

Intervention

Regarding the Consultation on *Review of the Wireless Code*:
Telecom Notice of Consultation CRTC 2016-293, 18 July 2016,
and CRTC 2016-293-1, 23 September 2016.

Intervenors:

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By submitting this intervention we are indicating our intent to become parties to
this proceeding.

We also wish to appear at the public hearing, beginning 6 February 2017 in
Gatineau, Quebec.

Executive summary

1. This intervention into the review of the Wireless Code builds from our initial contributions under Telecom Notice of Consultation (TNC) CRTC 2012-557, the development of the Code. In that consultation, we presented evidence from research with youth and seniors on their negotiation of wireless services in Canada, along with a cross-cultural examination of similar regulatory provisions in Australia and the United Kingdom.
2. It is our view that the Wireless Code has been effective in most respects, and should be protected and strengthened into the future.
3. In reviewing the Code, our current intervention addresses four consultation questions. These are:
 - a) The evolution of the retail mobile wireless market since the implementation of the Wireless Code: We note importance of recognizing changes in the competitive structure of the market as caused by the exit of several new entrants from the market, point to ongoing concerns about the cost of mobile services, and comment on how the Code might better address the increasing importance of data for consumers.
 - b) Content and wording of the Wireless Code: We call for Critical Information Summaries to be made available to consumers prior to signing their contract, to facilitate comparisons of service offerings.
 - c) Consumer awareness of the Wireless Code: We note declining awareness of the Code. In addition to ongoing promotion of the Code by the Commission and Wireless Service Providers (WSPs), we suggest that objectives of making it easier for consumers to understand service offerings could be achieved through production and promotion of consumer education guides, and development or accreditation of price comparison tools.
 - d) How should the Wireless Code's effectiveness be assessed and reviewed going forward: We refer the Commission to a recent Australian study demonstrating that despite assertions that they do understand contracts, many consumers are unable to demonstrate specific knowledge of contract terms when tested. We recommend that further studies, like this one, be conducted to assess the impact of the Code in creating a more dynamic wireless services market in Canada, as a supplement to existing initiatives that assess awareness of the Code.

a) The evolution of the retail mobile wireless market since the implementation of the Wireless Code

4. There are two trends in the retail mobile wireless market that bear consideration following the implementation of the Code: i) changes in the competitiveness of Canada's wireless marketplace; and ii) the increasing importance of data for many Canadians.

i) Changes in the competitiveness of Canada's wireless marketplace

5. The Code was established on the premise that the Canadian market for retail mobile wireless voice and data services is competitive.¹ In this context it was anticipated that the Code would "contribute to a more dynamic marketplace by making it easier for consumers to take advantage of competitive offers,"² thereby supporting consumers' rights and increasing their ability to make informed choices as a way to balance the marketplace. However, in order for consumers to take advantage of competitive offers, such offers must be available in the marketplace. When the Code was developed (in 2012-2013), there were more competitors in the market than there are today, with incumbents, regional providers, and newer entrants all active in the market. In 2016, market consolidation has seen the elimination of entrants Mobilicity and Public Mobile as independent competitors, and WIND Mobile is now owned by incumbent cable operator Shaw. While the notice of consultation suggests that discussion of the competitiveness of the marketplace is outside the scope of this consultation, we argue that it is impossible to assess the effectiveness of the Code without confirming that the assumptions of a competitive marketplace, on which the Code was based, remain valid.
6. The issue of costs of service remain central in consumers' concerns about their wireless services, an issue that is not directly addressed by the Wireless Code's provisions to make information about service contracts more understandable. Cost concerns are very apparent in the public comments received so far on the present consultation. These comments are consistent with the recent Nordicity study commissioned by the CRTC that notes Canada still ranks among countries with the highest prices for wireless services.³ As such, it is not clear that a more dynamic marketplace has emerged following the implementation of the Code.

¹ Telecom Decision CRTC 2012-556.

² Telecom Regulatory Policy CRTC 2013-271, paragraph 2.

