

March 16, 2012

filed via email

Ms. Jan Forster
Director
Consumer Protection Office
Manitoba Family Services and Consumer Affairs
302 – 258 Portage Avenue
Winnipeg, Manitoba R3C 0B6

Dear Ms. Forster,

Re: Proposed Cell Phone Contracts Regulations under Manitoba's *The Consumer Protection Act* (March 4 version)

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.
2. CWTA is pleased to provide these comments on the March 4, 2012 version of the draft regulations referenced above, as well the draft interpretation document accompanying them.
3. CWTA notes that the March 4, 2012 version reflects many of the comments and recommendations that CWTA had made in connection to the December 22, 2011 version of the draft regulations. CWTA appreciates the accessibility of staff at the Consumer Protection Office (CPO), and CPO's flexibility with regards to responding to the concerns raised by CWTA in its earlier correspondence and communications with CPO. We also appreciate the Minister's personal attention on this important file.
4. At the same time, CWTA notes that March 4, 2012 version of the draft regulations, and the draft interpretation document, do not address some of the areas on which CWTA had provided comments and recommendations on previous versions, and respectfully submits that the following recommendations would bring additional certainty and clarity to suppliers, consumers, and regulators of wireless services in Manitoba.

Optional services and manufacturer's warranty

5. With respect to optional services, section 185(1)(i) requires “any cell phone services available under the contract that a customer may opt to use, but that are not included in the calculation of the minimum monthly cost” to be included in the contract.
6. In its February 3, 2012 comments to CPO, CWTA recommended that the regulations, or at a minimum, an interpretation document, should clarify that “only those optional services to which a customer subscribes at the time a contract is signed be required to be included in the contract.”
7. To that end, CWTA notes, and appreciates, that the draft interpretation document clarifies that:

“Optional services for the purpose of s 185(1)(i) do not include cell phone services that the customer has not contracted for under the contract. For example, if a customer has not chosen to include voicemail in the contract, the supplier does not have to describe voicemail services in the contract.”
8. With respect to the manufacturer's warranty, sections 185 (1)(o)(i)-(iii) of the legislation require that the contract include a

“description of any manufacturer's warranty or other warranty that automatically applies, at no additional cost, to a cell phone provided for free or by sale — whether or not at a reduced cost — to the customer, including

 - (i) what is covered under the manufacturer's warranty or other warranty or, if applicable, under each warranty,
 - (ii) the duration of the manufacturer's warranty or other warranty or, if applicable, the duration of each warranty, and
 - (iii) (iii) how the customer can make a claim under the manufacturer's warranty or other warranty or, if applicable, under each warranty.”
9. In its February 3, 2012 comments to CPO, CWTA recommended that the regulations, or at a minimum, an interpretation document, clarify that this requirement could be met by providing customers with information on where they can obtain full warranty information.
10. Although neither the draft regulations or draft interpretation document make reference to warranties, CWTA notes that CPO's March 7, 2012 email to CWTA states that:

“. . . as long as suppliers bring the warranty to the attention of the customer both in writing and verbally, and the contract provides information about where more information is provided on the warranty, that would likely suffice.”

11. CWTA appreciates CPO’s clarification of the above-noted requirements pertaining to optional services and the manufacturer’s warranty.
12. At the same time, CWTA notes that wireless service providers are potentially subject to administrative monetary penalties (and/or class action lawsuits) for failure to comply with these sections of the Act, and respectfully submits that it would be more appropriate to embody these clarifications within the final regulations themselves, rather than in an interpretation document, or by way of an email.

Contract renewals vs. Contract extensions

13. Sections 8 and 9 of the draft regulations provide for similar rules for contract extensions and contract renewals. CWTA respectfully notes that extensions and renewals are different concepts, and that additional distinction between them would bring added clarity to the final framework.
14. Contract renewals refer to scenarios whereby the customer has been notified that their term is coming to an end, and has contacted the carrier to renew their service. Renewals are typically accompanied by a promotional ‘retention offer,’ such as an upgraded handset, or service credits, in exchange for the customer renewing their contract. Contract renewals involve a direct interaction with the customer, and generate a new service agreement reflecting the new, agreed-upon, contract terms.
15. Contract extensions, on the other hand, refer to scenarios whereby the customer is notified that they are approaching the the end of their contract term, but does not contact the carrier to renew or cancel their service, so is placed onto a month-to-month arrangement, under the existing contract terms. Note that promotional incentive offers (e.g. free caller ID for the term of the original contract) are usually not part of the month-to-month extension – rather, the base service is extended on an indeterminate month-to-month basis.
16. To further illustrate how contract extensions work: before the end of the contract term, the carrier will send a letter to the customer, notifying them that their term is about to end. The letter states that unless the customer contacts the carrier to renew or cancel their service, they will be placed onto a month-to-month arrangement, minus any promotional offers they may have received as an incentive when the original contract was signed.
17. CWTA submits that the final line in section 9 (“a statement as to the effective date of the extension, and except if the contract is an indeterminate contract, its termination date”) could

also lead to confusion: by definition, an “extended” contract is an indeterminate contract, in the sense that the former term contract has become a month-to-month contract with no fixed termination date.

18. CWTA recommends that section 9 of the final regulations be amended to clarify that the requirement to provide new documentation upon contract extensions does not apply if the contract is being extended on a month-to-month basis on the same terms as the original contract, even in situations where free/promotional features associated with the original contract do not form part of the month-to-month extension arrangement.

Coming into force

19. Both the December 12, 2011 and March 2, 2012 versions of the draft regulations indicate that the regulations will come into force on the same day that the legislation comes into force (i.e., on the day the final regulations are promulgated).
20. As noted in CWTA’s February 3, 2012 comments, wireless service providers will require a minimum of eight months from the time the final regulations are promulgated to make necessary changes to billing, staff training and other systems. CWTA respectfully reiterates that these are complex and expensive processes, and wireless service providers are therefore unlikely to begin them until they are fully assured of the final requirements (in order to avoid having to “re-do” them should the final requirements be different than the draft requirements).
21. CWTA recognizes that the norm in Manitoba is to align legislative and regulatory coming-into-force dates, but recommends that a formal delay in enforcement may be necessary as wireless service providers undertake the necessary transitions. Enforcement on Bill 60 in Quebec, for example, did not begin for several months after the regulations came into effect.

Conclusion

22. To summarize, CWTA submits that the final regulations, or where appropriate the final interpretation document, should:
 - Clarify that carriers can meet the requirement to include details of the manufacturer’s warranty in the contract by providing information on where the customer can obtain full details of the warranty. At present, neither the regulations nor interpretation document reference the warranty requirement in any way. We do have an email from CPO to CWTA addressing this requirement; however we strongly recommend that for the sake of future clarity on the part of those without access to that email, CPO’s interpretation of this requirement should be formally included in the regulations or, at a minimum, the interpretation document.

- Clarify that in the case of an indeterminate, month-to-month contract extension that does not include promotional incentives offered under the original contract, carriers are not required to issue documentation covering the indeterminate month-to-month extension.
- Clarify that carriers will have a reasonable length of time –we recommend eight months—to adapt their contract, billing, marketing, staff training, and other systems to the final requirements, before formal enforcement will begin.

23. CWTA reiterates its appreciation for CPO’s openness to consider our earlier recommendations, and commits to continuing to work with CPO as the regulations are finalized, particularly in addressing the interval between coming-into-force and enforcement dates.

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