

# **Paying a Premium: Consumers and Mobile Premium Services**

Written By: Eden Maher and Janet Lo  
Public Interest Advocacy Centre  
1204 – ONE Nicholas St  
Ottawa, Ontario  
K1N 7B7

Published June 2011  
*Revised September 2011*

*With Funding from the Industry Canada's Contributions Program for Non-profit  
Consumer and Voluntary Organisations*

**Copyright 2011 PIAC**

Contents may not be commercially reproduced.  
Any other reproduction with acknowledgment is encouraged.

The Public Interest Advocacy Centre  
(PIAC)  
Suite 1204  
ONE Nicholas Street  
Ottawa, Ontario  
K1N 7B7

Canadian Cataloguing and Publication Data

Paying a Premium: Consumers and Mobile Premium Services

**ISBN**  
**1-895060-93-1**

## **Acknowledgment**

The Public Interest Advocacy Centre received funding from Industry Canada's Contributions Program for Non-profit Consumer and Voluntary Organisations. The views expressed in the report are not necessarily those of Industry Canada or the Government of Canada.

PIAC would also like to thank all stakeholders who participated in this study.

## EXECUTIVE SUMMARY

Since 2004, mobile premium services (MPSs) have become an increasingly popular form of text messaging, providing new opportunities for entertainment, information, and interaction through consumers' handsets. Some of the most commonly used MPSs include jokes, horoscopes, chat, sports and weather updates, trivia games, and contests. Consumers purchase MPSs as either one-time services, such as texting a vote to television, or subscription services, such as daily jokes that are sent via text message to the consumers' handset until the consumer unsubscribes. MPS messages are charged a premium rate, usually on a per-message basis, in addition to standard text message costs, and are not included in any unlimited text messaging plan currently offered in Canada. The consumer will be billed for receiving premium text messages regardless of whether they open the messages or respond to the messages. The industry refers to mobile premium services as "common short codes."

This report details the consumer experience using MPSs, from the consumer's first contact with MPS advertisements, to the process of purchasing MPSs, to unsubscribing from services, and finally, to disputing MPS charges.

This report also details the technical functioning of MPSs, the MPS industry, the various players within the industry, the profit-sharing arrangement between industry players, and the self-regulatory model surrounding MPSs. Under the current self-regulatory model, the wireless industry's voluntary association, the Canadian Wireless Telecommunications Association (CWTA), oversees the leasing and administration of MPSs. A sub-committee of the CWTA, comprised of wireless service provider representatives, approves all MPSs that run on wireless service providers' networks in Canada. The major players within the industry form a value chain comprised of content providers, application developers, aggregators, MPS companies, and wireless service providers. All parties profit from the MPS scheme, however wireless service providers profit the most, as they control the networks on which MPSs run and provide the billing platform.

Since the launch of the MPS industry, the CWTA has developed guidelines and codes of conduct to assist the industry in providing standardized services for MPSs in Canada. The CWTA has maintained its position that these safeguards protect consumers. However, this report draws attention to two polarized explanations for the consumer experience with MPSs - the industry's explanation and consumers' explanation - and explores the difficulties consumers have experienced under the current self-regulatory model employed by the industry. This report provides important groundwork by collecting reports about and describing multiple aspects of the consumer experience that have proven troubling for Canadian consumers.

PIAC's methodology involved eliciting and collecting anecdotal reports from consumers. PIAC employed two primary methods - conducting focus groups and receiving reports directly from consumers through email. Focus groups provided the opportunity for consumers with direct knowledge of MPSs to discuss numerous aspects of their experiences using MPSs and to comment on the Canadian self-regulatory model as compared with the Australian regulatory

model. PIAC followed up with consumers who emailed PIAC to gather further information on various aspects of their experiences using MPSs. The findings from the focus groups and consumers' emails reveal that consumers' problems with MPSs relate to multiple aspects of the consumer experience and are more pervasive than the industry has acknowledged. PIAC consulted with Canadian agencies such as the Commissioner for Complaints for Telecommunications Services (CCTS), the Competition Bureau and the Canadian Anti-Fraud Centre (CAFC). PIAC reviewed advertisements for MPSs on wireless service provider websites and MPS websites. PIAC also consulted with the Canadian wireless industry for their views on consumer protection in the MPS industry. To better appreciate international approaches to regulating MPSs, PIAC consulted with foreign regulators.

Findings indicate that consumers' problems are both under-detected and underreported, and that industry often dismisses the complaints that are brought forward. No single agency in Canada tracks or handles consumer complaints with respect to MPSs. The CCTS receives several complaints about MPSs and the CCTS plays an important role in resolving consumer disputes about MPS charges, but can only do so when a consumer brings forward a complaint. The CAFC tracks reports of fraud and provided useful statistics on the rising trend of text messaging fraud in Canada. However, no agency has conducted a systemic inquiry into the regulation of MPS and the efficacy of consumer safeguards in Canada.

PIAC found that consumers are frequently misled by advertisements for MPSs. In particular, PIAC heard from consumers that online pop-up advertisements for MPSs are problematic because they lack clear and pertinent information, give a misleading impression about the nature of the service, use small print, and disappear after the consumer has inputted their wireless number or PIN. Results of the focus groups and consumers' reports signal that consumers are often not presented adequate terms and conditions prior to purchasing MPSs, while others are subscribed entirely without their consent. PIAC found that consumers are dissatisfied with being subscribed indefinitely to MPSs that they believed would be one-off services such as a contest entry or quiz result.

Consumers reported issues with the unsubscription process, as they do not understand how to unsubscribe, do not receive necessary assistance when they contact their wireless service providers, are required to unsubscribe multiple times, and are still billed after unsubscribing. Moreover, results from the focus groups and consumers' reports demonstrate that when consumers contact wireless service providers and MPS companies to stop or dispute charge, they routinely encounter hassles, blame, misinformation, denial of assistance, and denial of proof that they opted-in to the MPS. Lastly, PIAC found a lack of transparency and accountability within the industry with respect to audits of MPSs, compliance enforcement, and the profitable relationship between wireless service providers and MPS companies.

The Canadian Radio-television and Telecommunications Commission (CRTC) has in the past refrained from regulating wireless services in Canada, finding that the market was sufficiently competitive to protect the interests of consumers. In 2009, Quebec consumer group Union des consommateurs filed an application to the CRTC seeking an order requiring wireless service providers to waive disputed charges. The CRTC denied Union's application on the basis that

market forces and the industry self-regulatory mechanisms could be relied upon to protect consumers. The CRTC recently modified the forbearance framework for mobile wireless data services to retain certain powers to address issues with respect to the provision of mobile wireless data services by Canadian carriers.

PIAC examined various regulatory approaches for MPSs in international jurisdictions. The United Kingdom and Australian models have strong regulatory bodies that are tasked with regulating all aspects of MPSs from advertising to mandatory registration. These bodies also comprehensively investigate consumer complaints and use strong enforcement powers to punish noncompliant companies. As well, the regulatory bodies can address systemic problems by issuing determinations that the industry must follow. The United States has a self-regulatory model, wherein the Wireless Association and wireless service providers jointly administer the common short code regime. In the United States, the wireless service providers play a large role in monitoring and enforcing MPS compliance with industry best practices and other guidelines. In one case, wireless service provider Verizon Wireless filed a lawsuit alleging fraud with respect to MPSs and set up a third-party content subscription refund program for consumers who were improperly subscribed and billed. Notably, the Australian regulator requires all wireless service providers to provide an MPS blocking feature to their consumers. Wireless service providers in the United Kingdom and United States also offer the MPS blocking feature to their customers.

In light of the findings from our study, PIAC recommends a number of measures to improve consumer protection for MPSs. Given the extent of issues that consumers have experienced with various aspects of MPSs from beginning to end and given the recent modifications to the forbearance framework for mobile wireless data services, the CRTC must now reconsider whether they have a regulatory role to play regarding MPSs. PIAC calls on the CRTC to initiate a public proceeding regarding mobile premium services to study the relationship between MPSs, the CWTA, and wireless service providers, the efficacy of consumer protection in this area, and to solicit consumer experiences regarding these services. PIAC believes that the CRTC is the best placed regulator to implement consumer safeguards with respect to MPSs, and may wish to consider analogous safeguards that currently exist for 900 services. Some notable consumer safeguards that the CRTC should implement are: CRTC approval of agreements between wireless service providers and MPS companies or aggregators; requirements for clearly identifying charges in all advertisements about MPSs; a requirement that wireless service providers immediately cancel the MPS when a consumer calls and requests to cancel the MPS; a requirement that wireless service providers waive all reasonably disputed MPS charges for first-time disputes with customers; where the wireless service providers waives any disputed unpaid MPS charges, MPS company must absorb the waived charges as a “chargeback”; a requirement that wireless service providers provide a free blocking feature for MPS messages to their customers; a requirement that wireless service providers monitor MPSs; and a requirement that wireless service providers cut off MPSs that do not comply with all terms and conditions in the CRTC-approved contract or where the programs are or could potentially be fraudulent, deceptive or misleading.

Industry self-regulation of MPSs by the CWTA in its current form is not strong enough to protect consumers. Perhaps most notably, the double opt-in for subscription MPSs should not be allowed to occur within banner or pop-up advertisements. Consumers should only be able to complete the double opt-in on a static website that is permanent and can be easily accessible to the consumer should they wish to print or revisit the terms and conditions or unsubscribe from the service. The CWTA must be more transparent about its monitoring and auditing practices, given the conflict of interest it has as an entity that represents members who profit from the MPS industry. The CWTA should make results of the audits public: noncompliant companies should be named, and enforcement action should be described. Consumers who have been improperly charged must be refunded. PIAC prefers that an independent body be charged with monitoring the MPS industry for compliance and publicize reports.

The CCTS is a helpful ombudsman for consumers given that the CWTA does not handle consumer complaints but merely refers the consumer to the MPS company, and consumers can be frustrated when seeking assistance from their wireless service provider and the MPS company. The CCTS should continue to investigate consumer complaints about MPSs and track the number of consumer complaints about MPSs. PIAC recommends that the CCTS be given greater power to make recommendations on systemic issues.

Wireless service providers must assume greater responsibility for protecting their consumers, as they are more than a billing agent for these services: they are a profiting party and the first point of contact for a frustrated consumer. Wireless service providers must unsubscribe consumers from MPSs upon request. Wireless service providers must maintain detailed billing practices for MPSs and provide consumers with evidence of MPS authorization by providing the transaction record. Wireless service providers should have the obligation to investigate the legitimacy of the MPS charges when a consumer disputes the charge. Notably, Canadian wireless service providers should offer a blocking feature for MPSs, considering that Australia, the United States and the United Kingdom all have wireless service providers that offer an MPS blocking feature. Finally, wireless service providers must play a larger role in monitoring and auditing MPSs, at minimum flagging MPS companies that receive the most complaints and terminating programs that are noncompliant or could potentially be fraudulent, deceptive or misleading.

MPS companies should consider the application of the newly passed Canada Anti-Spam Law to premium text messages, which places the burden on the sender to demonstrate that it received consent prior to sending a commercial electronic message. CASL gives the CRTC the ability to impose hefty administrative monetary penalties and provides consumers with a private right of action. The MPS industry will need to update its practices for opting consumers into receiving MPS messages and must ensure that all premium text messages comply with the new anti-spam law.

There are not adequate safeguards for consumers with respect to MPSs. The self-regulatory model of MPSs in Canada does not provide sufficient accountability or oversight to ensure that consumers are aware of the charges that will be incurred with MPSs. Additionally, consumer attempts to seek redress are often frustrated by wireless service providers or MPS companies.

Given the consumer experience with MPSs in Canada, regulatory oversight with strong enforcement mechanisms is needed.

## TABLE OF CONTENTS

|  |    |
|--|----|
| EXECUTIVE SUMMARY .....  | 4  |
| I. INTRODUCTION.....   | 13 |
| A. OVERVIEW .....  | 13 |
| B. OUTLINE .....   | 14 |
| C. METHODOLOGY .....   | 15 |
| II. THE MOBILE PREMIUM SERVICES INDUSTRY .....                           | 17 |
| A. WHAT ARE MOBILE PREMIUM SERVICES? .....                               | 17 |
| B. WHO ARE THE INDUSTRY PLAYERS? .....                                   | 18 |
| i) Content Providers.....  | 18 |
| ii) Application Providers / Platform Developers .....                    | 18 |
| iii) Wireless Service Providers .....                                    | 18 |
| iv) Aggregators .....  | 19 |
| v) Canadian Wireless Telecommunications Association .....                | 20 |
| vi) Regulatory, Self-Regulatory, and Government Bodies.....              | 21 |
| a. The Canadian Radio-television and Telecommunications Commission.....  | 21 |
| b. The Commissioner for Complaints for Telecommunications Services ..... | 21 |
| c. The Competition Bureau .....  | 22 |
| d. Provincial Governments .....  | 23 |
| e. Voluntary Industry Associations .....                                 | 23 |
| C. THE RULES OF THE MOBILE PREMIUM SERVICES GAME .....                   | 24 |
| i) The Double Opt-in Mechanism .....                                     | 25 |
| ii) Mandatory Key Words .....  | 28 |
| iii) Advertisements .....  | 29 |
| D. WINNERS AND PROFITS.....  | 30 |
| III. CONSUMER COMPLAINTS WITH MOBILE PREMIUM SERVICES .....              | 33 |
| A. THE EXISTENCE OF THE PROBLEM.....                                     | 33 |
| i) Difficulties Mapping Consumers' Problems.....                         | 33 |
| ii) Consumer Complaints Made to the Telecommunications Industry .....    | 33 |
| iii) Complaints Made to Organizations, Governments & Other Agencies..... | 34 |
| iv) Consumer Complaints in the Media .....                               | 36 |
| v) Other Considerations.....   | 38 |

|       |  |    |
|-------|--|----|
| vi)   | Reports of Consumer Complaints Internationally .....   | 38 |
| B.    | CONSUMER CASE STUDIES .....  | 40 |
| i)    | Case Study #1: G.K. ....   | 40 |
| ii)   | Case Study #2: L.M. ....   | 41 |
| iii)  | Case Study #3: B. and J.P. ....  | 41 |
| iv)   | Case Study #4: S.S. ....   | 42 |
| v)    | Case Study #5: V.L. ....   | 42 |
| vi)   | Case Study #6: A.H. ....   | 43 |
| vii)  | Summary of Common Problems with Mobile Premium Services .....  | 44 |
| IV.   | CONSUMER FOCUS GROUPS .....  | 46 |
| A.    | FOCUS GROUP METHODOLOGY .....  | 46 |
| B.    | SUMMARY OF FOCUS GROUP FINDINGS: THE CONSUMER EXPERIENCE .....                                       | 47 |
| V.    | PROBLEMS WITH MOBILE PREMIUM SERVICES .....  | 50 |
| A.    | PROBLEMS WITH MOBILE PREMIUM SERVICE ADVERTISEMENTS .....  | 50 |
| i)    | Mobile Premium Services Advertised by Wireless Service Providers .....                               | 50 |
| ii)   | Mobile Premium Services Advertised by Mobile Premium Service Companies .....                         | 55 |
| iii)  | Problems with Online Advertising .....   | 58 |
| iv)   | General Issues with the Information Text Message and Mobile Premium Services<br>Advertisements ..... | 60 |
| B.    | PROBLEMS WITH SUBSCRIPTIONS .....  | 63 |
| i)    | Misleading Labelling of Subscription Mechanism as a “Double Opt-In” .....                            | 63 |
| ii)   | Problems with Subscription via Pop-up and Banner Advertisements .....                                | 63 |
| iii)  | Authentication Issues with the PIN Mechanism .....   | 64 |
| iv)   | Subscription Without Consent .....   | 66 |
| v)    | Additional Problems with Youth Subscribing to Mobile Premium Services .....                          | 67 |
| vi)   | Problems Indicating an Ongoing Subscription .....  | 67 |
| vii)  | Problems with Negative Option Selling .....  | 69 |
| viii) | Problems Unsubscribing from Mobile Premium Services .....  | 70 |
| a)    | Consumers Do Not Understand How to Unsubscribe .....   | 70 |
| b)    | Consumer Experience Asking Wireless Service Providers for Assistance with<br>Unsubscription .....    | 71 |
| c)    | Consumers Must Unsubscribe Multiple Times .....  | 73 |
| d)    | Consumers Still Billed After Unsubscribing .....   | 74 |
| C.    | PROBLEMS WITH PRICING AND BILLING .....  | 75 |

|       |   |     |
|-------|---|-----|
| i)    | Pricing .....   | 75  |
| a)    | Value and expectation .....   | 75  |
| ii)   | Billing.....  | 80  |
| a)    | Cramming.....   | 80  |
| b)    | Consumer Protection for 900/976 Numbers on Landline Phones.....   | 81  |
| c)    | Consumer Protection through Detailed Billing .....  | 81  |
| d)    | Billing and Implications for Consumer Protection in the Future .....  | 82  |
| D.    | THE MYTH OF “ROGUE” MOBILE PREMIUM SERVICE COMPANIES .....  | 83  |
| E.    | THE POTENTIAL FOR FRAUD.....  | 84  |
| F.    | PROBLEMS SEEKING REDRESS .....  | 86  |
| i)    | Seeking Redress through Wireless Service Providers .....  | 86  |
| a)    | Discovering Mobile Premium Service Charges .....  | 86  |
| b)    | Complaints to Wireless Service Provider Customer Service .....  | 86  |
| c)    | Wireless Service Provider Customer Service Denies Relationship with MPS Company .....                                   | 86  |
| d)    | Blaming Consumers.....  | 88  |
| e)    | Issues Accessing Details of the Transaction Record.....   | 90  |
| f)    | Burden of Proof.....  | 90  |
| g)    | Wireless Service Provider Customer Service Cannot or Will Not Help .....  | 91  |
| h)    | Failure to Resolve Within Wireless Service Providers’ Internal Complaints Process and Failure to Refer to the CCTS..... | 92  |
| i)    | “In Scope” Complaints.....  | 92  |
| ii)   | Seeking Redress Through Mobile Premium Service Companies .....  | 93  |
| iii)  | Seeking Redress through the CWTA .....  | 95  |
| iv)   | Seeking Redress through the CCTS.....   | 95  |
| v)    | Seeking Redress through the Competition Bureau .....  | 98  |
| vi)   | Seeking Redress through Provincial Consumer Protection Legislation .....  | 98  |
| vii)  | Seeking Redress through Voluntary Business and Professional Organizations.....  | 98  |
| viii) | Seeking Redress in Small Claims Court.....  | 99  |
| ix)   | Seeking Redress through Class Actions .....   | 99  |
| G.    | Problems with Transparency and Accountability.....  | 100 |
| i)    | Lack of Transparency with Respect to Audits .....   | 100 |
| ii)   | Lack of Transparency with Respect to Compliance Enforcement.....  | 101 |
| iii)  | Lack of Transparency About Mobile Premium Service Companies .....   | 101 |

|       |  |     |
|-------|--|-----|
| iv)   | Lack of Accountability of Wireless Service Providers .....                   | 102 |
| a)    | Lack of Transparency About the Wireless Service Providers' Profit Share..... | 102 |
| VI.   | JURISDICTION OF THE CRTC TO REGULATE MOBILE PREMIUM SERVICES .....           | 106 |
| A.    | CRTC Regulation of Wireless Services.....                                    | 106 |
| B.    | Union des Consommateurs Application for Commission Intervention for MPS..... | 108 |
| C.    | Analogy of Mobile Premium Services to 900/976 Pay-per-call Services .....    | 111 |
| VII.  | INTERNATIONAL COMPARISON .....   | 115 |
| A.    | United Kingdom .....   | 115 |
| i)    | Compliance and Monitoring .....  | 115 |
| ii)   | Comparison with Canada.....  | 115 |
| B.    | United States of America .....   | 116 |
| i)    | Leasing and Administration of Short Codes .....                              | 116 |
| ii)   | Compliance Monitoring .....  | 116 |
| iii)  | Regulation and Legal Oversight .....   | 118 |
| iv)   | U.S. Class Actions .....   | 119 |
| C.    | AUSTRALIA .....  | 120 |
| i)    | The Telecommunications Industry Ombudsman .....                              | 120 |
| ii)   | Tracking Problems with Mobile Premium Services in Australia .....            | 121 |
| iii)  | The TIO's Research.....  | 122 |
| iv)   | The Australian Communications & Media Authority .....                        | 122 |
| v)    | Consultation with the Australian Communications & Media Authority.....       | 123 |
| vi)   | Comparisons Between Australia and Canada.....                                | 124 |
| D.    | Summary of International Comparisons.....                                    | 127 |
| VIII. | CONCLUSION & RECOMMENDATIONS.....  | 128 |
| A.    | RECOMMENDATIONS.....   | 128 |
| B.    | AREAS FOR FURTHER RESEARCH .....   | 137 |
| IX.   | APPENDIX : FOCUS GROUP SUMMARY .....   | 139 |
| X.    | APPENDIX B: COMPETITION BUREAU COMMENTS .....                                | 186 |

## I. INTRODUCTION

### A. OVERVIEW

Text messaging is a billion dollar industry in Canada and a multi-billion dollar industry worldwide. According to the Canadian Wireless Telecommunications Association (CWTA), Canadians sent on average over 160 million messages per day in 2010.<sup>1</sup> In addition to using text messaging for business and personal communications, consumers now use text messaging as a popular means of entertainment. Consumers can purchase an array of entertainment and information services such as jokes, horoscopes, sports and weather updates, trivia games, and contests which are sent to their wireless handsets. These text message services are called “common short codes” because the text service is delivered from a short, five or six digit number as opposed to the usual ten digit phone number. They are also called “mobile premium services” (MPS) because they cost a premium, or more than the standard rate for text messages. Standard rate text messages are often included in the wireless subscriber’s plan. For the purposes of this report, PIAC will use the term “mobile premium service” or “MPS” to describe these services. The industry term is “common short codes.” According to the CWTA, a “total of 2.3 billion Common Short Code messages were sent and received by Canadians in 2010, representing a 36% increase over the 2009 total of 1.7 billion messages.”<sup>2</sup> With each premium text message costing between \$0.15 and \$10.00, and most common subscription MPSs are for daily messages that cost \$2.00 per message which would total approximately \$60 per month, the mobile premium service (MPS) industry is profitable for the companies involved.

The novelty and popularity of MPSs is undeniable, however, with new technology comes new variations on age-old consumer issues. Recent media attention has focused on consumer complaints with MPSs, suggesting that consumers are misled by advertisements for these services. Media reports suggest that often consumers do not understand that these services are offered on a subscription basis and consumers do not appreciate that premium text messages differ from regular incoming text messages. Consumers can become upset about many possible scenarios: for example, where they were charged for an MPS but either do not remember signing up for it, or did not understand the MPS was a recurring subscription; where they know they did not subscribe to an MPS but were charged because they had a recycled phone number; where the charge for an MPS on their wireless bill was not what they expected; where they had difficulties unsubscribing from an MPS; and where they did not receive accurate information or assistance from their wireless provider or the MPS company in resolving their complaints.

Currently, there is very little research on the MPS industry in Canada compared with the quantity of information that exists in other countries, particularly Australia. There is also a great deal of misinformation surrounding MPSs. This report provides necessary groundwork for mapping the MPS industry in Canada, for recognizing the types of problems Canadian

---

<sup>1</sup> For current statistics on the text messaging habits of Canadians, see the CWTA’s website online: <http://www.txt.ca/english/consumer/press.html>. This statistic is based on numbers collected for September 2010, and based on PIAC’s consultation with the CWTA, 9 February 2011.

<sup>2</sup> CWTA statistics online: <http://www.txt.ca/english/consumer/press.html>. Canadians sent and received a total of 544.6 million text messages from short codes in the second quarter of 2010, up from 538 million messages sent and received in the first quarter.

consumers experience with MPSs, and for debunking myths that may cause confusion when attempting to analyze industry dynamics. The report also provides a necessary foundation for understanding Canada's participation in this larger global industry, analyzing gaps in the current legal and regulatory structures that surround MPSs in Canada, and examining the adequacy of the current self-regulatory model of the MPS industry for Canadian consumers.

## **B. OUTLINE**

Parts I and II of this report comprehensively map the MPS industry in Canada. Part I describes mobile premium services - what they are, how much they cost, and how consumers subscribe and unsubscribe - so that clear working definitions can be used throughout. Part II introduces the various players involved: content developers, wireless service providers, industry regulators, and other entities that either have the ability to regulate certain aspects of MPSs or provide self-regulatory oversight of certain aspects of MPSs. Part II also describes the process for MPS programs to be approved and activated in Canada, highlighting the contractual relationship between MPS companies and wireless service providers.

Part III outlines the difficulties experienced by consumers who attempt to dispute MPS charges. The report will then highlight examples of, and reasons for, the apparent failure to track and report data on consumers' complaints with MPSs.

Part IV of the report describes consumers' experiences with MPSs as collected from: media reports, consumers who contacted PIAC, contact with other organizations directly receiving consumer complaints and in-depth consumer focus groups designed by PIAC and conducted by research group Environics.

Part V details the problems encountered by consumers with respect to specific aspects of the MPS scheme, including: a) misleading advertising of MPSs; b) problems with the two-stage subscription process; c) problems with pricing and improper billing; d) the question of rogue MPS companies; e) the potential for fraud; f) problems seeking redress; and g) problems with accountability and transparency. Specifically, Part V details problems consumers can encounter while seeking redress through various complaint resolution mechanisms.

Part VI examines the regulatory role to be played by the CRTC and the CRTC's historical treatment of wireless services and MPSs. In this section, PIAC also discusses the CRTC's regulation of 900 services, which are analogous to MPSs.

Part VII compares other jurisdictions' approaches to problems with MPSs. In particular, certain regulatory structures and mechanisms in the United Kingdom and Australia will be examined, as well as the role of the Federal Trade Commission, class action lawsuits and wireless service providers in the United States. Consideration will be given to what measures may or may not work if applied in Canada.

To conclude, Part VIII advances recommendations regarding measures that will afford consumers greater protection within the MPS industry.

## C. METHODOLOGY

In order to comprehensively map the mobile premium services industry in Canada and the consumer experience within this industry, PIAC engaged multiple stakeholders and collected consumer reports from multiple sources. First, to better understand industry practices, PIAC examined information about MPSs provided on wireless service providers' websites and contacted customer service representatives to learn about using and disputing charges associated with MPSs. Later, PIAC consulted again with willing wireless service providers regarding their policies and practices for MPSs, both for managing the services and handling consumer complaints regarding these services. PIAC also examined information about MPSs provided on MPS websites to better understand the practices of MPS companies. PIAC analyzed advertisements for MPSs, both on wireless carriers' websites and on MPS companies' websites. PIAC consulted with the Canadian Wireless Telecommunications Association regarding their role in short code administration. PIAC also consulted with the Commissioner for Complaints for Telecommunications Services to better understand how their office handles complaints regarding MPSs. PIAC consulted with the Competition Bureau to discuss how the Bureau could address certain aspects of consumer complaints, such as advertising.<sup>3</sup> The RCMP and the Canadian Anti-Fraud Centre (formerly PhoneBusters) provided useful statistics and context regarding mass marketing fraud conducted using wireless phones. Finally, PIAC consulted foreign regulators in the United States and Australia to appreciate various regulatory approaches to MPSs including how consumer complaints about MPSs are handled in those jurisdictions.

Perhaps the strength of this report is its description of the consumer experience with MPSs. PIAC adopted a two-pronged approach to collect consumer stories. First, PIAC designed a discussion guide and engaged a research firm to conduct consumer focus groups. Second, PIAC publicly called for stories directly from consumers.

PIAC designed consumer focus groups to explore consumer views and experiences with MPSs. PIAC engaged research firm Environics to conduct six focus groups in Vancouver, Toronto and in Montreal with eight consumers recruited for each group. Consumer participants were screened to ensure that they had previous experience with MPSs. Environics conducted each focus group for two hours, employing a discussion guide designed with PIAC to comprehensively address multiple aspects of the consumer experience. The consumer focus groups comprise the bulk of PIAC's evidence of the consumer experience. The findings from the focus groups are summarized in Part IV and extensively quoted in Part V of the report.

PIAC also solicited anecdotal evidence from the public by advertising a call for stories on Facebook, Twitter, and PIAC's own website. These are highlighted as case studies throughout the report. The media also assisted by referring consumers to PIAC. PIAC received several stories from consumers detailing issues with various aspects of MPSs. PIAC followed up with these consumers to gather more detailed information about their experiences. At a minimum,

---

<sup>3</sup> The Competition Bureau provided a response to PIAC just prior to publication of this report (23 June 2011). Where possible, PIAC has incorporated comments of the Competition Bureau within the text of this report. A summary of the Competition Bureau's comments are provided in Appendix B.

these case studies reveal quite divergent descriptions between consumers and the wireless industry as to how consumers understand MPSs, how consumers subscribe and unsubscribe from MPSs, as well the availability of meaningful dispute resolution mechanisms. A few of these case studies are highlighted in Part III of the report.

Before focusing on the consumer experience with MPSs, it is necessary to first identify the various components of the MPS scheme. The following section defines mobile premium services, introduces the various players within the industry, describes the way MPSs work and outlines the structure of the business models and profit sharing arrangements underlying the MPS scheme.

## II. THE MOBILE PREMIUM SERVICES INDUSTRY

### A. WHAT ARE MOBILE PREMIUM SERVICES?

Mobile premium services (MPSs) are also known as premium text messages. These services use five or six digit numbers, called “common short codes” by the industry. MPSs can be text, picture, or video messages. Some MPSs are subscriptions where the consumer receives messages on a regular basis, such as three times a week, or even daily. Subscriptions are renewed automatically until consumers cancel the service. Other MPSs are pay-per-use services such as texting a vote to a contest seen on TV, or texting a request to a radio station. MPS charges can range from 15 cents per message to \$10 per message or can be billed on a monthly subscription basis. There is no maximum monthly charge for subscriptions. In one case, one consumer reported a very costly subscription MPS that charged the consumer \$5 per message sent twice a day.<sup>4</sup> The charges are billed to the consumer’s wireless phone bill or deducted from their prepaid credit.

Consumers sometimes believe that when they have an unlimited text messaging plans they will not be charged for premium messages; however, MPSs are not part of any unlimited text messaging plan. Unlimited text messaging plans only include standard rate text messages. MPSs are always charged in addition to an unlimited text message plan. Some consumers believe that if they do not open or reply to a premium text message, they will not be charged for it; however MPSs can, and usually are, charged to consumers regardless of whether consumers open or reply to the premium message. Adding to the confusion is the way MPSs are advertised and described. For example, various wireless service providers advertise text messaging services on their websites, but do not clearly describe the pricing differences between the various types of services.<sup>5</sup> It is left to the consumer to figure out which of these are standard text messages or premium text messages. Equally confusing is the information given to consumers when they purchase their phone plans in stores and the information given to consumers by wireless providers’ call centre representatives, such as being told unlimited plans allow free social networking through one’s handset, when in fact the sending and receiving of social networking messages can be free, standard rate or premium rate, depending on the plan and the provider.<sup>6</sup>

---

<sup>4</sup> Consumer S.L. contacted PIAC by email.

