



April 23rd 2012

Cameron MacNeil
Executive Director
Service Nova Scotia and Municipal Relations
Program Management and Corporate Services Division
1505 Barrington Street
PO Box 1003
Halifax NS B3J 2X1

Dear Mr. MacNeil,

Re: An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act

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 appreciates the opportunity to share its views with respect to what we understand to be the Government's planned amendments to the above-noted Act.
2. As discussed in our meeting this week, CWTA maintains that consumers in Nova Scotia, and in all other provinces, would ultimately be better served by one set of national regulations, administered at the federal level, in keeping with the federal government's sole jurisdiction over all aspects of the telecommunications industry, rather than through a patchwork of provincial regulations.
3. At the same time, we recognize that Nova Scotia is taking steps to align its new requirements with those already in place in other provinces (Manitoba in particular), with a view to streamlining the regulatory burden for wireless carriers operating in the province. We appreciate that initiative, but caution that Bill 35 in Manitoba was far from perfect, and contained many problematic definitions and impractical requirements which, if implemented in Nova Scotia without amendment, would defeat the stated objective of providing clear, easy to understand contracts for consumers.
4. We understand that Nova Scotia plans to adopt these same elements, many of which required further clarification in the supporting regulations. We respectfully submit that Nova Scotia should be guided by both the legislative and regulatory language in Manitoba, rather than just the legislative language itself.

5. To that end, we note that the final regulations supporting Manitoba Bill 35 were released today, and can be accessed via: <http://web2.gov.mb.ca/laws/regs/> (see “C200, Consumer Protection Act”).

Information that the supplier must give to the customer

6. CWTA understands that Nova Scotia plans to adopt the same list as Bill 35 in Manitoba with respect to elements that carriers would be required to include in every wireless contract. This list of required contract elements will mean that contracts are not clear and understandable in Nova Scotia. To the contrary, if Nova Scotia adopts the same list of required contract elements as it appears in Bill 35 in Manitoba, contracts in Nova Scotia will be the longest and most complex wireless contracts in the country. At the same time, adopting Manitoba’s list of required contract elements, as amended by the regulations, would produce much clearer and easier to understand contracts in Nova Scotia.
7. In Manitoba, the list of mandatory items in Bill 35, sections 185(1)(a)-(q) is enumerated over nearly three pages. This list includes 33 known items, 14 of which are “detailed descriptions.” This list does not include the additional requirement to include “a description of any cell phone services available under the contract that the customer may opt to use.”
8. At least one national carrier has estimated that its current three-page contract would have to be at least 28 pages to accommodate all the required elements under Bill 35. The regulations that support Bill 35 now require the carrier to “give or make available” to the customer the elements required under sections 185(1)(a)-(q). In other words, some of those elements can be provided online, rather than inserted into every contract.

Optional services in a contract

9. CWTA has provided extensive comments to Manitoba on the impracticality of the optional services requirement: it is simply not feasible to provide “a description of any cell phone services available under the contract that the customer may opt to use” (emphasis added). There are literally hundreds of thousands of such optional services that a customer “may opt to use” over the life of their contract.
 - A subscriber may opt to download one of the more than 1,000,000 smartphone apps currently available;
 - A subscriber may opt to interact with one of the 650+ Common Short Codes currently active;
 - A subscriber may opt to purchase pay-per-use content ring tones, wallpapers and themes, streamed and downloadable video and music, and e-book readers;
 - A subscriber may opt to purchase any one of hundreds of different long distance packages;
 - A subscriber may opt to bring their handset when they travel internationally, accessing any of the thousands of roaming agreement services available to them;
 - A subscriber may opt to use text messaging to donate to one of the hundreds of Canadian charities using one or more of the 289 Mobile Giving Canada keywords,

10. Simply put, it would be impractical to describe in an “easy to understand” contract the thousands of optional services that a customer “may opt to use,” as well as their associated costs and restrictions. CWTA strongly recommends that Nova Scotia only require carriers to make information available in the contract on where consumers can obtain further information on “any cell phone services available under the contract that the customer may opt to use,” but to which the customer has not subscribed at the time the contract is signed.
11. Again, Manitoba has used the regulations and interpretive guidelines to refine the ‘optional services’ requirement, and to clarify that only those services that a customer signs up for at the time the contract is signed need to be included in the contract itself. CWTA strongly recommends that Nova Scotia adopt a similar approach, to avoid having the longest and most complex contracts in the country.

