

## Comment

Regarding the Consultation on *Proceeding to establish a mandatory code for mobile wireless services*: Telecom Notice of Consultation CRTC 2012-557, 11 October 2012, CRTC 2012-557-1, 1 November 2012, CRTC 2012-557-2, 21 December 2012, CRTC 2012-557-3, 28 January 2013, and CRTC 2012-557-4, 11 February 2013.

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## **Executive summary**

1. This comment is based on the Wireless Code Working Document, submissions made on the online consultation, and submissions made during the oral hearing.
2. Pursuant to the working document, we make a number of suggestions regarding the wording of certain sections, primarily in the interest of increasing transparency, simplifying the terminology, and supporting consumer empowerment.
3. To reiterate our intervention, drawn from original research with youth and seniors (attached to this comment as an appendix), we suggest that considering the wireless needs of particular vulnerable – and, in the case of seniors, rapidly growing – groups will result in benefits to all Canadians.
4. Finally, we maintain that the implementation of a Wireless Code that supports consumer rights is urgent, especially for more vulnerable segments of the Canadian population. The need for such a code evidences the continuing lack of sufficient industry competition in Canada. Increased market competition would address many of the issues raised in the online comments and during the oral hearing.

## **Part One – Comment on the Working Document**

5. The following addresses specific sections of the working document that require further adjustment in order to increase transparency of contracts, simplify the terms used, and aid in empowering consumers to make informed choices.
6. We note that throughout the Working Document, the language is not entirely accessible; for example, there is an inconsistent use of terms throughout (detailed below), and confusing descriptions of fee calculations (especially termination fees, D3.3).

### **A. Application of the Wireless Code**

#### *A3. Application of the Wireless Code to prepaid and post-paid wireless services*

- The term 'post-paid' is used by service providers but is unlikely to be very meaningful for consumers. We suggest using more consumer-friendly language, e.g. describing services as 'with contract' or 'without contract'.

#### *A6. Application of the Wireless Code to distance contracts*

- This section introduces the concept of 'distance contracts' as distinct from other contracts. We suggest that this distinction is unnecessary. While the method of negotiating the contract differs whether transacted in person, by phone, or online, the Code should treat all contracts as equal. It is reasonable to include a provision in the code setting requirements for providing contract information to customers when the contract was not negotiated in person. We agree with the intention of A6 with respect to ensuring that all customers receive the complete terms of their contracts in a timely manner, but suggest that the distinction among contract types is unnecessary.
- There appears to be inconsistency in defining a 'cooling off' period. 'Distance contracts' (A6) allows for 30 days but the 'Personal information summary' description notes a period of 15 days. We suggest that the 'cooling off' period be defined in Section D3.

### **C. Administration and Enforcement of the Wireless Code**

#### *C3. How consumers can make a complaint related to the wireless code*

- It would be useful for the Commissioner for Complaints for Telecommunications Services (CCTS) to produce outreach resources to inform Canadians of its role in addressing complaints related to service provider actions that are inconsistent with the Wireless Code.

## D. Content of the Wireless Code

### D1. Clarity of contracts and related policies

#### D1.1 Plain language

- contracts need to be written simply, not in legal jargon
- in addition, standardized language in the contracts across providers would help consumers to compare contracts

#### D1.2 Issues that must be addressed in a contract to ensure completeness:

- service providers must note any limitations on the provision of services (e.g. if a smartphone will not work without a data plan, this must be noted)
- D1.2 e: providers should include a statement of the minimum *total* cost of contract (monthly cost is insufficient, consumers should know their total minimum commitment when they sign a contract)
- description of services should include speed of data service (this provision is particularly relevant for standalone mobile broadband services)
- D1.2 f: As became evident during the hearing, the term 'subsidy' is problematic. The contract must clearly explain the pricing of the device, noting whether the device is actually subsidized or whether the contract provides a plan for paying for the device in installments.

#### D1.3 Additional information specific to pre-paid services

- The use of the terms 'pre-paid card', 'certificate' and 'credits' has the potential to be unclear. While consumers may purchase a 'card' pre-paid services can also be acquired online with no 'card' involved in the transaction. The term 'pre-paid card' could be removed, with reference instead simply made to 'pre-paid' services.

