



3 July 2020

Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Via GC Key

Dear Secretary General,

Re: *Call for comments – Provision of paper bills by communications service providers, Broadcasting and Telecom Notice of Consultation CRTC 2020-81 (14 April 2020), https://crtc.gc.ca/eng/archive/2020/2020-81.htm?_ga=2.37842019.1309790556.1586871959-1211976415.1582553073*

The Forum for Research and Policy in Communications (FRPC) is pleased to submit its comments in the above-noted proceeding. Our comments are focussed on issues related to broadcasting.

If you have any questions or encounter any difficulty in opening the document, please contact the undersigned

Sincerely yours,

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Paper billing in broadcasting: The tangled web that limits BDU subscriber choice

Call for comments – Provision of paper bills by communications service providers, Broadcasting and Telecom Notice of Consultation CRTC 2020-81 (14 April 2020)

Comments by the Forum for Research and Policy in Communications (FRPC)

3 July 2020

M.L. Auer
Executive Director

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Acronyms

BDU	Broadcasting Distribution Undertaking
CATV	Community Antenna Television
CCTS	Commissioner of Complaints for Telecommunications and Television Services
CRTC	Canadian Radio-Television Commission (to 1975) Canadian Radio-television and Telecommunications Commission (since 1976)
CTSC	Cable Television Standards Council
PIAC	Public Interest Advocacy Centre
TSP	Telecommunications Service Provider
WSP	Wireless Service Provider

Executive summary

This proceeding addresses the paper-billing practices of broadcasting and telecommunications companies. The CRTC is asking whether paper bills should or should not be available to subscribers.

This submission by the Forum for Research and Policy in Communications (FRPC) provides historical context for this issue and sets out the arguments and evidence for and against paper billing. The CRTC in 1982 declined to regulate BDUs' billing practices: in those days cable company rates for residential subscribers to receive programming services were closely regulated, and few alternatives to printing and mailing invoices existed. Times have changed: the Internet now permits bills to be paid online, but also enables private information to be accessed and misused.

The Forum argues that while some may neither need nor want paper bills today, many individuals and certain groups of Canadians still either need or want this billing format. All but one of the 51 interventions on the record (as of 9 am 3 July 2020) also opposed electronic-only billing. The Forum submits that providing Canadians and BDUs with 'choice' must mean more than submitting them to the business decisions of BDUs: subscribers should always be able to receive companies' invoices in print (and without charge) upon request, and without having to disclose their private reasons for doing so.

In response to the CRTC's questions, the CRTC's intervention in this matter is warranted because without that intervention companies have replaced paper bills with electronic bills; the asymmetrical distribution of power in favour of large incumbent BDUs means that consumers lack the power needed to change BDU practices. As to whether its intervention is appropriate, the law regarding the CRTC's authority over BDU business practices is at least unsettled, if simply unclear: in the absence of clear authority for the CRTC to regulate BDU business practices including billing format the TVSP Code should be amended to clearly state that BDU subscribers are entitled to choose the billing format that suits them best, and to change that decision without charge at any time. Data from the CCTS show that complaints about the written agreements between BDUs and their subscribers already represented more than half (306, or 54.6%) of the 560 breaches it found of the TVSP Code in 2018/19; amending the code to require choice of billing format would permit BDUs subscribers to better manage their accounts and may smooth their relations with buds.

The new TVSP Code provisions would be administered by the Commissioner of Complaints for Telecommunications and Television Services. The Forum notes that as CCTS it sees its own role as one of complaint resolution rather than 'code enforcement' and lacks substantive authority to correct potential BDU non-compliance, it is unclear how this approach will comply with *Canada's Digital Charter*, which requires "clear, meaningful penalties for violations of the laws and regulations that support" the *Charter's* principles, so as to strengthen Canadians' trust in the digital economy. The Forum therefore recommends that the CRTC clarify in its determination about this proceeding, whether it believes it has the authority to regulate BDU billing practices under the *Broadcasting Act*.

I. Introduction

- 1 This proceeding asks whether subscribers of broadcasting distribution undertakings (BDU) and telecommunications companies in Canada should be able to receive invoices from these undertakings in the format that best suits the individual subscriber. Specifically, TNoC/BnoC 2020-81 asks
 - whether there is a need for Canadians or certain groups of Canadians to continue to receive paper bills;
 - whether Commission intervention is appropriate and warranted with respect to the paper billing practices of TSPs and BDUs;
 - if Commission intervention is appropriate and warranted, what measures, if any, the Commission should impose with respect to paper billing practices; and
 - to whom and how any new obligations should apply.¹
- 2 The Forum's comments address the CRTC's four questions with respect to the broadcasting distribution sector whose licensees provide cable television and/or satellite TV subscribers with access to television programming services. Except in the context of providing background we do not address the four question with respect to Canada's telecommunications sector.
- 3 In the remainder of this Part the Forum sets out its understanding of the context of the TNoC/BNoC 2020-81 proceeding. It reviews the current approach by Parliament and the CRTC to invoice formats in broadcasting. It then describes the changed circumstances since the CRTC first addressed invoice formats in broadcasting in the early 1980s, and the levels of complaints that were received about BDUs in 2018/19.
- 4 The Forum then addresses the four issues raised by the CRTC in Part II. Briefly, the Forum's position is that while the CRTC several decades ago said that it would not intervene with respect to billing format, times have changed in terms of technology, Canadians' rights and Canadians themselves. While today's technology gives Canadians choices over document formats and Canadian law protects these choices as well as Canadians' privacy while prohibiting charges for printed bills, Canadians no longer enjoy or in some cases are able to use what used to be near-universal access to all systems of delivery – gaps exist in terms of Canadians' access to the Internet and the ability to manage that access.
- 5 The Forum's position is that the CRTC as well as the BDU industry must adapt to the changing demography of Canada. The CRTC must ensure that all BDU (or other broadcasting) subscribers are able to receive their bills in the format of their choice without having to justify that choice to their BDU, the CRTC or any other party, and must

¹ TNoC/BNoC 2020-81, at para. 9.

also be able to change that choice at any time and free of charge. BDUs that claim they cannot afford to print invoices for and mail invoices to their subscribers must prove to the CRTC not only that such expenses are so onerous as to be impoverishing, but also that e-mailed invoices will not disadvantage any of their subscribers.

A. Context of this proceeding

Concerns about BDUs' billing practices are not new and neither are attempts to address these concerns. Except for Parliament's intervention to pay-to-pay practices by BDUs in 2014, however, the CRTC has rarely addressed BDU billing practices in any detail in its licensing or regulatory activities. This may be due in part to the fact that nearly all Canadians relied on postal service to receive their bills until the end of the 20th century, but also in part to the CRTC's view that there is no evidence to justify regulation of BDUs' billing practices. The remainder of this section sets out a brief review of the history of CRTC regulatory announcements about BDU billing.

1. 1953 – 1967: Department of Transport

- 6 By way of introduction, Parliament first addressed BDUs² by statute in 1953 when it amended the *Radio Act* to require for-profit 'private receiving stations' – which we now think of as cable systems – to obtain 'receiving station licences'.³ The Department of Transport subsequently developed a policy for cable television that was implemented in 1959.⁴ It focussed on licensing mechanics⁵ and did not specifically mention companies' billing practices. At this time cable companies sent subscribers their bills entirely or nearly entirely by mail.

2. 1968 – 1991: CRTC

- 7 Parliament brought cable systems under the CRTC's authority through the 1968 *Broadcasting Act*, by defining broadcasting services to include 'broadcasting receiving undertakings'.⁶ The newly established Canadian Radio-Television Commission⁷

² Then known as community antenna television, or CATV; now known as cable television.

³ Department of Transport, "Community Antenna Television System (C.A.T.V.): Background Summary regarding the Licensing of Community Antenna Television System (C.A.T.V)" (Ottawa, 7 November 1962) at para. 1.1. [DOT CATV summary].

⁴ *Ibid.*, at para. 1.3.

⁵ *Ibid.*, at para. 2.1:

Under Departmental policy, licences for C.A.T.V. are granted as a routine matter where the receiving antenna is located within approximately ten miles of the main post office of the area to be served, provided the proposed system complies with the minimum technical requirements and the proposed antenna structure is acceptable from a hazard to aviation point of view. Licences are not exclusive and more than one system could be licensed to serve the same area. No restrictions are placed on this class of system for the number of channels which may be carried.

⁶ Section 3(d) defined "broadcasting undertaking" as including "a broadcasting receiving undertaking"; section 17(1)(e) gave the CRTC the authority to exempt such undertakings from the requirement to be licensed.

⁷ The CRTC's name changed in 1975, when the *Canadian Radio-television and Telecommunications Commission Act* (Bill C-5) required the Commission to "exercise the powers and perform the duties and functions in relation to telecommunications ... vested ... in the Canadian Transport Commission" (Part I, s. 14(2)).

recognized cable as one of “[t]he single most complex area of CRTC activity in its first year of operation”,⁸ given its ability to import large numbers of foreign, mostly American, television services that attracted audiences away from Canadian television services.⁹ Again, at this time all or nearly all bills were sent to subscribers by mail.

- 8 When it published its first comprehensive policy on cable television in 1975, the CRTC raised the matter of BDU subscriber complaints about BDUs’ failure to respond to their concerns. It said that it continued (implying it had already been receiving)

... a steady flow of complaints concerning the technical quality of service on many systems. These relate to poor picture quality and to annoying business practices such as **insufficient response to complaints** and inadequate public relations. Persons licensed in the public interest should hardly need to be reminded of their obligations to the public they are licensed to serve. The Commission does not intend to tolerate a continuation of this situation and will take all measures necessary in this regard, including the use of its licensing powers under the Broadcasting Act.¹⁰

[bold font added]

- 9 The CRTC did not specifically address complaints about BDU billing issues¹¹ until May 1982, however, when it notified all of its broadcasting licensees that it would be adding public complaints about “many different aspects of licensees’ operations” to the public record. This would

⁸ CRTC, *Annual Report 1968-’69*, at 3.

⁹ The CRTC held hearings and made several announcements about cable in its first few years of operation, culminating with its first cable policy in 1971: *Community Antenna Television*, CRTC Public Announcement (Ottawa, 13 May 1969); *On the Licensing of Cable Television Systems*, Public Announcement (Ottawa, 10 July 1969); *The Improvement and Development of Canadian Broadcasting and the Extension of U.S. Television Coverage in Canada by CATV*, Public Announcement (Ottawa, 3 December 1969); *Guidelines for Applicants Regarding Licences to Carry on CATV Undertakings*, Public Announcement (Ottawa, 10 April 1970); *Policy Statement on Cable Television: Canadian Broadcasting, “A Single System”*, (Ottawa, 16 July 1971).

¹⁰ *Policy announcement on cable television*, CRTC Public Announcement (Ottawa, 17 February 1975), at 12.

¹¹ The CRTC may have been considering quality of service issues, however, in 1974, when it clarified its approach to cable licensees’ applications for rate increases. Of 6 criteria the last consisted of “other criteria having particular reference or concern to the licensee and to the area and the subscribers served by it.” *Applications by cable television licensees for changes in fees charged to subscribers*, CRTC Public Announcement (Ottawa, 18 September 1974), at 2.

The CRTC’s 1975 cable television policy also touched on subscriber issues:

The Commission continues to receive a steady flow of complaints concerning the technical quality of service on many systems. These relate to poor picture quality and to annoying business practices such as insufficient response to complaints and inadequate public relations. Persons licensed in the public interest should hardly need to be reminded of their obligations to the public they are licensed to serve. The Commission does not intend to tolerate a continuation of this situation and will take all measures necessary in this regard, including the use of its licensing powers under the Broadcasting Act.

