

TIME FOR AN UPGRADE

DEMANDING CHOICE IN CANADA'S CELL PHONE MARKET



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Executive Summary

Canada's cell phone market is dysfunctional and in desperate need of an overhaul. Government policy has allowed three incumbent service providers—Bell, Telus, and Rogers—to control almost 94% of the cell phone market.¹ Because the growth of alternative options is suppressed through unnecessary switching costs and other hindrances, the incumbents have little incentive to improve their service. As a result of this lack of choice, Canadians experience excessively high telecom costs, restrictive contracts, and disrespectful customer service, particularly as compared to users in other countries. **Decision-makers can help create affordable, world-class telecom services by basing policies on the lived reality of Canadians.**

The Canadian Radio-television and Telecommunications Commission (CRTC) and Industry Canada are the main bodies empowered to repair Canada's broken cell phone market. **Canada will need quick, bold action from both the CRTC and Industry Canada to create incentives for choice and affordability.** In 2013,

the CRTC held a hearing to consider the specific rules it would put in place as part of a national wireless Code of Conduct. At the same time, Industry Canada was beginning to implement its plans for the auction of public spectrum resources. Taken together, the Industry Canada and CRTC decision-making processes mark a valuable opportunity to focus on creating policies that will improve Canada's broken cell phone market.

To facilitate citizen-centred policies, OpenMedia.ca undertook a study of Canadian experiences with cell phone service. In October of 2012, the group launched a community-powered project, reaching out to Canadians across the country through email, social media, and online ads, and drawing on input from digital policy experts. The goals of this study were to learn about the lived reality of Canadians regarding mobile Internet and phone services, to make citizen views and input clear to policymakers, and to provide expertise on how to address these lived realities through smart, effective policy changes.



THREE THEMES OF COMPLAINTS CANADIANS HAVE ABOUT OUR CELL PHONE MARKET





Key Findings

Between October 17, 2012 and February 15, 2013, 2,859 Canadians visited OpenMedia.ca's website to submit their "cell phone horror stories." Overall, respondents expressed frustration that Canadian wireless services are lagging behind other industrialized nations, both in terms of quality and price, even prompting some customers to take their business across the border and pay the fees for using an international service provider in Canada. The high level of frustration was clear from the energy many Canadians put into sharing their stories – one respondent even submitted a story that was fourteen pages long.² **A clear central issue emerges from these citizen stories: Canadians feel mistreated by cell phone providers who put excessive profits ahead of quality service.**

Beyond the central issue of mistreatment, Canadians identified twelve specific problems in their stories. Openmedia.ca's analysis categorized these twelve specific problems into three major themes: **Disrespectful Customer Service**, **Restrictive Contracts**, and **Price-Gouging**.

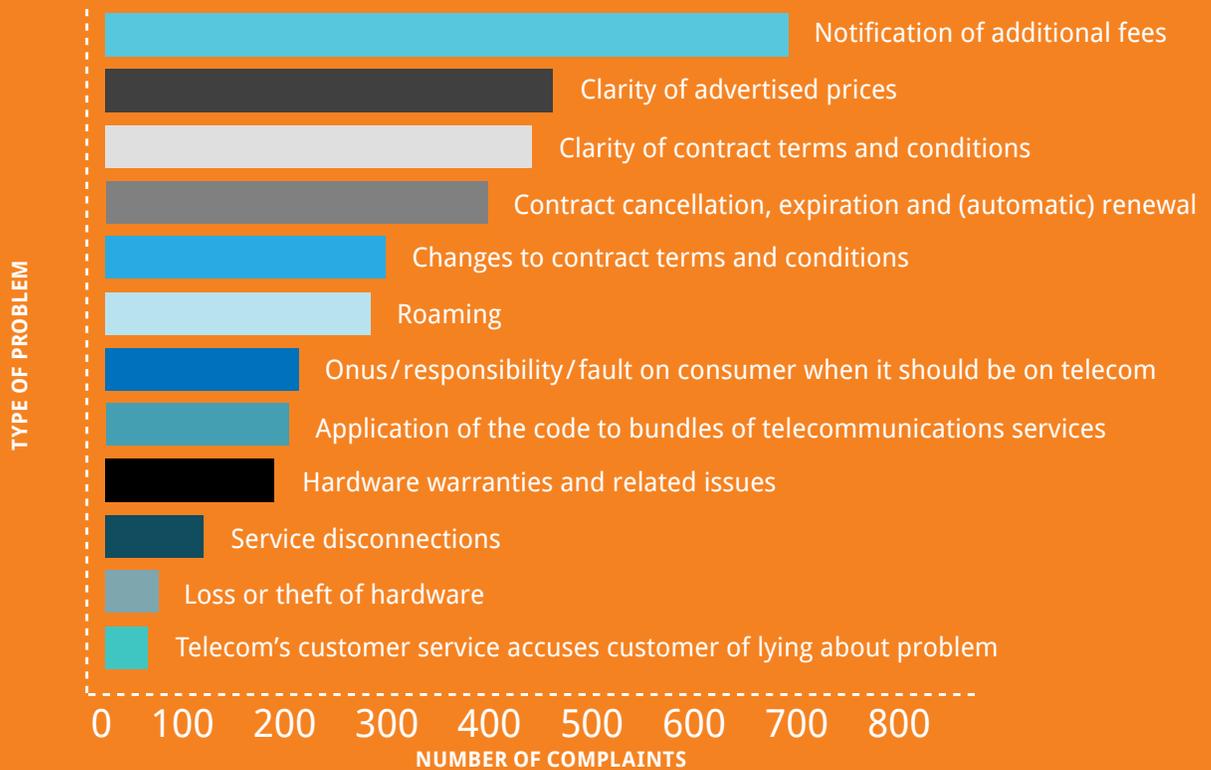
Stories that fell under the **Disrespectful Customer Service** theme underscored how customers were sacrificed in the single-minded pursuit of service providers' bottom line. One respondent shared the story of her son, who has Asperger's Disorder and was persuaded by a telecom

sales rep to sign a three year contract he couldn't possibly afford. Despite explaining that her son "didn't understand what he was signing and that he wasn't capable of understanding the consequences of the contract" the service provider refused to let him out of his contract, and forwarded the debt to a collection agency.³ Other citizens reported being treated poorly by sales representatives, often being repeatedly disconnected during a conversation, having to argue to correct billing errors, and in one case even being told to "shut up and pay the damn bill!"

Those stories falling under the **Restrictive Contracts** theme focused on the unequal relationship promoted by contracts, with the customer being locked in while the service provider "had no binding commitment to actually provide me with usable services during that time".⁵

A CLEAR CENTRAL ISSUE EMERGES FROM THESE CITIZEN STORIES: CANADIANS FEEL MISTREATED BY CELL PHONE PROVIDERS WHO PUT EXCESSIVE PROFITS AHEAD OF QUALITY SERVICE

Fig. 1: Canadians' Twelve Key Problems With Our Cell Phone Market



Similarly, these contracts were seen as excessively long, with many citizens commenting that “three-year contracts are appalling”⁶ and out of step with wireless options in many other countries.

Citizen stories falling under the **Price-Gouging** theme noted that, “[n]o matter how comprehensive your monthly plan is, it seems there’s always something you do that is not covered by the plan and that costs you an arm and a leg”.⁷ They also commented that “Canada is allowing greedy telecoms to kill innovative technology”, as some of the latest apps

being developed in other countries would cause customers to incur excessive charges in Canada.⁸

Canadians were clear that they expect policymakers to step in and empower customers to free themselves from this kind of poor service and the restrictions imposed by incumbent wireless providers. A full understanding of the lived realities of Canadians, as provided by the OpenMedia.ca study, is the first step to addressing the problems of a market dominated by powerful incumbents.



Recommendations

Drawing on the detailed stories that citizens took considerable time to submit to OpenMedia.ca, this report establishes four main priorities for improvements to our cell phone market. Each of the priority areas has corresponding policy recommendations listed below and laid out in more detail at the end of this report.

1. Canadians want real choice.

This was noted as a priority in 35.26% of citizen stories. These respondents complained that the lack of many independent companies providing alternative options meant that there is little choice other than to accept the poor service offered by the incumbents. Policymakers can address this desire for real choice by adopting spectrum fairness policies, providing wholesale access to the mobile marketplace, ensuring wireless neutrality, unlocking hardware, and empowering Canadians to avoid restrictive three-year contracts.

2. Canadians want reliable and respectful service.

This was a priority in a massive 63.45% of citizen stories. These respondents complained of receiving poor service or being treated disrespectfully by service

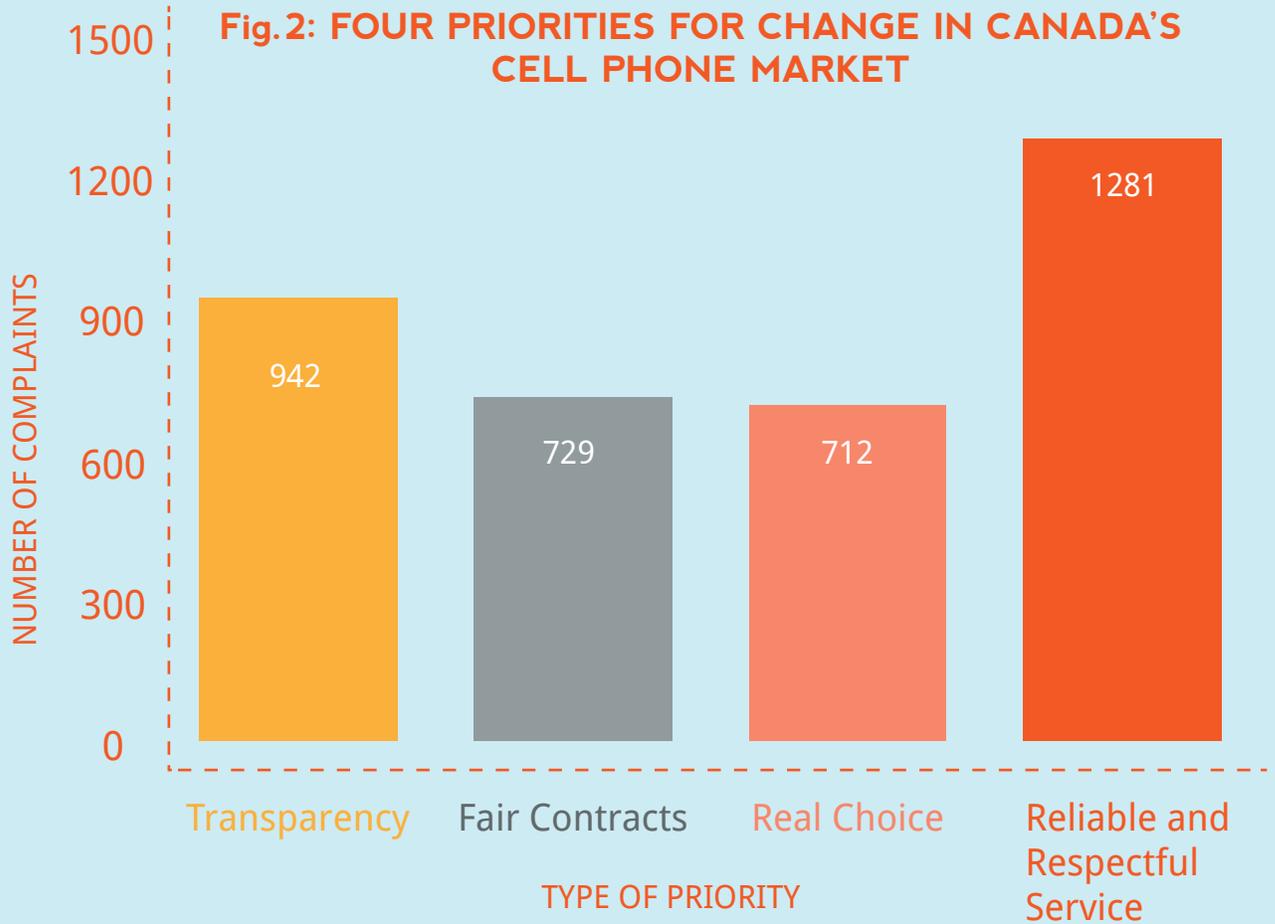
providers, and having little recourse or alternative options. Policymakers can address these problems by facilitating open roaming, protecting against punitive disconnections, suspending service charges when hardware malfunctions, and empowering citizens to choose the best service for them.