<sup>5</sup> Certain social networking tools are included in unlimited plans and some are not. For example, receiving messages from Twitter and Facebook may be free, but replying to Twitter and Facebook (depending on the type of message – be it a wall post or a chat message) may be charged at a standard rate. These social networking tools are often advertised under the “premium text messaging” sections of carriers’ websites, confusing the use of terminology like “free,” standard rate, and premium rate. For example, Rogers advertises “Premium Text Messaging” under the tab “Fun with Text,” see online: [http://www.rogers.com/web/content/add-ons/text-messaging?cm\\_mmc=Redirects--Consumer\\_Wireless\\_Eng--Addons\\_0110--textmessaging](http://www.rogers.com/web/content/add-ons/text-messaging?cm_mmc=Redirects--Consumer_Wireless_Eng--Addons_0110--textmessaging). Twitter and Facebook are listed in the same group as subscription MPSs such as My Luv Crush and skill2thrill. The Rogers customer is left wondering whether Twitter and Facebook are actually included in unlimited plans, and if not, whether they are charged at a standard rate or at a premium rate, or whether incoming social networking messages are charged differently from outgoing social networking messages. Similarly, Virgin advertises various “unlimited” text messaging plans, but then includes the disclaimer that “[i]nternational, premium text messages (like replies to a Tweet or Facebook message) and short codes are excluded from your text messaging plan or Add-on and are billed at a premium rate,” see online: <http://www.virginmobile.ca/en/hot-offers/offer-blackberry-social.html>. Virgin does not specify the premium rate for replies to Tweets or Facebook messages on this section of their website,

<sup>6</sup> PIAC contacted various wireless service providers’ customer service call centers between July 23 and 29, 2010 to ask about MPSs and other text messaging services. A representative at Virgin said that social networking services like Facebook are free with plans like the BlackBerry bundle, the smart plan combo or with an add-on plan. However, as indicated in footnote 4 above, only received

Moreover, a consumer may confuse a message from an MPS as being spam, especially when they do not believe that they have previously subscribed to these services. Spam messages are unsolicited messages and wireless service providers generally waive charges for text messaging spam. In contrast, MPSs will always cost the consumer in addition to the cost of any text messaging plan.

## **B. WHO ARE THE INDUSTRY PLAYERS?**

The short code industry became active in Canada in 2003-2004. As such, it is still relatively new to consumers, and is both novel and increasingly popular. At the same time, consumers struggle to understand who the various participants are and their respective roles in the industry. To provide clarification, the most common industry players are described below.

### ***i) Content Providers***

Content providers are the companies that want to promote their brand or their products to consumers through the medium of text messaging.<sup>7</sup> Content providers are often media companies such as broadcasters, radio stations, movie studios, and record companies, as well as sports and product companies. The content providers sponsor the creation of various applications like trivia, ring tones, and contests that promote their companies and products. Examples of content providers currently utilizing short code programs in Canada are the CBC, Dr. Pepper, MuchMusic, Ticketmaster, VISA and the Toronto Blue Jays.<sup>8</sup>

### ***ii) Application Providers / Platform Developers***

Application providers and platform developers are computer engineers or programmers who develop the software for MPSs. Some content providers are also application providers, but many application providers are independent. They create the programs that host the content that will be transmitted to consumers via text messages.<sup>9</sup> A larger organization, known as the application service provider, can offer network-based software solutions to content providers.<sup>10</sup>

### ***iii) Wireless Service Providers***

Wireless service providers are the companies that provide wireless phone services to consumers. Examples include Rogers Communications Inc., TELUS, Bell Mobility, Fido, Koodo Mobile, WIND, SaskTel, MTS, Virgin Mobile Canada and Videotron. Wireless service providers

---

messages are free, while replying to a Tweet or Facebook is billed at an undisclosed premium rate. A representative at WIND suggested that an unlimited MB data plan would cover the cost of mobile premium text messages, however WIND's website advertises that premium text messages (MPS) will vary in price depending on the MPS, and that receiving Tweets and Facebook updates is free, but replies will be charged per message sent. See online: <http://www.windmobile.ca/support/faq/special-numbers/>. Interestingly, WIND indicated in consultation with PIAC, that it does not carry any MPS, while its website lists short code programs for Facebook and Twitter, as well as hockey and weather updates that are charged at a monthly rate.

<sup>7</sup> Description given by the Common Short Code Administration, or CSCA, an American organization providing oversight of short codes in the United States, similar to the CWTA in Canada. The same terminology is used in the United States and Canada. See online: [http://www.usshortcodes.com/csc\\_partner.html#contentproviders](http://www.usshortcodes.com/csc_partner.html#contentproviders).

<sup>8</sup> The Toronto Blue Jays are owned by Rogers Communications Inc.

<sup>9</sup> CSCA online: [http://www.usshortcodes.com/csc\\_partner.html#contentproviders](http://www.usshortcodes.com/csc_partner.html#contentproviders).

<sup>10</sup> CWTA online: [http://www.txt.ca/english/current\\_codes.html](http://www.txt.ca/english/current_codes.html).

bill consumers for MPSs on their monthly bill or by deducting the charges from their pre-paid account.

#### ***iv) Aggregators***

Aggregators are the middlemen between content providers and wireless service providers. In order to run an MPS program, content providers must obtain a connection to participating wireless service providers' networks. Aggregators connect content providers with wireless service providers. Aggregators also often maintain the security, technical, and service level requirements of each wireless service provider's network.<sup>11</sup> For example, the aggregator MyThumb connects content providers like Sears, Coors Light, Universal Music, CTV, Sony, Shoppers Drug Mart, and MuchMusic to wireless service providers such as Rogers, TELUS, Virgin Mobile and Bell.<sup>12</sup>

In Canada, the wireless service provider and content provider must use either a Canadian-based aggregator or a foreign aggregator who deals directly with a Canadian aggregator.<sup>13</sup> Aggregators apply to have each short code program approved by the Canadian Wireless Telecommunications Association (CWTA) in accordance with the CWTA's Application Guidelines.<sup>14</sup> Aggregators are subject to the Common Short Code Code of Conduct that was developed by the wireless industry in Canada.<sup>15</sup> The procedure that aggregators must follow will be explained in greater detail later in this report.

Consumers can be confused trying to obtain the name and contact information for the company who is sending them premium text messages, when they are experiencing difficulty unsubscribing or disputing an MPS charge on their wireless bill. For clarity, the term "MPS company" is used throughout this report to refer to the third party who sends premium messages to the consumer and who bills the consumer for these messages via the consumer's wireless bill. Wireless service providers often refer to the MPS company as a "third party." This can be confusing for the consumer, as the name of the third party company operating the MPS program (e.g. TMG Americas) could be different from the name of the MPS game or program or promotion (e.g. Skill2Thrill or the Toronto Blue Jays). In any case, the consumer receives the premium text messages from the MPS company and usually needs to contact the MPS company to dispute charges or request a refund.

The following image demonstrates the content value chain for mobile content generally, which also applies to MPSs.

---

<sup>11</sup> CSCA online: [http://www.usshortcodes.com/csc\\_partner.html#contentproviders](http://www.usshortcodes.com/csc_partner.html#contentproviders).

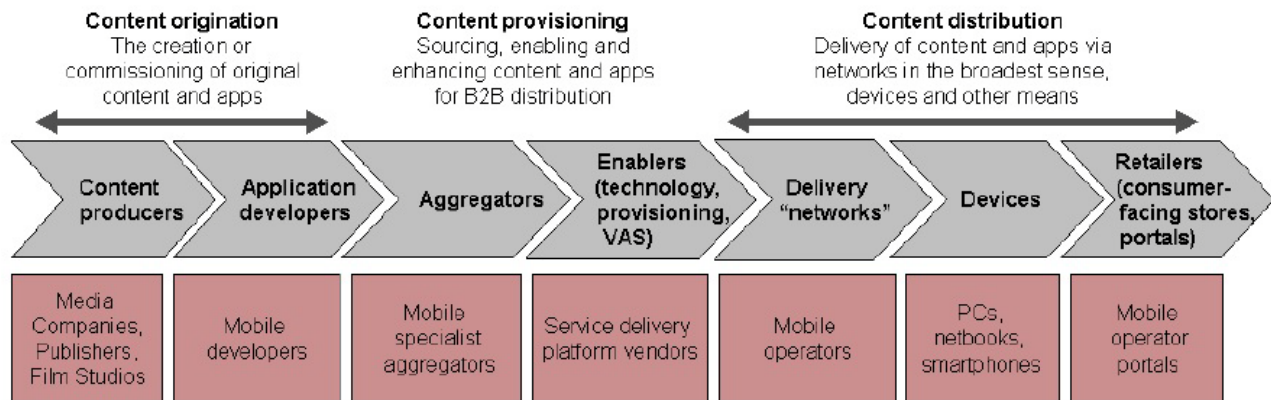
<sup>12</sup> For examples of various brands, retailers, media companies, non-profits and agencies that MyThumb has connected with various wireless service providers, see [www.mythumb.com](http://www.mythumb.com), click "check out our success stories," then click "meet some of our clients."

<sup>13</sup> For a list of aggregators see [www.txt.ca/english/business/links.php#agg](http://www.txt.ca/english/business/links.php#agg).

<sup>14</sup> For the Application Guidelines aggregators must follow, see the CWTA, "Canadian Common Short Code Application Guidelines, Version 1.1, 13 July 2010 [CWTA Guidelines] online:

<http://www.txt.ca/english/business/doc/Canadian%20Common%20Short%20Code%20Application%20Guidelines.pdf>.

<sup>15</sup> The Aggregator's Code of Conduct is found on pages 25-26 of the CWTA Guidelines.



Source: Ovum

Figure 1: Mobile Content Value Chain<sup>16</sup>

### v) **Canadian Wireless Telecommunications Association**

The Canadian Wireless Telecommunications Association (CWTA) is an industry association that represents the interests of cellular, messaging, and mobile service providers, as well as companies that develop and produce products and services for the wireless telecommunications industry.<sup>17</sup> The CWTA promotes the business interests of the wireless industry by intervening in key regulatory and public policy issues before the Canadian Radio-television and Telecommunications Commission (CRTC), Industry Canada, and House of Commons and Senate Committees.

In July 2003, Canada's wireless service providers came together with the CWTA to offer common short codes. The industry assigned the role of administrator of the common short code program to the CWTA. The CWTA leases all short codes that operate in Canada and keeps a list of all MPS programs in operation. The CWTA has developed Application Guidelines and Assignment Guidelines which include rules about how MPSs are required to operate, including required command words like STOP or INFO, and rules about subscribing and unsubscribing consumers.<sup>18</sup> The CWTA also developed a Code of Conduct for aggregators that specify minimum standards aggregators must meet when applying for approval of programs, and when connecting MPSs on wireless service providers' networks.<sup>19</sup>

The CWTA has a sub-committee, the Short Code Council (SCC), whose mandate is to develop standards for the management of common short codes. The SCC is currently chaired by a

<sup>16</sup> Ovum Consulting, "The Benefit of the Wireless Telecommunications Industry to the Canadian Economy: A Report prepared for the Canadian Wireless Telecommunications Association," April 2010 [Ovum Consulting] online:

[http://www.cwta.ca/CWTASite/english/pdf/OVUM\\_Study.pdf](http://www.cwta.ca/CWTASite/english/pdf/OVUM_Study.pdf)

<sup>17</sup> CWTA online: <http://www.cwta.ca/CWTASite/english/about.html>.

<sup>18</sup> CWTA, "Canadian Common Short Code Application Guidelines," Version 1.1, 13 July 2010 [CWTA Guidelines] online:

<http://www.txt.ca/english/business/doc/Canadian%20Common%20Short%20Code%20Application%20Guidelines.pdf>.

<sup>19</sup> CWTA, "Canadian Common SMS Short Code Assignment Guidelines," 26 June 2003 online:

[http://txt.ca/english/business/doc/Canadian\\_Common\\_SMS\\_Short\\_Code\\_Assignment\\_Guidelines.pdf](http://txt.ca/english/business/doc/Canadian_Common_SMS_Short_Code_Assignment_Guidelines.pdf).

representative from Rogers Wireless and includes representatives from other wireless service providers who consider and approve all MPSs to run in Canada. Two representatives from the SCC must agree to carry an MPS before it will be approved to operate in Canada, after which time most wireless service providers will carry the program.

The CWTA, as administrator of all short codes, also audits MPS programs for compliance with CWTA's Guidelines.

## **vi) Regulatory, Self-Regulatory, and Government Bodies**

### **a. The Canadian Radio-television and Telecommunications Commission**

The Canadian Radio-television and Telecommunications Commission (CRTC) is the federal level administrative tribunal regulating the telecommunications and broadcasting industries in Canada. The CRTC has forborne from regulating wireless services in Canada and thus does not regulate the MPS industry. In a decision responding to an application by a Quebec consumer group in 2009, the CRTC found that self-regulation of common short codes by the CWTA combined with the existence of a complaints handling body for the telecommunications industry in general are sufficient to protect consumers.<sup>20</sup> The CRTC's framework for regulation of wireless services and its decision regarding MPSs are discussed in greater detail later in this report.

### **b. The Commissioner for Complaints for Telecommunications Services**

A related but independent body, the Commissioner for Complaints for Telecommunications Services (CCTS), was created in 2007 in response to a Government Order-in-Council to report to the CRTC on consumer complaints in the telecommunications industry.<sup>21</sup> The CCTS hears complaints from consumers in relation to a variety of problems with telecommunications services.<sup>22</sup>

---

<sup>20</sup> Telecom Decision CRTC 2009-445 at para. 13 online: <http://www.crtc.gc.ca/eng/archive/2009/2009-445.htm>. The CRTC decided not to intervene in the regulation of MPS, stating that market forces and industry self-regulation provided sufficient protection to consumers.

<sup>21</sup> In April 2007, the Government of Canada (Governor in Council) ordered the creation of an independent, industry-funded consumer agency, to resolve complaints from individual and small business retail telecommunications customers (Order requiring the CRTC to report to the Governor in Council on consumer complaints, P.C. 2007-533). In July 2007, the CCTS was incorporated as a not-for-profit corporation and began operations. In December 2007, the CRTC issued Telecom Decision CRTC 2007-130, approving the structure and mandate of CCTS. The CRTC ordered all service providers with annual Canadian telecommunications revenues exceeding \$10 million to participate, commencing February 1, 2008. In Telecom Regulatory Policy 2011-46, the CRTC ordered all service providers regardless of revenue, to participate in the CCTS if they receive a complaint. The history of the CCTS is described on CCTS's website at <http://www.ccts-cprst.ca/en/documents/history>.

<sup>22</sup> The CCTS formerly handled a more limited range of complaints including (a) billing; (b) delivery of service (including installation, repair, and disconnection); (c) credit management; and (d) unauthorized transfer of service, however recent modifications to the CCTS' Procedural Code broaden its mandate. Generally, the CCTS will handle complaints related to: home telephone; long distance telephone services including prepaid calling cards; wireless phone services including voice, data, and text; wired and wireless Internet access services; and White page directories, directory assistance, operator services; compliance with contract terms and commitments (but not the contract terms themselves); billing disputes and errors (but not the price of the service itself); the delivery of service including installations, repairs, and disconnections; problems relating to security deposits, payment arrangements and collections; and unauthorized transfer of service. The CCTS does not assist with complaints relating to: television and radio broadcasting services; yellow page directories; security services such as alarm monitoring; internet content; software-based applications; payphones; 900/976 premium services; accessibility services such as teletypewriter; telemarketing or **unsolicited messages; claims of false or misleading advertising; the pricing of services;** privacy and confidentiality violations;

The CCTS generally exercises its powers informally, facilitating dialogue between the consumer and service provider to reach a mediated agreement regarding their dispute. If unsuccessful in achieving resolution, the CCTS can make a non-binding recommendation and, failing that, the CCTS can make an order which may include some financial restitution.<sup>23</sup>

While there are benefits to having a complaints-handling body for the telecommunications industry in general, it is important to note its limitations. The CCTS is not a regulatory body and thus does not regulate MPSs, the advertising of MPSs, nor the policies and business practices related to MPS. The CCTS does not advocate for regulatory or legislative measures to protect consumers from unfair industry practices. The CCTS acts as an ombudsman, ensuring that the wireless service providers follow practices and policies the industry has put in place.<sup>24</sup> The inability of the CCTS to address problematic underlying industry practices will be discussed later in the report.

### c. The Competition Bureau

It is possible that other branches of government may have oversight of various aspects of MPSs as well. For example, the Competition Bureau handles claims of false or misleading advertising in Canada, and therefore could potentially handle claims of false or misleading advertising relating to MPSs.<sup>25</sup> Notably, the Competition Bureau has published Enforcement Guidelines for the application of the *Competition Act* to representations made on the internet.<sup>26</sup> Thus, these guidelines would apply to advertisements for MPSs that were made online.

The Bureau advises that under its present legislative mandate, it “is not a consumer protection agency and cannot act on [a consumer’s] behalf to obtain reimbursement or to settle a dispute between two parties.”<sup>27</sup> The Bureau accepts general enquiries from consumers and assesses them to determine whether a formal inquiry should be commenced.<sup>28</sup> The Bureau has several potential enforcement powers and remedies available to it.<sup>29</sup> To date, while consumers have

---

**contract terms or terms on service agreements;** and complaints that have been, currently are, or should be before another organization or tribunal that has the authority to compensate a customer for losses arising from the occurrence at issue.

<sup>23</sup> In 2009-2010, 84% of complaints handled by the CCTS were resolved between the parties after the complaint came to the CCTS. Over 65% were resolved promptly at the first stage, usually within 30 days. Of the complaints that rose to the “Investigation” stage, over 66% were informally resolved through the CCTS’ efforts. In 2009-2010, 22 “Formal Recommendations” were issued, 18 (82%) of which were accepted by both parties. The CCTS was required to issue 4 “Decisions.” See CCTS, “Annual Report” 2009-2010 at pp. 9 & 14 online: <http://www.ctcs-cprst.ca/wp-content/uploads/2010/01/CCTS-Annual-Report-2009-2010.pdf>.

<sup>24</sup> CCTS, “Annual Report” 2009-2010 at p. 26, as per the CCTS: “When we investigate complaints, we review, interpret and apply the contract in order to determine whether the provider ‘reasonably performed its obligations pursuant to the applicable contract and followed its usual policies and operating procedures in its dealings with the Customer’ (section 4.1 of our Procedural Code).” The CCTS Procedural Code is available at <http://www.ctcs-cprst.ca/documents/procedural-code>.

<sup>25</sup> For a description of the Competition Bureau’s mandate, see [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_00529.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00529.html).

<sup>26</sup> Competition Bureau, “Application of the *Competition Act* to Representations on the Internet: Enforcement Guidelines” (18 February 2003), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01213.html>.

<sup>27</sup> For a description of the Competition Bureau’s complaints process, see [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_00129.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00129.html): “Any complaint examined by the Competition Bureau must fall within the scope of the: *Competition Act*; *Consumer Packaging and Labelling Act*; *Textile Labelling Act*; *Precious Metals Marking Act*. The Competition Bureau does not deal with the following issues: Bad service dealings with a person or business; Billing problems; Collection Agency harassment/problems; Contractual disputes; Information enquiry about a person and/or businesses standing or legitimacy; Refund issues; Store return and/or refund policy; Unethical behavior issues.

<sup>28</sup> Competition Bureau, “Filing a Complaint” online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02930.html>.

<sup>29</sup> “If it is determined that a complaint warrants further investigation, Bureau officers have a number of tools available to resolve competition issues. These tools are outlined in the Bureau’s Conformity Continuum and include: public education, written opinions, information contacts, voluntary codes of conduct, written undertakings and prohibition orders; the legal authority with court authorization to search for and seize documents and other forms of evidence, to take sworn oral evidence and to demand the production of documents and records; the ability to refer criminal matters to the Attorney General of Canada, who then decides

complained about MPSs to the Competition Bureau, no known investigations have yet been advanced by the Competition Bureau in response. For several reasons, including the fact that this might jeopardize an investigation, the Bureau does not usually indicate to the public when a company is being investigated.

#### **d. Provincial Governments**

Provincial consumer protection legislation may apply to consumer contracts for MPSs. However, the application of provincial legislation to a federally regulated industry is often constitutionally limited in addressing particular aspects of MPSs which consumers find problematic.

#### **e. Voluntary Industry Associations**

While not providing a legal or regulatory function, voluntary industry associations may also provide oversight over certain aspects of MPSs. Industry players are not required to join these associations.

For example, MPSs are advertised via various channels. Voluntary industry associations may handle consumer complaints about advertisements for MPSs through their own complaint resolution processes. The Advertising Standards Canada (ASC) is a national not-for-profit advertising self-regulatory body.<sup>30</sup> The ASC oversees the “Canadian Code of Advertising Standards,” which sets advertising standards, forms the basis for reviewing complaints about advertisements, and applies to advertising in any medium – radio, TV, newspapers, magazines, the internet and more.<sup>31</sup> The ASC also provides an investigation and complaints handling process through independent volunteer Consumer Response Councils.<sup>32</sup> Where the ASC determines that an advertisement has violated the Code, it may ask the advertiser to amend or withdraw the ad. The ASC publishes quarterly and annual complaints reports “as an important part of the advertising industry’s consumer response mechanism” and its commitment to “an objective and transparent consumer complaints process.”<sup>33</sup>

\* \* \* \* \*

In summary, the MPS industry has developed, in one sense, as a self-regulated industry with an industry association overseeing the leasing and administration of short codes. However, in another sense, MPSa are not simple consumer products or services. They are multi-faceted, engaging multiple spheres of law, regulation and self-regulation: wireless services; telecommunications; online, print, radio and television advertising; consumer contracts and more. This means that while the leasing and administration of short codes is overseen by the wireless industry association, other aspects of MPSs potentially engage multiple stakeholders

---

whether to prosecute before the courts; the power to bring civil matters before the Competition Tribunal or other courts depending on the issue; the authority to make presentations and intervene on matters of competition policy before federal and provincial boards, tribunals and commissions such as the Canadian Radio-television and Telecommunications Commission” (Competition Bureau, “Filing a Complaint” online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02930.html>).

<sup>30</sup> Advertising Standards Canada, online: <http://www.adstandards.com/en/AboutASC/aboutASC.aspx>.

<sup>31</sup> ASC, “Canadian Code of Advertising Standards” [the Code] online: <http://www.adstandards.com/en/Standards/canCodeOfAdStandards.aspx>.

<sup>32</sup> ASC, [www.adstandards.com](http://www.adstandards.com).

<sup>33</sup> ASC, “Ad Complaints Reporting,” online: <http://www.adstandards.com/en/ConsumerComplaints/adComplaintsReporting.aspx>. For archives of quarterly and annual complaints reports see <http://www.adstandards.com/en/Standards/previousReports.asp>.

such as those mentioned in the section above: government bodies such as the federal Competition Bureau; both voluntary and government-mandated complaints handling bodies such as the Canadian Anti-Fraud Centre and the CCTS; the federal Canadian Radio-television and Telecommunications Commission and provincial agencies charged with consumer protection; and voluntary industry associations such as the ASC. The sheer number of players and their various roles in the MPS scheme demonstrates that the MPS industry is not merely a subset of the wireless industry, but is in fact larger and more complex. As such, there is much more to mapping the consumer experience with MPSs than merely describing the leasing and administration of short codes or the wireless industry's guidelines for how MPSs are designed to function technically. However, the CWTA's administration of short codes and its Guidelines on how MPSs are designed to operate are a critical starting point on the map, and are outlined below.

### **C. THE RULES OF THE MOBILE PREMIUM SERVICES GAME**

It is evident after examining consumer and media reports that consumers provide one explanation for their experiences with MPSs, and the industry provides a very different description. However, before being able to compare these divergent explanations, this report will outline the technical and administrative process of leasing and operating MPS programs. The following information was provided by the Canadian Wireless Telecommunications Association (CWTA)<sup>34</sup> and describes both the process for approval of all MPS programs in Canada, and the guidelines all MPS programs are to follow. We call these the "rules of the game."

As mentioned earlier, the CWTA is the industry group that administers the short code program. The first step is to submit an application to the CWTA for approval to operate an MPS program in Canada. The aggregator is usually responsible for submitting the application and the required documentation to the CWTA.<sup>35</sup> Within the CWTA is a sub-committee called the Short Code Council (SCC), which comprises representatives of various wireless service providers.<sup>36</sup> No MPS will be approved to run in Canada unless there are two wireless service providers from the SCC who agree to carry the service.<sup>37</sup> It seems that while two carriers initially agree to carry a program for the purposes of its approval by the CWTA, following that, the MPS can be billed to most consumers on most wireless service providers' plans. WIND, Mobilicity, and Public Mobile are current exceptions. While they currently do not participate in most MPS programs, they have indicated that they are considering providing access to MPSs in the future.<sup>38</sup>

---

<sup>34</sup> PIAC phone and email consultations with CWTA in the fall of 2010; PIAC consultation with the CWTA, 9 February 2011. See also the CWTA's websites online: <http://www.cwta.ca> and <http://www.txt.ca/english/consumer/index.html>.

<sup>35</sup> For a model application form, see [http://www.txt.ca/pdfs\\_downloads/model\\_shortcode\\_application\\_form.pdf](http://www.txt.ca/pdfs_downloads/model_shortcode_application_form.pdf).

<sup>36</sup> The SCC is currently chaired by a representative from Rogers Wireless and is comprised of at least one representative from each wireless service provider. As of the writing of this report, the wireless service providers who are members of the CWTA are: Bell, Fido, Koodo Mobile, MTS Allstream, Rogers Communications Inc., SaskTel, Solo, TELUS (including Mike), and Virgin Mobile Canada.

<sup>37</sup> Guidelines at page 10, section 2.

<sup>38</sup> Where information on MPS was not clear on wireless service providers' websites, PIAC's research team contacted providers by email and phone throughout 2010 and 2011 to clarify whether they currently allow or plan to allow MPS in the future. WIND indicated that they are considering allowing MPS in the future, while Mobilicity and Public Mobile did not respond to our query. The

After a period of testing to ensure the MPS is operational and technically compliant, the MPS is licensed for an initial period of three months with the opportunity to renew or extend the lease.<sup>39</sup> The CWTA leases short codes for a monthly fee of \$500 for the first 3 months, with extensions available at the cost of \$350 per month.<sup>40</sup>

The CWTA keeps a list of all operational MPS programs running in Canada, which can be viewed online.<sup>41</sup> The list may be helpful for consumers who have an MPS charge on their bill and are seeking the name or contact information for the company behind the MPS program.<sup>42</sup>

The CWTA conducts audits of MPS programs.<sup>43</sup> Audits check for technical compliance with program guidelines, such as technical functioning of command words like STOP, INFO and HELP.<sup>44</sup> While the CWTA does not publicly disclose audit procedures or results, the Guidelines indicate that the CWTA will give audit results to aggregators and wireless service providers.<sup>45</sup>

The CWTA's Guidelines indicate that it is the aggregator's responsibility to ensure that all required modifications are made as soon as possible to bring a noncompliant MPS into technical compliance.<sup>46</sup> Depending on the level of severity of the infraction, new and revised applications submitted by the respective aggregator will not be reviewed by the Short Code Council (SCC) until all required changes have been completed.<sup>47</sup> Severe noncompliance issues can result in suspension of traffic on the short code in question until the issue is resolved and in the most severe cases, the lease can be revoked and the short code can be deactivated.<sup>48</sup>

### ***i) The Double Opt-in Mechanism***

As mentioned earlier, one aspect of technical compliance for MPSs is the "double opt-in." As per CWTA Guidelines, a consumer is required to subscribe to an ongoing (subscription) MPS using a two-step process.<sup>49</sup> Commonly, the consumer will see an advertisement (often called a "call to action") either on television, a billboard, or online, prompting the consumer to send a text message to the advertised short code. When the consumer responds to a call to action, this is considered the first step in the process, or the first opt-in.

---

CWTA asserts that the smaller new entrants to the market have expressed an intention to allow MPS in the future: see <http://www.txt.ca/english/business/doc/Canadian%20Common%20Short%20Code%20Application%20Guidelines.pdf>.

<sup>39</sup> CWTA Guidelines, section III.4 at p. 11: "The Short Code will be assigned for the duration of the program proposed to offer, up to a maximum of 12 months. Prior to the expiration of the lease and assuming the CSC program and account are in good standing, the CWTA will offer the leaseholder the opportunity to renew the lease for a maximum of 12 months."

<sup>40</sup> CWTA Guidelines, section II.7 at p. 8.

<sup>41</sup> For the list of short code programs operating in Canada see CWTA online: [http://www.txt.ca/english/current\\_codes.html](http://www.txt.ca/english/current_codes.html).

<sup>42</sup> CWTA online: [http://www.txt.ca/english/current\\_codes.html](http://www.txt.ca/english/current_codes.html). Note that this list is intended to be updated regularly, but may not provide all current MPS, or a link or contact information for the MPS company.

<sup>43</sup> CWTA Guidelines, section III.7, at p. 11: "[T]he CWTA will perform ongoing compliance testing to ensure that all CSC programs adhere to the CSC Code of Conduct and other guidelines as outlined in this document."

<sup>44</sup> CWTA Guidelines, section IV.2. at pp. 13-15.

<sup>45</sup> CWTA Guidelines, section III.7 at p.11: "The results of these tests will be reported to the WSPs."

<sup>46</sup> CWTA Guidelines, section III.7 at p. 11: "Upon receiving the compliance test results, it is the Aggregator's responsibility to ensure that all required modifications are made as soon as possible."

<sup>47</sup> CWTA Guidelines, section III.7 at p. 11: "Depending on the level of severity of the infraction, new and revised applications submitted by the respective Aggregator will not be reviewed by the Short Code Council until all required changes have been completed."

<sup>48</sup> CWTA Guidelines, section III.7 at pp. 11-12: "Higher level severity issues will result in suspension of traffic on the Short Code in question until the issue is resolved. In the most severe cases, the lease will be revoked and the Short Code will be deactivated."

<sup>49</sup> CWTA Guidelines, section IV.6 at pp.16-18.

There are two ways in which a consumer can complete the double opt-in: 1) exclusively through their handset; or 2) through a combination of their handset and an online mechanism. Each will be demonstrated in turn.

### a) Double Opt-in via Handset Only

A consumer may see an advertisement or a “call to action” prompting the consumer to send a text message to the advertised short code. The ad may be on television, a billboard or online. Below is a hypothetical advertisement that might be seen on a wireless service providers’ website:

|       |         |   |
|-------|---------|---|
| 88888 | WINQUIZ | This trivia game is based on knowledge, skills and not luck! Text “WINQUIZ” to 88888 for your chance to win stuff! Like an iPod or PLASMA TV. |
|-------|---------|---|

In this example, when the consumer texts “WINQUIZ” to the short code 88888, he or she completes the first opt-in. Notably, several programs can run on a single short code and a consumer may subscribe to a specific program by texting a different keyword to the short code. For example, short code 55455 operates various fun alert programs, such as gossip news that is activated by texting STAR to the 55455 short code, or pick up lines that is activated by texting PICKUP to the 55455 short code.

The MPS sends an information text message to the consumer’s handset explaining certain terms and conditions in brief.<sup>50</sup> The information message also requires the consumer to reply with a text message saying yes (or Y) to confirm they are signing up for the MPS. See below for a hypothetical information message the consumer may receive on their handset.

|  |
|--|
| Play WINQUIZ 4 ur chance to WIN! Max 4 Qs/wk (\$2/msg). Reply Y to play. Txt STOP to end. Info: <a href="http://www.winquiz.com">www.winquiz.com</a> |
|--|

The second step in the process, called the “double opt-in,” occurs when the consumer takes the positive step of replying Y to the information text message. At this point, the consumer is subscribed to the MPS.

### b) Double Opt-in via Online Mechanism + PIN to Handset

In the alternative, a consumer may subscribe through a combined method of using their handset and an online mechanism. Typically, the consumer will be online and will see a pop-up advertisement, which encourages them to enter their wireless number for the opportunity to participate in an MPS. While often a pop-up ad, the online mechanism could be a website, a

<sup>50</sup> CWTA Guidelines, section IV.6.2 at p.17: “During the course of subscribing to any subscription program, the following information must be noted in the double opt-in message: 6.2.1 Identifying that the service is a subscription; 6.2.2 Pricing terms, message frequency and billing interval; 6.2.3 Description of the program type (chat, vote, alert, etc.); 6.2.4 Contact details for the program sponsor including toll free number and/or website URL and/or email address at a minimum; 6.2.5 How to stop the service using the STOP command (at a minimum).”

banner advertisement, or an application on a social networking site such as Facebook. Below is an example of a screen prompting the consumer to enter their mobile number to receive their IQ test score.