[bold font added]

Policy announcement on cable television, CRTC Public Announcement (Ottawa, 17 February 1975), at 12.

... ensure that all complaints and replies thereto become an integral part of the licensing process and that significant issues arising from public complaints are fully considered in assessing the overall performance of a licensee, correspondence relating to complaints will form part of the public record. At the time of licence renewal, complaints received during a term of licence will be placed in the public examination file along with the licensee's application for licence renewal.¹²

10 The CRTC then noted that it continued to receive complaints from cable subscribers about BDU billing practices. It warned BDUs that it would act if they did not follow specified billing practices – but did not specifically require BDUs to send their bills to subscribers by mail.¹³

11 In 1983 the CRTC looked to the future, and the possibility of two-way interactive cable television service.¹⁴ It commented that

Interactive two-way cable television will significantly increase cable's capability to provide a wide range of programming and non-programming services. Inherent in this technology is cable's ability, for billing, monitoring and transaction purposes, to gather personal, service-specific information about individual subscriber preferences, including tastes in entertainment and leisure activities as well as data on banking and financial transactions. ...

12 The CRTC's concern in this context was the potential for information theft:

The Commission is very concerned about the possible abuses which could occur as a result of the transfer of such personal information to third parties, by sale or otherwise, even if in an aggregate form, without the consent or even the knowledge of the subscriber(s). The Commission considers that [20:] subscribers' expectations that the confidentiality of all such information will be

¹² *Complaints and the public examination file*, Public Notice CRTC 1982-36 (Ottawa, 18 May 1982), at 1.

¹³ *Cable billing practices*, Public Notice CRTC 1982-37 (Ottawa, 18 May 1982):

The Commission continues to receive complaints from cable subscribers in various regions of the country relating to the billing practices of cable television licensees. It appears that some licensees are leading subscribers to believe that only three methods of payment are available: annual prepayment, preauthorized cheque plan and postdated cheques.

In the Commission's view, a licensee has a duty to provide a subscriber with a hook-up and commencement of service upon payment of an installation fee and one month's fee not exceeding those authorized by the Commission. The licensee is not entitled to insist upon anything more, such as annual prepayment, postdated cheques or preauthorized cheques for the payment of subsequent monthly fees. On the other hand, the licensee and the subscriber may, of course, make any mutually acceptable arrangements for payment. The Commission does not require licensees to send monthly billing statements to all subscribers. The Commission will expect licensees, and, in particular, their staff members responsible for billing matters, to inform cable subscribers that payment may be made in advance, monthly, without requiring postdated cheques, a preauthorized cheque plan or annual prepayment.

If these billing practices are not adhered to, the Commission may take such further action as it deems appropriate in the circumstances.

[bold font added]

¹⁴ *Cable Television Service Tiering and Universal Pay Television Service*, Public Notice CRTC 1983-245 (Ottawa, 26 October 1983), at 19-20.

maintained places upon licensees the requirement of an unequivocal commitment to ensure subscriber privacy.

- 13 In 1984 the CRTC ‘lightened’ BDUs ‘regulatory burden’ by totally or partially removing “the regulation of particular areas of operation” of BDUs.¹⁵ It proposed, however, to add a new requirement for BDUs to notify their subscribers about increased rates “in a form established by the Commission to ensure that all subscribers are appropriately informed.”¹⁶
- 14 In 1990, just before Parliament enacted a new *Broadcasting Act*, the CRTC asked BDUs “to develop an industry code with respect to service standards” and to submit the propose code to the CRTC for its review and acceptance.¹⁷ The CRTC asked that the code include “measurable criteria or benchmarks where appropriate” for “billing and payment policies, including all options available for the subscriber”.¹⁸ As the 1968 *Broadcasting Act* did expressly enable the CRTC to delegate any of its responsibilities, it is unclear whether this request was within the CRTC’s jurisdiction.
- 15 The 1991 *Broadcasting Act* discusses the role of BDUs in more detail than the 1968 statute. Four sections address BDUs:

3.(1)(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

- 16 The new statute also enables the CRTC to consider broadcasters’ administrative expenses. Parliament told the CRTC that it must “regulate and supervise all aspects of

¹⁵ *Proposed New Cable and Subscription Television Regulations*, Public Notice CRTC 1984-305 (Ottawa, 12 December 1984), “2. Lightening of Regulatory Burden”.

¹⁶ *Ibid.*,

¹⁷ *CABLE TELEVISION REGULATIONS, 1986 - CHANGES TO THE REGULATION OF SUBSCRIBER FEES AND RELATED MATTERS*, Public Notice CRTC 1990-53 (Ottawa, 15 May 1990), <https://crtc.gc.ca/eng/archive/1990/pb90-53.htm>.

¹⁸ *Ibid.*

the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1)¹⁹ – which includes the “delivery of programming at affordable rates”.²⁰ Parliament also said that the CRTC must “have regard to” a new regulatory policy.²¹ According to this policy, regulation and supervision of the broadcasting system, including BDUs, should be “sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.”²² In other words, Parliament obliged the CRTC to consider the impact of its regulation and supervision on BDUs’ administration of their businesses.

- 17 Rather than addressing complaints about BDUs’ administrative and billing practices itself, the CRTC delegated the issue of BDU subscriber complaints to a new, non-governmental body – the Cable Television Standards Council (CTSC). Again, as the 1991 *Broadcasting Act* does not specifically empower the CRTC to delegate its responsibilities elsewhere, it is unclear whether this delegation was within the CRTC’s jurisdiction. Presumably the CRTC believed it had avoided this issue by stating its willingness to continue to receive complaints of those unwilling to deal with the CTSC.²³

3. 1992 – 2006: the Cable Television Standards Council

- 18 Established in 1992, it was to adjudicate “disputes between cable television licensees, their subscribers and members of the public.”²⁴ The *Standards* addressed seven matters:

- i) terms and conditions with respect to community access policies, and promotion of citizen access to the community channel;
- ii) balance in programming of public concern;
- iii) restrictions with respect to abusive comments and corrective measures;
- iv) stereotyping guidelines;
- v) adequate training programs for volunteers and promotion of availability of such programs;

¹⁹ S. 5(1).

²⁰ S. 3(1)(t)(ii).

²¹ Set out in s. 5(2).

²² S. 5(2)(g).

²³ *CABLE TELEVISION COMMUNITY CHANNEL STANDARDS*, Public Notice CRTC 1992-39 (Ottawa, 1 June 1992), <https://crtc.gc.ca/eng/archive/1992/pb92-39.htm>:

The Commission intends to refer to the Cable Television Standards Council (the Council), for its consideration and resolution, all complaints it may receive regarding the practices of the members of the Foundation that fall within the scope of these Standards. However, as stated in Public Notice CRTC 1992-22 dated 16 March 1992, any interested party may, at any time, choose to approach the Commission directly.

²⁴ *CABLE TELEVISION STANDARDS COUNCIL*, Public Notice CRTC 1992-22 (Ottawa, 16 March 1992), <https://crtc.gc.ca/eng/archive/1992/PB92-22.htm>.

- vi) allocation of funds from sponsorship and conventional local advertising for the benefit of community programming; and
- vii) complaint procedures and follow-up.²⁵

- 19 The CRTC two years later added that the CTSC would also “be the first forum for the mediation of disputes between cable and licensed programming undertakings.”²⁶
- 20 In 1996 the CRTC considered the accessibility of broadcasting and telecommunications services to those with disabilities and said that providing bills was necessary to the functions of a BDU. Providing
- ... bills and information concerning programs and channel line-ups is integral to the functions of a cable distribution undertaking. The Commission remains of the same view and considers this to be equally the case for all BDUs. In this regard, the Commission notes that customer service information ensures that subscribers may benefit fully from the service provided by the BDU.²⁷
- 21 The Commission found that bill formats could limit access to those with disabilities and amounted to barrier to accessibility:
51. Nevertheless, the record demonstrates that in some cases persons with disabilities have reduced access to customer information because it is only provided in formats or through customer service channels that are not accessible to them. This creates barriers to access to telecommunications and broadcasting services.
52. The Commission considers it important that persons with disabilities have access to information on disability-specific products and services as well as general information that would improve access to telecommunications and broadcasting services and products available to all customers.
53. The Commission notes that service providers offer customer service through various channels. However, the Commission considers that websites and general call centres are particularly important sources of information and customer service.
54. The Commission also considers it important that any new regulatory requirements be as flexible as possible in order to recognize the different models of customer service that the various TSPs and BDUs employ.²⁸

²⁵ *CABLE TELEVISION COMMUNITY CHANNEL STANDARDS*, Public Notice CRTC 1992-39 (Ottawa, 1 June 1992), <https://crtc.gc.ca/eng/archive/1992/pb92-39.htm>.

²⁶ *ACCESS RULES FOR BROADCASTING DISTRIBUTION UNDERTAKINGS*, Public Notice CRTC 1996-60 (Ottawa, 26 April 1996), <https://crtc.gc.ca/eng/archive/1996/pb96-60.htm>.

²⁷ *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy 2009-430 (Ottawa, 21 July 2009), <https://crtc.gc.ca/eng/archive/2009/2009-430.htm#b11>, at para. 48.

²⁸ *Ibid.*, at paras. 51-54.

- 22 In 1997 the CRTC re-issued its BDU regulations, intending that they “promote competition among BDUs”.²⁹ In this context the CRTC prohibited BDUs from granting anyone an undue preference, or from imposing an undue disadvantage:

Broadcasting Distribution Regulations (SOR/97-555),
<https://laws.justice.gc.ca/eng/regulations/SOR-97-555/index.html>

9 (1) No licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

(2) In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

- 23 (As the CCTS’ annual reports are at present unavailable online it is unclear whether these regulatory provisions or others³⁰ affected the disposition of any complaints it may have received about BDU billing practices.)

- 24 The CTSC was dissolved in 2006.³¹ The CRTC later reported that the CTSC had processed 456 complaints, but did not clarify whether these complaints addressed billing practices.³²

4. 2007 – present

- 25 In 2008 the CRTC reviewed its regulations for BDUs to determine, among other things, whether regulatory intervention was needed to address “the availability of billing in alternative formats, privacy concerns, clarity of billing, and other customer service standards.” It decided that, to be “consistent with a more market-driven approach”, replacing the CTSC was unnecessary.³³

²⁹ CRTC, *Communications Monitoring Report 2008*, at 37.

³⁰ In 2002 the CRTC said it did not want BDUs to use bulk billing contracts that would “result in exclusive access arrangements or otherwise restrict end-user choice”: *Bulk billing by direct-to-home satellite distribution undertakings*, Broadcasting Public Notice CRTC 2002-7 (Ottawa, 12 February 2002), <https://crtc.gc.ca/eng/archive/2002/pb2002-7.htm>, at paras. 8-9.

³¹ Wikipedia, *Cable Television Standards Council*, https://en.wikipedia.org/wiki/Cable_Television_Standards_Council, accessed 3 July 2020.

³² CRTC, *Communications Monitoring Report 2006*, [footnote omitted]:

...

The CTSC dealt with complaints with respect to cable service, such as concerns about quality of service and billing until 12 April 2006, when this organisation ceased operation. Since then, complaints filed with the Commission about quality of service and billing are forwarded to the appropriate licensee for resolution. The Commission continues to process complaints regarding simultaneous signal substitution, quality of signal and carriage of mandatory signals. For the 2004/2005 broadcast year, the CTSC processed 456 complaints, of which 135 were referred to the CTSC by the CRTC.

