

July 8, 2019

Mr. Bob D'Eith MLA
Parliament Buildings
Victoria, British Columbia V8V 1X4

Via Email: cellphonebilling@gov.bc.ca

RE: Consultation regarding cellphone contract and billing

Dear Mr. D'Eith:

I am writing to you regarding British Columbia's public consultation (the "Consultation") on cell phone contract and billing transparency and your invitation to provide our views on this and other related topics. We welcome this opportunity to provide you with details on how our industry and existing federal telecommunications law protects the interests of British Columbian wireless subscribers.

1. Cell Phone Contracts and Billing Transparency- Existing Protections

(a) The Wireless Code

In 2013, following broad consultation with the public, including provincial governments and consumer advocacy groups, and with the support of Canada's wireless service providers, the Canadian Radio-television and Telecommunications Commission (CRTC) established the Wireless Code¹. The purpose of this mandatory code of conduct for providers of retail mobile wireless voice and data services is to "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".² The Code was subsequently revised and enhanced in 2017 following a public review and consultation. The Code was preceded by the wireless industry's own voluntary Code of Conduct, adopted in 2009.³ The voluntary code similarly sought to ensure that wireless subscribers have the information they need to make informed purchasing decisions and to safeguard their rights as wireless subscribers.

(b) Contract Clarity

One of the primary objectives of the Wireless Code is to ensure that contracts for mobile services are clear and easy to understand. As a result, the Wireless Code contains detailed provisions that prescribe both the content and clarity of information that must be included in all contracts for wireless services. Key requirements of the Wireless Code include (emphasis added):

- Service providers must communicate with customers in a way that is **clear, timely, accurate**, and uses **plain language**(Part A, 1(i));

¹ Telecom Regulatory Policy CRTC 2013-271. For the 2017 Code update, see Telecom Regulatory Policy CRTC 2017-200.

² Preamble to Wireless Code.

³ <https://www.cwta.ca/for-consumers/code-of-conduct>

- Written contracts and related documents, such as privacy policies and fair use policies, must be written and communicated in a way that is **clear and easy** for customers to read and understand (Part A, 1(ii));
- Contracts for postpaid services **must set out all of the enumerated key contract terms and conditions and other aspects of the contract in a clear manner**; including, without limitation, the services to be provided and any limitations on those services, the minimum monthly charge, the commitment period, any cancellation fees, subsidized device pricing information, all one-time costs itemized separately, the trial period, rates for optional services, whether contract will automatically extend on a month-to-month basis and when, service provider coverage area, how to contact customer service, and how to make a complaint about wireless services, including contract information for the Commissioner of Complaints for Telecommunications Inc. (CCTS), and the Wireless Code. (Part B, 1). Mandatory contract information is also stipulated for prepaid service contracts (Part B, 2);
- In addition to the requirement to clearly set out key contract terms and conditions in a clear manner, service providers must also provide a **Critical Information Summary (CIS)** when they provide the permanent copy of the contract for postpaid services. The CIS summarizes the most important elements of the contract for customers, including all key terms and conditions, charges, trail period details, how to make a complaint about wireless services including contact information for the service provider’s customer service department and the CCTS. The CIS must accurately reflect the content of the contract and **be clear and concise (not exceeding two pages), use plain language and be in easily readable font**. The CIS must also be provided in alternate format for persons with disabilities upon request at no charge. (Part C, 1);
- Key contract terms and conditions for postpaid contracts **cannot be changed** during the commitment period without the account holder’s or authorized user’s informed and express consent, which they may refuse to give, unless the change benefits the customer by reducing rates or increasing a customer’s usage allowance. (Part D,1). Changes to any other terms requires at least 30 calendar days’ notice (Part D, 2)

(c) Bill Management

The Wireless Code also requires service providers to employ business practices that help consumers manage their bill for wireless services and avoid so-called “bill shock”. These measures include:

- Notifying the account holder and device user, at no charge, when a device is roaming in another country, which notification must clearly explain the associated rates for voice, text messaging, and data services (Part E, 1);
- Suspending national and international data roaming charges once they reach \$100 within a single monthly billing cycle, unless the account holder or authorized user expressly consents to paying additional charges; (Part E, 2);
- Suspending data overage charges once they reach \$50 within a single monthly billing cycle, unless the account holder or authorized user expressly consents to pay additional charges (Part E, 3);
- Service providers cannot charge for any device or service that the account holder or authorized user has not expressly purchased (Part E, 3)

Most wireless providers also provide free phone apps and web-based tools that enable subscribers to monitor voice, data and SMS usage.