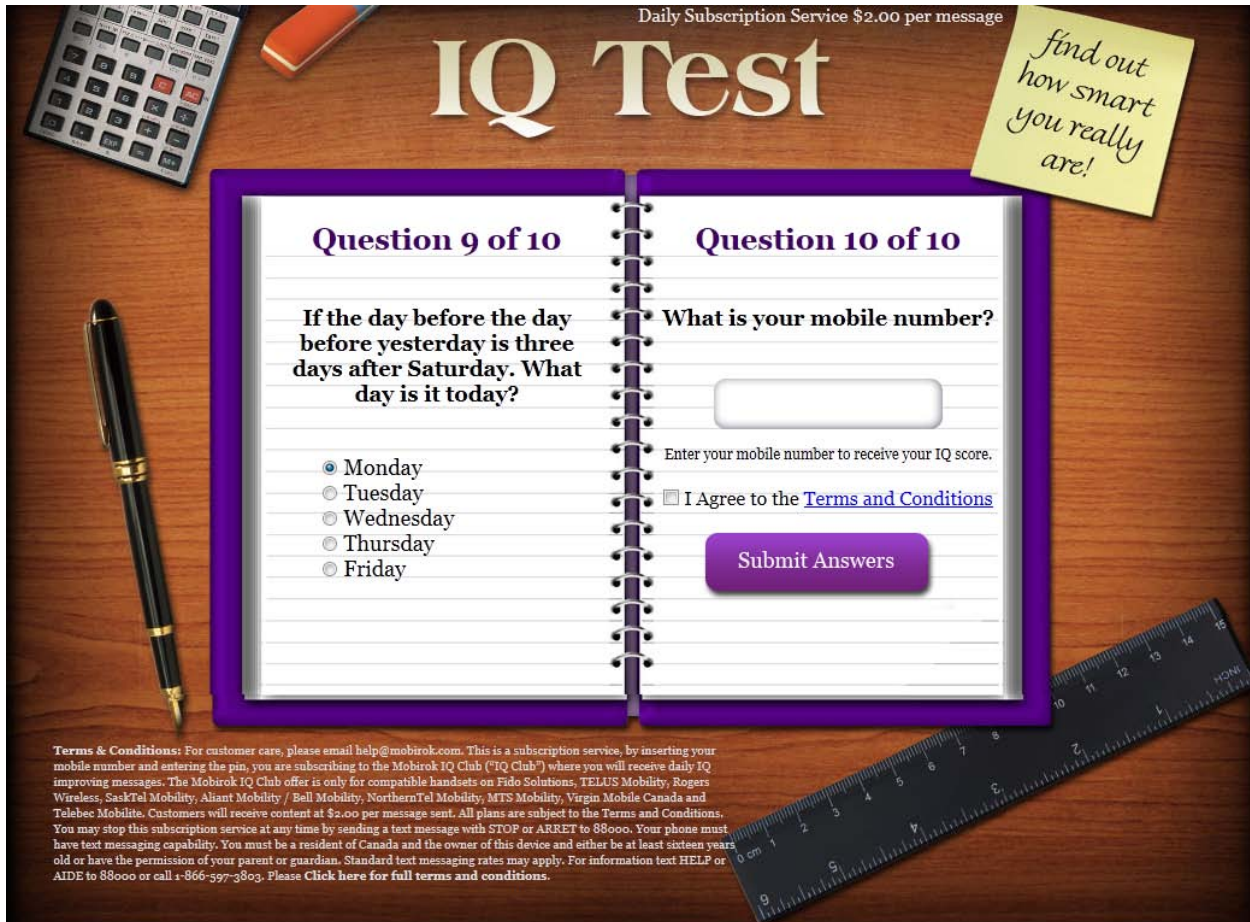


Figure 2: Mobirok IQ Test website prompting consumer to input mobile number to receive IQ score<sup>51</sup>

After entering their wireless number on the advertisement or into the social networking application, the consumer will receive an information text message on their handset which will include a PIN. See below for a hypothetical information text message the consumer may receive on their handset:

\$2/msg. For score & daily facts subscription enter ur PIN 3562 on the web. Call 18665973803 for help. Reply STOP to cancel subscription

<sup>51</sup> Link to Mobirok IQ Test: <http://www.mobirok.com/iq/test/>.

After the consumer enters their mobile number into the webpage, the consumer is presented with the next webpage that requests the PIN that was sent to the consumer's mobile phone. Below is an example of the screen that requests the consumer's PIN code.

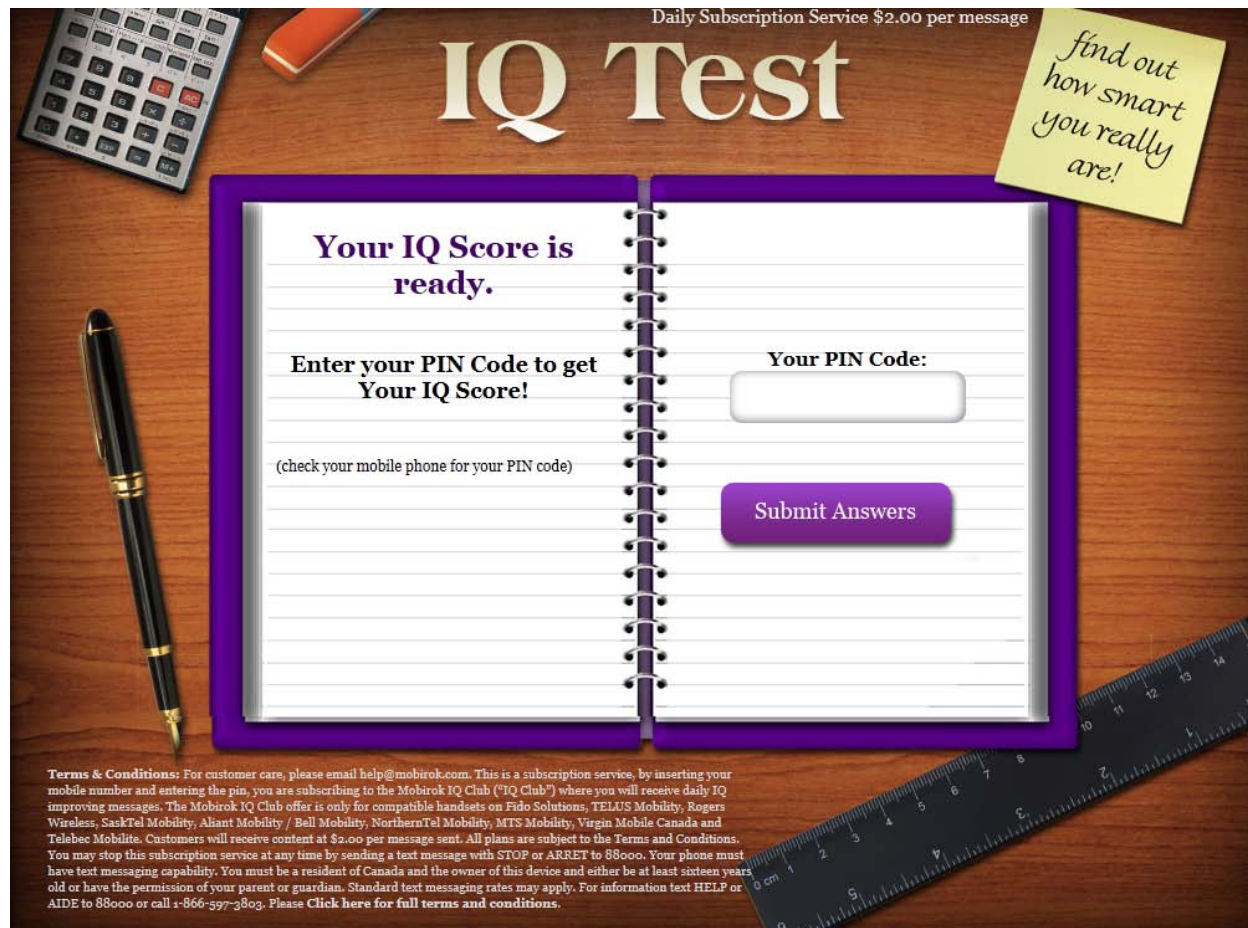


Figure 3: Mobirok IQ Test website requesting consumer PIN code

The double opt-in occurs when the consumer enters the PIN into the same online mechanism (i.e. the advertisement or social networking application). After entering the PIN, the consumer is subscribed to the MPS.

## ii) **Mandatory Key Words**

In addition to the requirement that subscription MPSs can only be subscribed to via the two step process, there are also certain command codes that all programs must operate.<sup>52</sup> For example, consumers must be able to send a text message that reads STOP or ARRET and the program must immediately cease sending premium text messages. The program is not allowed to continue to bill the consumer after this point. Consumers must be able to access help or information by texting HELP or INFO or AIDE to the short code. Consumers must also receive a

<sup>52</sup> CWTA Guidelines, section IV.2 at pp. 13-15.

subscription reminder text message at least once a month providing summary subscription information.<sup>53</sup>

### ***iii) Advertisements***

Beyond technical functioning, the Guidelines also set out certain minimum standards for MPS advertisements and “calls to action” (where the consumer is invited to send a text message to a short code). Advertising guidelines<sup>54</sup> are summarized here in brief. Advertising should be clear and conspicuous regarding all terms and conditions associated with the program. At all times, the MPS company must inform consumers of the cost of sending and/or receiving a text message to MPS. No program should be promoted as free unless it is genuinely free. All forms of advertised calls to action for MPSs are required to disclose: the billing period and applicable cost using a dollar sign “\$”. For example, “\$2/msg” and “\$0.50/msg” are acceptable pricing disclosures, however “2/msg” is not acceptable. Additionally, the frequency of message delivery must be disclosed if it is an ongoing service. Where the consumer receives a text message containing a link to a website accessible on the consumer’s mobile phone, messaging must additionally state that “Data rates may apply.” Advertisers are encouraged to use less text message savvy language when disclosing the pricing terms, message frequency and opt-out information.

When advertising online, the ad must also disclose whether the signup process requires the consumer to visit multiple web pages, the cost for participating in the program must be clearly included on all pages throughout the signup process (from the first contact page to the last contact page including pages in between that are not requesting consumer registration information). Calls to action should not contain language or utilize tools that convey a sense of urgency about an offer or service (e.g. a countdown clock). The consumer’s wireless phone number cannot be pre-populated in data entry fields. The content provider must own and control the wireless number entry page for all premium subscription online registrations. Summary terms and conditions must be completely visible (above the fold at screen resolution 1024x768 for Internet Explorer 8) and not automatically pre-checked in cases where a consumer is asked to accept the terms.

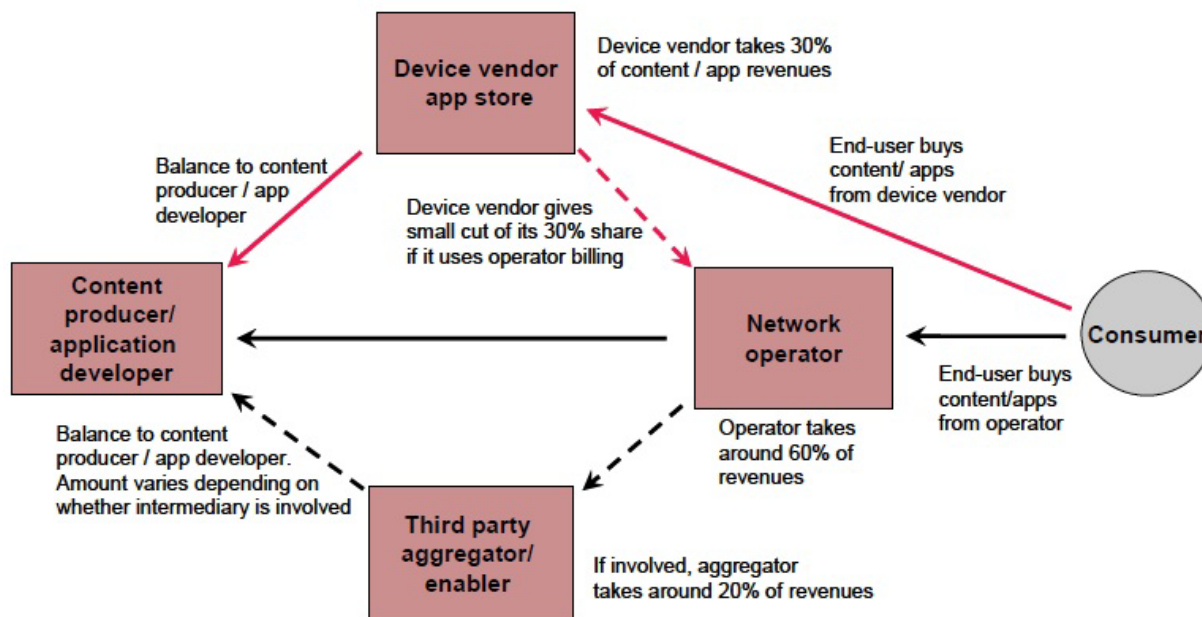
---

<sup>53</sup> CWTA Guidelines, section IV.6.3 at p.19: “A monthly reminder message is a notice of continuation of the subscription service...The monthly subscription reminder message must contain: 6.3.1 The name of the service; 6.3.2 That the service is a subscription service; 6.3.3 Billing period and advice of charge of the program and; 6.3.4 Instructions on how to stop the service using the <STOP> keyword (at a minimum).”

<sup>54</sup> CWTA Guidelines, section IV.1 at pp. 12-13.

## D. WINNERS AND PROFITS

A map of the MPS industry would not be complete without tracing the profit-sharing arrangements between players. In a publication prepared for the CWTA in April 2010, Ovum Consulting reported that business arrangements for mobile content in Canada generally involve the allocation of approximately 20% of revenues to aggregators, approximately 30% to content providers (including application and device suppliers), and 60% to wireless service providers.<sup>55</sup> MPSs are included in mobile content. The chart below demonstrates the content value distribution for mobile content generally, but also applies to MPSs.



Source: Ovum

**Figure 4: Mobile Content Value Distribution**<sup>56</sup>

This profit-sharing allocation is not uncommon globally. For example, in India, where aggregators and platform developers are calling for changes to the business model and seeking a more equitable profit-sharing arrangement, the division is currently very similar to Canada's with approximately 20-25% of profits to aggregators, 10-15% to content owners/providers, and 60-65% to wireless service providers.<sup>57</sup> In Australia, aggregators receive approximately 10% of profits, with content owners/providers at 50%, and wireless service providers at 40%.<sup>58</sup> In

<sup>55</sup> Ovum Consulting, "The Benefit of the Wireless Telecommunications Industry to the Canadian Economy: A Report prepared for the Canadian Wireless Telecommunications Association," April 2010 [Ovum Consulting] online: [http://www.cwta.ca/CWTASite/english/pdf/OVUM\\_Study.pdf](http://www.cwta.ca/CWTASite/english/pdf/OVUM_Study.pdf).

<sup>56</sup> Ovum Consulting, Figure 10 at p. 14.

<sup>57</sup> Telecominfo's Weblog, "Significant VAS terms: Business models, Market share, future speculation of mVAS in India," September 2008 online: <http://telecominfo.wordpress.com/2008/12/23/significant-vas-terms-business-models-market-sharefuture-speculation-of-mvas-in-india/>.

<sup>58</sup> PIAC email consultation with the Australian Communications and Media Authority (ACMA) 28 March 2011 citing Paul Budde Communication Pty Ltd., "Australia – Mobile Communications – Market Trends and Surveys," September 2009.

China, it is reported that profits are divided depending on which player provides marketing and customer service, so that if aggregators provide marketing and customer service they receive approximately 85% of the profits; if wireless service providers provide marketing and customer service they receive approximately 30-50% of profits.<sup>59</sup>

Academics suggest that the traditional concept of the value chain in the wireless industry allows wireless service providers to dominate the chain and profit the most from the MPS scheme.<sup>60</sup> Wireless service providers control the gateway – that is, the network, and can therefore profit the most, as the arrangement would not be possible without them. Even in countries where more equitable profit sharing is structured into the arrangement, either by government intervention or otherwise, wireless service providers still usually profit significantly.

This is not to say that wireless service providers are necessarily profiting unfairly, just that they are profiting considerably, and often profiting the most, from mobile premium services. In Canada, where wireless service providers derive 60% of the profits from MPS revenues, where wireless service providers allow MPSs on their networks, and where wireless service providers provide the billing platform and collect MPS charges from their consumers, it is odd for a wireless service provider to even characterize MPS charges as “third party” charges, considering that the wireless service provider is the first party to profit from them.

The CRTC reports that the wireless industry as a whole for all services posted profits of \$16.8 billion in 2009.<sup>61</sup> Ovum Consulting describes revenues in Canada from mobile content and applications generally, which includes MPSs, as “quite modest” at \$176 million in 2008.<sup>62</sup> However, Ovum projects rapid development in the MPS sector.<sup>63</sup> Ovum estimates the breakdown of profits from various types of content and applications at: \$43 million per year for personalized content (including ringtones, screensavers etc); \$39 million per year for mobile games; \$23 million per year for music downloads and music videos; and, of particular interest for this report, \$30 million per year for “other content” such as alert services, sports, weather, betting, horoscopes, and gossip alerts; premium or branded news and information service subscriptions; pay-on request information services. Presumably, the latter \$30 million in content includes pay-per-message MPSs, or subscription MPSs. With wireless service providers collecting 60% of these “modest” but ever-increasing revenues, it seems not unreasonable for consumers to ask that wireless service providers to acknowledge and take consumer issues

---

<sup>59</sup> Internet & Mobile Association of India, “Towards a liberal mobile Value Added Services Regime: Approach paper submitted by the Internet and mobile Association of India to the Ministry of Communications and Information Technology in March 2007,” online: <http://www.iamai.in/Upload/policy/Mobile%20Vas.pdf>.

<sup>60</sup> Joe Peppard and Anna Rylander, “From Value Chain to Value Network: Insights for Mobile Operators,” *European Management Journal*, Vol. 24, Issue 2, 2006: “Mobile operators are today in a key position as they ‘own’ the mobile delivery channel as well as relationships with customers... To maintain this position, operators have sought to develop ‘walled garden’ portals to ensure that content creators are kept away from end-customers... This practice is based on the old conception of the value chain with its value creating logic as a linked chain of activities, a perspective that leads to the development of strategies focused on controlling the chain” (*ibid.* at pp. 2-3). See also, Puree Sirasoontorn and Rohan Samarajiva, “Business Models for Delivering Mobile Value Added Services (VAS) in Developing Markets,” LIRNEasia Policy Brief May 2008 online: <http://lirneasia.net/wp-content/uploads/2008/05/Policy-Brief-Mobile-Value-Added-Services.pdf>. See also Telecominfo’s Weblog, “Significant VAS terms: Business models, Market share, future speculation of mVAS in India,” September 2008 online: <http://telecominfo.wordpress.com/2008/12/23/significant-vas-terms-business-models-market-sharefuture-speculation-of-mvas-in-india/>.

<sup>61</sup> CRTC, Communications Monitoring Report, 2010, Table 5.5.1 at p. 154 online: <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2010/cmr2010.pdf>.

<sup>62</sup> Ovum Consulting at pp. 13-14.

<sup>63</sup> Ovum Consulting at pp. 13-14.

seriously, to respond to consumers' inquiries truthfully and transparently, to assist consumers in their use of and dispute resolution related to MPSs, and to put in place customer service training and proactive policies to protect consumers from noncompliant MPS companies.

### III. CONSUMER COMPLAINTS WITH MOBILE PREMIUM SERVICES

#### A. THE EXISTENCE OF THE PROBLEM

##### *i) Difficulties Mapping Consumers' Problems*

As mentioned, two important objectives of this report are to map the mobile premium services industry in Canada and to map consumers' experiences within the industry. In mapping the existence of consumers' problems with mobile premium services, PIAC encountered difficulties obtaining Canadian research and hard statistics. Canada has very little qualitative and even less quantitative research into consumers' experiences with MPSs. Without such data, the MPS industry has to date remained unconvinced of the extent of consumers' problems with MPSs.

In comparison, the Australian Communications and Media Authority (ACMA) has "conducted qualitative and quantitative research into consumer expectation and usage behaviours in regard to MPS in Australia."<sup>64</sup> In addition, the ACMA augments its research with complaints data from Australia's Telecommunications Industry Ombudsman (TIO) and the related experiences of overseas mobile premium services regulators. The ACMA considers this aggregate data a "comprehensive evidence base for assessing the effectiveness of safeguards for mobile premium services."<sup>65</sup> In the United Kingdom, the regulator PhonepayPlus provides research, complaints data, and information on regulatory interventions taken against MPS companies, providing useful data for both industry and consumers.<sup>66</sup>

Thus far, MPS industry players in Canada refuse to acknowledge that consumer problems with MPSs that are happening around the globe are also happening here. This report is foundational, as it maps the industry in Canada and the consumer experience with the industry and draws connections to consumers' experiences globally. The following section explains why quantitative MPS complaint statistics are currently difficult to obtain in Canada. This section also indicates that the prevalence of complaints reported anecdotally here, as well as the prevalence of complaints reported qualitatively and quantitatively around the globe makes it apparent that Canadian consumers experience the same difficulties with MPSs as consumers in other jurisdictions.

##### *ii) Consumer Complaints Made to the Telecommunications Industry*

One reason that gathering quantitative data is difficult in Canada is that consumers struggle to bring their complaints forward at most steps in the complaint process. Consumers' difficulty at each stage in the complaint process demonstrates the hurdles consumers must overcome in order to make complaints heard, much less get complaints resolved, through the industry. Specifically, consumers may not notice MPS charges on bills, may not receive proper

---

<sup>64</sup> Chris Chapman, Chairman, Australian Communications and Media Authority, Public Comments on the Review of the Mobile Premium Services Code, 30 July 2010 [ACMA Public Comments] online: [http://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0020/24608/Review-of-the-Mobile-Premium-Services-Code.pdf](http://www.commsalliance.com.au/_data/assets/pdf_file/0020/24608/Review-of-the-Mobile-Premium-Services-Code.pdf). See also the ACMA's website for various research, consumer brochures and publications on MPS online: <http://www.acma.gov.au/WEB/HOMEPAGE/pc=HOME>.

<sup>65</sup> ACMA Public Comments online: [http://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0020/24608/Review-of-the-Mobile-Premium-Services-Code.pdf](http://www.commsalliance.com.au/_data/assets/pdf_file/0020/24608/Review-of-the-Mobile-Premium-Services-Code.pdf).

<sup>66</sup> See PhonepayPlus online: <http://www.phonepayplus.org.uk/>.

information or assistance from wireless service providers, may be blamed and consequently feel silenced by their wireless service provider and the MPS company when they do complain, may not have their unresolved complaints escalated internally through customer service channels, and may not know about or be informed of their right to take unresolved complaints to the CCTS. These difficulties suggest that industry players are not tracking and not acting on consumer complaints to the satisfaction of consumers.

### ***iii) Complaints Made to Organizations, Governments & Other Agencies***

When unsuccessful at disputing the charges with their wireless service provider, some consumers may attempt to pursue their complaints through various regulatory and self-regulatory agencies. However, few agencies currently track or report the number of complaints they receive regarding MPSs and as such, this information is not known. Specifically, the CWTA and the CRTC do not collect, track, or report information specific to MPS complaints. This is not surprising, as these bodies are not required to track such complaints. The CCTS also does not track or categorize complaints specifically as MPS complaints, however they confirmed that such complaints constitute approximately 5% of wireless complaints received.<sup>67</sup> Additionally, the CCTS noted the trend of MPS complaints in their recent annual report, recognizing the difficulties consumers can experience using MPSs and stating, “[g]iven that the Short Codes program guidelines prescribe rules that should prevent all of these [problems] from happening, the number of complaints is surprising.”<sup>68</sup> Lack of tracking by the industry and lack of tracking by complaint-taking bodies may explain in part why consumer complaints about MPSs seem surprising to industry, and thus far, may have been dismissed as being less numerous and serious than they truly are.

The Competition Bureau noted that they receive a number of consumer complaints about MPSs. While they were not able to provide a definite number about MPS complaints and could not provide details about when the Bureau began receiving complaints, they estimated approximately 100 consumer complaints about MPSs in the past year. Most consumers raise billing issues or issues regarding the terms and conditions of these services. The Bureau noted a trend that the number of complaints received about MPSs is increasing and they expect to see an increase in consumer complaints as mobile communications continues to grow.<sup>69</sup>

Other industry associations are now beginning to collect information on and respond to consumer MPS complaints. While the consumer complaint information collected by community groups will not provide a quantitative research basis for policy makers or governments, it should challenge the industry to listen and respond in consumers’ better interest. For example, the Better Business Bureau Victoria branch recently counted premium text messaging in its top ten

---

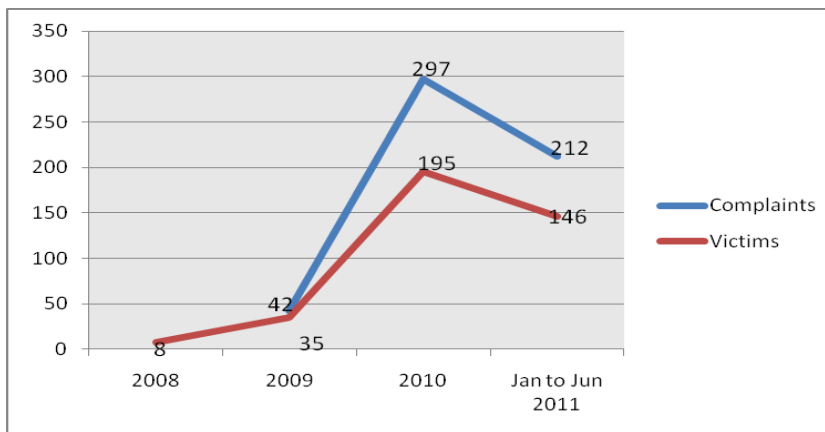
<sup>67</sup> PIAC consultation with CCTS, 14 October 2010.

<sup>68</sup> CCTS, “Annual Report” 2009-2010 at pp. 31-32 online: <http://www.ccts-cprst.ca/wp-content/uploads/2010/01/CCTS-Annual-Report-2009-2010.pdf>.

<sup>69</sup> PIAC consultation with the Competition Bureau, 23 June 2011.

scams of the year.<sup>70</sup> The Advertising Standards Canada (ASC) has received consumer complaints about misleading MPS advertisements.<sup>71</sup>

Notably, the Canadian Anti-Fraud Centre (CAFC, formerly PhoneBusters), which is jointly managed by the Royal Canadian Mounted Police, the Ontario Provincial Police and the Competition Bureau, has recognized a rising trend in complaints about text messaging fraud. The CAFC is a central fraud data repository, logging data from more than 25,000 victims each year. The CAFC noted a significant increase in complaints about text message fraud, which they have received since 2006, most of which are regarding unauthorized text messaging, false billing, or prize scams. In 2008, the CAFC received complaints about text messaging fraud from 8 victims claiming \$135 in dollar value loss, compared to 42 complaints, 35 victims and \$2,665.77 reported dollar value loss in 2009. In 2010, CAFC noted a significant increase in complaints regarding text messaging with 297 complaints, 195 victims and \$23,489.72 dollar value loss. CAFC reported that in 2011 up to June, they have received 211 complaints with 145 victims and \$8,802.70 reported dollar value loss to date.<sup>72</sup>

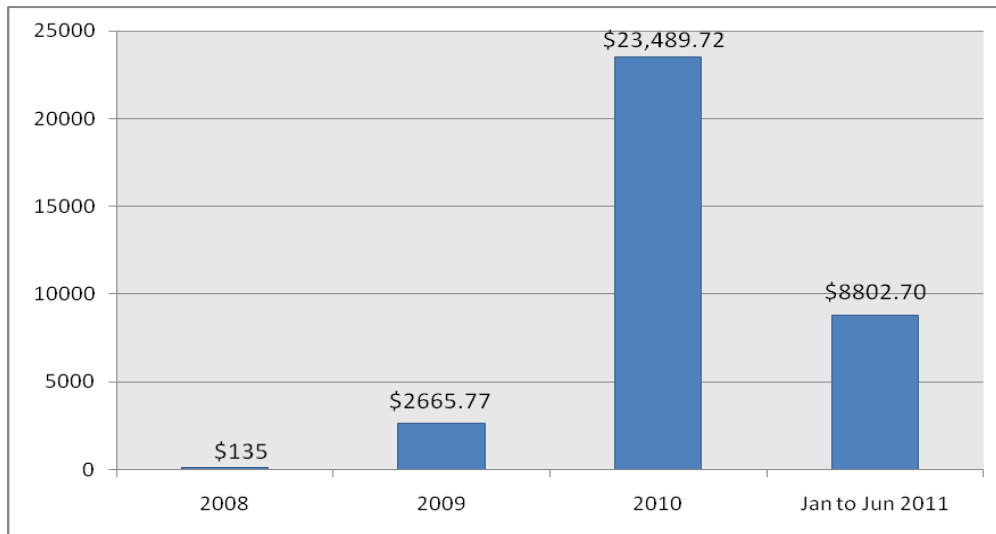


**Figure 5: Number of complaints and victims reporting text messaging fraud (up to June 2011)**

<sup>70</sup> Better Business Bureau, Victoria British Columbia Branch, "Top 10 Scams of 2009: Protect Yourself From Becoming a Victim of Fraud in 2010" online: <http://vi.bbb.org/article/top-10-scams-of-2009-protect-yourself-from-becoming-a-victim-of-fraud-in-2010-14526>; "If you own a cell phone and see new and unexplained charges on your bill each month, it may be due to premium text message services. People complain that they did not realize they were signing up for this service when they were signing up to play an online game or do an IQ test. In the end they were getting billed monthly and it is not through their cell phone service provider, but through a third-party company who may be hard to contact."

<sup>71</sup> Advertising Standards Canada, Complaints Archive at the 4th Quarter 2008 and 2<sup>nd</sup> Quarter 2010 online: <http://www.adstandards.com/en/Standards/previousReports.asp>.

<sup>72</sup> Statistics were provided by the Canadian Anti-Fraud Centre via email to the Public Interest Advocacy Centre on November 3, 2010 and updated on June 6, 2011. For 2011, one complaint was omitted, as the complaint was regarding a victim corresponding with a suspect via text message for property that was listed for sale.



**Figure 6: Reported dollar value loss for text messaging fraud (up to June 2011)**

The CAFC estimated that based on the low dollar amount of most MPSs, this is an under-reported issue.<sup>73</sup> The RCMP also indicated that as wireless phones become capable of initiating payment processes, like a debit or credit card, such instances will continue to increase. The trend toward using wireless phone accounts as a quasi method of payment makes it all the more important for agencies to track consumer complaints about MPSs now and in the future.

#### ***iv) Consumer Complaints in the Media***

In addition to the CAFC and unaffiliated industry associations like the BBB, the media has, for several years, been exposing the trend of consumer complaints about MPSs. Anecdotal reports presented in the media suggest that Canadian consumers have, for several years, encountered a variety of problems using MPSs. A survey of news reports indicates that while consumers complain of problems with MPSs, the industry continues to deny the existence of any problem or any need to respond. The crux of the diverging views is the industry belief that the safeguards it provides are sufficient protection for consumers, pitted against the consumers who do not feel that they are sufficiently protected under the scheme after experiences with what they perceive to be unfair and unauthorized charges, exacerbated by their attempts to obtain redress.