³³ *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100 (Ottawa, 30 October 2008), Regulatory Policy, at paras. 209-201:

Customer service standards

- 26 Canadian communications companies began to shift towards e-billing in the late-2000s. In October 2008 Mark 47 noted that Bell Mobility had notified them that it would add a charge of \$1 per bill to their account.³⁴

M **Mark 47** · Registered
Joined Aug 19, 2005 · 10 Posts

✓ Discussion Starter · #1 · Oct 2, 2008

Received the following email from Bell after purchasing new phone and renewing contract: "Thank you for choosing Bell Mobility. We appreciate your business. We have now completed your phone upgrade" ... "Your bill will be mailed to you as requested. A service charge of \$1 per bill will be charged to your account. This charge does not apply if you register for e-bill and preauthorized payment." I had been assured that absolutely nothing would change when I signed the new contract. The CSR I spoke with said the invoice was not part of the contract and they could charge what they wanted for it. Turns out this doesn't apply to onebill customers. Furthermore, just need to sign up for e-bill. It isn't necessary to do the preauthorized payment.

- 27 By April 2012, according to Skillkeeper, Bell (or one of its related companies) had doubled its service charge to receive paper bills, to \$2:³⁵

#12 · Apr 26, 2012

Bell Canada Paper bill charge

Just received an email from Bell Canada stating that there will be a \$2.00 charge for paper bills and no apparent charge for e-bill.

Why would I pay to receive a Bill? It seems to me that Bell should be happy to have customers to whom they can send a bill.

To add insult to injury, a Bell internet connection is a resource for which a Bell customer pays money TO BELL. Why would a customer make that resource available to Bell so that they can conduct their business at your expense, especially if the e-bill is received by a Bell wireless device where bandwidth is at a premium.

I hate bills, especially bills for bills.

Reply

- 28 In April 2012 TorontoColin³⁶ said that Telus, Virgin, Fido, Wind, Mobilicity, Koodo Teksavvy and Primus were all charging their subscribers to receive paper bills.³⁷

209. Noting the dissolution of the Cable Television Standards Council (CTSC), the Commission sought comment on whether regulatory intervention was necessary to address such matters as the following: the availability of billing in alternative formats, privacy concerns, clarity of billing, and other customer service standards.

210. The Commission considers that, consistent with a more market-driven approach, the establishment of an industry body to oversee and apply customer service standards is not necessary.

³⁴ digitalhome.ca, <https://www.digitalhome.ca/threads/bell-now-charging-for-paper-bill.93132/>.

³⁵ Skillkeeper, digitalhome.ca, <https://www.digitalhome.ca/threads/bell-now-charging-for-paper-bill.93132/>.

³⁶ TorontoColin, digitalhome.ca, <https://www.digitalhome.ca/threads/bell-now-charging-for-paper-bill.93132/>.



#16 · Apr 27, 2012

Let's please stay on topic here.

This has become standard practice for all companies, especially telecoms. Rogers, Telus, Virgin, Fido, Wind, Mobilicity, Koodo, Teksavvy, and Primus all charge for paper bills. Bell is actually late to the party here. It has nothing to do with profit, with the cost the cost of sending physical bills, Bell (or TD or any other company) will make somewhere between nothing and very, very little by charging for paper bills. Besides, they don't want to actually charge you for the paper bills, they want you to switch to ebilling.

ebilling is instantaneous, environmentally friendly, and cheap. There is no question that it saves the company money, but there are benefits for consumers too.

As far as I know, Shaw is the only major telecom not to charge for paper bills at this point.

- 29 Subscribers complained that they should not have to 'pay to pay', and by the summer of 2013 the CRTC was aware of concerns raised by members of Parliament, consumer associations and others.³⁸ The CRTC's "staff initiated a fact-finding exercise concerning the practice of charging consumers an additional fee for a paper copy of their bill"³⁹ on 3 July 2013. On 16 October 2013 the Federal Government's Speech from the Throne committed to end pay-to-pay practices.⁴⁰
- 30 On 22 October 2013 PIAC applied to the CRTC to direct TSPs to end charges for paper bills.⁴¹ On 23 July 2014, however, the CRTC wrote to PIAC to 'close' its application.⁴² The

³⁷ TorontoColin, digitalhome.ca, <https://www.digitalhome.ca/threads/bell-now-charging-for-paper-bill.93132/>.

³⁸ Peter Menzies, Vice-Chair, Telecommunications and Tom Pentefountas, Vice-Chair, Broadcasting, CRTC, *Re: Fees for Paper bills*, Letter (Ottawa, 23 July 2014), <https://crtc.gc.ca/eng/archive/2014/lt140723a.htm>: The exercise was launched on July 3, 2013 in response to numerous inquiries, expressions of concern and complaints received by the CRTC from individual Canadians, consumer and citizen associations, and members of Parliament.

³⁹ *Results of the fact-finding exercise on fees for paper bills*, (Ottawa, undated), <https://crtc.gc.ca/eng/publications/reports/rp140723.pdf>, at 3 ("Background").

⁴⁰ *Speech from the Throne*, Edited Hansard, No. 001 41st Parl., 2nd Sess. (16 October 2013):

Our Government will:

End "pay to pay" policies, so customers won't pay extra to receive paper bills;

...

The Federal government repeated this commitment in October 2014. See Jason Fekete, "Budget legislation will end fees for paper bills, introduce new rules for foreign investment reviews", *Ottawa Citizen*, (23 October 2014), <https://ottawacitizen.com/news/politics/budget-legislation-will-end-fees-for-paper-bills-introduce-new-rules-for-foreign-investment-reviews>.

⁴¹ PIAC argued in part that "market forces in this area have been adequate to protect the interests of consumers. Commission intervention is therefore required." PIAC, Part 1 Application, (Ottawa, 22 October 2013), DM#1995638, at para. 4.

⁴² PIAC and Consumers Association of Canada, *Re: Charges for paper billing made by Telecommunications Providers and Broadcasting Distribution Undertakings – Response to Reply of the Commission And Re: Part 1*

CRTC said it had decided “to pursue issues relating to fees charged to Canadian consumers for paper bills in an alternative and comprehensive manner, involving both telecommunications service providers and broadcasting distribution undertakings”, by meeting with private industry representatives.⁴³

31 (In April 2014 the CRTC in a separate process focussed on the television programming sector noted Canadian consumers’ “dissatisfaction with their BDU service providers,”⁴⁴ and in 2015 the CRTC decided in the context of reviewing Canadians’ access to Canadian television services that Canadians needed to “be better equipped to make informed choices about TVSPs in a dynamic marketplace”⁴⁵ and that the CCTS was “the appropriate party to administer the TSP”.)

32 The CRTC’s 23 July 2014 letter invited 11 companies⁴⁶ to attend a meeting with the CRTC’s Vice-Chairmen “... to address the issue of fees for paper bills”.⁴⁷ The CRTC later said that the companies⁴⁸ that attended the meeting on 28 August 2014

... verbally committed to exempting the following customers from paper bill fees:

- customers who have no personal or home broadband Internet service connection;
- persons with disabilities;
- seniors aged 65 or over; and
- veterans of the Canadian Armed Forces.⁴⁹

Application by the Public Interest Advocacy Centre and Consumers' Association of Canada regarding certain Telecommunications Service Provider billing practices (Fees for Paper Bills), Letter to the CRTC (Ottawa, 31 July 2014), https://crtc.gc.ca/public/otf/2012/8480/b54_x/2174344.PDF.

⁴³ CRTC, (Ottawa, 23 July 2014), *Re: Part 1 Application by the Public Interest Advocacy Centre and Consumers' Association of Canada regarding certain Telecommunications Service Provider billing practices (Fees for Paper Bills)*, Letter to PIAC, (Ottawa, 23 July 2014), https://crtc.gc.ca/eng/archive/2014/lt140723.htm?_ga=2.168342753.1113879779.1593637287-1211976415.1582553073.

⁴⁴ *Let’s Talk TV: Navigating the Road Ahead - Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104 (Ottawa, 26 March 2015), <https://crtc.gc.ca/eng/archive/2015/2015-104.htm>, at para. 18.

⁴⁵ *The Television Service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1 (Ottawa, 7 January 2016), <https://crtc.gc.ca/eng/archive/2016/2016-1.htm>, at para. 2.

⁴⁶ Bell Aliant, Bell Canada, Bragg Communications Inc. (Eastlink), Cogeco, Globalive Wireless Management Corp., MTS Allstream, Rogers Communications Inc., Saskatchewan Telecommunications Inc., Shaw Communications Inc., Telus Communications Company and Videotron G.P.

⁴⁷ *Public Interest Advocacy Centre and National Pensioners Federation – Application regarding paper billing by Koodo Mobile*, Telecom Decision CRTC 2020-80 (Ottawa, 3 March 2020), <https://crtc.gc.ca/eng/archive/2020/2020-80.htm>, at para. 2.

⁴⁸ It is unclear who attended the August 2014 meeting.

- 33 The Public Interest Advocacy Centre (PIAC) also released a study in August 2014 which found that Canadians were (still) paying between \$495 million to \$734 million per year just to receive paper copies of their bills.⁵⁰
- 34 In October 2014 the Federal Government repeated its 2013 promise “to end pay-to-pay policies so that consumers would not have to pay extra to receive their bills in paper form.”⁵¹ New legislation was introduced in November 2014. During the debates, the Parliamentary Secretary to the Minister of Industry noted the industry’s unwillingness to eliminate charges for paper bills on a voluntary basis:

Hon. Mike Lake (Parliamentary Secretary to the Minister of Industry, CPC), Edited Hansard (Ottawa, 24 November 2014), No. 147, 41st Parl., 2nd Sess.:

...

We gave the industry the opportunity to eliminate these fees voluntarily, but it did not. Following the commitment in the Speech from the Throne and in budget 2014, we noted that our government would be following the proceedings on paper billing fees that were being undertaken by Canada’s telecommunications regulator, the Canadian Radio-television and Telecommunications Commission. In late August 2014, the CRTC met with the industry to try to come to a voluntary industry-led solution to the problem of unfair fees for paper bills, but the industry could not agree to stop these charges, so we acted swiftly to table our legislation.

The legislation includes new enforcement mechanisms for the CRTC to promote compliance with the Telecommunications Act, including prohibiting telecommunications service providers from charging for paper bills and ensuring that those in violation face appropriate monetary penalties of up to \$10 million for a first violation and up to \$15 million for subsequent violations.

Canadians have made it clear that they expect lower prices and better service from their telecommunications providers. When consumers make decisions about how to spend their money, they deserve transparency and choice in a free marketplace.

Our government has taken action to achieve greater competition in the telecommunications sector, and Canadian families have seen lower prices and

⁴⁹ *Public Interest Advocacy Centre and National Pensioners Federation – Application regarding paper billing by Koodo Mobile*, Telecom Decision CRTC 2020-80 (Ottawa, 3 March 2020), <https://crtc.gc.ca/eng/archive/2020/2020-80.htm>, at para. 2.

⁵⁰ *Ibid.*

⁵¹ Hon. Mike Lake (Parliamentary Secretary to the Minister of Industry, CPC), Edited Hansard (Ottawa, 24 November 2014), No. 147, 41st Parl., 2nd Sess.:

In the 2013 Speech from the Throne, our government promised to end pay-to-pay policies so that consumers would not have to pay extra to receive their bills in paper form. It reinforced this promise in budget 2014. On October 23, 2014 our government tabled legislation to end these unfair billing practices in the telecommunications and broadcasting sectors. We could not be clearer. The legislation states that providers in these sectors shall not charge their subscribers for paper bills.

more choice. As a government, we will continue to stand up for consumer choice and competition and to promote policies that support hard-working Canadian consumers.