(d) Other Wireless Code Protections

The Wireless Code also addresses other consumer protection matters such as: device unlocking requirements (Part F, 1), protections if a device is reported lost or stolen (Part F,3), suspension of service charges during device repairs (Part F,4), consumers' right regarding contract cancellation and extension (Part G), trial periods to allow customers to determine whether a service meets their needs (Part G, 4), and provisions dealing with security deposits (Part H) and disconnection of service (Part I).

With respect to lost or stolen devices, CWTA also operates a database of mobile devices reported lost and stolen. This allows consumers looking to purchase a pre-owned device to first check whether that phone has been reported as lost or stolen.

(e) The Effectiveness of the Wireless Code

In its 2017 review of the Wireless Code the CRTC concluded that after three years in practice, the Wireless Code is largely achieving its objectives.⁴ In particular, it noted that since the Code was introduced, bill shock has decreased; unilateral changes to contract terms have decreased; and ease of switching providers has increased. In addition, by providing a set of guidelines for wireless customers across Canada, the Wireless Code has helped to alleviate the administrative burden on provincial governments, regulators, and wireless service providers, and has reduced consumer confusion.

In instances where consumers think that their service provider has not complied with the Wireless Code, they can turn to the Commission for Complaints for Telecom-Television Services (CCTS) to help enforce their rights. The CCTS is an independent organization that works with customers and their telecommunications service providers to resolve complaints relating to their telecommunications services. The CCTS: (i) responds to and resolves complaints from customers to ensure that they are treated in a way that is consistent with the Code; and (ii) collects data and reports on complaints related to the Wireless Code. The CCTS has also published *CCTS Annotated Guide to the CRTC Wireless Code* which sets out its interpretation of certain provisions of the Wireless Code.

Despite their being over 33 million wireless subscribers in Canada, an increase of almost 5 million since the beginning of 2015, the CCTS reports that number of confirmed breaches of the Wireless Code fell from 582 for the year ending July 31, 2015, to 111 for the year ending July 31, 2018; a decrease of 80.9%⁵. The proportion of complaints that the CCTS receives regarding the Code in comparison to the total number of complaints that it receives regarding all telecommunication service has also gone down from 35.2% for the year ending July 31, 2015 compared to only 24.7% in the year ending July 31, 2018; a decrease of 29.8%.⁶

In addition to the CCTS annual reporting, the CRTC conducts regular public opinion research to help it better understand the issues that affect Canadians and assess the effectiveness of the Wireless Code. In its most recent survey prepared for the CRTC, Kantar TNS concluded that "Canadians are making fewer complaints than in the past suggesting the Wireless Code is having a positive impact for wireless consumers."⁷ Of note, Kantar TNS reported that when assessing the main reasons for complaints to their service providers, complaints alleging incorrect charges on bills dropped from 45% to 17% between 2016

⁴ Telecom Regulatory Policy CRTC 2017-200, paragraph 24.

⁵ CCTS Annual Reports.

⁶ CCTS Annual Reports.

⁷ Wireless Code Public Opinion Research 2018, Kantar TNS, report date March 1, 2018, page 5.

and 2018 and complaints alleging misleading information about the terms of contract dropped from 23% to 12%. The number one reason for complaints in 2018 was data charges (28%).⁸

(f) Awareness of the Wireless Code

A key factor to the effectiveness of the Wireless Code is increasing public awareness. To ensure that customers are aware of their rights under the Wireless Code, wireless service providers are required to do the following:

- i. ensure that their customer service representatives are (i) knowledgeable of the Code; (ii) able to effectively describe the Code's provisions; and (iii) able to explain recourse options for customers;
- ii. provide prominent links to the consumer checklist on their websites, on their home page, and on all pages on which their wireless service plans and offerings are described;
- iii. visually display information from the consumer checklist in their stores and kiosks;
- iv. add a notification regarding the consumer checklist to their billing statements on two separate occasions: one notification in the month that the revised Code takes effect, and one notification three months later, and semi-annually thereafter;
- v. inform customers of their right of recourse to the CCTS immediately upon a failure to resolve a complaint at the second level of escalation, and again at subsequent levels of escalation within the WSP's internal process; and
- vi. retain statistics on an ongoing basis on how many customers, out of the total number of customers who make a formal complaint, they informed about the CCTS, and provide these statistics to the CRTC as part of the compliance reporting process on an annual basis.

