

8 February 2017

Hearing presentation

Regarding the Consultation on *Review of the Wireless Code*:  
Telecom Notice of Consultation CRTC 2016-293, 18 July 2016; CRTC 2016-293-1,  
23 September 2016; CRTC 2016-293-2, 26 October 2016; CRTC 2016-293-3, 5  
January 2017; and CRTC 2016-293-4, 24 January 2017

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## **Introduction**

1. Good morning. I'm Tamara Shepherd, Assistant Professor at the University of Calgary and presenting with me is Catherine Middleton, Professor and Canada Research Chair at Ryerson University. Thank you to the Commission for your time today.
2. To begin, we support the statement made by intervenors across the board that the current Wireless Code is an important step toward improving the dynamism of Canada's wireless services market and supporting consumers' rights.
3. The benefits of the Code are important, and yet, in the years since its implementation, it is apparent that even more benefit could potentially be accrued to consumers to help them navigate what continues to be a confusing sea of service contract terms and language.
4. As such, we focus our presentation today on two key elements for consideration: A) Ensuring consumers can benefit from a competitive marketplace; and B) Ensuring that the wireless services marketplace, through competitive practices, provides fair options for consumers.

### **A) Ensuring consumers can benefit from competitive marketplace**

#### **i) Critical Information Summary**

5. In our view, a key mechanism by which the Code can continue to provide consumers with better information is the Critical Information Summary (CIS). This would entail minimal revision to the existing Code, namely, to render the CIS more standardized and simplified and to provide it to consumers earlier in the process of signing up for wireless service. According to the Wireless Code's original rationale, the improved CIS would thus support a more competitive marketplace where consumers could feel confident in their analysis of particular service plans.
6. The need for an improved CIS has been widely criticized across the submissions to this proceeding from wireless service providers (WSPs). WSPs Bell, Rogers, Telus, and Eastlink claim that their websites offer sufficient

tools for consumers to determine the parameters of available wireless services and pricing plans.<sup>1</sup>

7. And yet, when examining the examples furnished by these providers in the responses to requests for further information dated 4 November 2016, it is apparent that the pricing plans are not quite so simple.<sup>2</sup> We looked at the screenshots and links appended to these responses and found a confusing array of plans, presented in different permutations – premium, light, heavy, flex, share, tab, easy pay – even under a single brand, evidencing how confusing it can be for consumers to try to navigate the offerings and understand in simple terms how one plan compares to another.<sup>3</sup> Moreover, often when providers attempt to simplify the presentation of these diverse offerings, they end up foregrounding only those higher cost plans.<sup>4</sup> By contrast, a standardized CIS would assist consumers to get past the marketing rhetoric with which they are obviously frustrated in order to evaluate for themselves the appropriateness of particular plans for their communication needs.
8. In a larger sense, what does it say about Canadian WSPs if they're not able to summarize their plans up front, in both post-paid and pre-paid options? We look toward the example of Australian WSPs who have a more standardized version of plans across providers as an example of a system in which consumers stand to benefit from reduced confusion. For instance, on the major Australian WSP Telstra's website, consumers are presented with five possible CIS documents representing their range of service plans.<sup>5</sup> This low number would translate to a minimal operational burden in the provision of a standardized CIS.
9. We are not necessarily positioning the CIS as a marketing or comparison shopping document, as some WSPs have claimed.<sup>6</sup> Rather, the goal is for the CIS to be a more standardized and simple reference point for consumers

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<sup>1</sup> Rogers Communications, Reply Comments to CRTC-2016-293, 16 November 2016, par. 67; Eastlink, Reply Comments to CRTC-2016-293, 16 November 2016, par. 5.

<sup>2</sup> Q3 "What information do you currently provide to potential customers who are interested in comparison shopping for wireless services? Provide examples as appropriate."

<sup>3</sup> For instance, on Telus's Ontario site, there are three most popular Data Talk and Text plans (that come with a subsidized device) shown, and then a total of 15 plans in the "build your own" area that can be accessed by clicking below those three, and then another set of prices after clicking a link to choose the device. On Koodo's Ontario site, 12 different options are presented, organized under Tab size – small, medium and large – which don't correspond to the plans on Telus's site.

