



## Telecom Decision CRTC 2021-177

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### **Xplornet Communications Inc. – Application to review and vary Telecom Regulatory Policy 2019-269 regarding disconnection**

The Commission **denies** Xplornet’s application to review and vary Telecom Regulatory Policy 2019-269. Xplornet submitted that the Commission erred in its determination to require that two conditions be met before Internet service providers could consider disconnecting customers for non-payment; however, the Commission finds that Xplornet has failed to demonstrate that there is substantial doubt as to the correctness of that determination. Accordingly, there is no change to the disconnection conditions, which state that an Internet service provider can disconnect a customer who fails to pay a past-due account only if the amount owing exceeds \$50 and if the account has been past due for more than two months.

#### **Background**

1. The Internet Code, set out in Telecom Regulatory Policy 2019-269 (the Internet Code Policy), is a mandatory code of conduct for providers of retail fixed Internet access services (Internet services) for individual customers. It came into effect on 31 January 2020 and applies to the 10 largest facilities-based Internet service providers (ISPs): Bell Canada (including Bell MTS; NorthernTel, Limited Partnership; and Télébec, Société en commandite); Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications inc.; Northwestel Inc.; Rogers Communications Canada Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; TELUS Communications Inc. (TCI); Videotron Ltd.; and Xplornet Communications Inc. (Xplornet).
2. The Internet Code aims to make it easier for Canadians to understand their Internet service contracts, prevent bill shock from overage fees and price increases, and make it easier for Canadians to switch ISPs. Among other things, the Internet Code ensures that customers will benefit from increased clarity in their interactions with ISPs; clearer prices, including for bundles, promotions, and time-limited discounts; and increased clarity around service calls, outages, security deposits, and disconnections.
3. The Commission stated in the Internet Code Policy that the purpose of the Internet Code’s disconnection provisions is to provide clear obligations about when and how an ISP may disconnect service due to a customer’s failure to pay.
4. The Commission published a working document of the Internet Code as part of Telecom Notice of Consultation 2018-422. The draft language in the working

document with respect to disconnections mirrored the language of the Wireless Code, which was last reviewed in Telecom Regulatory Policy 2017-200, and the [Deposit and Disconnection Code](#).<sup>1</sup> These codes both set out that a service provider can disconnect a customer for failure to pay only if the amount owing on the account exceeds \$50 or if the account has been past due for more than two months.

5. However, based on arguments presented by parties during the proceeding that led to the Internet Code Policy (hereafter, the Internet Code proceeding), the Commission determined that the final wording of the Internet Code should differ from the wording in the working document, specifically by making the conditions for disconnection by the ISP cumulative. In other words, a service provider can disconnect a customer who fails to pay a past-due account only if the amount owing exceeds \$50 and if the account has been past due for more than two months.

## Application

6. The Commission received an application from Xplornet, dated 19 October 2019, in which the company requested that the Commission review and vary the Internet Code Policy on the basis that there is substantial doubt as to the correctness of the Commission's decision that governs the disconnection of Internet services for non-payment.
7. Specifically, Xplornet argued that the record of the Internet Code proceeding was not sufficient to properly assess the appropriateness of adopting a cumulative standard for disconnection. Xplornet further argued that adopting a cumulative standard does not address any demonstrated regulatory concerns and imposes unnecessary costs on service providers, and as a result runs counter to the *Telecommunications Act* (the Act), as well as to both the 2006 Policy Direction<sup>2</sup> and the 2019 Policy Direction<sup>3</sup> (collectively, the Policy Directions).
8. Xplornet requested that the Commission vary its determination in the Internet Code Policy by reverting back to the language used in the working document governing disconnection for instances of non-payment.

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<sup>1</sup> The Wireless Code is a mandatory code of conduct for providers of retail mobile wireless voice and data services. The Commission created the Wireless Code to make it easier for Canadians to understand their mobile contracts, prevent bill shock, and switch service providers. The Deposit and Disconnection Code is a mandatory code of conduct that applies to all home telephone services (residential primary exchange service) in areas where prices are no longer regulated by the Commission, which means most service areas in Canada.

<sup>2</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

9. The Commission received interventions regarding Xplornet's application from Bell Canada, Eastlink, and l'Union des consommateurs (l'Union).

