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Telecom Notice of Consultation CRTC 2012-557

Proceeding to Establish a Mandatory Code for Mobile Wireless Services

CRTC Reference No.: 8665-C12-201212448

**Final Reply of the Samuelson-Glushko Canadian Internet Policy &
Public Interest clinic (CIPPIC) & OpenMedia.ca**

March 15, 2013

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Introduction

1. The Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) and the Open Media Engagement Network (OpenMedia.ca) are pleased to offer our final reply comments in this proceeding, which seeks to establish a much needed national Wireless Consumer Protection Code (“Code”).
2. We are additionally grateful to the Commission for the leeway it has provided in accepting our Final Comments, which were not filed within the designated timeline. The factual data provided in those Final Comments was compiled primarily in response to evidence filed by parties to this proceeding on February 22, 2013 (which only became available to parties, however, on Tuesday, February 26, 2013). Although hardly a week has passed since we filed our Final Comments, the figures provided therein are already out of date, as in the time between then and now multiple annual reports providing more recent data have been released.¹ Specifically, more recent (2013) figures show greater Canadian smartphone penetration than were available a few weeks ago. In addition, in their Final Comments, filed March 1, 2013, parties to this proceeding have emphasized the ‘lack of evidence’ to support the need for more flexible customer lock-in.²
3. In light of this, of the importance of ensuring a robust, up-to-date and accurate factual record to form the basis of this proceeding, and of the fact that this will be our final opportunity to comment on this issue, we recreate, update and expand Tables 1-3 of our Final Comments in these, our Final Reply Comments. To avoid confusion, any changes from the previous versions are highlighted in yellow.
4. Our comments begin with an attempt to clarify the objective of this Code and proceed to assess elements of the Code that are necessary to achieve these objectives.

Objectives of this Code: Ensuring Responsive Wireless Services

5. Disagreement remains as to the objective of this Code. Some argue it is about ensuring transparency in service offerings. However, in our view, it is far more than this. Indeed, this is where we see a clear difference between the obligations of the Commission – a federal regulator of telecommunications

¹ Most notably, in the week of March 3, comScore, which was the source for much of the data on smartphone penetration rates, has issued multiple 2013 annual reports, replacing the 2012 reports relied upon in our Final Comments.

² See, for example, Bell Canada, Final Comments to TNC CRTC 2012-577, March 1, 2013, p. 11: “Section 3.1 No Evidence to Support a Ban on Three Year Agreements or Mandatory One- and Two-Year Fixed Term Agreements”.

services – and the myriad protections adopted in various consumer protection laws. The latter aim to ensure transparency and fairness in the context of wireless service contractual arrangements. The former, however, is tasked with ensuring telecommunications services in Canada remain high quality, competitive and responsive to the needs of customers as well as to the social and economic fabric of Canada.³

6. As such, this Code set out to:

“the clarity and content of mobile wireless contracts and related issues, [and] to ensure consumers have the information and protection they need to make informed choices in the competitive market”⁴.

In our view, ensuring greater transparency in service offerings, on its own, will not achieve this objective. The Code must inform customers *and* ensure they are sufficiently empowered in a way that will allow their preferences can resonate through the competitive market. Only by addressing ongoing transparency issues and persistent barriers to this type of resonance will the Code achieve its objectives.

7. Put another way, customers *must* have the information they need to make informed choices. At the same time, however, they must *also* be given the *opportunity* to make those choices. This requires adopting a more robust solution to switching barriers, ensuring customers are able to easily understand service offerings *before* they are locked into a contract, limiting WSP ability to unilaterally change conditions of service and retaining the notification and financial cut-offs already in the Draft Code. We address these issues below.

I. Switching Barriers: Still a Problem

8. As explained in our Final Comments, the proposed ETF remains problematic. It poses, in our view, a significant and ongoing barrier to ensuring customers are able to make informed decisions will not permit customers to ‘escape at any time’, and will, therefore, continue to exacerbate a number of problems endemic to wireless services. Specifically, they will continue to impose an extremely high switching cost. As noted in our Final Comments, many parties point to the new ETF as a panacea.