In early 2009, CBC News reported on consumers' problems with MPSs and the industry's response to their complaints.<sup>74</sup> CBC reported that "customers said they were charged \$16 - \$35 a month - up to \$200 and \$300 in total – for premium text messages even though they: don't remember signing up for them, or weren't clearly told they would cost them a certain amount per

<sup>73</sup> In email and phone consultations with PIAC in the fall of 2010 and spring 2011, the Canadian Anti-Fraud Centre stated they have been receiving complaints about unauthorized text message charges since 2006 with a dramatic increase. In a meeting with Inspector Kerry Petryshyn of the RCMP in November 2010, he noted that when the total dollar value lost by the consumer is less than \$100, the consumer is very unlikely to report the loss (0.5 out of 10 victims will report).

<sup>74</sup> CBC News, "Tighter rules on 'premium' SMS charges needed: consumer group: CRTC should stop wireless providers from cutting service during fee disputes" 6 March 2009 online: <http://www.cbc.ca/news/technology/story/2009/03/06/tech-090306-text-messages-crtc-wireless.html>.

message... [and] were unable to stop the messages from being sent to them.” Non-profit consumer group Union des consommateurs stressed that “[t]he system is not foolproof like they say.”

In September 2009, the CBC reported that they had “received a number of complaints from people getting unexpected text-messaging charges” and that “many people sign up for them without realizing it.”<sup>75</sup> On October 28, 2009, the CBC reported very different explanations from consumers and industry as to how consumers are, or are not, protected under the MPS scheme.<sup>76</sup> Consumer Mila Magno reported that she “had to pay \$26 for something [she] never subscribed to,” which she was able to trace to an online IQ quiz she had taken. Magno insisted that she was surprised to see the charge on her bill because she is very tech savvy and knows she never subscribed. The report noted consumers’ struggles finding and reading very fine print and having to click 17 or 18 times to reach the terms and conditions of some MPS subscriptions. The report also mentioned consumers’ problems with unsubscribing when texting STOP does not stop the service or the charges. In response, the CWTA did not address the problems consumers have unsubscribing, but instead insisted that “It’s a simple process. It’s very easy to use and we’ve set it up in a way to protect consumers....They have to sign up twice before they get the service.”

Two days later, CBC News reported that “more Canadians are coming forward with complaints about how they were duped into signing up for an expensive premium text messaging scheme.”<sup>77</sup> One consumer complained of being subscribed to an MPS unaware of the charges, receiving multiple MPSs from multiple sources, needing to spend 90 minutes on the phone with Bell and then cancelling with six different companies. The CWTA insisted that “customers cannot be duped into receiving text messages merely by entering online contests” and that consumers confirm their subscription twice to insure they are aware of the cost per message, the frequency of the message and the opt-out information. The consumer said that he thought he was receiving a one-time IQ score, not a subscription for multiple messages. He said, “[w]hen they say you can’t miss the terms and conditions, well, obviously I did.”

In November 2009, the Toronto Star’s Ellen Roseman reported on three consumers’ problems with MPSs: one consumer had opted into a subscription after doing an IQ test on a website; another consumer received charges even after disabling the text message function on his phone; and another consumer received charges because he had a new phone number that had been recycled without scrubbing the previous customer’s MPS subscriptions. Even so, the report quotes an industry spokesperson saying, “[a] double opt-in is required, meaning the customer has to agree to terms on two separate occasions.” While the industry maintains that the double opt-in is failsafe, media reports reveal that improper charges do occur – even when consumers’ text functioning is disabled, and when consumers’ obtain new phone numbers with old subscriptions still attached. Ellen Roseman continues to report on consumers’ problems with

---

<sup>75</sup> CBC News, “Premium Text Messages,” 24 September 2009 online: <http://www.cbc.ca/newsatsixtoronto/idesk/2009/09/premium-text-messages.html>.

<sup>76</sup> CBC News, “Cell users angry at pricey texting scheme,” 28 October 2009 online: <http://www.cbc.ca/news/story/2009/10/27/consumer-cellphone-text-messaging-scheme.html>.

<sup>77</sup> CBC News, “IQ test led to premium texting: victim,” 30 October 2009 online: <http://www.cbc.ca/news/technology/story/2009/10/30/consumer-texting-scam.html>.

MPSs, highlighting consumers complaints of improper charges for MPSs, confusion by advertising, subscribing, terms and conditions, and unsubscribing. This continues despite the safeguards the industry continues to insist are “enough” to protect consumers.

In September 2010, Global TV aired the story of a consumer who was charged for an MPS to which he and his partner did not knowingly subscribe.<sup>78</sup> The interview suggested that the consumer was likely charged by an unknown, “rogue” overseas MPS company.

In March 2011, CTV Calgary ran a story on the problems consumers have with MPSs.<sup>79</sup> Notably, the reporter received detailed reports from the CWTA itemizing the featured consumers’ MPS charges, which was more information than the consumers were able to receive on their own after several hours attempting to dispute the charges. This case study will be discussed later in the report, along with several other consumer responses PIAC received in response to the CTV Calgary story.

#### **v) Other Considerations**

Contributing to the difficulty reporting and tracking complaints about MPSs in Canada is the multi-faceted nature of MPSs. MPSs can involve advertisements on various media including billboards, radio, TV, and the internet. As well, MPS content ranges from contests to weather reports to adult entertainment to trivia games. There can be different regulation and self-regulation involved with the multiple facets of MPSs, meaning that consumers may initiate complaints with different organizations in addition to their wireless service provider.

#### **vi) Reports of Consumer Complaints Internationally**

In the United States, instances abound of MPS companies improperly charging consumers. The Federal Trade Commission (FTC) receives several consumer complaints about MPSs and the FTC tracks the number of complaints received.<sup>80</sup> While the FTC could not confirm or deny whether they are investigating any MPS cases, they did state that they see an increase in complaints about MPS. The FTC also pointed to the role of the class action bar in the U.S. to pursue relief for consumers, and what seems to be subsequent improvement in consumer protection.<sup>81</sup> Additionally, because of the prevalence of consumer complaints, wireless service providers in the U.S. have begun to provide MPS blocking as a consumer protection feature.<sup>82</sup>

---

<sup>78</sup> Global TV broadcast September 22, 2010, formerly available online:

[http://www.globalnews.ca/video/index.html?releasePID=P\\_oagxzyamIj5vKIkHTor3sXwL019Y0I](http://www.globalnews.ca/video/index.html?releasePID=P_oagxzyamIj5vKIkHTor3sXwL019Y0I).

<sup>79</sup> CTV Calgary, “Texting Troubles,” 7 March 2011 online:

18:00:54[http://www.cp24.com/servlet/an/local/CTVNews/20110307/CGY\\_text\\_premiums\\_110307/The%202011%20Billboard%20Music%20Awards](http://www.cp24.com/servlet/an/local/CTVNews/20110307/CGY_text_premiums_110307/The%202011%20Billboard%20Music%20Awards).

<sup>80</sup> See Federal Trade Commission, Consumer Sentinel Network Data Book for January to December 2010 (March 2010), online: <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>. The statistics are discussed in greater detail later in this report.

<sup>81</sup> For example, in the class action *Re Jamster Marketing Litigation.*, MDL No. 1751 (S.D. Cal.), consumers were able to access refunds for unauthorized charges relating to mobile content from Jamster. A class action against the MPS company Mobile Messenger involved tens of thousands of consumers who were ultimately awarded refunds for up to three months of improperly charged MPS (*Gray v. Mobile Messenger Americas, Inc., et al.*, No. 2008-CV-61089 (S.D. Fla.)). Mobile Messenger is currently running MPS in Canada. Another well-known class action involved the MPS company OpenMarket (*Walker v. OpenMarket*, No. 64272-3-1 (WA)). In this case, members of the class had the option to receive refunds for up to three months for unauthorized mobile content charges (*ibid.* at page 6 of the judgment). In early 2011, Verizon Wireless filed a lawsuit in federal district court in Phoenix, AZ alleging fraud with respect to MPS run by the companies Cylon, Jawa and Eyelevel Holdings, among others (*Verizon Wireless v.*

In Australia, a recent survey conducted by the Australian Communications and Media Authority (ACMA) with responses from 1600 consumers found that four out of ten consumers had received an unrequested MPS message within three months of the survey. Of these 40%, nearly one third had difficulty stopping the unwanted service, and of those consumers who had difficulty stopping the unwanted service, nearly 70% had not obtained a refund.<sup>83</sup> As of June 2010, the ACMA has successfully issued sixteen directions against MPS companies in violation of the Mobile Premium Services Code,<sup>84</sup> in keeping with the ACMA's power to enforce directions under the *Telecommunications Act* and prosecute MPS companies in Federal Court for not complying with their directions.<sup>85</sup>

In the U.K., consumers have complained for years of improper MPS charges and their difficulties disputing these charges.<sup>86</sup> Because of the prevalence of consumer complaints, wireless providers began to provide MPS blocking as a feature to protect consumers. Vodafone, for example, provided the feature as early as 2008.<sup>87</sup> Further, pervasive problems with MPS companies and aggregators who "consistently cause harm," has required the intervention of U.K. regulators who instituted a mandatory registration scheme for MPSs in force as of 2011.<sup>88</sup> These and other regulatory interventions in the U.K. will be discussed later in the report, but for now, indicate that the widespread noncompliance within the industry in other countries has caused such risk and harm to consumers, that regulatory intervention became necessary.

It is highly improbable that widespread problems with MPSs exist would around the world, requiring various forms of regulation, legal action, and consumer protection measures like the blocking feature, yet not affect the wireless industry in Canada. The CWTA nonetheless suggests that such problems do not exist in Canada and no regulation or similar consumer protection measures are necessary in Canada.<sup>89</sup> Several of the MPS companies that have been

---

*Jason Hope et al.*, Case 2:11-cv-00432-SRB (AR). Verizon has set up a "Third-Party content Subscription Refund Program" for consumers who were signed up and charged for the MPS which did not meet Verizon Wireless' standards for the disclosure of pricing and subscription information, online: <https://www.premiumsmsrefunds.com/ClaimForm.aspx>. The number of consumers affected in these lawsuits indicates the sheer number of consumers who want redress for MPS charges that they claim were unauthorized.

<sup>82</sup> See [http://support.vzw.com/faqs/Premium\\_TXT\\_and\\_MMS/faq\\_premium\\_txt\\_and\\_mms.html](http://support.vzw.com/faqs/Premium_TXT_and_MMS/faq_premium_txt_and_mms.html).

<sup>83</sup> Lesley Parker, "SMS sent: we're watching," *The Age*, 1 December 2010 online: <http://www.theage.com.au/money/planning/sms-sent-were-watching-20101130-18ed>, citing Australian Communications and Media Authority, "Mobile Premium Service User Survey 2010" online: [http://www.acma.gov.au/webwr/\\_assets/main/lib311865/mobile\\_premium\\_services\\_user\\_survey\\_2010.pdf](http://www.acma.gov.au/webwr/_assets/main/lib311865/mobile_premium_services_user_survey_2010.pdf).

<sup>84</sup> Lise Martin, "Man fined \$2m for SMS dating swindle" *Herald Sun* 3 December 2010 online: <http://www.heraldsun.com.au/ipad/man-fined-2m-for-sms-dating-swindle/story-fn6bfm6w-1225964703916>. For a list of directions issued against MPS companies in 2010 see [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_1312](http://www.acma.gov.au/WEB/STANDARD/pc=PC_1312).

<sup>85</sup> *Ibid.* See also *Telecommunications Act 1991* at section 571 (Cth.) online:

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/ta1997214/](http://www.austlii.edu.au/au/legis/cth/consol_act/ta1997214/).

<sup>86</sup> Rebecca O'Connor, "Beware of the mobile text pests," 23 October 2008, *The Times* online:

[http://www.timesonline.co.uk/tol/money/consumer\\_affairs/article5002795.ece](http://www.timesonline.co.uk/tol/money/consumer_affairs/article5002795.ece). See also Ofcom, "Premium rate text messages" online: <http://consumers.ofcom.org.uk/tell-us/telecoms/other-issues/premium-rate-text-messages/>. See also Tony Dennis, "Jamster at it again with rip-off phone app," 08 February 2010 *techeye* online: <http://www.techeye.net/mobile/jamster-at-it-again-with-rip-off-phone-app>.

<sup>87</sup> See <http://www.theinquirer.net/inquirer/news/1033403/voda-creates-premium-text-blocker>.

<sup>88</sup> See <http://www.phonepayplus.org.uk/News-And-Events/News/2011/4/PhonepayPlus-Registration-Scheme-opens.aspx>.

PhonepayPlus' Registration Scheme comes into effect in the fall of 2011, and requires that all MPS be registered in order to carry on business. The registration scheme will identify individuals who are behind breaches of the Code of Practice "so that future potential business partners are fully aware of their track record and can then make an informed risk assessment of doing business with them" (*ibid.* at pp. 5-6). Additionally, PhonepayPlus provides the public with names of companies who have committed violations and describes the violations and regulatory intervention taken. These are available through lists of adjudications and names of prohibited persons online: <http://www.phonepayplus.org.uk/For-The-Public/Adjudications/Search-adjudications.aspx>.

<sup>89</sup> PIAC consultation with CWTA, 9 February 2011.

sued in the United States and reprimanded in the U.K. also operate MPS programs in multiple countries worldwide, including Canada.<sup>90</sup>

## B. CONSUMER CASE STUDIES

As part of our research methodology, PIAC asked consumers to send their stories about their experiences with mobile premium services. PIAC solicited comments through social media including PIAC's website, Facebook, and Twitter.<sup>91</sup> As well, reporters referred consumers who had contacted them to our study. PIAC followed up with consumers who shared their experiences to better understand their problems with specific aspects of MPSs. The case studies are used in this report to supplement and reinforce the stories heard through our consumer focus groups. PIAC has chosen to highlight six of approximately thirty-five consumer case studies received to demonstrate typical or common consumer experiences with MPSs.

### *i) Case Study #1: G.K.*

This case exemplifies the experiences of consumers who are billed for an MPS after entering their phone number on a pop-up advertisement online. While surfing online, G.K. saw a pop-up ad offering a gift certificate at a store where he is a regular customer. In order to receive the gift certificate, the ad asked for his mobile phone number. After G.K. entered his mobile phone number, he received a text message with a PIN on his wireless handset. The ad asked him to enter the PIN within 60 seconds to receive the gift certificate. G.K. did not see any terms or conditions or fine print indicating it was a subscription text messaging service or that it would be charged to his wireless bill. G.K. felt suspicious and did not appreciate the pressure he felt because of the time limit. He does not recall entering the PIN.

Soon after, he began receiving unwanted text messages. He opened the text messages and saw that they were about flirting tips, so he stopped opening the messages and assumed he was not being billed. When he received his monthly bill from his wireless service provider TELUS, he discovered the messages had been billed at \$2 each and cost him \$60 in total. When he called TELUS customer service, he was given what he calls "the runaround." He reports that TELUS discounted his allegation of being scammed and did not help him recover the funds. TELUS also insisted that he must have subscribed to the service, otherwise there was no way he would have received the messages. Further, TELUS told him that the only way to recover his money was to go after the company that sent the texts. He could not find any way to contact the MPS company, Mobile Media Solutions, by himself. It was only when PIAC asked G.K. whether he had ever entered his mobile phone number into an online form that G.K. recalled that he had that one encounter with the pop-up ad. He had not thought to link the ad to the text messaging service, since the flirting tip text messages were completely unrelated to the company that was offering a gift certificate.

---

<sup>90</sup> Examples include, *inter alia*, mblox and Sybase. These companies have been reprimanded in the U.K., and sued in the U.S. and currently operate as aggregators in Canada. For example, mblox has been reprimanded and barred from operating in the U.K. multiple times; see <http://www.phonepayplus-services.org.uk/output/Search-adjudications.aspx> and has also settled at least one class action in the U.S.; see <http://moconews.net/article/419-mblox-sony-pictures-others-settle-latest-mobile-content-lawsuit/>.

<sup>91</sup> See PIAC's call for stories: [http://piac.ca/telecom/mobile\\_premium\\_services/](http://piac.ca/telecom/mobile_premium_services/).

**ii) Case Study #2: L.M.**

Pop-up ads, as well as contests to win an iPhone, iPad or other gadget were common among consumers who wrote to PIAC. One consumer, L.M., replied to an online pop-up ad to enter a contest to win an iPhone. L.M. entered her mobile phone number, name, and wireless service provider in the pop-up ad. Afterward, she saw fine print saying she would receive text messages at \$2 per message. She could not find a way to retract her submission or cancel the transaction and the ad disappeared. In this case, when L.M. received text messages, she immediately deleted them without responding or opening them, believing that no response would mean no bill. She was in fact billed \$36 for 18 messages. She unsubscribed from the service, but after contacting both her wireless service provider, Fido, and the MPS company that was running the Skill2Thrill game, she was unsuccessful in having the charges reversed.

**iii) Case Study #3: B. and J.P.**

The following case typifies many consumers' difficulties with MPSs using up their prepaid amounts, unbeknownst to the consumers, and also highlights the challenges consumers face when they try to dispute MPS charges. Consumers B. and J.P. rarely use their prepaid phone and did not give out the number as a contact number because the phone was never routinely turned on. B. and J.P. noticed after a couple months that their credit card had been charged several times by their prepaid account, rather than the usual \$25 every two months.<sup>92</sup> After contacting their wireless service provider, Consumers B. and J.P. were told to turn on their phone and reply STOP to one of the messages. They did so, at which time the phone downloaded several more text messages. The Bell representative insisted that because B. and J.P. had a prepaid account, there was no transaction record of the text messages and they could not get a refund. However, a supervisor did provide a one-time refund of \$25 to their credit card. B. and J.P. did not feel the dispute was resolved.

B. and J.P. searched the internet and found the MPS company's website. They attempted to contact the MPS company by phone, but reached only an automated message of poor sound quality, which told the customers to leave their phone number. B. and J.P. attempted to contact the MPS company by email and did not receive a response.

They then contacted a CTV reporter who was able to receive their transaction history from the CWTA, despite the wireless service provider previously insisting that they did not keep records of prepaid accounts. The transaction history suggested that the consumers were opted-in to the MPS online and also provided their home IP address. The consumers maintain they did not opt-in online and would never have provided their mobile phone number to an online advertisement. They also maintain that the PIN that would have initiated the subscription service was entered during a stretch of time when the owner of the phone was ill, the phone was off sitting in a drawer, and the phone was never accessed by anyone else for any purpose.

---

<sup>92</sup> Pre-paid accounts are usually set up such that when a pre-paid account balance dips below a set amount (usually \$5 or \$10), the pre-paid wireless account automatically charges the customer's credit card a pre-determined amount to top up the account. A monthly bill is not provided to the customer by the wireless service provider.

#### **iv) Case Study #4: S.S.**

This case study epitomizes the multitude of problems consumers may encounter when attempting to unsubscribe from an MPS and stop the charges. S.S. had a prepaid account through TELUS. She noticed early in March that MPS charges had been accumulating since the end of January. S.S. texted STOP to the MPS, but found the process confusing as she was unsure whether or not she needed to capitalize “stop.” Upon contacting TELUS, S.S. was told that TELUS only bills the account for the third party and that TELUS could neither reverse the charges nor stop the service. S.S. continued to receive nine further text messages from the MPS, though she was not charged for those. S.S. contacted TELUS again, who informed her that she would have to go into a TELUS store so the store could send a message saying STOP. S.S. went to the store, but did not receive help - she was merely told the STOP message should have worked. She ended up changing her mobile phone number because she felt enough of her time, energy, and money had been wasted and she did not want to argue or try to deal with a service she did not even know the name of. Some consumers in focus groups and consumers who contacted PIAC directly noted that they had changed their phone number to prevent future unsolicited MPSs when their service provider could not provide a blocking feature and either could not or would not stop MPS messages for them.<sup>93</sup>

#### **v) Case Study #5: V.L.**

Consumer V.L. contacted PIAC after her father was unknowingly subscribed to three MPSs. She had difficulty disputing the charges or getting resolution until the Commissioner for Complaints for Telecommunications Services (CCTS) investigated the issue. Initially, V.L.’s father received an MPS message and texted back STOP. He was charged \$5, which Fido refused to reverse, even though he insists he did not authorize the charge. A few months later, V.L.’s father received multiple text messages and was afraid to open them. V.L. called Fido, but Fido told her they could not do anything, that the charges had not shown up yet, and that she should check her next billing statement and then contact the MPS company directly. V.L. asked Fido to decline to accept any charges from the third party companies and Fido refused.

On her father’s next bill, V.L. found charges from two MPSs: Mobirok and 2WayTraffic. V.L. contacted the first MPS company and reached only an answering machine. She reached the second MPS company and was told that her father had signed-up for the MPS by entering a PIN online. V.L.’s father insists he did not receive a PIN message, much less enter the PIN online. In order to obtain a refund from the second MPS company, V.L. had to give her father’s personal information, including his email and mailing address, which she was uncomfortable doing after feeling scammed by the company to begin with. She was concerned about what the

---

<sup>93</sup> For example, consumer T.P. described such difficulty unsubscribing and not getting help from her wireless service provider, that she had to pay to change her number. She explains: “I had signed up for Daily Horoscopes to be sent to my phone. I was unaware that there would be a \$2.00 fee per text message (both receiving and sending) until I saw this on my bill. When I saw this, I had texted “STOP” to the service....I texted “STOP” numerous times, but nothing happened...The messages did not cease to continue and the charges kept accumulating, so I called Telus, asking them if there was any way to stop this on their end. They told me no, there’s no way they can stop it themselves, and that if I wanted the messages to stop, and if what I had done already was not working, that I would have to change my number entirely and I would have to pay them a fee of \$25 for the number change. This really got under my skin, because not only did my request for these messages to stop [go] ignored and [I was] still being charged for them, I was also being charged long distance to call Telus, due to being out of province at the time, and the \$25 fee to change my number.”

MPS company might do with her father's personal information for two reasons. First, she suspected that the MPSs were linked to email spam that her father had received months earlier which had asked him to enter his phone number. Second, she was concerned the initial company sending the email spam may have provided her father's personal information to the MPS companies.

PIAC provided V.L. with contact information for the CCTS and the CWTA. After V.L. filed a complaint to the CCTS, the CCTS initiated an investigation. Fido objected to V.L.'s complaint on the basis that the complaint was outside the scope of the CCTS' mandate, but the CCTS maintained that the complaint was within scope and that the complaint was properly before the CCTS. Fido contacted V.L. and agreed to reimburse V.L.'s father for the MPS charges. V.L. expressed satisfaction with this resolution, as all she and her father wanted was reimbursement for illegitimate charges.

**vi) Case Study #6: A.H.**

Consumer A.H. purchased a phone and unlimited text messaging plan for her 11 year old daughter. A.H. noticed the phone bill was very high, with several subscription MPS charges amounting to over \$200. She learned that her daughter had entered the cell phone number online to obtain what she thought would be free ringtones, free music, and quiz results. The companies included: Jamster, Prize King, Playphone, Funmobile, and Motime. When A.H. called Rogers to ask Rogers to block the MPSs and prevent future subscriptions, she reported:

Rogers basically told me that it was my responsibility to talk to my daughter about not subscribing to these services (even though she is obviously being preyed upon by scam artists that target naive and vulnerable children and do nothing to confirm that a person is indeed of the age of consent to agree to being billed for a subscription plan) and that not only would they not refund any charges, but they would not be able to block or disallow future charges to be billed to my account.

As A.H. explains:

I had to...text each [MPS] to either 'stop' or 'block' the subscription, then call each [MPS] company (usually getting an unsympathetic robot) that would refund \$10 of the charges (we'll see if I ever get those checks in the mail)...One company even tried to deny that they had ever even charged our bill saying that the pin number was never entered, thus, they 'never charged the account' (even though it was on my bill in the amount of \$26 for that month).

[M]y cell phone account is not a 'free for all' 'credit card' that any 3rd party can simply bill because someone inserted a mobile number into their falsified gimmicks...[I]n no way, shape, or form does entering a cell phone number and responding with a text that includes a 'pin' number, constitute 'acknowledgement' 'permission from the account holder' or 'verify identity/age'.

I simply cannot believe that cell phone companies like Rogers have 'no way' to block charges / deny 3rd party attempts at charging. I cannot believe that they are rendering me so powerless as to have no control over what goes on my bill!

In my opinion this is a major scam, it preys upon and exploits children, it seems fraudulent (as I never agreed/consented to the charges nor was I aware of them)...[T]he policies and practices of these [MPS] need to be changed to be up front and clear about the charges/subscriptions [and] also to better authenticate the identity/age of the "purchaser"...I believe if a parent or account holder complains due to the mobile phone user being under the age of 13 (it should be under 18) then the full charges need to be refunded.

...[T]he cellular phone companies need to be accountable in this too - they are allowing the misuse of billing [because] they do not ensure the account holder is authorizing the charges - and should be the front line in refunding the charges - and then go after the third parties to demand repayment.

I cannot believe the CRTC has not implemented a national standard, rule, or law regarding this issue.

#### ***vii) Summary of Common Problems with Mobile Premium Services***

While the six case studies highlighted above typify some consumers' experiences, other common problems were reiterated throughout PIAC focus groups and the approximately thirty-five consumers who contacted PIAC through email. Common problems reported by these consumers, from the beginning to end of their MPS experience, were as follows:

- 1) advertisements do not present clear terms, conditions, clear pricing, or contact information prior to purchase;
- 2) advertisements that appear to be for a one-off event (i.e. a coupon offer or contest entry) but turn out to be for an ongoing MPS subscription;
- 3) consumers are blamed by their wireless service provider when they ask for assistance. Routinely, the consumer was assumed to have subscribed to the service despite their claims that they never subscribed to such a service or they did not have notice of or understand the terms, conditions, and prices of the service to which they were subscribed;
- 4) consumers are told that their wireless service provider merely bills and collects the third party charges and cannot help the consumer with disputed charges;
- 5) consumers are told the consumer must unsubscribe themselves because the wireless service provider cannot do this, especially if previous attempts to unsubscribe have been unsuccessful;
- 6) consumers are unable to get their detailed, itemized transaction record from either the wireless service provider or the MPS company;

- 7) consumers are told by their wireless service provider to contact the MPS company but are not given contact information for said company;
- 8) consumers attempt to reach the MPS company but are only able to reach an automated service that asked them to leave their phone number, or the consumer does not receive a response to an email inquiry to the MPS company disputing the charges;
- 9) consumers are not able to block premium text messages;
- 10) consumers are charged for changing their phone number after unsuccessfully trying to dispute or stop MPS charges;
- 11) and consumers are unable to reverse what the consumer believes to be unauthorized charges.

These problems, as well as other issues with multiple aspects of MPSs, are discussed in greater detail in Part V below, with reference to findings from consumer focus groups and consumer experiences reported to PIAC. Overall, the consumer case studies show that consumers in focus groups and who shared their experiences with PIAC were very dissatisfied with multiple aspects of using MPSs. The focus groups provide the additional benefit of more in-depth investigation into consumers' experiences and attitudes.

## **IV. CONSUMER FOCUS GROUPS**

### **A. FOCUS GROUP METHODOLOGY**

PIAC's focus groups inform the findings in this report in three ways. First, the consumer experience is best described by affected consumers themselves, and forums for consumers to meaningfully comment on their experiences are often limited. Second, online consumer blogs or discussion boards are easily dismissed by the industry, rightly or wrongly, as providing only the voice of the disgruntled customer with a proverbial axe to grind. While anecdotal evidence only provides one perspective, blogs and discussion board comments are nonetheless indicative of the extent of consumer discontent and frustration. In order to document the frustration consumers experience and also overcome weaknesses of anecdotal evidence, PIAC engaged an independent research company to conduct neutral, structured, and methodologically sound focus groups on our behalf. Such research, being qualitative, provides insights into the range of opinions held within a population, rather than the weight of the opinions held, as would be measured in a quantitative study. The results of this type of research should be viewed as indicative of consumer opinions rather than projective. Third, focus groups allow consumers with direct experience to comment on multiple aspects of their experience, from advertising, to subscription and unsubscription, to billing, to complaint resolution or lack thereof, providing a thorough and granular description of the consumer experience with MPSs from beginning to end.

Focus groups were conducted in Vancouver, Toronto, and Montreal. Two groups were conducted in each city, with eight consumers recruited per group. Group sizes allowed the input of all participants and thorough discussion of multiple facets of the consumer experience. Participants were screened to ensure that at minimum, participants were familiar with MPSs, though efforts were made to ensure that most participants had personal experience receiving mobile premium text messages. Consumers with no direct experience subscribing to MPS were limited to 1 or 2 per group and were included in the focus groups to provide opinions on advertising and industry practices. Participants included male and female consumers, came from a variety of income levels and had wireless phone services through a diversity of wireless service providers. They were, on average, younger than forty years of age, technologically savvy and quite familiar with various aspects of mobile services in general, including various handsets available and various phone plans and data plans on the market. They were quite familiar with text messaging, many sending hundreds and even thousands of text messages per month, and familiar with MPSs in particular, as most had been subscribed to an MPS (such as receiving horoscopes, jokes of the day or sports updates) or had used a one-off MPS (such as making charitable donations or voting in a contest). Some participants were satisfied with their experiences using MPSs; many were not.

Participants described their personal experience with MPS subscriptions, including how they heard about the MPS and how they subscribed for the service, whether the billing matched their expectations, unsubscribing, and resolving disputes if any had arisen. Participants (those with direct experience using MPSs and those without) viewed examples of online MPS

advertisements and commented on whether, from their perspective, these ads disclosed necessary information in a way that would enable the general consumer population to make informed decisions at this first stage in the subscription process. Participants also viewed examples of MPS information messages sent to handsets, and commented on whether pricing, subscription terms, and contact information were disclosed in a way that would enable consumers to make informed decisions at the second stage in the subscription process. Finally, focus group participants considered industry regulatory models and commented on what they believed worked or did not work well for consumers in the Canadian MPS industry.

## **B. SUMMARY OF FOCUS GROUP FINDINGS: THE CONSUMER EXPERIENCE**

Participants were asked first to discuss their awareness of MPSs. Consumers reported being aware of, and having participated in, many different kinds of MPSs. Examples mentioned by consumers included: daily horoscopes, news, sports and weather services, contests, dating services, charity donation campaigns, and transit or municipal parking meter information.

Participants were asked to discuss their reasons for subscribing to MPSs. Most focus group participants had subscribed to MPSs out of curiosity or because they thought the service offered would be useful. Some participants said that they had subscribed “by accident,” or without realizing that they had done so. Some participants subscribed to the service but the service did not match their expectations: they thought the service was free, not realizing that they were subscribing to a premium paid service. Others were aware that the service would cost money, but were not aware of the number of messages they would receive and the total cost of those messages. Some participants who had unlimited text messaging plans had subscribed to an MPS thinking this would be covered under their plan, but were frustrated to learn the MPS was not covered under their “unlimited” plan.

When participants were asked to describe their experiences signing up for the MPSs, few recalled a “double opt-in” process. Most simply remembered receiving a confirmation message saying they would now receive the content they had subscribed to.

Participants were asked to describe the service they received and whether the service met their expectations. A few participants expressed satisfaction with the MPSs they had subscribed to, particularly where they received the content they had expected at the frequency and price they were expecting. Many participants mentioned that they had received more texts than they had anticipated. Some participants noted that after subscribing to an MPS, they began receiving an increased number of “spam” text messages promoting other MPSs.

When participants were asked to describe billing, many stated that they did not realize how much they were being charged until they received their bills. For many of these participants, the actual amount of the charges for the MPSs was both unexpected and disconcerting. Some recalled paying a flat monthly fee ranging from \$10 to \$15 per month for their subscription, while others were billed on a per message basis, with the fee per message ranging from 25 cents per

message to \$2.50 per message. Those who have prepaid wireless services said they received no indication that the premium charges were being deducted from their prepaid account.

Participants were asked to recall the advertising or the call to action that had prompted them to try the MPS. Participants mentioned a number of different media and most responded to advertising of some kind. Some participants said that the ads they responded to fully disclosed the costs of subscribing. Others indicated that when they responded to the ad, they were sent a disclosure notice that contained information about the cost of the MPS. However, participants frequently stated that the ads did not indicate the number of texts that a subscriber might expect to receive.