### **Review and vary criteria**

10. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that in order for it to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
11. Xplornet did not specify which of the criteria it considers its arguments to fall under. In light of the specifics of its arguments, the Commission is of the view that Xplornet is arguing that the substantial doubt as to the correctness of the original decision is due to an error in law or in fact.

### **Issues**

12. The Commission has identified the following issues to be addressed in this decision:
  - Did the Commission err in law or in fact by relying on an insufficient record to adopt a cumulative standard for disconnection?
  - Did the Commission err in law or in fact by responding to an unsubstantiated regulatory concern and imposing unnecessary costs on service providers?

### **Did the Commission err in law or in fact by relying on an insufficient record to adopt a cumulative standard for disconnection?**

#### **Positions of parties**

13. Xplornet argued that the record of the Internet Code proceeding was insufficient for the Commission to properly assess whether a cumulative standard for disconnection was appropriate.
14. Xplornet further argued that home telephone service has long been considered a basic service and does not require a cumulative standard, and that Internet services should be no different.
15. Bell Canada supported this position and stated that no evidence was presented that indicated the non-cumulative standard for disconnection raised problems that warranted further regulatory intervention through the imposition of a cumulative standard.

16. Eastlink agreed that the evidence on the record was not sufficient to suggest the need for a cumulative standard, and added that the language used in the Internet Code working document had been in place for years with no evidence that it caused significant harm to consumers.
17. L'Union argued that the public record for the Internet Code proceeding was sufficient for the Commission to reach its position in the Internet Code Policy, and cited the following examples:
  - The initial comments l'Union submitted proposed to make the conditions for suspension and disconnection cumulative;
  - Réseau Fédération de l'Âge d'Or du Québec (FADOQ) argued in favour of a similar amendment to the disconnection provisions in its initial comments; and
  - TCI's reply comments, which opposed l'Union's proposal.
18. L'Union submitted that the Commission's decision regarding disconnection criteria is well explained and justified in the Internet Code Policy. It noted that the Commission analyzed the parties' interventions regarding the conditions for disconnection and suspension for non-payment to be included in the Internet Code, and further noted that the Commission partially adopted its proposal.
19. L'Union argued that the conditions for disconnection and suspension for non-payment were justified because Internet service is a basic telecommunications service that is now necessary for participation in society and the economy, and costs on average more than twice as much each month as residential telephone service.
20. L'Union noted that the arguments in Xplornet's application are similar to those in TCI's reply comments in the Internet Code proceeding, and that Xplornet has therefore not raised any new information.

### **Commission analysis and determinations**

21. The Commission addressed the issue of a cumulative standard in the Internet Code Policy. It determined that such a standard was necessary because Internet services are now considered basic services, a designation which entails the application of a higher standard. In other words, the importance of basic services is such that disconnections should take place under more limited circumstances than for other, non-basic services.
22. In the Internet Code proceeding FADOQ suggested that the monetary threshold be eliminated entirely and that disconnections should only be triggered after two months of non-payment. L'Union suggested a cumulative standard of two months of non-payment combined with a higher threshold of \$100, noting that the average customer

spends approximately \$49.50 on Internet service per month,<sup>4</sup> and that therefore a \$50 threshold would trigger disconnections for many households after only one month of non-payment. While the Commission considered and ultimately rejected the proposal to raise the monetary disconnection threshold from \$50 to \$100, citing the need to evaluate whether the cumulative disconnection standard would be sufficient to address the concerns, it accepted l'Union's proposal to apply a cumulative standard.

23. The Commission notes that TCI responded directly to the FADOQ and l'Union proposals, arguing that they would expose ISPs to a high credit risk and should not be adopted. TCI argued that the language in the Internet Code working document struck the right balance between protecting consumers from disconnection for non-payment of small amounts and protecting ISPs from providing services without compensation. The Commission further notes that Xplornet, which also had the opportunity to provide comments on these proposals at that time, declined to do so.
24. The Commission is of the view that the comments and replies from l'Union, FADOQ, and TCI on the record of the Internet Code proceeding provided a sufficient basis for its determinations in the Internet Code Policy, and that the proceeding provided ample opportunity for any other party, including Xplornet, to comment on the proposal the Commission ultimately adopted. Moreover, the comments and replies directly informed the Commission's decision to adopt the cumulative standard for disconnections due to non-payment.

