cwta
Association canadienne des télécommunications sans fil
Canadian Wireless Telecommunications Association
acts

March 15, 2013

John Traversy
Secretary General
Canadian Radio-television and Telecommunications Commission
Les Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, Québec J8X 4B1

Dear Mr. Traversy,

Re: Telecom Notice of Consultation 2012-557 *Proceeding to establish a mandatory code for mobile wireless services* – Final reply comments

1. The Canadian Wireless Telecommunications Association (CWTA) is the authority on wireless issues, developments and trends in Canada. It represents cellular, PCS, messaging, mobile radio, fixed wireless and mobile satellite carriers as well as companies that develop and produce products and services for the industry. CWTA is pleased to file its final written reply comments with respect to this Wireless Code proceeding.

2. In its final submission on March 1, CWTA restated its position that first and foremost, no element of the Wireless Code should remove any options for consumers that exist in the market today, or result in any unintended negative consequences for Canadian wireless subscribers. CWTA also reiterated that the Wireless Code should respond to two objectives:
   - The Government's 2006 Telecommunications Policy Direction to use "measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary," and
   - The Commission's own conclusion that "consumers need additional tools to better understand their basic rights, as well as their service providers' responsibilities with respect to mobile wireless services."

3. CWTA has noted throughout this process a clear pattern of consensus among the industry and consumer and other advocacy groups with respect to most of the elements that belong in a wireless code of conduct. This was made more apparent by the support from most stakeholders for the majority of the elements in the Commission's Draft Code (issued with TNC 2012-557-3). In light of the consensus, CWTA's final submission focused on only eight aspects of the Draft Code that remained subject of a debate following the hearing component of the proceeding.

4. CWTA has reviewed all other final submissions and is pleased to note that consensus continues to grow. Indeed, the level outstanding debate on elements of the Wireless Code has decreased in each phase of the proceeding. We submit there are two reasons for this: 1) the Commission listened to Canadians and service

providers, and focused on the above-noted objectives, in tabling its Draft Code; and 2) the proceeding itself has increased the level of understanding among all stakeholders of the wireless industry and the most effective means of addressing the clarity and content of mobile wireless service contracts and related issues for consumers.

5. At the same time CWTA notes remaining alternative views on some of the proposed contents and administrative aspects of the Wireless Code. We submit that much of the remaining debate stems from a lack of understanding the positions put forward by the various interveners. This is evident in the misinterpretation of international regulatory practices and wireless business models, and the clear misrepresentation of the positions put forward and comments made by interveners, including those made by CWTA.

6. This reply submission therefore again focuses on the eight aspects of the Draft Code identified in CWTA's final submission, noting for each element where consensus has increased and responding to the remaining points of debate. It also identifies and addresses instances where CWTA comments were taken out of context in the final submissions of other interveners and takes the opportunity to clarify these misrepresentations.

7. CWTA maintains that the appropriate direction for each element the Wireless Code is that which best responds to the Commission's stated objectives for this proceeding and is most consistent with the requirements of the Policy Direction. We reiterate that the underlying basis of a Wireless Code should not be to strike a balance between the interests of the industry and consumers, but rather the Code should balance market forces and regulation to the greatest benefit of consumers. By focusing on this result, Commission will achieve a balanced Code that provides the tools and options that consumers demand, and that provides flexibility for service providers to respond to new innovations and new business models.

8. Finally, CWTA supports TELUS' recommendation for some form of additional consultative process to finalize the ultimate wording of the Wireless Code. CWTA agrees with TELUS that after the intent of each element of the Code has been clearly established, the drafting language of the Wireless Code should be reviewed ensure it optimizes "the implementation of the policy determinations the Commission will have made as the result of this proceeding."

The CRTC must exercise its mandate as the federal telecommunications regulator and implement a single national Wireless Code that applies to all wireless agreements in Canada

9. For more than a year CWTA has strongly submitted that the outcome of this process should be one set of rules that applies equally to all wireless consumer agreements, in all provinces and territories. CWTA maintains that consumers, carriers and the regulator would be better served by a proportionate and symmetrical set of federal regulations, rather than an asymmetrical and inefficient patchwork of different provincial frameworks.

