

November 16, 2016

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

Dear Ms. May-Cuconato,

**Re: CWTA Reply Comments, Telecom Notice of Consultation CRTC 2016-293, *Review of the Wireless Code***

1. The Canadian Wireless Telecommunications Association is the authority on wireless issues, developments and trends in Canada. It represents wireless service providers as well as companies that develop and produce products and services for the industry, including handset and equipment manufacturers, content and application creators and business-to-business service providers.
2. CWTA is pleased to file its reply comments with respect to the above-noted consultation. In its intervention, CWTA submitted that the Wireless Code, given its success, requires only minor updates to ensure it continues to meet the objectives set for it in 2013. CCTS statistics and CRTC-commissioned research strongly indicate that the Wireless Code is not only effective, but increasingly so.
3. Instances of bill shock, overall complaints and contract disputes have all declined, while awareness of key contract elements such as early cancellation fees is on the rise. Indeed, the Wireless Code is empowering Canada's savvy wireless consumers with an even better understanding of their rights and responsibilities, and contributing to a dynamic wireless marketplace overall.
4. CWTA has carefully reviewed the other interventions to this proceeding and is pleased to note a strong consensus has emerged showing the Wireless Code has had a positive impact on the wireless consumer experience. At the same time, CWTA notes alternative views on some of the contents and administrative aspects of the Wireless Code.
5. We therefore use these reply comments to consider and address the other interventions filed to the proceeding and reiterate the principles of our submission. Our reply comments are grouped under the five issues identified by the Commission to be addressed: the effectiveness of the Wireless Code; the evolution of the retail mobile wireless market since the implementation of the Wireless Code; the content and wording of the Wireless Code; consumer awareness of the Wireless Code; and how the Wireless Code's effectiveness should be assessed and reviewed going forward.

## The effectiveness of the Wireless Code

6. The available statistics demonstrate that, in just three years, the Wireless Code has already had a positive impact for consumers. Between 2013 and 2015, total wireless service-related complaints per 10,000 subscribers decreased by 17.6%, wireless contract disputes decreased by 1.8% and complaints related to billing errors decreased by 35.5%.<sup>1</sup> And at fewer than one per 10,000 subscribers, confirmed breaches of the Wireless Code are rare.
7. Results of public opinion research further confirm the effectiveness of the Wireless Code. There have been declines, over the past three years in the percentage of Canadians: reporting having made a complaint about their wireless service; experiencing changes to their wireless service without having been made expressly aware; and experiencing some form of “bill shock.” To paraphrase the research commissioned by the CRTC, these results indicate that consumers’ understanding of wireless contracts has improved and service providers are complying with the requirements of the Wireless Code.<sup>2</sup>
8. Yet some interveners question the Wireless Code’s effectiveness. Specifically, the Coalition<sup>3</sup> and the Forum<sup>4</sup> both contend that an effective Wireless Code would have resulted in lower retail wireless rates and/or lower per-user revenue for wireless service providers. The Commission was clear in TNC 2016-293 that “rates and competitiveness of the marketplace” are outside the scope of this proceeding. CWTA additionally submits that the comments by these interveners are based on a misunderstanding of the objectives of the Wireless Code overall.
9. As the Commission clearly stated when it launched the proceeding to develop the Wireless Code, the purpose of a mandatory code of conduct for mobile wireless services was to provide consumers with “additional tools to better understand their basic rights, as well as their service providers’ responsibilities with respect to mobile wireless services, in order to participate in the competitive market in an informed and effective manner.”<sup>5</sup>
10. In rendering its Wireless Code decision, the Commission additionally verified that the Wireless Code will “make it easier for individual and small business consumers to get information about their contracts with wireless service providers and about their associated rights and responsibilities, establish standards for industry behaviour, and contribute to a more dynamic marketplace.”<sup>6</sup> And the Commission, in the Notice for this proceeding, further noted an objective of the Code is to “contribute to a more dynamic wireless market.”<sup>7</sup> The Commission has never tied retail price to any Wireless Code objectives.
11. CWTA has also consistently submitted that an effective Wireless Code should establish a single set of national guidelines, thereby removing the inefficient patchwork of provincial regulations that serves only to confuse and frustrate Canadian wireless customers and service providers. While CWTA recognizes the Wireless Code as the only valid wireless consumer contract regulation in Canada, ongoing provincial regulation of wireless

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<sup>1</sup> CCTS annual reports.

<sup>2</sup> TNS Canada, *Wireless Code Public Opinion Research 2016*, March 29, 2016.