3. Canadians want fair contracts.

This was a priority for 36.11% of citizens who submitted stories. For many respondents, contracts are too long in duration, difficult to terminate, and create an unequal relationship between the customer and the service provider. Policymakers can address contract fairness by mandating consensual changes to contracts; transparency in extension, cancellation, expiration of contracts; and the early notification of additional fees.

4. Canadians want transparency.

This was a priority for 46.66% of citizens who submitted stories. These respondents complained of having insufficient knowledge about their services to make informed decisions, or being misinformed or misled by service providers. The report recommends addressing these problems by providing



greater clarity in contracts, clarity of advertised prices, and clarity in bundled services.

Policymakers in a variety of positions need to take action if Canada is to create a level playing-field that will empower citizens. This report is an effort to ensure that recommendations for the improvement

of our broken cell phone market are based in the lived reality of Canadians, that they empower choice and innovation, and that they safeguard citizens against unnecessary price-gouging.



Background: Canada's Dysfunctional Cell phone Market

Insufficient Choice

Mobile connectivity in Canada is increasingly seen as a basic necessity for participation in the economy and society. From job-seeking, to keeping in touch with friends and family, to running a business: high-quality wireless services are an essential part of everyday life.⁹ Citizens the world over are increasingly going 'wireless only', giving up landlines in favour of mobile devices.¹⁰

However, Canada lags behind other countries like the U.S. in the shift from landlines to cell phones, and is actually growing in fixed line subscriptions¹¹ while faring extremely poorly when measured in terms of mobile subscriptions per 100 inhabitants.¹² In addition, cell phones are increasingly important as a means of accessing the Internet, and in Canada the high cost of handsets and data plans sharply limits this point of access.¹³

According to the 2011 CRTC Communications Monitoring Report, allowing new entrants into the market increases the number of wireless subscribers, while the average revenue per subscriber decreases as prices become more competitive.¹⁴ These beneficial effects of new market entrants suggest that more choice both

stimulates the economy and discourages customer price-gouging.

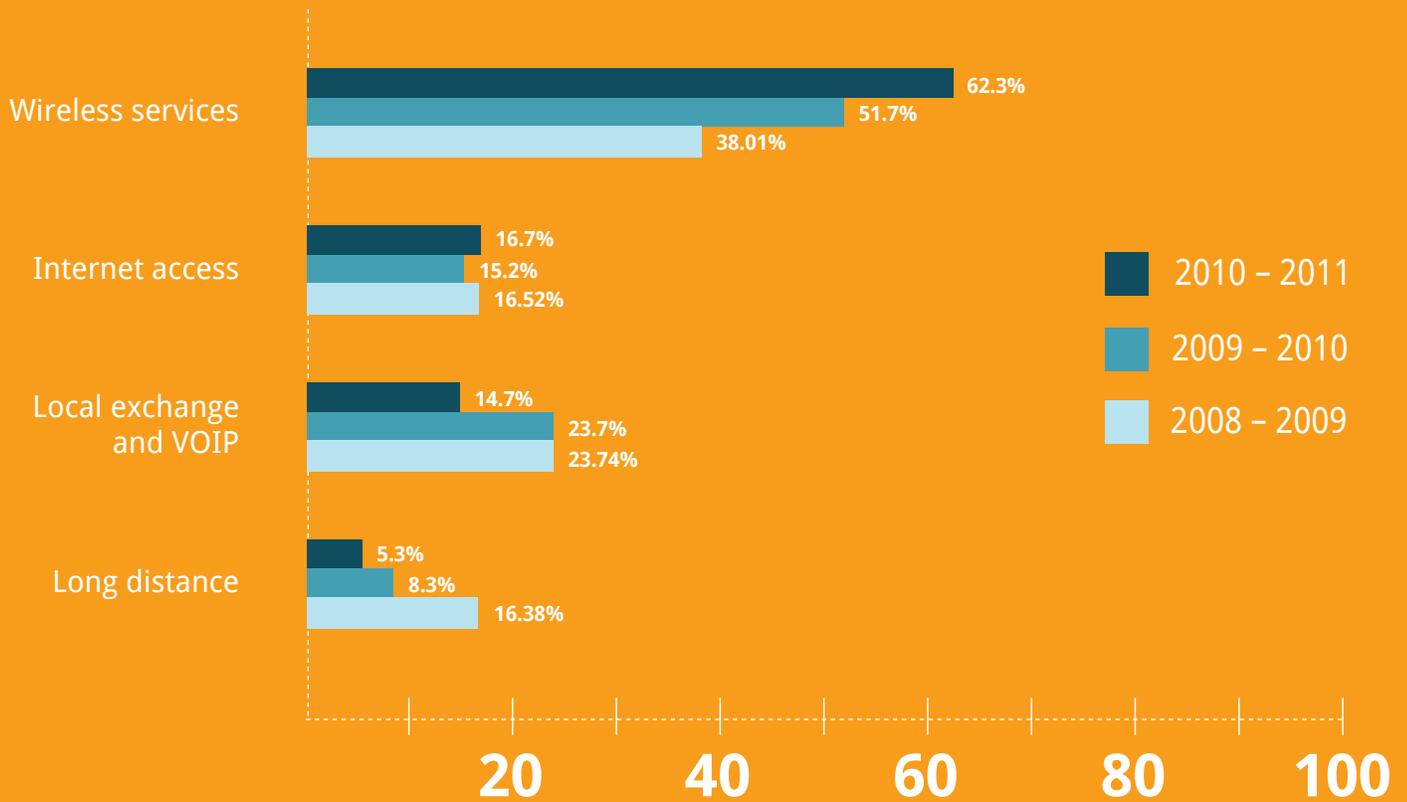
There is clear and growing dissatisfaction among citizens with the general state of Canada's mobile service market. The Commissioner for Complaints for Telecommunications Services (CCTS) noted a significant increase in the proportion of complaints related to wireless services since its first annual report; from 31% in 2007 – 2008, up to 62% in 2010 – 2011.¹⁵

As this study illustrates, and previous far-reaching citizen engagement efforts have shown, Canadians are encountering price-gouging, restrictive contracts, and disrespectful customer service, and have been complaining about these practices for years.¹⁶ This increase in telecom complaints is unlikely to change so long as three incumbent service providers—Rogers, Bell, and Telus—have a dominant share of the market.

Canadians have few alternative options because affordable independent cell phone providers cannot effectively reach new customers on a playing-field tilted in favour of these three incumbents. Government policy has



Fig. 3: PROPORTION OF TELECOM COMPLAINTS BY TYPE



*Source: CCTS annual report 2010-2011 statistics

allowed the incumbents to entrench and take advantage of their position by acquiring nearly all the wireless spectrum –the infrastructure essential to reaching Canadian customers.¹⁷ Rather than providing a level playing-field and effective safeguards for consumers, this allows just three companies to essentially regulate the mobile market.

There is a serious lack of choice for Canadians, and these incumbents have little incentive to innovate or improve their rates and services, which in turn prevents Canadians from fully realizing the potential benefits of cellular technology. The dysfunctional cell phone market has resulted in poor service, punitively high prices, and acts as a dead weight on the Canadian economy.



Opportunities for Better Service

Wireless spectrum is the digital public infrastructure essential for mobile operators to connect their customers with wireless services. Spectrum is allocated in different frequency bands and Industry Canada is responsible for governing its use. In 2008, Industry Canada reserved a set amount in the AWS spectrum auction for new entrants, calling it the ‘the new entrant set-aside’. This permitted entrants such as Globalive (WIND Mobile) and David A/V (Mobilicity) to successfully enter the wireless marketplace.¹⁸

Unfortunately, Rogers, one of Canada’s largest incumbent telecom companies, recently made arrangements to obtain a portion of AWS set aside spectrum from Shaw Communications. This arrangement defeats the original purpose of the ‘set-aside’ by giving more power to incumbents, further restricting independents, and therefore limiting choice for Canadians. OpenMedia.ca along with experts from public interest organizations and tens of thousands of Canadians through the DemandChoice.ca online campaign¹⁹ have called on Industry Canada to stop Rogers from obtaining this spectrum, and to assure Canadians that the government is “committed to advancing real competition that lowers prices and increases consumers’ choices of wireless providers”.²⁰

At the time of publication of this study Industry Canada was preparing for the 700

Mhz and 2500 Mhz spectrum auction.²¹ Industry Canada opted to put a cap on the amount of spectrum incumbents can obtain, rather than setting aside a band of high-quality spectrum for new entrants, as experts recommended.²² Incumbents could therefore use their allotted amount, under the cap, to obtain all the high-quality spectrum. Both spectrum policy and Rogers’ proposed takeover of spectrum assets are opportunities for Industry Canada to make wireless market improvements for Canadians²³.

For the last ten years, the Canadian Radio-television and Telecommunications Commission (CRTC) - the key organization responsible for ensuring fairness in the cell phone market- has effectively held off on addressing the problems of the Canadian wireless industry.²⁴ This inaction has given the incumbents license to price-gouge customers and monopolize the market—even developing their own competitors, for example Rogers’ subsidiary Fido—leaving customers with few alternative options for services.²⁵

OpenMedia.ca sought to emphasize the need for a fairer wireless market through its StopTheSqueeze.ca campaign in 2012, enabling 64,674 Canadians to call on government officials to promote policies that provide mobile service affordability and choice.²⁶



Building on the clear public discontent expressed through the StopTheSqueeze.ca campaign, on December 22, 2012 the Public Interest Advocacy Centre (PIAC), alongside the Consumers' Association of Canada (CAC), submitted an application to the CRTC requesting national rules that would curb the price-gouging practices of wireless telecommunications providers.²⁷ The creation of these national rules falls within the CRTC's mandate to "facilitate the development of a telecommunications system that enriches the social and economic fabric of Canada [and] that is accessible and affordable" and ensure that the system is "responsive to the economic and social requirements of individual users".²⁸

Establishing a national 'Code of Conduct' for wireless service providers is an opportunity for policymakers to begin to finally take steps to fix Canada's broken telecom market.

Following PIAC's request, in April 2012 the CRTC launched a call for comments to decide whether the market situation was such that a code for retail wireless services was needed.²⁹ OpenMedia.ca facilitated a demonstration of public support by creating an online tool that allowed Canadians to write in and request that the CRTC establish national rules,³⁰ arguing, along with many other civil society groups, that policies are needed to promote a level playing-field, and that

these policies should build on top of, rather than undermine, existing provincial rules.³¹

In the context of clear public pressure, on October 11, 2012, the CRTC announced it would develop a National Code for Wireless Service, and would hold a public consultation on this Code.³² Several provinces have already established rules of their own, including Quebec³³ and Manitoba,³⁴ while a regulatory framework was also proposed in Private Members Bill 133 in Ontario, which is currently on hold pending elections.³⁵ These provincial rules give Canadians more control over their cell phone services, but do not exist in all provinces. The CRTC's decision to take these provincial initiatives further and create national rules is a welcome step.

The incumbent wireless providers also seem to be in favour of a national set of rules. Soon after PIAC submitted their request Rogers followed suit,³⁶ and Telus made a request for minimum national standards, rather than having to adhere to differing provincial rules.³⁷

During the CRTC hearing, the Canadian Wireless Telecommunications Association explicitly called for the national rules to supercede any existing provincial rules,³⁸ confirming OpenMedia.ca's fears that the incumbents would try to use the code to their own ends and to the disadvantage of customers.



Incumbents hope to bypass strong provincial rules by pushing for a weaker set of national rules. OpenMedia.ca has therefore stressed that new rules must build substantially on these existing provincial efforts, and not override them.

Listening to what Canadians have to say

OpenMedia.ca took the CRTC's National Code process as an opportunity to research the effect of the broken cell phone market on the lived reality of Canadians. The group began soliciting the input of citizens through its 'Cell Phone Horror Story' campaign.³⁹ A wide sample of Canadians from across the country were recruited in an effort to consolidate stories of wireless services from the customer perspective.