Largely, participants thought that ads for MPSs that do disclose the terms and conditions of subscription do so in a manner that makes it difficult for the average person to absorb the information being provided. For example, participants described small, fine print terms and conditions in print ads, and quickly-read terms and conditions in television ads. Participants in Montreal noted that they face the additional difficulty of ads and information messages being in English only.

Participants were asked to describe the process of unsubscribing from an MPS. Most participants had unsubscribed from an MPS. For some, the process was relatively easy, but others experienced considerable difficulty. A common complaint was that despite cancelling the subscription service, they were charged for the entire month. Some suggested that instructions on unsubscribing should be a part of every MPS text message.

Overall, participant complaints about MPSs most commonly related to: misleading ads or solicitations; lack of disclosure about the cost and volume of texts they would be receiving; “spam” messages promoting other MPSs; and difficulties unsubscribing.

Participants were asked to describe either the complaints process they had followed if they had sought resolution of a dispute over an MPS, or the process they would follow in such an instance. Even though many participants had experienced difficulties with MPS advertisements, pricing, billing, further solicitations, and unsubscribing, participants had little experience with any formal dispute resolution process in dealing with MPSs. Most participants indicated that if they needed to dispute an MPS, they would try to contact their wireless service provider first. Participants were asked whether they were told they could complain to the Commissioner for Complaints for Telecommunications Services (CCTS). There was little awareness among participants of the CCTS and none of the participants suggested that they knew they could take MPS disputes to the CCTS.

Participants were asked to comment on the MPS industry and its self-regulatory model. By and large, participants did not have a positive perception of the MPS industry, nor of the part that wireless service providers play in the industry. Many viewed the MPS industry as a profit-grabbing scheme in which the goal is to make money at the expense of the consumer rather than provide a quality service.

Participants were asked about the role (or potential role) of various players in overseeing the MPS industry and in protecting the consumer interest. Many participants wanted wireless service providers to be held responsible for the actions of MPS aggregators / content providers, since the latter make use of the wireless service providers' infrastructure to distribute their products. Participants also wanted wireless service providers to be required to act in the interests of consumers when problems arise.

Participants were unaware of the Canadian Wireless Telecommunications Association (CWTA) and none had heard of the CWTA's website for consumers, [www.txt.ca](http://www.txt.ca). Upon being informed of the CWTA, participants expressed considerable cynicism at the idea that those who benefit from MPSs are also regulating them. There was general agreement that it would be far preferable to have either an independent regulatory body or clear government oversight of such an industry association.

Notably, participants were concerned that the results of audits performed by the CWTA are not published, and suggested a need for the publication of names of noncompliant MPS companies. Participants also suggested the need for appropriate penalties for non-compliance or any other behaviour that violates consumers' rights. Participants were further concerned that any code of conduct administered by a self-regulating industry association with no government oversight or consumer input would be toothless. Most felt that a code of conduct for the MPS industry should require MPS ads to give full disclosure of all costs, require easy and immediate termination of MPS contracts, establish a clear method of dispute resolution, and ensure assistance from wireless service providers to customers in dealing with MPS disputes. Some participants also felt that wireless service providers should be required to inform customers about MPS, so that consumers could make informed decisions.

Participants were asked to consider the question of consumer responsibility. Most agreed that the responsibility of industry players to deal fairly with consumers took precedence over the principle of *caveat emptor*.

When informed of the Australian model of industry regulation of MPSs, participants expressed considerable approval for the Australian model. They felt that a similar regulatory system should be in place in Canada. Some felt that perhaps these responsibilities could be taken on by the CCTS. Of particular importance to the participants was the Australian model of annual publication of the number of complaints made each year and the names of non-compliant MPS companies. Participants also responded positively to the penalty structure and the arbitration process in Australia and many were interested in the option of blocking MPS messages.

Overall, consumers in the focus groups were able to give general feedback on the MPS industry from the perspective of everyday consumers. Additionally, they were able to provide specific comments on specific aspects of using MPSs. A deeper examination of various aspects of the MPS scheme will highlight specific comments and concerns expressed by consumer participants in the focus groups. Problems with various aspects of the MPS scheme are discussed in greater detail below.

## V. PROBLEMS WITH MOBILE PREMIUM SERVICES

### A. PROBLEMS WITH MOBILE PREMIUM SERVICE ADVERTISEMENTS

As previously noted, the CWTA Application Guidelines state that advertisements for MPSs must be clear and conspicuous in describing the cost, terms, and conditions of the services.<sup>94</sup> The Guidelines also require that the following information be disclosed in all forms of advertised calls to action: the billing period, the applicable cost using a dollar sign, the frequency of message delivery, and whether standard or premium rates may apply.<sup>95</sup> When advertising online, the cost for participating must be disclosed on all pages throughout the sign-up process, and summary terms and conditions must be completely visible throughout the process.<sup>96</sup> Online ads should not contain language or utilize tools such as a countdown clock that convey a sense of urgency about an offer or service.<sup>97</sup> Additionally, the consumers' phone number must not be pre-populated in data entry fields, and the aggregator/content provider must own and control the phone number entry page for all MPS subscriptions that register online.<sup>98</sup>

#### *i) Mobile Premium Services Advertised by Wireless Service Providers*

PIAC reviewed websites of wireless service providers that offer MPSs to their customers to see what information was available about MPSs and how these services are advertised. PIAC's review reveals multiple ads for MPSs on wireless service provider websites which do not appear to meet the above-noted CWTA requirements. For example, Rogers advertises MPSs such as Twitter, Facebook, My Luv Crush, Skill2Thrill and Game On.<sup>99</sup> Rogers' ad for Game On, as viewed in May 2011, is typical of MPS ads on many wireless service providers' websites. It is problematic because it invites the consumer to send a text message to the MPS before any terms or conditions or pricing are shown:



Figure 7: Screen shot of Game On MPS on Rogers' Website<sup>100</sup>

<sup>94</sup> CWTA Guidelines, section IV.1. at pp. 12-13 online:

<http://www.txt.ca/english/business/doc/Canadian%20Common%20Short%20Code%20Application%20Guidelines.pdf>.

<sup>95</sup> CWTA Guidelines, section IV.1. at pp. 12-13.

<sup>96</sup> CWTA Guidelines, section IV.1. at pp. 12-13.

<sup>97</sup> CWTA Guidelines, section IV.1. at pp. 12-13.

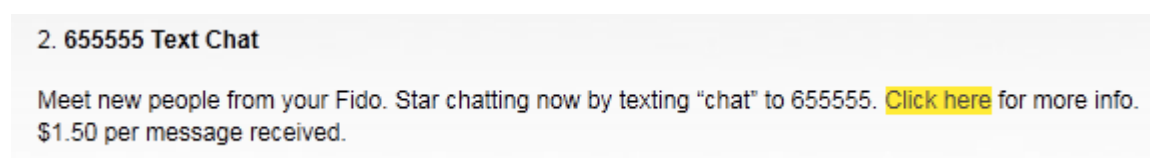
<sup>98</sup> CWTA Guidelines, section IV.1. at pp. 12-13.

<sup>99</sup> Rogers, online: [http://www.rogers.com/web/content/add-ons/text-messaging?cm\\_mmc=Redirects--Consumer\\_Wireless\\_Eng--Addons\\_0110--textmessaging](http://www.rogers.com/web/content/add-ons/text-messaging?cm_mmc=Redirects--Consumer_Wireless_Eng--Addons_0110--textmessaging).

<sup>100</sup> Rogers, online: [http://www.rogers.com/web/content/add-ons/text-messaging?cm\\_mmc=Redirects--Consumer\\_Wireless\\_Eng--Addons\\_0110--textmessaging](http://www.rogers.com/web/content/add-ons/text-messaging?cm_mmc=Redirects--Consumer_Wireless_Eng--Addons_0110--textmessaging).

While intended as a hook to get the consumer interested in the service, this ad is problematic because it falls under the CWTA's rubric of an "online ad," and a "call to action." It therefore should adhere to CWTA Guidelines which require the billing period, the applicable cost, the frequency of message delivery, and whether standard or premium rates may apply, as well as the cost for participating on all pages throughout the sign-up process, and summary terms and conditions throughout the process. One positive is that Rogers' MPS ads on this webpage provide a link to the MPS companies' website, unlike many ads on other wireless service providers' websites which provide no link to MPS companies' websites.

Fido advertises multiple MPSs on its website.<sup>101</sup> By clicking on "The Top 5 Short Codes," the consumer will see Facebook, Text Chat, TV Word Soup Game, Trivia Service and Air Canada. These ads are problematic because they encourage the consumer to text the short code before seeing terms, conditions or pricing. Text Chat encourages the consumer to "start chatting now by texting to 655555."



**Figure 8: Ad on Fido's website for Text Chat**<sup>102</sup>

Again, according to CWTA Guidelines, any call to action is supposed to include: the billing period, the applicable cost, the frequency of message delivery, and whether standard or premium rates that may apply. Also, when advertising online, the cost for participating must be disclosed on all pages throughout the sign-up process, and summary terms and conditions must be completely visible throughout the process. Again, these ads, or calls to action, do not include such information. It is especially important for consumers of Word Soup Game and Trivia Service to know how often they will receive messages, and that they will be charged whether or not they open and reply to messages. However, that information is not provided. While it is true that *after* texting the short code, the consumer will receive summary terms and conditions in an information message texted to their handset, it is also required in the ad in the first instance, as per the CWTA's Guidelines. Proper disclosure in advertising enables the consumer to make an informed choice as to whether to subscribe.


On the Fido website under "Fun Alerts," there are a number of ads. One example is short code "55455" for gossip, love life tips, YO Momma Jokes, and pick up lines. These MPS programs are operated by an MPS company called Glomobi. Ads for these programs are problematic, because even though a price is listed per message received, there is no indication how many messages the consumer will receive, except for the PICKUP code which specifies that messages are sent daily. While \$1.25 may seem reasonable to the consumer at first glance, \$1.25 three times per week for a total of approximately \$15 per month as an indefinite

<sup>101</sup> Fido, online: [http://www.fido.ca/web/content/messaging/fun\\_with\\_text](http://www.fido.ca/web/content/messaging/fun_with_text).

<sup>102</sup> Fido, "Top 5 Short Codes" online: [http://www.fido.ca/web/content/messaging/shortcodes\\_top5](http://www.fido.ca/web/content/messaging/shortcodes_top5). Note that for this particular ad, accessed in May 2011, the link to "click here" results in an invalid webpage.

subscription, whether or not the consumer opens or replies to the messages, may not be reasonable. The consumer cannot determine from this ad the frequency of texts, total monthly price, or terms and conditions prior to texting the short code for the first time.

**Whatever you're into, there's a short code for you!**



Chat/Dating    Fun alerts    Horoscope    Sports    Trivia

---

- Top 5 Short Codes

Let your Fido have fun!

| Short Code | Text word | Cost                    | What You Get  |
|------------|-----------|-------------------------|---|
| 55455      | STAR      | \$1.25/Received message | Get the hottest gossip news straight to your cell daily! Click here for more info.    |
| 55455      | LOVE      | \$1.25/Received message | Find out how to spice up your love life! Click here for more info.                    |
| 55455      | YO        | \$1.25/Received message | The best and funniest YO Momma Jokes straight to your cell! Click here for more info. |
| 55455      | PICKUP    | \$1.25/Received message | Get the best pickup-lines straight to your cell daily! Click here for more info.      |

**Figure 9: Ad on Fido Website for Short Code 55455<sup>103</sup>**

If the consumer clicks “click here,” they are taken to Glomobi’s front webpage, not its terms and conditions. The Glomobi website is confusing as the page that displays appears to be an order page for sounds and games, not for a short code service (see Figure 10 below). To add to the confusion, it is not clear to the consumer, either on Fido’s website or through the link to Glomobi’s website, that the service is a subscription. The consumer would only be able to locate this information by scrolling to the bottom and clicking and reading “Terms of Use.” Glomobi MPS programs are also problematic because they target youth, however it is only in the Terms of Use that the consumer is told they must be 18 to subscribe. It is trite to point out the most teenagers do not read the Terms of Use.

<sup>103</sup> Fido, online: [http://www.fido.ca/web/content/messaging/fun\\_with\\_text#](http://www.fido.ca/web/content/messaging/fun_with_text#).

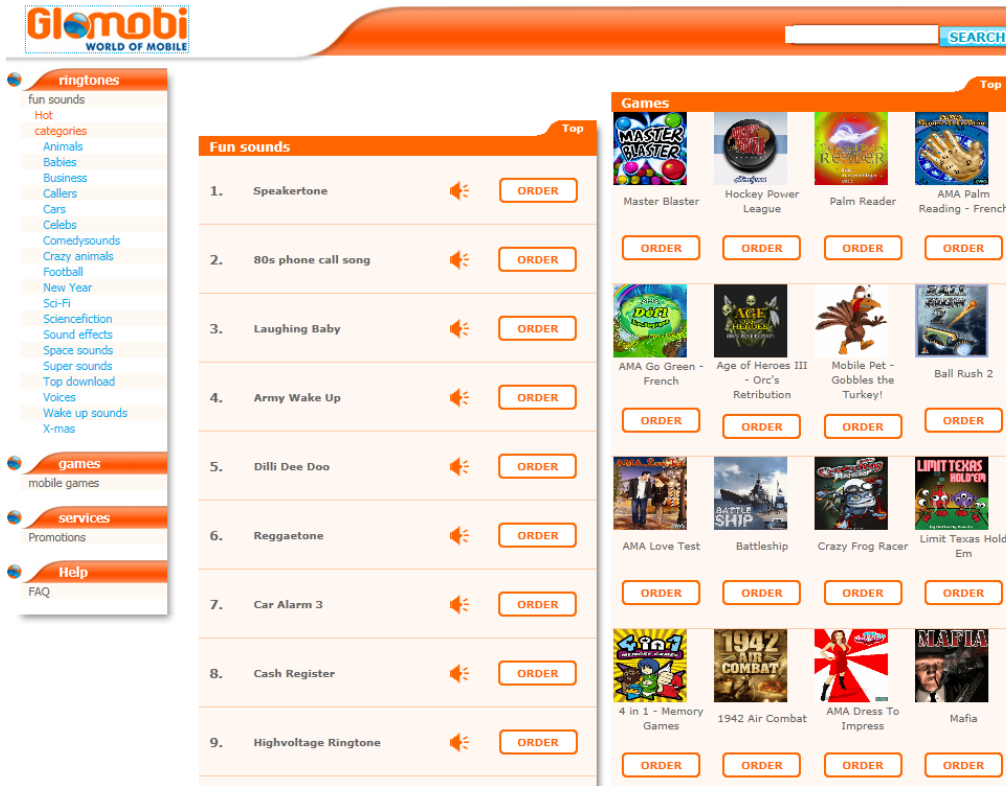


Figure 10: "Click Here" on Fido website redirects to Glomobi's home page, displayed above<sup>104</sup>

Bell Mobility may be the wireless service provider with the least compliant advertisements of MPSs on its website.<sup>105</sup> These ads are calls to action, encouraging consumers to text to short code numbers for various services, and listing only the price per message sent or received. There is no information about the frequency of messages, the billing period and the fact that these are indefinite subscriptions. Moreover, there is no link provided to the MPS website. The consumer would have to, on their own initiative, conduct an independent search online to discover the MPS company, find their website and look at their terms and conditions. These ads are inadequate and fall below CWTA Guidelines. They also frustrate the consumer experience because there is no way to easily find the MPS company and the MPS program's pricing, terms and conditions.

<sup>104</sup> Glomobi, online: <http://www.glomobi.com/?cy=CA/star.html>.


<sup>105</sup> Bell, online: <http://www.bell.ca/shopping/PrsShpWls TxtMsg Partners.page>.

## Text for fun


Enter contests, meet new people, get music news, as well as weather, sports and fashion reports, and so much more.

Find a service for you and start texting!


Entertainment   Communities and Chat   Information   Sports




Sign up for Mobile Fun Alerts and get free exclusive updates on music, games, TV, and contests from Bell. Text Alerts to 5500 to sign up.




Catch the fully automated, all-request music video service on Bell ExpressVu channel 578. Text your request or vote to **10101**  
Cost: \$1.00 per message sent



Request a song or send a comment. Text to 935935.  
\$0.50 per message sent



Watch The Score every day from 4 p.m. - 6 p.m. (ET), and text in your messages to vote in real-time. Text the keyword plus your message to **776776**.  
\$0.50 per message sent



Sign up to be the first to find out about new releases, promotions, and exclusive contests from Universal Music Canada. Text "MUSIC" to **909090**.  
\$0.50 per message sent

Figure 11: MPS Ads on Bell Mobility website<sup>106</sup>

PIAC's review of MPS advertisements on wireless service provider websites shows that these ads fall short of CWTA's Guidelines, and are often inadequate and confusing for consumers. These ads demonstrate that without full disclosure of pricing, terms and conditions up front, it is easy for a consumer to "opt-in" to a subscription without necessarily knowing what they are getting into. The CWTA Guidelines expressly requires **all** advertisements to include full information, even advertisements that are "hooks."<sup>107</sup> It becomes apparent that the first "opt-in" is not really an "opt-in" at all, as the consumer has little knowledge of terms, conditions or pricing and so cannot make an informed decision to consent to the consumer contract at this point. Also, the fact that consumers are sent information text messages to their handsets does little to correct any misunderstandings created by ads in the first place.

Not only do MPS ads promoted on wireless service providers' websites fail to adhere to CWTA standards of clearly and conspicuously providing pricing, terms and conditions, they also raise

<sup>106</sup> Bell, online: [http://www.bell.ca/shopping/PrsShpWls TxtMsg\\_Partners.page#tabCont0-tabs](http://www.bell.ca/shopping/PrsShpWls TxtMsg_Partners.page#tabCont0-tabs).

<sup>107</sup> PIAC consultation with CWTA, 9 February 2011.

the issue of accountability of wireless service providers. Wireless service providers are advertising these services, billing for them, receiving up to 60% of the profits from them, and then denying to consumers that they have any part or responsibility for disputed charges. The latter aspect will be addressed later in the report.

### ***ii) Mobile Premium Services Advertised by Mobile Premium Service Companies***

In addition to the ads on wireless service providers' websites, MPS companies host websites and advertise through pop-up and banner ads to promote their MPS programs. PIAC reviewed the websites of MPS companies to understand how these services are promoted and described. Notably, there is no comprehensive list of all currently operational MPS companies in Canada, so PIAC was only able to review websites for MPSs that we were able to find based on information available on the CWTA website, online searches, and MPSs that consumers told PIAC about.

MPS website advertisements and calls to action are problematic because they may not display pricing clearly, or may give the impression that the MPS is a one-off service, when in fact the small print or buried terms and conditions state that the MPS is an ongoing subscription. One example of this is the Love Calculator, shown to consumers in our focus groups.<sup>108</sup> The Love Calculator advertises itself as providing a one-off compatibility reading for a couple whose names are entered into the website.

---

<sup>108</sup> Mobirok, online: <http://www.mobirok.com/lovecalculator/>.

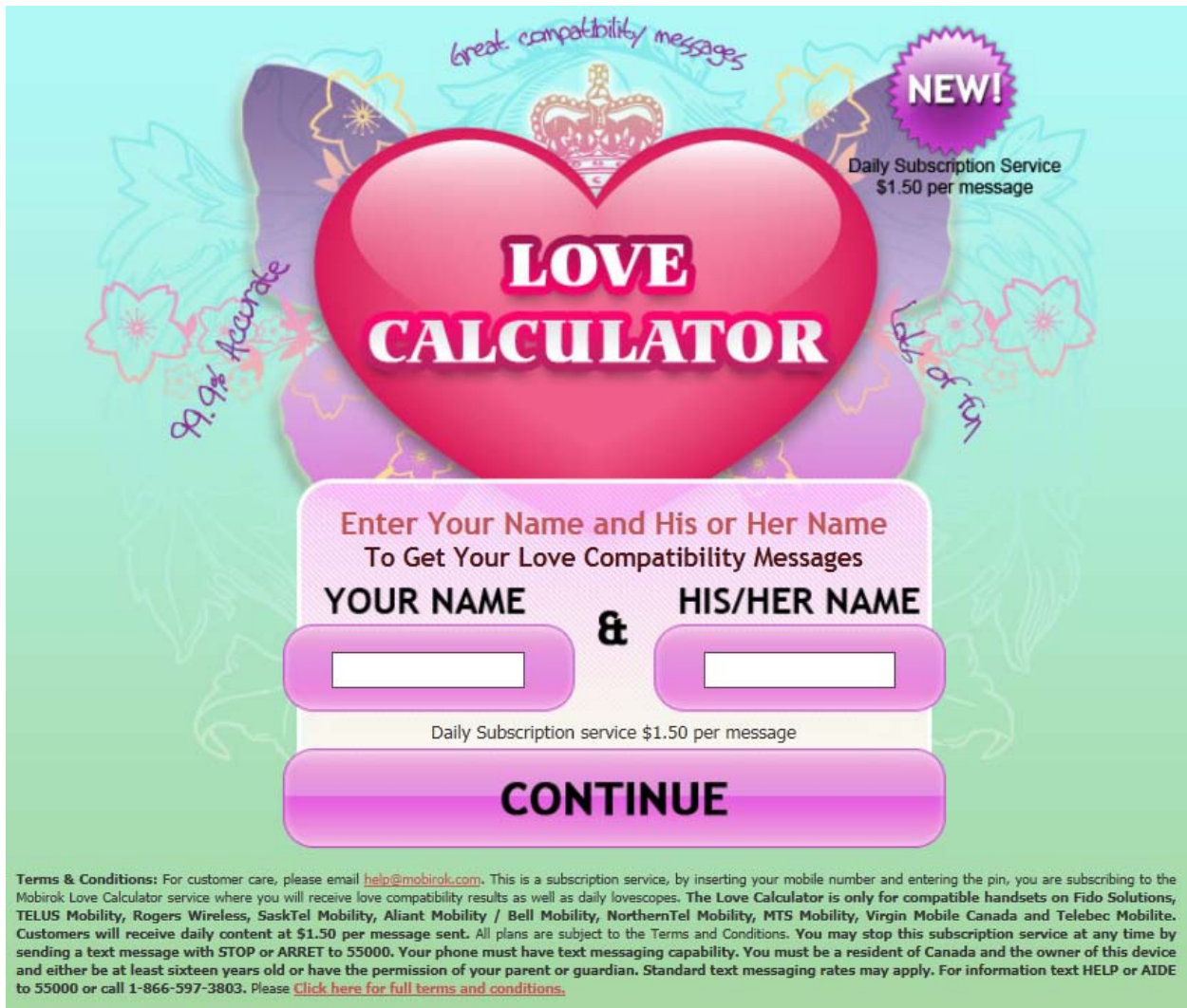


Figure 12: Love Calculator<sup>109</sup>

The graphic advertising the love compatibility calculator is quite large and above the “Continue” button, there is a statement saying “Daily subscription service \$1.50 per message.” The consumer may not see that sentence as easily, or may not think that they are ordering the subscription, as this does not match their expectation of receiving a one-time compatibility score. At the bottom of the screen is a buried term in small print that says the consumer “will receive love compatibility results as well as daily lovescopes.”

Consumers find ads for MPSs to be ambiguous, contradictory and unclear.<sup>110</sup> In PIAC’s consumer focus groups, participants were shown the front page of the Love Calculator website, as shown in Figure 12 above. While some consumers in PIAC’s focus groups considered the

<sup>109</sup> Mobirok, online: <http://www.mobirok.com/lovecalculator/>

<sup>110</sup> The sources mentioned in this report include media reports, reports to Phonebusters / the Anti-Fraud Centre, reports to consumer groups like the BBB, reports to PIAC through social media which form our consumer case studies, reports from around the globe, and comments made in the consumer focus groups. These all indicate that consumers find ads for many MPS not clear and not conspicuous in their pricing, terms and conditions.

advertisement to be clear about the pricing and most terms, several consumers commented on the difficulty reading the fine print, the confusing nature of the ad, the incomplete information provided, and the need to keep searching for full disclosure:

“...[I]t’s just fine print is just really confusing.”

“It’s just so, almost ambiguous, like she said, what’s going on, like I don’t know what any of this really means.”

“...there’s a lot of writing and just not a lot that I can understand out of it. I don’t know, it’s just, I don’t understand.”<sup>111</sup>

“The fine print sure is hard to read.”

“Extremely fine.”

“Extremely fine even with my reading glasses.”<sup>112</sup>

“You can read this and think, it’s just a one-time message; find out if you and your lover are compatible. And then you read it and it says, receive complete compatibility results as well as daily loves scores. So that could definitely mislead some people.”<sup>113</sup>

“There’s something in the fine print that says you will receive love compatibility results as well as daily love scopes; so there’s two things now at three dollars a day, or is it still a dollar fifty?”

“So there’s the microprint underneath the fine print.”

“Yeah, it’s just like having a bottomless pit of charges and fine print, bring out my microscope to find it all.”<sup>114</sup>

“Just, it makes me think that when I enter it, it’s going to tell me my compatibility with this one person and that would be kind of the end of it. But then when you look into the fine print, it looks like it’s a daily thing.”

“...so do you pay \$1.50 for the compatibility and the love scope?”

“...It wasn’t really specified how many messages you get.”<sup>115</sup>

“This disclaimer at the bottom here, oh man, I would not read this.”

“It’s legalese.”<sup>116</sup>

Another example is the Skill2Thrill website.<sup>117</sup> Skill2Thrill was mentioned several times in the consumer case studies that PIAC collected through social media.<sup>118</sup> Skill2Thrill’s website can be problematic because of the type of service offered, and the problems consumers encounter using the service. Skill2Thrill primarily runs trivia contests to win prizes such as iPods, Nintendo Wiis, gift cards, computers and cash. Skill2Thrill’s trivia games tend to target youth (win a Wii,

---

<sup>111</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at pp. 20-1.

<sup>112</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 19.

<sup>113</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 21.

<sup>114</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 23.

<sup>115</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 28.

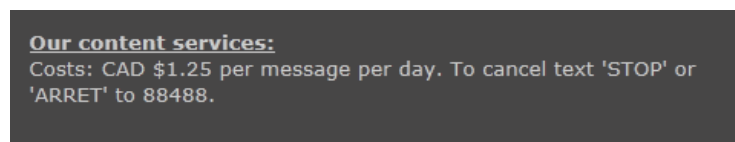
<sup>116</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at pp. 31-2.

<sup>117</sup> See <http://skill2thrill.com/>.

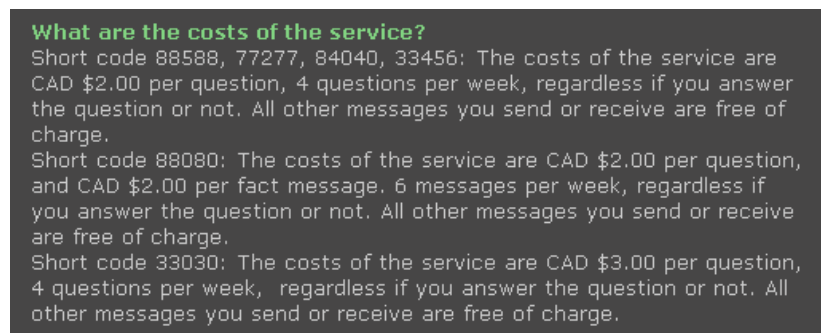
<sup>118</sup> Rogers’ customer C.L. from Toronto, ON; Rogers’ customer R.C. from Toronto, ON; Fido customer G.S. from unspecified city; Fido customer L.M. from unspecified city; Koodo customers B & D.S. from unspecified city; TELUS customer S.L. from unspecified city.

play a Spelling Bee, win an iPod, play Sports trivia, take an Optical Illusion Test, take an IQ Challenge, Avatar trivia, Iron Man trivia, Alice in Wonderland trivia) and the website has pictures of youth-oriented entertainment including a roller-coaster, bungee jumping, and surfing.

Consumers may be confused by the pricing of MPS advertised on the Skill2Thrill website. The price is listed at the very bottom of the “Products & Pricing” page, in fine, white print, at \$1.25 per message per day. However, the “Contact” page confuses this, listing pricing schemes for different short code programs (including \$2 per message x 4 questions per week; \$2 per message x 6 messages per week; and \$3 per message x 4 questions per week) which could amount to more than \$1.25 per day. On the home page, consumers are provided information on unsubscribing and are given a 1-866 phone number and email address to contact for help. Overall, it is unclear that Skill2Thrill’s website meets the CWTA Guidelines.



**Figure 13: Skill2Thrill's Pricing Information Under "Products & Pricing" <sup>119</sup>**



**Figure 14: Skill2Thrill Pricing Information Under "Contact" <sup>120</sup>**

Notably for both ads on wireless service provider websites and on the MPS company’s own websites, the consumer is required to spend a disproportionate amount of time clicking through the advertisement to the company’s website and then to locate and read the Terms of Use, given the advertised seemingly low price of the premium text message (\$1.25 in the case of Skill2Thrill).

### ***iii) Problems with Online Advertising***

As mentioned above, several consumers reported to PIAC that they were subscribed to MPSs after interacting with an online pop-up advertisement. This kind of advertisement is particularly problematic because the consumer may believe they are giving their phone number or entering a PIN in order to receive a gift certificate or a quiz result, but in fact they are subscribing to an ongoing MPS. After the consumer enters their information in the pop-up ad, the ad disappears.

<sup>119</sup> Skill2Thrill, “Products & Pricing” online: <http://skill2thrill.com/ca/products.html>.

<sup>120</sup> Skill2Thrill, “Contact” online: <http://www.skill2thrill.com/ca/contact.html>.

For consumers who do not understand the information text message sent to their handset, it can be confusing and difficult to find contact information for the MPS company and to understand the pricing, terms and conditions, and unsubscrition process.

For example, in the first consumer case study described above, consumer G.K. was unknowingly signed-up for an ongoing subscription service after entering his phone number through an online pop-up advertisement.<sup>121</sup> He believed he would be offered a gift certificate for a store where he is a regular customer, and did not see any fine print explaining terms and conditions. In the second consumer case study described above, consumer L.M. replied to a pop-up ad online, believing she would be entered to win a iPhone. Afterward, she saw fine print saying she would be subscribed to a \$2 per message service. She did not understand how to cancel the transaction and tried deleting the messages without responding. She was billed \$36 that month and was not successful in having the charges reversed through her wireless provider or the MPS company.

Below are examples of advertisements prompting consumers to enter their mobile numbers to win prizes.

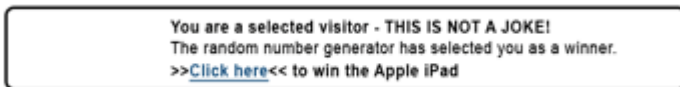


Figure 15: Banner ad offering consumer an opportunity to win an iPad



Figure 16: When consumer clicks on ad, they are redirected to this page asking them a trivia question to win the iPad and iPhone 4

<sup>121</sup> Consumer Case Study #1: G.K.



**Figure 17: When the consumer responds, the ad prompts for the consumer’s mobile number – the fine print states that the service is a subscription of \$3 per question at 4 questions per week**

**iv) General Issues with the Information Text Message and Mobile Premium Services Advertisements**

Proponents of the double opt-in suggest that the information text message sent to consumers is sufficient to explain pricing, terms and conditions. However, the information text message often is not sufficient to correct confusion caused by MPS advertisements, or to provide full disclosure of pricing, terms and conditions not clearly stated in advertisements. Consumers consistently report difficulty differentiating MPS text messages from spam. This may be because the messages use what looks like code language – particularly when the MPS program sends the information text message with pricing, terms, and conditions, as in the example below.