- 35 Another member of the government noted that she had received numerous complaints about BDU billing practices with respect to pay to pay:

Lois Brown, (Parliamentary Secretary to the Minister of International Development, CPC):

... My constituents are also pleased that Bill C-43 would end pay-to-pay billing practices by telecommunications service providers whereby subscribers are charged to receive bills in paper form. The practice of broadcasting companies charging subscribers for providing them with a paper bill is an irritating and costly one. I have had numerous complaints from my constituents regarding this practice. ...

Edited Hansard, (Ottawa, 24 November 2014), 41st Parl, 2nd Sess, No. 147

- 36 At the end of 2014 Parliament created and enacted a new sub-Part in the *Broadcasting Act* to put its prohibition on pay-to-pay BDU practices into effect:

PART II.1

Offence — Paper Bill

Marginal note:Prohibition

34.1 No person who carries on a broadcasting undertaking shall charge a subscriber for providing the subscriber with a paper bill.

Marginal note:Offence

34.2 Every person who contravenes section 34.1 is guilty of an offence punishable on summary conviction and is liable

(a) in the case of an individual, to a fine not exceeding \$25,000 for a first offence and not exceeding \$50,000 for each subsequent offence; or

(b) in the case of a corporation, to a fine not exceeding \$250,000 for a first offence and not exceeding \$500,000 for each subsequent offence.

Marginal note:Limitation

34.3 No proceedings for an offence under section 34.2 are to be instituted more than two years after the time when the subject-matter of the proceedings arose.

- 37 Despite this change complaints about telecommunications sales practices grew. In mid-2018 the Privy Council of Canada ordered the CRTC to report on “the retail sales practices of Canada’s large telecommunications carriers”, and to consider “the most

feasible and effective ways to strengthen or expand the scope of existing consumer protections” through existing or new approaches.⁵²

- 38 On June 4, 2018 the Public Interest Advocacy Centre applied to the CRTC regarding Koodo Mobile’s decision to discontinue paper billing. PIAC asked that the CRTC “clarify that wireless service providers must offer paper billing upon request...”⁵³
- 39 Before releasing its decision about PIAC’s application, the CRTC held a public proceeding involving a public hearing to address the order of the Governor in Council. The evidence of the President of the National Pensioners Federation was that faced with an onslaught of technological change Canadian senior citizens were losing trust in communications service providers:

2100 MS. McAULIFFE [National Pensioners Federation]: If I could add as well, amongst our members we have discussions around sort of an onslaught of changes in the tech world. And my concern as the growing tsunami that we are, some of our understanding of what -- even what I know technically is changing all the time and my needs are changing all the time, as we've heard previous. But seniors are becoming less trusting in the conversations that I have with them. And I would believe that it would be most beneficial to the service providers that they come back and regain that trust. As we evolve, we need to bring in seniors into this -- into the new technology advancements.

2101 It's very concerning to us as organisers of our communities when we lose communications with seniors because they simply fall off the grid, because they have bad experiences in sales. They've had bad experiences in not being able to cancel the contract and they've had bad experiences on the help line or the service lines that are provided.

2102 So the conversations that I've had most recent were those members that live in remote communities that have little or no access to high speed internet and are searching for that. Some of the others that I spoke with have real concerns about the future of paperless billing when they fall off the grid, and/or if they can review their bills. They want to see them. They want hard copies.

2103 So as we see our aging community taking on and continuing on the practices they've always felt in trust and in trust to others in that service and that provision of services, we're getting into an era where then people of my own generation become very distrusting. And I've had one comment made to me as recent to say, "They've actually asked me if I recorded this conversation. So are we getting to that place, Trish? Like, what's going on? You know, how do I best protect myself?"

2104 And I'm at a place right now where I feel where I'm trying to represent the best interest and advocacy and promotion for seniors at all levels of

⁵² Privy Council, Order in Council 2018-0685 (6 June 2018), at 4-5.

⁵³ PIAC, *Part 1 Application Regarding Paper Billing by Koodo Mobile*, (Ottawa, 4 June 2018), CRTC DM#3151137, Application 8661-P8-201804295, at para. 2.

government, at all levels of their quality of life, where they fall off the grid is going to be very difficult for us. We have to get back to regaining the trust. And the code of practices I think is a first queue because that's the first point of contact. Thank you.⁵⁴

- 40 The CRTC's February 2019 report took note of concerns raised by some interveners about telecommunications carriers' practices for issuing paper bills.
- 41 The Governor in Council subsequently directed the CRTC to implement Canada's telecommunications policy "to Promote Competition, Affordability, Consumer Interests and Innovation", as of 17 June 2019.⁵⁵ Cabinet did not issue a similar direction to the CRTC with respect to BDUs.
- 42 The Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation uneasily combines mandatory requirements for the CRTC ("must implement") with decision-making at the CRTC's discretion ("should consider how ...") along with competing and vague objectives (encourage competition and investment while enhancing and protecting consumer rights and overall promoting consumer interest):

Marginal note:Principles

1 In exercising its powers and performing its duties under the Telecommunications Act, the Commission must implement the Canadian telecommunications policy objectives set out in section 7 of that Act, in accordance with the following:

(a) the Commission should consider how its decisions can promote competition, affordability, consumer interests and innovation, in particular the extent to which they

(i) encourage all forms of competition and investment,

(ii) foster affordability and lower prices, particularly when telecommunications service providers exercise market power,

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

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

(v) reduce barriers to entry into the market and to competition for telecommunications service providers that are new, regional or smaller than the incumbent national service providers,

⁵⁴ CRTC, *Transcript*, (Gatineau, 23 October 2018).

⁵⁵ *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, P.C. 2019-803 (16 June 2019), <https://laws.justice.gc.ca/eng/regulations/SOR-2019-227/page-1.html#h-1138628>.

(vi) enable innovation in telecommunications services, including new technologies and differentiated service offerings, and

(vii) stimulate investment in research and development and in other intangible assets that support the offer and provision of telecommunications services; and

(b) the Commission, in its decisions, should demonstrate its compliance with this Order and should specify how those decisions can, as applicable, promote competition, affordability, consumer interests and innovation.

43 The *Order* appears to have placed the CRTC in a difficult position. On the one hand, it found itself unable to grant PIAC’s application for the CRTC to protect subscribers who or that want paper bills,⁵⁶ while on the other it needed to consider the *Direction* at least with respect to telecommunications. In any event, no parallel direction has been issued on the broadcasting side.

44 The CRTC set out 13 reasons for denying PIAC’s request – see Table 1.

45 Four of the CRTC’s reasons related to statutory interpretation (see 1, 3, 4, and 5 below), one addressed existing protection for visually disabled customers (see 9) and another noted the valuelessness of undertakings by those it regulates (see 2). The CRTC found that the “growing majority of seniors [who] are becoming digitally literate” (see 12). The CRTC speculated about the impact of paper bill requirements on WSPs’ competitiveness (see 6, 7, 8), the potential problems of customers who are cognitively disabled, uncomfortable with using the Internet or paying bills online (see 10, 11 and 13).

Table 1: 13 reasons set out by the CRTC in March 2020 for not requiring WSPs to provide paper billing to subscribers

- 1 Parliament only requires that telecommunications companies not charge subscribers to receive paper bills, not that they actually provide paper bills⁵⁷
- 2 Communications service providers’ verbal commitment in August 2014 “was a verbal commitment and did not result in any Commission determinations or regulations” and was in any event superceded by Parliament’s December 14 legislative amendments⁵⁸

⁵⁶ *Public Interest Advocacy Centre and National Pensioners Federation – Application regarding paper billing by Koodo Mobile*, Telecom Decision CRTC 2020-81 (Ottawa, 3 March 2020), <https://crtc.gc.ca/eng/archive/2020/2020-80.htm>, at para. 63.

⁵⁷ *Ibid.*, at para. 29.

⁵⁸ *Ibid.*

- 3 The *Telecommunications Act* “cannot be interpreted so liberally as to create an obligation to provide paper bills when the words of the statute convey no such obligation”⁵⁹
- 4 The existing requirements in the *Wireless Code* (at sections A.1(i) and B.1(i)) do not apply to bills⁶⁰
- 5 Imposing a requirement to provide paper bills can only be justified if “there is a demonstrable failure in the marketplace and/or a clear need for the Commission to take action, such as to advance one or more of the policy objectives set out in section 7 of the Act”⁶¹
- 6 Imposing a requirement on WSPs to offer paper billing would “impair” their ability to offer paper bills so as to compete with other WSPs⁶²
- 7 Information in the CRTC’s 2018 *Communications Monitoring Report* and confidential information submitted by Telus shows that Koodo has a small share of the WSP market, and “a very small segment of Koodo’s customers still receive paper bills”, making it unreasonable to impose this requirement on the entire industry as the CRTC “recognizes that digital service innovation and price competition remain important factors to consider for the overall market.”⁶³
- 8 There is insufficient evidence to show that the marketplace has failed to meet an economic or social need” for paper bills because PIAC’s application focussed on Koodo⁶⁴
- 9 Customers with a visual disability have access to bills provided in alternative formats⁶⁵
- 10 Customers with cognitive disabilities “may also encounter issues using e-billing” but this is not evidence that “additional obligations regarding accessible billing are necessary at this time”⁶⁶
- 11 Customers who are uncomfortable using the Internet or paying bills online have other options, such as pre-authorized payments, attending banks in person to pay their bills or finding a new communications service provider⁶⁷

⁵⁹ *Ibid.*, at para. 30.

⁶⁰ *Ibid.*, at para. 31.

⁶¹ *Ibid.*, at para. 52.

⁶² *Ibid.*, at para. 55.

⁶³ *Ibid.*, at para. 56.

⁶⁴ *Ibid.*, at para. 57.

⁶⁵ *Ibid.*, at para. 58.

⁶⁶ *Ibid.*, at para. 58.

- 12 “[A] growing majority of seniors are becoming digitally literate”⁶⁸ (being 81% of those aged 65 to 74 years in 2016, and 50% of those aged 75 years in 2016 – para. 41).
- 13 Customers of Koodo from before the transition to the default of e-billing in 2015 and may be uncomfortable with e-billing “may not yet have activated their self-serve accounts”⁶⁹customers who are uncomfortable using the Internet or paying bills online
- 46 Of the 13 reasons given by the CRTC only one (number 12, above) is based on objective evidence rather than statutory interpretation or speculation.
- 47 The CRTC then clarified that WSPs may charge subscribers a fee to print any bills other than their current bill showing the amount currently owing.⁷⁰ It added that, “consistent with the principles of the Wireless Code, it is important for Koodo to continue to advise new customers at the time of service activation that paper bills are not available”.⁷¹
- 48 The CRTC also said that even though PIAC did not provide the Commission with the evidence showing a need for the CRTC to impose a general condition of service requiring WSPs to provide paper bills upon request, the CRTC itself “has received complaints from customers of TSPs ... regarding paper bills”, and PIAC “raised concerns about the need for vulnerable consumers to have access to paper bills, including senior citizens and customers who may have difficulties paying bills online.”⁷²
- 49 The CRTC has now called for comments on the issue of paper billing in TNoC/BNoC 2020-81.⁷³ The Forum is concerned that the Commission will, as it has in the past, hesitate to mandate practices that protect and support consumer interests, on the grounds that interveners do not provide the specific evidence it seeks. The absence of evidence satisfactory to the Commission has proven fatal to these organizations’ arguments. In 2005, for instance, the CRTC denied requests to promote programming services whose distribution was mandated:

36. In the Commission's view, the interveners failed to provide any statistical information or other evidence in the course of this proceeding to demonstrate the effectiveness of billing inserts to communicate information about programming services. The Commission finds, in this instance, that the use of billing inserts would be cumbersome, and that the time and effort required to

⁶⁷ *Ibid.*, at para. 59.