Participants were reached through online advertising; social media platforms such as Twitter, Facebook, Pinterest, and Reddit; websites and blogs; traditional media outreach; as well as email. The public was asked to vote for the cell phone 'horror story' that best reflected their frustrations with their wireless companies: either price-gouging through extra charges, being locked into restrictive contracts, or being met with disrespectful customer service when trying to communicate with a service provider.⁴⁰

OpenMedia.ca then surveyed specific experiences through an online tool which allowed the members of the public to submit a detailed description of the problems they had encountered.⁴¹

The group received robust public participation, with 2,859 responses recorded through the story submission tool over a period of approximately four months, and many more submitted afterwards. Citizens were later given the option of signing a petition calling for the CRTC's new rules to protect customers.

Drawing on these detailed responses, OpenMedia.ca has produced this study outlining some of the main wireless service concerns of citizens. The report also puts forward recommendations to both the CRTC and Industry Canada for more citizen-centric policies that will facilitate a level playing-field and more choice in the wireless market (for a description of the methodology used to analyze citizen concerns, see Appendix A).

In addition, OpenMedia.ca partnered with the Canadian Internet Policy and Public Interest Clinic (CIPPIC) to create a crowdsourced submission to the CRTC's national wireless Code consultations,⁴² outlining detailed Code-specific recommendations that are grounded in Canadian experiences.⁴³ Individual citizen stories were also sent directly to the CRTC, with the expectation that Commissioners would take the time to read each one.



How Cell phone Service Hits Home

Key Findings: Priorities from Canadians

Canadians feel that the wireless market is broken and want it to be fixed; they want more choice, better prices, and reliable service. Citizens feel the incumbent service providers who have a controlling share of the market are acting solely in their own interests, so policymakers need to step in to protect customers.

Citizens also note that Canadian wireless services are lagging behind other industrialized nations, both in terms of quality and price, prompting some customers to take their business across the border and pay the fees for using an international service provider in Canada. Finally, the level of anger in the written submissions was high, making it clear that Canadians are frustrated. One respondent even submitted a story that was fourteen pages long.⁴⁴

Canadians want effective policies to enable fair service and affordable cell phone options through a level playing-field. This citizen response was typical of calls for change:

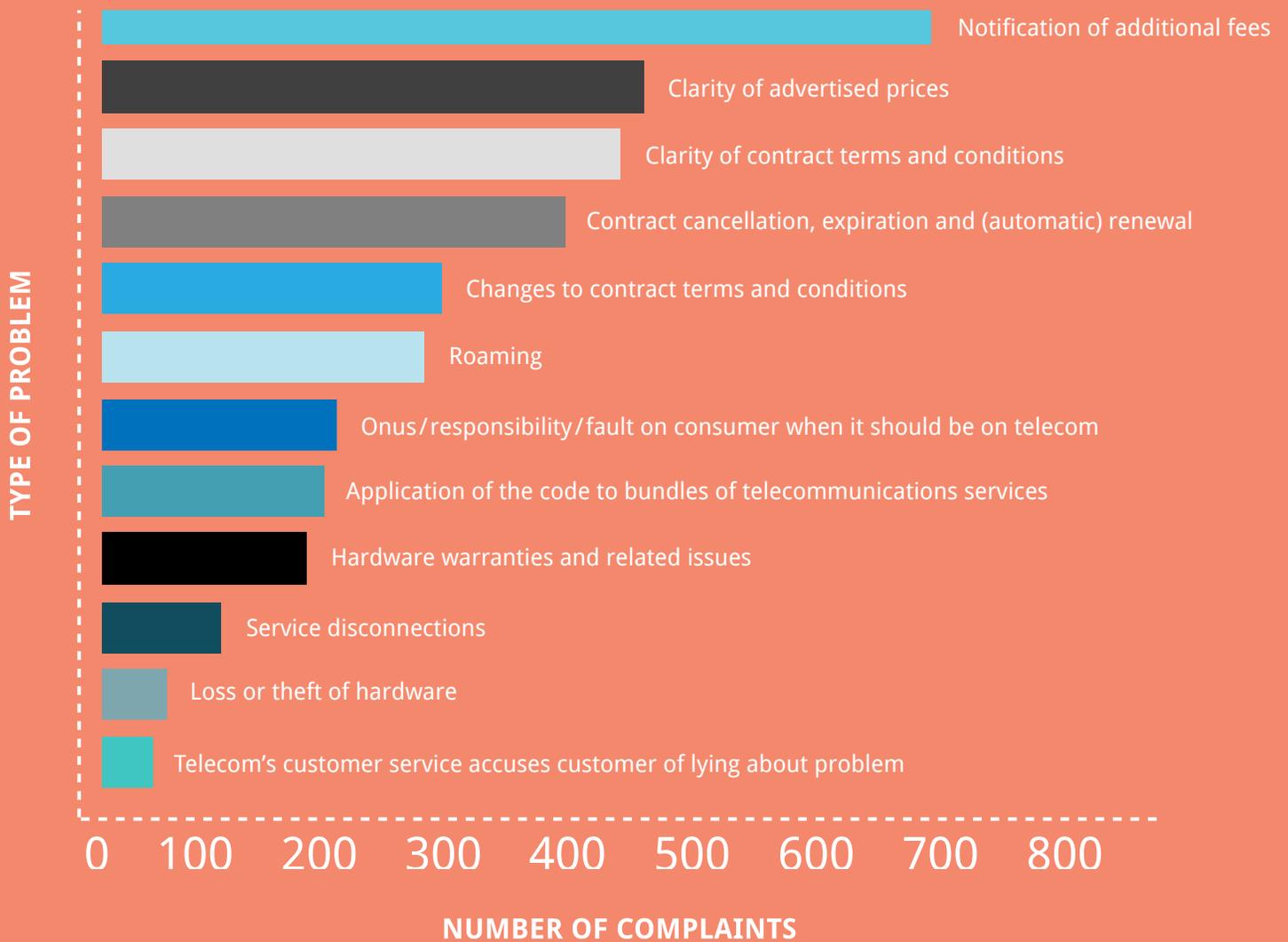
“I applaud this initiative to tackle the poor service reality that is endemic to the industry [...] it appears that [wireless

service providers] hold all the cards and we as the consumers are left with little ability to affect their behaviour. Please remember that the CRTC is there to fundamentally protect the consumer and ensure the service provided by the companies is fair in value, service and in the interests of the Canadian public.”⁴⁵

The content analysis of detailed citizen stories revealed twelve key problems with our cell phone market. These twelve problems are the challenges that Industry Canada and the CRTC must address; a full understanding of the lived realities of Canadians is the first step to meeting these challenges.



Fig. 4: Canadians' Twelve Key Problems With Our Cell Phone Market





Restrictive Contracts

Lack of Clarity

Respondents to OpenMedia.ca’s call for citizen stories frequently highlighted the lack of clarity around what is actually covered by a wireless contract. A full 20.65% of Canadians who took the time to write out their stories cited problems with “convoluted, micro-print,” contracts ⁴⁶ –i.e. that that are difficult to decipher, and are designed to protect the service provider and not the customer. This lack of clarity led to related problems such as unexpected charges, changes to services, and difficulty fixing mistakes once they have been discovered. As one respondent put it, “[n]o matter how comprehensive your monthly plan is, it seems there's always something you do that is not covered by the plan and that costs you an arm and a leg... cell phone companies give you mountains of things you don't need (like more voice minutes than I'll

ever use in my lifetime) while charging you through the nose for the services (frequently one-offs) you actually do need.”⁴⁷

Respondents also complained about not being able to request a copy of the contract they had signed after the fact; instead, customers were provided with a copy of the latest service contract, which might have changed since the original signing. It was also unclear what service guarantees were made by contracts, as they usually gave the service provider the right to change any feature at their discretion.⁴⁸

In some cases customers were not even aware that they had actually entered a contract.⁴⁹ Citizens cannot be expected to make informed decisions about the devices that they purchase when the terms and conditions by which they will be bound are not made clear.

A related and frequently cited complaint involved service providers locking cell phones so that customers were unable to use their devices with a different provider. If a customer pays for their device through a contract, this should not limit their ability to use their device as

“ALL CELL PHONE PURCHASES SHOULD HAVE THE HARDWARE COMPLETELY UNLOCKED TO ALLOW CONSUMERS TO SHOP AROUND FOR THE BEST DEALS ON CELL PHONE SERVICE.” - BATCH 1, P. 322



they see fit. Locking devices to one service provider does not reflect the lived reality of Canadians, as people often travel out of province or go on holiday and want to be able to choose the best provider for them in that area.

For example one respondent reported paying for his smart phone with the intention of using it with different service providers in different countries; however, he was told that he would have to pay \$70 to unlock the phone, and only after having been with the provider for several months.⁵⁰ Locking cell phones restricts choice, and as another respondent noted, “all cell phone purchases should have the hardware completely unlocked to allow consumers to shop around for the best deals on cell phone service”.⁵¹

Citizens who are under contract should be able to unlock their phones at cost (or free) whenever they choose.

Changes Without Consent

The ill effects of the lack of clarity in contracts are compounded by the fact that wireless service providers often include a provision in contracts stating that they ‘reserve the right to make any changes,’ while the customer cannot say

“MY FRIENDS IN OTHER COUNTRIES TALK ABOUT HOW CHEAP CELL SERVICE AND DATA PACKAGES ARE BUT CANADA IS IN THE DARK AGES WITH SKY-HIGH COSTS. THIS MONOPOLY AND CONSUMER-IS-THE-LEAST IMPORTANT MENTALITY NEEDS TO STOP. THE CONVOLUTED, MICRO-PRINT CONTRACTS DO NOT PROTECT CONSUMERS. CONSUMERS NEEDS TO BE HEARD AND THE BIG THREE COMPANIES NEED TO BE TAKEN TO TASK.” - BATCH 1, P. 21

“LAST YEAR I BOUGHT A GSM SMART PHONE OFF MY PROVIDER SO I COULD TRAVEL AND INSERT SIM CARDS FROM THE COUNTRIES I VISITED AND ALSO USE IN MY LOCAL AREA. I ASKED IF THIS WAS UNLOCKED AS I WAS PAYING THE FULL RETAIL PRICE FOR THE PHONE WITH NO PLAN. [...] WHAT THEY DID THOUGH WAS TELL ME I HAD TO PAY.” - BATCH 3, P. 485



'no' to such terms. 13.57% of respondents who wrote out their personal cell phone horror stories complained that **changes were made to a contract** without their knowledge or consent. Thus, contracts end up binding customers but not service providers.

As a result, customers who believed they were entitled to certain features or upgrades under the contract they signed suddenly discovered that their contract had been changed without their knowledge.

One respondent experienced this issue when she tried to use the opportunity for a hardware upgrade that had been guaranteed in her original contract, only to find that the policy had changed, and the upgrade was now only available after three years. She explained, "[s]eeing that I already had an older phone, I couldn't continue using it for another year and was made to pay an exorbitant hardware upgrade".⁵²

People make decisions about whether to purchase hardware or sign a contract based on the terms and conditions they are presented with at that time. If these terms are subject to changes at the service provider's discretion, the customer

cannot make an informed decision about the services they are purchasing. The following respondent's reaction to this situation was typical: he called for the CRTC to listen to Canadians and put strong safeguards in place because "what is the point of signing contracts that companies refuse to uphold, or can change as they see fit?"⁵³

Automatic Renewals, Cancellation, and Expiration

Another frequently reported problem concerned the termination of these contracts: 18.47% of submitted stories complained that customers were restricted in their ability to **cancel contracts**, changes were made to services when **contracts expired**, and contracts could be **automatically renewed** without the customer's consent.

