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Manitoba Family Services and Consumer Affairs
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***Submission of the Canadian Wireless Telecommunications Association to
Manitoba Consumer Protection Office December 2010 Public Consultation Paper***

Introduction

1. The Canadian Wireless Telecommunications Association (CWTA) is the authority on wireless issues, developments and trends in Canada. It represents wireless service providers, as well as companies that develop products and services for the industry.
2. CWTA appreciates the opportunity to share its views on the Province of Manitoba's Consumer Protection Office (CPO) December 2010 Public Consultation Paper *Improving Consumer Protection in Cell Phone/Wireless Contracts*.
3. CWTA approaches this process from the position that government consumer legislation adds costs to consumers and the industry, and that consumers are better served by open competitive markets and a self-regulated wireless industry with a strong Code of Conduct.
4. In summary, CWTA respectfully submits that the CPO consultation paper's representation of federal jurisdiction in the telecommunications sector is incomplete, its rationale for provincial intervention in the telecommunications sector is not compelling, and that at the end of the day, consumers are better served by competition than by regulation.

The consultation paper's representation of federal jurisdiction is incomplete

5. CWTA respectfully submits that the CPO consultation paper reflects an incomplete representation of the extent of federal jurisdiction over telecommunications in Canada. Page 3 of the consultation paper states that "Although the federal government is responsible for the technological area of telecommunications, the Manitoba government can regulate cell phone contracts."

6. CWTA notes that the federal objects and powers set out in the *Telecommunications Act*, the *Radiocommunication Act*, and the *Canadian Radio-television and Telecommunications Commission Act* far exceed “the technological area” of telecommunications.
7. The legislative and regulatory framework for telecommunications in Canada clearly sets out the federal government’s sole jurisdiction with respect to all aspects of the telecommunications industry in Canada (*i.e.*, technological, economic and social). CTWA notes that to date the Canadian Radio-television and Telecommunications Commission (CRTC) has forborne from regulating wireless contracts. However to the extent that any regulation or enforcement may be required in the future, CWTA submits that such action would remain squarely within the CRTC’s purview.
8. Accordingly, this submission only offers CWTA’s general comments on the CPO consultation paper, and should not be construed as CWTA’s recognition of the Government of Manitoba’s jurisdiction to regulate in the sphere of telecommunications services, which CWTA respectfully maintains is solely under federal jurisdiction.

The consultation paper’s statistical rationale for provincial intervention is not compelling

9. Page 3 of the CPO consultation paper states that “Throughout Canada complaints about cell phone equipment and service have been rising.” CTWA notes that the consultation paper offers no comparative statistics in support of this claim, nor does it distinguish between complaints that are deemed by complaints bodies to have merit, and claims that are dismissed because they are without merit.
10. For example, a review of the number of complaints opened with the Commissioner for Complaints for Telecommunications Services (CCTS) –including those complaints not upheld by the CCTS—when measured against the overall subscriber base in Canada, shows a minuscule increase in the portion of subscribers filing complaints.

	2008-2009	2009-2010
Wireless Complaints*	1,222	1,937
Total Subscriber Base**	21,973,179	23,417,117
Percent of subscribers filing complaints	0.006%	0.008%

*The total number of complaints that were opened, multiplied by the percent CCTS reported were wireless. *e.g.* 2008-2009 (3,214*38.01%=1222)

**Second quarter 2009 and second quarter 2010 respectively

11. As these numbers demonstrate, although over 1.4 million new subscribers entered the Canadian wireless market between 2008-2009 and 2009-2010, the number of complaints opened with CCTS increased by a total of 715 –including complaints that were not ultimately upheld.
12. In other words, even when taking into account complaints that were not upheld by CCTS, the overall “increase” in wireless complaints filed with CCTS represents two-one-thousandths-of-one-percent of the wireless subscriber base in Canada.

