



June 6, 2013

Department of Environment and Local Government
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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 New Brunswick's draft e-waste regulations.
3. The Canadian wireless telecommunications industry, under the auspices of the CWTA, has developed Recycle My Cell (RMC), a free, national cellular phone recycling program. The RMC program has received regulatory approval from the provinces of Nova Scotia (October 2008), British Columbia (November 2009) and Newfoundland & Labrador (May 2013); regulatory approval is expected in Manitoba in 2013. Further, Recycle My Cell has also been formally recognized by the provinces of Prince Edward Island (March 2009), Saskatchewan (November 2009), and Alberta (June 2011).
4. The RMC program has operated voluntarily within the province of New Brunswick since its national launch in January 2009, and was officially recognized by the province in March 2009.
5. CWTA administers the RMC program in New Brunswick on behalf of Bell, BlackBerry, Dell Canada Inc., Eastlink, GEEP Inc., GREENTEC, LG Electronics Canada, Inc., Motorola Mobility, Nokia, Rogers Communications, Samsung Electronics Canada Inc., Sims Recycling Solutions, Sony Mobile Communications, TELUS, and Virgin Mobile Canada.
6. The program accepts mobile devices that are primarily designed to connect to cellular or paging networks, regardless of brand, model, origin, or age. The devices include: cellular phones, wireless smartphones, wireless PDAs, pagers, and aircards, as well as certain accessories and rechargeable batteries.
7. Recycle My Cell accepts all orphan, historic, and imported mobile devices, as well as mobile devices from non-participating brand owners, when consumers return such products to the Recycle My Cell drop-off locations.
8. In 2012 there were 47 drop-off locations within 19 communities in New Brunswick. The vast majority of these locations are affiliated with carrier member programs. CWTA and its members support a return-to-retail model for collection drop-off sites. It is felt that the most effective method for cell phone recovery is simply dropping off an existing device(s) when a new one is purchased.

9. In instances where a drop-off location is not available, RMC offers several mail back options through its member programs which will allow any consumer in the province – with access to Canada Post service – the ability to conveniently and easily return their devices and accessories at no cost to the consumer.
10. All of processors involved in the program are ISO certified and/or verified under Electronic Products Recycling Association's (EPRA) Recycling Vendor Qualification Program, (RVQP) meaning they have an environmental management system in place which ensures accountability and knowledge of the associated environmental impacts.

Comments on Draft Regulations

11. In administering a national EPR program, CWTA has a unique perspective. Given its operation in multiple jurisdictions and under various regimes (voluntary, MoU with Government, regulated but managed by third-party, regulated but direct relationship with Government) CWTA has had the ability to find best practices that allow the program to run efficiently in all environments.
12. While CWTA and its members fully support the need to base recycling programs on the principles developed by the Canadian Council of Ministers of the Environment, we continue to encourage the Department to harmonize its EPR approach with those that are already in existence in other jurisdictions as much as possible, addressing best practices learned from each jurisdiction.
13. The following are CWTA's comments specific to the draft regulations:

1 Section 2 of New Brunswick Regulation 2008-54 under the Clean Environment Act is amended in the definition "brand owner"

14. CWTA recognizes that the intent of the brand owner definition is to be inclusive enough to ensure that any organization "touching" the material in the province has responsibility for that material. This includes the manufacturers of the devices, the carriers, and non-affiliated retailers.
15. CWTA encourages the Ministry to ensure that a clear definition of brand owner is developed as it is integral to successful implementation of EPR, to avoid confusion among stakeholders as to their respective responsibilities under the final regulatory framework.

50.3 "electronic product" means a product intended for consumer, industrial or commercial use and (vii) a telephone,

16. CWTA respectfully submits that the term 'telephone' is too generic and should be defined in more clear and specific terms. The CWTA therefore recommends that "wireless devices" be included as a separate and narrower category, specifically, "Cell phones and other wireless devices".
17. In this instance the following definition of wireless devices is the most appropriate: Cell phones and other wireless devices: mobile devices designed primarily to connect to a cellular or paging network, including, without limitation, super phones, cellular phones, wireless smartphones, cellular personal digital assistants (PDAs), pagers, and aircards. (This does not include factory-installed communication devices developed for embedded use in motor vehicles.)

18. CWTA also notes that a mechanism for including new products within a program should be in place. For example, as new wireless devices are launched they will be included within the RMC program. However, since many of the newer devices have multiple uses and vary in size, it may not be clear to which recycling program the responsibility for their recovery lies. CWTA believes that devices that meet the requirements of being “designed primarily to connect to a cellular or paging network”, even when they straddle the line between a phone and tablet (or any other similar combination), should fall to RMC unless otherwise agreed to by impacted brand owners. CWTA notes that its members are the primary importer and retailer of personal communications devices designed to connect to a cellular network. In the interest of clarity for the consumer as to where they should deposit all end-of-life devices that are designed to connect to a cellular network we respectfully submit that the final regulations should assign clear responsibility for such devices to the RMC program.

50.32 No brand owner shall sell, offer for sale or distribute an electronic product to a person in the Province unless the brand owner holds a valid registration as a brand owner.