³ Best captured in sub-sections 7(a), (b), (f) and (h) of the *Telecommunications Act*, S.C. 1993, c. 38.

⁴ Telecom Decision CRTC 2012-556, Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services, October 11, 2012, CRTC Reference Nos.: 8661-C12-201204057, 8620-R28-201202598 and 8661-P8-201116807, <www.crtc.gc.ca/eng/archive/2012/2012-556.htm>, para. 27.

WSPs point to the ETF as a solution to bill shock,⁵ to ‘consumer irritants’,⁶ to market mobility.⁷ TELUS best captures the essence of this notion in its Final Comments:

Once the code comes into force and consumers can cancel a term contract any time they wish without arbitrary fees (and without having to pay for another 30 days, as some of our competitors require), complaints about three-year contracts can be added to that list.⁸

Yet, the reality is that, while attempting to better rationalize switching costs, the ETF will continue to act as a serious barrier to any customer attempt to leave, forcing customers to consider unexpected and high costs as a counterbalance to any other concern that might motivate them to leave.

9. In our Final Comments, we demonstrated how termination costs will continue to be high. Factoring in unlocking fees, which WSPs continue to insist are necessary as a deterrent to recouping handset costs.⁹

Table 1: ETF Switching Costs

Months Expired on Contractual Term	Termination Fee Schedule		Total Switching Cost ETF + \$40 Phone Unlock	
	Proposed ETF (Samsung Galaxy Note II 3 year) ¹⁰	Proposed ETF (iPhone 5 16 GB 3 year) ¹¹	Samsung Galaxy Note II	iPhone 5 16 GB
0	\$680	\$520	\$720	\$560
6	\$566.67	\$433.33	\$606.67	\$473.33
12	\$453.36	\$346.67	\$493.36	\$386.67
24	\$226.68	\$173.33	\$266.68	\$213.33
33	\$56.67	\$43.33	\$96.67	\$83.33
35	\$18.89	\$14.44	\$58.89	\$54.44

⁵ Bell Canada, Final Comments to TNC CRTC 2012-557, March 1, 2013, para. 41, citing Mr. Oosterman’s oral testimony in this proceeding: “...when people have sticker shock, they’re unhappy, and when they’re unhappy, they leave us.”

⁶ Telus, Final Comments to TNC CRTC 2012-557, March 1, 2013, para. 13.

⁷ Rogers, Final Comments to TNC CRTC 2012-557, March 1, 2013, paras. 8-9: “Such mobility is exactly what the early termination fee (“ETF”) formula proposed in the draft Code accomplishes but without any reduction in customer choice. According to the ETF formula, a wireless customer may break his or her contract at any time and is only responsible for paying a cancellation fee based on their device’s subsidy.”

⁸ Telus, Final Comments, para. 13.

⁹ See, for example,

¹⁰ Bell, for example, charges \$729.95 for the Samsung Galaxy Note II. With a three year contract, the up-front cost is reduced to \$49.95, leaving a base ETF of \$680.

¹¹ All three major Canadian providers offer the 16 GB iPhone under the same conditions: \$649.99 if purchased without a fixed term contract or \$179.99 if one purchases the iPhone with a 3 year term contract: Bell: <<http://www.bell.ca/Mobility/Products/Apple-iPhone-5>>; Telus: <http://www.telusmobility.com/en/ON/iphone5_16gb/index.shtml>; and Rogers: <http://www.rogers.com/web/link/wirelessBuyFlow?forwardTo=PhoneThenPlan&productType=normal&productId_Detailed=IP516WHT&N=52+11+4294967107>.

Two thirds into a service contract, switching costs can be well over \$200 or, effectively, 3-4 months worth of service. As a one-off and *unplanned for* cost, this may be very difficult for many customers to absorb.

10. Our concerns over the harmful effects that long-term lock-in is having on the ability of customer preferences to resonate through the Canadian wireless market has been strengthened by the Final Comments of other parties to this proceeding. Bell, for example, notes in Figure 1 of its Final Comments that from 2009-present (estimate), approximately 40% of all subscriber additions within Canadian wireless have gone to new market entrants. Yet, in spite of this, new entrants *still* only have 4% customer market share (only 2% market revenue share).¹² Typically, the appearance of new entrants is characterized by market churn, lower prices, more competition.¹³ However, in Canada, churn amongst incumbent WSPs only increased by 0.5% CAGR since 2008.¹⁴ Given the high percentage of *those who move* that choose new entrants, it is reasonable to assume that these new entrants are providing compelling offers.