A number of respondents told horror stories in which contracts were used to bind customers to inappropriate services. For example, one respondent discovered that his new cell phone had no reception in his apartment. He tried to return the device within days of the purchase, but was told that he was locked in to three years of monthly payments, while his service provider "had no binding commitment to



actually provide me with usable services during that time”.⁵⁴

Another respondent’s story underscores how this single-minded pursuit of service providers’ bottom line conflicts with Canadians’ daily lives; the respondent’s son, who has Asperger’s Disorder, was persuaded by a telecom sales rep to sign a three-year contract he couldn’t possibly afford. Despite explaining that her son “didn’t understand what he was signing and that he wasn’t capable of understanding the

consequences of the contract” the service provider refused to let him out of his contract, and later forwarded the debt to a collection agency.⁵⁵

A cooling-off period would be a simple remedy for some of these situations, allowing customers out of contracts if the service turns out to be inappropriate or unusable. Customers should have the right to cancel the service contract at any time if the service is no longer functional. Beyond this, more needs to be done to make contacts easier to terminate. Other respondents also reported difficulties with cancelling their wireless services, sometimes being charged for services that they believed they had successfully cancelled,⁵⁶ or being unable to cancel the contracts of a deceased relative.⁵⁷

One of the main sources of anger for respondents was the ‘termination fee,’ charged when customers tried to end their contracts early or without giving 30 days notice. This greatly reduces the already limited choice that does exist in the wireless market by restricting customers’ ability to switch services. When customers are afraid to take their business elsewhere because they are threatened with incurring exorbitant termination fees, there is little incentive for incumbents to provide a competitive service.⁵⁸

**“ I FIND IT DESPICABLE THAT SOME CARRIERS CONTINUE THEIR ARCHAIC CONTRACT CANCELLATION POLICY WHICH KEEPS CUSTOMERS AFRAID TO LEAVE THAT CARRIER IF THEY WANT TO TRY A NEW ONE. THE COMPANY KNOWS THAT THESE INFLATED FEES SCARE THEIR CUSTOMERS AND THIS CARRIER CLAIMS THEY MAKE MORE MONEY AS A RESULT. THIS BEHAVIOUR AND POLICY IS TERRIBLE AND WE NEED LESS OF A STRANGLEHOLD ON OUR ACTIVITIES AND OPTIONS.”
- BATCH 1, P. 491**



“MY SON IS NOW 29 YEARS OLD AND HE HAS ASPERGER'S DISORDER. IN 2006 HE WAS IN WHITBY ONTARIO AND CAME ACROSS A KIOSK IN THE MALL AND THE SALES PERSON ASKED HIM TO TAKE A LOOK AT THEIR NEW LINE OF CELL PHONES. THE SALES PERSON CONVINCED HIM THAT HE SHOULD HAVE A PHONE FOR PROTECTION WHEN HE WAS AWAY FROM FAMILY AND FRIENDS. WHEN HE ARRIVED HOME AND TOLD ME WHAT HAD HAPPENED, AND SHOWED ME THE CONTRACT HE HAD SIGNED, I WAS FURIOUS AND VERY CONCERNED.

I IMMEDIATELY CALLED TELUS MOBILITY AND EXPLAINED THAT MY SON HAD ASPERGER'S, WHICH IS HIGH FUNCTIONING AUTISM, AND DIDN'T UNDERSTAND WHAT HE WAS SIGNING AND THAT HE WASN'T CAPABLE OF UNDERSTANDING THE CONSEQUENCES OF THE CONTRACT. I ALSO EXPLAINED THAT HE LIVED ON DISABILITY AND COULDN'T AFFORD A CELL PHONE. TELUS TOLD ME THAT HIS CONTRACT WAS LEGALLY BINDING AND THAT HE WOULD NEED TO KEEP UP THE PAYMENTS OR DAMAGE HIS CREDIT RATING.” - BATCH 1, P. 273

“A FEW DAYS AFTER THE FUNERAL [...] I HAD TO START HELPING MY MOM TAKE CARE OF VARIOUS BUSINESS ITEMS, SUCH AS CANCELLING THE CELL PHONE THAT MY DAD HAD. I WILL NEVER FORGET MY MOM CALLING THE CELL PHONE COMPANY.

THE OPERATOR AT BELL WAS UNBELIEVABLE. MY MOM EXPLAINED THAT HER HUSBAND HAD JUST DIED AND THAT SHE NEEDED TO CANCEL HIS CELL PHONE, BUT SHE WOULD BE KEEPING HER PHONE. THE OPERATOR DIDN'T EVEN HAVE THE COURTESY TO EXPRESS HER CONDOLENCES AND THEN PROCEEDED TO TELL HER THAT THERE WOULD BE A \$200 + EARLY CANCELLATION FEE.” - BATCH 2, P. 185



Users often faced termination fees after encountering other issues with their contracts, services and devices, and therefore had to continue with the sub-standard service or pay a huge fee for breaking their contract early. For example, one respondent replaced a series of faulty handsets over a six-month period, had his contract renewed without his consent, and then was charged \$400 to leave this poor service.⁵⁹ Many customers questioned this use of cancellation fees, wondering, “[i]s there any other service you have to pay for when the reason you discard it is that it cannot do the service you are paying for?”⁶⁰ Another respondent’s story highlights how out of touch these punitive fees are with reality; despite the extenuating circumstance of a debilitating injury that left her unable to work and pay for her cell phone plan, this citizen was still bound to her contract. When she asked under what circumstances she would have been allowed to cancel her contract without penalty, her provider responded “you would have needed to die”.⁶¹

Respondents also reported having their contracts automatically renewed when they had made small changes to their plans,⁶² even in cases where the customer had explicitly stated that they did not want to add a new feature if it meant that their contract would be extended, and were assured this would not be the case.⁶³ Some citizens reported that their

“ IN 2002 I HAD MY LEGS CRUSHED IN A HORRIBLE ACCIDENT. I COULD NOT WORK AND WAS SURVIVING ON GOVERNMENT FUNDING TEMPORARILY. THERE WAS 8 MONTHS LEFT TO A THREE YEAR PLAN ON MY TELUS CELL PHONE. I PHONED THE COMPANY, HOPING TO USE THE EXCEPTIONAL EMERGENCY CLAUSE, IN ORDER TO BE RELEASED FROM THE REMAINDER OF THE CONTRACT. I TOLD THE PERSON I SPOKE WITH THAT MEDICAL AND POLICE RECORDS COULD BE PROVIDED. THEY TOLD ME I DID NOT QUALIFY FOR THE EXCEPTIONAL EMERGENCY CLAUSE. I ASKED HOW I WOULD QUALIFY AND WAS TOLD, ‘YOU WOULD HAVE NEEDED TO DIE’.” - BATCH 2, P. 509

“ MY CONTRACT WAS EXPIRED WITH ROGERS AND AFTER 3 YEARS OF TERRIBLE SERVICE I DECIDED TO SWITCH TO BELL. I FOLLOWED THE RULES AND MADE THE SWITCH PROPERLY, YET STILL RECEIVED A \$400 BILL FROM ROGERS THAT I HAD NOT COMPLETED MY CONTRACT AND NEEDED TO BUY OUT THE CONTRACT.” - BATCH 1, P. 357



Price-Gouging

Unclear Pricing

contracts were automatically renewed with no input on their part at all; for example, one respondent found that his contract was renewed when his service provider was taken over by a larger telecom company.⁶⁴ Others reported that their contracts were renewed when their service provider agreed to replace defective hardware.⁶⁵

There were also problems when contracts expired. Some respondents reported that their rates went up after their contract expired because the old deal was no longer offered.⁶⁶ One respondent reported that when he called his service provider to find out why his bills were suddenly so much higher, “they told me that my 3 year plan had expired, and they reverted me to the highest possible charge they had. There was no attempt to inform me that the original contract had expired and that my rates were about to change”.⁶⁷

For customers who tried to leave their service provider after their contracts expired, this also proved difficult. Some respondents reported cancelling the service after the contract’s expiration, but still being charged,⁶⁸ or being told that the contract had been cancelled early and hit with additional fees, when in fact it had expired.⁶⁹ Similarly respondents complained of having to pay for an extra month of service after their contract expired because the service provider required one month notice to terminate a monthly contract.⁷⁰

A significant number of submissions involved complaints that advertised prices did not always represent the actual price of a service; 21.64% of comments highlighted this problem with **unclear pricing**, both with services and with hardware.

For example, one respondent discovered only after buying pre-paid minutes for his phone that part of the money went towards ‘admin’ fees rather than just call time.⁷¹ Other customers complained that it was hard to tell what charges had occurred as bills did not provide enough detail in plain language, so errors went unchecked in the confusion.⁷²

Similar issues were reported with hardware, when the actual price of a device was found to differ from its advertised price. For example, one respondent reported having explicitly asked to buy a phone outright, but when he returned the device owing to poor service, he found he had been given a discounted price for the hardware and was charged a “handset rebate”.⁷³ One commenter—a previous employee of a wireless company—suggested that this situation is exacerbated by the pressure put on staff to meet sales targets. He asked, “[h]ow many people out there have signed up for a cell phone in a store, only to find out what the rep told them in person is in no way true? This happens all the time. Sales reps in stores have



one job, to sell. They aren't required to provide full disclosure, only to be honest-ish... They consistently over promise and under deliver."⁷⁴

Additional Fees

One of the biggest problem areas was that of **additional fees** being added to customers' bills, with **33.09%** of respondents' horror stories relating to this problem.

These unexpected charges were often linked to a lack of clarity in advertised prices and services; for example one respondent reported buying a plan with picture messaging included, but the messages would not work unless 'data access' was turned on in the phone's settings, at which point she was charged extra for data usage.⁷⁵ Others were surprised by additional charges when they had no control over the service, such as charges for incoming text messages.⁷⁶

Citizens with special requirements are often especially disadvantaged by these pricing strategies. For example some respondents who are deaf or hard of hearing were unable to remove voice services from their plans. These respondents complained that the text message feature they required was not an option without a voice plan, because service providers tie these features together in their pricing structures. As a result, citizens who are deaf and hard of hearing were paying the fees every month for a voice service they would never use.⁷⁷

Roaming Fees

Roaming fees (were one of the main sources of frustration in respondents' comments. **12.83%** of respondents complained that roaming charges were too high, making it prohibitively expensive to use cell phones while abroad.⁷⁸ Roaming fees incurred while traveling seemed to be a particular problem with some customers facing astronomical charges.⁷⁹ But some users even reported being charged roaming fees when they were not actually roaming, because they lived close to the U.S. border and so their phone connected to wireless towers in the U.S. These users then had to call their service providers to correct their bills, sometimes every month.⁸⁰

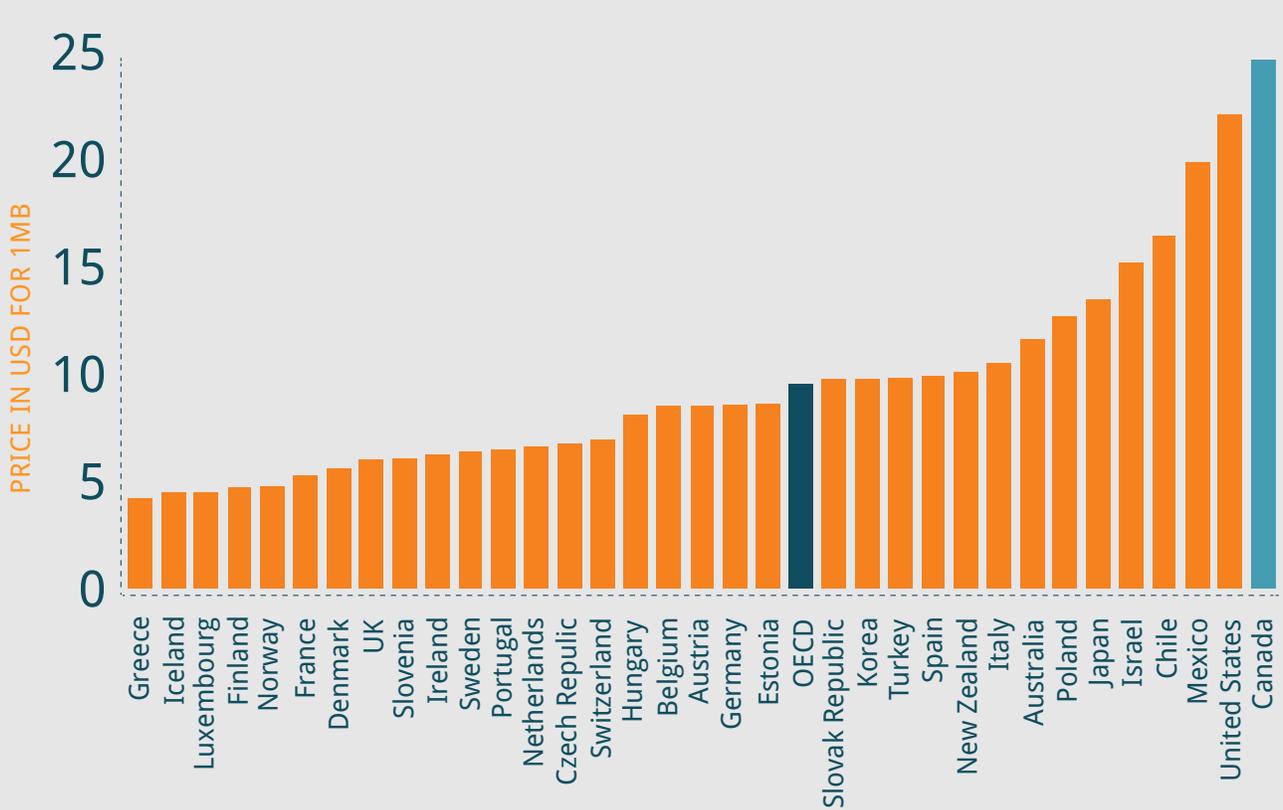
Bundled Services

Bundling telecommunications services together creates additional complexity in pricing. **8.92%** of respondents had issues when their wireless services were bundled. Some reported encountering difficulties when they tried to cancel parts of bundled services, as different services had different contract obligations.⁸¹