### **Did the Commission err in law or in fact by responding to an unsubstantiated regulatory concern and imposing unnecessary costs on service providers?**

#### **Positions of parties**

25. Xplornet argued that the concerns presented by parties on the record of the Internet Code proceeding were hypothetical. Xplornet submitted that ISPs work hard to maintain and grow their customer base in a highly competitive environment and that it is not aware of any ISP with aggressive disconnection policies for customers with past-due invoices.
26. Bell Canada argued that regulation that addresses no demonstrable problem runs counter to the Act and the Policy Directions, which require that telecommunications policy be efficient in nature and that the Commission regulate in a manner that is efficient and proportionate to its purpose.
27. Xplornet submitted that based on the number of disconnection notices it issued to customers and the percentage of those notices that resulted in customer termination, it estimated that its bad debt costs would increase by 50% as a result of the adoption of the cumulative standard. It also submitted that it would incur significant costs due to

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<sup>4</sup> l'Union cited the Commission's 2018 *Communications Monitoring Report*.

the need to build parallel infrastructure to manage services subject to the Internet Code.

28. Eastlink agreed with Xplornet's arguments regarding the imposition of significant costs for ISPs and submitted that the cumulative standard would be confusing to consumers who have multiple timelines for disconnection. Eastlink added that since ISPs will have to wait at least two months before undertaking collection activities, this change could impose significant costs on service providers as the changes will lead to an increase in bad debt expenses and costs for implementing and maintaining multiple disconnection requirements. Eastlink noted that this could ultimately lead to higher costs for consumers.
29. L'Union argued that a strict framework for disconnection and service suspension for non-payment is necessary to protect consumers. It noted that the Commission has historically recognized that the operation of market forces does not result in adequate protections with respect to disconnection and suspension of communications services, and that the presence of these rules in other telecommunications service codes is a clear sign that the Commission does not share Xplornet's view of ISPs' leniency toward consumers in default or the power of competition to ensure proper treatment of consumers on these issues.
30. L'Union submitted that the cumulative criteria adopted by the Commission are consistent with the telecommunications policy objectives set out in section 7 of the Act and the Policy Directions in that they promote accessibility of Internet services for households in financial difficulty. L'Union argued that Internet services should be treated differently than other telecommunications services since they are important basic telecommunications services and they are more expensive.
31. With regard to Xplornet's argument that the disconnection criteria will impose unreasonable financial burden, l'Union argued that Xplornet may be exaggerating its bad debt costs, since the company admitted that few of its subscribers are ultimately disconnected after receiving a notice of disconnection.
32. L'Union submitted that regulatory burden arguments put forth by service providers have often been significantly exaggerated in the past. As an example, l'Union cited comments made by service providers when Quebec's *Consumer Protection Act* was amended in 2009, which it stated were found to be inaccurate.

### **Commission analysis and determinations**

33. As noted by l'Union and FADOQ on the record of the Internet Code proceeding, the average monthly bill for home Internet service was \$49.50, or double that of home telephone service in 2016. Being in arrears on a home Internet service bill by one month would have triggered a disconnection for many consumers under the language used in the Internet Code working document. As a result, the Commission considers that there was a demonstrated regulatory concern which it addressed by adopting the cumulative standard.

34. In addition, given that home Internet is a basic service, and that the cumulative standard is intended to protect consumers from unnecessary or premature disconnection, the cumulative standard responds to the economic and social requirements of users of telecommunications services. The Commission therefore considers that the cumulative standard is consistent with paragraph 7(h) of the Act.
35. In determining the regulatory requirements of the Internet Code Policy, the Commission explicitly considered the burden that each requirement would impose on the ISPs and the effect of those burdens on their business models. The Commission stated that the regulatory requirements it established in the Internet Code Policy were necessary because market forces alone have not provided the same protections that the Internet Code offers, including fostering customers' effective participation in the retail fixed Internet access services market. While there may be costs associated with implementing this requirement, those costs are necessary to protect consumers from being prematurely disconnected from an important basic service. Accordingly, the Commission considers that its determination to adopt a cumulative standard for disconnection in the Internet Code furthers the policy objectives in paragraphs 7(a), (b), and (f) of the Act.<sup>5</sup>
36. The Commission notes that while ISPs have to wait at least two months to disconnect a customer whose account is past due, the Internet Code does not prevent ISPs from informing customers that their payments are overdue and that they run the risk of future disconnection. It also does not prevent ISPs from offering a deferred payment plan to customers with overdue accounts, much like the informal process Xplornet submitted it employs, in order to reduce the possibility that the ISPs will have to take on bad debt costs.
37. The 2006 Policy Direction requires that the Commission rely on market forces to the maximum extent feasible and regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary. The Commission considers that the protections provided under the disconnection rules comply with the 2006 Policy Direction by ensuring that Canadians are not prematurely disconnected from their Internet service, while at the same time interfering with market forces to the minimum extent necessary.
38. Lastly, the Commission notes that although the Internet Code Policy took into consideration and is consistent with the 2019 Policy Direction principles of promoting competition, affordability, consumer interests, and innovation, the Internet Code Policy is subject only to the 2006 Policy Direction.

