

December 4, 2012

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

Dear Mr. Traversy,

Re: Telecom Notice of Consultation 2012-557 Proceeding to establish a mandatory code for mobile wireless services

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 file its comments with respect to the above-noted proceeding. In its Notice of Consultation, the CRTC poses a number of specific questions pertaining to the potential contents of the Wireless Code for mobile wireless services. Based on several years of experience dealing with these issues and questions at the provincial level, CWTA respectfully submits the attached Appendix as its suggested text for the Wireless Code governing the making of consumer contracts for mobile wireless services. This text is guided by the following key principles:
 - (i) The public interest in streamlining and simplifying regulation requires that today's current patchwork of inconsistent provincial wireless consumer protection measures be replaced by a single, mandatory, easy-to-understand and transparent set of rules;
 - (ii) Quebec's consumer legislation applicable to wireless services was the first of its kind in Canada and has thus been in force by far the longest (almost two and a half years). Quebec's is the legislation that consumers and wireless service providers are most familiar with – there are more wireless service providers operating in Quebec than in any other province with consumer legislation. Moreover, each of the three provincial statutes that have been enacted since Quebec's are all modelled to a large extent on the Quebec model.
 - (iii) Each of the foregoing considerations strongly suggests that the principles embodied in the measures found in the *Quebec Consumer Protection Act* ("QCPA") should form the underlying basis of the Wireless Code. Consideration, however, should be given to experiences garnered operating under the Quebec legislation to address gaps or unclear or ambiguous language or

terms. Subsequently-enacted provincial codes that provided additional clarity to stakeholders should also be considered in such instances.

3. Accordingly, the Wireless Code suggested in the Appendix to this submission builds primarily on QCPA principles and augments them to provide clarity, remove ambiguity, and to address the CRTC's stated concerns.
4. The CRTC has also asked for comments on how the Wireless Code should be implemented, enforced, promoted and monitored. CWTA additionally submits the following comments in addition to the Wireless Code suggested in the Appendix.

Implementing the Wireless Code

5. The CRTC has asked:
“Should the Wireless Code apply to both Canadian carriers and resellers?” and “Should the Wireless Code apply to both pre-paid and post-paid wireless services?”
6. CWTA submits that the Wireless Code should apply to all post-paid wireless consumer services, regardless of whether they are issued by a carrier or reseller, which will ensure a level playing field for all post-paid providers and subscribers. CWTA also submits that the Wireless Code should have clear and limited applicability to pre-paid services.
7. The majority of the proposed contents of the Wireless Code suggested in the TNC 2012-557, and in existing provincial wireless services legislation, address issues that are specific to post-paid service and billing. Indeed, ‘Stop Bill Shock’ and similar slogans have been widely used to build awareness and support of new or proposed provincial wireless services contract regulations. Pre-paid wireless services typically do not have fixed term contracts or monthly bills, and as such, do not attract the same level of regulatory attention or concern.
8. Provincial wireless regulations enacted to date have recognized that the majority of post-paid-facing regulations are not relevant to pre-paid services, and have therefore excluded pre-paid services entirely or in part. The QCPA includes two clauses specific to the distribution and sale of pre-paid cards, which we have included in our proposed draft code. However, CWTA submits that, beyond this application, the Wireless Code should not apply to pre-paid wireless services.
9. The CRTC has asked:
“Should the application of the Wireless Code be suspended in provinces or territories which the Commission determines have legislation that provides substantially similar protections for mobile wireless consumers?”
10. CWTA notes that the overarching impetus for this process is the notion that consumers in all provinces should have the same level of certainty, information, transparency and protection when it comes to considering a contract for wireless services. Consumers should be spared the confusion and inconsistency resulting from the current patchwork of divergent provincial legislation. CWTA has consistently submitted 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.” Above all, CWTA strongly submits that the outcome of this process should be one set of rules that applies to wireless consumer agreements in all provinces and territories.

