

February 3, 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*

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 has previously provided substantive comments on the Province of Manitoba's discussion paper *Improving Consumer Protection in Cell Phone/Wireless Contracts* and submitted industry responses to a questionnaire issued by the Manitoba Consumer Protection Office on the same subject. Although CWTA remains of the view that the provisions of *the Act* pertaining to wireless services are unnecessary, and that government regulations inevitably add costs to government, industry, and ultimately consumers, Canada's wireless industry is committed to providing the highest standard of service and support and ensuring that customers receive the information they need to make informed purchasing decisions.

Despite these reservations, CWTA provides the following comments on the *Proposed Cell Phone Contracts Regulation* received by email on December 22, 2011.

Section 1 — The only time which should be determinative as to whether a contract is one which is “not made in person” is the moment when the customer enters into the contract with the supplier

In Section 1, the proposed definition for a “contract not made in person” includes the period of time between the initial offer and the time the customer enters into the contract to determine if the contract was not made in person, provided the customer has not had at least one-person meeting with the supplier.

This reference period will create unnecessary confusion. The only time which should be determinative as to whether a contract is one which is “not made in person” is the moment when the customer enters into the contract with the supplier. For example, a customer may decide to obtain information in a store but subscribe to the service on the supplier’s website at a later time, days, weeks or even months later. Under the proposed definition, this contract would not be considered a “contract not made in person” since the customer had one in-person meeting with a representative of the supplier.

Section 3 — The list of required contract elements will mean that contracts are not clear and understandable. Unless adjusted through regulation, Bill 35’s provisions will produce the longest and most complex wireless contracts in the country

The legislation requires contracts to be “clear and understandable”. The legislation, however, also outlines a detailed list of requirements to be “set out prominently and in a clear and understandable manner” at “the beginning of the contract” — including a requirement to provide descriptions and explanations of various elements of the contract.

Section 3(a)(i) of the Regulations requires that all information that is required under clauses 185(1) (a) to (q) of the Legislation be provided to the customer before a contract is entered into. Elements required by Section 185(1) include information such as the customer’s name and address and the date of the contract.

The list of mandatory items in 185(1) (a) to (q) is enumerated over nearly three pages in the PDF version of Bill 35. This list includes 33 known items (14 of which require detailed descriptions), as well as a large number of open ended items, including optional services. CWTA has previously provided extensive comments on the impracticality of the optional services requirement but will reiterate: 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”.

- A subscriber may opt to use text messaging to donate to one of 120 Canadian charities using one or more of the 289 Mobile Giving Canada keywords,
- 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 634 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 a long distance package
- A subscriber may opt to bring their handset when they travel internationally. At least one service provider active in Manitoba has over 650 roaming agreements with international partners

CWTA seeks clarification that the preceding items do not require description on the face of the customer’s contract, and that service providers may instead use industry standard practice of referring customers to sources of information provided elsewhere, e.g., online.

The list of elements proposed to be included in the contract add unnecessary complexity and confusion for the customer, in particular the requirement to include optional services and pay-per-use fees, such as roaming rates. It would be impractical to describe the many optional services available to the consumer (as well as their associated costs and restrictions), in the contract, particularly “in the beginning pages” as the Legislation requires. Requiring the inclusion of optional and pay-per-use services would significantly increase the size of the contract. If the purported objective remains simplifying and clarifying wireless contracts for Manitoba subscribers, this section of the legislation will have the complete opposite effect – it will require wireless contracts signed in Manitoba to be the lengthiest and most complex in Canada.

There is also a requirement to provide details of the manufacturer’s warranty within the contract. Manufacturer’s warranties are tied to a device purchase, not the contract for mobile services. Manufacturer’s warranties are included with, and associated with the devices purchased and can often be quite lengthy. A requirement to include such warranties in the contract will also add to the length and complexity of a contract for the consumer. As above, CWTA recommends the use of industry standard practice of referring customers to sources of information provided elsewhere.

We continue to recommend that Manitoba revise its list of mandatory terms to be included in the contract. Manitoba should ensure that the Regulations require that only the base services the customer has subscribed to must be included as part of the minimum monthly cost in the contract. This would include a new provision in the Regulations to either: a) exclude the description of optional services, pay-per-use services such as roaming and long-distance rates, and manufacturer’s warranties from the list of contract terms included in Section 185 of the Legislation or b) allow for wireless service providers to continue the industry practice of referring the customers to online resources for additional information about pricing and restrictions associated with optional services, pay-per-use services and manufacturer’s warranty information. Further, CWTA seeks clarification that these optional services do not constitute a “material term”.