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<sup>5</sup> The cited objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada; and (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective.

39. In light of the above, the Commission considers that it responded to a demonstrated regulatory concern in adopting a cumulative standard for disconnection from Internet services, and that any associated costs to service providers are necessary to protect customers. Consequently, the Commission maintains that its determination in the Internet Code Policy furthers the policy objectives of the Act in accordance with the 2006 Policy Direction.

## **Conclusion**

40. In light of all of the above, the Commission finds that Xplornet has not established substantial doubt as to the correctness of the Commission's determination in the Internet Code Policy stemming from errors in law or in fact. The Commission therefore **denies** Xplornet's application to review and vary the Internet Code Policy.

## **Policy Directions**

41. The 2006 Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives set out in the Act. It also requires the Commission to regulate, where there is a need to do so, in a manner that interferes with market forces to the minimum extent necessary to meet the policy objectives.

42. The Commission's determination to deny Xplornet's application is consistent with the 2006 Policy Direction in that it upholds a Commission determination that, in itself and as noted above, fully took into consideration the requirement to interfere in market forces only where there was a need to do so, and then only to the minimum extent necessary.

43. The 2019 Policy Direction provides that the Commission should consider how its decisions can promote competition, affordability, consumer interests, and innovation when exercising its powers and performing its duties under the Act.

44. The Commission finds that its denial of Xplornet's review and vary application is consistent with subparagraphs 1(a)(iii) and (iv) of the 2019 Policy Direction, which state that the Commission should consider the extent to which its decisions

(iii) ensure that affordable access to high-quality telecommunications services is available in all regions of Canada, including rural areas; and

(iv) enhance and protect the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility.

45. The Commission's determination is consistent with subparagraph 1(a)(iii) since it maintains a benefit of the Internet Code that protects consumers from being disconnected from their Internet service should they fail to pay their bill for a single billing period. Given the importance of home Internet service to Canadians and their reliance on the service, especially in rural areas, a more robust safeguard in the form of the cumulative standard is appropriate and necessary.

46. Maintaining the cumulative standard is also consistent with subparagraph 1(a)(iv) since it enhances and protects the rights of consumers in their relationships with service providers. It achieves this by maintaining a benefit of the Internet Code that, among other things, gives consumers a reasonable opportunity to pay any outstanding amounts they owe to their service provider before being disconnected or having their credit score impacted by being pursued by a collections agency.
47. The Commission considers that its determinations in this decision also address the policy objectives set out in paragraphs 7(a), (b), and (f) of the Act, which respectively relate to the safeguarding, enrichment, and strengthening of the country's social and economic fabric; rendering reliable and affordable telecommunications services of high quality; and fostering increased reliance on market forces while ensuring that regulation, where required, is efficient and effective. Specifically, the Commission's determination upholds the Internet Code's disconnection rules and provides consumer protections grounded in the evidence that was before the Commission in the Internet Code proceeding.

Secretary General

### **Related documents**

- *The Internet Code*, Telecom Regulatory Policy CRTC 2019-269, 31 July 2019; as amended by Telecom Regulatory Policy CRTC 2019-269-1, 9 August 2019
- *Call for comments – Proceeding to establish a mandatory code for Internet services*, Telecom Notice of Consultation CRTC 2018-422, 9 November 2018; as amended by Telecom Notices of Consultation CRTC 2018-422-1, 21 February 2019; and 2018-422-2, 18 March 2019
- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011