Play WINQUIZ 4 ur chance to WIN! Max 4 Qs/wk (\$2/msg). Reply Y to play. Txt STOP to end. Info: [www.winquiz.com](http://www.winquiz.com)

Some consumers noted that they thought they would only be charged for sending messages, or opening messages, or that these premium text messages would be covered under their unlimited texting plans. These consumers are surprised and angry to learn that they are charged for receiving messages, particularly unopened messages. Often, advertisements and information messages sent by text message are not sufficient to communicate to consumers the fact they will be subscribed indefinitely and that they will be charged for every message whether

or not they open or reply to them. Given that a number of consumers in PIAC's focus groups and who contacted PIAC to share their experiences report that they never subscribed to the service, did not understand the pricing details of the service and do not recall a double opt-in mechanism, this suggests that consumers are not receiving clear information upon which to base their purchasing decisions. Consumers must be presented with adequate necessary information in a clear and conspicuous way in order for the consumer to meaningfully consent to a subscription with these charges.

Another problem with MPS ads is that minors are particularly responsive to them, being that texting is a youth pastime, and the content of the programs is often youth-driven. Popular music, popular entertainment, games, sports and juvenile jokes target minors who may not understand pricing, terms and conditions. For example, Bell's advertisements for MPS on its website list PUNCH music, Universal Music Canada, and sports and game sites of interest to teens.<sup>122</sup> Teens may be less likely to read the small print in the ad, and may not know they need to pay careful attention to the information text message sent to their handset. As a result, teens may subscribe to an MPS without fully understanding the terms and conditions. Furthermore, teens are often not the account holder responsible for paying for these services. Issues regarding youth will be discussed later in this report.

The reports PIAC received from consumers through email revealed that immigrants and seniors also were more vulnerable to problems with advertisements about MPSs and may subscribe without full knowledge or consent. Consumer Z.L. from Venezuela is a prime example. She stated:

"...I had seen an ad on TV about a contest to win some movies and all you had to do was send a text message to a number that appeared on the screen and send your answer to a multiple choice question that also appeared in the ad. Since I knew the answer and I wanted the movies I sent the text message with the answer. The ad clearly stated that there was a charge for sending this message so I sent the SMS knowing that I would be charged for this. I then received a reply to my text from the company promotion the contest saying that my answer was correct and [that] I had to answer another question to qualify for the prize. I did and I got a third message with another question which made [me] think that this was a never ending movie quiz and I would probably get the movies only after spending \$50 in text messages. I never replied to another message...The most upsetting part was being lied to, or at least that's what I felt. The ad on TV was deceiving and lacked key information which to me is a scam. They never said you have to answer an endless movie quiz or that you would also pay a fee for receiving their text messages, even if you read them or not....I had never seen this kind of promotions in my home town of C., Venezuela, so I thought it was a good idea to participate in the contest....My experience was very negative...[Now] I always get the feeling that everything is a scam and I believe those companies should be forced to disclose all the charges that apply to their offer, contest or service."

---

<sup>122</sup> Bell, "Text for Fun," "Entertainment," online: <http://www.bell.ca/shopping/PrsShpWls TxtMsg Partners.page>.

Other consumers in our case studies felt similarly frustrated. For example, G.K. is a senior in his 70s, does not send or receive texts normally, and does not know how he was subscribed to an MPS. Consumer V.L., consumer case study #5, highlighted earlier in this report, is a consumer whose father, a senior, does not speak English fluently. He was charged for MPS messages despite being unable to recall registering for any MPS.

The focus groups revealed that French-speaking Canadians sometimes struggled with the pricing, terms and conditions presented in English, particularly if the writing in the ad was very small, or the terms were presented in “code language” English. Focus group participants stated:

“M: Et est-ce que les pubs étaient en français en général ou est-ce que c’était en anglais?”

R: La plupart du temps c’était en anglais, sur Internet en tout cas c’était en anglais.

R:...C’est souvent en anglais.”<sup>123</sup>

“R: Mais c’est jamais clair non plus les frais cachés si on veut, ils t’attirent toujours en disant c’est pas cher, mais les autres frais c’est jamais clair moi je trouve.

R: Dans les contrats c’est tellement minuscules et si c’est dans une autre langue, je prenais même pas le temps de lire ça.

R:...Oui mais en français déjà j’ai de la misère à lire ça et à comprendre parce que c’est tellement minuscule et si ça serait en anglais dans une autre langue, j’évite ça.”<sup>124</sup>

“En français c’est difficile il y a des termes alors en anglais ou dans une autre langue c’est encore pire déjà en français ils utilisent des termes que nous on peut pas comprendre vis-à-vis de la loi ou des règles.”<sup>125</sup>

On the whole, immigrants, seniors, and consumers whose first language is not English may experience more difficulty differentiating MPS messages from spam and more difficulty fully comprehending the terms, conditions, and pricing.

Overall, consumers feel duped when they come to understand the full pricing, terms and conditions *after* being billed. Reputable services communicate the pricing, terms and conditions up front – not in small print, and not on websites that require multiple clicks to find. The information text message sent to consumers’ handsets is often not adequate to supply full terms and conditions or to correct misunderstandings or confusion experienced by many consumers. While consumers need to always be aware of fine print, wireless service providers and MPS companies also need to take responsibility for the advertising practices that contribute to consumers’ confusion and frustration using MPSs.

---

<sup>123</sup> Consumer Focus Group, 14 October 2010 Montreal 5:30 pm at p. 18.

<sup>124</sup> Consumer Focus Group, 14 October 2010 Montreal 5:30 pm at p. 19.

<sup>125</sup> Consumer Focus Group, 14 October 2010 Montreal 5:30 pm at p. 21.

## **B. PROBLEMS WITH SUBSCRIPTIONS**

### ***i) Misleading Labelling of Subscription Mechanism as a “Double Opt-In”***

The CWTA expressed that their Guidelines are designed to protect consumers from being charged for MPSs that they did not knowingly order.<sup>126</sup> The industry purports that the sales transaction, or the process of subscribing, requires two instances of consumer consent or a “double opt-in” to finalize a consumer subscription.

For the consumer to consent, he or she must be provided adequate information about the MPS terms and conditions, and actively indicate consent to the purchase. As discussed above, there are questions surrounding whether some “hook” advertisements or calls to action for MPSs (such as in Figure 7 and 17) adequately provides sufficient information about price, frequency of messages, or the fact that the service is subscription, for a consumer to make an informed decision about whether to initiate a subscription with the service. Thus, this first consumer-initiated action of texting the MPS cannot be said to adequately qualify as consent to “opt-in.” Rather, one might call such a transaction an “invitation to treat.” This first “opt-in” as characterized by the industry is not consent to purchase the MPS any more than walking into a store is consent to purchase what is on display.

The Guidelines and the industry should not describe the first “opt-in” as a mechanism of consent, as “opt-in” suggests a level of knowledge or consent that in reality, the consumer often does not have at this point in the sales transaction. The industry’s characterization of its opt-in procedures as a “double opt-in” is misleading through semantics, suggesting that safeguards against uninformed subscription are stronger than they actually are.

### ***ii) Problems with Subscription via Pop-up and Banner Advertisements***

One problematic subscription mechanism is subscriptions that occur within the online pop-up or banner advertisement. In this scenario, the consumer sees a pop-up or banner advertisement online asking for their mobile phone number. As described above, if the consumer enters their mobile phone number into the advertisement, this constitutes the “first opt-in.” The consumer then receives a PIN via a text message to their wireless handset, prompting the consumer to enter the PIN into the pop-up or banner advertisement to complete the subscription.<sup>127</sup> One consumer reported a high pressure advertisement asking the consumer to enter the PIN before the time limit expires on the ad (within one minute, for example) which is in direct violation of the CWTA Guidelines.<sup>128</sup> Some ads may not readily disclose a term, condition, price, notice of a subscription service or other important information.

Pop-up and banner ads pose an especially problematic concern for consumers, as once the consumer has completed interaction with the pop-up or banner ad and has clicked away, they cannot go back to the advertisement. The consumer has no means of proving what information they were or were not provided during the subscription process. This becomes an issue first, if

<sup>126</sup> PIAC consultation with CWTA, 9 February 2011.

<sup>127</sup> See above Figures 2 and 3.

<sup>128</sup> CWTA Guidelines, section IV.1.2.7: “[Calls To Action] should not contain language or utilize tools (e.g. a countdown clock) that convey a sense of urgency about an offer or service.” In consumer case study #1, consumer G.K. encountered a pop-up ad that pressured him to enter the PIN within 60 seconds (*supra*, Part III.B. of the report).

the consumer believes he or she was deceived or misled by the ad and second, if the consumer is adamant that they never subscribed. First, where a pop-up ad was deceptive or misleading, the consumer has no evidence of the ad. The CWTA also is similarly challenged in monitoring pop-up ads to ensure that they are not deceptive or misleading. Second, the MPS company is not necessarily able or willing to provide evidence of the consumer's subscription via the pop-up ad. Consumer J.C. stated that when he contacted an MPS company to demand verification that he subscribed to their services, the company stated that he had completed the double opt-in online, but they could not specify the website where this occurred.<sup>129</sup> This is a serious evidentiary problem for consumers, as they are asked to pay for services they allegedly subscribed to somewhere online, but even the MPS company cannot identify a static website where the subscription occurred. This is also problematic for consumers because the CWTA cannot monitor or audit the double opt-in process that takes place via pop-up ads.

### ***iii) Authentication Issues with the PIN Mechanism***

Authentication is the process of confirming a claimed identity. All forms of authentication are based on something you know, something you have, or something you are. Once authentication has been confirmed, authorization is the act of granting permission for someone to do something to conduct an act.

In the context of MPSs, the PIN can be used as a method of authentication if the consumer is subscribing through an online process. As described above, a consumer may be prompted to enter their mobile phone number to receive their quiz result or to enter a contest or to receive daily text messages. When the consumer enters their mobile phone number, they are sent a 4-digit PIN by text message to their wireless handset and the online mechanism prompts the consumer to enter the PIN on the screen in order to complete the transaction. After the consumer enters the PIN, the consumer is subscribed to the MPS.

The only guidance that the CWTA Guideline provides regarding authentication using the PIN is the rule that holds the aggregator responsible for the management of the opt-in subscription information.<sup>130</sup> However, there are no requirements in the CWTA Guidelines to ensure security of the PIN,<sup>131</sup> such as specifications regarding who assigns the PIN or safeguards such as who has access to the PIN or whether the PIN must be randomly generated, or unique for each individual or set to expire after a period of non-use.<sup>132</sup> Thus, MPS companies' practices with PIN for web-based opt-ins are not transparent to consumers nor are they required to meet a set security standard. This is extremely problematic, as consumers expect and need secure authentication processes to prevent unauthorized subscriptions.

---

<sup>129</sup> Consumer J.C. contacted PIAC through email.

<sup>130</sup> CWTA Guidelines, section IV.6.2.

<sup>131</sup> There are a number of articles that criticize the 4-digit PIN as being weak and describing possible attacks on the 4-digit PIN, especially in the context of the PIN being an authentication method for banking and financial services. There is a 1 in 10,000 probability of cracking the 4-digit PIN. The probability can be higher, depending on how the PIN is generated, see for example: Marcus G. Kuhn, "Probability Theory for Pickpockets – ec-PIN Guessing" online: <http://www.cl.cam.ac.uk/~mgk25/ec-pin-prob.pdf>.

<sup>132</sup> TMG Americas in their submission to the CRTC in 2009 stated that for their services, once the registrant has clicked away from the registration page, the PIN instantly becomes invalid. The registrant is thus forced to re-complete the registration steps to obtain another PIN. This is a good practice, however, it is not clear that all aggregators or MPS companies implement the same practice.

Consumers have reason to be uncomfortable with web-based opt-in processes for MPSs. Industry Canada's Authentication Principles Working Group published *Principles for Electronic Authentication – A Canadian Framework* in May 2004, designed to function as benchmarks for the development, provision and use of authentication services in Canada.<sup>133</sup> The third principle of security emphasizes the periodic review of security practices surrounding an authentication process conducted by an independent person. This principle protects players by requiring transparency, however in the context of MPSs, there lacks transparency in authentication safeguards. It is unclear whether the authentication systems of MPSs are audited by the CWTA.<sup>134</sup> The possibility of consumers subscribing via a non-static web-based opt-in mechanism such as a pop-up or banner advertisement poses additional challenges, as the MPS company has even less control over the subscription mechanism and cannot guarantee security of authentication via a non-static online mechanism.<sup>135</sup> Furthermore, CWTA could not possibly monitor or audit every pop-up authentication process to ensure that the authentication process is secure.

The sixth electronic authentication principle encourages organizations with authentication processes to make available a complaints-handling process that enables participants to resolve complaints efficiently and effectively and to respond appropriately to non-compliance issues:

The complaints-handling processes should be visible, accessible to all participants, responsive, fair and objective, free-of-charge to the complainant, confidential and private, accountable, and seek continual improvement.<sup>136</sup>

Complaints with authentication processes have proven to be challenging for consumers who believe they have been improperly subscribed to an MPS, as their wireless service providers and MPS companies remain adamant that because they are receiving the premium text messages, they must have subscribed to the service. Issues with complaint resolution will be discussed in greater detail below, but it is important to note that many of the consumers who contacted PIAC because they had been improperly subscribed and charged for MPSs suspected that a web-based opt-in mechanism could have been improperly used to subscribe them to the service.

---

<sup>133</sup> Industry Canada, May 2004 online: [http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/h\\_gv00240.html](http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/h_gv00240.html).

<sup>134</sup> CWTA stated in consultation with PIAC that in their testing of the subscription process, they test to ensure that an information text message is sent to the consumer after the first opt-in, and that a confirmation text message is sent to the consumer after the second opt-in. It is not clear that CWTA tests to ensure that if the consumer does not enter their PIN onto the web-based opt-in mechanism, the consumer will not be opted into the MPS.

<sup>135</sup> For example, consumer J.C. did not believe he had subscribed to the MPS program that he was billed for. He reported that when he contacted the MPS company that he had subscribed to, the MPS company told him that he subscribed "online" but could not specify a website.

<sup>136</sup> *Principles for Electronic Authentication – A Canadian Framework*, Industry Canada, May 2004 online: [http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/h\\_gv00240.html](http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/h_gv00240.html), Authentication Principle 6.

#### **iv) Subscription Without Consent**

There are examples of when the industry's own game rules can be ignored, such as when consumers are subscribed to MPSs without their consent. The industry has admitted that on occasion, consumers can, in fact, be subscribed to MPSs without their consent.<sup>137</sup> Consumers can be subscribed without their consent in at least two possible ways.

First, when consumers obtain a new phone number which has been recycled, they could assume the MPS subscriptions of the previous wireless customer with that phone number. The wireless service provider should immediately scrub their list when a subscriber terminates a wireless account to ensure that any subscriptions associated with the wireless number are cancelled. However, if the wireless service provider does not scrub the list in a timely manner or if the scrub is not successful in terminating an MPS subscription, the consumer may be billed for MPS charges that the previous subscriber accumulated. If a consumer recognizes that they have been charged for an unauthorized MPS, he or she would need to dispute these charges through customer service of their wireless service provider and may need to specifically demand that the wireless service provider investigate to determine if the charges are from a recycled number. Customer service representatives of wireless service providers may or may not know how to detect whether the MPS subscription has rolled over from a recycled number, much less offer to investigate this on the consumer's behalf. Consumers may not know to demand such investigations, as they may not know this type of improper charges exists and customer service representatives may be equally unaware.

Second, it is possible that consumers may be subscribed to MPSs by noncompliant MPS companies. The CWTA has indicated that noncompliant MPS have been operating in Canada since at least 2007, when the CWTA conducted its first audit.<sup>138</sup> The CWTA conducted an audit of all active MPSs in 2007, testing, among other things, the opt-in procedure. As the CWTA admits, "The audit did discover a number of [MPS] programs that were not in strict compliance with CWTA's rules."<sup>139</sup> Between June and September 2008, the CWTA audited all active MPS and again discovered noncompliant MPS programs, albeit a smaller number.<sup>140</sup> A third audit of active MPS programs was conducted in 2009, showing "compliance levels improved," but that noncompliant MPS were still operating in Canada.<sup>141</sup> Despite finding noncompliance, the CWTA has insisted it "has not identified any systematic abuse or disregard for [MPS] rules."<sup>142</sup> Any time noncompliance relates to the double opt-in, consumers could be subscribed without their consent.

---

<sup>137</sup> PIAC consultation with CWTA, 9 February 2010.

<sup>138</sup> CWTA Comments, 26 February 2009, CRTC File # 8620-U11-200901951, Application to CRTC by Union des consommateurs regarding text messaging Short Codes [CWTA Comments] online: [http://www.crtc.gc.ca/PartVII/eng/2009/8620/u11\\_200901951.htm](http://www.crtc.gc.ca/PartVII/eng/2009/8620/u11_200901951.htm). Because CWTA's comments do not provide detailed information on audit results, it is unclear what behavior was found to be noncompliant during the audits. However, the opt-in was one of the functions tested in the audits.

<sup>139</sup> CWTA Comments at paras. 25-26.

<sup>140</sup> CWTA Comments at para. 27.

<sup>141</sup> CWTA Comments at para. 28.

<sup>142</sup> CWTA Comments at para. 28.

#### **v) Additional Problems with Youth Subscribing to Mobile Premium Services**

While not the major focus of this report, PIAC is troubled by the proliferation of MPSs and advertisements for MPSs that target youth.<sup>143</sup> PIAC received a few reports from parents whose minor children had subscribed to MPSs.<sup>144</sup> These reports raise important considerations. First, MPSs that target youth are problematic because minors may lack the ability to consent to purchasing MPSs that will be paid for by the account holders, usually the minors' parents. While many MPSs stipulate in buried terms and conditions that the account holder must be over a certain age to participate, the ads still target youth and there is no mechanism that can guarantee the person opting-in to an MPS is the wireless account holder or an adult.

Compounding the problem, parents in Canada have no option to block MPSs without blocking text messaging altogether, a feature that would go a long way to protecting the account holder from improper MPS charges. Parents who find MPS charges on their wireless bills may encounter difficulty disputing the charges. While educating minors regarding MPSs is important, it is not a holistic solution when many MPSs directly target minors in their advertising and content, and the industry fails to provide a mechanism to prevent minors from subscribing without parental consent or to block MPSs without losing regular texting capabilities.

#### **vi) Problems Indicating an Ongoing Subscription**

One of the most significant problems with subscription MPSs is that consumers do not realize they are subscriptions. While section 6.2.1 of the CWTA Guidelines requires the information message to indicate that the MPS is a subscription in addition to indicating the frequency and number of messages that will be sent, none of the information text messages submitted to the CRTC in a recent hearing actually met the requirement of indicating the program was a

---

<sup>143</sup> The content of many MPSs is youth-centered. Examples include the following MPSs from Skill2Thrill: games to win cash, "PS3 Slim and Modern Warfare 2!", "Test your music knowledge with the Pop Quiz!", "Take the Geo Challenge!", "Iron Man 2!", "Kick-Ass!", "Avatar!", "Alice in Wonderland!", "iTunes Gift Card!", "Win a Dell laptop in your favourite colour!", "Mr Sub \$500 Gift Card!", "Spelling Bee", "Take the Idiot Test and prove that you're not one!", "WIN an iPad!", "Test your Brain Age!", "Take the Hockey Quiz and have a chance to win a Nintendo Wii!", "Take the IQ test and have a chance to win an iPod Touch!", "Chance to win a home cinema set for the World Cup!", "Can you handle the Optical Illusion Test?", "Are you smarter than a 10 year old? Find out here!" and "IQ Test (Win a Nintendo Wii + Brain Academy!)" online: <http://www.skill2thrill.com/ca/products.html>. Youth-centered MPSs provided by Glomobi include popular animated characters, arcade and other video games, sports, and games that test youths' skills such as spelling, memory or strategy (see <http://www.glomobi.com/>).

<sup>144</sup> Case Study #6: A.H. One parent's struggle is featured in a 2010 report by CTV (see Chris Olsen, "Premium Text Messages Cost a Premium," 21 April 2010 CTV BC online: [http://www.ctvbc.ctv.ca/servlet/an/local/CTVNews/20100421/bc\\_olsen\\_text\\_messages\\_20100421?hub=BritishColumbiaConsumer](http://www.ctvbc.ctv.ca/servlet/an/local/CTVNews/20100421/bc_olsen_text_messages_20100421?hub=BritishColumbiaConsumer). For examples of radio ads targeting youth, see Advertising Standards Canada, Complaints Archive at the 4th Quarter 2008 and 2<sup>nd</sup> Quarter 2010 online: <http://www.adstandards.com/en/Standards/previousReports.asp>.

subscription.<sup>145</sup> None of these information text messages used the word “subscription.” It appears that currently, many MPS programs do not comply with this industry requirement.

This is especially confusing for consumers who interact with MPSs that they believe to be one-time events, such as a contest entry or to receive a game score which are often promoted online. The service itself appears to be for a one-time event, yet if the consumer were to read the fine print at the bottom of the screen or click through to the Terms of Use, they would learn that the service is actually an ongoing subscription, sometimes for content that did not relate to the one-off event. Where the MPS is for a prize contest, often the consumer is unknowingly subscribed to subsequent promotions for different prizes.

Focus group participants reported that they entered what they believed to be a one-time contest, but realized later the MPS was an ongoing subscription:

“R: Actually there was one that I remember signing up, well I didn’t realize I was signing up, but it was a contest. And if you text something to a certain number, you would have been entering the contest. But all of a sudden, I started getting several requests to enter continuously or some were emails and when I did get the bill I realized that it was something that I was paying like \$2.00 a text to send or receive.

M: So realized that you kind of inadvertently ...?

R: Yeah, even though I didn’t answer some of the texts when I received them, I was charged for it because I remember I paid about \$40.00 in terms of those incoming texts even though I did not answer all of them.”<sup>146</sup>

“M: And [name], when you signed up for the contest or whatever, why did you decide to do it? Were you curious or ...?

R: I think I was interested in entering the contest that they had sent me but I wasn’t interested in getting continuous, to be continuously contacted.”<sup>147</sup>

“R: Well, when I signed up for the contest I didn’t think I was going to get a couple a day until I hit “stop”. It was just really annoying. I thought I would get one that would say, you know, you’ve been put into the contest, or you won, or you did not win, but it was just like junk mail kind of ads that they sent.

M: So, in other words, you thought you were just signing up for one contest entry, and

---

<sup>145</sup> See Comments from Bell Mobility Inc., 26 February 2009, CRTC File # 8620-U11-200901951 at para. 24 online: [http://www.crtc.gc.ca/PartVII/eng/2009/8620/u11\\_200901951.htm](http://www.crtc.gc.ca/PartVII/eng/2009/8620/u11_200901951.htm). In their comments, Bell provides the information text message sent to a consumer who claimed to have been improperly charged for MPS. The information message read ““*Ur PIN code is 2033. Enter this PIN on the webpage 2 confirm ur mobile number! Help: [www.wixawin.com](http://www.wixawin.com), \$2/Ques, 4Qs/wk.*” The information text message does NOT indicate to the consumer that the program is an ongoing subscription or that the consumer will be subsequently subscribed to future programs on the short code. This is especially problematic for the consumer, who, by Bell’s own admission, “was responding to an offer to win a Canadian Tire Gift Card” (*ibid.* at para. 24). CWTA Comments, 26 February 2009 at appendix B, CRTC File # 8620-U11-200901951: The CWTA provides several descriptions of short code programs, but no actual examples of information text messages; none of the descriptions indicate that consumers are told prior to signing up, that MPSs are ongoing subscriptions and that consumers will be automatically subscribed to future programs on the same short code. In the Comments provided by TMG Americas Inc., 27 February 2009, CRTC File # 8620\_U11-200901951 at appendices A and B, none of the information text messages sent to consumers’ handsets indicated that the consumers would be purchasing ongoing subscriptions or that the consumers would be automatically subscribed to subsequent programs on the short codes.

<sup>146</sup> Consumer Focus Group, 5 October 2010 Toronto 5:00pm at p. 9.

<sup>147</sup> Consumer Focus Group, 5 October 2010 Toronto 5:00pm at p. 12.

then you started getting this whole flood of them or whatever?

R: Yeah.”<sup>148</sup>

“But the one where ... it was actually Rogers who texted me saying I could win a prize, and then I was all intrigued by it, and then after that per contest it was maybe like three texts per contest. But, like [name] said, once you entered that one, it was like oh, you have one in three chance of winning this, you have one in five chance of winning this, and then it keeps going. And that’s where it becomes annoying.”<sup>149</sup>

Consumer S.K., who contacted PIAC through email, expressed frustration upon discovering that a prize the consumer entered online was actually a subscription for an MPS:

“[The MPS] had got my phone number during an online registration, and I was asked to give a password sent to me as an SMS, to claim a ‘prize’. I now realize it was a scam, and an excuse to get my mobile number. But I had never asked to receive those text messages.”<sup>150</sup>

### **vii) Problems with Negative Option Selling**

Many subscription MPSs use a “negative option selling” model, which means that the company assumes that the consumer has purchased the product and the onus is on the consumer to contact the company to cancel the order if they do not want to continue the service. MPS companies are not required to indicate in advertising or in the information text message sent to consumers’ handsets that the MPS company will continually re-enter the consumer into subsequent rounds or programs on the same short code. For example, the Terms of Use for Glomobi’s MPS state that they automatically bill the consumer for subsequent "promotions" until the consumer unsubscribes.<sup>151</sup> Similarly, Skill2Thrill makes several of their games one to two years long, and others as long as four years, with a new "round" every month.<sup>152</sup>

Consumers are dissatisfied with the negative option model and do not believe this is adequately brought to their attention prior to purchasing MPS.

“...there was a contest or something, so you punch in your cell number and they’re supposed to send you the information. But it’s a negative billing type of thing that, if you don’t cut it off it continues, which for me is a huge pet peeve. Negative billing shouldn’t be allowed.”<sup>153</sup>

<sup>148</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30pm, at p. 13.

<sup>149</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30pm, at p. 14.

<sup>150</sup> Consumer S.K. contacted PIAC through email.

<sup>151</sup> See “terms of use” online: <http://www.glomobi.com/>.

<sup>152</sup> See terms of service for Skill2Thrill’s game “Win a Dell laptop in your favourite colour” at rule 6 online:

[http://www.skill2thrill.com/pages/info/CA-EN/terms\\_dellblue.html](http://www.skill2thrill.com/pages/info/CA-EN/terms_dellblue.html): “The contest begins on August 1st, 2007 at 12:01 a.m. Eastern Time (“ET”) and ends on August 31st, 2011 at 11:59 p.m. ET (“Contest Period”). Each round of the contest starts on the first day of each month during the Contest Period at 12:01 a.m. and ends on the last day of that month at 11:59 p.m. ET. (“Round”).”

<sup>153</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at pp. 13-14.

“The deal I take issue with is the fact that it’s subversive and it relies on a negative billing feature. You don’t know what you don’t know until it’s there and then it’s really difficult to shut the thing off.”<sup>154</sup>

### **viii) Problems Unsubscribing from Mobile Premium Services**

Consumers in PIAC’s focus groups and consumers who contacted PIAC with their experiences, reported problems unsubscribing. Generally, the issues were two-fold: first and most often expressed was the issue of stopping the messages; second, consumers had issues stopping the charges. The following quotes indicate that consumers often do not understand how to stop an MPS; consumers contact their wireless service provider for help unsubscribing; consumers do not always get helpful information about unsubscribing when they contact customer service – particularly when a STOP request does not work; and consumers often have to unsubscribe multiple times before messages and charges finally cease.

#### **a) Consumers Do Not Understand How to Unsubscribe**

Consumers commented on how they were confused by the particulars of actioning a STOP text message. On occasion, consumers noted that they had to locate the MPS company’s website and request the service to be stopped via the website.

“I never knew how to stop it. I was trying to stop it without using the subject line and they were still responding. It seemed like they were giving me more messages in return.”<sup>155</sup>

“You have to keep doing it until you get it right.”<sup>156</sup>

“Sometimes if you don’t put exactly the right...”

“Exactly, if it’s not all capitalized it might not stop.”

“Oh right, character sensitive.”<sup>157</sup>

“...they told me to put it in the subject line, the headline. That’s the only way to do it, that’s what they told me...because I was sending messages a paragraph below the subject line... The body of it and they said, that doesn’t count. They’re not going to respond to that. They don’t care so you’ve got to put it in the subject line. Just one word, stop and it took them about two, three times to stop and they did.”<sup>158</sup>

“I wouldn’t have known [how to unsubscribe]. I probably would have had to look it up I guess online.”<sup>159</sup>

“I remember trying to get it to stop at first, because it didn’t say reply stop or whatever... because that wasn’t provided to say that’s how you unsubscribe...”<sup>160</sup>

---

<sup>154</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at pp. 28-9.

<sup>155</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 40.

<sup>156</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 43.

<sup>157</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 51.

<sup>158</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at pp. 38-9.

<sup>159</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 40.

“There wasn’t any indicator to stop the text message for horoscope. So I think I went back and...I think there was the name of the company within the text. I went online and stopped it from there.”<sup>161</sup>

“[Two months ago] I suddenly started receiving short texts with U.S. news, 2 per day, \$5.00 per text. I tried to block them but could not find a way to do this on my cell phone. I don’t believe you can block a text message. I just deleted them. I am now told that if I answered the texts “Stop” that I could have discontinued the service, but I was not told this until today as I am not text savvy.”<sup>162</sup>

### **b) Consumer Experience Asking Wireless Service Providers for Assistance with Unsubscription**

Consumers who could not figure out how to stop the MPS on their own or were unsuccessful in stopping the MPS often contacted their wireless service provider for assistance.

“...I did do the STOP, but I remember having to speak to a Rogers rep first, because I wasn’t sure how to end it.”<sup>163</sup>

“I did have to call Telus themselves because I was having a hard time finding out how to stop it and even when I did try to get them to stop, send the text message or so, it stopped for a few days and then it continued on. So it took a while to actually get them all to stop.”<sup>164</sup>

However, some consumers were frustrated by the unhelpfulness of the wireless service provider customer service representatives they spoke with. Some consumers received inaccurate information about not being able to stop the messages and some customer service representatives refused to assist the consumer with unsubscribing from the MPS, particularly when the consumer had already sent a STOP message but the messages continued.

“[Rogers] didn’t know about doing the ‘stop’ thing. She was fairly new, so she eventually came back and told me that that’s what we had to do and they deleted the entire bill.”<sup>165</sup>

“I had to call Fido twice to know about [the STOP] function (after more than ten days)...At no stage I was warned about the exorbitant costs associated with those messages.”<sup>166</sup>

“...I had to call Fido. Basically, I wouldn’t let up until they agreed to just stop messaging me these things.”<sup>167</sup>

---

<sup>160</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 45.

<sup>161</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at pp. 45-6.

<sup>162</sup> Consumer S.L. contacted PIAC through email.

<sup>163</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 39.

<sup>164</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 38.

<sup>165</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 52.

<sup>166</sup> Consumer S.K. contacted PIAC through email.

<sup>167</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 52.

"I remember...stopping it...but again I still got the same thing...I did reply to that, I just actually put "STOP"...and again I thought it would help, but it didn't.... and I didn't know what to do at that point...I went in and complained at Rogers...and they said 'Well we can't control it because you're subscribed to it' and I'm like 'No I'm not' and it was just an ongoing battle....I told them already I replied to it...So at that point I was at the end of my rope so I really did not know, and they didn't believe me."<sup>168</sup>

"I had signed up for Daily Horoscopes to be sent to my phone. I was unaware that there would be a \$2.00 fee per text message (both receiving and sending) until I saw this on my bill. When I saw this, I had texted "STOP" to the service....I texted "STOP" numerous times, but nothing happened...The messages did not cease to continue and the charges kept accumulating, so I called Telus, asking them if there was any way to stop this on their end. They told me no, there's no way they can stop it themselves, and that if I wanted the messages to stop, and if what I had done already was not working, that I would have to change my number entirely and I would have to pay them a fee of \$25 for the number change. This really got under my skin, because not only did my request for these messages to stop [go] ignored and [I was] still being charged for them, I was also being charged long distance to call Telus, due to being out of province at the time, and the \$25 fee to change my number."<sup>169</sup>

PIAC learned, in consultation with TELUS, that TELUS wireless service provider customer service representatives have the ability to unsubscribe consumers.<sup>170</sup> Rogers also noted that their customer service representatives can complete a form to have Rogers deregister a number on behalf of the customer in exceptional circumstances.<sup>171</sup> The fact that wireless service providers do not openly use this ability to help consumers who have expressed a desire to unsubscribe is an extremely troubling aspect of the consumer experience reported in focus groups and case study findings.