In addition, CWTA has created a ASL and LSQ video series that provides an overview of the Wireless Code to consumers who are Deaf, Deaf-Blind, or Hard of Hearing. All videos are produced with closed captioning, and include a voice-over and transcripts to ensure there is full accessibility. The videos are available on service providers' website, as well as made available to any organization requesting them, free of charge. The CRTC also promotes the videos and provide links on its website.

(g) Ongoing Monitoring of the Wireless Code

The Wireless Code is subject to periodic review and amendment. As a living document, it can accommodate developments in technology, service plans, and policy to ensure that the guidelines for wireless contracts remain clear and enforceable. This ensures that consumer rights across the country remain equally well-protected, and service provider practices remain consistent.

The CRTC also conducts regular reviews and public consultations regarding the Wireless Code. The first review was conducted in 2017, with the next review scheduled to take place in 2022. Between reviews, the CRTC considers requests for clarification and has issued clarification decisions regarding how the Wireless Code applies to corporate plans, indeterminate contracts, tab contracts, suspension of service, refunds for services not providing following cancellation, and phone unlocking.

⁸ Wireless plans are now available that do not charge for data use overages. This should result in significant reduction in complaints about data-coverage charges.

2. Consumers are Best Protected by a National Code of Conduct

In its press release announcing this consultation, the Government stated its goal “is to identify ways to promote the transparency and fairness and aid government in reviewing B.C.’s current consumer protection laws.” CWTA encourages the Government to explore new ways to promote consumers’ rights under the Wireless Code, however, we are concerned by the suggestion that provincial consumer protection laws may be a vehicle for establishing additional rights and obligations.

The Wireless Code provides the most consistent, efficient, and easily-enforceable consumer protection standards for wireless consumers and service providers. It is the result of comprehensive public consultation, including input from provincial governments and consumer rights advocates, and deals with all of the main areas of concerns that have been raised by stakeholders regarding contracts for wireless services. It is also subject to ongoing monitoring and review and can be adjusted, if necessary, when new issues arise. 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 British Columbians.

Expecting consumers to navigate co-existing wireless contract regulations based on both provincial and federal requirements will not improve transparency in contracts or billing. Differing provincial regulations would also require carriers to maintain multiple different marketing, contracting, and billing systems to accommodate such requirements. Carriers would also need multiple sets of training practices for customer service and national call centre staff, which could significantly hamper their ability to serve Canadians efficiently and effectively. The end result would be confusion for consumers and increases in administrative burdens, the costs of which would ultimately be borne by British Columbian consumers.

The superiority of having a national regime governing wireless service contracts was recognized during the consultation process that led to the Wireless Code. The CRTC stated that “the Wireless Code should apply to all individual Canadian consumers of wireless services equally wherever they reside.”⁹ Consumer Protection BC (CPBC) indicated its support for a single set of national wireless service agreement standards. CPBC suggested that a single set of standards “provides for greater consistency, more clear explanation, and lower cost,” and noted that “elsewhere it is certainly the norm to have harmonized standards in place on a national basis”.¹⁰ The Alberta Government agreed that “Canada, and Alberta, will benefit greatly from a national Wireless Code. A national solution will ensure that all consumers across Canada have a consistent level of protection”.¹¹ The provinces of Nova Scotia and Ontario, both of which had consumer protection requirements dealing with wireless service contracts, have repealed their requirements.

Not only is having one national code of conduct desirable, the constitutionality of using provincial legislation to address issues pertaining to telecommunication services is also of concern. Under Canadian law, the regulation of telecommunications is an area of federal authority. This federal power has been recognized by the courts, including in the context of regulating contracts for wireless services. For example, the Court of Quebec recently found that all sections of provincial consumer protection laws regarding contractual telecommunications issues in Quebec were null and void. Creating provincial laws that would likely be challenged as being unconstitutional, especially where comprehensive federal protections are in place, would not be an efficient use of provincial resources.