⁶⁸ *Ibid.*, at para. 59.

⁶⁹ *Ibid.*, at para. 60.

⁷⁰ *Ibid.*, at para. 33.

⁷¹ *Ibid.*, at para. 61.

⁷² *Ibid.*, at para. 65.

⁷³ *Ibid.*, at paras. 64-68.

implement and monitor a system based around the use of billing inserts would outweigh their effectiveness.⁷⁴

- 50 What is striking about this decision is that CRTC had expressly stated its expectation for BDUs to distribute annual billing inserts to describe the availability of community access programming, three years earlier in 2002:

63. The Commission considers that, in light of its final policy on access, it is appropriate that cable companies take specific and effective steps to inform and promote access to the community channel, and to provide and promote the availability of related training programs.

64. The Commission expects all Class 1 and Class 2 licensees to distribute a billing insert describing the availability of access programming and methods by which proposals can be made. Such billing inserts should be distributed within six months of the date of this public notice, and annually thereafter. The Commission intends to review the efforts of licensees in this regard as part of the licence renewal process.⁷⁵

- 51 While it is true that its past decisions cannot and do not bind the Commission, it is difficult to know what specific evidence the CRTC needs to act in the public interest – which, incidentally, the CRTC in 1968/69 said included the interest of industry⁷⁶ – in the absence of clear direction from the Commission itself. The Forum therefore recommends that if the CRTC decides in this proceeding that it still lacks the evidence it needs to give BDU subscribers the right to select either printed or electronic BDU bills, the CRTC should state the specific evidence it would need to do so: how many Canadians must be disadvantaged to some degree, or submit complaints about billing, before the CRTC will require BDUs to make expenditures on paper billing which may amount to a very small percentage of their total revenues?

⁷⁴ *Tools to promote and improve the visibility of services whose national distribution is required pursuant to section 9(1)(h) of the Broadcasting Act*, Broadcasting Public Notice CRTC 2005-89 (Ottawa, 9 September 2005), <https://crtc.gc.ca/eng/archive/2005/pb2005-89.htm>.

⁷⁵ *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61 (Ottawa, 10 October 2002), <https://crtc.gc.ca/eng/archive/2002/pb2002-61.htm>.

⁷⁶ At p. 3 of its first *Annual Report* (for 1968-69), the CRTC wrote that the public interest includes “the interest of the industry”:

“The public interest”

The CRTC produces no programs, operates no network or station, farms no market, plays to no “prime-time” audience, does not enter the living rooms of the nation. How, then, is its sphere of activity in broadcasting defined? It is by its position in the structure of the system. The determination of the “public interest,” in the view of the legislators, required a body that was not at the same time arbiter and party in the matter: “..... a single independent authority.” The CRTC's concerns are about broadcasting for the public. The “Public Interest,” in its full acceptance, includes the interest of the industry, for without a viable industry the public interest could not be served.

(Highlighting added)

B. Complaints about billing

- 52 As mentioned earlier many BDU subscribers have complained in the past about BDU companies' billing practices, although following the closure of the CTSC little information was published by the CRTC about the types of complaints it received about BDUs. Its 2008 statistical summary of "Broadcasting complaints by sector, by issue", for instance, addressed radio and television programming services, but not BDUs.⁷⁷
- 53 Since the establishment of the TVSP Code and the CCTS' administration of the Code the CCTS has published a year of data about the complaints it received in connection with by the CCTS, The Forum analyzed information published by the CCTS about breaches of the CRTC Codes of Conduct from August 1, 2018 to July 31, 2019. The CCTS' data appear to show 4,029 Code breaches in respect of 2,566 separately identified complainants.⁷⁸
- 54 We then extracted the data related solely complaints about breaches of the TVSP Code.⁷⁹ The CCTS' data, summarized below with respect to total numbers of complaints only, show 638 complaints about the Code: Table 2.

Table 2 Breaches of the Television Service Provider Code in 2018/19

Breaches involving the Television Service Provider Code	
Companies	Total complaints
Bell Canada	308
Cogeco Connexion	98
Shaw Communications	49
Vidéotron Itée/Videotron Ltd	49
Rogers Communications	44
TELUS Communications Inc.	33
Bell Fibe	17
Bell Aliant	11
Bell ExpressVu	11
Eastlink	10
Bell MTS	4
Shaw Direct (Star Choice Television Network Incorporated)	3
Delta Cable	1
Total	638

- 55 We then considered total breaches of the TVSP Code's provisions. The CCTS data show that thirteen separate companies apparently breached the TVSP in 904 ways, with the

⁷⁷ CRTC, *Communications Monitoring Report 2008*, at 20 (Table 2.3.1).

⁷⁸ The CCTS' data breach data refer to complaints with identification numbers that skip numbers (ie, CCTS-000279A is immediately followed by CCTS-000290A). We derived the figure of 2,566 complaints by identifying each unique complaint number; we derived the figure of 4,029 breaches by adding the number of issues identified by the CCTS for each complaint.

⁷⁹ The CCTS dataset includes a column showing the specific CRTC Code of Conduct to which a breach or complaint is related; we chose the TVSP Code-related complaints.

Bell group of companies apparently having committed the most breaches (53.9% of all complaints): Table 3.

Table 3 Breaches of the TVSP in 2018/19, by ownership group

Ownership group	Issues raised	As % of all TVSP complaints
Bell Canada	423	46.8%
Bell Fibe	24	2.7%
Bell Aliant	19	2.1%
Bell ExpressVu	16	1.8%
Bell MTS	5	0.6%
Bell	487	53.9%
Cogeco Connexion	135	14.9%
Shaw Communications	83	9.2%
Shaw Direct (Star Choice Television Network Inc.)	3	0.3%
Shaw	86	9.5%
Rogers Communications	68	7.5%
Vidéotron Itée/Videotron Ltd	61	6.7%
TELUS Communications Inc.	48	5.3%
Eastlink	17	1.9%
Delta Cable	2	0.2%
Total - 13 companies (7 ownership groups)	904	100.0%

56 We then summarized the alleged breaches, by section of the TVSP code. In 2018/19 54 sections of the code were breached:

Table 4 Breaches of the TVSP in 2018/19, by section

TVSP provision	Area	Total breaches
VII(4)c	Written agreements – monthly charges	306
XI(1)a	Price of individual channels	78
VII(4)h(i)	Early cancellation fees	64
XI(1)b	Changes of channel packaging	54
VII(4)a	Written agreements – list of channels	45
VII(4)b	Written agreements – rates of channels	40
VII(4)f	Written agreements – commitment period	24
VII(4)e	Written agreements – monthly equipment charge	23
XII(1)	Service calls – time frame	22
X(1)	Changes to channels/packages by customer	20
XIV(1)c	Written agreements – disconnection notice	18
VII(1)a	Written agreement – provided immediately after acceptance	17
II(1)	Offers – clearly explained	15
VII(1)	Written agreements – permanent copy	13
VII(4)d	Written agreement –additional costs itemized separately	13
XIV(1)a	Disconnection - grounds	13
VI(1)	Written agreements and related documents – clear and easy to	12

TVSP provision	Area	Total breaches
	understand	
XIV(1)b	Disconnection - timing	12
II(2)a	Offers – explanation of time limited discounts	11
II(2)c	Offers – minimum commitment period	11
VI(2)	Written agreements – additional charges clearly set out	9
VII(1)b	Written agreements – to be sent within 15 days	9
II(2)b	Offers – price at end of time limited period	7
IX(1)	Critical Information Summary - required	7
VII(2)	Written agreements – permanent copy	6
XII(2)	Service calls – potential charges	5
VII(4)k	Written agreements - amendments	4
X(2)b	Written agreements – amendment – written summary offer	4
I(1)	Communication – plain language	3
VII(4)g	Written agreement – renewal terms	3
VII(4)l	Written agreement – security deposit	3
XIV(1)f	Disconnection – cost to reconnect	3
IX(3)b	Critical Information Summary – rates for channels/packages	2
VII(4)m(iii)	Written agreement - warranty	2
VII(5)	Written agreement – 90 days’ notice	2
X(2)a	Request for change – impact on rates	2
XI(1)c	Services – notice to change equipment price	2
XI(3)	Services – options if customer wants to unsubscribe	2
XII(3)	Service calls – cancellations and costs	2
XIV(1)e	Disconnection – collection agency	2
IV(1)	Written agreements – clear and easy	1
IX(3)a	Critical Information Summary – list of channels	1
IX(3)d	Critical Information Summary – additional costs, separated	1
IX(3)f	Critical Information Summary – commitment period	1
IX(4)c	Critical Information Summary – clear and concise	1
V(1)	Written agreement – other language	1
VII(4)h(ii)	Written agreements – early cancellation fee	1
VII(4)h(iii)	Written agreements – retail price of equipment	1
VII(4)i(ii)	Written agreements – payment for equipment	1
VII(4)i(iii)	Written agreements – equipment – options to buy	1
VII(4)m(ii)	Written agreements – channels/packages – how to remove/add	1
VIII(3)	Trial period – cancellation without penalty	1
XI(2)	Notice of change – clear explanation	1
XIV(1)d	Disconnection – when can occur	1
Total breaches, 54 sections:		904

57 Next, we grouped the breaches by common element. Of the 904 breaches of the TVSP in 2018/19, 560 (61.9%) related to the written agreements provisions of the TVSP; of

these 560 breaches more than half (306 or 54.6% of the 560 breaches) related to monthly charges: Table 5.

Table 5 Breaches of the TVSP, by common element

TVSP provision	Area	Total breaches
4 XI(1)b	Changes of channel packaging	54
10 X(1)	Changes to channels/packages by customer	20
29 I(1)	Communication – plain language	3
43 IX(3)d	Critical Information Summary – additional costs, separated	1
45 IX(4)c	Critical Information Summary – clear and concise	1
44 IX(3)f	Critical Information Summary – commitment period	1
42 IX(3)a	Critical Information Summary – list of channels	1
33 IX(3)b	Critical Information Summary – rates for channels/packages	2
24 IX(1)	Critical Information Summary - required	7
40 XIV(1)e	Disconnection – collection agency	2
32 XIV(1)f	Disconnection – cost to reconnect	3
16 XIV(1)a	Disconnection - grounds	13
18 XIV(1)b	Disconnection - timing	12
54 XIV(1)d	Disconnection – when can occur	1
3 VII(4)h(i)	Early cancellation fees	64
53 XI(2)	Notice of change – clear explanation	1
13 II(1)	Offers – clearly explained	15
19 II(2)a	Offers – explanation of time limited discounts	11
20 II(2)c	Offers – minimum commitment period	11
23 II(2)b	Offers – price at end of time limited period	7
2 XI(1)a	Price of individual channels	78
36 X(2)a	Request for change – impact on rates	2
39 XII(3)	Service calls – cancellations and costs	2
26 XII(2)	Service calls – potential charges	5
9 XII(1)	Service calls – time frame	22
37 XI(1)c	Services – notice to change equipment price	2
38 XI(3)	Services – options if customer wants to unsubscribe	2
52 VIII(3)	Trial period – cancellation without penalty	1
35 VII(5)	Written agreement – 90 days' notice	2
46 V(1)	Written agreement – other language	1
12 VII(1)a	Written agreement – provided immediately after acceptance	17