These amendments are particularly important given that Section 13 of the Regulations sets out the details of Administrative Penalties associated with the Legislation. Wireless service providers have the potential to face significant administrative penalties for failure to comply with the onerous and unnecessary requirement to include information about optional services, pay-per-use services, and manufacturer’s warranties in the contracts.

Section 5 — The only time which should be determinative as to whether a contract is one which is “made over the Internet” is the moment when the customer enters into the contract with the supplier

As commented with respect to Section 1, we suggest that only the time the contract is made should be determinative and not the period of time between the initial offer to the time the customer enters into the contract.

Section 6 — ‘Trial period’ should reflect Section 62(1) of the *Consumer Protection Act*.

Section 6 (1) (a) (ii) provides that a customer may cancel a contract not made in person within 30 days after entering into the contract, creating an effective trial period of 30 days which is unusually long even compared to the buyer’s cancellation right which is set at 10 days for a sale made by a direct seller under Section 62 (1) of the *Consumer Protection Act*. A similar period for direct sales is established in other provinces such as in Ontario and in Quebec.

We strongly encourage the government to amend this section to reflect Section 62(1) of the *Consumer Protection Act*.

Section 7 — Not all changes require complete revision of documentation.

This section requires the merchant to provide a copy of the terms or the contract as amended, regardless if the amendment results from the merchant or the customer. There are a variety of circumstances where a wireless service provider does not necessarily provide documentation of a customer-requested change, for example, where the change is self-evident (e.g., add/delete optional feature). Such changes can simply and effectively be communicated by way of change in line item listing on the monthly invoice. Where the change is not self-evident (e.g., extension), then communication as required by Section 7 (terms or contract as amended) should be sufficient for the purposes of compliance.

This additional requirement for documentation doesn’t serve any necessary purpose for the customer given that their invoicing would reflect the changes made to their account.

Sections 8, 9 — Provision of a complete new contract should satisfy requirement to provide details of places where the revised contract differs from the previous contract

These sections require the supplier to provide a copy of the provisions of the contract which differ from the previous contract. Some wireless service providers treat contract renewals as an entirely new contract. Therefore, we submit that there should be the option to provide only the copy of the new contract should be provided to the customer by the supplier and not a copy of the provisions which differ from the previous contract.

Section 10 — The formula for calculating a cancellation fee should be identical to that in place in Quebec (which is easier for customers to understand and for service providers to calculate)

Section 10 sets out the formula for calculating the maximum cancellation fee allowable under Section 198(2) of the Legislation. In Quebec, the formula is slightly different - it is: $SDRF = EI - [EI \times \#of\ months\ elapsed / term\ in\ months]$. We request a modification of the formula so that it is expressed in the same way as Quebec.

Furthermore, we recommend that Section 10 be amended to state that “months” includes partial months, e.g., 1 month and 29 days would equal: $1 + (29/30)$. Clarifying that months includes partial months would be more accurate and therefore more fair, in addition to providing greater certainty in interpreting the regulations.

Section 11

As with Section 10, CWTA notes that the formula for calculating the maximum cancellation fee that can be charged is similar to the Quebec formula, but not identical. Quebec's regulations refer to the "unpaid balance of the sales price". We recommend a modification of the formula so that it is expressed in the same way as Quebec.

Section 12 — Service providers should not be required to keep separate, individual copies of standard forms for every customer

Section 12(1) of the Regulations requires that wireless service providers are to maintain complete an accurate record of each contract entered into. This includes a complete copy of the contract and all documents that comprise the contract. It is unnecessary for providers to have to keep individual copies of every standard form or document that is part of the contract given to each customer (such as the *Terms of Services*, the *Acceptable Use Policy*, *User Guide*, etc.).

The Regulations should be amended to clarify that it is sufficient to just keep copies of each version of these forms, but not a separate copy for every customer contract as this section seems to require. Otherwise suppliers will be required to keep hundreds of thousands of copies of documents that are identical for every subscriber. Further, the Regulations should be amended to clarify that these records may be kept electronically.

Section 12(2) requires that a complete copy of the contract, including all copies of all documents that comprise the contract, and proof that the customer has agreed to enter into the contract for at least six years after the date of the contract expires or is terminated. CWTA recommends that the Manitoba government remove this provision. An obligation such as contained in Section 12(2) would likely require significant IT development and policy changes to retain phone and online acceptances for this length of time. In addition, we are not aware of any other jurisdiction with this record retention requirement. Other jurisdictions place the onus on the provider to provide proof that a customer has entered into a contract but do not require retention of such proof for a set period.

