



September 27, 2018

Honourable Brian Malkinson  
Minister of Service Alberta  
Office of the Minister  
Service Alberta  
103 Legislature Building  
10800 – 97 Avenue  
Edmonton, Alberta T5K 2B6

Via Regular Mail and Email: [ConsumerProtectionAlberta@gov.ab.ca](mailto:ConsumerProtectionAlberta@gov.ab.ca)

**RE: Request for consultations regarding proposed regulatory developments stemming from the passing of *Bill 31: A Better Deal for Consumers and Businesses Act***

Dear Minister:

The Canadian Wireless Telecommunications Association (CWTA) is the recognized authority on wireless issues, developments and trends in Canada. The CWTA 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.

We are writing you with respect to Service Alberta's request for consultations regarding proposed regulatory developments stemming from the passing of *Bill 31: A Better Deal for Consumers and Businesses Act* ("Bill 31"). In a letter dated February 1, 2018, the CWTA shared its concerns regarding certain aspects of Bill 31 with the Honourable Stephanie McLean, the Minister of Service Alberta at the time. In particular, we expressed concern about a provision in Bill 31 regarding changes to contract terms that, if applied to contracts for wireless services, would be inconsistent with the federal government's Wireless Code and other applicable consumer protection laws in Canada. Such inconsistencies create needless confusion and inefficiencies as well as increasing compliance costs for wireless service providers. They also result in certain disadvantages for Albertan consumers relative to other consumers in Canada.

In light of the above, we are requesting an exemption for the Canadian wireless telecommunications sector from the application of Sections 6.1 and 6.2 of the *Consumer Protection Act* (the "Act") introduced through Bill 31. In the alternative, we are proposing a number of measures which, if adopted, would promote uniformity across consumer protection laws in Canada as applied to the wireless sector.

**1. The wireless telecommunications sector should be exempted from Sections 6.1 and 6.2 of the Act**

Item number two in the request for consultations asks to identify any exemptions for particular classes of suppliers or consumer transactions that should be established in regulation, if any. Respondents are asked to explain why any suggested exemptions are necessary and the impact that will result if any such exemptions are not established. Respondents are also asked to indicate whether defining a "benefit" as an advantage, improvement or net gain to the consumer is a sufficiently broad definition.

The CWTA believes that it is in the best interests of consumers and suppliers of wireless service contracts in Alberta to be subject to the same robust and comprehensive laws, rules and regulations as those applicable throughout the rest

of Canada. Accordingly, **we strongly recommend that you exercise your power under subsection 6.1(6)(e) of the Act to exempt:**

- **wireless service providers and wireless service transactions from the application of Sections 6.1 and 6.2; and**
- **contract amendments that are to the benefit of the consumer from the application of Section 6.1.**

In 2013, the Canadian Radio-Telecommunications Commission (CRTC) enacted its Wireless Code (the “Code”), which is intended to make it easier for consumers to understand their wireless service contracts, establish consumer-friendly business practices for the wireless services industry, contribute to a more dynamic wireless market, and to establish minimum standards for wireless service providers. It applies to contracts between a service provider and an individual or small business for the provision of wireless services, and includes regulations concerning changes to contract terms and related documents. The Code was subsequently revised and enhanced in 2017 following a public review.

Section D of the Code provides that, in the case of a postpaid wireless contract, the service provider cannot, during the term of the contract, unilaterally change any of the enumerated “key terms”, such as services to be provided, data caps, minimum monthly charges, and cancellation fees, without informed and express consent, unless the change benefits the consumer by either reducing the rate for a single service or increasing the customer’s usage allowance for a single service. Any other term of the contract can be changed provided the account holder is given at least 30 calendar days’ notice before making such changes.

Other jurisdictions in Canada that have regulations that apply to contracts for wireless services, such as Ontario’s *Wireless Services Agreement Act*, Quebec’s *Consumer Protection Act*, and Newfoundland and Labrador’s *Consumer Protection and Business Practices Act*, provide for the same 30 day minimum notice period for unilateral changes to wireless service contracts.

As you know, Section 6.1 of the Act prohibits suppliers of ongoing consumer services, which includes wireless services, from changing, without consent, any term of the contract that relates to price, or any other term that is prescribed as “substantive” in the regulations, unless the ongoing transaction provides in writing that the supplier can make such changes without consent and the supplier provides the consumer with at least 60 days’ but not more than 120 days’ written notice of the changes. Importantly, unlike the Code, the Act makes no distinction between changes that are favourable or unfavourable to the consumer.

The creation of two different notice periods creates confusion and inefficiencies for suppliers, particularly national providers who will be required to treat consumers in Alberta differently than those in other provinces. Compliance costs are therefore likely to increase, as are wireless service rates in the province. In addition, the fact that the Act does not recognize that some changes will benefit consumers means that Albertan consumers will be disadvantaged by having to wait longer to receive the benefit from positive changes to their wireless services contract.

