

October 3, 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 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 comments with respect to the above-noted consultation. More than four years ago, CWTA petitioned the CRTC to develop and implement a national wireless services consumer code. Throughout the subsequent consultation process, CWTA consistently submitted that a national wireless code of conduct should:
 - Provide consumers, to use the Commission’s own conclusion, “additional tools to better understand their basic rights, as well as their service providers’ responsibilities with respect to mobile wireless services,”¹ and
 - 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.
3. After nearly three years in practice, the Wireless Code is largely achieving these objectives. By providing a set of guidelines for wireless customers across Canada, the Wireless Code has, for the most part, helped alleviate the administrative burden on provincial governments, regulators and wireless service providers, and has reduced consumer confusion. The contents of the Code and its consistent employment at the point-of-sale have provided Canada’s already savvy wireless consumers with an even better understanding of their rights and responsibilities in Canada’s competitive wireless market.
4. CWTA therefore submits that the Wireless Code, given its success, requires only minor updates to better address the way Canadians use wireless services today and to level certain imbalances among competitors

¹ <http://www.crtc.gc.ca/eng/archive/2012/2012-557.htm> Paragraph 1.

caused by existing rules. CWTA also encourages the Commission to declare that the Wireless Code is the only valid wireless consumer contract regulation in Canada to address the existing cases where provinces continue to endorse conflicting rules. We are pleased to elaborate on our recommendations throughout the remainder of this submission.

The Wireless Code is a success

- In December 2012, CWTA submitted to the Commission that a combination of quantitative and qualitative measures should be used to assess the effectiveness of the Wireless Code. On the quantitative side, we submitted that “an effective Wireless Code will result in a lower percentage of total Canadian wireless customers filing contract-based complaints with the CCTS.” The statistics available prove that in just three years the Wireless Code has already had a positive impact for consumers.

	2013	2015 ²	Change
Wireless Subscribers³	27,581,688	29,389,553	6.6%
Wireless Complaints per 10,000 Subscribers	4.22	3.48	(17.6%)
Contract Disputes per 10,000 Subscribers	1.16	1.14	(1.8%)
Billing Error Complaints per 10,000 Subscribers	2.29	1.48	(35.5%)

- While wireless subscribers increased by 6.6% between the end of 2013 and the end of 2015, total wireless service-related complaints to the CCTS decreased by 12.2% during that same time.⁴ Therefore, complaints per 10,000 subscribers fell from 4.2 in the 2012-13 year to 3.5 in 2014-15, an overall decline of 17.6%. Similarly, wireless contract disputes decreased by 1.8% between 2012-13 and 2014-15, when **fewer than two subscribers per 10,000 experienced a contract dispute**. Complaints related to billing errors also declined significantly – by 35% – between 2013 and 2015. Finally, wireless complaints as a percentage of all complaints to CCTS have decreased by 8% since 2012-13.⁵
- Results from the CRTC-commissioned *Wireless Code Public Opinion Research 2016*⁶ further verify the Code’s effectiveness. Specifically, 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” all declined over the past three years. And at fewer than one per 10,000 subscribers, confirmed breaches of the Wireless Code are rare.
- Both CCTS statistics and the CRTC-commissioned survey confirm that the Wireless Code is not only effective, but increasingly so. In fact, there is no data to support the opposite conclusion. To paraphrase the research commissioned by the CRTC, these results indicate that consumers’ understanding of wireless contracts has improved and that service providers are complying with the requirements of the Wireless Code.
- The survey research also indicates that the Wireless Code has helped reduce consumers’ barriers to switching service providers. In 2012, service cancellation fees were a prominently identified barrier to consumers seeking new options in the market place on a more regular basis. The Wireless Code standardized the formula

² Based on complaints statistics from the 2012-13 and 2014-15 years, as reported by CCTS.

³ As compiled by CWTA.

⁴ CCTS annual reports. Decline from 11,633 wireless-related complaints in 2012-13 to 10,214 in 2014-15.

⁵ CCTS annual reports. Decline from 11,633 of 19,297 complaints in 2012-13 to 10,214 of 19,326 complaints in 2014-15.

⁶ TNS Canada, March 29, 2016.

for calculating early termination fees, which empowered consumers to make informed choices about their wireless service. Canadian consumers are increasingly aware of this change.

10. The percentage of Canadians that indicate it is easy to switch service providers has increased from 74% to 79% over the past three years. Similarly, the percentage of Canadians that find early cancellation fees clear and easy to understand has improved from 50% to 55%.⁷ It is clear that the Wireless Code is effectively contributing to a dynamic marketplace.