Alternatively, CWTA recommends that any record-keeping requirement be changed to commence at the start of the contract, not the expiry, to bring certainty to the end-date at which suppliers may properly dispose of old records. Using the start date as the commencement would bring a uniform period of document retention, whereas using the expiry date leads to an unnecessarily complex requirement and possibly to different record-keeping lengths for different customers depending on the length of their contract. Using the start date would therefore minimize unreasonable long-term storage of records.

Section 14 — Service providers will require at least eight months to make the necessary changes to billing, staff training and other systems

CWTA recommends a coming-into-force date that allows a timeframe sufficient to allow suppliers to (i) fully understand finalized regulations and any interpretive guidelines associated with Bill 35; and (ii) make the significant underlying order process changes and contract generation system changes. The CRTC, the federal telecommunications regulator, frequently

provides a six month implementation period for lesser changes. Given the broad scope of the changes proposed by Manitoba, CWTA recommends a minimum eight month implementation.

Other

The legislation's problematic treatment of 'optional services' should be clarified via legislative amendment or regulation. At a minimum, any interpretation guideline should be released in draft form for public comment before being adopted

Pay-per-use services and optional subscription features

CWTA understands that Manitoba intends to clarify Bill 35's treatment of optional services in an interpretive guideline. CWTA submits that the guidelines should state: that the attributes and rates of any optional services which may be added/deleted by the customer (with immediate effect and without penalty) may be changed by the supplier upon notice. CWTA prefers that this issue be addressed in a legislative amendment, or at minimum, clear treatment in the supporting regulations. In any case, CWTA requests that the interpretive guideline be released in draft form such that comments can be sought on whether the interpretation strikes the balance being sought between consumer protection and service providers' ability to compete.

Unilateral Contract Changes to pay-per-use services and optional subscription features

The Legislation requires that material terms cannot be unilaterally changed. It also provides an exhaustive list of contract terms that are considered material terms, including the monthly cost for base services, additional use charges, charges for optional use services, and any other fee payable by the customer.

The Province has received comments suggesting that services the customer has not subscribed to are not material to the customer, and that the Manitoba legislation should mirror the Quebec legislation. Quebec's legislation does not allow for a unilateral change to an essential element of the contract, such as the nature of goods or services that are the object of the contract; the price of services subscribed to on a term commitment; and the term of the contract.

CWTA recommends that the Regulations be amended to allow for wireless service providers to make unilateral changes to services that do not form an essential element of the customer's contract. This is particularly necessary for such pay-per-use services such as roaming rates (which are the subject of international agreements and subsequently subject to change from time to time), and long distance rates.

Director's Discretion

The Legislation includes various provisions (Sections 185(1), 190(2), 200(1), and 211(1)(g)) that require contracts to be set out in a "clear and understandable manner, satisfactory to the director" and provisions for certain written notices to customers be provided in a "form that is satisfactory to the director".

CWTA submits that Manitoba should allow for wireless service providers to determine on their own how to set out written notice to our customers and the form in which contracts are set out.

Attempting to create a standard 'template' for a wireless contract in Manitoba would be a time consuming, expensive, and ultimately unnecessary exercise and one that will hinder the ability of service providers to compete against one another on differentiation.

Conclusion

Canada's wireless industry is committed to providing the highest standard of service and support and ensuring that customers receive the information they need to make informed purchasing decisions. To minimize the cost and complexity of the *Cell Phone Contracts Regulation*, CWTA's makes the following key recommendations:

- The list of required contract elements should be reduced, amended and/or clarified
- The legislation's treatment of 'optional services' should be amended or clarified
- The only time which should be determinative as to whether a contract is one which is "not made in person" or "made over the Internet" is the moment when the customer enters into the contract with the supplier
- Any trial period should reflect Section 62(1) of the *Consumer Protection Act*.
- The formula for calculating a cancellation fee should be identical to that in place in Quebec
- Not all service changes should require the supply complete new contract documentation.
- Service providers should be permitted to provide a complete new contract to satisfy the requirement to identify revisions from the previous contract
- Regulations should not mandate retention of separate, individual copies of standard forms for every customer
- Wireless service providers should be permitted to determine the form of customer notifications and contracts
- Any interpretation guideline(s) should be released in draft form for comment before being adopted
- Coming into force should allow at least eight months for service providers to make the necessary changes to billing, staff training and other systems

CWTA appreciates the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Patrick". The signature is stylized and cursive.

Jim Patrick
Senior Vice President,