11. In terms of phasing in the Wireless Code, consideration must be given to existing wireless services consumer contracts were signed – whether under existing provincial legislation or not – prior to the effective date of the Wireless Code. CWTA submits it would be untenable to amend existing contracts retroactively to ensure all clauses and conditions aligned with those of the Wireless Code.
12. CWTA notes that provinces that have enacted wireless services contract legislation have not done so retroactively. Rather, they 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. CWTA recommends a similar approach for phasing in the Wireless Code in provinces with or without existing wireless contract regulations.
13. The CRTC has asked:
“When should the Wireless Code be implemented?”
14. Experience at the provincial level indicates that carriers will need to reprogram billing systems to meet the new requirements set out in the Wireless Code, amend their existing consumer agreements, update marketing material, and revise other in-store collateral. In addition, new terms and conditions around retail wireless service mean that carriers will need to retrain customer service and sales staff across the country. CWTA notes that some companies have already had to revise, update and retrain multiple times in multiple provinces, over the past 18-24 months (some of which having only recently been completed), at considerable expense.
15. CWTA cannot specify how long it will take wireless carriers to implement the requirements of the Wireless Code in absence of its specific requirements. However, CWTA recommends that in establishing the effective date (or dates), the CRTC fully consider of the following circumstances:
 - (i) 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
 - (ii) Some elements of the Wireless Code will take longer to implement than others and a staggered or phased implementation process may be more suitable.

Enforcing and Promoting the Wireless Code

16. The CRTC has asked:
“Who should enforce the Wireless Code (e.g. the Commission, the CCTS, or other)?”
17. The Commissioner for Complaints for Telecommunications Services (CCTS) should be given exclusive jurisdiction to enforce the Wireless Code; its structure, its experience enforcing its current

mandate, and its Procedural Code make it ideally suited to overseeing implementation and compliance with the Wireless Code. Under the CCTS Procedural Code, service providers would remain the first point of contact for customer queries, and complaints not resolved to the customer's satisfaction could be taken up with the CCTS.

18. Tasking the CCTS with enforcing the Wireless Code would also allow the CRTC to continue to focus on the aspects of the industries that it regulates, independent of responding to individual consumer complaints. As the CCTS recognizes on its own website, the Industry-funded, 'ombudsman' model is common throughout Canada and the rest of the world. Indeed, the Canadian Broadcast Standards Council has successfully enforced broadcast standards in Canada under the same Industry-funded model – and being guided by a CRTC-endorsed Code – for more than two decades.
19. The CRTC has asked:

“What mechanisms should be used to ensure compliance with the Wireless Code?” and “What recourse and remedies should be available to consumers if their service provider does not comply with provisions in the Wireless Code (e.g. liquidated damages clause)?”
20. CWTA submits that the answer to the compliance question essentially replicates our response to the above enforcement question: the CCTS should extend its current enforcement tools to the Wireless Code with the same mechanisms it has been using since its inception to resolve consumer complaints. In other words, if following a complete investigation by the CCTS as outlined in its Procedural Code a service provider was found to have acted, either by its service agreements or otherwise, in a manner inconsistent with the Wireless Code and the complaint remains unresolved, the CCTS' may require the participating service provider to:
 - (a) provide the Customer with an explanation or apology;
 - (b) undertake to do or cease doing specified activities with respect to the Customer;
 - (c) pay the Customer monetary compensation in an amount not to exceed:
 - i. in relation to any single complaint, or any two or more complaints consolidated pursuant to Section 6.15, five thousand dollars (\$5,000) in the aggregate; or
 - ii. in relation to any two or more complaints consolidated pursuant to Section 6.16, five thousand dollars (\$5,000) in respect of each such complaint so consolidated; or
 - iii. in relation to any complaint filed on behalf of two or more Customers in respect of which the Commissioner has taken action pursuant to Section 6.18, five thousand dollars (\$5,000) in the aggregate; or
 - (d) any combination thereof.
21. The CRTC has asked:

“What mechanisms should be used to promote the Wireless Code among consumers?”
22. The launch of the Wireless Code is equally anticipated by wireless carriers, consumer advocacy groups, consumers and regulators. As such, joint promotional and communication initiatives of the Wireless Code by the CRTC, CWTA, CCTS, the wireless service providers and public interest groups like PIAC, could be coordinated to promote the Code. At a minimum, consumers will need to be able to familiarize themselves with their rights under the Wireless Code. The Wireless Code should therefore reside on CWTA, CRTC and CCTS websites, and service providers could provide links to

the Wireless Code from their own websites, on service agreements, and in periodic promotional material on or accompanying customers' bills. In this way we would expect that these promotional measures would largely mirror those adopted when the CCTS first began its mandate in respect of forborne wireline and retail internet services.

