your position regarding the imposition of ITMPs on time-critical applications?**

**6. a) In your view, is the CRTC's regulatory framework for ITMPs still up-to-date?**

Yes

☐

No

☐

Why:

**b) What do you think of the regulations for time-critical applications?**

**7. What do you think of the ITMP policy's transparency requirements?**

Numerous regulations have been adopted abroad to clarify the type of information that must be given to consumers and the way to provide that information. Here are a few questions about measures that have been adopted.

What do you think of...

**8. Regulations to ensure that relevant consumer information, including information on prices, service limits and ITMPs, is disclosed on the provider's website and at its points of sale?**

9. The requirement to notify consumers explicitly before imposing an ITMP if it has an impact on their end use?
10. Use of the word “unlimited” being regulated to prohibit it if the service includes limits or exclusions?
11. Ensuring that the fine print in a promotional document does not contradict the overall impression given by an advertisement’s main message?

Thank you for your cooperation.  
Please return the completed questionnaire by **May 25, 2017** to:

**Sophy Lambert-Racine**  
E-mail: [SLambert-Racine@uniondesconsommateurs.ca](mailto:SLambert-Racine@uniondesconsommateurs.ca)