<sup>4</sup> Rogers Communications, Response to requests for further information, 4 November 2016, Q3, p. 2.

<sup>5</sup> For example, see <https://www.telstra.com.au/content/dam/tcom/personal/help/pdf/cis-personal/mobile/personal-critical-information-summary-go-mobile-plus-plans.pdf>

<sup>6</sup> Bell Mobility, Reply Comments to CRTC-2016-293, 16 November 2016, par. 8; Rogers, Reply Comments, par. 19; Eastlink, Reply Comments, par. 5.

before they commit to a particular service contract. Our recommendation is intended as a direct solution to the frequently reported problems of consumers not understanding what their services include and don't include.<sup>7</sup>

10. Moreover, other intervenors have made similar proposals that bear repeating. The Coalition outlined a simplified, generic version of the CIS that would feature:

- a complete description of all key contract terms and conditions;
- the total monthly charge, including rates for optional services selected by the customer at the time the contract is agreed to;
- information on all one-time charges and additional fees; and
- information on how to complain about the service provider's wireless services, including how to contact the service provider's customer service department and the CCTS.<sup>8</sup>

11. The potential of an improved – meaning simplified, standardized, and early (before the contract is signed) – CIS to rectify some of the confusion that consumers feel around available services and pricing plans stands to benefit many Canadians.<sup>9</sup> In this light, it appears that mandating such a summary would be a key means of strengthening the overall objectives of the Wireless Code.

## **ii) Awareness of the Wireless Code**

12. The falling awareness of the Code suggests that consumers would further benefit from increased understanding of their rights to, for example, request a CIS. Despite the claim made by WIND that “the suggested lack of consumer awareness of the Code may actually be a testament to its effectiveness,”<sup>10</sup> the simultaneous lack of awareness of the CCTS indicates that it is a problem. As noted in the most recent public opinion research from November 2016, increased consumer awareness of the CCTS – as part of the overall objectives of the Code – is correlated with higher satisfaction with complaint resolution.<sup>11</sup>

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<sup>7</sup> Evidence supporting the role for an improved CIS can be found in the Union des Consommateurs' research, which found that, even since the implementation of the Code, most WSPs' service contracts do not fulfill the Code's obligations of term and rate clarity. And, while the current provisions of the Code call for the CIS to fulfill this role, Pavlovic et al.'s mystery shopper findings indicate that WSPs rarely provide such a summary; in their study, not one provider offered a CIS.

<sup>8</sup> The Coalition, Reply Comments, par. 51.

<sup>9</sup> Media Access Canada, Reply Comments, par. 40.

<sup>10</sup> WIND Mobile, Reply Comments to CRTC-2016-293, 16 November 2016, par. 24.

<sup>11</sup> Kantar TNS, Wireless Code Public Opinion Research Fall 2016, Ottawa: Prepared for the Canadian Radio-Television and Telecommunications Commission, p. 6. Retrieved from: <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2016/027-16-e/report.pdf>; see also: “Canadians do

13. We suggest that one means of improving consumer awareness would be to add a note about the Code and the CCTS to the CIS, putting some of the onus on WSPs in addition to the Commission's public outreach work.<sup>12</sup> The suggestion made on Day 1 of the hearing by Marina Pavlovic and her group to support NGOs or other advocacy organizations who produce informational resources would also be part of this solution.