TVSP provision	Area	Total breaches
30 VII(4)g	Written agreement – renewal terms	3
31 VII(4)l	Written agreement – security deposit	3
34 VII(4)m(iii)	Written agreement - warranty	2
15 VII(4)d	Written agreement –additional costs itemized separately	13
50 VII(4)i(iii)	Written agreements – equipment – options to buy	1
51 VII(4)m(ii)	Written agreements – channels/packages – how to remove/add	1
21 VI(2)	Written agreements – additional charges clearly set out	9
28 X(2)b	Written agreements – amendment – written summary offer	4
27 VII(4)k	Written agreements - amendments	4
41 IV(1)	Written agreements – clear and easy	1
7 VII(4)f	Written agreements – commitment period	24
11 XIV(1)c	Written agreements – disconnection notice	18
47 VII(4)h(ii)	Written agreements – early cancellation fee	1
5 VII(4)a	Written agreements – list of channels	45
1 VII(4)c	Written agreements – monthly charges	306
8 VII(4)e	Written agreements – monthly equipment charge	23
49 VII(4)i(ii)	Written agreements – payment for equipment	1
14 VII(1)	Written agreements – permanent copy	13
25 VII(2)	Written agreements – permanent copy	6
6 VII(4)b	Written agreements – rates of channels	40
48 VII(4)h(iii)	Written agreements – retail price of equipment	1
22 VII(1)b	Written agreements – to be sent within 15 days	9
17 VI(1)	Written agreements and related documents – clear and easy to understand	12
Subtotal – breaches related to written agreement		560 (61.9% of total)
Total		904

- 58 The Forum submits that the data provided by the CCTS about breaches of the TVSP Code support the argument that at least some BDU subscribers are having problems with respect to BDUs’ billing practices, and that the CCTS agrees that BDUs were in breach of the TVSP Code. Requiring BDUs to provide paper bills until specifically asked to provide e-bills could enable subscribers to quickly identify problems they are having, letting them contact their BDUs more quickly to resolve these problems without having to involve CCTS.

59 The Forum notes that there is little or no evidence to show whether the breaches identified by the CCTS' data are complete and reflect all BDU subscribers who/that believe they have been subjected to a breach or breaches of TVSP Code. An unknown number of BDU subscribers may not know about the CCTS and the Code, may not know how to file a complaint with the CCTS, or simply may be unable to do so for a variety of personal reasons.

60 Data are available, however, which show that Canadians are concerned about the loss of their privacy and that a significant number do not believe that private companies that collect information about them will protect that information.

C. Canadians' views

61 In February 2019 a national survey of Canadians aged 16 years and older conducted for the Office of the Privacy Commissioner of Canada found that in February 2012 most Canadians are concerned about protecting their privacy, and that this concern has increased since 2012:

- “the vast majority (92%) of Canadians expressed some concern about the protection of their privacy”, with 37% being extremely concerned, 35% somewhat concerned and 20% concerned,⁸¹ and
- “Since 2012, the proportion of Canadians who rated their level of concern as extreme has increased 12 percentage points (from 25% to 37% ...), and “The likelihood of being extremely concerned about protecting personal privacy increased with age and was higher among Canadians aged 35 and older”⁸²

62 Two out of three Canadians thought they understood their privacy rights and knew how to protect those rights:

- two out of three rated their knowledge of their privacy rights as good (50%) or very good (14%), and their knowledge of how to protect their privacy rights as good (46%) or very good (11%)

63 Despite this knowledge, one in three Canadians (34%) did not feel confident they had “enough information to know how new technologies might affect [their] personal privacy”.

⁸⁰ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

⁸¹ *Ibid.*

⁸² *Ibid.*

64 More to the point, almost half (45%) disagreed that “business in general respect [their] privacy rights”, and three out of four Canadians (76%) “refused to provide an organization or business with their personal information.”⁸³

65 The Forum’s responses to the CRTC’s four issues take this information into account.

II. The CRTC’s issues

A. Do Canadians or certain groups of Canadians need to receive paper bills?

66 Yes. Individual BDU subscribers and certain groups of Canadians need to receive paper bills for a variety of reasons.

67 Some Canadians – particularly older or less well-educated people – are unfamiliar with today’s technology, and fear (among other things) that they will be unable to defend themselves against phishing attacks, malware, botnets, identity theft, and online scams. While Statistics Canada found in 2016 that just 15% of seniors aged 65-69 did not use the Internet, it also found that 38% of those aged 75-79 years and 59.2% of those aged 80 years or older did not use it.⁸⁴ The February 2019 survey for the Privacy Commissioner of Canada found that the likelihood of not installing or uninstalling applications was indeed higher for the young and the well-educated.⁸⁵

68 Concerns about potential breaches of privacy and theft of personal information are well-founded. In the fall of 2019 the Office of the Privacy Commissioner of Canada reported that it received 680 reports of data breaches by small, medium-sized and large business from November 2018 to the end of October 2019.⁸⁶ The breaches affected more than 28 million Canadians.⁸⁷ The Office made recommendations for individuals, as well as businesses. Rogers announced in February 2020 that one of its databases containing customer information including addresses, account numbers, email addresses and telephone numbers was breached, when

⁸³ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

⁸⁴ J. Davidson & C. Schimmele, Statistics Canada, *Evolving Internet Use Among Canadian Seniors* (Release date: 10 July 2019), 11F0019M, No. 427, <https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019015-eng.htm>: “By 2016, 85.0% of seniors aged 65 to 69 were Internet users, compared with 62.0% of seniors aged 75 to 79 and 40.8% of seniors aged 80 or older.”

⁸⁵ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

⁸⁶ OPC blogger, “A full year of mandatory data breach reporting: What we’ve learned and what businesses need to know”, (30 October 2019), <https://www.priv.gc.ca/en/blog/20191031/>.

⁸⁷ *Ibid.*

... one of its external service providers had “inadvertently made information available online that provided access to a database managed by that service provider.”

- 69 Rogers subsequently warned its customers about the breach, offered them a “complimentary Transunion credit monitoring subscription, and added a block to its mobile subscribers’ account to “prevent their number from being transferred to another carrier without their authorisation.” It added that “All impacted customers should look out for targeting phishing scams.”⁸⁸
- 70 In light of such announcements it is perhaps unsurprising that in February 2019 nearly all Canadians – 90% - said they were “at least somewhat concerned about people using their online information to attempt to steal their identity”, and “more than half ... are decidedly concerned”.⁸⁹ Canadians were also concerned about companies’ use of their personal information: in “[t]hinking about the information available about [them] online”, four out of five Canadians (88%) were concerned (51%) or somewhat concerned (37%) about “companies or organizations using information available about [them] online to make decisions about [them], such as for a job, an insurance claim or health coverage”.⁹⁰ In this case, “those under 35 were more likely to express concern about companies or organizations using their online personal information to make decisions about them”.⁹¹
- 71 But there are other reasons for wanting paper bills. Of the 51 interventions filed by 9 am on 3 July 2020, 50 supported the idea of being able to receive paper bills (see

⁸⁸ Meera Narendra, “#Privacy: Rogers Communications discloses data breach”, 20 March 2020, <https://gdpr.report/news/2020/03/20/privacy-rogers-communications-discloses-data-breach/#:~:text=The%20Canadian%20telecom%20provider%20has,breach%20exposing%20their%20personal%20data.&text=Rogers%20has%20begun%20notifying%20customers,complimentary%20Transunion%20credit%20monitoring%20subscription>.

⁸⁹ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

⁹⁰ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

⁹¹ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

72 Appendix 1) citing (among many other factors)

- Lack of ‘tech savviness’
- Lack of computer equipment and/or Internet
- Challenges from poor eyesight
- Likelihood that senior citizens may miss paying their bills if they are electronic only and have their credit ratings impaired
- Opposition to the transfer of BDU costs to individual BDUs (who would have to print their own bills) and
- Desire to monitor accuracy of BDU billing.

73 It should also be pointed out that online-only billing can also backfire for BDU subscribers, who may need printed bills when their communications services fail. The Forum is aware of one individual’s recent case, involving the loss of all communications services – TV, Internet and telephone. The subscriber contacted their BDU, and although they provided their name, telephone number and account holder name, were informed by the BDU’s representative that the account holder was not in the BDU’s system. The representative asked for the subscriber’s last few billing amounts – which they were unable to provide because they could not access their online invoices. The representative told the subscriber that their service would resume some time in the future, and ended the call. As this subscriber wrote (the Forum), this is “what happens when you don’t have a paper bill!”

74 Shifting to electronic billing may, however, not only save BDUs the cost of printing, but benefit companies by giving them more information about their subscribers and hence more revenue opportunities. In a sector where the walls between business lines are disappearing or have disappeared, a company that offers more than one type of communication service to its subscribers may benefit from more information about those subscribers by learning more about their preferences and using that information to upsell their subscribers: “Data is [sic] now a resource that companies use to be more productive and to develop better products and services”⁹²

75 The Forum notes that unless BDUs are required to provide paper bills,

- Households without Internet access in their area will be disadvantaged because they will be unable to receive BDU bills – forcing them to negotiate with their BDUs that may or may not arrange alternatives
- Those living in areas with Internet access but who do not have computers would, if they only receive ebills, have to travel to a location where they can access the bills electronically – costing them time and money

⁹² Innovation, Science and Economic Development Canada, “Canada's Digital Charter: Trust in a digital world” https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html.

- Households whose income does not allow extensive Internet use will be disadvantaged if their use of the e-billing system (or online searches for information about their e-bills) results in additional Internet fees
- Households without printers, printer ink and paper will be either required to ask (and perhaps pay) BDUs for printed copies of past bills⁹³ or to buy a printer, ink and paper to be able to print the bills they may previously have received in the mail – again disadvantaging low-income households
- Those who pay the BDU bills but cannot easily read or access ebills will be disadvantaged,
- BDUs may be able to ‘upsell’ their subscribers more easily, and
- Those who simply do not want to conduct their banking online will be forced either to change service providers or, if all providers discontinue paper billing, may be forced to disconnect from the BDU sector altogether.

76 The Forum also notes that when the Federal Government began to consult about proposals to modernize Canada’s Personal Information Protection and Electronic Documents Act it said it wanted to respect individuals by giving them “meaningful control”:

The Government is considering how best to modernize its private-sector policy and regulatory framework in order to protect privacy and support innovation and prosperity. In short, the goal is to respect individuals and their privacy by providing them with meaningful control without creating onerous or redundant restrictions for business; enable responsible innovation on the part of organizations; and ensure an enhanced, reasoned enforcement model.⁹⁴

77 It seems incongruous to the Forum that the Commission, while giving BDUs themselves the choice to provide or not provide a specific billing format, would force BDU subscribers to accept a billing format they do not want, and one that imposes costs on the subscribers: is this not the opposite of providing individuals with meaningful control?

B. Is CRTC intervention appropriate and warranted with respect to BDU billing practices?

78 The Forum submits that intervention is warranted with respect to BDU billing practices. First and foremost, as Members of Parliament and the CRTC have each noted, companies’ voluntary commitments are meaningless: in 2014 the Parliamentary Secretary to the Minister of Industry said their government had given “the industry the opportunity to eliminate these fees voluntarily, but it did not”;⁹⁵ in 2020 the CRTC

⁹³ Rogers charges \$15 to BDU subscribers requesting reprints of their bills.

⁹⁴ Innovation, Science and Economic Development Canada, “Strengthening Privacy for the Digital Age: Proposals to modernize the Personal Information Protection and Electronic Documents Act”, https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00107.html.