11. This is not merely a function of market share and of service costs, but of market innovation. Our survey of service providers in other countries demonstrated an extremely varied range of service offerings amongst incumbents. An example of this is O2, the U.K. provider, is a typical example, with its *myriad* number of options for splitting the cost of an iPhone 5 between up-front and monthly costs:

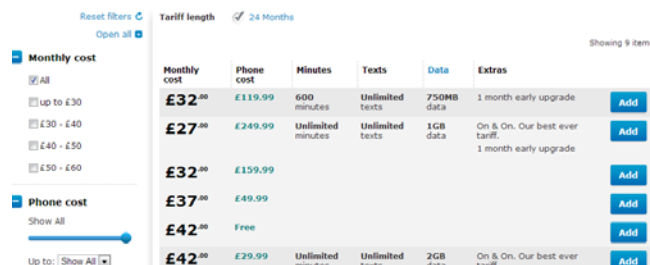


Figure 1: O2 iPhone 5 Service Options

Sonerus in Finland allows customers four different ways to monetize the iPhone 5 with the same monthly service offering – 12 vs. 24 month commitment & immediate vs. monthly payments:

¹² CRTC, Communications Monitoring Report 2012, Figures 5.5.4 and 5.5.5.

¹³ For an example, see: ITU, "Measuring the Information Society, 2012", <http://www.itu.int/ITU-D/ict/publications/idi/material/2012/MIS2012_without_Annex_4.pdf>, Box 3.1: Low-cost provider Free Mobile shakes up the French market.

¹⁴ Average 1.56 % in 2008 to average 1.83% in 2011: CRTC, Communications Monitoring Report 2012, Table 5.5.7.



Figure 2: Sonera Finland iPhone 5 + Valittu Laite Plan Options

12. Far from adopting this type of service innovation, Canadian incumbents have, in fact, moved in the other direction. While 1 and 2 year contracts in Canada were always a false choice,¹⁵ these options have disappeared altogether from incumbent offerings in the time since the AWS spectrum introduced new competition and new entrants into the market.
13. In addition, we have argued in our Final Comments that the lock-in mechanism obscures the true cost of such handsets/services. Our analysis of various service offerings amongst comparable OECD countries strongly supports this assertion. In Appendix A to these Final Reply Comments, we have corrected a mathematical error in our initial analysis of this matter, and included additional service offerings from other OECD countries. Our further analysis confirms our concerns, as set out in our Final Comments: that these lock-in mechanisms effectively obscure the true costs of Canadian wireless services.
14. Our analysis demonstrates, for example, that the extensive period of time to which Canadians are 'locked in' to service agreements offers no real benefits to Canadians. Canadians are offered a iPhone 5, 16 GB handset and a basic service basket (high voice/SMS usage, 1 GB of data, voice mail and caller ID) and minimum 4G/LTE connectivity speeds at a pro-rated amount of roughly \$85-87/month over

¹⁵ R. Entner, "International Comparisons: The Handset Replacement Cycle", June 23, 2011, Recon Analytics, <<http://www.mobilefuture.org/page/handset-replacement-cycle.pdf>>, p. 5:

Another interesting note is that Canada is the only country in the world that has three-year contracts for the purchase of a new device for the lowest price. For most devices the price difference between a 3 year contract and a 2 year contract is more than \$300, sometimes even \$400, whereas the difference between a 2 year, 1 year or no contract is only an additional \$30 per step. This provides Canadians with a significant incentive to commit to 3 year contracts. Nevertheless, Canadians replace their devices every 2 ½ to 2 ¾ years.

the course of three years. While, of course, across all WSPs and countries, total monthly costs decreased over time, with the exception of the United States, all other surveyed countries (United Kingdom, France, Italy, Australia and Finland) offered comparable services and rates within 2 years or less:

Table 2: Time Spent w/Provider before Reaching \$85/87 Price Point [updated]

WSP + Term of Service (years)	Total Rate (CDN \$/month) ¹⁶	Handset Replacement Rate (months) ¹⁷	Smartphone Users (% of all mobile users) ¹⁸
Bell 3 years	\$87.00	33.0	62% [45.95%]
Rogers 3 years	\$85.00		
AT&T 3 years	\$86.28 ¹⁹	21.7	50% [41.8%]
EE (UK) 1 year	\$87.11	22.4	64% [51.9%]
O2 (UK) 1 year	\$89.19		
BT (FR) 2 years	\$79.64	30.8	53% [40.0%]
BT (FR) 2 years	\$86.89		
Telstra (AUS) 2 y	\$81.01	N/A	~51.81-53.26% ²⁰
Vodafone (ITA) 2 y	\$80.99	51.5	53%
Sonera (FIN) 2 y	\$84.21	74.5	N/A

With respect to the United States, while customers are required to use the same handset for three years before reaching an \$85-87 pro-rated monthly price point, U.S. WSPs are able to offer this rate at three years without a three year lock-in.

¹⁶ These figures are taken from APPENDIX A: International Comparison of Blended Handset/Monthly Services [updated], found in Appendix A to these comments.

¹⁷ As measured in: R. Entner, "International Comparisons: The Handset Replacement Cycle", June 23, 2011, Recon Analytics, <<http://www.mobilefuture.org/page/handset-replacement-cycle.pdf>>, Table 1, p. 2.

¹⁸ As set out in: comScore, "2012 Mobile Future in Focus", February 2013, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2012/2012_Mobile_Future_in_Focus>, p. 7.

¹⁹ Due to a mathematical error, this figure was listed as "\$2,098.08 (\$87.42)" in our Final Comments. The new figure is based on the same exact service plan and phone price, exchange rate, etc., which have not changed. It is merely the mathematical total that has changed: \$87.42 * 24 months = \$2,098.14 + \$205.69 = \$2,303.77 / 24 months = \$95.99/month over the course of the contract. The previous figure cited in Table 1 of our Final Comments, '\$2,098.08 (\$87.42)', failed to account for the initial cost of the handset (\$205.69) in determining the total amount paid over the full course of the 2 year service.

²⁰ The Australian Communications & Media Authority (ACMA) estimates that 92% of all adult Australians (ages 18 and up) have mobile phones, while 49% have smartphones, suggesting that 53.26% of all adult mobile users have smartphones. Only 83% of all youths (aged 14-17) had mobile phones in total, and total youth smartphone penetration is reported at 43%, meaning that about 52% of youth mobile users are smartphone users. ACMA, Communications Report 2011-12, November 12, 2012, <http://www.acma.gov.au/webwr/_assets/main/lib550049/comms_report_2011-12.pdf>, Figures 1.7 & 1.8, pp. 34-35.

15. That is, the handset is paid off within 2 years, and customers are able to take their handset to another provider, if they wish, for the third year. While this is possible under Canadian rules as well, a Canadian customer leaving 24 months into a 3 year contract will face high, unexpected switching costs while their counterparts in the United States will *not*. Yet the U.S. market is able to offer comparable rates without locking customers in *a WSP's own services* for three years. We note that our proposal for addressing ongoing mobility problems will replicate this, by permitting customers to leave their WSP without having to incur heavy, unanticipated fees.²¹
16. Further, it is not clear that the United States should operate as a model, as Canada and the United States offer the highest rates of all surveyed countries. This is to be expected, as Canada and the United States have *long* been known for higher prices in mobile and telecommunications generally.²² Our analysis, research, as set out in Appendix A, confirms this, with Canada and the United States offering the highest rates over the longest period of time among surveyed countries. This *strongly* suggests that reducing Canadian customer lock-in, by adopting some of the suggestions we make in paras. 36-44 of our Final Comments to this proceeding, will not in any way increase prices for Canadians even though Canadian WSPs will be more limited in their ability to deter customers from leaving during 3 year lock-in periods.
17. We note that other concerns over the impact that placing limits on long-term lock-in in Canada might have are equally unfounded. While, since our Final Comments, new data has come out demonstrating stronger smartphone penetration in Canada, this cannot be attributed to the unique three year lock-in Canadians experience. Even with these figures, Canada's smartphone penetration levels are comparable to the other countries examined in Appendix A. All of these other countries have succeeded in achieving these comparable penetration rates at lower prices and without extensive lock-in periods:

²¹ See CIPPIC/OpenMedia.ca, Final Comments to TNC CRTC 2012-577, dated March 1, 2013, para. 39.