The Commission should declare the Wireless Code as the sole set of wireless consumer contract regulations in Canada

11. In CWTA's final intervention to the Wireless Code proceeding in 2013, it submitted that "the preeminent measure of a successful Wireless Code is *one* set of regulations that applies to *all* wireless agreements made in Canada." While the Commission, in its final determination, indeed considered that "the Wireless Code should apply to all individual Canadian consumers of wireless services equally wherever they reside," it also noted that "where the Wireless Code is in direct conflict with a valid provincial law, the Wireless Code takes precedence."
12. CWTA recognizes the Wireless Code as the only valid wireless consumer contract regulation in Canada. Not all provinces share this view. For instance, Nova Scotia is the only province to have repealed its existing consumer legislation in light of the Wireless Code – Manitoba, Quebec and Newfoundland still have active wireless consumer legislation. And 10 months after the Wireless Code decision was issued, the province of Ontario enacted its own Wireless Services Agreements Act, and continues to consult on amendments to those rules.
13. These conflicting provincial regulations continue to confuse and frustrate wireless consumers and to increase the administrative burden on service providers that must account for multiple sets of rules. The Consumers Council of Canada predicted this scenario during the Wireless Code proceeding when it submitted that references to the Code co-existing with provincial regulations would "create the confusion that we believe a national Code ought to eliminate."
14. CWTA agrees, and submits 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.

Requirements in the Wireless Code should account for the constant evolution of the retail mobile wireless market

15. Canadian consumer preferences have created our mobile-first world, where smartphones and tablets are the preferred choice to communicate, navigate, inform, shop, bank, work, collaborate, entertain and be entertained. The retail wireless market is constantly evolving to address increasing consumer demand for data and other mobile services. Wireless market evolution is the norm, not the exception.
16. The Commission's goal should be to maintain requirements that will meet the Wireless Code's objectives regardless of how the market evolves. Therefore, rather than being prescriptive regarding retail rules or plans

⁷ TNS Canada.

related to current consumption patterns, 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. CWTA submits that the Code has so far been successful in this regard.

17. Consumers, the CRTC, CCTS and the industry will not be well served by sweeping changes to the Wireless Code in an attempt to specifically address recent changes in the retail market. 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.
18. Therefore, while some minor updates will help the Wireless Code to continue to meet its objectives, the Commission should ensure such changes are worded in a manner that best accounts for the continued evolution of the wireless market. Otherwise, CWTA submits that a goal of this review should be for the Wireless Code to maintain the open-minded approach that has made it successful thus far.

Only minor updates are required for the Wireless Code to continue to meet its objectives

19. CWTA submits that the following four updates to the content and wording of the Wireless Code are necessary to enhance its consistency and to level an imbalance among competitors caused by existing rules:
 - Clarify the definition of small business to address inconsistency and confusion with respect to applicability;
 - Amend the definition of “permanent copy of the contract” to match the requirements in the *Television Service Provider Code*;
 - Address the confusion between the definition of “customers” and “account holders”; and
 - Allow service providers to charge a restocking fee when devices are returned within the mandated trial period to level a market imbalance resulting from this policy.

Small business definition

20. The definition of a small business used for the purposes of the Wireless Code is difficult to apply on a consistent basis in practice. The definition – “a business whose average monthly telecommunications bill is under \$2,500” – has led to many problems in its application due to its general vagueness. Indeed, defining a small business based on any spending threshold raises obvious questions of application.
21. For instance, how does the definition apply to a new business (i.e. one with no ‘average’ spend)? How is the Wireless Code applied to a business whose size or needs fluctuate, and its telecommunications spending increases or decreases out of or into the “small business” range after it has entered into a wireless contract? How is a business customer treated that purchases its telecommunications services from multiple providers? The current definition creates a situation where some businesses are subject to certain rules one month but not the next, or where businesses of the same size are treated differently.
22. In addition, business accounts can differ greatly from personal accounts and are not necessarily structured to comply with the provisions in the Wireless Code. The current small business definition therefore puts service

providers at risk of running afoul of the Wireless Code if an existing corporate client's telecommunications spend drops below \$2,500. Similarly, it would mandate the application of certain rules to a company that has grown well past the small business threshold and may want to negotiate different terms.

23. CWTA submits that clarity on this issue is required and encourages the Commission to consider the wireless service providers' proposals to amend the definition of a small business.

Permanent copy of the contract

24. Section B(ii) of the Wireless Code requires that "The permanent copy of the contract and related documents must be a paper copy, unless the customer expressly and knowingly decides that an electronic copy is acceptable." This requirement, however, somewhat contradicts the Commission's analysis in Telecom Regulatory Policy CRTC 2013-171 that "that a permanent copy can be a paper copy or an electronic copy, as long as the electronic copy cannot be altered and can be easily read by the customer."⁸
25. In fact, the Commission used this analysis to inform its policy for the *Television Service Provider Code* in Broadcasting Regulatory Policy CRTC 2016-1. In that decision, the Commission determined that "it would not be appropriate to mandate that the permanent copy of the agreement be in paper format," choosing instead to leave "it to each TVSP to decide whether the default format of the permanent copy of the agreement is paper or electronic."⁹
26. CWTA agrees with the Commission's analysis and submits that it should logically inform the same conclusion for the Wireless Code. CWTA therefore submits that Section B(ii) of the Wireless Code be amended to allow wireless service providers to determine whether the default format of the copy of the agreement provided to customers is paper or electronic.