⁹ Telecom Regulatory Policy CRTC 2013-271.

¹⁰ Telecom Notice of Consultation CRTC 2012-206.

¹¹ Telecom Notice of Consultation CRTC 2012-557.

3. Cost, Value, Consumer Choice and Competition

While cell phone contract and billing transparency is the primary concern of the Government, the public questionnaire issued by the Government also includes questions regarding the cost and value of wireless services, consumer choice and competition. While we understand the Government's desire to gauge individual's perceptions on these topics, perceptions can be influenced by misinformation. Therefore, it is important that Government also has the facts about the quality and value of Canada's mobile wireless services and how increasing competition amongst facilities-based wireless providers is driving positive results for consumers.

(a) World-class Wireless Services

Canada's wireless networks are among the best performing networks in the world. For example, Canada's wireless networks deliver the 3rd fastest average download speeds in the world; 134% faster than the global average and 82% faster than the United States.¹² While speed is important, consistency is also a significant metric when evaluating the performance of wireless networks. According to OpenSignal:

...Canada does an excellent job delivering the full capabilities of its network from hour to hour. There was very little difference between Canada's most optimized connections and its average speed, putting it not only amongst the fastest countries in our analysis but also the most consistent.¹³

Canada's wireless networks are also far-reaching. According to the CRTC, as of 2018, 4G LTE service is available to 99% of Canadians where they live, and LTE-Advanced networks are available to 92% of Canadians.¹⁴

The performance and reach of Canada's wireless networks is all the more remarkable when one considers that Canada is one of the largest countries in the world, has one of the harshest climates, and has one of the lowest population densities. By way of example, compare the size and population of Canada to that of the European Union:

	Canada	European Union	Difference
Size – km2	9,984,670	4,422,773	Canada 125% Larger
Population	37,060,000	512.6 million	Canada 92.8% Smaller

Regardless, Canada's facilities-based wireless providers have stepped up to the challenge by investing over \$50 billion to build Canada's wireless networks. This is more, on a relative basis, than any other country in the G7 and Australia. They have also spent approximately \$20 billion at spectrum auctions and in annual spectrum license fees. Our members are also funding the new CRTC Broadband Fund which will be used to help finance infrastructure projects in areas of underserved or unserved populations. Continuing significant investments will also be required to keep up with Canadians increasing demand for wireless services and the introduction of 5G, the next generation of wireless services.

¹² <https://www.speedtest.net/global-index> - May 2019 - results posted as of June 20, 2019

¹³ *The 5G Opportunity: How 5G will solve the congestion problems of today's 4G networks*, OpenSignal, February 2019.

¹⁴ CRTC Communications Monitoring Report 2018

(b) Consumer Choice and Competition

Canadians in each provincial market are now served by at least four facilities-based carriers. When one includes flanker brands and resellers¹⁵, there are close to 20 wireless brands in Canada, each striving to differentiate themselves from one another by offering a wide variety of mobile wireless plans at different price points. Canadians in major cities have a choice of at least 10 service providers and brands. In non-urban areas there are typically 3 national providers, plus flanker/reseller brands and one or more regional provider. This compares favorably to Canada's G7 counterparts, which have four or less facilities-based carriers, and in some cases, like the United States, there exists pressure to consolidate to a smaller number of network operators.¹⁶

These wireless brands vigorously compete for subscribers through significant marketing initiatives and continue to introduce new and innovative service offerings, including bonus data promotions, device subsidy models, and rollover data allowances; all in an effort to attract new subscribers. For example, for the week of June 17, 2019, the website MobileSyrup.com listed 68 different in-market promotions from 17 different brands.¹⁷ The fact that MobileSyrup, as well as other 3rd party websites such as whistleout.ca and PlanHub.ca, regularly track and update service plan offerings illustrates the high level of rivalry between wireless providers.