⁹⁵ Hon. Mike Lake (Parliamentary Secretary to the Minister of Industry, CPC), Edited Hansard (Ottawa, 24 November 2014), No. 147, 41st Parl., 2nd Sess.

wrote that a verbal commitment about billing practices without a subsequent CRTC determination or regulation is meaningless.⁹⁶ If BDU subscribers' rights to choice and privacy are to be respected, action must be taken beyond requests that BDUs serve their subscribers' interests – the asymmetrical nature of the relationship between a few extremely large BDUs and millions of individual BDU subscribers makes it unlikely that the decisions of individual subscribers will substantively change BDUs' business practices.

- 79 Second, the current absence of any requirement to give subscribers choice over billing format clearly enables BDUs to reduce costs by eliminating paper billing, and to raise profits. Shifting to e-billing reduces such companies' billing expenses by reducing their use of paper, printing, packaging and postal service. Companies that monitor their expenses will be highly motivated to use that information to argue that CRTC intervention that maintains such costs is inappropriate and unwarranted. They may not disclose that even if their income simply remains steady, reducing expenses by eliminating paper billing raises profits. Even BDU industry associations may not know the impact of paper billing on their own sector:

Joyce Bateman Winnipeg South Centre, MB: How much are those companies making? There is a change now; they can't charge for paper bills. What is the impact on their bottom line?

Director, Regulatory Affairs, Canadian Wireless Telecommunications Association: I don't know. We don't talk about business issues.

Joyce Bateman Winnipeg South Centre, MB: What do you do? I'm curious. I am a chartered accountant and I am always looking for value for money and I'm curious about what services you provide. If you were serving the industry, you would probably have done some kind of calculation as to impact.

Director, Regulatory Affairs, Canadian Wireless Telecommunications Association: If we did, we would have to do it separately. We can't go to our members and ask them all to tell us how much they make from something, because we are not allowed to talk about what they make.

...⁹⁷

- 80 Third, the continuing absence of CRTC intervention will allow any BDU to set and change its own approach to electronic or paper billing. CRTC intervention will provide a standardized approach for all BDUs and ensure that all BDU subscribers may choose the method of being invoiced that best serves their needs. This standardized approach will

⁹⁶ *Public Interest Advocacy Centre and National Pensioners Federation – Application regarding paper billing by Koodo Mobile*, Telecom Decision CRTC 2020-80, <https://crtc.gc.ca/eng/archive/2020/2020-80.htm>, at para. 29. The challenge in broadcasting is that it is unclear whether the CRTC has jurisdiction to issue either determinations or regulations about BDUs' billing formats.

⁹⁷ STANDING COMMITTEE ON INDUSTRY, SCIENCE AND TECHNOLOGY, House of Commons, *Evidence*, 41st Parl., 2nd Sess., No. 029 (18 November 2014).

help to clarify the complex offers that now exist for BDU subscribers thanks to bundled television distribution and telecommunications services, and promote certainty for BDU subscribers. In February 2019 the survey conducted for the Privacy Commissioner of Canada found that “The majority of Canadians feel they have little to no control over how their personal information is being used by either companies (67%) or by government (61%).” Approximately three in 10 believe they have no control at all: 27% said this about companies and 31% about government.”⁹⁸

- 81 The February 2019 survey also found that this view changed if some of kind of enforcement mechanism existed to address privacy breaches:

Half or more of Canadians would probably or definitely be more willing to do business with a company that collects their personal information if any of the measures tested were in place. Canadians were most likely to be influenced by financial penalties, with 40% saying this would definitely increase their willingness to do business with a company. In contrast, fewer felt this way about easy to understand privacy practices (26%), a seal of approval (22%), and a menu of options (19%). ...⁹⁹

- 82 The survey found that more than two thirds of Canadians (71%) said they probably or definitely would be willing to do business if “Under Canadian law, the company would face strict financial penalties, such as large fines, for misusing [their] personal information.”¹⁰⁰

- 83 As for the degree to which the CRTC’s intervention is appropriate, the Forum considers that the law on this point is at least unsettled if not unclear. The *Broadcasting Act* appears to suggest that the CRTC can address BDUs’ business practices, as section 5(2)(g) says that regulation and supervision should be “sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.” The *Act* does not, however, clearly state that the CRTC must consider broadcasters’ billing practices in the broadcasting policy for Canada, meaning that the CRTC does not have explicit authority to set conditions of licence to that effect for BDU licensees. Nor does the *Act* give the CRTC explicit authority to make regulations about paper or e-billing.

- 84 The introduction of the paper-billing prohibition in the *Broadcasting Act* without any clarification of Canada’s broadcasting policy in section 3, the CRTC’s licensing authority in section 9 and its regulation-making authority in section 10 simply makes it uncertain as to whether the CRTC is able as a matter of law to require paper billing or to prohibit e-billing.

⁹⁸ Phoenix Strategic Perspectives Inc., *2018-19 Survey of Canadians on Privacy: Final Report*, Prepared for the Office of the Privacy Commissioner of Canada, Contract number: 2R008-180131-001_CY (11 March 2019), https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2019/por_2019_ca.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

85 That said, the February 2019 survey for the Privacy Commissioner of Canada determined that two out of three Canadians said the government should be responsible for helping them to protect their personal information, because the government represents their interests: approximately two-thirds (67%) said government should be responsible, whereas one-quarter (25%) said companies. Six percent volunteered that they did not know who should be responsible.¹⁰¹

86 The problem for Canadians is that many may not realize that the *Broadcasting Act* does not give the CRTC explicit authority to regulate BDU bill formats, and also that at least some Members of Parliament may be equally unaware of this fact.

87 The Forum therefore recommends that the CRTC, in its determination in this matter, clearly state its view as to its authority over BDU billing format. This statement will be timely, given the likelihood that the government will seek Parliamentary approval of new broadcasting legislation within the next twelve months.

C. If CRTC intervention is appropriate and warranted, what measures should CRTC impose with respect to BDU paper billing practices?

88 Although the Forum's preference would be for the CRTC to set regulations prohibiting the termination of all paper billing by broadcasters (including BDUs), it is in the Forum's view unclear whether the CRTC has this authority.

89 An alternative to setting regulations would be for the TVSP Code to be amended. Currently section I.1 requires BDUs to communicate with their subscribers "using plain language":

I.1 A television service provider (TVSP) must communicate with a consumer using plain language

90 The Forum proposes that if the CRTC is unable to regulate BDUs' billing practices, this section of the TVSP Code be amended to clarify that BDU subscribers may choose how they are billed:

I.1 (a) A television service provider (TVSP) must communicate with a consumer using plain language.
(b) A TVSP must provide the first bill it sends to the customer by mail.
(c) A TVSP must continue to provide the customer with printed and mailed bills until the customer asks the TVSP to be billed electronically.
(d) A customer who or that has asked to be billed electronically may at any time ask for bills to be sent by mail, and the TVSP must resume sending bills by mail without imposing any additional charges or fees.

¹⁰¹ *ibid.*

(e) A TVSP who is asked by a customer for printed copies of previous bills shall provide such copies and may charge a reasonable fee for this service.

(Italics: proposed change)

- 91 The Forum’s concern with using the TVSP Code to address BDU billing practices is that the CRTC’s legal authority to establish or approve the TVSP Code (and CCTS) remains unclear. The *Broadcasting Act* is silent with respect to the CRTC’s delegation of authority, and it does not specifically empower the Commission either to create organizations such as CCTS, or to require those ‘governed’ by CCTS to abide by specific codes of conduct.
- 92 Moreover, while all telecommunications and BDU service providers are supposed to participate in the CCTS, not all do. While the CCTS advises complainants that it can get non-participating companies to participate,¹⁰² this process may take time, during which BDU subscribers remain subjected to disadvantages. The Forum’s concern is that during this period non-participating BDUs may impose additional costs on subscribers who do not regularly check or do not have e-mail service. The administrative charges set out by Rogers on its website include a \$35 fee for suspending BDU subscribers’ accounts, and a \$19.99 fee for reconnecting residential services after suspension for non-payment.
- 93 It may well be that the CCTS operates legally but separately from the CRTC despite Parliament’s statements in the *Broadcasting Act* that there is to be but one “single independent public authority” responsible for regulating and supervising the Canadian broadcasting system¹⁰³ and that “the Commission shall regulate and supervise all aspects of the Canadian broadcasting system”.¹⁰⁴ A second problem in terms of using the CCTS to deal with billing formats is that its role is to ‘resolve’ complaints about BDUs; and its powers are limited to publicly identifying non-compliant BDUs, expelling BDUs and pursuing civil litigation. The CCTS cannot set actual requirements and cannot revoke BDU licences of non-compliant companies; it can merely expel such companies from its midst: in 2018 the CCTS reported that it had expelled a participating service provider (PSP) when it did not implement a CCTS recommendation “despite numerous contacts over several months”.¹⁰⁵ Even if this process is effective in encouraging compliance – which we do not know, it is time-consuming.

¹⁰² The CCTS itself notes that “For all complaints that fall within our mandate but are about telecommunications service providers (not TV service providers) that do not currently participate in the CCTS, we take the necessary action to have them join the CCTS within 30 days.” CCTS, “Participating Service Providers: Don’t see your provider on this list? We might still be able to help”, <https://www.ctcs-cprst.ca/about-ctcs/participating-service-providers/>.

¹⁰³ S. 3(2), underlining added.

¹⁰⁴ S. 5(1), underlining added.

¹⁰⁵ CCTS, *2018 Compliance Monitoring Report*, <https://www.ctcs-cprst.ca/codes-stats-and-reports/ctcs-reports/2018-compliance-monitoring-report/>.

- 94 The Forum’s concern is that this cobbled-together approach to regulating BDU business practices makes it impossible to meet 21st century objectives for the digital era, as set out in section 10 of *Canada’s Digital Charter* provides for:

10. Strong Enforcement and Real Accountability:

There will be clear, meaningful penalties for violations of the laws and regulations that support these principles¹⁰⁶

- 95 Without such penalties, non-compliance about any new ‘rules’ for paper billing may simply become another cost of doing business, and BDU subscribers will have fewer meaningful choices about their own business decisions – how they pay their bills – than they might otherwise have.

D. To which parties and how should new obligations apply?

- 96 If the CRTC agrees that intervention is both appropriate and warranted and uses the TVSP Code as its tool for this intervention, four separate sets of parties be affected: BDU subscribers, BDUs, CCTS and the Commission.
- 97 Insofar as BDU subscribers and BDUs are concerned, the Forum submits that the CRTC’s key goal must be – somehow – to ensure that subscribers’ choices about billing format are respected. That said, we adamantly oppose the idea that BDUs be permitted require current or potential subscribers to justify their choice – by having to disclose that they lack money to buy a compute or subscribe to the Internet, that they cannot understand how to use the Internet or online banking systems, that they are in some way physically prevented from using online services, or that they simply do not trust the BDU. This requirement requires potential or actual subscribers to breach their own privacy rights. The Forum notes in passing that requiring BDU subscribers to disclose their reasons for choosing one format of bill over another is unfair, if BDUs themselves are not required to disclose to all who ask their expenditures on and associated revenues from their billing practices.
- 98 BDUs subscribers should simply be asked how they would like to receive their paper bills.
- 99 Insofar as BDUs are concerned, the Forum submits that any new requirements should apply to all BDUs, including exempted BDUs. This was the CRTC’s approach in 2009 when it considered accessibility issues:

The Commission considers that alternative format obligations apply to each customer, rather than to each household. Each qualifying customer who requests to receive information to which the obligations apply in an alternative format should be provided with such information in that format, even if another

¹⁰⁶ Innovation, Science and Economic Development Canada, “Canada’s Digital Charter: Trust in a digital world” https://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html.

person in the same household has received the same information in a different format.¹⁰⁷

- 100 The CRTC and CCTS are well placed to determine how to deal with smaller or exempted companies and their membership in the CCTS/
- 101 The CRTC and CCTS will also gain new responsibilities if the TVSP Code is amended as the Forum has suggested. The CCTS should be prepared to provide data about the added sections; the CRTC should report trends in its annual *Communications Monitoring Reports*.