#### D1.5 How and when contracts and related policies are to be provided

- Rather than note that "The contract *should* be made available in alternative formats for people with disabilities upon request at no additional cost." we suggest that just as a copy of a paper contract *must* be provided, the contract *must* be provided in alternative formats.

#### D1.6 Privacy policies

- privacy provisions must also address management of personal information on devices that are returned for repair
- privacy policies should also generally conform to standards of clear language, and include some indication of how consumers can manage the collection of their personal information on mobile devices

## *D2. Changes to contracts by service providers*

- email notification as opposed to SMS when terms are changed: individuals have told us that providers text them too often, and sometimes these texts are subject to fees

## *D3. Contract cancellation, expiration, and renewal*

### D3.2 Application of early termination fees

- penalties for altering services or terminating the contract need to be clearly communicated to consumers, where consumers understand what costs the fees are intended to cover

### D3.3 Calculation of early termination fees

- The language in this section is very confusing. As noted above (D1.2 f), the use of the word 'subsidy' must be clarified. This section also refers to 'economic incentives.' Clear and consistent language should be used throughout the Code, reflecting what a consumer is actually agreeing to when the contract includes the purchase of a phone in addition to the purchase of a service package. (On this point, we agree with comments made in the hearing that the provision of service and the acquisition of a mobile device can and should be subject to separate contracts.)
- The draft code states "If the service provider did not provide an economic incentive when the consumer signed up for a monthly term service, then the cancellation fee will be the price of the services provided up to the effective cancellation date." This description is unclear (and seems to imply that the cancellation fee is the equivalent of fees paid up to cancellation).

### D3.4 Automatic contract renewal

- We suggest that the general principle should be that consumers opt-in to services, rather than opt-out. As such, the default position on contracts should be that they are not automatically renewed, but consumers have the option to select automatic renewal when they sign their contract.

## *D4. Clarity of advertised prices*

### D4.1 Advertised prices

- in our research, mobile advertising was found to be perceived as untrustworthy, especially in regard to prices quoted in advertisements; ads should reflect the real cost of service, and include a statement of the *total* minimum cost for a contract.
- We note that there are no 'government-mandated' fees for the provision of wireless services and question the need to mention this concept in the code.

### D4.3 "Unlimited plans"

- unlimited should mean unlimited

## *D5. Notification of additional fees and tools to monitor and manage usage*

### D5.1 Notification of additional fees

- notification is not enough to improve consumer outcomes; additional fees such as roaming rates may need to be regulated, as in the EU<sup>1</sup>
- Following the principle of requiring opt-in rather than opt-out for services, we suggest that services or features not included in wireless service plans should be unavailable. If a consumer wants to add something to a plan, this can be done by contacting the provider and changing the contract.

### D5.2 Tools to monitor and manage usage

- Consistent with the principle of opting-in rather than out for services, the default set up for mobile devices should be that features/services not included a contract should be disabled.

### D5.3 Mobile Premium Services

- this should again be an opt-in choice for consumers, rather than opt-out

## **E. Promotion of the Wireless Code**

### *E1. Mechanisms to promote the Wireless Code*

- young people in our research noted that useful approaches here could include: a viral video; interviews with celebrities; Facebook page; and educational mobile apps, such as app to check contracts.
- *accredited* online resources that would enable a comparison of pricing plans, as we noted in our initial intervention:

Another important resource for consumers would be an independent analysis of wireless service prices, made available to the public in a price comparison tool. Such a tool was proposed in Canada as early as 2007 by then-Industry Minister Maxime Bernier, but has since been abandoned.<sup>2</sup> A revival of this project would provide an important consumer education tool. Alternately, Canada could follow the example of the UK, where there are several accredited price comparison websites that empower consumers by clarifying the differences and similarities between fee structures and service plans.<sup>3</sup> It would be helpful for Canadians to know whether comparison sites<sup>4</sup>

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<sup>1</sup> European Commission. (2012) More transparency and cheaper roaming prices for EU citizens: [http://ec.europa.eu/information\\_society/activities/roaming/regulation/archives/current\\_rules/index\\_en.htm](http://ec.europa.eu/information_society/activities/roaming/regulation/archives/current_rules/index_en.htm)

<sup>2</sup> Tencer, D. (2012) Cellphone Price Calculator Scrapped after Industry Lobbying: Report. *The Huffington Post*. Business, February 27: [http://www.huffingtonpost.ca/2012/02/27/cellphone-price-calculator-lobbying\\_n\\_1304632.html](http://www.huffingtonpost.ca/2012/02/27/cellphone-price-calculator-lobbying_n_1304632.html)

<sup>3</sup> <http://consumers.ofcom.org.uk/price-comparison/>

<sup>4</sup> e.g. <http://www.comparecellular.com/>

offer unbiased advice, and an accreditation process would assist in this regard.