Reviewing and Assessing the Effectiveness of the Wireless Code

23. The CRTC has asked:

“How should the Wireless Code’s effectiveness be measured?” and “What performance measurements should be monitored?”

24. Implementing the Wireless Code will set a single new national standard for Canadian wireless services agreements. As such, the ongoing effectiveness of the Code will be best measured on a year-over-year basis, using the first year of implementation as the source of baseline data. The effectiveness of the Code can then be assessed through both quantitative (e.g. percentage of consumers filing complaints) and qualitative (e.g. consumer satisfaction surveys) measures.

25. Ideally, an effective Wireless Code will result in a lower percentage of total Canadian wireless customers filing contract-based complaints with the CCTS. Specifically, tracking the percentage of breaches of the Wireless Code upheld by the CCTS as a percentage of all wireless consumer agreements on an annual basis would effectively measure service provider compliance and the overall success of the Code. In addition, consumer satisfaction surveys could provide metrics on overall awareness of the Wireless Code, increased awareness of the terms of wireless service agreements and perceived impacts on the service contracting process as a whole. All performance measurements should also be established and reported relative to other countries and possibly other similar services.

Conclusion

26. CWTA appreciates the opportunity to participate in this important proceeding. CWTA has strongly advocated that federal regulation of wireless agreements is necessary to eliminate the current patchwork approach of provincial regulations. CWTA looks forward to appearing at the public hearing in February 2013.

Appendix A - National Wireless Services Consumer Code

This National Wireless Services Consumer Code describes the rules applicable to all wireless consumer agreements in Canada.

The following glossary contains the definitions used in this Code.

Glossary

In this Code:

“**agreement**” means an agreement between a service provider and a consumer for services. An agreement may consist of a combination of fixed term services, monthly term services and pay-per-use services.

“**CCTS**” means the Commissioner for Complaints for Telecommunications Services.

“**commitment period**” means the service period agreed to by the consumer.

“**consumer**” means an individual that receives wireless services.

“**device**” means the hardware than enables the consumer to use the service.

“**economic incentive**” (e.g. device subsidy) means the amount of the discount applied on the full price of any device given to the consumer as an incentive to sign up for services.

“**fixed term service**” means any services to which a consumer subscribes for a committed commitment period.

“**lock**” or “**locked**” means a technological or physical feature restricting the functioning of any device provided by the service provider to services provided by the service provider.

“**monthly term service**” means a service that a consumer subscribes to on an ongoing month-to-month basis, without a commitment period, and which can be subscribed to or cancelled by the consumer at any time.

“**pay-per-use service**” means any service that a consumer uses without a previous subscription and which the service provider bills on a per-usage basis (which may be a one-time usage, or usage for a set period of time) but not on an ongoing basis.

“**post-paid**” means an agreement by the consumer to pay retroactively for wireless services.

“**pre-paid**” means a balance paid in advance by means of a certificate, card or other form that allows a consumer to buy services.

“**service**” means a wireless service (e.g. voice, data, text) provided by a service provider to a consumer.

1.0 *Application of the Code*

This Code applies to:

- 1.1** post-paid wireless service and as specifically provided below, pre-paid wireless service, whether purchased separately or as part of a bundle of services by a consumer.
- 1.2** agreements entered in every province and territory, and supersedes any consumer legislation regulating the provision of wireless services.
- 1.3** services purchased from Canadian wireless carriers and wireless resellers.