²² See Berkman, "Next Generation Connectivity: A Review of Broadband Internet Transitions and Policy from Around the World", Final Report, February 2010, <http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Berkman_Center_Broadband_Final_Report_15Feb2010.pdf>; C. Li & B. Ninan-Moses, "An International Comparison of Cell Phone Plans and Prices", October 14, 2010, New America Foundation, Open Technology Initiative, <http://newamerica.net/sites/newamerica.net/files/policydocs/Intl_Comparison_Cell_Phone_Plans_0.pdf>, Ryerson, Initial Comments to TNC CRTC 2012-557, November 1, 2012.

Table 3: Smartphone/Mobile Penetration in Context [updated]

Country	Smartphone Penetration (as % of Mobile Users) ²³	Smartphone Penetration (as % of total pop.) ²⁴	Wireless Broadband Subscriptions [OECD] (per 100 inhabitants) ²⁵
United Kingdom	64% [51.9%]	50.25% ²⁶ [45.25%]	60.0
United States	50% [41.8%]	39.83% ²⁷ [31.41%]	76.2
France	53% [40.0%]	38.36% ²⁸ [29.71%]	46.9
Canada	62% [45.95%]	39.90% ²⁹ [26.40%]	41.4
Spain	66%	49.10% ³⁰	48.3
Italy	53%	41.53% ³¹	34.6
Germany	51%	38.26% ³²	38.7

²³ Square bracketed figures are as presented in Table 3 of our Final Comments in this proceeding, dated March 1, 2013 and based on # of total smartphone subscribers in Dec 2011, as presented in comScore, “2012 Mobile Future in Focus”, February 2012, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2012/2012_Mobile_Future_in_Focus>, p. 7. Non-bracketed figures are from comScore, “2013 Mobile Future in Focus”, February 2013, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_Mobile_Future_in_Focus> and comScore, “2013 UK Digital Future in Focus”, March 2013, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_UK_Digital_Future_in_Focus2>, pp. 8.

²⁴ Square bracketed figures are as presented in Table 3 of our Final Comments in this proceeding, dated March 1, 2013 and based on # of total smartphone subscribers in Dec 2011, as presented in comScore, “2012 Mobile Future in Focus” as a percentage of total national population July 2011.

²⁵ OECD, “1d. Fixed and Wireless Broadband Subscriptions per 100 Inhabitants”, June 2012, OECD Broadband Portal, <<http://www.oecd.org/internet/broadband/oecdbroadbandportal.htm>>.

²⁶ Total U.K. population as of July 2012 is estimated at 63,047,162: CIA, “The World Factbook: United Kingdom”, accessed March 12, 2013. The United Kingdom had 49.5 million mobile subscribers in 2012, of which 64%, or 31.68 million, were smartphone subscribers: comScore, “2013 UK Digital Future in Focus”, March 2013, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_UK_Digital_Future_in_Focus2>, pp. 8-9. Total number of smartphone subscribers (31.68 million) / total population (63,047,162) = 50.25%.

²⁷ Total U.S. population as of July 2012 is estimated at 313,847,465: CIA, “The World Factbook: United States”, accessed March 12, 2013. The United States had 125 million smartphone subscribers in 2012 (50% of all mobile subscribers): comScore, “2013 Mobile Future in Focus”, February 2013, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_Mobile_Future_in_Focus>, p. 27. Total number of smartphone subscribers (125 million) / total population (313,847,465) = 39.83%.