### **iii) Reviewing the Effectiveness of the Wireless Code**

14. In order to review the Code's effectiveness, including as a consequence of increased awareness, a multi-pronged approach would be most appropriate. As noted by a number of intervenors, only looking at CCTS complaints does not provide the best measure of effectiveness because of confounding factors such as attrition through the complaints resolution procedure.<sup>13</sup> We further suggest that surveys on their own are insufficient to understand how consumers actually interface with providers to learn about their contract terms and make decisions about wireless services. As such, we call for more qualitative research, such as Pavlovic et al.'s or Union des Consommateurs' mystery shopper studies, or the Australian experiment about consumers' contract information retention,<sup>14</sup> or the in-depth focus group research with youth and seniors that we presented in the initial proceeding to establish the Code.<sup>15</sup>
15. To that end, future studies we hope to conduct would involve interviews with participatory techniques, such as shadowing participants as they attempt to navigate WSPs' websites. It would also be useful to conduct research on how people are consuming mobile data – how do users' decision making actions reflect their understandings of mobile data vis-à-vis fixed data? This is an important question to unpick especially when services are bundled, which can be even less transparent for consumers. Both of these studies would help

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not recall being informed of their right to complain to the CCTS. Only seven per cent of Canadians can recall being informed of their right to complain to the CCTS suggesting an alternative approach to informing Canadians about the CCTS may be required" (p. 34).

<sup>12</sup> Consumers Council of Canada, Reply Comments, par. 8; The Coalition, Reply Comments, par. 74; Marina Pavlovic et al., Presentation at CRTC-2016-293 hearing, 6 February 2017.

<sup>13</sup> Media Access Canada, Reply Comments, pars. 6-9; Union des Consommateurs, Reply Comments, par. 41, Pavlovic et al., Presentation.

<sup>14</sup> Harrison, Hill, & Gray. (2016). *Confident, but Confounded: Consumer Comprehension of Telecommunications Agreements*. Sydney: Australian Communications Consumer Action Network. Retrieved from: <http://accan.org.au/our-work/research/1307-confident-but-confounded>

<sup>15</sup> Catherine Middleton et al., Intervention to CRTC 2012-557, 20 November 2012. Retrieved from: <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1804996>

show more clearly how people manage the converged digital communications environment.

## **B) Ensuring a competitive marketplace**

16. While our presentation today has largely focused on the CIS as a means to ensure that Canadians are able to understand their wireless services and costs in a currently confusing landscape, we also wish to note that there are larger, more endemic problems underlying consumer frustration. These endemic problems have to do with changes to Canada's wireless marketplace since the development of the Code.<sup>16</sup> Even while competitiveness and rates are designated as "out of scope" issues in this proceeding,<sup>17</sup> a political economic analysis of Canada's wireless industry reveals that achieving the objectives of the Code – including contributing to a more dynamic marketplace within which Canadians can access quality, affordable, and innovative communication services – are subject to structural issues within that marketplace.
17. To summarize, the Coalition and others pointed out the following changes to the marketplace:<sup>18</sup>
- New service models, such as share plans and flex plans, which can present new sources of confusion for consumers and need more precise language in the Code;<sup>19</sup>
  - Changing consumer demand, particularly the now-central status of data, which changes the implications of the ways that plans are typically worded. In accordance with the basic service ruling of December 2016, data can no longer be considered an "add-on"<sup>20</sup> – as such, data plan pricing needs to be more transparent.<sup>21</sup>
  - Industry changes, namely increased consolidation of WSPs.<sup>22</sup> As the submissions from Media Access Canada argue, the "Big Three" have accordingly shown little faith in fulfilling accessibility provisions, since "past policies intended to attract a third or fourth service provider into the Canadian market have clearly failed."<sup>23</sup> This failure is further evidenced in simultaneous price increases across the Big Three's wireless service

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<sup>16</sup> The Coalition, Intervention to CRTC-2016-293, 3 October 2016.

<sup>17</sup> CRTC, Telecom Notice of Consultation 2016-293.

<sup>18</sup> Consumers Council of Canada, Reply Comments, par. 10, supporting The Coalition's initial submission.

<sup>19</sup> The Coalition, Reply Comments, pars. 27-9.

<sup>20</sup> CCTS, Reply Comments, pars. 19-20; The Coalition, Reply Comments, par 31; Union des Consommateurs, Reply Comments, par. 12.

<sup>21</sup> Media Access Canada, Reply Comments, par. 37.