Warranties in a contract

12. CWTA has related concerns about the practicality of including full manufacturers’ warranties within the contract. Manufacturers’ warranties are tied to a device purchase, not the contract for mobile services. Manufacturers are not parties to the contract for wireless services. Manufacturers’ warranties are already included with the handset, and can often be quite lengthy. A requirement to insert these warranties in the contract will add to the length and complexity of a contract for the consumer, but will provide no additional protection for customers.
13. CWTA recognizes that Bill 35 in Manitoba contains a similar requirement to include the full details of the manufacturers’ warranty on the contract, but notes that under the regulations and interpretive guidelines, the final requirement in Manitoba will be to disclose, orally and in writing the existence and location of the manufacturer’s warranty, but not the full details of the warranty itself (which, as noted, the customer will have received, in its entirety, with the handset already).

Service extension upon contract expiry

14. CWTA understands that Nova Scotia plans to prohibit carriers from extending a customer’s wireless service upon the contract’s expiration. In other words, Nova Scotia would become the only jurisdiction of which the CWTA is aware, anywhere in the world, which requires a carrier to cut-off a customer’s service the minute their contract term ends.
15. Already, carriers take every step possible to inform customers that their contracts are about to expire. This just makes good business sense. At the same time, there will always be customers who do not pay attention to a carrier’s notifications. Under common industry practice across Canada and around the world, at the end of their contracts these customers are placed on indeterminate month-to-month service arrangements, at the same terms and conditions they were operating under during their fixed-term period. They can cancel or renew their service at any time without penalty. Such customers in Nova Scotia, however, will be rudely surprised to discover that their wireless service has been cut-off one day, by direction of the provincial government.

16. Moreover, the potential of even a single customer being cut-off, and being unable to reach family in an emergency situation, raises questions of whether the province or the carrier would bear ultimate liability for associated losses of life or property, and the basic question of how such a requirement could possibly be in the customer's interest in the first place.
17. For these reasons CWTA strongly recommends that Nova Scotia not require carriers to cut-off a customer's service when their contract expires, but allow those customers to be placed on indeterminate month-to-month service, at the same terms as their fixed term service, until such time as the customer cancels or renews their service. This is the standard practice in all other Canadian provinces, and all other jurisdictions of which CWTA is aware.

Regulated government-mandated messages

18. CWTA understands that Nova Scotia proposes to give itself the statutory authority to require businesses operating in Nova Scotia to communicate specific messages reflecting government policy directly to their customers, even in cases where the messages do not directly pertain to the business relationship in question.
19. CWTA strongly questions the appropriateness of such measures, given that they could one day be used -- despite initial best intentions--to require federally-licensed entities to pass on provincial politically-driven communications to customers.
20. Moreover, given that numerous public and private alternatives already exist for the Province to communicate those messages directly with the public, CWTA questions the extent to which requiring federally-licensed entities to dedicate resources to communicating provincial government messages could amount to appropriation by the Government of Nova Scotia of those companies' commercial property. CWTA respectfully notes that wireless carriers are federally licensed, and are not agents of the provincial government.
21. The particular example that was raised in our discussions last week is a legal requirement to inform wireless customers in Nova Scotia about the dangers of cyber-bullying. We are not aware that the Government of Nova Scotia made any requests to the wireless industry to ask for its support for an anti-cyber-bullying campaign --support it would have readily received--before taking this unprecedented and heavy-handed legislative measure to require the industry to communicate government-mandated messages to the public.
22. CWTA questions why such a heavy-handed legislative approach is necessary, particularly at a time when the wireless industry already partners with the Canadian Centre for Child Protection on an award-winning program to teach young people about responsible use of wireless devices (see: <http://www.texted.ca/app/en/>).
23. Should the government proceed with this element of its legislation, CWTA respectfully cautions that the appropriateness and legality of this requirement will have to be taken into careful consideration in our communications with media, shareholders and customers.

A national approach works best for customers everywhere

24. In conclusion, CWTA respectfully submits that Nova Scotians, like all Canadian consumers, will ultimately be better served by having one set of rules for wireless contracts that apply equally, in all parts of the country. CWTA notes that the CRTC has received formal applications for, and has begun a process leading towards, a national framework governing wireless contracts. We recommend that Nova Scotia give that process time to conclude before finalizing any detailed legislative requirements that will add millions of dollars in regulatory costs for business, customers and the government in Nova Scotia.
25. We also recommend that Nova Scotia look carefully at those areas of Bill 35 in Manitoba that proved to be so problematic that much time and energy had to be spent clarifying them in regulation afterwards. Nova Scotia should ensure that its legislation reflects both Bill 35, and its supporting regulations and guidelines.
26. We appreciate the opportunity to share our views at this juncture, and look forward to working with you to ensure that any new legislative requirements are as practical and effective as possible for customers in Nova Scotia.

Sincerely,



Bernard Lord
President and CEO

C.C.: Paul Black, Office of the Premier
Linda Moxsom, Office of the Premier
Nancy Sheppard, Deputy Premier's Office