<sup>3</sup> The Consumers’ Association of Canada (“CAC”); The Council of Senior Citizens Organizations of British Columbia (“COSCO”); The National Pensioners Federation; and The Public Interest Advocacy Centre (“PIAC”).

<sup>4</sup> The Forum for Research and Policy in Communications.

<sup>5</sup> Telecom Notice of Consultation CRTC 2012-557, October 11, 2012.

<sup>6</sup> Telecom Regulatory Policy CRTC 2013-271, June 3, 2103.

<sup>7</sup> CRTC 2016-293, paragraph 8.

contracts continues to confuse and frustrate wireless consumers and to increase the administrative burden on service providers that must account for multiple sets of rules.

12. CWTA submitted in its intervention to this proceeding that the CRTC should address the existing confusion by clearly declaring that the Wireless Code is the only valid wireless consumer contract regulation in Canada. We therefore support the similar recommendation by the Coalition that the Commission, through its decision in this proceeding, call on the provinces to repeal their consumer legislations.
13. The submission by the Ministère de la Culture et des Communications du Québec et l'Office de la protection du consommateur, which contends that the National Assembly of Québec holds jurisdiction over wireless services in its province, further demonstrates the need for the Commission to clearly confirm its authority as the sole federal regulator of telecommunications services.

### **The evolution of the retail mobile wireless market since the implementation of the Wireless Code**

14. The significant evolution of the retail mobile wireless service market over the past three years is undeniable. Wireless market evolution is the norm, not the exception, as service providers must evolve to address consumer preferences in a world where smartphones and tablets are increasingly the preferred choice to communicate, navigate, inform, shop, bank, work, collaborate, entertain and be entertained.
15. CWTA maintains the Wireless Code should continue to focus on consumer flexibility while allowing competitive wireless service providers to respond to market demand in new and innovative ways. Code requirements should reflect technological and service plan neutrality to the greatest extent possible. The measurable success of the Wireless Code in the face of such rapid market development is proof of the Code's success in this regard.
16. Conversely, prescriptive rules that attempt to respond directly to current consumption patterns or consumer preferences could stifle the wireless market and reduce current dynamism. As CWTA submitted to this proceeding, one purpose of the Code is to provide an ongoing level of consistency and predictability for consumers, regardless of service provider or market. Making comprehensive changes to the rules every time the Wireless Code is up for review would significantly undermine this objective.
17. CWTA therefore reiterates that a preferred outcome of this review would be for the Wireless Code to maintain the open-minded approach that has made it successful thus far.

### **The content and wording of the Wireless Code**

#### Contract clarity and the Critical Information Summary

18. The CRTC-commissioned public opinion research reveals 66% of Canadians find their wireless contract clear and easy to understand, while only 14% find their contract difficult to understand.<sup>8</sup> Clearly, the Wireless Code's contract requirements related to plain language, which are further bolstered by the Critical Information Summary (CIS), are helping Canadians better understand their wireless contracts.

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<sup>8</sup> TNS Canada pg. 26.

19. The Coalition has proposed that service providers be required to use terminology in contracts that corresponds directly to that found in the Wireless Code. Wireless service providers, however, have not experienced issues that would be addressed by this provision. Rather, the flexibility of the Wireless Code allows service providers to use terms to more specifically describe the nature of their services or contract provisions. Service providers are constantly working to improve communications with customers and need to maintain the freedom to describe new and innovative plans and service options.
20. The Coalition, the Forum and the intervention from the group of researchers at the University of Ottawa all recommended the Wireless Code require service providers to offer copies of the CIS to be used by potential customers for comparison shopping purposes. As the Commission is aware, it determined in 2013-271 that “the proposal to require WSPs to provide the Summary before a contract has been entered into would involve a significant burden, from both a financial and a resource perspective, and the Commission considers that it is not necessary to require this.”
21. This burden still exists today. CWTA encourages the Commission to consider the interventions of its members on this subject. Many indicate it would be operationally difficult to provide the CIS, which currently comprises the first two pages of the service contract, in advance. Indeed, such a requirement would increase costs for service providers, and possibly for consumers. For example, service agreement offers in some cases cannot be provided until a credit check has been performed.
22. The Commission also ruled in 2013 that “WSPs may provide the Summary at this stage if they so choose.” Service providers currently provide a variety of marketing materials that consumers can use for comparison shopping. We encourage the Commission to consider the information provided in service providers’ interrogatory responses. Comparisons have also become easier as plans have become increasingly streamlined. A potentially resource-intensive and costly solution is therefore not necessary to bolster an issue that is already being addressed by the competitive market.