<sup>22</sup> The Coalition, Intervention.

<sup>23</sup> Media Access Canada, Reply Comments, par. 42

offerings, which has contributed to the continued high pricing in Canada relative to other countries.<sup>24</sup> Recent CRTC decision 2015-177 also supports the finding of reduced competition.<sup>25</sup>

18. What these changes further suggest is that, while it's important to provide consumers with fair and appropriate information about their wireless services, there are a number of limitations to this "rational consumer" model. The rational consumer idea posits that people's decisions are solely based on an instrumental cost-benefit analysis of possible outcomes. Decades of critical behavioural research has shown that this is not in fact the case.<sup>26</sup> People's decisions are based on a number of factors beyond rationality, but importantly for this proceeding, one of the main restrictions to consumer choice are the suite of options available in the marketplace. In this way, the rational consumer idea obscures the power of WSPs to shape choices through their offerings.<sup>27</sup>
19. To that end, we suggest that additional onus be placed not solely on consumers to be responsible for understanding wireless services, but on providers who have been characterized as using "confusion-based marketing strategies"<sup>28</sup> that unfairly disadvantage consumers. Informing consumers of their rights is not enough if they don't have adequate choices and if those choices that are available are difficult to navigate.<sup>29</sup>
20. Sharing the responsibility for ensuring that Canadians do not feel limited and taken advantage of in the wireless marketplace is especially important when the Code is viewed within the larger framework of basic service. If wireless service is increasingly oriented around data, the Commission needs to recognize the significance of the Code as a measure of access to affordable, quality, broadband infrastructure. If the Code were to help achieve this larger

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<sup>24</sup> Nordicity Group Limited, 2016 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions, 22 March 2016. Retrieved from: <http://www.crtc.gc.ca/eng/publications/reports/compar/compar2016.htm>; Tefficient, Industry Analysis #5 2016, 5 January 2017. Retrieved from: <http://tefficient.com/unlimited-pushes-data-usage-to-new-heights/>

<sup>25</sup> CRTC, Telecom Regulatory Policy 2015-177, Regulatory framework for wholesale mobile wireless services, 5 May 2015. Retrieved from: <http://www.crtc.gc.ca/eng/archive/2015/2015-177.htm>

<sup>26</sup> For a summary, see Amartya K. Sen (1977), "Rational fools: A critique of the behavioral foundations of economic theory." *Philosophy & Public Affairs*, pp. 317-344. Retrieved from: [https://www.ucl.be/cps/ucl/doc/cr-cridis/documents/sen\\_on\\_TCR\\_rational\\_fools.pdf](https://www.ucl.be/cps/ucl/doc/cr-cridis/documents/sen_on_TCR_rational_fools.pdf)

<sup>27</sup> As Media Access Canada has noted, these limitations of the rational consumer model hinder some of the stated objectives of the Wireless Code: "More broadly, various parties are framing compliance issues in terms of a lack of information and knowledge by consumers about their rights, rather than incentives of operators to implement general transparency and specific obligations the Commission has seen fit to formalize into the Wireless Code." (Media Access Canada, Reply Comments, par. 3.)

<sup>28</sup> Media Access Canada, Reply Comments, par. 38.

<sup>29</sup> Media Access Canada, Reply Comments, par. 46.

purpose, it seems obvious to us that the issue of providing more information to consumers is a necessary but not sufficient means of addressing structural competition issues that continue to shape Canada's wireless marketplace.

## **Conclusion**

21. To reiterate, our proposals revolve around a contention that the Wireless Code is an important mechanism for helping Canadians access what has become a set of essential communications services through their wireless, mobile devices. The two main arguments we presented – to strengthen to Code through measures such as improved Critical Information Summaries and to consider means of ensuring a competitive marketplace that offers fair options for consumers – speak to the importance of wireless communication for a large and diverse group of Canadians. We trust that the Commission will continue to render its decisions with an attention to the needs of this public.
22. Again, thank you for your attention today. We are grateful to be party to this proceeding and welcome further questions.

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