³ Nordicity Group Limited. 2016 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions. March 22, 2016:

<http://www.crtc.gc.ca/eng/publications/reports/compar/compar2016.htm>

7. In particular, the Nordicity report points out that Canadians pay some of the highest prices for lower-end plans. Such pricing may, according to the research we presented in our submissions to TNC 2012-557, disproportionately affect seniors and other low-income Canadians who simultaneously face the highest costs and the most difficulty in absorbing these costs. CRTC-commissioned public opinion research done in 2016 by TNS⁴ suggests that individuals seeking low cost options may favour pre-paid plans for their wireless services, but also notes that the numbers of subscribers with pre-paid services is declining. This finding may mean that despite the intention for the Code to establish consumer-friendly business practices, consumers are still unable to determine which wireless plan best suits their individual circumstances, with individuals moving away from lower cost pre-paid options.
8. The cost charged to consumers to unlock a phone offers another example of a business practice that is not consumer friendly — WSPs have been found to charge up to \$150 to unlock a device.⁵ The actual costs of unlocking are negligible, however, meaning that providers are adding an unreasonable mark-up. In the UK, Ofcom has provided a guide to unlocking to help consumers understand the real costs of unlocking their device, and to compare the unlocking practices of WSPs.⁶ This additional transparency is urgent for Canadian wireless users, and would require Canadian WSPs to curb their unfair business practices of charging inflated rates for services such as unlocking.
9. While the Commission is not regulating rates, there are strategies it can implement to strengthen the Code to require more transparency around pricing, including the ability to compare prices (see paragraphs 16 and 21 below) on this point). It is crucial that pricing does not disproportionately affect lower-income Canadians as part of the Code's mandate is to support consumer-friendly business practices.

ii) The increasing importance of data

10. We note that one of the key findings of the 2016 public opinion research⁷ is that data is considered an increasingly important feature of wireless plans. This is especially true for Canadians under the age of 55, women, and those who speak a language other than English or French. Such demographic information is

⁴ TNS Canada. Wireless Code Public Opinion Research 2016. March 29, 2016: <http://epe.lac-bac.gc.ca/100/200/301/pwqsc-tpsgc/por-ef/crtc/2016/034-15-e/report.pdf>

⁵ Union des Consommateurs. The Wireless Code: Who's the Winner? June 2015: <http://www.uniondesconsommateurs.ca/wp-content/uploads/2015/11/R31-UC-Code-SSF-MEF-rapport-F-Eng.pdf>

⁶ Ofcom. Mobile phone locking and unlocking. <http://consumers.ofcom.org.uk/phone/mobile-phones/changing-provider/mobile-phone-locking-and-unlocking/>

⁷ TNS Canada. Wireless Code Public Opinion Research 2016. March 29, 2016.

important in that it reflects how the market offerings for data plans should respond to the needs of broader and more diverse consumer groups. Responses to the consultation suggest that many consumers are not satisfied with the data plans currently on offer from Canada's WSPs.

11. We do note that in response to this increased importance of data, Canadian wireless service providers (WSPs) have altered their offerings to provide data "flex" plans.⁸ Essentially, these plans work as built-in overages, where customers agree to pay-per-use according to predetermined brackets. We feel this undermines the Wireless Code's provision for data caps to prevent bill shock in that users' monthly fees automatically rise to the next bracket. While consumers agree to subscribe to these flex data plans, their use may still lead to bill shock as consumers are not notified when the pay-per-use flex data option is activated. A more consumer-friendly practice would instead be to have consumers explicitly agree to each overage into the next bracket as opposed to that switch occurring automatically.
12. In contrast, we note that US carriers have been offering wireless consumers the ability to roll over unused portions of their monthly data allocation. For example, Verizon offers a "Carry Over Data" option free of charge.⁹ The Wireless Code has not led to this sort of option being made available to Canadian consumers who often pay for more data than they use in a typical month yet experience bill shock in a month when they do exceed their data cap.
13. Overall, with regard to data, the mismatch between consumer demand and the market's supply (namely, a lack of sufficient amounts of data in plans or lack of plans that emphasize data over voice) suggests that the Code hasn't addressed the fundamental concerns that people have about the choices they have in the marketplace. While the premise of the Code was that people could make better choices with more information, the ability to make choices at all hinges on the plans offered by WSPs.