Customer vs. account holder

27. The CCTS, for the purposes of data cap notifications, defines the "customer" as "the person who signed up for the service and will be legally responsible for paying the WSP's bill."¹⁰ This interpretation of the definition of a customer limits consumer options for control over their wireless services in both standard and share plans, and cannot be consistently applied throughout the Wireless Code. Most significantly, removing individual or small business customers' control over their devices increases the risk of service being suspended when it is needed most.
28. In the case of share plans, service to all users is suspended when a data cap is reached and cannot be resumed without the approval of the account holder. This suspension could be lengthy if the account holder is not using their device and therefore does not receive the data cap notification. It is also not uncommon for the account holder in a share plan to not have a device on that plan, or with the same service provider, making the notification and approval scenario required by CCTS complicated. The same situation applies to a standard (non-share) plan where the account holder is not the user of a device.

⁸ Paragraph 51.

⁹ Paragraph 58.

¹⁰ *CCTS Annotated Guide to the CRTC Wireless Code*, pg. 32.

29. Using the CCTS definition of the customer throughout the Wireless Code also takes valuable tools away from wireless users. For instance, the Wireless Code requires service providers to “notify the customer, at no charge, when their device is roaming in another country.” A service provider strictly adhering to the CCTS definition of a customer would send the notification to the account holder, rather than providing the valuable information to the device user.
30. CWTA therefore submits that the Commission review the definition of a “customer” in the Wireless Code to address the confusion and consumer barriers created by current interpretations. We encourage the Commission to consider the wireless service provider’s proposals to amend this definition.

Restocking fees

31. The Wireless Code requirement to provide a 15-day trial period to contracted customers has had the unintended consequence of disadvantaging wireless service providers in the marketplace. Specifically, while service providers must take back devices with no fee when returned within the 15-day trial period, third-party device retailers face no such requirement. The provision is open to abuse and increases service provider costs.
32. The trial period requirements stipulate a device must be returned in “in near-new condition, including original packaging.” However, these returned devices cannot simply be re-packaged and re-sold as brand new. Rather, they need to be sold at a discount to reflect the fact that they have previously been used, even if only briefly, and service providers must absorb the loss. Third-party device retailers that are not affiliated with a service provider are free to implement their own policies, which can include charging a re-stocking fee.
33. CWTA and its members supported the trial period requirement when the Wireless Code was established. It clearly serves a valuable purpose. However, it has created an imbalance in the market that should be addressed. A nominal restocking fee would balance the benefits of the trial period, while mitigating the negative impact on service providers. 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.

Awareness of the Wireless Code’s provisions are more important than awareness of the Code itself

34. 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. However, we submit that the significant awareness of the key rights and responsibilities embodied in the Wireless Code is a more important measure than awareness of the Code itself.
35. For instance, it is important that consumers are aware that early cancellation fee rules effectively limit wireless contracts to 24 months, 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. According to the *Wireless Code Public Opinion Research 2016*, consumers’ understanding of early cancellation fees and the ease of switching service providers have improved, and both are reported at a higher incidence than general awareness of the Code. As well, instances of bill shock and overall complaints continue to decline, meaning the Wireless Code is meeting its objectives.

36. Finally, 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.

The Wireless Code should continue to be assessed through qualitative and quantitative measures on an ongoing basis, with a comprehensive review in five years

37. CWTA submits that 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. The Commission has also demonstrated a willingness to provide clarification on the Wireless Code when needed, with six such decisions being issued in the Code's first three years of existence. This willingness to provide clarification on how the Code should function in the market helps minimize the need for frequent, significant reviews.
38. Avoiding overly-prescriptive policies that would have difficulty keeping pace with changing market conditions will also mitigate the need for a review proceeding. As such, CWTA submits that the Commission undertake to review the Wireless Code five years after any changes resulting from this proceeding take effect.

Conclusion

39. The Wireless Code is largely meeting the objectives set for it in 2013. It provides national guidelines for service providers and empowers Canada's savvy wireless consumers with an even better understanding of their rights and responsibilities in Canada's competitive wireless market. Available measures indicate that the Code is reducing instances of bill shock, overall complaints and contract disputes, while increasing awareness of key contract elements such as early cancellation fees, and generally contributing to a dynamic wireless marketplace.
40. CWTA submits that the Wireless Code requires only minor updates to ensure it continues to meet its objectives. Specifically, the Commission should review the definition of small businesses and customers to provide more consistency and predictability, amend the definition of permanent contract, and permit a restocking fee for devices returned during the trial period to help level an existing market imbalance. CWTA also encourages the Commission to declare that the Wireless Code is the only valid wireless consumer contract regulation in Canada to address the existing cases where provinces continue to endorse conflicting rules. Finally, 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.
41. CWTA appreciates the opportunity to participate in this important proceeding and requests to appear at the public hearing.

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