- both youth and seniors would like increased public literacy about how mobile data works
- outside the code, there needs to be additional information available on the basic terms and definitions used in contracts.

### **Personalized Information Summary**

- this summary should be included at the beginning of every wireless service contract
- to “Total monthly cost,” the total cost of the service over the contract period should also be added; this would allow the consumer to understand the magnitude of the contract
- the addition of total costs over the entire length of the contract is a common practice in other jurisdictions, such as Australia<sup>5</sup>
- the total cost would also enable consumers to better navigate the often confusing terrain of contracts; for example, in the oral hearing, Rogers’s Senior Vice President Regulatory claimed that the provider has 11,000 different contracts currently engaged in by their subscribers<sup>6</sup>
- as suggested by Mr. Michael Lancione in the oral hearing, the device costs should be separated from the service costs, so that consumers better understand what they are paying for, and ultimately enjoy lower rates<sup>7</sup>
- the addition of total costs and an indication of the cost for the device as separate from the cost of services would also facilitate the availability of shorter-term contracts

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<sup>5</sup> See for example, Telstra’s pricing plans: <http://www.telstra.com.au/mobile-phones/mobile-plans/every-day-connect/>

<sup>6</sup> Engelhart, K. (2103) Rogers Communications, Presentation at the CRTC Wireless Code Hearing, 12 February: <http://www.crtc.gc.ca/eng/transcripts/2013/tt0212.html>, par. 4188.

<sup>7</sup> Lancione, M. (2013) Presentation at the CRTC Wireless Code Hearing, 12 February: <http://www.crtc.gc.ca/eng/transcripts/2013/tt0212.html>, par. 4660.

## Part Two – Research on Canadian youth and seniors

7. Our research on youth and seniors in Canada (attached as an appendix) shows that, similar to Media Access Canada's assertion in the oral hearing that "people with disabilities have all of the same concerns as other consumers and are similarly effected in detrimental ways by specific policies put in place by the telecommunications industry and the individual wireless service provider in particular,"<sup>8</sup> addressing the needs of particular groups is likely to have benefits for all Canadians.

### A. Youth

8. Youth are important as the consumer group with the highest levels of mobile device adoption – and significantly, the 2012 CWTA Cell Phone Consumer Attitudes Survey found that 18-24-year-olds were the most likely demographic to own a smartphone at 72%.<sup>9</sup>
9. According to our research, young Canadians experience mobile devices as indispensable everyday technologies for a range of functions.<sup>10</sup> When we asked youth about the economics of owning a mobile phone, they discussed a number of concerns with the current standard industry practices, as addressed in the Wireless Code Working Document. These are detailed in Part One above, and they include the need for plain, standardized contract language, privacy provisions for handsets, notifications, the length of contract terms, and clarity in advertising.
10. In addition, regarding service plans, youth said that they need more flexibility in the way plans are organized and presented. They use SMS and data more than voice (similar to deaf users who have noted a similar need in the comments contributed to the online portal). A provision about un-bundling voice, SMS, and data services might address this issue. Having an *à la carte* plan option, as long as it remained simple, would be made further effective by allowing for devices to be unlocked at any time from a single provider's network.

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<sup>8</sup> Milligan, B. (2013) Media Access Canada, Presentation at the CRTC Wireless Code Hearing, 13 February: <http://www.crtc.gc.ca/eng/transcripts/2013/tt0213.html>, par. 5207.

<sup>9</sup> Quorus. (2012) 2012 Cell Phone Consumer Attitudes Study. Canadian Wireless Telecommunications Association: <http://cwta.ca/wordpress/wp-content/uploads/2011/08/CWTA-2012ConsumerAttitudes1.pdf>, p. 17.