⁸ E.g., Bell's flex plans:

https://www.bell.ca/Mobility/Cell_phone_plans/Pay_Per_Use_Flex_Data_option

⁹ Verizon Wireless. "Carry Over Data FAQs." <http://www.verizonwireless.com/support/carryover-data-faqs/>

b) Content and wording of the Wireless Code

14. Further to our comments in our interventions during the development of the Wireless Code,^{10,11} we believe that the current Code misses an opportunity to make it easier for consumers to compare offerings from various providers and thereby contribute to a more dynamic wireless market. As currently implemented, the Critical Information Summary (CIS) simply provides consumers with a summary of the contract to which they have already agreed. As the Union des Consommateurs¹² explains in detail, there is much variation in the way that Canadian WSPs have chosen to implement Critical Information Summaries for their consumers. Their research suggests that Canadian WSPs are failing to provide Critical Information Summaries that offer consumer-friendly information.
15. We again draw the Commission's attention to the use of CIS in the Australian wireless market. We have appended¹³ sample Critical Information Summaries from the three major Australian WSPs, Optus,¹⁴ Telstra,¹⁵ and Vodafone.¹⁶ While each provider presents the information in its CIS in its own format, it is very easy to compare the offerings across the three providers by reviewing each CIS (see the information highlighted in blue boxes, which we have added to show the level of service a customer would get for a monthly expenditure in the range of \$75 to \$85). These CIS are not personalized, and are available prior to signing a contract. Links to relevant CISs are displayed clearly on the WSPs' web pages. We note that the Wireless Code adopted the Australian terminology in identifying these documents as Critical Information Summaries, but the Code's implementation of CIS could, and should, be modified to facilitate consumer choice among WSPs' offerings.

¹⁰ http://www.ryerson.ca/~cmiddlet/ourresearch/CRTC2012-557_Wireless_Middleton_et_al_2.pdf

¹¹ http://www.ryerson.ca/~cmiddlet/ourresearch/CRTC2012-557_Wireless_Middleton_et_al_3.pdf

¹² Union des Consommateurs. The Wireless Code: Who's the Winner? June 2015.

¹³ These are provided in a separate file as they are in PDF format.

¹⁴ [http://smb.optus.com.au/opfiles/Shop/All/cis/Cis_Documents/1415645_CIS_\\$85_My_Plan_Plus.pdf](http://smb.optus.com.au/opfiles/Shop/All/cis/Cis_Documents/1415645_CIS_$85_My_Plan_Plus.pdf)
(accessed 3 October 2016)

¹⁵ <https://www.telstra.com.au/content/dam/tcom/personal/help/pdf/cis-personal/mobile/personal-critical-information-summary-go-mobile-plus-plans.pdf> (accessed 3 October 2016)

¹⁶ <http://www.vodafone.com.au/doc/cis/mobileplans/au11542/august2016.pdf> (accessed 3 October 2016)

c) Consumer awareness of the Wireless Code

16. Broad public awareness of the Code seems to be falling steadily, according to the TNS 2016 public opinion research commissioned by the CRTC.¹⁷ This finding suggests that more could be done to make Canadians aware of their rights under the Code.
17. There are three main avenues for people to learn about the Code: the media, which could be targeted with updated press releases; educational institutions, which could teach about the Code (as we do in university courses on telecom regulation in Canada); and WSPs, who should be providing consumers with information at the point of sale.
18. Since Canadian WSPs are in direct contact with those who are most affected by the Code — those purchasing wireless services — the primary onus should be on the WSPs to improve awareness. An obvious way to do this would be to modify the Critical Information Summary, ideally in the manner noted above, and promote the CIS as a tool to help consumers better understand their service offerings before they agree to a contract. The Summary could also be used to provide information on the trial period for the service, information which has been shown to be communicated ineffectively to consumers at present.¹⁸ Changing the provision of Critical Information Summaries is more likely to have a useful impact on awareness than would extensive promotion of the Code by the Commission itself.
19. While the CRTC has produced a number of resources for outreach around the Code, our initial submission to TNC 2012-557¹⁹ pointed out how other federal regulators such as Ofcom in the UK have produced useful guides for consumers about specific issues, including costs, coverage, and lost or stolen devices.²⁰ The Australian Communications and Media Authority similarly offers advice on choosing products and services, including specific information on contracts, spam, and roaming.²¹
20. Another important resource for consumers, as we also suggested in our submission to TNC 2012-557, would be an independent analysis of wireless service prices, made available to the public in a price comparison tool. Alternately, Canada could follow the example of the UK, where there are several accredited price comparison websites that empower consumers by clarifying the

¹⁷ TNS Canada. Wireless Code Public Opinion Research 2016. March 29, 2016.