#### Key Contract Terms

23. Multiple interveners submitted that wireless data should be categorized by the Wireless Code as a key term. For example, the Coalition submitted that the Commission “modify the Wireless Code to specify that voice, data and text messaging services are to be considered “key terms” of all wireless contracts unless clearly established by the WSP as an exceptional case.”
24. There is no denying that data service has become increasingly important to consumers and is often considered one of the most important feature of a wireless service agreement. CWTA therefore believes that data would be considered a key term in the majority of wireless contracts. However, the Wireless Code is service agnostic. Identifying any specific service as a key term would remove existing service plan flexibility for consumers and would fundamentally alter the Code.
25. As per the Wireless Code, key contract terms include, among other items, “the services included in the contract; and...the limits on the use of those services that could trigger overage charges or additional fees;

[and] the minimum monthly charge for services included in the contract.”<sup>9</sup> The Code does not specify that voice, text or data, for instance, are key terms, because they may not be key terms in all service agreements.

26. CWTA submitted during the Wireless Code proceeding that key terms should be those the customer cannot cancel and the service provider cannot unilaterally alter. As mentioned above, wireless data should be considered a key term in a majority of service agreements. However, the Wireless Code should still allow service providers to offer wireless plans that provide consumers the flexibility to add, remove or alter a service as suits their needs. In a situation, for instance, where a customer added data on a trial or as-needed basis, it would not be considered a key term.
27. Therefore, rather than specify that data, or other specific services, are key terms, CWTA submits that the requirement that services included in the contract be classified as key terms continue to be enforced.

#### Prepaid and postpaid services

28. The Consumers Council of Canada submitted that “Prepaid accounts should remain open and phones active as long as positive cash balances are available.” Since issuing the Wireless Code the Commission has addressed the subject of the expiration of prepaid services on a number of occasions. The extensive evidence and review has confirmed the legitimacy of the time-plus-usage prepaid business model. CWTA believes this issue has been settled and therefore it is not necessary to restate the evidence to address the Consumers Council’s submission.
29. As well, CWTA has also responded to a Commission Request for Information (RFI) regarding the difference between prepaid and postpaid service. CWTA responded that:

The most significant difference between prepaid and postpaid wireless service is that postpaid service allows the subscriber to use services for which they have not already paid. That is, a postpaid subscriber can choose to incur usage overages – be they from data use or voice minutes, or other pay-per-use services – for which they will be billed at a later date. A prepaid user, on the other hand, is strictly limited to using services for which they have already paid.
30. The Coalition has submitted that the term postpaid be replaced by the term “term subscriber,” which it defines as “a user who pays a minimum charge for a usage allowance.” The Coalition further submits this definition would include all service plans that today are classified as postpaid as well as some plans currently classified as prepaid. Based on the clear difference between postpaid and prepaid services, as described in CWTA’s response to the Commission’s RFIs – as well as in the responses of CWTA’s members – the Wireless Code should not adopt any terminology that classifies both types of service under one definition. Furthermore, we note that not all customers on postpaid service plans are “term subscribers” as they are not subject to any term and could cancel services at any time without penalty, making the proposed rewording even more inappropriate.
31. The most significant factor distinguishing prepaid from postpaid service – i.e. that a prepaid user is strictly limited to using services for which they have already paid – is exactly what renders some aspects of the Wireless Code inapplicable to prepaid service. That is, prepaid users cannot incur overages and they are not

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<sup>9</sup> CRTC 2013-271, paragraph 58.

on term contracts or contracts that automatically extend every 30 days without any action on the customer's part.

#### Bill management

32. CWTA submitted in its intervention that the Commission review the definition of a "customer" in the Wireless Code to address the confusion created by current interpretations. Such confusion appears to most often arise in requirements to notify customers that they have reached data overage threshold. The Forum also recommended the Wireless Code differentiate between "subscribers" and "account holders" as separate types of customers. CWTA encourages the Commission to consider the wireless service provider's proposals to amend this definition.
33. The Coalition submitted that the Wireless Code should require service providers to offer more detailed or customizable usage alerts, and mandate providers to send customers alerts when they reach 50% and 100% of their monthly data usage limit. CWTA strongly opposes such mandatory requirements. Many service providers currently offer various account management options. Indeed, many advertise the availability of such tools as a competitive tactic to attract more subscribers. Requiring all service providers to do the same would reduce the innovation that has been fostered by competition, and would result in a less dynamic wireless market.
34. The Coalition and the Forum also submitted the Wireless Code should require service providers to allow postpaid customers to rollover all or part of any unused data to the next month, or receive a rebate for unused data. CWTA submits that such a requirement is not within the scope and does not serve the objectives of the Wireless Code, which are to provide Canadians with additional tools to better understand their basic rights, as well as their service providers' responsibilities with respect to mobile wireless services. Indeed, the Wireless Code should never be worded in a way that would prevent a service provider from exploring any competitive option, and it should not require all providers to offer the same service options to all subscribers.
35. Finally, the Coalition submitted that contracts should include a description of how data usage is measured. Such a requirement is not necessary and would not be helpful for consumers. To start, much of the Coalition's justification for such a requirement is related to an isolated incident that was quickly rectified. Clearly, past contract or service issues that were quickly addressed should not justify changes to the Wireless Code. If anything, such instances demonstrate the Code and the market are functioning properly.
36. Also, a detailed description of how data is measured would be of little use to anyone but the most technically experienced subscribers. In fact, the technical nature of data traffic and data use would be extremely difficult to describe without violating the Wireless Code's plain language requirements.