10. CWTA is far from alone in this opinion. We note that the vast majority of interveners to this proceeding, both from the industry and representatives from consumer and public interest groups, strongly urge the Commission to fulfil its mandate as the primary regulator of wireless services in Canada by instituting a single national code for all Canadians.

11. As CWTA noted in its final submission, elected officials from multiple provinces have also publicly stated that this field is best occupied by the dedicated federal regulator, and they await a national code.

12. To recap: in announcing Nova Scotia's new provincial regulations governing wireless services agreements, Service Nova Scotia Minister John MacDonell "said federal rules would trump the province's."[1] Indeed, the provinces have been clear that they moved ahead with regulating telecommunications services agreements only because there was not federal regulation. Said Ontario MPP Margaret Best: "I am encouraged to hear that they [the CRTC] are taking action with respect to this and am looking forward to it. But in the interim, life goes on here in the province of Ontario. We have a responsibility to Ontario consumers, and that is why we want to act with respect to this bill, because I don't know how long these hearings are going to go on."[2]

13. These elected officials recognize the clear jurisdiction of the Commission with respect to telecommunications regulation. It is evident that, had a federal Code come first, these provinces would not have introduced consumer protection legislation for wireless services. They see their role as filling a vacuum at the federal level, rather than attempting to co-exist with federal regulations. Over a century of jurisprudence, legislation and regulation have established that interprovincial telecommunications services are to be subject to federal jurisdiction in Canada. Bell and PIAC's filing on the constitutional jurisdiction over the regulation of cell phone contracts further underlines the depth and range of jurisprudence and legal opinion confirming the Commission's sole jurisdiction once it acts to regulate in the field of telecommunications.

14. However, if the Commission does not exercise its federal mandate and instead elects to issue a code that "will co-exist with provincial consumer legislation," it will be doing a disservice to those provinces that clearly recognize and await federal oversight in this area. With federal regulations in place, provinces with existing wireless consumer regulations can simply cede authority to the federal regulator. But if the Wireless Code insists that it is to co-exist with provincial legislation, a provinces ability to suspend its own legislation is less clear. A province cannot cede to clear federal oversight if the federal regulator explicitly relinquishes its authority.

15. In fact, some interveners have suggested that the constitutionality of provincial legislation is not a relevant component of a Wireless Code. CWTA agrees; any suggestion that the Wireless Code co-exists with provincial legislation would clearly embed the constitutional argument in the regulation. As TELUS submitted in its final comments: "the question of the applicability of provincial legislation to telecommunications services is external to the code and need not be addressed within it. The exclusively federal nature of telecommunications regulation will be confirmed in the courts, if necessary."

16. The only actual argument against a single Wireless Code put forward during the proceeding is the suggestion that wireless service providers are trying to reduce potential penalties in favour of CCTS remedies. The

[1] Source*: The Chronicle-Herald*. February 16, 2013.
[2] Source: Queen's Park Hansard. September 20, 2012.

Telecommunications Act has large penalty offence provisions for failing to comply with regulatory rules, which would be available under a national Wireless Code.

17. CWTA has advocated for a single national code first and foremost to remove the inefficient patchwork of provincial regulations that serves only to confuse and frustrate Canadian wireless customers and service providers. As the Consumers Council of Canada submitted in its February 22 undertaking response: "such references [to co-existence with provincial legislation] create the confusion that we believe a national Code ought to eliminate."

18. Wireless customers, service providers, and provincial officials await a single national Wireless Code. CWTA again strongly submits that the Commission exercise its federal mandate. The Telecommunications Act not only authorizes the Commission to regulate wireless agreements at a federal level; in the face of disparate provincial wireless regulations, the Act compels the Commission to do so.

19. Finally, CWTA again submits that the preeminent measure of a successful Wireless Code is one set of regulations that applies to all wireless agreements made in Canada. We further submit that the success of a national code could not be measured if it were to co-exist with provincial legislation and regulations. Co-existing federal and provincial codes would make it impossible to accurately measure the success of either. Improvements or problems in any area of the market could not be reliably attributed to either federal or provincial regulation, making it impossible to address problem areas to better serve consumers.