Notably, some wireless service providers have implemented mechanisms to help consumers manage their MPS subscriptions. For example, TELUS showed PIAC a "premium messaging subscriptions" management tool, wherein TELUS subscribers can see which MPSs they are subscribed to and allows the consumer to unsubscribe from a service by clicking "unsubscribe." However, there are limitations with this portal, such as the fact that it is only accessible to customers with a SmartPhone through the WAP deck and does not display detailed pricing information or link to the MPS company's Terms of Use. PIAC is pleased to see developments to help consumers manage their MPS subscriptions and hopes that similar developments will be deployed across all wireless service providers offering MPSs, be user-friendly and provide as much information to the consumer as possible.

---

<sup>168</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 39.

<sup>169</sup> Consumer T.P. contacted PIAC through email.

<sup>170</sup> Consultation with Telus, March and April 2011. TELUS customer service can opt-out the consumer upon request.

<sup>171</sup> Rogers' responses to PIAC consultation questions provided 17 May 2011.

### c) Consumers Must Unsubscribe Multiple Times

Some consumers in PIAC's focus groups stated that they had to attempt to unsubscribe multiple times, as their first attempt did not work.

"...So did it actually take more than one attempt to unsubscribe?... "Definitely, yep."<sup>172</sup>

"...when I sent to stop the joke of the day, yeah, it stopped, but then...other ones were coming."<sup>173</sup>

"It took quite a few attempts for it to actually all stop."<sup>174</sup>

"It took more than one attempt because I tried...I think I might have sent them a message first saying I don't want this anymore, please stop, or whatever...I didn't know the drill."<sup>175</sup>

"...even when I did try to get them to stop, send them a text message or so, it stopped for a few days and then it continued on. So it took a while to actually get them all to stop."<sup>176</sup>

Consumers who contacted PIAC reported similar problems unsubscribing. Consumer C.L. was instructed by Rogers' customer service to text STOP to the MPS when she first called them to complain about MPS charges on her bill. Unfortunately, the messages did not stop. The first time she contacted Rogers, customer service told her the messages were spam. This was not accurate as MPS messages are not spam. The second time she contacted customer service, the representative told her that she should "allow up to 10 business days for [the] service to be canceled." This is also not accurate as a STOP request must immediately unsubscribe the consumer from receiving premium text messages and the consumer should not be billed for any further messages. Several months later, C.L. was charged again for premium text messages from the same company, TMG Americas. When she contacted TMG Americas for compensation and demanded proof that she had subscribed, TMG Americas provided her with links to their terms of service only, and said they were "unable to provide [her] with the complete logs" that would verify her subscription.<sup>177</sup>

Consumers B.S. and D.S. experienced so much difficulty unsubscribing from MPSs that they decided to change their cell phone number:

"I began receiving premium text messages that I did not authorize. [KODOO] advised me to contact the text company to stop the texts, so I did. The text company agreed to stop the texts, but stated that it might take a month for the texts to stop. The subsequent month, more premium text charges appeared on my bill, so I again contacted [KODOO] but they would not block the texts...As they could not (or would not) block the texts, I took the drastic step of changing my cell phone number to prevent

<sup>172</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 40.

<sup>173</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 41.

<sup>174</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 39.

<sup>175</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 47.

<sup>176</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at page 38.

<sup>177</sup> Consumer C.L. contacted PIAC through email.

further premium texts ad charges. ...We did text the word STOP to the companies, but the texts did not stop immediately. In fact, they did not stop at all. They only stopped when we changed our cell phone number.”<sup>178</sup>

In consumer case study #4 described above, consumer S.S. texted STOP to short code 22888 that had depleted her TELUS prepaid account at a rate of \$5 per message. However, she continued to receive another nine text messages from the MPS company. Although she later discovered on her bill that she had not charged for the final nine messages, she had already paid to change her cell number as she did not want to argue or try to deal with the hassle.<sup>179</sup>

#### **d) Consumers Still Billed After Unsubscribing**

Some consumers complained that after they unsubscribed from an MPS, they were still billed for premium messages.

“I replied stop, but I think I did it maybe the 5<sup>th</sup> or 6<sup>th</sup> of the month, like early one, but I got charged for the whole month. So that was the kind of unpleasant part...They had stopped it right away, but they still charged me for the whole month.”<sup>180</sup>

“I got billed for that month [after unsubscribing].”<sup>181</sup>

“I think I had two billing cycles and I was kind of upset about that...I just kept getting them. My billing cycle had ended and I got a few before I stopped so I got them on two bills. So, I got mad after the first bill. The second bill I was really mad because a lot of it was still there.”<sup>182</sup>

It is important to note that under CWTA's Guidelines, where the MPS is charged on a monthly basis, a consumer will be billed for the full month of service if they unsubscribe before the end of the billing month. However, subscription MPSs that bill on a per message basis are required to cease sending premium text messages and cease billing for premium text messages immediately after a STOP command is actioned.

Problems with unsubscription are a key concern because they create unnecessary expenses and frustration for consumers. Consumer frustration is often compounded when they are required to follow up on unsuccessful unsubscription requests with their wireless service provider or to search for an alternative unsubscribe method, resulting in time-consuming endeavours. Furthermore, the technology exists for at least two wireless service providers to unsubscribe consumers, and yet many customer service representatives deny this capability and refuse to provide this service to consumers, even upon request.

Problems unsubscribing are also a key concern because the CWTA and the industry in general stand behind the double opt-in as the impenetrable, be-all-end-all answer to consumer complaints. However, the double opt-in requirement can only help protect consumers in the

---

<sup>178</sup> Consumers B & D.S. contacted PIAC through email.

<sup>179</sup> Consumer case study #4: S.S.

<sup>180</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 45.

<sup>181</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 47.

<sup>182</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 53.

subscription process, and only when companies voluntarily adhere to it. The double opt-in requirement does not protect consumers from problems with unsubscribing. Consumers in the focus group stated:

“R: I think that my main concern with this is that there are a lot of problems with cancelling the subscription.

M: Yeah, I was going to say, what about the unsubscribe process, like should there be a ...

R: Yeah, there’s a lot more hassle with that and I think that’s why they try to reel you in with this, I guess they’re kind of protecting themselves with the double opt in so you already know what you’re getting yourself into, but if the customer has a problem with unsubscribing I think they could address that for sure.

R: Yeah, they just tell you how they can do it but theory and practice are different things.”<sup>183</sup>

## **C. PROBLEMS WITH PRICING AND BILLING**

### ***i) Pricing***

#### **a) Value and expectation**

Problems with pricing and billing range from the innocuous (the questionable value of the MPS itself) to the more offensive (bills not describing the MPS, bill shock, and being billed after unsubscribing). Regarding the questionable value of the MPS itself, it should be kept in mind that three consumers in our focus groups indicated satisfaction with the value of MPSs when the MPS they received matched what they had expected to receive. This was the case with MPSs where consumers wanted a specific piece of information or entertainment such as hockey score updates and received this at the frequency and price anticipated.

“M: And did the content of the messages meet your expectations? Like when you were getting the joke of the day were they funny?

R: I mean, in a way yeah because they were so bad, but like I said I didn’t have like high expectations when I participated in it, right, so.”<sup>184</sup>

“I did the one for the Canucks, like, Sports Central, because I was interested in sports scores...Yeah, sports scores and stuff, who was drafted, goals, injuries. It was pretty cool.”<sup>185</sup>

“M:...like in your case [name], it sounds like you got what you wanted from it.

R: Definitely, I have nothing negative to say about it...I probably signed up a little more than half-way through the season so it only ended up costing like around \$20.00. Once the season ended, I didn’t get any texts or anything...

M:...So why did you decide to sign up for it?

---

<sup>183</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p.46.

<sup>184</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p.13.

<sup>185</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 8.

R: I'm just a hockey fan, wanted to know what was going on with the team. <sup>186</sup>

One consumer who received a free sports alert service indicated he would consider paying for such a service because it provided the information he wanted:

"[I]t is good value, I mean, I get exactly what I want, I know exactly what I'm getting and if you know what you're getting you're comfortable paying however much I guess it would be. So my experience is that it's fine, I like it, if I had to pay for it I might, but because it was free."<sup>187</sup>

Other consumers indicated that many MPSs did not match their expectations. This was particularly the case for MPSs where the consumers were charged even when they did not open or reply to the messages, where consumers received more messages than expected or frequent solicitations for other MPSs, and, as mentioned earlier in the report, where consumers signed up for what they expected to be a single contest entry or game score but received a subscription service.<sup>188</sup>

"M:... So what was your general impression of the MPS that you subscribed to? Like, was it good or bad value?

R: Bad value.

R: It wasn't annoying.

R: Annoying.

R: Yeah, I don't like the fact that you don't really know what it's costing you. Like none of them told me at the time. And I guess you should be aware of that, but I feel like you have to question cell phone companies so much. Like, they don't disclose that, so ..."<sup>189</sup>

"R:... I didn't realize I was signing up, but it was a contest. And if you text something to a certain number, you would have been entering the contest. But all of a sudden, I started getting several requests to enter continuously or some were emails and when I did get the bill I realized that it was something that I was paying like \$2.00 a text to send or receive.

M: So realized that you kind of inadvertently ...?

R: Yeah, even though I didn't answer some of the texts when I received them, I was charged for it because I remember I paid about \$40.00 in terms of those incoming texts even though I did not answer all of them."<sup>190</sup>

"R : Moi en fait j'étais abonnée, mais j'ai décidé de faire stop, quand tu envoies stop ça arrête parce que la raison c'est que je trouvais ça vraiment dispendieux et moi ce que j'avais comme SMP c'était l'horoscope aussi, mais la météo également, c'est environ une dizaine de dollars par mois, je trouvais ça inutile dans le fond, Internet est tellement accessible, tu es tout le temps devant un ordinateur, météo, horoscope."<sup>191</sup>

"[I cancelled] and I stopped getting them. But that's when I started getting other ones, I got horoscope and like, you know, enter to win a, you know, vacation, that kind of stuff.

<sup>186</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 11.

<sup>187</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 11.

<sup>188</sup> For examples of consumers expecting one time contests or quizzes, not subscriptions, see above section vi) Problems Indicating an Ongoing Subscription.

<sup>189</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 12.

<sup>190</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 9.

<sup>191</sup> Consumer Focus Group, 14 October 2010 Montreal 8:00 pm at p. 8.

M: But actual messages or more solicitation to sign up for ...  
R: Solicitations to sign up for another one.”<sup>192</sup>

“M: ...what about you when you were getting it, how many were you getting per month?  
R: Until I sort of complained about it?  
M: Yeah.  
R: I don't know, I would get, I think it was about three times a week or something like that, it wasn't an insane amount but I didn't like it.”<sup>193</sup>

“When I was getting them they were pretty frequent. Again that's why I just like, okay, this isn't right, I'm not signing up for this. Yeah, like I said, probably about like, in a month, maybe like, well, 30 a month, like you know, it just became too frequent so.”<sup>194</sup>

“M: Okay. So those of you that were getting them over and over, did you expect the volume of messages that you'd end up getting?  
R: No.  
R: No.  
M: So it was more than you ...  
R: Definitely.  
R: M'hmm.”<sup>195</sup>

“M: So did you expect the volume of messages that you were going to get?  
R: No.  
R: No.  
R: No.”<sup>196</sup>

“J'ai été abonnée et c'est moi qui ai eu une mauvaise expérience et c'était sur Internet j'ai trouvé et c'était l'horoscope sauf que j'ai payé 12 \$ par mois, ça durait 2 mois et j'ai payé au bout de deux mois enfin le total de 2 mois ça m'a coûté autour de 70 \$ et je recevais les messages, mais il y avait rien à voir avec l'horoscope, les premiers messages de la journée oui c'était l'horoscope il y a pas de problème et après je recevais toutes sortes d'informations les météo, il y avait tout là-dedans, il y avait des messages je comprenais pas de quoi ça parlait c'était la bourse c'était n'importe quoi.”<sup>197</sup>

One consumer was subscribed to an MPS which she insists she did not subscribe to, “not even by mistake.”<sup>198</sup> Even if she *had* wanted the service, it did not match its description and was priced higher than most MPSs. It was described as “IQ Pad Alerts” on her Rogers' bill, but the content of the service was American news events. Messages were sent twice a day, at \$5.00 per message and she was billed for \$95.00 in third party charges.

While it is certainly a consumer's prerogative to receive a service that is expensive and of questionable value, there is still a point to be made about the “premium” cost of many MPSs in

---

<sup>192</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 12.

<sup>193</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 12.

<sup>194</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 12.

<sup>195</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 12.

<sup>196</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 14.

<sup>197</sup> Consumer Focus Group, 14 October 2010 Montreal 5:30 pm at pp. 7-8.

<sup>198</sup> Consumer S.L. contacted PIAC through email.

relation to the value consumers receive in return. As consumer P.H. stated, MPS “charge exorbitant rates for something called a premium service that really seems to have little to no value and in fact costs next to nothing to offer.”<sup>199</sup>

Additionally, consumers’ perception of the value of a service relates to the consumer’s expectation of what they should receive. In summary, consumers found value in services that cost and delivered what they expected, but consumers also found several MPSs that failed to meet their expectations.

## **b) Bill Shock**

The price vs. value complaint relates to another common complaint among consumers which is bill shock. As described above in relation to problems with subscriptions, consumers are often confused by the advertised price of MPS subscriptions and shocked to discover the actual cost on their bill at the end of the month. For example, consumers may not understand from the advertisement or the information text message sent to their handset that the MPS is a subscription that will be charged to them daily or per message received, regardless of whether they open the message or reply. The consumer may think that for example, a daily horoscope means a horoscope that is accurate or current each day, and that on the day the consumer chooses to open their horoscope, he or she will be charged \$1.25 for that day. The consumer may not realize he or she will be charged for one horoscope each day regardless of whether he or she chooses to open their horoscope each day, to a total approximate monthly price of \$37.50. Similarly, the consumer may think that a daily trivia game means that they have the option to play a new question each day, and that on the day they choose reply to a message, or play the game, that they will be charged \$1.25. A consumer does not always realize that in fact, even if they ignore the messages, they will still be charged for every message received each day, to a total monthly price of \$37.50. Consumers may not understand the advertised price if they are only told that each message will be 25 cents, without recognizing that they will receive 20 messages per week, for a total monthly price of \$20.00.

“R: ... first it started like two a day because of the joke or the horoscope but then afterwards it was like four or five a day and then I didn’t really pay much attention to it I guess because I wasn’t really seeing the cost until I got the bill at the end of the month. And then that’s when I was going crazy to stop it but it was really, really hard.

M: So that was kind of a shock when you got the bill?

R: Yes.”<sup>200</sup>

“M: So when did you first realize that you were being charged for the MPS?

R: When my bill was a little bit over. Because I like to have a plan where I know what I’m going to pay every month and then it won’t be a surprise. And that’s when I was surprised.”<sup>201</sup>

---

<sup>199</sup> Consumer P.H. contacted PIAC through email.

<sup>200</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 14.

<sup>201</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at pp. 17-18.

There is a lesson to consumers to be vigilant about calculating the monthly cost of an MPS before subscribing. However, that does not absolve the industry - including the MPS companies, aggregators, wireless service providers who advertise MPS, and the CWTA who maintains rules regarding all aspects of MPS including advertisements - of their responsibility to ensure that accurate, transparent, easy to understand pricing information is advertised to consumers.

The problem of bill shock is not new to consumer contracts, particularly in the context of telecommunications contracts and other continuing or ongoing service contracts. Proposed amendments to consumer protection legislation in Ontario and Manitoba follow consumer protection legislation already enacted in Quebec, applying to agreements for wireless phone and data services. These proposed amendments speak to the need to clearly advertise a total monthly charge for cell phone services in addition to indicating all individual charges for which the consumer is contracting to pay.<sup>202</sup> This is because of the potential for consumers to be misled by an advertised price that neglects to mention a total, or “all in” price. Although these amendments do not specifically apply to MPSs, they indicate a general need for consumers to receive full information about pricing and terms prior to contracting for wireless services. In the same way, consumers of MPSs also need full, clear information about pricing and terms prior to purchasing MPSs. Where consumers do not see a clearly advertised “total” or “all in” price for MPSs and the total amount is much higher than expected, consumers experience bill shock.

Bill shock does not only happen when consumers use subscription MPSs. Consumers may also be shocked to discover the price of certain one-off MPSs as well. For example, a recent news story revealed that consumers were surprised to learn that when making one-time donations to charity, such as in response to the 2009 crisis in Haiti, they were being charged a standard text messaging fee in addition to the cost of the MPS donation. Given that the cost of transmitting a text message is negligible for the wireless company, many consumers were indignant to learn that wireless service providers received a cash windfall in the millions from the crisis in Haiti via MPS donations. In response, four major wireless service providers in the United States waived the standard text messaging rate for donations to Haiti.<sup>203</sup> The Mobile Giving Foundation

---

<sup>202</sup> In 2010/2011 Gord Mackintosh introduced Bill 35, *The Consumer Protection Amendment Act*, to regulate many aspects of cellular phone contracts, which the Manitoba consumer affairs minister thinks are “unfairly costly and harder to read than an 800 year old law” (see Paul Turenne, “Province takes aim at cell contracts,” *Winnipeg Sun*, 12 January 2011, at <http://www.winnipegsun.com/news/winnipeg/2011/01/21/16980041.htm>). For information on Bill 35 see The Legislative Assembly of Manitoba online: <http://www.gov.mb.ca/legislature/bills/billstatus.pdf> and <http://web2.gov.mb.ca/bills/39-5/b035e.php>.

See also Bruce Wwen, “Cellphone chicanery cancelled: Province unveils consumer-protection bill” 17 May 2011 online: <http://www.winnipegfreepress.com/local/cellphone-chicanery-cancelled-121984649.html>. See also Manitoba Consumer Protection Office Public Consultation Paper, “Improving Consumer Protection in Cell Phone / Wireless Device Contracts” December 2010 online: <http://www.gov.mb.ca/fs/cca/cpo/pubs/cellphone.pdf>. In Ontario, *The Wireless Phone, Smart Phone and Data Service Transparency Act*, was proposed in late 2010, calling for clear disclosure of all costs of mandatory and optional phone services as well a “prominent statement of the total cost to the consumer on a monthly or other periodic basis of all services,” if a supplier advertises a price for a particular service as part of an advertisement (see Bill 133, *Wireless Phone, Smart Phone and Data Service Transparency Act*, 2011 ordered referred to the Standing Committee on General Government online: [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2431&detailPage=bills\\_detail\\_the\\_bill&Intranet](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2431&detailPage=bills_detail_the_bill&Intranet)). In Quebec, Bill 60 brought amendments to the *Consumer Protection Act* as of June 2010. Now, cell phone providers must issue written contracts with the monthly rate for each service provided, as well as the total amount paid each month. The Quebec *Consumer Protection Act* is online:

[http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FP40\\_1%2FP40\\_1\\_A.htm](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FP40_1%2FP40_1_A.htm).

<sup>203</sup> CBC News, “Salvation Army taking text donations for Haiti,” 14 January, 2010, CBC News online at <http://www.cbc.ca/technology/story/2010/01/13/text-donations-haiti.html#ixzz1E2njJpAa>. See also, The Consumerist, “AT&T And Sprint Are Making Money Off Of Your Text Message Donations,” The Consumerist online at: <http://consumerist.com/2010/01/att-and-sprint-are-making-money-off-of-your-text-message-donations.html>.

Canada now states that mobile users that choose to make a text message donation will not incur any standard text messaging fees typically charged by a wireless service provider.<sup>204</sup>

## **ii) Billing**

### **a) Cramming**

“Cramming” is the practice of placing unauthorized, misleading or deceptive charges on consumers’ telephone bill.<sup>205</sup> The United States Federal Communications Commission and Federal Trade Commission acknowledge cramming as an issue for consumers. The Federal Trade Commission states: “[c]ramming happens when a company adds a charge to your phone bill for a service you didn’t order, agree to, or use. Cramming charges can be small, say \$2 or \$3, and easy to overlook.”<sup>206</sup> There are several types of cramming charges, which may appear once or may be “subscription” charges that show up every month. The FTC lists a number of possible cramming charges, including long distance service, subscriptions for internet-related services such as web hosting, access to restricted websites, entertainment services with a 900 area code, collect calls, and club memberships.

In the United States, the Federal Communications Commission implemented Truth-in-Billing rules that require telephone companies to provide clear, non-misleading, plain language in describing services for which the consumer is billed and has published Anti-Cramming Best Practices Guidelines.<sup>207</sup> The telephone company sending the bill must identify the service provider associated with each charge and must also display one or more toll-free numbers that the consumer can call to ask about or dispute any charge on the bill. The United States Federal Trade Commission also works to prevent fraudulent, deceptive and unfair business practices in the marketplace.

Where the consumer has not authorized an MPS and is billed for MPS charges, this may fall under the umbrella of “cramming” as the unauthorized charge is on the consumer’s telephone bill. Furthermore, where the charge on the phone bill is not accompanied by sufficient information for the consumer to identify the charge, the charge may appear to be misleading or deceptive.

---

<sup>204</sup> In the CBC News story dated 14 January 2010 (“Salvation Army taking text donations for Haiti,” online at <http://www.cbc.ca/technology/story/2010/01/13/text-donations-haiti.html#ixzz1E2njJpAa>), CWTA spokesman Marc Choma stated: “Cellphone users are charged the amount of their donation on their next cellphone bill. There are no additional or ancillary charges, ... but standard text messaging rates apply.” This was PIAC’s understanding until the Mobile Giving Foundation Canada stated in a submission to the CRTC on 7 September 2011: “All messages sent and received from the MGFC CSCs have been zero rated by the Canadian WSPs. This means that any mobile user that chooses to make a text message donation will not incur any standard text messaging fees typically charged by a Wireless Service Provider.” See submission by Mobile Giving Foundation Canada to Telecom Notice of Consultation 2011-400, *Call for comments on draft Electronic Commerce Protection Regulations (CRTC)* dated 7 September 2011 at p. 2.

<sup>205</sup> See Federal Communications Commission, “Cramming – Unauthorized, Misleading, or Deceptive Charges Placed on Your Telephone Bill” online: <http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill>.

<sup>206</sup> See also the Federal Trade Commission, “Facts for Consumers: Cramming Mystery Phone Charges” online: <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro18.shtml>.

<sup>207</sup> Cite Truth-in-Billing rules. See Federal Communications Commission, “Anti-Cramming Best Practices Guidelines” online: [http://transition.fcc.gov/Bureaus/Common\\_Carrier/Other/cramming/cramming.html](http://transition.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html).

## **b) Consumer Protection for 900/976 Numbers on Landline Phones**

The practice of billing MPSs on wireless phone bills is relatively new to consumers however, the practice mirrors third party billing on landline phone bills for calls to 900 and 976 numbers. Problems arose with 900 and 976 numbers only a few years ago. These third party services - primarily psychic readings, adult chat services, sports and weather updates and information services - resulted in problems for consumers who were charged by the minute for calls to a 900 or 976 number without realizing that the call incurred a cost. In response to the need to protect consumers, the CRTC mandated a series of consumer protection measures, including the requirement that bills itemize each 900 or 976 call together with a date and time for each call.<sup>208</sup> A discussion of these 900 services as well as the consumer safeguards implemented to address issues with 900 services will be discussed in Part VI later in this report.

## **c) Consumer Protection through Detailed Billing**

Consumers need to know exactly when and how they subscribed to an MPS. They need to see listed on their bills the date and time and the mechanism by which the consumer subscribed to the MPS (e.g. the time and date stamp and content of the first opt-in text message sent by the consumer via handset, and the time and date stamp of the second opt-in entered online with the URL of the website where the consumer entered the PIN number). In addition, consumers need to see listed on their bills the number of premium messages sent and received, with date and times for each message. First, this is necessary to reduce billing disputes, as consumers with access to this very basic information could then verify that they (or someone with access to their phone) had in fact subscribed or participated in an MPS. Second, this would provide consumers with sufficient information to dispute incidents in which they do not believe they subscribed to an MPS via a “double opt-in” mechanism.

“R: Now I’m finding it’s much more difficult to get an itemized charge on your bill. Because I know for Telus for example, they were going to charge you extra if you want a paper bill. And even if you want a paper bill, it’s not going through the full details of the charges that you’re getting.

M: They’re giving you a lump sum you mean?

R: That’s right. So if you do need the information you have to go log in online and stuff like that to find out what you’ve used...If it looks out of the ordinary then I will go and check it because it requires me to go online and log in and take a look and go through the bill what I’ve been charged for. And I really can’t be bothered with that.

M: So the whole switch to online billing makes it harder to scrutinize your bill, is that what you’re saying?

R: Yeah.”<sup>209</sup>

“The thing now though is you can’t even track your text messages online.”<sup>210</sup>

<sup>208</sup> Telecom Decision CRTC 2005-19, *900 service - Agreements and consumer safeguards* (30 March 2005).

<sup>209</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 34.

<sup>210</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 54.

Consumers are able to see a list of every phone call made or received on their monthly bill, however consumers cannot see a list of each individual MPS message that was sent or received. They cannot verify the date, time and method of subscription, when messages were sent or received, and how many messages were sent or received. Sometimes, their wireless bill is general and describes the charges as merely “third party charges” and consumers are simply billed the total amount for MPS charges. Rogers now provides the name of the MPS company, the five or six digit short code number, and the contact information of the MPS company and displays the total number of messages billed for multiplied by the cost of each message on the customer’s monthly bill. This is critical information that all carriers should provide when billing their customers for MPSs. Where information is not provided to the customer on his or her bill, in fact, the customer is being forced to pay for a charge that the MPS company, the wireless phone company and the CWTA refuse to prove is legitimate. It is simply not owed under common law that one should be forced to pay for unnamed “third party charges” without the company verifying up front, when and how the consumer contracted for the purchase. An unnamed “third party charge” is not a debt owing, and a debt action would most likely fail.

#### **d) Billing and Implications for Consumer Protection in the Future**

At the recent “Preventing Fraud in a Digital Age” conference, the CWTA presented a panel discussion on mobile transactions and the “micro payments world.”<sup>211</sup> David Farnes, Vice President, Industry and Regulatory Affairs of the CWTA stated that “within 5 years the mobile phone will be the preferred consumer financial transaction instrument, slowly displacing cash and plastic card usage.” Mobile phone financial transactions will include the “m-wallet” as well as micro payments through MPSs. Similarly, Gary Schwartz, President and CEO of Impact Mobile described MPSs as a “billing gateway.” He also described using MPSs for digital content purchases as a “very robust and thriving way of driving transactions.” The growing trend of using wireless phone accounts for billing third party charges cannot be overlooked.

The panel described how the MPS industry has evolved from formerly being focused on ringtones, to now tethering payments to phones. There has been a proliferation of options for MPS “micro payments” in the past 2 years. For consumers, this raises some interesting comparisons. There is much invested in protecting consumers’ credit card information, their government ID and other critical personal information and accounts electronically, and multiple consumer fraud protections built into those payment systems. In comparison, the CWTA adamantly claims that no fraud is possible through MPSs, yet it is unclear that the third-parties operating MPSs are put through a diligent review to ensure that their systems cannot be compromised. The only consumer and fraud protection currently in place in the MPS scheme appear to be the double opt-in and unsubscription mechanisms contained in the CWTA’s Guidelines. When MPS companies are noncompliant with the double opt-in or unsubscription mechanisms, there are no consumer redress channels.

Credit cards provide consumer protection through chargebacks, “zero liability” policies and independent investigations. MPS third party billing provides none of these. This glaring deficiency was pointed out by one consumer who stated:

---

<sup>211</sup> Preventing Fraud in a Digital Age, March 7 & 8, 2011, Ottawa, ON, Session #3 “Mobile Transactions.”

“Fido refused to do anything...when I told them to decline any billing from these unauthorized third party charges. They said it’s not a fraudulent company, they’re legit. I told them that they’re not protecting their customer. It’s the same scenario as any vendors can put charges on my credit card accounts. Fortunately, lots of credit card company [sic] provide zero liability to their customers. They dispute...charges on behalf of their customers. Fido paid any third party company on their customers behalf without verifying the charges and then blatantly passed the charges to their customers. And they told the customer to dispute the charges directly to the third party? How is it fair?”<sup>212</sup>

In summary, consumers encounter obstacles advocating for themselves because of problems with pricing and billing of MPS. These problems range from paying large amounts of money for what may be described as services of questionable quality or usefulness, to the problem of insufficient information on bills, to concerns about the potential for fraud as micro-payments through one’s wireless service account becomes more and more common.

#### **D. THE MYTH OF “ROGUE” MOBILE PREMIUM SERVICE COMPANIES**

In response to the gap between the industry’s version of events and consumers’ version of events, the myth of the rogue MPS company was born. The industry maintains that MPSs running in Canada are in strict compliance with the CWTA’s Guidelines, and that it is impossible for consumers to be subscribed to services without having opted in. At the same time, however, when a consumer states that they have been improperly subscribed and charged, the industry in some cases points to an unnamed “rogue” overseas company as the culprit. For example, in a Global News story that aired in September 2010, a consumer who disputed MPS charges on his phone bill was told by his wireless service provider that the charges must have come from a “rogue” MPS operating in Holland.

The myth of the rogue, unknown MPS company is problematic because it deflects attention away from the real problem – noncompliant MPS companies that are not being forced into compliance. The CWTA adamantly stated in its consultation with PIAC that “rogue” MPS companies do not in fact exist.<sup>213</sup> It is not technically possible for an unknown MPS company either operating in Canada or in a foreign jurisdiction to bill Canadian consumers on their wireless phone bills, as all MPS operating in Canada must first be approved by the CWTA through the Short Code Council comprised of representatives of wireless service providers. If it is impossible for an unknown “rogue” overseas company to bill wireless consumers in Canada, then the logical explanation is that the mobile premium service was approved by the wireless service provider and leased by the CWTA, but is acting in noncompliance with CWTA Guidelines. So then, while “rogue” companies do not exist, it appears that noncompliant companies do. It is the responsibility of the CWTA to monitor noncompliance and intervene when noncompliance is discovered.

---

<sup>212</sup> Consumer V.L. contacted PIAC through email.

<sup>213</sup> PIAC consultation with CWTA, 9 February 2011.

## E. THE POTENTIAL FOR FRAUD

Fraud moves to the easiest target. The industry can prevent the MPS scheme in Canada from becoming an easy target for fraud by ensuring that MPSs operating in Canada are compliant, noncompliant MPSs are quickly discovered and dealt with, and consumers can obtain appropriate redress when they have dealt with a noncompliant MPS company. PIAC's research team attended a recent conference on digital fraud and noticed that issues surrounding digital fraud are similar to issues surrounding current practices within the MPS industry.<sup>214</sup> These practices, as well as technological advancements, make MPSs a potentially attractive tool for future fraudsters.