²⁸ Total French population as of July 2012 is estimated at 65,630,692: CIA, “The World Factbook: France”, accessed March 12, 2013. France had 47.5 million mobile subscribers in 2012, of which 53%, or 25.175 million, were smartphone subscribers: comScore, “2013 UK Digital Future in Focus”, March 2013, comScore MobiLens, <http://www.comscore.com/Insights/Presentations_and_Whitepapers/2013/2013_UK_Digital_Future_in_Focus2>, pp. 8-9. Total number of smartphone subscribers (25.175 million) / total population (65,630,692) = 38.36%.

²⁹ Total Canada population as of July 2012 is estimated at 34,300,083: CIA, “The World Factbook: Canada”, accessed March 12, 2013. Canada had 22.076 million mobile subscribers in 2012, of which 62% (13.687 million) were smartphone subscribers: comScore, “Canada Digital Future in Focus 2013”, March 2013, comScore MobiLens, <http://www.comscore.com/Insights/Press_Releases/2013/3/comScore_Releases_the_2013_Canada_Digital_Future_in_Focus_Report>, pp. 15, 17. Total smartphone subscribers (13.687 million) / total population (34,300,083) = 39.9%.

³⁰ Total Spain population, July 2012, estimate = 47,042,984: CIA, “The World Factbook: Spain”, accessed March 12, 2013. Total mobile subscribers, Spain, 2012 = 35 million, of which 66% (23.1 million) were smartphone subscribers. Total smartphone subscribers (23.1 million) / total population (47,042,984) = 49.10%.

³¹ Total population, Italy, July 2012, estimate = 61,261,254: CIA, “The World Factbook: Italy”, accessed March 12, 2013. Total mobile subscribers, Italy, 2012 = 48 million, of which 53% (25.44 million) were smartphone users. Total smartphone subscribers (25.44 million) / total population (61,261,254) = 41.53%.

³² Total population, Germany, July 2012 = 81,305,856: CIA, “The World Factbook: Germany”, accessed March 12, 2013. Total mobile subscribers, Germany, 2012 = 61 million, of which 51% (31.11 million) were smartphone subscribers. Total smartphone subscribers (31.11 million) / total population (81,305,856) = 38.26%.

Australia	~51.81-53.26% ³³	~43-49% ³⁴	97.4
Finland	N/A	N/A	95.8

18. Nor are concerns over deficiencies in service justified. Reports on average mobile connection speeds suggest that Canadian WSPs are not providing a higher value service:

Table 4: Average Mobile Speeds (actual, not advertised)(kbps)³⁵

Country	Canada	U.K.	U.S.	France	Australia	Italy	Spain
Avg. Speed	1068	2665	2187	2599	2453	2732	3860
Avg Peak	2895	16521	7363	9760	14089	46098	33315

In sum, as there does not appear to be any tangible risk to addressing customer lock-in in a more robust manner, and the benefits in customer mobility that will result from doing so suggest such a solution is desirable.

II. Personalized Information Statement

19. We note that the personalized information statement should not only form part of a WSP's ultimate obligations to its customers, but should also facilitated customer comparisons. It must be made available to customers *before* point of sale, so that customers are able to understand and compare the nature of various competing offers from different providers. Standardization of the format and components of the PIS is critical to achieving this.³⁶
20. Some WSPs have expressed concern that format/standardization obligations will limit their ability to market to customers in the manner in which they choose. We respectfully submit that this limitation will, in fact, be of benefit to customers, who will be better placed to make comparisons on the basis of

³³ The Australian Communications & Media Authority (ACMA) estimates that 92% of all adult Australians (ages 18 and up) have mobile phones, while 49% have smartphones, suggesting that 53.26% of all adult mobile users have smartphones. Only 83% of all youths (aged 14-17) had mobile phones in total, and total youth smartphone penetration is reported at 43%, meaning that about 52% of youth mobile users are smartphone users. ACMA, Communications Report 2011-12, November 12, 2012, <http://www.acma.gov.au/webwr/_assets/main/lib550049/comms_report_2011-12.pdf>, Figures 1.7 & 1.8, pp. 34-35.

³⁴ ACMA estimates that 49% of all adults (age 18 and up) enjoyed a smartphone and a monthly data usage allowance of 1GB (Figure 1.7, p. 34) in May 2012.. Only 43% of all youths (ages 14-17) had a smartphone. *Ibid*.