The Wireless Code should come into force when it can apply equally to all *new* wireless agreements in Canada

20. CWTA reiterates its position that while the Wireless Code should be implemented as soon as possible, the Commission must fully consider the following circumstances in establishing an effective date (or dates) for the Wireless Code:
    - Not all carriers will have the same readiness to implement new billing and customer support systems and particular consideration should be given to carriers that have only recently completed a significant modifications to align with provincial regulations; and
    - Some elements of the Wireless Code will take longer to implement than others and a staggered or phased implementation process may be more suitable.

21. The Commission has received estimates from service providers on the projected implementation time of various elements of the Wireless Code and we recommend these estimates be given full consideration in developing an implementation schedule. We reiterate, however, that any phased implementation process must be done so based on a schedule that reflects the requirements of all service providers. At no time should there be a situation where the customers of some service providers are protected by the Wireless Code while subscribers to another service provider are not.

22. The precedent in retroactively applying new regulations to existing agreements is as clear as the jurisdictional arguments. Absent any express direction from a legislature, industry regulation has never come into force retroactively in any industry. CWTA notes that this precedent has been respected in all provinces that have

enacted wireless services contract legislation to date. Rather, the provinces have used the 'grandfathering' approach, whereby fixed-term contracts signed prior to the effective date of the provincial regulations remain in force until they expire or are cancelled. This approach should be maintained in implementing the Wireless Code.

23. CWTA notes the submission of PIAC/CAC/COSCO [PIAC] that "It is unreasonable for consumers who have signed up for contracts during this period, when carriers are well aware that an eventual Code will result, will have to wait for a period of up to three years to enjoy the Code's protection." Whether unreasonable or not, it is an unavoidable practicability, and it is how new regulations come into effect – proactively, not retroactively.

24. At the same time, CWTA notes that most service providers have already implemented a device subsidy-based termination fee formula based on the 'Quebec model,' so many customers in Canada already benefit from what is generally viewed as the most important element of the Wireless Code – the ability to terminate a contract, with no other liability beyond the remaining device subsidy.

25. CWTA also note that service providers have identified many elements of the Wireless Code that would, in practice, be applied to all subscribers as soon as the elements are implemented. The simple fact is that some elements of the Wireless Code, by their very nature, cannot be applied retroactively to all existing contracts.

26. Finally, in response to the question of "when do changes to an existing contract effectively make it a new contract?" We reiterate that the most straightforward trigger to use to identify the creation of a 'new' contract would be any extension of the commitment period for the service term or the device subsidy. We also agree with the suggestion by MTS that a mid-term device upgrade, whether resulting in a contract extension or not, should also trigger the Code application, as such a change would address the issue of identifying a device-based ETF.

27. CWTA notes that some parties to the proceeding have suggested that any change resulting in a higher per-month service price would also trigger a Code application. We respectfully disagree. Simply put, a customer agreeing to or requesting a larger and more expensive service plan – without a contract extension or a new device – will not necessarily eliminate existing impediments to a Code application, namely identifying the value of the device-based ETF.

28. Similarly, using the addition of an optional service to the customers' plan, no matter how 'material' that service is perceived to be, to rewrite the terms of the contract and claim that a new contract has now been entered into, would ultimately be arbitrary, subjective and not straightforward for service providers or consumers. In fact, a change to the service or features being provided under contract, as explicitly envisaged under the agreement, does not create a new contract. A consumer who adds a voicemail service to an existing plan would not consider themselves to be signing a 'new contract.' We therefore reiterate that the extension of a commitment period or the issuance of a new device are the most straightforward, objective and consistent triggers to use to identify the creation of a new contract and a subsequent Code application.

The Wireless Code must apply to pre-paid service in a clearly defined way that does not remove any options for consumers, or business models, that exist in the market today

29. CWTA maintains that the impetus for regulating wireless agreements, and the resulting rules and regulations at the provincial level, in other countries, and in the majority of the Commission's Draft Code, is post-paid-specific, i.e., to prevent "bill shock." By its very nature pre-paid service does not entail bill shock, as it does not involve bills.

30. Further, as CWTA submitted in its February 22nd undertaking, many of the elements in the CRTC Draft Code, as currently written, simply could not apply to pre-paid service business models. Virtually all interveners to the proceeding recognize this fact and support applying the Code to pre-paid service only where it is practical and possible to do so without altering existing business models.