Similarly, respondents encountered problems due to variations in the pricing of bundled services. For example, one respondent explained how, having been told that bundling services would be a cheaper option, they later discovered that the pricing varied by province, and the final deal was not the same as the amount promised by a sales representative.⁸² Other



Fig.5: OECD Chart of Mobile Roaming Fees by Country



customers found that their bundled features were suddenly charged at individual rates when their contract ended.⁸³

Hardware Malfunction

8.17% of respondents complained that high service prices were matched with **unreliable hardware**. Users cannot be expected to sign three-year contracts for handsets that are not expected to last this long.⁸⁴ Many respondents wrote about hardware problems which were not

dealt with by their service provider. For example one respondent reported that his phone began to malfunction, and he was told it would cost \$120 to repair. He had no choice but to pay or to buy a new phone, as he was bound to the service for the remainder of his contract.⁸⁵

Even when service providers are directly responsible for the malfunction, there is little that the customer can do; this was the case for another respondent whose handset stopped working after



she accepted a software update from her service provider. When her husband updated his identical phone, his device also stopped working. The manufacturer's warranty for the devices had expired, but the contract bound them to a service they could not use for another two years.⁸⁶ In such cases, if neither the manufacturers nor the service providers are willing to take responsibility for faulty products, customers are left with inadequate hardware and no recourse.⁸⁷

Loss or Theft of Hardware

A similar issue was highlighted by 2.58% of commenters who shared stories of [stolen or lost hardware](#) and binding contracts. Despite the fact that the users no longer had a device through which they could access these services, they were still expected to pay sometimes astronomical termination fees if they left their contract early.⁸⁸ One respondent said that he thought service providers were taking advantage of customers who had no other options. When his phone was stolen he was given the option to buy a replacement at full price, or get a special lower price if he signed a new contract. He therefore ended up paying for the new services, and the remainder of the old service on the stolen phone.⁸⁹

“LAST NOVEMBER SOMEONE STOLE MY PHONE. I TRIED ENDING THE CONTRACT BUT I HAD TO PAY \$600.00 OR KEEP PAYING THE BILL. AFTER HOURS AND HOURS OF TALKING TO PEOPLE ON THE PHONE IN WHICH THEY HAD NO IDEA TO HELP ME WITH THE ISSUE, I ENDED TALKING WITH A ‘HIGHER UP’ AND CANCELLED MY PHONE SERVICES WITH BELL. I AM STILL PAYING \$20.00 A MONTH ON ABSOLUTELY NOTHING.” - BATCH 1, P. 584

When handsets can cost as much as \$800 to buy outright, many customers have no option but to pay for their devices over time through contracts. If this is the case there must be some kind of contingency for lost or stolen hardware that is too expensive to replace. Otherwise, as another respondent commented, customers are held prisoner by their service providers, unable to afford any other option.⁹⁰



IN-DEPTH ANALYSIS

Price-Gouging in a Global Context

Many respondents compared the Canadian market to their experience of wireless providers in other countries, and were appalled by how Canada compares. One respondent commented on the availability of unlimited data plans in Europe and Asia, which are not available at comparable prices in Canada.⁹¹ Similarly another respondent complained that wireless usage is more affordable in Ecuador than Canada, and that “[w]e in Canada are being gouged by greedy corporations whereas the rest of the world gets affordable cell phones”.⁹² Some citizens found the prices and services in Canada so bad that they maintained long-distance cell phone plans in other countries, because this was cheaper or had better service than a plan in Canada. One respondent reported having used a U.S. calling plan while living in Canada for seven years because he finds the rates to be cheaper.⁹³

Others also expressed concern with the limitations that our broken wireless market puts on innovation and economic growth; one respondent’s story explained how they found it more affordable to use an Asian wireless service in Canada, and expressed shock that this was the case considering that cell phone use “is an integral part of economic growth by means of providing affordable communications to small businesses, individuals and large companies”.⁹⁴

Another respondent who is a mobile app developer commented that, “I see all sorts of cool apps in countries like Chile, Brazil, India, and South Africa that customers in Canada could never use because they would see huge charges if they did. Canada is allowing greedy telecoms to kill innovative technology”.⁹⁵

As mobile devices are increasingly the means used by Canadians to access the Internet, the affordability of data plans is of great importance to innovative technology. Research from the Organization for Economic Cooperation and Development (OECD) shows that **Canada is still lagging in terms of wireless broadband access, ranking 23rd out of 34 countries, behind Israel, Austria, and Spain.**⁹⁶ Only a small portion of this access is represented by dedicated mobile subscriptions in Canada.⁹⁷

According to the OECD, data caps and high prices also leave the networks underutilised.⁹⁸ Citizen comments highlighted this problem, as a number of respondents complained of outrageous charges for Internet access in particular. The high cost of mobile Internet access in Canada mirrors the high cost of wireless services generally.

Using figures released by the OECD, the CBC compared the cost of cell phone use in Canada to that of 19 other countries.



Fig. 6: CBC Chart of Cell Phone Plan Costs By Country

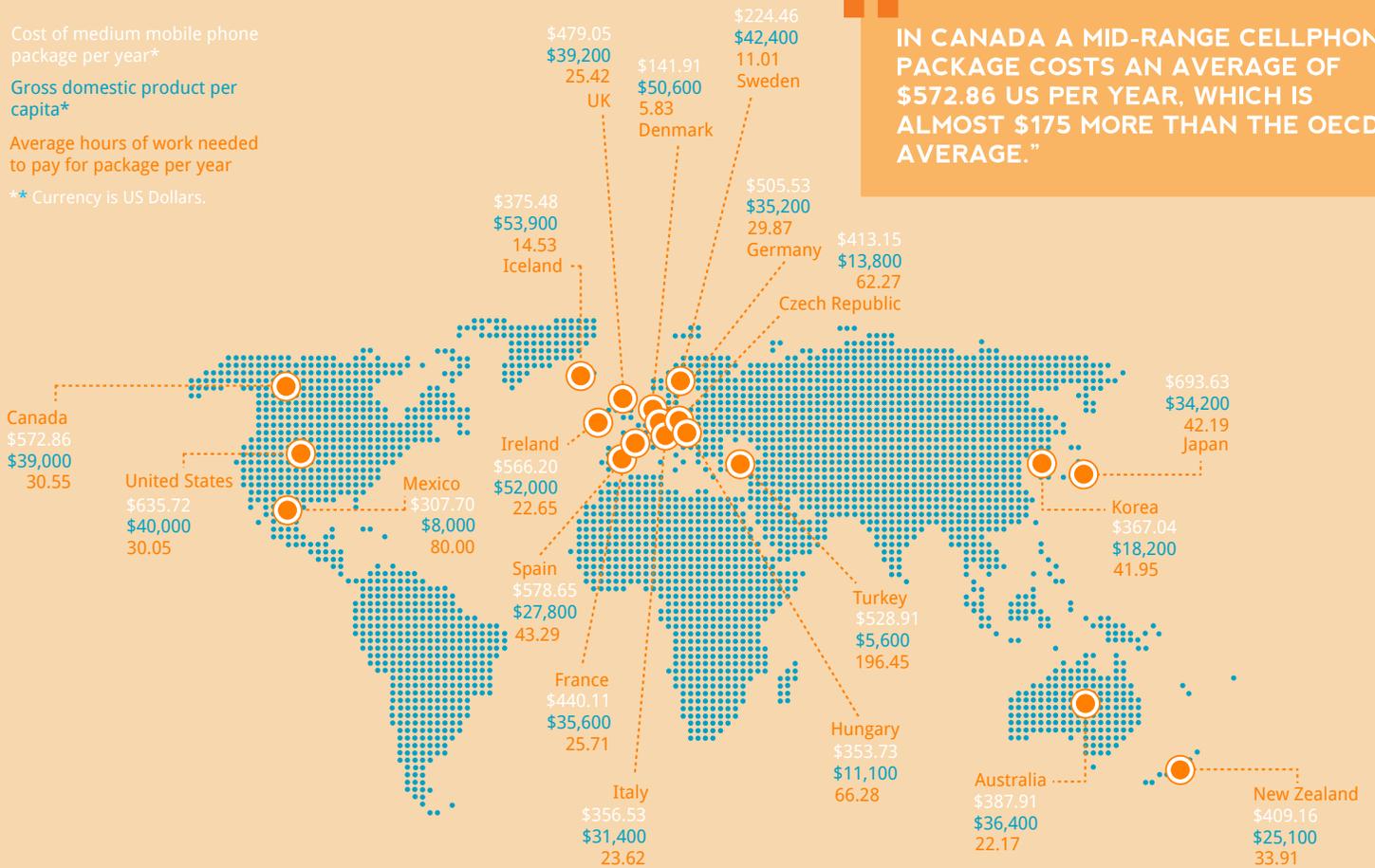
Cost of medium mobile phone package per year*

Gross domestic product per capita*

Average hours of work needed to pay for package per year

** Currency is US Dollars.

“ IN CANADA A MID-RANGE CELLPHONE PACKAGE COSTS AN AVERAGE OF \$572.86 US PER YEAR, WHICH IS ALMOST \$175 MORE THAN THE OECD AVERAGE.”





They found that in Canada a mid-range cell phone package costs an average of \$572.86 US per year, which is almost \$175 more than the OECD average.⁹⁹ These comparatively high prices are matched by low mobile penetration rates.