³⁵ As measured in Akamai, "The State of the Internet: 3rd Quarter, 2012 Report", Volume 5, Number 3, <<http://www.akamai.com/stateoftheinternet/>>.

³⁶ See, for example: Telstra, "Personal Critical Information Summaries", accessed March 15, 2013, <<http://www.telstra.com.au/help/critical-information-summaries/personal/>>.

standardized information sheets. We note that WSPs who wish to highlight *additional* service features that are not included in the PIS, can do so by appending an additional sheet to the customized PIS.

III. Unilateral Contract Changes

21. A number of parties have suggested that limits on unilateral changes to contracts should not be too severe. That customers should be presented with 'take it or leave' it changes and that, since termination fees are now regulated and 'leaving it' is a real option, there is no need for additional protection against unilateral changes. We strongly disagree. WSPs should be categorically prevented from, at minimum, imposing changes to key contractual features such as the cost of key elements such as incremental usage, monthly fees, term length, billing type (by the minute replaces by the second or incoming minutes become chargeable), traffic management of specific applications or of the service in general (whether after a usage threshold is reached or otherwise), or a host of other key changes that WSPs have unilaterally imposed on customers in the past. Customers must retain the right to refuse such changes. For some changes, such as technical ones, if these *must* be imposed, customers should be permitted to leave the contract without *any* additional cost, including the ETF.

IV. Notifications and Financial Caps

22. Finally, we noted that concerns over obligations to adopt notifications and financial caps across all usage-based services (voice, SMS and data) have been characterized as 'unnecessary',³⁷ 'exorbitant'³⁸ and even 'anti-consumer'.³⁹ We remain skeptical of all of these claims. Bill shock is a serious issue. While it may or may not affect high percentages of customers, the degree of impact on individuals is high. We further have serious difficulties understanding claims that these financial cut-offs are in some way detrimental to customers imposed on them without express consent. This is simply not the case. Few customers expect to incur additional usage fees in excess of \$50 in one month. Those that do, will only experience 'arbitrary cut-off' once, after which they can simply raise the cap manually. Further, it is something that, once obligated to provide, WSPs can freely and explicitly raise with customers at point of sale. At that point, customers can, if they wish, adopt a

³⁷ Bell, Final Comments, TNC CRTC 2012-577, March 1, 2015, para. 42, suggesting bill shock is only a problem for a relatively small number of customers.

³⁸ TELUS claims, without any attempt to actually explain underlying costs or rationale, that implementing financial cut-offs will cost \$50-75 million. It is not clear what the basis for this estimate might be.

³⁹ Bell, Final Comments, para. 46, argues that a financial cut-off in some way conflicts with informed decision-making.

higher financial limit. Notification thresholds can similarly be adjusted at point of sale. For example, in the case of a low-threshold usage plan (50 minutes / month), customers can be prompted to set their own custom notification levels at point of sale.

23. We are similarly unconvinced as to cost-estimates and technical challenges regarding the implementation of such notification and cut-off systems. As we suggested in our Final Comments, these types of notifications and financial limitations are rapidly becoming an international standard.⁴⁰ A number of regional entities have recommended or required the adoption of such mechanisms, and in light of this it appears likely that the capacity to provide this type of notification will soon be a regular feature of mobile networks and, hence, a cost of doing business.

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⁴⁰ See CIPPIC/OpenMedia.ca, Final Comments to TNC CRTC 2012-577, dated March 1, 2013, para. 50. See also: See OECD, Council Recommendation on International Mobile Roaming Services, February 16, 2012, C(2012)7, <<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=271&Lang=en&Book=False>>, Article 4; European Commission, "Regulation on Public Mobile Communication Networks within the Union", EC 531/2012, June 13, 2012, <<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:172:0010:0035:EN:PDF>>, Article 15; APT, International Mobile Roaming Working Group, Working Group Report, May 15, 2012, <http://www.apr.int/sites/default/files/2012/05/APT_IMR_Working_Group_Report_Final.pdf>, pp. 18-19.