Another example of a stark inconsistency between the Act and the Code that is likely to lead to operational complexity and inefficiency for both wireless consumers and suppliers as well as concrete disadvantage to Albertans unless an exemption is provided relates to customer cancellation requirements. Section 6.2 of the Act permits consumers who receive a unilateral amendment notice to cancel their service by providing written notice to their service provider within a certain timeframe to be established by regulation. However, under the federal regime, wireless consumers already enjoy extensive cancellation rights that are, in fact, broader and more generous than the Act.

Under the Code, wireless consumers currently have the right to cancel their existing ongoing services contracts at any time (whether or not a unilateral amendment notice has been sent) and with no requirements as to timeframe or form of notice. Moreover, although wireless consumers who cancel a fixed-term service early may have to pay the Code-regulated early cancellation fee, such a cancellation would never be the result of a unilateral change of a substantive

term since, as noted above, the Code prohibits unilateral amendments to key elements of fixed-term services without a customer's express consent. Finally, we note that, in addition to the Code, the CRTC's *Broadcasting and Telecom Regulatory Policy CRTC 2014-576* ("CRTC Policy 2014-576") directs that, among other things, all Canadian customers of voice, Internet and TV services may terminate their service contract at any time by notifying their service provider and that any such cancellation takes effect on the day that the service provider receives notice of the cancellation.

The CWTA believes that consumers are best served by having one national standard for wireless telecommunications contracts. During the consultation process for the federal Code, the issue of potential conflicts between the Code and provincial consumer protection laws was a key topic of discussion. Most participants expressed the need for a national standard consistently applied across Canada. We note that, in its submission to the CRTC as part of the proceedings which established the Code, the Government of Alberta advocated for one national standard:

The Wireless Code should be applied consistently across Canada: While recognizing that provinces and territories have a capacity and a responsibility to implement consumer protection measures, interveners in Telecom Notice of consultation CRTC2012-206 called for a single set of standards for certain aspects of retail wireless service contracts across Canada, in order to avoid consumer confusion, as well as increased compliance costs and inefficiencies for the industry.<sup>1</sup>

Moreover, during its appearance before the CRTC, the Government of Alberta reminded the CRTC that it was in fact the Government of Alberta that had long advocated for a national wireless code, and during its testimony stated:

I think it's obvious that having 10 provinces with varying legislation could be a regulatory nightmare for consumers and wireless service providers. A national solution is really the only way to go on this. It will really ensure consistency across all provinces and territories and best serve consumers and service providers.

...

As someone who is advocating for Alberta consumers, current and future, a national Code is the most appropriate solution to address the challenges many are experiencing.<sup>2</sup>

The CRTC agreed with these submissions and in its original Code determined that the Code would apply to all Canadian consumers and suppliers of wireless services equally, regardless of any consumer protection legislation in force in the provinces or territories. Further it stated that the Code would take precedence over valid provincial laws in cases of direct conflict.<sup>3</sup> In deference to the Code, Nova Scotia, which had provisions in its consumer protection legislation dealing with wireless service contracts prior to the Code, repealed such provisions after the Code became applicable to all wireless service contracts with individuals and small businesses.

The arguments made before the CRTC still hold true today. Consistency across Canada is in the best interests of consumers and suppliers. Inconsistency creates confusion for consumers, inefficiencies and increased compliance costs. Furthermore, the imposition of one set of rules across the country has unquestionably yielded results. In last year's mandatory review of the legislation, the CRTC concluded that the Code is on its way to achieving its objectives. Specifically, since the Code was introduced:

- wireless complaints have decreased;
- bill shock has decreased;

<sup>1</sup> <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1812575>

<sup>2</sup> <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1844949>

<sup>3</sup> <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>

- unilateral changes to contract terms have decreased; and
- ease of switching providers has increased.<sup>4</sup>

The Code is subject to periodic review and amendment. It provides Canadians and telecommunications providers with clear and enforceable guidelines for wireless contracts. To impose new rules for consumers and suppliers that are different than those that have already been accepted across the country does not serve the best interests of Albertans.

For the reasons stated above, the CWTA reiterates its recommendation that wireless service providers and wireless service transactions be exempt from the application of Sections 6.1 and 6.2, and that contract amendments that are to the benefit of the consumer be exempt from the application of Section 6.1. With respect to the definition of a “benefit”, the CWTA agrees that defining the term as an advantage, improvement or net gain to the consumer is sufficiently broad to meet the intended purpose.

## **2. Alternatively, certain regulatory measures should be adopted by the Government of Alberta to promote and ensure consistency across the country with respect to wireless service contracts**

While the CWTA believes strongly that wireless service contracts should be exempted from Sections 6.1 and 6.2 of the Act, in the alternative there are a number of practical measures which, if adopted through regulation, would improve consistency for consumers and thereby increase the effectiveness of the proposed consumer protection legislation. In order to promote consistency for consumers across the county, the following suggestions should be adopted.

### **a. Substantive Terms**

*Please identify what, if any contract elements beyond cost and term should be considered substantive.*

*Are there any words or terms you feel should be defined in Regulation, and if so, please provide the rationale for the definition, and the impact that will result if a definition is not established.*

As previously noted, the Code establishes certain conditions for unilateral changes to any “key terms” set out in a postpaid wireless contract. The definition of a “key term” under the Code is considerably more detailed and robust than the definition of a “substantive term” under Bill 31. In order to ensure maximum consistency between the Act and the Code and to avoid any unnecessary inconsistencies and inefficiencies, the CWTA recommends that no additional elements be included in regulation as part of the definition for a “substantive term”. The definition of a “key term” under the Code already captures all of the essential elements required for meaningful consumer protection.