#### Device unlocking

37. Some interveners have called for the Wireless Code to require service providers to unlock devices at no charge. However, the conditions under which the Commission issued its ruling on unlocking wireless devices in the Wireless Code continue to exist today. Namely, "requiring WSPs to disclose their unlocking service charge in the Critical Information Summary will enable consumers to make fully informed decisions and allow WSPs to keep unlocking service rates a point of competitive differentiation."<sup>10</sup> Indeed, there continues to be a

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<sup>10</sup> Ibid. Paragraph

variety of unlocking fees in the market, which indicates service providers continue to use this feature as a competitive differentiator.

38. The Forum has also submitted the Wireless Code should prohibit service providers from requiring accounts to be in good standing as a pre-condition for device unlocking. While the Wireless Code is currently silent on this issue, CWTA submits that the Code should undoubtedly allow service providers to require accounts to be in good standing before unlocking devices. To do otherwise would allow a customer to activate a device and simply wait out the 90-day minimum period without making any payments on the account before having the device unlocked and terminating service.
39. Today's smartphones can retail for more than \$1,000 and device subsidies routinely exceed \$500. Service providers need to protect themselves against fraud and losses when issuing contracts and when unlocking devices. Credit checks, security deposits and requiring accounts to be in good standing before unlocking are some protectionary measures. The Wireless Code should not take such rights away from service providers.

#### Device subsidies and early cancellation fees

40. Two interveners, the Coalition and the Forum, submit the Wireless Code should amend its position on early cancellation fees. To summarize: the Coalition argued that fee reductions for subscribers who bring their own devices should directly match the monthly early cancellation fee reduction for subscribers who received a subsidized device; and the Forum submitted the term "subsidized device" should be replaced by "financed device." Both submissions, however, are based on a misunderstanding or misrepresentation of device subsidies in wireless contracting and should therefore be dismissed.
41. CWTA appreciates the opportunity to clarify, for the record of this proceeding, the nature of wireless device subsidies and how they relate to the early cancellation fee formula:
  - Many wireless service providers package devices and service plans in a manner that significantly reduces the upfront cost of the device in return for a customer's commitment to purchase service for a specified period – typically two years.
  - During the Wireless Code proceeding, the Commission considered that "a clear, standard, and transparent formula for early cancellation fees will improve clarity for consumers."<sup>11</sup>
  - The Commission further determined it was "appropriate for WSPs to be allowed to recover an early cancellation fee if a customer seeks to exit their contract early and a subsidized device was provided as part of the contract."<sup>12</sup>
  - The Commission therefore determined that maximum early cancellation fees would be limited to the amount of a device that was subsidized, but that this value must decline by an equal amount each month over no more than 24 months.
42. The facts, therefore, are that service providers subsidize devices and the subsidy amount is tied to the fee a subscriber must pay to exit a wireless service contract. It was never determined that, in subsidy situations, the customer was entering into a financing arrangement with service providers. Indeed, it is extremely circular reasoning to use the fact that early cancellation fees are tied to device subsidy amounts to determine that

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<sup>11</sup> Ibid. Paragraph 222.

<sup>12</sup> Ibid. Paragraph 225.

subsidies do not exist. Implementing the Forum's recommendation that the Wireless Code prohibit service providers from using the term "subsidized device" would therefore be inaccurate.