19. CWTA understands this to mean that all parts of the distribution chain (in the case of RMC, this would be the manufacturer, carrier, and retailer) must be part of an approved stewardship program in order to sell the obligated materials within the province. CWTA’s members represent the majority of links in the value chain for devices designed to connect to a cellular network in New Brunswick (manufacturers, carriers and some retailers affiliated with carriers) but notes that not all retailers are currently CWTA members. If the expectation under the regulations is that ALL retailers who sell devices designed to connect to a cellular network must become part of the RMC program, we would recommend that the regulations make this clear.

50.36 (b) information on the expected number of units or weight of electronic waste to be collected, reused, refurbished, recycled or recovered, as well as the expected associated costs.

20. CWTA currently submits an annual report to the Department of Environment and Local Government. This report highlights several items including an aggregate number of devices recovered within the province, with a percentage breakdown for the amount recycled and reused. This is consistent with data reported in other jurisdictions.
21. The requirement to report on associated costs of running an EPR program is unnecessary. EPR programs are intended to shift full responsibility for the management and cost of the program to impacted brand owners. The costs of the program to the brand owners are irrelevant. For example, Recycle My Cell operates with no fees charged to consumers purchasing or recycling mobile devices. The cost to operate the RMC program is borne directly by CWTA members running their individual corporate programs, and by CWTA through dues payable to a national trade association (i.e., RMC is funded through CWTA’s general budget, using CWTA staff and resources).
22. In addition, the cost of running individual corporate recycling programs is considered proprietary commercial information as each brand owner develops their own programs and implements individual communications and marketing programs. This information is not shared with CWTA.
23. Moreover, participating carrier programs encompass the recovery and recycling of a broad range of materials. For examples, carriers that also sell consumer electronics for their cable operations, such as internet modems and Personal Video Recorders, also recycle these products through the same processors

that collect and recycle wireless devices. The costs that are negotiated with their processing partners include all materials collected and recycled, and furthermore are national in scope.

50.36 (k) an assessment of the performance of the brand owner's plan by an independent auditor;

24. CWTA respectfully submits that the requirement for a review by independent auditor be mirrored on the work that is currently being developed in other jurisdictions. CWTA notes that the audit process is very resource intensive on all involved stakeholders so steps to minimize impacts should be taken into consideration. Harmonization should always be the goal.

50.42(1) A brand owner shall, on or before, April 30 in each year, provide the Board with an annual report ...

(i) the annual financial statements, as prepared by an independent auditor, of the revenues received and the expenditures incurred by the electronic products stewardship plan;

(j) an assessment of the performance of the brand owner's electronic products stewardship plan that is prepared by an independent auditor;

25. An April filing date that encompasses the additional requirements noted in the draft regulations (primarily the assessment of the program by an independent auditor) will be impossible to meet. CWTA currently submits an annual report to the ministry that includes a comparison over the previous year data, and is based on the original management plan. This report is provided at the end of June in order to ensure that there is an opportunity to collect and analyze all relevant data. CWTA respectfully submits that June 30th be maintained as the filing date.
26. As already noted above, CWTA believes that financial accountability for the program should be shared with those incurring the costs. As such, if a program does not collect fees from consumers, financial reporting should occur solely between the agent and the brand owners it represents, and only if applicable.

50.42(2) Subject to subsection (3), at the same time a brand owner submits its annual report, it shall provide the Board a statement in writing as to the total amount of electronic products sold by it during the previous calendar year

27. CWTA notes that obtaining actual sales data is very challenging given its sensitive nature and the complex distribution chains in place for many products. CWTA supports the use of "product distributed" as a more appropriate and realistic measure. As is consistent with other jurisdictions, product distributed means the amount of product that was reported as distributed into the province and does not reflect the actual quantity that was sold to an end user.
28. To-date, CWTA has not provided product distributed data to the Department; this information is currently being collected on a limited basis and can be made available in an aggregate form.

50.43(1) A brand owner shall provide to each retailer of its electronic products, educational and consumer material, including printed handouts, that informs customers about (a) the brand owner's electronic stewardship plan, (b) access to return facilities, and (c) the environmental and economic benefits of participating in the brand owner's electronic products stewardship program.

29. Information that is noted as being required is unduly prescriptive. Consumers express an interest for simple and straightforward information that gives them what they need to know quickly. This information is generally limited to what they can recycle and where.

30. Most brand owners put in place extensive tools meant for consumer engagement and education. For example, CWTA and its participating members, have undertaken various promotional activities to raise awareness about cell phone recycling, including developing a Web site and social media presence. The requirement to provide printed hand-outs potentially hinders the ability of brand owners to communicate with those using their program by a means that is more suitable.
31. Given that physical handouts are not environmentally friendly, and may be discarded by consumers with other packaging that comes with a new device, brand owners should have the freedom to provide communications to their consumers through various other avenues. For example, in store signage, references on marketing collateral etc. should be sufficient to meet this requirement.
32. In addition, depending on the product being purchased, the retailer may be required to provide specific contractual information to the consumer at the time of sale as a result of federal regulation. In these instances it is unlikely that the consumer will want any additional information that does not pertain to the buying process. In a digital age, with all the options available to them, consumers are more receptive to information that they can find when they have a need for it. As such, CWTA submits that information on recycling should be made available to consumers in the most consumer-friendly fashion possible.