2.0 *Content of Agreement*

Every agreement will be written in simple and understandable language and will include the following information:

- a)** The name, address, telephone number and website address of the service provider;
- b)** The name, address, telephone number and email address, if provided by the consumer;
- c)** The place and date the agreement is made;
- d)** A description of each of the services selected by the consumer when the agreement is made consisting of the following elements, as applicable:
 - (i)** the length of the term and the expiry date;
 - (ii)** the minimum monthly fee;
 - (iii)** the usage included in the applicable rate (e.g., the amount of airtime local calling minutes or data volume) and related limits, such as geographical zones and time of day for all elements;
 - (iv)** the charges for additional usage;
 - (v)** any one-time costs;
- e)** The total monthly fee for the services subscribed to at the time the agreement is made;
- f)** The monthly rate for each government-mandated fee as applicable;
- g)** How to get information about rates for pay-per-use services and other services not subscribed to;
- h)** The payment terms;
- i)** A description of the economic incentive, if any, provided by the service provider;
- j)** How the economic incentive is used to calculate any early cancellation fee;
- k)** The circumstances under which the consumer can cancel or change the agreement;
- l)** A description of any device supplied by the service provider when the agreement is made including,
 - (i)** whether it is new or reconditioned,
 - (ii)** whether it is locked,
 - (iii)** its retail price,
 - (iv)** the economic incentive,
 - (v)** that the value of the economic incentive will be used to calculate early cancellation fees;

- m) A description of any promotional rates applicable to the services subscribed to including how long the promotional rate applies;
- n) The service provider's customer service contact information;
- o) How to obtain information about the Code, the CCTS and how to file a complaint with the CCTS; and
- p) The amount, if any, charged to receive a paper invoice.

3.0 *The Sale of Pre-paid Services*

3.1 Before an agreement is made for prepaid services, the service provider will inform the consumer of the conditions applicable to the prepaid balance, including usage period, and explain how the consumer can check their remaining prepaid balance. The service provider will provide this information separately if it does not appear on the prepaid card or certificate.

3.2 The service provider will not charge a fee for the purchase of a prepaid balance.

4.0 *Monitoring Use of Services*

The service provider will enable a consumer to:

- (i) monitor their use of services; and
- (ii) determine how and when additional charges relating to that use may be incurred.

5.0 *Agreement Form and Delivery*

The service provider will provide the consumer with the agreement in writing and offer a copy:

- (a) when in store, on paper and/or by email; or
- (b) when the agreement is made remotely, by email or mail.

6.0 *Service Provider Changes*

6.1 Fixed Term Service: The service provider will not change the price, term or volume (e.g. voice minutes, data megabytes) of a fixed term service during the commitment period if the change would increase a consumer's obligations to the service provider or reduce the service provider's obligations to the consumer.

6.2 Monthly Term Service. The service provider may change the price, term or volume (e.g. voice minutes, data megabytes) of a monthly term service, but if the change would increase a consumer's obligations to the service provider or reduce the service provider's obligations to the consumer, the service provider must notify the consumer of the change at least 30 days before the change takes effect.

6.3 Positive or Neutral Change. The service provider may notify the consumer of any positive or neutral change to a fixed term service or a monthly term service (including the price).

6.4 Pay-Per-Use Services. Pay-per-use services (including the price) may be changed by the service provider at any time without notice.

7.0 Consumer Cancellation

7.1 Effective date of cancellation. The consumer may cancel an agreement for a fixed term service or a monthly term service at any time by notifying the service provider. The cancellation takes effect on the day that notice is received, or a later date requested by the consumer.

7.2 Early Cancellation Fee (Fixed Term Service):

- a. If the consumer received an economic incentive and cancels their fixed term service before the end of the commitment period, the cancellation fee may not exceed the sum of: (i) the price of the services provided up to the effective cancellation date plus (ii) any remaining economic incentive balance. The service provider automatically reduces the economic incentive balance by an equal amount each month over the commitment period. This reduction equals the value of the economic incentive for that fixed term service divided by the number of months in the commitment period, and the cancellation fee can therefore be calculated using the following formula:

(Economic Incentive) x (Number of Contract Months Remaining/Total Months in the Contract)

- b. If the consumer did not receive an economic incentive and cancels their fixed term service before the end of the commitment period, the cancellation fee will be the sum of: (i) the price of the services provided up to the effective cancellation date plus (ii) the lesser of: \$50 or 10% of the monthly rate for unexpired months of the commitment period.