13. CWTA respectfully questions whether such a miniscule year-over-year increase—at a time of rapid expansion and change within the wireless marketplace— constitutes an urgent need for provincial government intervention in an increasingly competitive wireless marketplace.
14. Moreover, CWTA notes that during this time frame, a total of only 113 complaints from the Province of Manitoba have been filed with CCTS, including non-wireless complaints, and complaints that were ultimately not upheld by CCTS.
15. In summary, CWTA submits that a review of CCTS numbers does not provide a compelling rationale for detailed micro-regulation of the wireless sector by the Government of Manitoba, such as that contemplated in the CPO consultation paper.
16. With respect to the OECD study cited in the CPO consultation paper, there remain differing views as to the accuracy and utility of international benchmarking studies in general. However, it is generally agreed that a full understanding of the metrics used, and the nature of the comparisons being made, are paramount to the utility of the study in question.
17. For this reason, there is a need to look at comparative Canadian and international data from a range of perspectives. Therefore, any thorough analysis must necessarily include multiple international benchmarking studies.
18. The CPO consultation paper relies solely on the widely discredited OECD 2009 *Communications Outlook* report, and did not test its conclusions against other studies. For example, the CRTC's 2010 *Communications Monitoring Report* contains a section on 'How Canada Compares Internationally' which finds that Canadian wireless prices are directly competitive in low, medium and high usage baskets.
19. Absent a thorough analysis of the high-level data and definitions from multiple studies, the CPO's analysis is incomplete and inconclusive, and therefore not compelling when the factors it references are fully and properly considered.

Consumers are better served by competition than micro-regulation

20. The underlying premise behind the 18 questions in the CPO consultation paper is that only government micro-regulation can ensure that consumers have adequate information and safeguards with respect to the wireless marketplace. CWTA respectfully disagrees with that premise.
21. Government micro-regulation inevitably adds costs to consumers and industry in any sector of the economy. Consumers are better served by open competitive markets than by micro-regulation.
22. CWTA's wireless service provider members subscribe to a Code of Conduct that underscores their commitment to providing the highest standards of service and support to their customers.

23. The Code of Conduct ensures that consumers have all the information they need to make informed purchasing decisions with respect to the aspects of the commercial relationship between carriers and subscribers addressed in the discussion paper.
24. The Code of Conduct also safeguards the rights of customers and assures that their concerns are addressed. The CPO discussion paper claims that “there are no consequences for (carriers) who don’t follow the Code.” CWTA disagrees with this conclusion.
25. First, the Code is used as a tool by CCTS when evaluating the basis for complaints against its signatory members. In fact, in a recent media interview, the Commissioner for Complaints noted that *“I’m a big supporter of industry codes of conduct—especially good ones—because they clarify what consumers can expect. They set minimum standards for the industry and they give us a tool.”*ⁱ
26. Second, the claim that voluntary codes carry “no consequences” implies that only government micro-regulation of commercial relationships can compel service providers to respect their customers. Such a conclusion overlooks the fundamental motivation of carriers to keep their customers happy, or suffer the “consequences” of losing that customer to a competitor.
27. Over the past two years, numerous new entrants have come into the market across the country. Since 2008 the wireless industry’s \$9.2 billion investment in spectrum and capital infrastructure has permitted a wide range of advanced wireless products and services to come into the marketplace.
28. Canada now boasts more of the fastest HSPA+ networks than any other country. The wireless industry now employs more than 300,000 people in Canada, each of whom has a direct stake in ensuring that customers feel well served by their carrier. Clearly, all wireless carriers have incentives to comply with voluntary codes in order to minimize customer losses to competitors.
29. In other words, the competitive imperative for wireless carriers to comply with the Code of Conduct is very strong, because the consequences of losing a customer have never been higher.
30. To that end, in addition to the Code of Conduct, individual carriers have recently implemented, or are planning to implement, a range of consumer-friendly practices. These include:
 - Agreements to unlock handsets once device subsidies have been recovered;
 - Online account usage details that provide indications and records of voice, data and text usage;
 - Alerts to let customers know when they start roaming and when additional charges will apply;
 - Text message alerts when a customer is approaching and/or has reached their data allotment, and also at predetermined increments throughout the usage period;
 - Data usage calculator tools to help customers determine the appropriate amount of data to purchase for their personal usage habits, and applications that allow subscribers to check data usage;

- Q&A sections on company websites to address frequently asked questions about data and in some cases tips on how to manage data usages;

Conclusion

31. In conclusion, while CWTA appreciates the opportunity to provide comments on the CPO consultation paper, an analysis of its core premises and questions leads CWTA to the conclusion that the CPO consultation paper displays an incomplete picture of federal jurisdiction over the telecom sector, and does not provide a compelling rationale for provincial intervention in the commercial relationship between wireless carriers and their customers.
32. For those reasons, CWTA respectfully submits that there is nothing in the CPO consultation paper that would lead CWTA to depart from the view that government micro-regulation will only add costs for the industry and consumers, and that consumers are better served by competition than by regulation, and by a self-regulated wireless industry with a strong Code of Conduct.
33. CWTA appreciates the opportunity to share its views in this consultation process, and looks forward to remaining engaged with Manitoba CPO as this process moves forward.

End of Document

ⁱ http://www.thewirereport.ca/reports/content/11585-howard_maker_meets_his_maker_the_crtc