31. As a rule, CWTA supports clear and transparent service terms, accurate advertising, accessible privacy policies and advanced notification of service changes for all wireless customers, including pre-paid customers. However, we also support consumer choice, and strongly submit that any elements of the Wireless Code applied to benefit pre-paid consumers must not remove any options for consumers that exist in the market today. The ability to acquire wireless service in a convenience store, gas station or supermarket with no customer service interaction is an option that many consumers prefer and use today. Such options should not be eliminated by the Wireless Code.

32. For example, expecting a cashier in a supermarket to fill in the Commission's proposed 'personal information summary' when ringing in a cart load of groceries, and happening upon a pre-paid phone, is not realistic. Moreover, the notion of 'personal information' is not the same in pre-paid and post-paid scenarios. A customer does not have to provide any personal information whatsoever to acquire pre-paid services in Canada.

33. Mobilicity stated in its final submission: "Nothing in the CRTC Wireless Code should derogate from the choice and competitive prices available to consumers through pre-paid services." It is important that the Commission keep this in mind when determining which specific elements of the Code apply to pre-paid service as even seemingly benign applications could have negative, unintended consequences.

34. For example, some interveners have recommended that pre-paid terms of service include "the place and date the agreement is made." This obligation would require pre-paid providers to develop separate terms of service forms for each individual kiosk, pharmacy, gas station and convenience store in which they are distributed. It would increase service provider, and potentially consumer, costs, and provide virtually no benefit to customers.

35. Finally, CWTA maintains that pre-paid service is not defined solely by the purchase of minutes that should never expire. Pre-paid service models are based on access to the network (e.g. the ability to receive or send calls, texts or data) as well as stated usage volumes (e.g. a set number of minutes, texts or megabytes; or

unlimited usage for a fixed duration). Pre-paid wireless service balances also typically do not have an 'expiry date'; rather they have a usage period that begins once the balance is activated. And many pre-paid services also allow customers to carry over unused minutes to a new usage period as long as the customer refreshes the account before the end of the term.

36. As CWTA submitted in its final comments, there does not appear to be a single jurisdiction in the world where the time+usage business model runs afoul of regulation. However, a limited number of parties to this proceeding continue to either not understand this business model, or reject it outright. CWTA has provided many examples of other commonly used and accepted time+usage business models, including car rentals and pre-paid rounds at a golf course. Perhaps the most relatable similar business model is post-paid wireless service. Most post-paid plans provide an allowance of a number of minutes, texts or data megabytes per month. It is commonly accepted that post-paid subscribers do not get to redeem any minutes, texts or data megabytes they did not use each month. Yet some parties continue to challenge the use of same business model for pre-paid service.

37. The service providers submitted through undertakings and final submissions a variety of pre-paid business practices offered in the market today, including unlimited use for 30 days, or time+usage for 30, 90 or 365 day periods. It is clearly a competitive market that provides many options for consumers. A prohibition on the expiry of pre-paid minutes, or mandatory usage terms for all pre-paid services would therefore fundamentally alter pre-paid business models. The Wireless Code should not remove existing business models from the market and should similarly not prescribe competitors to conform to the same business model.

38. Prohibiting the time+usage business model would also be impossible for many service providers to comply with. Eliminating usage-period provisions from the pre-paid business model would result in a never-ending increase of unused telephone numbers. These unused numbers would also technically count as wireless subscribers, as carriers could never be certain if five people held five numbers, or if one person held all five – they would register as five subscribers, when in reality, they may be one. This over-reporting of subscriber bases would run Canada's publicly-trade service providers afoul of securities regulations.

39. CWTA notes that one March 1st intervention suggested service providers could repatriate phone numbers and close dormant accounts, but hold remaining balances indefinitely until the customer returns to the network. Wireless service providers are not banks, and pre-paid service balances are not bank accounts. Such a requirement would oblige wireless service providers to maintain eventually millions of accounts – many of which would only contain a few cents – indefinitely for unnamed customers who may or may not return. CWTA submits that this is a patently unworkable suggestion.

40. CWTA clearly submits there is no compelling reason for current practices to be prohibited. Consumers who purchase access to a network do so for a pre-set period of time, and/or a pre-set amount of usage. Pre-paid business models have evolved this way around the world, in recognition that requiring a pre-paid account to remain active for years would be a recipe for wasted telephone numbers, and would make it impossible for carriers to be certain how many actual subscribers they were serving.