### **b. Notice Requirements**

*Please comment on whether the proposed requirements represent a fair balance between consumers and suppliers, and describe any obstacles or unanticipated impacts resulting from the regulation.*

The CWTA submits that the proposed notice requirements are inconsistent with the existing federal regime and introduce unnecessary complexity for, and undue constraints on, both wireless consumers and providers.

As noted above, the Code provides that service providers cannot unilaterally change any of the enumerated “key terms” without a consumer’s informed and express consent unless the change benefits the consumer. Any other terms (i.e., those not considered “key terms”) can be changed provided the account holder is given at least 30 calendar days’ notice before making the change. In contrast, Section 6.1 of the Act prohibits suppliers of ongoing consumer services from changing, without consent, any substantive term of the contract unless the ongoing transaction provides in writing that the supplier can make such changes without consent and the supplier provides the consumer with at least 60 days’ but

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<sup>4</sup> <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>

not more than 120 days' written notice of the changes. The differential notice periods (30 vs. 60 days) creates (among other things) confusion, inefficiencies and increased compliance costs. For these reasons, the CWTA recommends an exemption for wireless service providers and transactions from the application of Sections 6.1 and 6.2 of the Act, as argued herein.

While the CWTA strongly recommends a full exemption for wireless service providers and transactions, in the alternative we recommend that the regulations avoid setting strict requirements with respect to timeframe for customer notifications and regarding form for both customer and supplier notifications. As previously explained, a fixed timeframe for consumers to provide their notifications is more restrictive than what is currently permitted under the Code, under which consumers may currently cancel any federally regulated telecommunication or broadcasting service at any time. Similarly, a requirement that consumers must provide notice in writing is more onerous for Albertans than what is currently mandated federally, and is impractical since consumers often interact with their service providers by phone, in person or through an online customer portal.

Finally, the CWTA opposes the proposal that suppliers must acknowledge in writing a consumer's desire to cancel their services as this is more onerous than the current federal regime and, in our view, unnecessary. If, however, a written acknowledgement of cancellation is required by regulation, the CWTA recommends that service providers be permitted to provide any such acknowledgment in electronic form or through a customer's online portal.

#### **c. Cancellation Requirements**

*Please comment on whether there are other considerations, such as respecting implementation of and compliance with the proposed cancellation requirements.*

*Additionally, please identify if any potential exemptions should be set out under the Regulations respecting the above proposed cancellation requirements. Please provide the rationale for the exemption, and the impact that will result if the exemption is not established.*

As explained in greater detail above, the CWTA reiterates its recommendation that wireless service providers and wireless service transactions be exempt from the application of Section 6.2 concerning cancellation requirements (in addition to being exempt from Section 6.1). Cancellation requirements are already comprehensively addressed under the federal regime (including the Code and CRTC Policy 2014-576) in an appropriate and practical manner that serves the best interests of wireless consumers and providers.

#### **d. Effect of Cancellation**

*Are there any other considerations respecting refund requirements? What might be the implications of cancelling third-party contracts?*

*Please provide the rationale for your comments, and if applicable the impact that will result if not captured by the Regulation.*

The CWTA opposes the proposed regulation that "upon cancellation, any and all associated contracts are void and cancelled" as this is likely to result in confusion, unintended consequences and, ultimately, consumer dissatisfaction. For example, consumers with share plans (whereby several individuals subscribe to one wireless plan that is shared across multiple lines within a family or friend group) may be negatively impacted by the proposed regulation since, if one line were to be cancelled, all other lines and contracts on the shared wireless plan would be void and cancelled. In our view, consumers should have the option and flexibility to cancel whichever lines they wish, whenever they want, as they are entitled to do under the current Code.

**e. Requirements for the Creation/Retention of Records Respecting Notices**

*Are there any other considerations concerning the proposed retention schedules for notices or complying with the retention period? If so, please describe.*

The CWTA opposes imposing additional records retention requirements on service providers beyond what is already mandated. No additional requirements should be created through regulation. Service providers already adhere to robust and extensive records retention practices for their own purposes and to comply with various laws and regulations already in place. Additional requirements will add unnecessary complexity and regulatory burden which will ultimately impact service rates in the province.

The CWTA encourages maximum flexibility and discretion for service providers in the manner in which they retain records.

**Conclusion**

The CWTA insists that consumers are best served by consumer protection legislation that is consistent across the country. We therefore respectfully request that wireless service providers and wireless service transactions be exempted from Sections 6.1 and 6.2 of the Act pursuant to your authority under subsection 6.1(6)(e). Alternatively, we recommend that the suggestions in this response be implemented to promote consistency between the Act and the Code.

Thank you for the opportunity to provide our comments with respect to this consultation. Should you have any questions regarding our response, please do not hesitate to contact the undersigned.

Sincerely,



Robert Ghiz  
President & CEO