¹⁰⁷ *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy 2009-430 (Ottawa, 21 July 2009), <https://crtc.gc.ca/eng/archive/2009/2009-430.htm#b11>, at para. 59.

Appendix 1 Analysis of interventions received about paper billing (as of 9 am 3 July 2020)



**Analysis of Public Interventions to Broadcasting and
Telecom Notice of Consultation CRTC 2020-81**

3 July 2020

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Description:

This small study was commissioned to review the interventions posted on the CRTC's website with respect to the 2020-81 paper billing proceeding to determine the intervenors' positions on paper billing. Interventions posted by the CRTC as of 9 a.m. EST, July 3, 2020 were reviewed and analyzed.

Altogether 51 interventions were posted by the CRTC by the morning of 3 July 2020. They were numbered 1 through 75 on the CRTC web page, but several numbers were skipped over in the CRTC's numbering process. The analysis, therefore, is of 51 interventions.

CRTC intervention number	Intervenor's stated location	Intervenor Comments
1.	Toronto ON	Attempt by Rogers to cut costs
2.	Edmonton AB	Adds to poor customer service. People who are not tech savvy are less likely to be able to find the CRTC web site, understand the process and intervene.
3.	Mercier, QC	Approves of proposal. Good for the environment.
4.	Oshawa, ON	Issuing and mailing bills is part of the cost of doing business. Not everyone has access to computers.
5.	Edmonton, AB	Wants bill mailed. No other comment.
6.	Toronto, ON	Intervenor works with many seniors who don't have access to computers and printers. Believes many will miss paying if they do not get a bill in the mail.
7.	Whitby, ON	Dropping paper billing is a breach of contract, an unwanted change forced upon them by Rogers.
8.	Calgary, AB	Finds Telus billing department is already a "time vampire". Sees it as worsening of customer service.
10.	Edmonton, AB	Identifies as senior. Paper bill prevents mistakes. There's no need for him to remember a password, how to find the bill online and print it.
11.	Glen Robertson, ON	Intervenor says there will be no environmental savings. People will still print the bill. Sees it as cash grab by provider.
12.	Winnipeg, MB	In hand-written intervention mailed to CRTC, senior says she has no computer, and has friends in similar situations.
13.	Cambridge, ON	Proposal does not respect rights of seniors, disabled, "illiterates" and others.
14.	Calgary AB	Needs mailed bill to ensure she pays on time.
15.	Cobble Hill BC	Concerned about access to computer. Sees proposal as cash grab.
16.	Woodbridge ON	Intervenor writes on behalf of her mother, who is a senior and is not tech-savvy. At least wants the choice to switch to provider who offers paper billing.
20.	St. Catharines ON	e-billing is a problem for the elderly and poor.
31.	Mississauga ON	Problem for seniors, people who can't access computers or have limited computer literacy, and people with vision challenges.

CRTC intervention number	Intervenor's stated location	Intervenor Comments
32.	Vancouver, BC	Telus is already doing this for detailed statements. People with limited access to computers get no real accounting of charges.
37.	Ottawa, ON	Intervenor is a lawyer. Says his email box is already flooded with junk, including offers from BDUs and Telcos that he tries to ignore. An emailed bill would be easy to miss, and failure to make a payment would affect his credit rating.
38.	Edmonton, AB	Intervenor writing for sister, who has "mental disability". She now has an easy-to-follow pattern of getting the bill in the mail, taking it to the bank and paying it on time. Doubts this would be maintained.
39.	McAdam BC	Already has customer service problems with her BDU and ISP. Can never get through to get answers about bill, put on hold for long periods, gets run-around.
40.	Toronto, ON	Canada Post is reliable. Does not see why printing cost should be shifted to him
41.	Oakville, ON	People who accept e-bills should get a break on costs.
43.	Thornhill, ON	Person tries not to be online. Does not want to go online to look for BDU, ISP, Telco bills. Sees proposal as cash grab.
44.	Angus, ON	Has no computer. Rogers has told him to use public library to pay the bill. He does not believe that's safe.
45.	Comox, BC	Tried to talk to Telus about this proposal and spent 25 minutes on hold. Believes there are Internet safety and privacy issues. Says COVID-19 pandemic is already spurring cyber crime.
46.	Grimsby, ON	Already dealing with poor customer service. This is a cash grab.
47.	Toronto, ON	Has no phone, can't afford the technology, no receipt for payment.
50.	Guelph, ON	Present e-bill requires online sign-in to see details of charges. If e-billing is approved, wants Commission to require full details of charges to be included in that bill. Opposes the idea for Internet security reasons.
51.	Calgary	Concerns about access to technology. Says Telus sends out so much marketing material every month that he worries he will miss his bill.
52.	Ariss, ON	Wants a share of the savings from e-bill. Concerned about seniors' access.
53.	Strathmore, AB	Concerned about cyber crime, identity theft. Says Telus went to e-billing during the pandemic, but feels Telus' reasons are no longer valid as Canada Post has been running fairly smoothly.
54.	Beaver Lodge, AB	Rural customer with farm. Has separate accounts with Telus for farm and home. Concerned about ability to keep track of charges, maintain records.
56.	Calgary AB	CNIB Regulatory Affairs. Recommendations:

CRTC intervention number	Intervenor's stated location	Intervenor Comments
		<ol style="list-style-type: none"> 1. Commission address the lack of compliance to W3C standards from telecommunications providers. 2. All websites and mobile applications be made accessible to subscribers with sight loss using any assistive technology they require. 3. Robust user testing by assistive technology users who are blind or partially sighted to ensure CSP websites and mobile applications are accessible – usability cannot be assessed solely by automated testing. 4. Canadians with sight loss be provided with timely information about alternate format billing information. CNIB Foundation recommends that telecommunications providers make this information readily available to Customer Service Agents who deal with inquiries from the public. 5. Information and correspondence from CSPs be written in plain language to help Canadians understand their contract and billing documents.
57.	Toronto ON	Vision-impaired man wants choice. Believes some measures taken, like large-print, have helped, but believes many blind people will have serious difficulty with e-billing.
58.	Winnipeg, MB	Woman with no sight. Able to use scanner and OCR and voice software but believes many visually-impaired people will suffer a negative impact if there is no choice re: e-billing.
59.	Carignan, QC	Wants choice between e-billing and paper bills. Believes it is best management practice.
60.	Vancouver, BC	Has lost considerable amount of data when hard drives fail. Believes hard copy is the best way to keep important financial records.
63.	Toronto, ON	Says "KMP" report shows choice in records is best practice, and that surveys show vast majority of customers want paper bills.
64.	St. Catharines ON	Believes e-billing is not an option for most seniors.
65.	Winnipeg, MB	Believes people should have choice between paper and e=bills, without penalty.
66.	USA (No Address)	"Aurora". Wants choice for reasons related record keeping and computer access.
67.	Toronto ON	Concerned about his mother and others with cognitive issues, and with access issues for seniors.
68.	Ft. Mill, SC, USA	VP Govt. Relations Domtar believes important financial records should be issued on paper. Says this is the preferred choice of 82% of Canadians.

CRTC intervention number	Intervenor's stated location	Intervenor Comments
69.	Toronto, ON	Communication companies should be required to send paper bills. If e-billing is the only option, or if customers opt for e-bills, cost savings should be passed along to them.
70.	Mississauga ON	Believes customers should have choice, and that any savings from e-billing should be passed along to customers.
71.	Peterborough ON	Wants the choice of paper or e-bill.
72.	Toronto ON	Wants choice. Concerned her father will not be able to keep records and pay bill.
73.	Victoria	On behalf of Province of British Columbia. This provincial government has found considerable opposition to the proposal, especially from seniors. Says they are experiencing "sticker shock" at the cost of opting for paper bill.
74.	Montreal QC	Consumer group says paper bills are comprehensible and accessible and opposes e-billing.
75.	Ponoka, AB	Grocery store manager. Does not wish to have to access an online account and log in. Has no printer in his home.
76.	Brampton, ON	Uses "KMP" best practices information to show paper billing is the best way to share and keep records. Three interventions used all or part of this material verbatim.

Results of analysis:

The majority of the analyzed interventions shown on the CRTC's web page were from people living in urban or sub-urban areas: 21 (41%) were from major urban centres with populations of 1 million or more (GTA, Ottawa, Vancouver metropolitan areas) ; 15 (29%) were from smaller cities (in the 500,000-1 million range) communities such as Edmonton, Calgary and Winnipeg), 12 (24%) were from small cities and towns. One was expressly from a rural area. There were no interventions from Atlantic Canada. Some 21 (41%) of intervenors were people who self-identified as senior citizens or were writing on behalf of seniors.

Seven interventions expressed details of dissatisfaction with the customer service departments of broadcasting distribution undertakings, Internet service providers and telcos. Two intervenors talked of long waits on hold and other aspects of bad service, with one calling them a "time vampire." Ten intervenors described the proposal as a method for providers to save the cost of issuing a bill. The phrase a "cash grab" was recurring. A majority of the interventions (32, or 63%) asked for a choice of mailed bill, the chance to switch to a provider that offered mailed bills, or a share in the savings in postage and printing. For instance, Ed Eakin, of Cobble Hill BC (Intervention 15) wrote, "Telus is using the pandemic as an excuse to switch to e-mailing bills for phone service. They tried this before but were turned down. I am sure that they will not be the only one to try this stunt."

More than a third of the intervenors (20, or 39%) cited access to technology and/or computer literacy as a barrier. Seniors and people writing on their behalf were especially concerned about these issues. For example, Lidia Bruzzese of Woodbridge (intervenor 16) wrote, "I am writing on behalf of my mother

Angela Bruzzese. My mom is a Rogers customer and has been informed by Rogers that she will no longer be receiving paper billing. She has now been told that she has to pay /view her bill online. Angela is a senior and is not internet savvy. She does not know how to view her bill or access online accounts. I cannot believe that Rogers is making it more difficult for customers to pay their bills. It would be easy to say that Angela could go to another provider, but they have done the same thing. This action has caused extreme anxiety to my mom and I am sure to others who have relied on receiving a paper bill.”

Other interveners addressed Internet issues specifically. One said she is already trying to stay off the Internet and does not want to be compelled to go online to see their bills. Another made the point that the process for commenting on this proposal required a level of computer access and competence that many people do not have. However, two of the interventions were mailed to the Commission. One was written out by hand by a self-described senior.

Three of the intervenors were concerned their bills would be lost in their email boxes, with one intervenor worrying that the bill would be indistinguishable from the many emailed advertisements and offers he already receives and tries to ignore. Others worried that they would have to go through intricate online processes requiring passwords.

Four intervenors raised the issues of security and privacy. One intervenor said, for example, that they are concerned about online scams targeting Canadians, which have been proliferating during the 2020 COVID-19 pandemic. This intervenor, and others, were also concerned with online privacy.

In summary, one intervener in examined in this study supported the replacement of paper bills with e-mails, while the remainder opposed the idea. A substantial portion of the opposition was from seniors who lacked access to computers and printers, and/or computer literacy.