¹⁸ Union des Consommateurs. The Wireless Code: Who's the Winner? June 2015.

¹⁹ http://www.ryerson.ca/~cmiddlet/ourresearch/CRTC2012-557_Wireless_Middleton_et_al_1.pdf

²⁰ <http://consumers.ofcom.org.uk/phone/mobile-phones/?a=0>

²¹ <http://www.acma.gov.au/Citizen/Phones/Mobile>

differences and similarities between fee structures and service plans.²² It would be helpful for Canadians to know whether comparison sites offer unbiased advice, and an accreditation process would assist in this regard.

d) How should the Wireless Code's effectiveness be assessed and reviewed going forward?

21. It is not the existence or awareness of the Code per se that is important, it is that the Code achieves its objectives, as set out in Telecom Regulatory Policy CRTC 2013-271:

"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."

As such, while public opinion surveys asking about awareness of the Code may be of some interest to the Commission, they are not a sufficient mechanism to assess the impact of the Code.

22. The 2016 public opinion survey²³ appears to have revealed contradictory findings about the effectiveness of the Code in increasing understanding of wireless service contracts. For instance, it is noted that "Nearly two-thirds of Canadians find the contracts clear and easy to understand" but at the same time "Surprisingly few Canadians (less than one-in-five) are aware of their right to complain to the Commission for Complaints for Telecommunications Services (CCTS)." Since information on how to make complaints to the CCTS is required information in contracts, this finding suggests that many consumers are not in fact fully aware of the information provided in their contracts. Additionally, if nearly two-thirds of Canadians find the contracts clear and easy to understand, that means that more than one-third do not find the contracts clear and easy to understand, despite the plain language requirements set out in the Code. The CRTC notes there are almost 29 million wireless subscribers in Canada,²⁴ meaning that approximately 9.5 million subscribers find their contracts unclear and not easy to understand.

23. The 2016 public opinion survey also notes that 24%, or almost a quarter of Canadians reported experiencing bill shock in 2016. While this is noted as a reduction from the 29% experiencing bill shock in 2015, it is still a very large number (>4.5 million subscribers). If consumers did indeed understand what

²² <http://consumers.ofcom.org.uk/tv-radio/price-comparison/>

²³ TNS Canada. Wireless Code Public Opinion Research 2016. March 29, 2016, p. 5.

²⁴ Telecom Decision CRTC 2016-60, <http://www.crtc.gc.ca/eng/archive/2016/2016-60.htm>.

they had agreed to in their contracts, and the requirements to notify consumers regarding additional fees were in fact effective, it is unlikely that they would have experienced bill shock. This outcome suggests that more work is needed to ensure that consumers do understand the terms of their contracts.

24. Recent research²⁵ for the Australian Communications Consumer Action Network (ACCAN) concluded “a person may claim to understand the implications of their signing a contract, but may fail to appreciate the possible consequences until they are presented with a particular challenge arising from or related to the terms of the contract.” This research, titled “Confident but Confounded” offers a rigorous assessment of the extent to which Australian telecommunications consumers actually understand their service contracts. Rather than relying upon self-reported understanding as captured in public opinion surveys, the researchers designed a test to assess specific understanding of elements of service contracts. They “found that while, in general, consumers displayed confidence in their self-assessed ability to understand telecommunications agreements, only a very small proportion were able to demonstrate adequate understanding of the standard operations and potential problems arising from telecommunications agreements.” Given the broad similarities between Canadian and Australian markets for wireless services, it is likely that consumers would exhibit the same lack of understanding of their service contracts in Canada. We highly recommend that the Commission review this study, and look to replicate it in the Canadian context.
25. In addition to the study just mentioned, we believe that further qualitative work is needed to supplement public opinion polling, to fully assess the impact of the Wireless Code in creating a more dynamic marketplace in Canada. We would be happy to provide additional details on this point at the public hearing.

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²⁵ Harrison, P., Hill, L., & Gray, C. (2016). *Confident, but Confounded: Consumer Comprehension of Telecommunications Agreements*. Sydney: Australian Communications Consumer Action Network. <http://accan.org.au/our-work/research/1307-confident-but-confounded>, p. 1.