The increasingly competitive nature of the wireless retail market is also evidenced in recent public statements by the national providers as well as industry analysts. For example:

- “On the competitive marketplace around wireless, I would say that Q4, once again, was an intensive competitive period for the industry. It started early in the quarter and it just kept going on a regular and consistent basis in terms of competition and competitive offers setting up” – Rogers CEO Joe Natale, Rogers Q418 Conference Call, January 24, 2019.
- “In wireless, network revenue...was partly offset ...the competitive environment putting pressure on rate plan prices.” TELUS Q3 2018 Press Release, November 8, 2018.
- “Wireless postpaid net additions of 109,000 decreased by 6,000 over the same period a year ago due to competitive intensity.” TELUS Q3 2018 Press Release, November 8, 2018.
- “On the wireless side...clearly, the four players are building out, they are more competitive, and that is why we are going into other segments as well, to try to pick up revenue, and obviously making significant investments in IoT opportunities.” BCE CEO, George Cope, Bell Q4 2018 Conference Call, February 7, 2019

¹⁵ Resellers refers to non-MNO brands such as 7-Eleven Speak Out, PC Mobile, Petro-Canada Mobility, Zoomer, DCI Wireless and Good2Go Mobile, who have entered into commercial arrangements with a mobile network operator to sell wireless services.

¹⁶ Sprint and T-Mobile are seeking government approval to merge.

¹⁷ <https://mobilesyrup.com/2019/06/17/rogers-google-canada-freedom-bell-telus/>

- “[W]e believe the slower ARPU growth trend...reflect a more competitive market that will likely intensify further as we go through 2019” ScotiaBank, Equity Research/Daily Edge, Thursday April 18, 2019.

(c) Affordability

When it comes to affordability, as facilities-based regional new entrants (“Regional Providers”) have entered markets with lower rates and innovative service offerings, the national providers have aggressively introduced matching or alternative offerings. These activities have led to a significant downward trend in prices. Statistics Canada reports that prices for mobile telecommunications services have declined 53.6% from Q1 2014 to Q2 2018¹⁸, while the CRTC reports that the average revenue per 1GB of data/month decreased 40% between 2015 and 2017.¹⁹ Veritas Investment Research has reported that there has been a 67% decrease in the average monthly price per GB for the national providers from May 2017 to November 2018 (\$31.10/GB to \$10.38/GB).

The downward trend in prices is even greater when one takes into account the recent introduction of “unlimited” data plans by several wireless providers. These plans provide: (i) large data allotments at maximum speed with reduced speed beyond those allotments, (ii) reasonable prices, and (iii) eliminate data overage charges, which as referenced above, has been the main source of consumer concern in the CRTC’s annual survey.

Wireless providers have also introduced low-cost data only plans for consumers who primarily use Wi-Fi connectivity and only require small amounts of cellular data connectivity when in places where Wi-Fi is not available.

Conclusion

Canadians enjoy some of the best performing and far-reaching wireless services in the world. In addition, the mobile wireless market is becoming increasingly competitive, resulting in a significant downward trend in prices. This positive momentum in consumer outcomes has also been aided by the establishment by the CRTC of the Wireless Code. The Wireless Code provides mandatory national guidelines that require contracts for wireless services be clear and transparent and that measures are in place to help consumers manage their cell phone bills. Available measures indicate that the Wireless Code has been effective in addressing consumers most pressing concerns regarding cell phone contracts and billing. As other provinces have recognized, having a national regime governing wireless service contracts provides for the most consistent, efficient, and easily-enforceable consumer protection standards for wireless subscribers. We therefore respectfully recommend that the Government refrain from considering provincial legislation to address matters already dealt with by the Wireless Code, and instead focus its efforts on educating British Columbians about their consumer rights and protections under the Wireless Code.

¹⁸ Statistics Canada, Telecommunications service price indexes, second quarter 2018, <https://www150.statcan.gc.ca/n1/daily-quotidien/190201/dq190201a-eng.htm>

¹⁹ CRTC Communication Monitoring Reports

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,

A handwritten signature in black ink, appearing to read "R. Ghiz".

President & CEO
Robert Ghiz

About the CWTA

The Canadian Wireless Telecommunications Association (CWTA) is the recognized authority on wireless issues, developments, and trends in Canada. Its membership is comprised of companies that provide services and products across the wireless industry, including wireless carriers and manufacturers of wireless equipment. These companies combine to deliver Canada's world-class wireless services, one of the key pillars on which Canada's digital and data-driven economy is built.