7.3 Early Cancellation Fee (Monthly Term Service).

- a. If the consumer cancels a monthly term service, the cancellation fee will be the price of the services provided up to the effective cancellation date and the remaining economic incentive balance. Over a period of up to 48 months, the service provider must automatically reduce the economic incentive balance each month by a minimum set amount. This minimum monthly credit is equal to the original economic incentive divided by up to 48. The cancellation fee can therefore be calculated using the following formula:

(Economic Incentive) – [(Economic Incentive) x (Number of Contract Months Elapsed/up to 48)]

- b. If the service provider did not provide an economic incentive when the consumer signed up for a monthly term service, then the cancellation fee will be the price of the services provided up to the effective cancellation date.

8.0 Service Provider Cancellation

8.1 Consumer Default: The service provider may suspend the services or cancel an agreement without notice if the consumer fails to meet their obligations under the agreement, including, for

example, non-payment of charges; fraud, unlawful or improper use or behavior related to the service; exceeding reasonable usage limits; or engaging in activity that negatively affects the service provider's network. However the terms of the agreement, including charges up to the service suspension or cancellation and applicable early cancellation fees apply.

8.2 Fixed Term Service: The service provider may cancel a fixed term service if the service provider no longer provides the service and has given the consumer at least 30-days' notice.

8.3 Monthly Term Service: The service provider may cancel a monthly term service by giving written notice of the cancellation at least 30 days before the cancellation date.

8.4 Payment for Services Provided: Upon cancellation, the consumer must pay for the services provided by the service provider up to the effective cancellation date, and any other charges established by the agreement.

9.0 *Expiry and Renewals*

9.1 Expired agreements may only be automatically renewed on a monthly basis.

9.2 The service provider will provide Consumers who have commitment periods longer than 60 days with notice of the commitment period's expiry date at least 60 days before that date.

10.0 *Device Repairs and Warranties*

10.1 The service provider will not charge for services unavailable during the repair of the device supplied to the consumer necessary for the use of the service, if the following three conditions are met:

- a. the customer's service provider is repairing the device;
- b. the device is still under the manufacturer's or service provider's warranty; and
- c. the service provider did not provide a free device during that repair.

All other charges will continue to apply if the consumer caused the damage to the device.

10.2 The service provider will inform the consumer of the existence and duration of the manufacturer's device warranty before offering an extended warranty on that device.

11.0 *Unlocking of a Device*

The agreement will set out the conditions under which the service provider will unlock the device, if permitted by the device manufacturer.

12.0 *Device Loss or Theft*

If the device is lost or stolen, the service provider will suspend the services associated with that device, provided the consumer gives notice of the loss or theft. However, the terms of the agreement, including charges up until when the service provider received notice that the device was lost or stolen and applicable early cancellation fees apply.

13.0 *Security Deposits*

13.1 If the consumer paid a security deposit, the service provider will not cancel the agreement for failure to pay outstanding amounts as long as the amounts due do not exceed the amount of the deposit.

13.2 The service provider will notify the consumer if it is drawing down the security deposit to collect amounts past due.

13.3 Within 30 days after the expiry or cancellation date of the agreement, the service provider will return the security deposit to the consumer, less any amounts owing, with interest calculated on the remainder at a rate set by the service provider no less than:

- a. the overnight rate of the Bank of Canada that is then in effect plus 1.25%, on the basis of the actual number of days in the relevant year, accruing monthly, or
- b. the Bank of Canada rate plus 1%, calculated from the date on which the consumer provided the security until the date on which it is returned to the consumer.

14.0 *Privacy Policies*

The service provider will make its privacy policies available in a manner that is accessible to the consumer.

15.0 *Advertising*

Any advertising material featuring a price for a fixed term service or monthly term service will include the total amount the consumer must pay for the services on a monthly recurring basis, except sales taxes and government mandated fees.

16.0 *Unsolicited Goods or Services*

The service provider will not charge for any device or services that the consumer has not expressly purchased.

17.0 *Complaints and Enforcement*

The CCTS will be responsible for receiving, investigating and resolving complaints under this Code, and issuing remedies for non-compliance. Information about the CCTS is available at: www.ccts-cprst.ca.

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