43. Similarly, the Coalition's recommendation is based on a misrepresentation of device subsidies. To begin, the Coalition erroneously refers to "inflated upfront device costs" charged by service providers when wireless device prices are typically the same even when purchased directly from the manufacturer. Secondly, the Coalition's submission clearly demonstrates the existence of device subsidies and how they are used in wireless contracting. Yet the Coalition refers to this practice as "inverted consumer financing" and attempts to assign it some nefarious motivation.
44. While the savings identified by the Coalition provide an obvious advantage, purchasing a device outright also provides significant, but different, advantages. Namely, subscribers who own their device can switch providers at any time in favour of a better offer without penalty.
45. The Canadian wireless service market is awash with a variety of service plans based on a number of business models, including bring your own device, device subsidies and tab accounts. Each plan includes inherent benefits designed to attract customers. The Coalition's proposal would have the Commission effectively mandate a single business model for all wireless service contracts, or, at the very least, neutralize any customer benefits that may be inherent to one option versus another.
46. CWTA cannot speculate as to why the Coalition – beyond its misinterpretation of device subsidies – is attempting to find fault with service plans that provide significant device savings to customers. Eliminating such models, or neutralizing their benefits, would not contribute to a dynamic wireless marketplace. CWTA, therefore, strongly submits that the Commission maintain the current rules regarding early cancellation fees in the Wireless Code for the benefit of Canadian wireless subscribers.

#### Trial period

47. CWTA submitted in its intervention, and reiterated in its response to the Commission's RFI, that permitting a nominal restocking fee for devices returned during the trial period would balance the benefits of the trial period, while mitigating the negative impact on service providers. Indeed, while the trial period serves a valuable purpose, it has created a market imbalance with third-party device retailers and can also be open to abuse. SaskTel submitted that sales losses on devices returned during the trial period cost the company nearly \$1.5 million each year. CWTA encourages the Commission to consider the evidence submitted by all service providers as this policy may result in significant costs to the industry.
48. CWTA requests that, as with unlocking fees, the Code allow for restocking fees "at the rate specified by the service provider," as long as the fee is clearly set out in the contract. There would be no obligation on service providers to charge a restocking fee, or use a blanket restocking fee policy. As WIND Mobile submitted in its response to the Commission's RFIs: "When contemplating a restocking fee, a WSP will need to balance the benefit versus the consequences. This should be an individual WSP decision. If some WSPs start charging restocking fees, other WSPs may take advantage of this to promote their more friendly return policies. This would be good for competition."

## **Consumer awareness of the Wireless Code**

49. Promoting awareness of the Wireless Code should continue to be the shared responsibility of the Commission, the CCTS, consumer groups and wireless service providers. CWTA provides a link to the Code on its website and will continue to do so. As well, the majority of Canadians who are aware of the Wireless Code recall hearing about it in the media. Proceedings such as this and the media attention that will result from the final decision will be among the best measures to renew and increase awareness of the Code.
50. The Coalition has submitted that if awareness of the Wireless Code were to decline, wireless service providers would begin violating the rules enshrined in the Code. This submission is completely unfounded and is an insult to service providers. The Wireless Code sets out industry regulations that are strictly followed by the wireless industry. Service providers that do not adhere to these regulations could be subject to administrative monetary penalties from the Commission. We are pleased to note this has not been necessary to date, and we do not believe it will be in the future.
51. CWTA also maintains that significant awareness of the key rights and responsibilities embodied in the Wireless Code is a more important measure than awareness of the Code itself. For instance, it is important consumers are aware of early cancellation fee rules, or the trial period, regardless of whether they know the source of the underlying regulation. The same holds true for other key objectives of the Wireless Code that are being recognized by Canadian consumers.

## **How the Wireless Code's effectiveness should be assessed and reviewed going forward**

52. CWTA is pleased to note many interveners to this proceeding, including service providers and consumer groups, also recommended the Wireless Code be assessed five years after this proceeding concludes. At that time, the Commission should continue to assess the effectiveness of the Wireless Code through a combination of qualitative and quantitative measures, including CCTS statistics, public opinion surveys and by reporting on service provider implementation.
53. CWTA also notes some interveners have submitted other success measurement criteria to be used when assessing the Wireless Code. We recommend that the Commission allow for industry and public feedback on any measurement criteria that it considers using going forward.

## **Conclusion**

54. By all accounts, the Wireless Code is meeting the objectives set for it in 2013. Indeed, the record of this proceeding demonstrates a strong consensus from individual interveners, consumer groups and telecommunications service providers has emerged showing the Wireless Code has had a positive impact on the wireless consumer experience. While there remain some alternative views on specific aspects of the Wireless Code, CWTA has demonstrated that many of these positions are based on a misunderstanding or misinterpretation of the objectives of the Code, or specific aspects of the wireless market.
55. CWTA maintains that any amendments to the Code should consider the constant evolution of the retail mobile wireless market, which will help mitigate the need for continuing modifications. We also submit that the

Wireless Code should not remove existing options from the marketplace or reduce market dynamism in any way.

56. CWTA appreciates the opportunity to participate in this important proceeding and looks forward to appearing at the public hearing.

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