<sup>10</sup> Shepherd, T. and Shade, L.R. (2012) Mobile Phones as a 'Necessary Evil': Canadian Youth Talk About their Mobile Phones. In Vannini, P., Budd, L., Fisker, C., Jiron, P. and Jensen, O. (eds.), *Mobility and Communication Technologies in the Americas* (New York: Peter Lang): 199-213.

11. As a complement to the Wireless Code itself, the needs of youth may be met by the creation of impartial consumer resources. These might include: a viral video; interviews with celebrities; a Facebook page; and educational mobile apps, such as app to check the terms of the contract.
12. Another element of consumer outreach could consist of an accredited price comparison tool – particularly important considering the admission by the President of Bell Mobility that they did not want consumers to be better able to comparison shop between providers.<sup>11</sup>
13. More broadly, it is important to provide a glossary of basic terms that appear across supplier contracts, where esoteric and inconsistent terminology – such as “device subsidy” and “economic incentive” to describe handset cost – has the potential to confuse youth consumers and consumers in general.

## **B. Seniors**

14. In our research with over 300 seniors across the country,<sup>12</sup> their main reported use was for emergencies – the phone lent them (and their families) a sense of security. They wanted to not only use the devices for safety reasons, however, and be able to fully participate in wireless communication. Yet, many seniors restricted their use of cell phones either because another family member was paying for the service and/or they self-imposed restrictions to limit phone bill costs.
15. Some concerns raised by these seniors included:
  - language about accessibility
  - options for people who do not text and/or do not have access to the Internet through their mobile devices
  - expiring minutes in prepaid plans (on this point we support Option 2 for Section D1.3, to prohibit expiration of credits purchased for mobile phone use)

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<sup>11</sup> Oosterman, W. (2013) Bell Canada, Presentation at the CRTC Wireless Code Hearing, 14 February: <http://www.crtc.gc.ca/eng/transcripts/2013/tt0214.html>, para. 7270. The exchange was transcribed as follows:

7269 COMMISSIONER MOLNAR: So if you're going to use it [the personalized information summary] as a competitive differentiator, you probably didn't like the notion of folks that said, well, we should be able to use this form and basically shop it so we can do better comparison shopping before we sign a contract.

7270 MR. OOSTERMAN: That's correct, we did not like that.

<sup>12</sup> Sawchuk, K. and Crow B. (2010) Talking ‘costs’: Seniors, cell phones and the personal and political economy of telecommunications in Canada. Telecommunications Journal of Australia 60(4): <http://tja.org.au/index.php/tja/article/view/4/20>

- instruction manuals should be written in plain language and available in paper format
  - time to understand contracts – for instance, the physical environment of buying a cell phone typically provides nowhere to sit and is a rushed experience, making it difficult for seniors to get the information they need
  - possibility to revisit the plan: shorter contracts, more flexibility, longer cooling off period to reflect learning curve – once seniors discover new features, they may want to change their plan
  - the need for a clearer understanding of how roaming charges work
  - rural populations and service delivery
16. The Wireless Code can address these concerns through a citizenship framing that places less onus on the individual consumer. Since wireless communications have become an essential infrastructure for the full societal participation and well-being of Canadians, part of the CRTC's responsibility is to make sure that access to this infrastructure is democratized for all segments of the population.
17. We need a Wireless Code that is accessible, transparent, and accountable in its language – and we have significant legislation to draw on, including the CRTC's Accessibility of telecommunications and broadcasting services,<sup>13</sup> the Ontarians with Disabilities Act,<sup>14</sup> and the World Summit on the Information Society Declaration of Principles.<sup>15</sup>
18. In addition to the code itself, seniors would – like youth and Canadians generally – benefit from complementary resources for consumers. Independently of service providers, the CRTC should develop impartial resources and tools that help Canadians understand wireless services, and recognize whether a supplier is adhering to the code.
19. Increased public literacy for both youth and seniors is most needed in relation to how mobile data works. Canadians would like to understand the costs per unit of data in meaningful term related to their device's functionality; for example, how much data does it take to do a certain activity? What is the difference between

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<sup>13</sup> Canadian Radio-television and Telecommunications Commission. (2009) Broadcasting and Telecom Regulatory Policy CRTC 2009-430, Accessibility of telecommunications and broadcasting services: <http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm>

<sup>14</sup> Ontarians with Disabilities Act. (2001) S.O. 2001, Chapter 32: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_01o32\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01o32_e.htm)

<sup>15</sup> World Summit on the Information Society. (2003) Declaration of Principles, Building the Information Society: a global challenge in the new Millennium: <http://www.itu.int/wsis/docs/geneva/official/dop.html>

mobile data and Wi-Fi? What is the impact of per-Kb versus per-Mb billing? How is data transmission speed calculated? Understanding the units and costs of data is less intuitive for most Canadians than voice functionality, and it is important to increase literacy on this issue particularly because of the growing centrality of data in wireless communication.