50.43(2) A brand owner shall not release any educational and consumer material referred to in subsection (1) unless the material has been submitted to the Board at least one month before its intended release.

33. The ability of a brand owner to brand their respective material so that it is identifiable with the brand owner's corporate image is integral to doing business. Brand development and management is highly sensitive and competitive.
34. The requirement to submit material to the Board does not fulfill any reasonable need and hinders the ability of a brand owner to market their program and proactively make changes to its approach.
35. It is unreasonable to expect that any change to promotional or educational materials would be provided to a non-affiliated organization in advance of their launch. Marketing and promotions are often tied to product launches which are highly confidential. In addition, many materials are time sensitive and need to be released within a short window.

50.43(3) A retailer shall post or distribute the educational and consumer material it receives from brand owners at the area inside the retailer's premises where electronic products are displayed, and (a) at the main entrance of the retailer's premises, or (b) at the area inside a retailer's premises where the transaction to purchase electronic products takes place.

36. CWTA notes that the requirement for retailers to physically post or distribute information at specific locations within their premises is overly prescriptive.
37. The size of the retail location may impact its ability to post information. A kiosk, for example, does not have a physical presence in the traditional sense and would be limited in terms of where and how material could be displayed.
38. CWTA respectfully submits that the sections dealing with Consumer information be reconsidered to allow brand owners more flexibility, in keeping with physical limitations of their retail space, and in keeping with

consumer preference not to be burdened with physical handouts or materials, should they prefer to receive that information electronically.

50.44(1) No retailer, brand owner or wholesaler shall charge a consumer, or make visible on a consumer's receipt of sale, a separate fee with respect to the costs associated with implementing or operating an electronic products stewardship plan, or with respect to supplying material under section 50.43.

50.44(2) A brand owner is not prohibited from showing the fee referred to in subsection (1) to a retailer or wholesaler.

39. CWTA believes that this section is intended to allow a brand owner to pass on the cost of recycling to those further down their supply chain and also provides an incentive to brand owners to minimize program costs. At the point of sale the expectation is that the fee is already imbedded in the price of the product paid by the consumer, and not added as an additional cost to the receipt.
40. While RMC does not include any costs to the consumer, CWTA notes that as it relates to wireless devices specifically, if the Government of New Brunswick were ever to mandate a per-device recycling charge brand owners (carriers) would be obligated to display that fee as a separate line on the service contract, in order to comply with the CRTC's Consumer Code of Conduct for Wireless Services.

50.45(3) The annual administrative costs of the Board incurred or to be incurred by it, together with any sum needed to make up any deficiency in the assessment for the preceding year shall be borne equally by each brand owner.

41. CWTA reiterates its belief that the inclusion of a third-party to manage programs is not required and that the imposition of an administrative fee is an unnecessary burden to brand owners. As noted previously, CWTA operates within jurisdictions that have adopted a third-party approach and there is no discernible benefit to the consumer, or to the program in terms of performance. The addition of the third-party often brings with it unnecessary bureaucracy and duplication of efforts.
42. CWTA respectfully submits that programs which operate nationally, and have been operational in the province in advance of the regulations, be exempt from the requirement of administrative fees.
43. Specific to RMC, the program, as it is set-up, requires little, if any, monitoring given the nature of the material being collected. Cell phones, unlike other "e-waste" have a value at the end of life that makes them very attractive to numerous organizations, including not-for-profit and profit organizations. The instances of a wireless device being disposed of in the garbage, or ending up as incidental waste at a landfill are minimal.
44. Should administrative fees be assessed, the fees should be determined in a manner that takes into consideration the size of the program and the level of effort that is required by the Board to oversee the program.

Conclusion

45. RMC aims to prolong the useful life of mobile devices by encouraging customers to return their used devices rather than throw them away. RMC leverages existing programs operated by wireless service providers and handset manufacturers, which will accommodate the requirements of the proposed provincial legislation and regulation. These corporate programs collect, transport, reuse and recycle mobile devices and accessories. Where no other option exists, these programs properly dispose of the products.
46. Consumers are already able to turn in their devices at any collection site across the province of New Brunswick, completely free of charge. As an additional benefit to consumers, a variety of postage-paid mail-back options that accept any cellular phone are also in place.
47. Harmonized regulations would allow for obligated parties to find efficiencies in program operation to the benefit of residents in the province. Where harmonization is not possible, best practices from other jurisdictions should be considered.
48. Once the regulations are finalized further to this consultation process, CWTA will be pleased to file a stewardship plan that addresses all regulatory requirements and that commits to an agreed-upon level of reporting.
49. CWTA looks forward to remaining a productive partner in the collection and processing of end-of-life wireless handsets and other devices in New Brunswick, and remains available for any follow-up questions the Province may have in the meantime.

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