The consumer right that 'Service providers cannot unilaterally change services that consumer cannot change, cancel or choose not to use' should be embedded in the Wireless Code

41. CWTA submitted in its final comments that much of the frustration from wireless consumers stems from changes to contract terms that the consumer was unaware could be subject to change under the terms of the agreement. CWTA therefore strongly recommends that contracts must stipulate which services could be changed by the consumer or the service provider. This recommendation is not just a language preference; we recommend the Commission embed the consumer right that "service providers cannot change services that customers cannot themselves change, cancel or choose not to use" in the Wireless Code. We believe the introduction of this regulation would provide clarity and consistency across the industry, as well as flexibility for consumers and service providers.

42. Conversely, But the Code should not attempt to delineate a set list of services that can and cannot be changed by this or that party. Such a list could never be exhaustive, and would surely become stale as new business models and services emerge.

43. Under our proposal, when a consumer agrees to a fixed term for any service, they are ensuring that neither they nor the service provider can unilaterally change the price, term or volume of that service for the duration of the agreement. Conversely, if they prefer a monthly term for any service, they can amend or drop it at any time, and the service provider could also change the price, term or volume of that service by providing 30-days' notice.

44. Some parties to the hearing continue to disagree with respect to what services can or cannot be changed by the service provider. Our main concern with the alternative proposals is that they are difficult to understand and, depending on the interpretation, could be untenable. For example, PIAC continues to support a Code that would allow a customer to refuse certain changes to a contract, or alternatively cancel at no cost and keep a subsidized device.

45. However, it is unclear which changes PIAC believes should be prohibited. In its final comments, PIAC submitted that: "WSPs should not be able to make unilateral changes to certain terms of the contract that are <u>fundamental from the perspective of the contract</u>,"[3] which it appears to define as those "issues enumerated in D1.2 of the Draft Code," (e.g. the issues that must be addressed in a contract to ensure completeness).

46. While this proposal appears understandable (e.g. no changes to fixed or optional services that are in the contract) PIAC goes on to add that: "An increase to pay-per-use fees, which are not considered by WSPs to form part of the fixed term service, term commitment or base service, could be a change to the contract that <u>the consumer views as an important term</u>."[4] Rates for pay-per-use services are not a requirement to be *in* the contract under D1.2 of the Draft Code. But PIAC appears to suggest that a consumer could cancel at no cost and keep their device if they determine any price change is, in their view, to an important term.

[3] Emphasis added.
[4] Emphasis added.

47. CWTA submitted in its final comments that there are endless pay-per-use services (e.g. international roaming and long-distance calling) for which new prices are negotiated on an ongoing basis. Most of these services will never be used by the average consumer. Requiring service providers to lock these pay-per-use rates in time, for each subscriber, based solely on the date on which they entered into the agreement, would be completely unmanageable for service providers and would create confusion for consumers.

48. PIAC additionally mischaracterized the nature of CWTA's submission on this element of the Wireless Code. PIAC stated in its final submission: "If the WSPs' suggested modifications are accepted, then the Code prescribes no requirement to either notify consumers about changes to contracts that are not for a fixed term service, subject to term commitments, or relating to base service."[5] This is simply not true, and could have been verified by reference to the record of this proceeding. At each stage of this proceeding CWTA has clearly submitted that changes to optional services that a consumer has subscribed to must be preceded by 30-days' notice.

49. To reiterate and clarify CWTA's position on changes to contracts by service providers:
    - Fixed-term services: Service providers cannot unilaterally change services that consumer cannot change, cancel or choose not to use. Any service that is committed to at a fixed price in the contract cannot be changed during the stipulated commitment period.
    - Optional services: Service providers can change optional (or monthly) services that are provided under the contract, but are not contracted services that the consumer has elected to lock in or 'fix' for a commitment period, provided 30 days' advanced notice is given. CWTA notes that these changes would now be done with the knowledge that the subscriber can choose to cancel at any time under the cancellation provisions in the code.
    - Pay-per-use services: Service providers can change pay-per-use services without providing notification. However, any pay-per-use service that is agreed to on a fixed-price basis as part of a contract must remain at that fixed price for the duration of the stipulated term. We also note that for many pay-per-use services, such as international roaming, consumers are informed of the price at the time they elect to use the service.