The OECD found that between 2005 and 2007, Canada was one of only nine countries that had a less than 100% penetration rate (number of wireless subscriptions per 100 people); Italy led the field with 151 2G and 3G subscribers per 100 inhabitants, while Canada trailed near the bottom of the list with only 62%.¹⁰⁰ This was still the case in 2009, when the OECD cited Canada as having the lowest penetration rate at 71 subscriptions per 100 inhabitants.¹⁰¹

Research from UK regulator Ofcom, supports these findings, and suggests that Canada's poor global standing is a long-term problem. In comparing eight developed countries between 2005 and 2010, Ofcom found that the amount Canadians pay each month for their wireless services is the second highest. Ofcom also found that during this period, with the exception of Australia, all other countries' prices fell, whereas Canadian prices increased.¹⁰² According to a 2009 OECD report, Canadian wireless providers charged higher than average rates for 'low' usage of cell phone services, as compared to 19 other OECD countries. For 'medium' usage (defined as 780 voice calls, 600 SMS messages, and eight MMS messages over one year) Canadian providers charged some of the most expensive rates, at \$42 USD per month. Canada was also above

the OECD average price for 'high' usage of wireless services.¹⁰³

Research by the New America Foundation (NAF) adds more detail to these reports. The NAF looked at "cell phone voice, text and data services for prepaid, regular postpaid, and unlimited postpaid plans provided by prominent cell phone carriers in 11 countries".¹⁰⁴ Canadian customers have the highest minimum monthly charge for a complete postpaid cell phone service at \$67.50.¹⁰⁵ Canadian rates for various services also consistently fell in the high- to middle-price tiers. Canada was found to charge one of the highest rates for voice plans with costs of \$0.37 to \$0.38 per minute, much higher than the rates for India (\$0.01/minute), Hong Kong (\$0.02/minute), and Sweden (\$0.04/minute).¹⁰⁶ Canada again had some of the highest rates for texting; the cost for 250 texts in Canada was \$4.80 (\$0.02 per text) while in countries like Japan and South Korea, which charge customers by usage, a text costs \$0.003 and \$0.01 respectively.¹⁰⁷ In the case of texting however, Canada does have the advantage of being one of the only nations that offers unlimited texting plans. Yet, in a comparison of data rates across countries, Sweden set the bar with unlimited data plans for \$13.80 per month, while Canada's plans were much more expensive at \$72.90.¹⁰⁸

In other countries, mobile consumers also have more options for different pricing models. Indian service providers use a pay-per-use model which charges a low monthly fee of \$12.90, plus low per-usage charges. Hong Kong uses a variation on



Fig. 7: OECD Graph of Average Prices for "Low" Usage Plans by Country

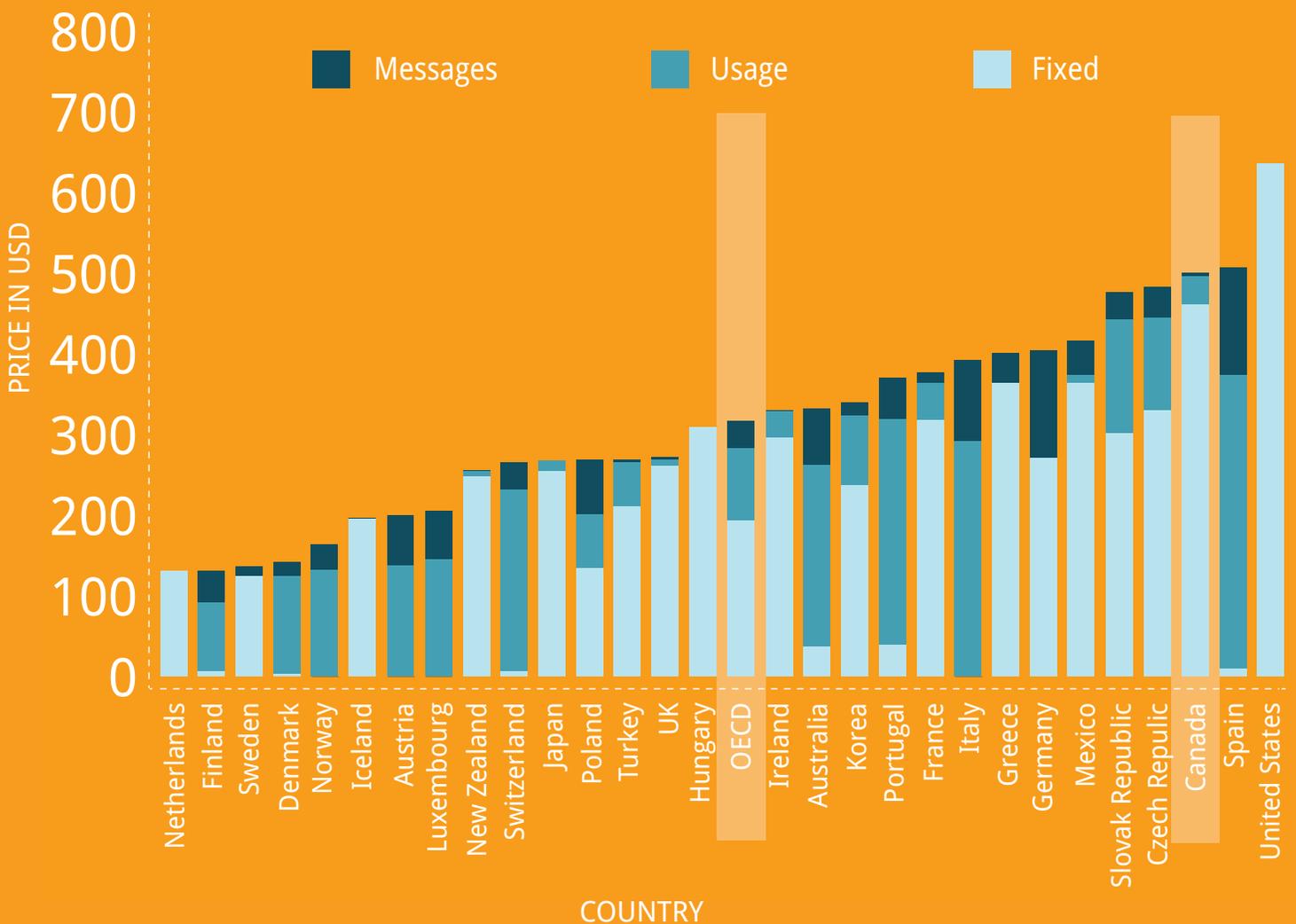
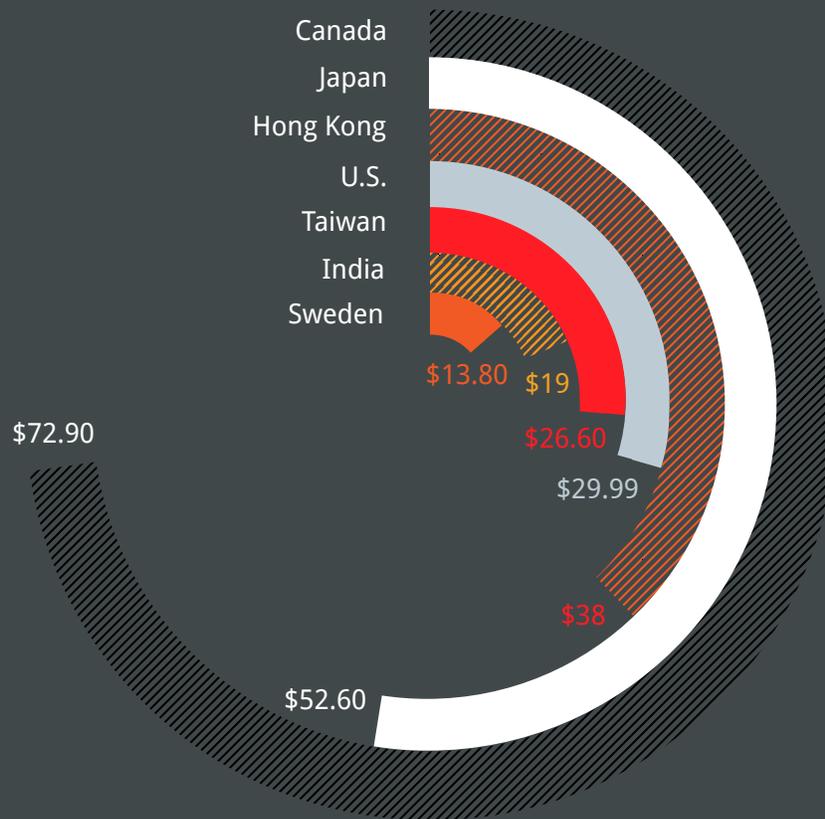




Fig. 8: Unlimited Data Plan Costs Per Month by Country



this model, charging a minimum monthly amount of \$13.50, and allowing this charge to be used for voice minutes, text, or data.¹⁰⁹ AT&T in the U.S. and Tele2 in Europe are allowing customers to carry over their unused minutes to the following month, so as to encourage cell phone use rather than having customers consistently under-use their cell phones, fearful of exceeding their limits, and then

losing the remainder of the time they have paid for.¹¹⁰

Generally, when looking around the world, we see Canadians at a comparative disadvantage. High prices have significant consequences not just for individual citizens, who are forced to ration their use of wireless services, but also for our digital economy as a whole.



Disrespectful Customer Service

Disconnections

4.75% of commenters reported that they had been **disconnected** due to billing issues. Rather than contacting the customer, the default response of the service provider seems to be to cut off the service. Often it transpired that there was an error on the part of the service provider, but it was the customer who was inconvenienced and who had to remedy the problem. This was the case for one respondent whose payment of a bill did not register properly on the service provider's system. As a result, his service **was cut off the following month**. After having spoken to a customer service representative to clarify that the bill had been paid, his phone remained disconnected, and he received an additional bill for \$600 for breaking his contract.¹¹¹

Another respondent reported a similar issue when his direct debit payment was short due to unexpected overbilling errors. His phone was disconnected along with his wife's and son's, and they had to pay a \$30 reconnection fee for each phone.¹¹² This unwillingness by service providers to fix, take responsibility for, or even acknowledge errors leaves customers frustrated, feeling powerless, and often out of pocket.

“ [THEY] RENEWED MY CONTRACT FOR AN ADDITIONAL 3 YEARS WITHOUT MY KNOWLEDGE OR CONSENT. I CALLED REPEATEDLY, SPENDING HOURS ON THE PHONE AND EVENTUALLY ALMOST 1.5 YEARS FIGHTING WITH THEM THAT THE CONTRACT WAS RENEWED NOT OF MY CONSENT. EACH CALL IS SAID TO BE RECORDED SO I HAD ASKED THEM TO REVIEW THE CALL. THEY REFUSED WITHOUT EXPLANATION AND STATED THAT CONTRACTS COULD NOT BE REVERSED. ONE "CUSTOMER SERVICE" PERSON WENT AS FAR TO SAY THAT I WAS A LIAR AND THAT THEIR COMPUTER RECORDS DON'T LIE.”
-BATCH 3, P. 441

“ I HAD JUST UPGRADED MY PHONE TO GET A NEW IPHONE, AND WHEN I DID, IT NOT ONLY COST ME \$400 EXTRA TO UPGRADE, BUT WHEN I RECEIVED MY FIRST BILL IT WAS \$1600 [...] I CALLED MY PROVIDER AND GOT A RUN AROUND [...] THE WHOLE PROCESS TOOK 1 WEEK, 3 TRIPS TO THE STORE AND ABOUT 4 HOURS ON THE PHONE WITH MY COMPANY BEFORE THEY FINALLY REMOVED THE CHARGES. WELL, I GOT MY PHONE BILL THE NEXT MONTH AND THERE WERE STILL \$50 IN OUTSTANDING TEXT CHARGES. I GAVE UP.” - BATCH 3, P. 27



Blaming the Customer

Amazingly, some respondents even reported that customer service representatives actually **accused customers of lying** about their problems; **2.08%** of respondents experienced this shocking issue. For example, when one respondent attempted to dispute her service provider’s billing records, the representative said “[she] was a liar and that their computer records do not lie”.¹¹³ Other customers reported being treated like liars and scam artists, as if they were trying to get something for nothing. Another respondent had this experience when he was charged for long distance calls that should have been included in his plan; he reported, “I felt like I was being treated as a liar and someone trying to get something for free”.¹¹⁴

Shifting Responsibility

While not all respondents experienced this aggressive behaviour from their service providers, **9.36%** did report that the **onus was placed on the customer** to remedy an issue, while the service provider had to be constantly chased in order to get a response. This tactic of ignoring customers until they give up was noted by one respondent who was overcharged on her bill. It took “1 week,

3 trips to the store and about 4 hours on the phone with my company before they finally removed the charges”. The next month she found that there were still extra charges on her bill, but at this point she gave up and paid them.¹¹⁵

Customers who do raise complaints with their service providers face the prospect of spending hours on the phone over a period of weeks or even months. One respondent stated that she calls her provider six to seven times a year to fix errors on her bills, and suspects that service providers profit from customers who don’t catch these frequent ‘computer errors’.¹¹⁶

“ I GET A BILL FOR ABOUT 600 DOLLARS INCLUDING A BREACH OF CONTRACT FEE. SO I PHONE THEM BACK, AND WAS TOLD EVEN THOUGH THEY HAD RECORD THAT YES THE PAYMENT WAS MADE BUT DUE TO AN ERROR ON THEIR END NEVER ‘REGISTERED’ I WAS STILL RESPONSIBLE FOR THE BILL?!?”

-BATCH 3, P. 60



The time and effort it takes to resolve complaints has serious consequences for customers, many of whom will be deterred from attempting to resolve, or even monitor, ongoing or recurring problems. A previous employee of a cell phone company reported that customer service representatives often have to hang up on customers in order to meet call objectives.¹¹⁷ When companies know they can simply wait out customers—sometimes literally, through excessive hold times—there is little incentive for them to remedy problems.