### **Part Three – Industry competition**

20. In conclusion, we note that although “the Commission considers that competition in the mobile wireless market continues to be sufficient to protect the interests of users with respect to rates and choice of competitive service provider,”<sup>16</sup> presentations at the oral hearing as well as comments to the online consultation portal suggest that additional action is needed to ensure that the interests of Canadian consumers are well-served by our wireless service providers.
21. Despite Telecom Decision CRTC 2012-556, many of the issues raised by consumers in the development of a wireless code suggest that there remains a lack of effective competition<sup>17</sup> in the Canadian marketplace. Action beyond informing consumers of the terms of their contracts is needed to ensure that Canadians have access to affordable, innovative mobile telecommunication services.
22. We believe that a more competitive market would help to resolve some of the concerns held by consumers in relation to fee structures and the fair pricing of services. To give credit where it is due, we do note that carriers have implemented some consumer-friendly changes to service plans in the period immediately preceding this hearing.
23. Not only should increased competition lead to more affordable wireless communication, which is key, but also simpler and more transparent provision of wireless services. Attendant issues raised throughout the oral hearing, such as the availability of unlocked devices, should be addressed by more effective competition.
24. Competition should also begin to accommodate the special needs of certain consumer groups, such as youth and seniors, through a

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<sup>16</sup> Canadian Radio-television and Telecommunications Commission (2012) CRTC Telecom Decision 2012-556: <http://crtc.gc.ca/eng/archive/2012/2012-556.htm>

<sup>17</sup> For a discussion of effective competition in the broadband market in Canada see van Gorp, A., & Middleton, C. (2010). The Impact of Facilities and Service-Based Competition on Internet Services Provision in the Canadian Broadband Market. *Telematics and Informatics*, 27(3), 217-230.

marketing imperative, e.g., attracting the “silver market” of Canadian seniors, but also through Corporate Social Responsibility. While these benefits of competition would be a productive start, the CRTC needs to guide market pressures through effective regulation that ensures the fair provision of wireless services to all Canadians.

25. The role of the CRTC in the development of the Wireless Code should facilitate the needs of Canadian consumers as not only consumers, but citizens who need affordable access to digital communications infrastructure.
26. As part of Canada’s digital infrastructure, wireless services should be considered within the broader communications ecology of data transmission.<sup>18</sup> Technological neutrality implies that there is no reason for differentiating the provision of broadband by wireless or by wireline (fixed) means, raising the need for a code of conduct to govern the provision of all telecommunication services in Canada.
27. Further research into the effectiveness of the eventual Wireless Code should thus address the issue of competition in telecommunication services more broadly, looking closely at the potential benefits and limitations of increased market competition from the perspective of the Canadian public.

#### 28. Attachments

- Sawchuk, K. and Crow B. (2010) Talking ‘costs’: Seniors, cell phones and the personal and political economy of telecommunications in Canada. *Telecommunications Journal of Australia* 60(4): <http://tja.org.au/index.php/tja/article/view/4/20>
- Shepherd, T. and Shade, L.R. (2012) Mobile Phones as a ‘Necessary Evil’: Canadian Youth Talk About their Mobile Phones. In Vannini, P., Budd, L., Fisker, C., Jiron, P. and Jensen, O. (eds.), *Mobility and Communication Technologies in the Americas* (New York: Peter Lang): 199-213.
- van Gorp, A., & Middleton, C. (2010). The Impact of Facilities and Service-Based Competition on Internet Services Provision in the Canadian Broadband Market. *Telematics and Informatics*, 27(3), 217-230.

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<sup>18</sup> Schoenen, R. (2013) Presentation at the CRTC Wireless Code Hearing, 12 February: <http://www.crtc.gc.ca/eng/transcripts/2013/tt0212.html>, par. 4833.