50. We strongly submit that these rights, and their clear communication in contracts, provide the greatest clarity and certainty to consumers and service providers. The Wireless Code should require contracts to clearly state which services are fixed, monthly, and pay-per-use, but should reflect maximum consumer flexibility and technological neutrality in not codifying which services must be included under which category.

Service providers should offer to provide certain, prescribed relevant information to consumers before they sign their contract, but should have the flexibility to do so in a manner that responds to their own customers' preferences

[5] Emphasis added.

51. CWTA believes that all wireless consumers should be able to fully review and understand all elements of their wireless services agreements before signing their contract. While CWTA understands the motivation behind the suggested personal information summary, we maintain that the requirement should be flexible enough to ensure that consumers do not have to be walked through the info summary if they do not want to be, and that service providers can present the info summary in a manner that fits their business practices and allows them to cater the offering as a competitive differentiator.

52. The wireless service providers are unanimous both in their support for an element in the Wireless Code that identifies what information must be offered to consumers and in their insistence that they be permitted to customize the information in a format and delivery mechanism of their choice. Different service providers have different ways of communicating with their customers. A prescriptive, format-specific personal information summary would effectively require all service providers to communicate with their customers in the same way, and not alter their method of communicating to respond to consumer needs. It would also be impossible to capture all the relevant information in a rapidly-evolving industry. The Commission would have to approve any change to the personal information summary, every time a new service or product entered the market that was not contemplated on the one-size-fits-all template that was included in the draft Wireless Code.

53. CWTA submits that there is no comparison-shopping market failure that needs to be addressed through a mandated, one-size-fits-all tool. We agree with the Consumers Council of Canada that it can be difficult for consumers to “retain in memory the many different and complex aspects of a wireless service offer when they consider the offers made by different WSPs.” However, we are unaware of any wireless service provider that does not currently provide written descriptions of service plans that consumers can take with them when they leave the store.

54. CWTA reiterates that the Personalized Information Summary requirement of the Wireless Code should only identify the information that must be offered to the consumer before they sign their contract. However, service providers should be able to present the required information with a reasonable amount of flexibility, such as on the first page of the contract, with appropriate messaging and context, in an order deemed to be more consumer-friendly, or on a tablet or large-screen monitor. No consumer should be forced to be walked through a mandated information form if they do not want to be.

The presence of an industry-wide, device-based early termination fee provides consumer mobility without removing any options for consumers that exist in the market today

55. Many interveners, including CWTA, maintain that the cornerstone of the Wireless Code is a standard early-termination formula. Indeed, the Draft Code’s proposals to allow consumers to cancel at any time (with no advance notice) and only pay the remaining device subsidy to do so, allows consumers the freedom to terminate service agreements and pay the balance on their device subsidy at their own convenience. The consumer and public interest groups similarly agree that the mandatory ETF addresses previous issue related to contract length without removing any options that exist in the market today.

56. To that point, the market is addressing any issues surrounding contract length. Currently, consumers that may prefer not to enter into a long-term fixed contract can purchase their device outright and acquire service on a month-to-month basis, or they can choose a 'Tab' model, which allows for the device to be paid over three years, but provides the flexibility to amend or terminate service terms at any time. The Commission, through its Draft Code and in public statements, has recognized that there is no reason to remove any potential advantage sought by those service providers currently offering alternatives to fixed-term contracts.

57. There remain some advocates for limiting contract lengths to two years. However, every alternative proposal put forward would still require consumers have to pay for their device outright, or payback a pro-rated portion of the upfront subsidy they received in order to terminate their contract. The increased consumer mobility purported under these alternative models is not evident.

58. Finally, there continues to remain some confusion over the nature of device subsidies. Device subsidies are not loans or lease agreements, and are not 'paid back over time.' Subsidies are absorbed by service providers in exchange for a commitment to acquire service for a fixed period of time. It was determined under the Quebec Consumer Protection Act that service providers had the right to recuperate a pro-rated portion of their upfront subsidy from subscribers that do not fulfil their commitment to pay for service for the entire fixed period. The formula has become the accepted norm for early termination fees and has subsequently come to be viewed by some as being an inherent part of the monthly bill. However, the presence of a declining device subsidy balance is for the purposes of the ETF only and is not directly related to subscribers' monthly service fees.