The comments that OpenMedia.ca received indicated a lack of awareness on the part of customer service representatives of the proper response to a complaint, and the proper channels to go through. Instead, shutting down the customer as quickly as possible seemed to be the default method, rather than passing the complaint on to the appropriate department. Customers reported having difficulties even reaching customer services representatives, often being ‘accidentally’ disconnected, or receiving conflicting information. For example one respondent was told by a representative that no supervisors were working, but after being disconnected and calling back, the next representative informed him that several supervisors were currently available.¹¹⁸

Disrespectful customer service tactics create distrust between the customer and the service provider, and leave the impression that the customer is not valued. This is compounded by the fact that service representatives often deal poorly with complaints, offering insincere platitudes, shrugged shoulders, and even laughing at customers. One commenter reported having been told to “[s]hut up and pay the damn bill”.¹¹⁹

“AFTER ARGUING WITH THEM FOR A WHILE, THE MANAGER ON THE OTHER END, TOLD ME TO, AND I QUOTE, ‘SHUT UP AND PAY THE DAMN BILL!’” - BATCH 3, P. 60



Existing Provincial Rules

Provincial legislation is generally responsible for consumer protection as well as for contracts. Over the last few years, several provinces have recognized the digital policy neglect at the federal level and established their own codes of conduct for telecommunication service providers.

OpenMedia.ca recommends that the CRTC look at these rules as a floor on which to build its national rules. Incumbent wireless providers have a vested interest in establishing a weaker set of national rules that will undermine those established by individual provinces.

Manitoba

June 16, 2011 Manitoba passed Bill 35, The Consumer Protection Amendment Act to legislate protections for cell phone users.¹²⁰ The act protects customers from the unfair price-gouging practices of incumbent cell phone providers through a number of stipulations that target some of the main complaints that were highlighted by customers in this study.

These include limitations to how contracts can be changed, along with a guarantee that the customer can cancel without penalty if changes are made without their consent. The bill also demands clarity of advertised pricing, and limitations on the amount that can be charged for early can-

cellation; termination fees cannot exceed the remainder of contracted services, or the remaining cost of a discounted phone. Wireless telecommunications provider Wind Mobile, a newer entrant to the Canadian market, welcomed the decision on their website, stating, "we're happy to see the Manitoba Consumer Protection Office taking strides to protect consumers from unfair wireless practices and to raise the bar for the rest of Canada".¹²¹

Quebec

Quebec's Bill 60, An Act to amend the Consumer Protection Act and other legislative provisions,¹²² came into effect on July 1, 2010, and offers many of the same protections.

Notable protections include preventing the provider from automatically renewing contracts, limitations on termination fees, and requires clearly advertised pricing that includes all fees. Customers must be given 60 days notice when changes are made to contracts, and these changes cannot affect the nature of the service offered. Like the Manitoban bill, customers will not be charged a cancellation fee if the changes involve "an increase in the consumer's obligations or a reduction in the merchant's obligations".¹²³ If these rules are broken, the provider can be forced to comply through an injunction.¹²⁴



When the bill came into effect, Ellen Roseman of the Toronto Star applauded these changes, and criticized the federal government for the lack of comparable national rules, noting that landline phone services are regulated by the CRTC, and the lack of choice in the wireless market necessitates similar regulation to that provided by Quebec.¹²⁵

Nova Scotia

On April 21, 2012, Nova Scotia also proposed an amendment to their Consumer Protection Act in the form of Bill 65.¹²⁶

Still under consideration, this bill stipulates that customers leaving their contract early would have to buy out their hardware, but would cap cancellation fees at \$50. Like the Quebec bill, it forbids service providers from automatically renewing contracts, or from changing contract terms without a customer's consent, and it requires clarity over the 'real cost' of introductory offers.¹²⁷

Allan Sullivan, a spokesman for service provider EastLink, supports the increased choice these proposals would bring to the market, noting that, "[r]ather than being locked into long-term contracts, [customers] have the flexibility of taking a look at the pricing in the market and [then

they] are able to respond and change providers".¹²⁸

Newfoundland and Labrador

Newfoundland and Labrador passed An Act to amend the Consumer Protection and Business Practices Act on June 27, 2012.¹²⁹

This legislation stipulates that service providers outline their terms and conditions in plain language, ensures that customers are notified in advance of changes to their service, and requires that advertising make clear the total monthly cost of a service.¹³⁰ It also mandates that customers should be able to terminate their service when they choose, and there are caps on termination fees if a customer chooses to end a contract early.¹³¹

Ontario

Ontario proposed its own customer protection bill last year: Bill 82, the Wireless Services Agreement Act, 2012.¹³²

The bill proposes many of the same protections as the other provinces, including caps on cancellation costs, clearly advertised minimum costs of agreements – including which services result in added costs – and a requirement of plain contract language that customers



can understand. Service providers may not renew, extend, or amend contracts without the customer's consent, may not charge customers for services while their device is being repaired, and providers must notify customers when they are about to exceed their service limits and incur extra charges.¹³³ MP David Orazietti who proposed the bill noted its importance because “[c]omplaints about wireless carriers comprised 62

percent of the complaints received by the federal Commissioner for Complaints for Telecommunications Services (CCTS) in 2010 – 2011. Ontario accounted for 41.4 percent of all complaints”.¹³⁴ This is a clear indication that firm rules are needed. This bill is currently awaiting reintroduction after the Ontario government was prorogued on October 15, 2012.¹³⁵



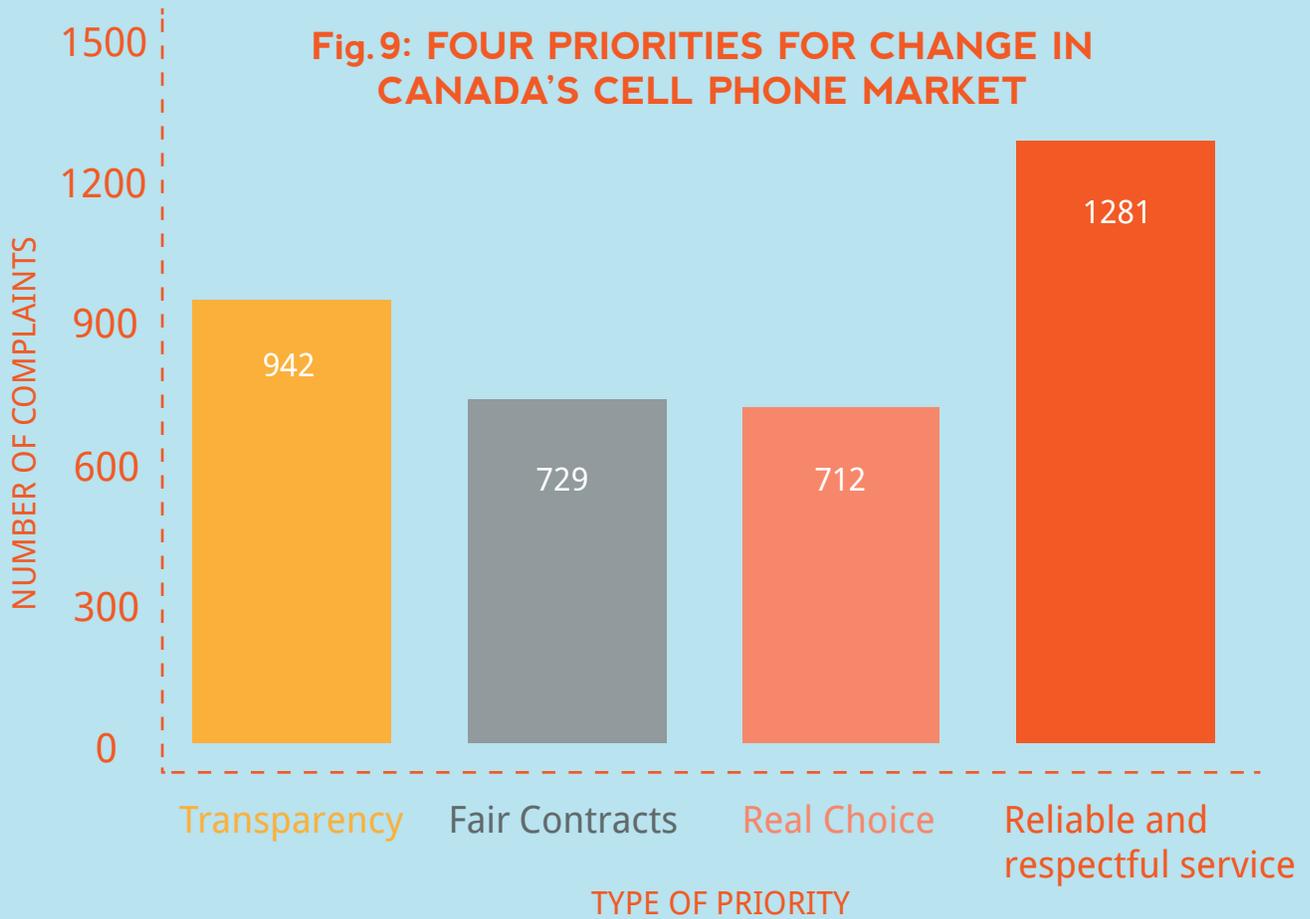
Recommendations: A Road Map to Fix our Broken Cell Phone Market

As long as three incumbents control almost 94% of the cell phone market¹³⁶ there will be a lack of choice for Canadian wireless customers, with associated social and economic costs. As this study demonstrates, Canadians experience excessively high telecom costs, restrictive contracts, and disrespectful customer service. Because the alternative options are suppressed through unnecessary switching costs and other hindrances, the incumbents have little incentive to improve their services.

Industry Canada and the [Canadian Radio-television and Telecommunications Commission](#) (CRTC) are the main bodies mandated to repair Canada's broken cell phone market, and quick, bold action will be needed from both to create incentives for choice and affordability. Industry Canada has a responsibility to promote a level playing-field in the Canadian wireless market, so that independent service providers are able to compete with the incumbents and Canadians are given real choice.

In early 2013, Industry Canada is preparing for its upcoming 700 Mhz and 2500 Mhz spectrum auction.¹³⁷ Industry Canada also faces a decision regarding Rogers Communications' plan to obtain key public spectrum assets from Shaw Communications that were set aside for new independent mobile options for Canadians. Both spectrum policy and Rogers' proposed takeover of spectrum assets are opportunities for Industry Canada to make wireless market improvements for Canadians. These recommendations suggest ways to implement these positive steps.

The CRTC is also holding a proceeding to consider the specific rules it will put in place as part of a national Code of Conduct; this is an opportunity to build strong customer protections into a set of minimum standards. This code should build on existing provincial rules, and where differences exist, the rules with the stronger customer protections should apply.¹³⁸ The following recommendations for the CRTC should, where possible, be



implemented through the Code process and outside of it where necessary.

New policies must be created in dialogue with citizens so that they reflect the lived reality of Canadians and further the growth and prosperity of the Canadian economy as a whole. Citizen stories highlighted four priorities for improvements to

the cell phone market: **real choice, fair contracts, reliable and respectful service, and transparency** (see Appendix A for full methodology of the content analysis). The following recommendations are designed to address these citizen priorities.



FIG. 10:
1 Real Choice



35.26%

complained that the lack of independent companies providing alternative options meant that there is little choice other than to accept the poor service offered by the incumbents.

Real Choice

35.26% of respondents highlighted the lack of real choice in the wireless market when asked to write about cell phone service in Canada. These respondents complained that the lack of easy access to independent companies providing alternative options meant that there was little choice other than to accept the poor service offered by the incumbents.

As a result, Canadians are left paying some of the highest cell phone rates in the industrialized world for some of the worst service.¹³⁹ While new entrants to the cell phone market have begun to provide affordable options to some Canadians, current policy has allowed incumbent service providers to obtain most of the high-quality spectrum necessary to provide a high standard of service.¹⁴⁰ There are a number of common-sense

recommendations that will facilitate the growth of choice within the Canadian wireless market.

Enable Independent Options Through Spectrum Fairness (Industry Canada)

While the government has put a cap on the amount of spectrum incumbents can obtain in the upcoming 700 Mhz spectrum auction, it did not set aside dedicated spectrum blocks for new entrants, as experts recommended.¹⁴¹ If the auction proceeds with the current framework incumbents will be provided with superior access to key spectrum assets. To level the playing-field for mobile startup providers, Industry Canada should adopt clear mechanisms to ensure that new entrants have the spectrum assets they need to provide Canadians with independent



cell phone options nation-wide. **Industry Canada should adopt a clear ‘use-it or lose-it approach’, with deployment evidence available within five years, and take back any unused assets.** Telecom companies must show that they have made substantial use of their spectrum within a specific period of time – if they don’t, the spectrum licence should immediately expire and the spectrum should be auctioned again, giving new entrants the opportunity to obtain it.

At the very least, **Industry Canada should not allow the spectrum set aside for new entrants in the 2008 auction or future auctions to be obtained by a wireless incumbent under any circumstances. This of course includes the recent Rogers/Shaw proposal.**

Unleash Wholesale Access for Authentic Choice (Industry Canada)

The large upfront investments required for network infrastructures—such as towers, base stations, and spectrum licences—create a high barrier for new entrants to the marketplace. **Industry Canada should mandate the CRTC to require that carriers provide wholesale access and resale roaming to allow new companies to enter the market without the need to create a new Canada-wide system.** This will in turn allow innovators to continue to introduce alternative business models and new types of wireless technologies.¹⁴² Wholesale access could be particularly useful to provide service options to rural and remote regions.

Ensure Unfettered Service Through Wireless Neutrality (Industry Canada)

Wireless service neutrality is necessary to protect customer choice and the portability of wireless devices, software applications, and wireless services. **Industry Canada should mandate that networks are open to standard devices from any device manufacturer. Service providers should also use standard and interoperable wireless protocols to facilitate wholesale access to network infrastructure by independent operators.**¹⁴³ Furthermore, services should not discriminate against different types of traffic or different types of applications. For example, a service provider should not provide some online services with network advantages of access, speed, or cost of usage not available to competing online services. While the CRTC has established net neutrality rules that apply to the mobile context in Telecom Decision 2010-445,¹⁴⁴ **Industry Canada should build in greater protections for network neutrality through the license approval process.**¹⁴⁵

Unlock Mobile Devices (CRTC)

Hardware that is locked to a particular service provider is a frequent source of frustration for citizens; it limits important uses of the device and imposes an onerous barrier to switching providers. There is no legitimate reason to support this practice. **The CRTC should consider taking steps to prevent technical or physical mechanisms from restricting a particular device to a particular service provider.**



FIG. 11:

2 Respectful and Reliable Service



63.45%

complained of poor service. This could range from a promised service not being provided to customers being accused of lying or incorrect cell phone coverage maps.

Reliable and Respectful Service

An overwhelming 63.45% of respondents wrote about **poor service**. This could range from a promised service that is not available, problems with coverage or failed hardware, the onus being put on the citizen to remedy or pursue an issue even when a customer service representative identified it as a legitimate complaint, and even customers being accused of lying. These issues could clearly be remedied by enforceable rules to safeguard against the worst abuses of the incumbent cell phone providers. At the same time, ensuring customers are able to leave service providers who provide poor service will

pressure incumbent providers to improve on this metric as well.

Open Roaming and Tower Sharing to Break Up Service Chokepoints (Industry Canada)

Industry Canada is currently reviewing existing roaming and tower-sharing policies.¹⁴⁶ While there are ongoing attempts to address some of the issues surrounding tower sharing and roaming, we have yet to see a comprehensive solution emerge. **Spectrum rules should include improved arbitration and enforcement**



for tower-sharing rules, including financial penalties for uncooperative practices. In order to provide Canadians with wireless services that function seamlessly across the country, on a level playing field between independent and incumbent providers, Industry Canada should implement clear indefinite roaming obligations. While there are currently obligations in place there have been disputes over the requisite level of service.

New Industry Canada roaming obligations should entail seamless hand-offs of calls between operators, a streamlined arbitration process, and the imposition of penalties for noncompliance. Industry Canada should be bold in its stated aim of tower sharing and roaming policies which is to, “encourage the deployment of advanced networks that provide the greatest choice of basic and advanced services available at competitive prices to the greatest number of Canadians”.¹⁴⁷

Disconnection Protection (CRTC)

Given the potential impact of a loss of connection, the CRTC must create strict guidelines for how and when such penalties are put in place. At minimum, disconnection should not be done trivially, and customers should have an opportunity to address the underlying cause of an intended disconnection prior to having their service cut off.

A Reasonable Hardware Malfunction Protocol (CRTC)

The CRTC should mandate that warranty information is clearly displayed and explained to the customer. In addition, as suggested in the CRTC’s Draft Wireless Code, customers should not be charged monthly service fees while their handset is being repaired and is therefore not in use, unless a replacement device is provided.¹⁴⁸ Further, the repair of a device should not result in changes to the duration of a contract, beyond an extension to cover the period that service charges were suspended.¹⁴⁹



FIG. 12:

3 Fair Contracts



36.11%

named contracts as an issue. Complaints about contracts involved disapproval of how citizens' contracts were handled, or seeing contracts in general as unhelpful and restrictive.

Fair Contracts

36.11% of citizens highlighted **contracts** when invited to write about their experience with cell phone service. Complaints about contracts involved contracts being too long, contracts being difficult to get out of, disapproval of how their contract was handled, or seeing contracts in general as unhelpful and restrictive. Contracts only work if all parties understand and agree to the terms and conditions. This means that contracts must not only be clear, but also fair and balanced.

Free Canadians From Three-Year Contracts (CRTC)

Three-year contracts are very long in a marketplace that aims to facilitate choice. These extremely long contracts do not reflect the realities of device life span, the life changes of the user, and the desire to switch to other service providers. The high termination fees attached to contracts restrict choice by making it costly to switch service providers, even when there is a



legitimate reason, leaving citizens trapped in inappropriate or ineffective contracts.

The CRTC should take steps to ensure customers are not locked in to restrictive lengthy contract terms. A cell phone market that provides real choice **must include strict limits on termination fees.** The CRTC should specifically prevent customers from being locked into one service provider for three years. Merely limiting termination rates to a one-off payment of outstanding device costs does not address the problem, as few will be able to incur hundreds of dollars in switching costs. **The solution should ensure that customers are not charged more than the actual outstanding cost of their device, and must also ensure that device payment is not used as a means of extending customer lock-in for three years at a time with no practical way out.**

Establish Consensual Contracts (CRTC)

Given that many respondents complained that changes were made to their contracts without their knowledge, the **CRTC should place strict limits on unilateral changes of both fixed term and indeterminate contracts.**¹⁵⁰ Customers enter into term agreements with the understanding that their service will be provided under certain conditions. To have those

conditions change part-way through is fundamentally unfair. If changes to an ongoing service are made, customers should be provided with a copy of their amended contract.

Fairness in Extension, Cancellation, Expiration (CRTC)

Most service providers impose a one month notice period on customers wishing to terminate their service. This is frustrating for customers because, after giving notice, they still have to pay one final bill for a month of service that they often do not use, having already switched to another provider. Therefore **the CRTC should ensure that customers are able to terminate their contract whenever they choose.**¹⁵¹ When a fixed term contract reaches its expiration date, it should continue on an indeterminate monthly basis so that customers are not blindsided by a sudden jump in fees.¹⁵² **A fixed term contract should not be renewed without the explicit consent of the customer.**¹⁵³

Stop Bill Shock: Early Notification and Caps on Additional Fees (CRTC)

Additional fees frequently result in what has become known as 'bill shock'. Various factors that are beyond the customer's control can cause them to go over their allocated limits without realizing and



incur a host of additional micropayments. For example, when travelling, roaming rates can change dramatically from area to area, often without clear notice.

As another example, customers may think they are using wifi when in fact they are on their data network, or a customer's phone may initiate automatic features such as downloading an update while they are travelling.

Providers should be mandated by the CRTC to empower customers to better manage their usage. This must include real-time notifications that warn customers when they approach a usage threshold. In addition, there should be caps on excessive charges so that services are put on hold when extra fees are incurred up to a certain level, unless customers opt out.¹⁵⁴ This would prevent customers from incurring hundreds and even thousands of dollars in extra fees without their consent.



FIG. 13:

4 Transparency



46.66%

highlighted a problem of transparency (being in the dark or confused by insufficient information or communications from their service provider)

Transparency

46.66% of citizens highlighted the problem of transparency in their comments. Responses suggested that they are in the dark or confused by insufficient information or communication from their service provider. As a result, respondents identified that they did not have enough knowledge when making a decision, that a decision was made for them or without their knowledge, that someone withheld information from them (willingly or because of poor documentation), and in some cases, they felt that their privacy was violated. All of these situations could be improved by mandating greater clarity and communication on the part of service providers.

Create Clarity in Contracts (CRTC)

To guarantee that individuals are aware that they have entered into a contract, and of the binding terms of that contract, the CRTC should “mandate the provision of an actual copy of the definitive contract” in plain language.¹⁵⁵ There should be at least a 15 day ‘cooling off’ period to ensure that customers can assess the suitability of any device purchased alongside the service agreement. Similarly, customers should be able to leave a contract during a cooling off period if the service turns out to be inadequate or inappropriate.



Ensure Truth in Advertised Prices (CRTC)

Choice is restricted and informed decision-making is impossible when customers are unable to compare prices due to unclear advertising. **Therefore the CRTC should provide some standardization for advertised pricing and services, including the adoption of a personalized information statement. The advertised pricing should ensure there are no hidden fees and impose limits on when terms such as 'unlimited usage' can be used.**

Protect Canadians Against Bundled Service Abuse (CRTC)

An overwhelmingly large percentage of wireless services in Canada are bundled with other service offerings. Service providers should not be permitted to avoid the protections the CRTC intends to offer wireless services simply by bundling these services with other offerings. **The CRTC should apply wireless protections to all wireless services, including those that are bundled together with other service offerings.** As part of an effort to reduce the use of bundling to restrict customer choice, policymakers should also work to enable independent options that are not vertically integrated telecom conglomerates.

Penalize Cell Phone Companies That Break the Rules

One sure fire way to encourage better service is to enable a more accessible range of choices in the cell phone market, and empower Canadians to exercise that choice. To ensure many of the recommendations put forward in this study and the CRTC's upcoming code of conduct are enforced it's important to develop an effective system of enforcement and significant penalties.

Parliament, led by Industry Canada, should amend the CRTC Act to permit the CRTC to levy administrative monetary penalties (AMPs) that can be used to enforce requirements and rules.



Appendix A:

Content Analysis Methodology

The data gathered for this study was analyzed in two parts. The content analysis team first looked at eleven problem areas identified by the CRTC in its initial call for comments.¹⁵⁶

After reading a sample of a few hundred responses and discussing the initial findings, these problem areas were added to. This resulted in twelve key problem areas or specific complaints, which related to contracts (lack of clarity, changes to service without consent, automatic renewals), unexpected additional expenses (due to unclear pricing, termination or roaming fees, bundled services, replacing broken or lost hardware out of pocket, security deposits), and poor service (from representatives who are rude or shift responsibility, or by having service disconnected due to miscommunications or errors).

In discussing the topics that respondents tended to highlight, and which complaints they had in common, four main priorities were isolated, based on how people felt they had been negatively impacted by their service providers and where improvement was needed. These categories are increased transparency,

a need for real choice, the need for fair contracts, and a desire for reliable and respectful service. Some respondents were quite specific in addressing these broad problem categories, for example labeling the practice of trapping customers in contracts as being ‘anti-choice’.

Other comments were more descriptive and less analytical, but clearly illustrated a specific problem with a service. These experiences were documented through the specific complaints categories, which were then organized according to which broad priority categories they were representative of. Almost all the horror stories include several complaints and many have multiple priorities.



Footnotes

Executive Summary

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How Cell Phone Service Hits Home

Key Findings: Priorities from Canadians

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Recommendations: A Road Map to Fix our Broken Cell Phone Market

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APPENDIX A: Content Analysis Methodology

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Graphs

Fig. 1: OM content analysis

Fig. 2: OM content analysis

Fig 3: Commissioner for Complaints for Telecommunications Services. (2011). CCTS Annual Report 2010- 2011. Retrieved from <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/CCTS-The-Year-in-Review.pdf>, p. 13

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Fig. 9 OM content analysis

Fig. 10-13 (Real Choice, Fair Contracts, Respectful and Reliable Service, Transparency): OM Content Analysis