The Wireless Code should ensure consumers have the tools they need to manage their service usage and that service providers can continue to innovate to respond to consumer needs

59. CWTA reiterates its position hat service providers should be required to enable consumers to monitor and manage their service usage, but should be afforded the flexibility to tailor competitive offerings through a variety of means (e.g. push or pull options) and for each of the individual service categories (i.e. voice, data, text, and data roaming). We note the broad consensus that the appetite for usage notifications is significantly greater for data and data roaming than for voice or text usage. As such, the full suite of notification services suggested in the CRTC Draft Code applying to voice, text and data services would be unwanted and unnecessary, and would only burden service providers at no meaningful benefit to consumers.

60. Consumer and public interest groups continue to take an opposing viewpoint and advocate for a mandatory full suite of tools, notifications and caps. However, in some respects our views are not that divergent. PIAC submitted in its final comments that: "We agree with Commissioner Molnar's suggestion at the Oral Hearing that the goal should be no unanticipated fees for customers." We also agree, but we don't believe notifications *and* caps are needed to achieve that goal. Simply put, if a consumer is notified that they have reached 100% of a usage allowance, additional fees cannot be considered unanticipated. Therefore, a cap may serve to help consumers avoid high overages in lieu of push or pull notification options, but is completely unnecessary when consumers are already aware of their usage levels.

61. As well, the Consumers Council of Canada misrepresented multiple statements by CWTA on the issue of caps. These misrepresentations show the Consumers Council's lack of understanding of the wireless industry, international regulatory measures, or the consequences of over-regulation. We would like to take the opportunity to clarify.

62. The Consumers Council submitted: "The CWTA opposed caps as being unprecedented, but this evidence was contradicted by the fact that some Canadian WSPs already use caps." This is completely false. The CWTA quote cited by the Consumers Council clearly refers to CWTA's opinion of mandating all notification and cap requirements, not just caps. We were clear in our opening statement that we would support the use of "*any* of the options proposed by the CRTC Code could be employed to fulfil this obligation" to enable consumers to manage their usage.

63. The Consumers Council submitted: "The CWTA also said caps were not used "anywhere else in the world." Australia, however, has mandated the use of caps in combination with notifications." Again, this statement referenced the same quote as above, in which we clearly refer to the full suite of usage management requirements. We would also like to clarify that no other country uses the combined all-services cap that was proposed in the Draft Code.

64. Furthermore, the Consumers Council has clearly misinterpreted the Australian requirements by saying the use of caps are mandated "in combination" with notifications. Australia's Telecommunications Consumer Protections Code requires service providers to provide *either* a hard cap or near real-time (within 48 hours) notifications, as well as one other spend management tool, which could include access to usage information, pre-paid service, or speed throttling.[6] The cap/notification combination is in no way "mandated." In fact, CWTA would fully support the many-option approach used in Australia, provided they remain options.

65. The Consumers Council submitted: "CWTA also argued that introducing caps takes away some WSPs' competitive advantage, or misdirects resources away from improving Canada's wireless telecommunications system. No evidence was presented about the scale of this misdirection... Moreover, this argument presupposes that the Wireless Code is being designed to protect WSP interests, rather than those of consumers." TELUS has now submitted to the record that it would cost an estimated $50-$75 million to develop a capping system. That level of investment by each service provider would clearly either divert resources away from other network development initiatives or increase costs to consumers.

66. CWTA has been clear that we do not presuppose that the Wireless Code be designed to protect WSP interests. We have consistently recommended that the Wireless Code balances market forces and regulation for the greatest benefit of all consumers – in fact, the Consumers Council supported this exact CWTA statement in its final submission. We respectfully submit that the imposition of mandatory caps, even if notifications are already in place, is a clear example of regulation in spite of market forces to the detriment of consumers.

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[6] Communications Alliance Ltd, Telecommunications Consumer Protections Code, Industry Code C628:2012 (Australia, May 2012). Sections 6.5.2 and 6.5.4.

67. Finally, we again urge the Commission to carefully consider the potential consequences of mandating which notifications must be delivered by service providers. Network-wide technical solutions are often not scalable, costing all carriers the same to implement. Such solutions are proportionately more expensive to smaller service providers, and would significantly hamper their ability to invest in other areas that would better benefit their customers.

There is no appropriate one-size-fits-all regulation for unlocking. The market is already addressing unlocking in manner that provides consumers with the options they prefer, without removing existing business models

68. CWTA maintains its position that although every wireless customer should clearly be aware of unlocking options or capabilities before acquiring a device, there is no appropriate one-size-fits-all regulation for unlocking. Considering recent changes to unlocking policies that will benefit the majority of Canadian wireless subscribers, there is no reason to mandate an unlocking policy that may significantly damage the business models of some service providers.

69. We submit that the market is already addressing unlocking demands. One service provider already unlocks devices for which the subsidy has been recovered for $10. And within the coming months all national service providers will offer unlocking for all handsets after 90 days of service. However, there are other carriers that offer device subsidies that are not linked to a fixed term contract or cannot be recovered through an ETF. Locked handsets represent an important tool for recovering any subsidy these carriers have absorbed to attract customers and mandating unlocking could negatively impact the business models of these service providers,

70. In fact, Mobilicity submitted that if the sale of locked handsets were prohibited, it may not be able to offer discounted handsets due to the increased risk that customer acquisition costs may not be recovered. We see no justification for the Wireless Code to unduly punish such a business model, or remove additional differential from the marketplace, when the issue of unlocking has been sufficiently addressed by the market.

The industry is committed to addressing accessibility issues through the appropriate channels

71. As noted in its final submission, Media Access Canada met with CWTA and its service provider members to discuss how the needs of Canadians with disabilities could be addressed through the Wireless Code or other processes. CWTA is pleased to note that its members are committed to addressing the specific needs of Canadians with disabilities when it comes to wireless service.

72. Some service providers have further committed to addressing concerns that were raised during the oral hearing. For instance, Rogers is working to accommodate a 30-day trial period for persons with disabilities. Similarly, Bell has submitted that an extended cooling-off and a la carte services for persons with disabilities, as well as accessibility awareness training to their customer service representatives, could be elements of the Wireless Code.

73. CWTA also recognizes TELUS' submission that accessibility concerns could not and should not be addressed entirely through the Wireless Code. The pace of change in the wireless industry would require the Wireless Code to be frequently updated to address new concerns. The current process where parties apply to the Commission to launch accessibility proceedings represents a better option. To that end, CWTA will be setting up an Accessibility Advisory Group to coordinate discussions among its members with respect to the obligation to ensure that wireless services are accessible.

Conclusion

74. CWTA has appreciated the opportunity to participate throughout this important proceeding. We strongly advocate that federal regulation of wireless agreements is necessary to eliminate the current patchwork approach of provincial regulations. That regulation must provide the tools and options that consumers demand without removing any options for consumers that exist in the market today or result in any unintended negative consequences. To summarize:
    - The CRTC must exercise its mandate as the federal telecommunications regulator and implement a single national Wireless Code that applies to all wireless agreements in Canada.
    - The Wireless Code should come into force when it can apply equally to all new wireless agreements in Canada.
    - The Wireless Code must apply to pre-paid service in a clearly defined way that does not remove any options for consumers, or business models, that exist in the market today.
    - The consumer right that 'Service providers cannot unilaterally change services that consumer cannot change, cancel or choose not to use' should be embedded in the Wireless Code.
    - Service providers should offer to provide certain, prescribed relevant information to consumers before they sign their contract, but should have the flexibility to do so in a manner that responds to their own customers' preferences.
    - The presence of an industry-wide, device-based early termination fee provides consumer mobility without removing any options for consumers that exist in the market today.
    - The Wireless Code should ensure consumers have the tools they need to manage their service usage and that service providers can continue to innovate to respond to consumer needs.
    - There is no appropriate one-size-fits-all regulation for unlocking. The market is already addressing unlocking in manner that provides consumers with the options they prefer, without removing existing business models.
    - The industry is committed to addressing accessibility issues through the appropriate channels.

75. We encourage the Commission to focus on these outcomes as it finalizes a Wireless Code that provides the greatest benefit to Canadian wireless consumers.

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