According to Inspector Kerry Petryshyn of the RCMP, a significant incentive for mass marketing fraud is that the fraud affects a large number of people at under \$200 per person so that the fraud will not likely be reported to police or acted upon in court.<sup>215</sup> Moreover, many consumers do not even know or recognize that they have been victimized. For a fraudster seeking a new and profitable scheme, an MPS scam could affect a large number of people with a smaller dollar amount charged, such that many consumers would not recognize the unauthorized or fraudulent charge, much less report it.<sup>216</sup> Most consumers would not dispute it beyond a call to their wireless service provider and few if any bring an action to court. Recent statistics from the Canadian Anti-Fraud Centre reflect a significant increase in the number of reported instances of fraud through unauthorized text message charges.

Online fraud, in its many forms, is particularly rampant. Consumers are bombarded with advertisements, malware, cookies, and viruses that can collect their data, lead to identity theft, infect their systems and make their computers botnets for fraudsters. It can be challenging for consumers to protect themselves against online fraud, however consumers are being educated to take certain precautions in order protect themselves. For example, consumers are constantly reminded that they should not open a suspicious email and should not communicate with an email address they do not trust. These are important precautions, however the design of the MPS scheme runs counterintuitive to consumer education in fraud prevention. Consumers indicate that when they receive unwanted MPS text messages, they do not open them or reply to them. However, the MPS scheme requires consumers to open these messages if consumers are to obtain information or to unsubscribe.

"I just ignored the messages they sent as most do, believing that they were just text spam. Big Mistake! Had I opened them, I may have recognized the as a message that cost me \$2/message."<sup>217</sup>

---

<sup>214</sup> Conference Panelist Bill Harmon, Associate General Counsel, Head, Digital Crimes, Microsoft, Preventing Fraud in a Digital Age, 7-8 March 2011, Ottawa, Ontario.

<sup>215</sup> Inspector Kerry Petryshyn, RCMP speaking at Preventing Fraud in a Digital Age, 7-8 March 2011, Ottawa, Ontario.

<sup>216</sup> PIAC consultation with Inspector Kerry Petryshyn of the RCMP, November 2010. Inspector Petryshyn estimated that 9 out of 10 people who are defrauded do not report it. Furthermore, where the value of loss is low, it is estimated that approximately 0.5 out of 10 people will report the fraud. Organized crime groups perpetrating fraud generally aim to stay "below the radar" by keeping the fraud dollar value under \$100 per victim.

<sup>217</sup> Consumer R.C. contacted PIAC through email.

“...this all happened, with that specific [MPS], within a couple days. And so I looked back at every text that they had sent me and there was that little disclosure in every one of them and I just didn’t look, because I just kind of hit ignore and deleted it or whatever.”<sup>218</sup>

“In some cases you might get all these MPSs and you might ignore them because you think they’re spam and you don’t bother to text back to stop, and then all of a sudden you get your bill.”<sup>219</sup>

“When I started receiving these questions the next week, I immediately deleted the text never ‘responding’ to any of the questions. I believed that no response meant ‘no bill’...”<sup>220</sup>

“After while I even stopped reading them and I would delete them before even opening them so it was a big surprise that there charges for receiving text messages even you they were not read.”<sup>221</sup>

“I never responded to any of the text messages I received from them. I got rid of them right away...If I knew I was getting charged for these messages I would have complained sooner.”<sup>222</sup>

However, the MPS scheme requires consumers to open these messages if consumers are to obtain information or to unsubscribe. This design is counterintuitive for consumers with the result that consumer confidence is eroded when they receive bills with unexpected totals. Consumers will be less trusting when asked to enter their personal information online, interact with advertisements, and purchase digital content (such as MPSs) through their wireless account. Current industry measures (such as texting HELP or INFO or STOP) fail to protect consumers because they are, in practice, counterintuitive for the majority of consumers who have been educated to ignore unsolicited messages for their own protection. In addition, there are measures that could protect consumers that the industry has not yet pursued, such as the ability for consumers to block MPSs, the ability of consumers to access a comprehensive text message transaction record, and itemized billing of MPSs on wireless accounts. As described by Don Mercer of the Consumers’ Council of Canada, timely technological fixes are critical for consumers.<sup>223</sup> PIAC highlights the importance of these technological fixes not only to protect consumers from the current noncompliant MPSs, but to ensure that fraudsters do not target use the MPS industry as a vehicle for fraudulent activity.

When examining consumers’ experience within any industry, Mercer highlights that it is very important to ask whether the balance of risk is appropriate and fair.<sup>224</sup> In the case of MPSs, the balance of risk lies entirely with the consumer. There is almost no risk to wireless service

---

<sup>218</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 19.

<sup>219</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 81.

<sup>220</sup> Case study #2: L.M.

<sup>221</sup> Consumer Z.L. contacted PIAC through email.

<sup>222</sup> Consumer L.G. contacted PIAC through email.

<sup>223</sup> Don Mercer, Consumers’ Council of Canada speaking at Preventing Fraud in a Digital Age, 7-8 March 2011, Ottawa, Ontario.

<sup>224</sup> Don Mercer, Consumers’ Council of Canada speaking at Preventing Fraud in a Digital Age, 7-8 March 2011, Ottawa, Ontario.

providers or aggregators whose worst case scenario would be to stop an MPS from operating. The risk to consumers involves financial loss, loss of confidence in the industry, loss of time and energy spent disputing charges, and frustrated attempts to access information to dispute a charge. This imbalance puts consumers at a serious disadvantage. It also paves the way for fraudsters to take advantage of consumers' inability to detect and dispute charges.

## **F. PROBLEMS SEEKING REDRESS**

### ***i) Seeking Redress through Wireless Service Providers***

#### **a) Discovering Mobile Premium Service Charges**

As mentioned above, wireless phone bills may not clearly describe MPS charges. With the move to electronic bills, where the consumer often only sees a front page of the bill with a total amount due, there may be extra steps a consumer must take to access the details of their bill to understand the breakdown of charges.<sup>225</sup> Even with electronic bills, there is no requirement to provide detailed billing as per CRTC decisions forbearing from wireless regulation, as will be discussed below. Consumers with pre-paid accounts often have no access to their text message history and no way to see or recognize improper charges. A consumer would need to notice that their account is depleted more frequently than usual and call their service provider to discover MPS charges. As a consequence, individual consumers may not recognize they are being billed for an unauthorized MPS and therefore may not bring those complaints forward.

#### **b) Complaints to Wireless Service Provider Customer Service**

There may be a lack of information, or worse, misinformation, provided at the customer service level as attested to by many consumer complaints and in focus group discussions. Even if consumers recognize and attempt to dispute improper MPS charges with their wireless service provider, they may be stymied in their attempts to resolve disputes to their satisfaction. The consumer's first point of contact is with their wireless service provider, as it is the wireless service provider who bills the consumer for MPSs. Issues consumers often encounter with customer service representatives are described below.

#### **c) Wireless Service Provider Customer Service Denies Relationship with MPS Company**

Customer service representatives often state that the wireless service provider is not responsible for "third party" charges. Customer service representatives may claim that the wireless service provider merely collects the charges on behalf of the company and cannot resolve billing disputes on behalf of the third party. As well, consumers have reported that customer service representatives claim that they cannot cancel the service for the consumer

---

<sup>225</sup> For example, Fido's electronic bill statement is sent by email to the consumer each billing cycle. The front page of the bill states only the previous and current month's total charges. This is not unusual and promotes some level of efficiency and clarity, as consumers often like to know the total, upfront. However, e-billing can be problematic because it adds extra steps for the consumer before he or she can read through the bill in any detail including clicking on the link, opening an attachment and perhaps having to save or print the pages for easier use. The result is that when a consumer is charged a few dollars in MPS charges, he or she may not notice this on the front page of the electronic bill and may not recognize the need to read the bill in detail.

and does not have authority waive the charges. Consumers expressed frustration with wireless service providers' denial of responsibility of their role in the MPS scheme:

"When [my son] called and complained to MTS they said 'well it's not us charging you it's the 3<sup>rd</sup> party and we just act as the billing agent.'"<sup>226</sup>

"Ultimately, if Rogers is responsible for this stuff getting to your phone, providing the highway for it to get to your phone... they should be able to cut it off."<sup>227</sup>

"...the phone company is who you have a relationship with...somewhere down the line there has to be accountability..."<sup>228</sup>

"It took two days to talk to an agent...[who] confirmed that I must pay since it was not Bell Mobility's charges."<sup>229</sup>

"...in my Fido bill I had been charged an extra \$41.25 as "other party charges"... Fido refused to take any responsibility in the messages or waive the charges."<sup>230</sup>

"...I contacted my provider (FIDO) to complain and get the charges removed. I was told that I had to contact the 3rd party company myself to get the charges removed and that [FIDO] couldn't do anything about it."<sup>231</sup>

"... I was finally able to speak to a Bell representative. She promptly told me that she couldn't help..."<sup>232</sup>

"As the money was already paid out, the Bell contact would/could not do anything about recovery, not even their commission!"<sup>233</sup>

"There has to be some accountability by the service providers to, in some ways, act on their client's behalf..."<sup>234</sup>

"Oui c'est ça le service à la clientèle, mais la première des choses c'est l'Internet où je me suis abonnée, j'ai essayé sauf qu'il y avait aucun numéro de téléphone ou aucun où on pouvait envoyer la lettre ou quoi que ce soit pour arrêter, il y avait rien du tout ça fait que moi je me suis adressée à la compagnie de téléphone, mais eux ont dit qu'ils sont pas responsables, je présume vous voulez pas me garder comme cliente."<sup>235</sup>

"The representative on the phone from Rogers went on to tell me that the government of Canada authorizes them to collect these charges on behalf of the third party....I even

---

<sup>226</sup> Consumer P.H. contacted PIAC through email.

<sup>227</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 40.

<sup>228</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 48.

<sup>229</sup> Consumer G.K.B. contacted PIAC through email.

<sup>230</sup> Consumer S.K. contacted PIAC through email.

<sup>231</sup> Consumer C.W. contacted PIAC through email.

<sup>232</sup> Consumer M.L. contacted PIAC through email.

<sup>233</sup> Consumer Case Study #3: B. and J.P.

<sup>234</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 71.

<sup>235</sup> Consumer Focus Group, 14 October 2010 Montreal 5:30 pm at p. 37.

asked the representative of Rogers to have his manager call me...When she did after 72 hours of waiting, she couldn't answer when I asked, if Rogers makes money off of collecting these funds. She was 'unsure' about what this process entailed."<sup>236</sup>

#### **d) Blaming Consumers**

Consumers routinely reported being blamed by their wireless service providers. Focus group participants stated:

"R:...[y]ou rarely get the benefit of the doubt, I mean, you have to prove your case."

R: They don't really believe you, yeah.

R: You kind of have to plead.

R: Yeah.

R: And you cry. They won't listen, like I told them adamantly that I did not subscribe to this and I don't know who this person is, but..."<sup>237</sup>

"[W]e are being charged for a service that we knowingly subscribe to. We are being charged approximately \$300.00 to date. We did notify Fido, who were condescending and did provide us with two phone numbers to call to cancel the subscription. We now are told that they provided us with 3. It appears, we are guilty of the following.:  
[p]roviding our phone # to the service, ....[a]ccepting the service. The accusations are untrue and we cannot understand how we accepted the service. Fido has made us feel Stupid!!! I feel abandoned by Fido, they are not supporting their customers (me) at all but charging us for a service we did not request. They have told us that if we do not pay they will discontinue our service. We have paid \$100.00 to date over and above our regular amount. After calling the two numbers we thought it was taken care of but it was not. We were told that there was more activity and that we were aware of it. They know it is entrapment and don't care. It appears there is no help for us. We have a new number, and were told matter of factly, that if we did not take care of the situation properly, all calls on the old number would be charged to our new number."<sup>238</sup>

Wireless service providers routinely tell consumers that they must have signed up for the MPS because it is impossible to be signed up without consenting or actively opting-in. This is not true, as consumers could inherit a subscription when they activated a recycled phone numbers, or could have been subscribed without consent by noncompliant MPS companies. As well, consumers may have subscribed to MPSs without full knowledge of the terms of service such as the fact that the service was a subscription.

Parents feel frustrated when blamed by customer service for charges their children unknowingly incurred. This frustration is exacerbated by the fact that many MPS specifically target youth with

---

<sup>236</sup> Consumer M.A. contacted PIAC through email.

<sup>237</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 42.

<sup>238</sup> Consumer E.W. contacted PIAC through email.

content and prizes teens find particularly attractive.<sup>239</sup> Consumer A.H. (case study #6) described the frustration many parents experience being blamed for MPS charges:

"I called Rogers, and asked if they would please block these subscriptions and cease to allow [my child] to subscribe to anything in the future. I explained that I am the account holder, and in no way did I ever authorize these charges to be on my account. I noted that [my child] is under 13, and I was never informed about the 'subscriptions' until it was too late.

Rogers basically told me that it was my responsibility to talk to my daughter about not subscribing to these services (even though she is obviously being preyed upon by scam artists that target naive and vulnerable children and do nothing to confirm that a person is indeed of the age of consent to agree to being billed for a subscription plan)...

In my opinion this is a major scam, it preys upon and exploits children, it seems fraudulent (as I never agreed/consented to the charges nor was I aware of them)... [T]he policies and practices of these [MPS] need to be changed to...better authenticate the identity/age of the "purchaser"...I believe if a parent or account holder complains due to the mobile phone user being under the age of 13 (it should be under 18) then the full charges need to be refunded."<sup>240</sup>

Another parent, P.H., described similar frustrations:

"The second incident is even more frustrating as it's my son who is 14 [and who has a] student plan. As the person registered I find it amazing that the phone companies have the authority to add charges to your bill without you the contract owner ever agreeing to them. No underage kid on a student plan should be able to subscribe to these scams. To me the whole idea...is just ripe for fraud."<sup>241</sup>

Consumers resent dealing with customer service agents who are condescending to them and who suggest they are assisting the consumer out of kindness or an act of patronage, when in fact the consumer may be fully entitled to a refund and, at minimum, an explanation for the charges. One consumer stated:

"I kind of always got the impression that [Rogers was] doing me a favour by crediting my bill, you know. They're not up front. ... They definitely don't take any responsibility for it."<sup>242</sup>

Blaming the consumer does not address the real problem of unauthorized charges that should not have been billed to the consumer in the first place.

---

<sup>239</sup> Al MacRury, "Teen's text message bills add up," The Hamilton Spectator 26 February 2008 online:

<http://www.thespec.com/news/business/article/172833--teen-s-text-message-bills-add-up>. In this article, Bell Canada communications vice-president Mark Langton explains that "There are many third-party providers of text messages... horoscopes, weather reports, even daily jokes and dating tips. You've probably seen the TV ads they run, often aimed at younger cellphone users" (*ibid*).

<sup>240</sup> Consumer Case Study #6: A.H.

<sup>241</sup> Consumer P.H. contacted PIAC through email.

<sup>242</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 39.

### **e) Issues Accessing Details of the Transaction Record**

Consumers have serious difficulty securing their detailed transaction record with the MPS, such as details surrounding the opt-in and a record of each message for which the consumer was billed. Wireless service providers either cannot or will not provide this record, and the MPS company can be very difficult to contact. PIAC has only seen consumers access their transaction record after the assistance or intervention of another party (for example, after a journalist picked up their story<sup>243</sup> or in the context of a CRTC hearing<sup>244</sup>). In these cases, the transaction record still did not show sufficient detail surrounding the opt-in, particularly when the opt-in was conducted via an online mechanism and used a PIN.

Consumers B. and J.P. contacted a CTV reporter who was able to secure their transaction record from the CWTA.<sup>245</sup> The record listed the MPS messages sent and billed for, but the only details provided for the web opt-in that the consumers disputed were the customer's mobile phone number and IP address. The MPS company could not provide greater detail about the "double opt-in" mechanism, such as the location of the online mechanism, particularly if the subscription was purportedly completed on an online pop-up or banner ad.

This is also reflected in one consumer's experience shared with PIAC. Consumer J.C. contacted 2WayTraffic and was told that he had been subscribed online, however they could not provide a website where this happened and would not provide evidence to the consumer.

"They stated that the charges were initiated on March 12, 2011 by someone entering a phone number into a website, then a text message was sent to the cell phone number containing a pin code and the pin code had to be entered online at the same website to initiate the service but they could not provide a website where this might have actually occurred! They have no evidence they are willing to provide that these services were requested and I have no knowledge that these services were requested."<sup>246</sup>

### **f) Burden of Proof**

Consumers are troubled by the underlying assumption that they agreed to purchase an MPS unless they can prove otherwise. The onus should not be on the consumer to prove they did not authorize a transaction. In any context it is difficult for one to prove what one has not done, especially when the consumer is unable to access transaction records. In this specific context, it is virtually impossible for the consumer to prove that he or she did not subscribe to an MPS because the only evidence of the purchase lies with the MPS company, with the wireless service provider, or with both, and a consumer's attempt to access this information is often

---

<sup>243</sup> CTV Calgary, "Texting Troubles," 7 March 2011 online:

[http://www.cp24.com/servlet/an/local/CTVNews/20110307/CGY\\_text\\_premiums\\_110307/The%202011%20Billboard%20Music%20Awards](http://www.cp24.com/servlet/an/local/CTVNews/20110307/CGY_text_premiums_110307/The%202011%20Billboard%20Music%20Awards).

<sup>244</sup> CRTC hearing 2009-01-21 #: 8620-U11-200901951 Union des consommateurs - Application requesting the CRTC to conduct a proceeding relating to the wireless carriers in order to adopt a policy for their respective subscribers concerning the abridged numbers for text messaging services. Hearing documents are available online:

[http://www.crtc.gc.ca/PartVII/eng/2009/8620/u11\\_200901951.htm](http://www.crtc.gc.ca/PartVII/eng/2009/8620/u11_200901951.htm). This hearing was decided in Telecom Decision CRTC 2009-445.

<sup>245</sup> CTV Calgary, "Texting Troubles," 7 March 2011 online:

[http://www.cp24.com/servlet/an/local/CTVNews/20110307/CGY\\_text\\_premiums\\_110307/The%202011%20Billboard%20Music%20Awards](http://www.cp24.com/servlet/an/local/CTVNews/20110307/CGY_text_premiums_110307/The%202011%20Billboard%20Music%20Awards).

<sup>246</sup> Consumer J.C. contacted PIAC through email.

frustrated. The onus must fall on the MPS company and the wireless service provider to prove that the MPS charges are legitimate.

#### **g) Wireless Service Provider Customer Service Cannot or Will Not Help**

Consumers are frustrated when they reach front line customer service employees who state that they do not have access to the name of the MPS, the short code number, or contact information for the MPS company. Some consumers have been told by customer service that they do not have the authority or ability to refund charges, to refund charges beyond one month, to provide transaction records, and above all, to immediately cancel the MPS subscription on the consumer's behalf. Consumers may be told that the only solution is to change phone numbers, often for a fee.

"...the customer service person was more so like 'just follow the on screen instructions.' She told me how to do it, and it didn't work. And I had told her this is my second time I've complained, I'm calling in, and told me the same thing. So at this point I was like 'Okay, I'm just going to change my phone. You guys are p\*\*\*ing me off.'"<sup>247</sup>

R: Telus said they couldn't do anything and I'd have to watch the [TV] commercial again...they said there should be fine print and it will tell you how to stop it.

M: That's interesting, they said go watch the commercial.

R: Yeah.

R: Well, they said there should be fine print and it will tell you how to stop it."<sup>248</sup>

A more helpful customer service representative may tell the customer to reply with a text message saying STOP to cancel the service. However, in some cases, customer service representatives may tell consumers to take their dispute to the MPS company, but may not provide the contact information for the MPS company.<sup>249</sup> The customer service representative will not usually cancel the service on the consumer's behalf, even if though they have the

---

<sup>247</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 41.

<sup>248</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 53.

<sup>249</sup> PIAC contacted wireless service providers in the summer of 2010 to ask if they could provide contact information for MPS companies. Several customer service agents stated that they did not have contact information for MPS that were billed to their customers. PIAC's research team spoke with a customer service agent from **Virgin** on July 26 2010. She stated that Virgin does not know who the company is who sends an MPS, unless it is MY Crush Luv or Text2Win for example. There are too many other companies and they don't have a list of them. PIAC's research team spoke with a customer service agent from **Fido** on July 26, 2010 who stated that sometimes Fido has the MPS company's phone number or five digit code, but that there are so many MPS companies that Fido's list is not complete. He also said that some MPS companies may block their numbers even from Fido. He suggested that the police are able to investigate and get the MPS company's number for the customer. PIAC's research team spoke with **Telus'** customer service on July 23 2010 who stated that the MPS text message will usually give the short code number and customers can then Google the number to get the MPS company's 1-800 number. She said that "if" Telus can access the 1-800 number or the MPS company's website, they will provide that information to the customer. PIAC's research team spoke with **Koodo's** customer service on July 29 2010. The agent stated that when "STOP" doesn't work, the customer can report their problem to phonebusters.com (the Anti-Fraud Centre).

technical means to do so.<sup>250</sup> The example below illustrates how consumers are given incorrect information from agents who either do not know what to do, or give consumers the run around:

“It took two days to talk to an agent...[who] confirmed that I must pay since it was not Bell Mobility’s charges. He explained how to ‘stop’ texts from this sender... If it doesn’t work, I need to visit a Bell mobility store. It didn’t work! The closest store is a 35 minute drive... The agent at Bell Mobility also had difficulty trying to ‘stop’ this particular text sender, explaining that the phone had an ‘automatic response’ setting which I didn’t understand. Only after changing the setting we could then stop the texter.”<sup>251</sup>

#### **h) Failure to Resolve Within Wireless Service Providers’ Internal Complaints Process and Failure to Refer to the CCTS**

When complaints are not resolved at the initial customer service level to the customer’s satisfaction, consumers may not be aware that they can ask for complaints to be escalated and customer service representatives may not offer to escalate the complaints. Many times, wireless service providers’ customer service agents do not inform consumers of their ability to bring unresolved complaints to complaints resolution organizations such as the CCTS. None of the consumers in the focus groups were provided information about either the CWTA or the CCTS when they contacted their wireless service provider to complain about MPS charges.

#### **i) “In Scope” Complaints**

In Australia, it is within the scope of the Telecommunications Industry Ombudsman (TIO) to track complaints about a customer service’s failure: a) to action a complaint, and b) to escalate a complaint.<sup>252</sup> Tracking these two categories of consumer complaints helps ensure that on a systemic level, wireless providers cannot simply “drop the ball” when consumers contact them with disputes. In Canada, no agency is tracking such complaints, and thus, no statistics are available on the regularity with which wireless service providers fail to take action on MPS complaints and fail to escalate MPS complaints. Many consumers who contacted PIAC about their issues with MPS and participated in PIAC’s focus groups reported that their complaints to wireless service providers were not resolved to their satisfaction and yet their complaints were not escalated up the chain. Few consumers who participated in PIAC’s focus groups were even aware of the existence of the CCTS or the possibility of resolving their complaint with the assistance of the CCTS.

At a recent CRTC hearing, PIAC requested that consumers be enabled to bring their complaints about customer service to the telecommunications industry’s complaints handling body, the CCTS. Specifically, PIAC requested that the CCTS’ scope of complaints be expanded to include

<sup>250</sup> In consultation with Telus in March and April 2011, PIAC learned that wireless service providers have the technological ability to cancel an MPS service, often by the mere click of a mouse. Telus provides a WAP deck for smart phone consumers, which has a screen listing all MPS to which the consumer is subscribed, and which provides an “unsubscribe” function, by directly clicking “unsubscribe” from the WAP deck. With these kinds of technological capabilities, it is inexcusable that wireless service providers routinely deny this capability, and refuse to exercise this ability even at the consumer’s request.

<sup>251</sup> Consumer G.K.B. contacted PIAC through email. For clarification, there is no automatic response setting that would interfere with texting STOP to cancel a short code. There is also no value in visiting a retail store over calling customer service. The agent needed to investigate the matter and refer the matter to a supervisor if he or she didn’t know what to do.

<sup>252</sup> To see the list of complaint categories which the TIO investigates, see the Telecommunications Industry Ombudsman, “2010 Annual Report: Making a Difference” at pp. 112-115 online: [http://www.tio.com.au/publications/annual\\_reports/ar2010/PDFs/AnnualReport2010Download.pdf](http://www.tio.com.au/publications/annual_reports/ar2010/PDFs/AnnualReport2010Download.pdf).

customer service issues, similar to the Australian model, however the CRTC considered that “the record did not justify” requiring that.<sup>253</sup> The Commission now requires the CCTS to begin to collect statistics on their “out of scope” complaints, which would include customer service complaints. PIAC hopes that this will lead to documentation and recognition of the prevalence and detriment of customer service problems in general and provide a voice for consumer complaints about MPSs in the larger Canadian public.

### ***ii) Seeking Redress Through Mobile Premium Service Companies***

Consumers reported serious difficulty seeking redress through MPS companies. Problems range from not receiving a response from the company, being unable to speak to a live person at the company, not having their complaint addressed, and the inability to obtain a refund. Consumers reported frustration reaching only an automated phone message or only having an email address as a point of contact, as opposed to a live service agent. Consumers noted that when they could not reach a live agent, they felt wary of having to unsubscribe or report a problem by leaving their wireless number and other information in an online form or in a voice message, particularly after feeling that they were “scammed” by the company in the first place.

Consumers stated that when they did reach a live agent at the MPS company, they did not receive helpful assistance or find resolution. They recounted their experiences of being blamed and dismissed by MPS companies. In extreme cases, consumers reported being laughed at or made to feel stupid when they contacted MPS companies. Consumers informed PIAC that the MPS company often required them to submit a refund request in writing or online. After that, their request would be reviewed and if the MPS company decided to provide a full or partial refund, the consumer could expect a cheque in the mail. Consumers described feeling wary of providing the MPS company with even more personal information such as their full name and mailing address, in order to potentially receive a cheque. Again, this process was counter-intuitive for many consumers who have been educated to protect themselves against fraud by only providing personal information to entities they trust.

Consumers in the focus groups expressed skepticism at the possibility of reaching the MPS company or seeking redress through them:

“M: Before you called Telus, did you ever try to contact, like did you ever directly try to contact the MPS company? Was there ever a phone number or a place to ...?”

R: No.

R: I don’t think it was an option or else I would have called.

R: And they never told me where the messages were coming from, what headquarters, what city, nothing.”<sup>254</sup>

“M: Did any of you ever try to contact the MPS or short code provider directly if you had a dispute? Like did you ever try calling their number?”

R: Can you call them, like is it ever clear who to ...

---

<sup>253</sup> Telecom Regulatory Policy CRTC 2011-46: Review of the Commissioner for Complaints for Telecommunications Services at paras. 28-9 online: <http://www.crtc.gc.ca/eng/archive/2011/2011-46.htm>.

<sup>254</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 42.

R: That's what I worry about, can you actually reach them anywhere? Like they give you a short code and a help line, who are you really talking to though? Like that's why I think the best people to talk to are your cell phone providers but even then they can't really, they don't even offer, I don't even remember them offering oh call this person."<sup>255</sup>

Experiences of consumers in the case studies are summarized below:

Consumer C.A. was told by the MPS company, Habbo, to go back to his wireless service provider and insist they block MPSs from his phone (however, wireless service providers do not provide this service in Canada).<sup>256</sup>

Consumer V.L. was frustrated when she was only able to reach an answering machine for one MPS company, which instructed her to leave her cell phone number. She contacted another MPS company who insisted she had subscribed online and required her to submit a form to request a refund. She was reluctant to give her number to the first company's answering machine as she suspected the company was scamming her in the first place, and did not want to provide a form to the second company providing name, email address, mailing address and name of her wireless provider, as she did not know what else they might do with that information.<sup>257</sup>

Consumer G.S. reached TMG Americas, the company that runs Skill2Thrill, who told him they were in compliance with CRTC regulations (however, the CRTC does not regulate MPS).<sup>258</sup>

The same MPS company, TMG Americas, told consumers B.S. and D.S. that it would take a few months to stop the MPS program (however the company is required to stop all texts and all charges immediately upon request by the consumer under CWTA rules).

Consumers B. and J.P., reached only an automated message through MPS company Textea. The automated message (in Spanish and English) was confusing and difficult to hear and did not assist them with their problem.<sup>259</sup>

Consumer C.W. attempted to contact the MPS company, Fanbox, but reached only an automated message, not a person, which meant he could not dispute the charge.<sup>260</sup>

Consumer J.C. contacted 2WayTraffic and was told that he had been subscribed online, however they could not provide a website where this happened and would not provide evidence to the consumer.<sup>261</sup>

---

<sup>255</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at pp. 42-43.

<sup>256</sup> Consumer C.A. contacted PIAC through email.

<sup>257</sup> Case Study #5: V.L.

<sup>258</sup> Consumer G.S. contacted PIAC through email.

<sup>259</sup> Case Study # 3: B. and J.P.

<sup>260</sup> Consumer C.W. contacted PIAC through email.

Consumer A.S. was charged by the website text4u.com, but could not find a way to contact the text4u company as their website is not in English. Her wireless provider, Bell, cancelled the MPS for her, but would not reimburse the charges and she could not reach the MPS company for a refund.<sup>262</sup>

In essence, seeking redress through the MPS company is very inconsistent and yields difficulty and frustration. Some consumers were partially refunded for MPS charges by the MPS company with nominal cheques for \$5 or \$10, however, such experiences are not standard. A few consumers reported frustration when offered only a partial refund. For example consumer A.H. (case study #6) accumulated \$200 in charges through several MPS companies, but was offered only \$10 by some of the companies she contacted.<sup>263</sup> One consumer turned down a refund offer because it was so meager.

“Text [C]hallenge did eventually offer to refund \$10.00 of the charges but I declined their offer...The reason I declined their offer to refund \$10.00 worth of the charges was because they indicated that this would be a final settlement and as they had charged me for \$70.00 worth of messages that I truly believe my husband did not sign up for, I said no.”<sup>264</sup>

MPS companies are not regulated, not required to provide customer service, and not required to refund disputed charges. This creates a systemic disadvantage for consumers trying to seek redress through MPS companies.

### ***iii) Seeking Redress through the CWTA***

When consumers contact the CWTA to dispute an MPS, the CWTA provides information on how to stop the MPS (by texting back STOP) and provides the contact information for the MPS company so that the consumer can dispute the charges directly through the MPS company. Consumers cannot seek redress *per se* through the CWTA.

### ***iv) Seeking Redress through the CCTS***

The CCTS is still in its infancy and is not well known yet by the public.<sup>265</sup> Further, when consumers contact their wireless service provider to dispute MPS charges, they are usually not made aware of the CCTS's mandate to hear their complaints, despite regulation that requires providers to do so.<sup>266</sup> Thus, consumers may remain unaware of their rights and dissuaded from pursuing such disputes. When matters cannot be resolved through a service provider's customer service channels, consumers must independently seek out other avenues (such as calling the Canadian Anti-Fraud Centre, the CRTC, or consumer groups) before they learn of the existence of the CCTS and its mandate.

---

<sup>261</sup> Consumer J.C. contacted PIAC through email.

<sup>262</sup> Consumer A.S. contacted PIAC through email.

<sup>263</sup> Case Study #6: A.H.

<sup>264</sup> Consumer S.L. contacted PIAC through email.

<sup>265</sup> For example, in the consumer focus groups, very few consumers knew of the CCTS. Of the few who thought they had heard of the CCTS, none were able to distinguish it or its mandate from the CRTC, a provincial ombudsman or other complaints handling bodies.

<sup>266</sup> Telecom Decision CRTC 2007-130.

A recent CRTC decision now requires wireless service providers to put standard notation on consumers' bills four times a year, providing contact information and a brief description of the CCTS.<sup>267</sup> It is believed that this will enhance consumer awareness of the CCTS, and provide a greater number of consumers the option to involve this independent party in resolving disputes over MPS charges. Additionally, recent changes simplify and expand the CCTS' mandate, so that consumers with complaints about MPS should not be ruled out of scope.<sup>268</sup>

When the CCTS decides to handle a complaint, the Commissioner generally exercises his powers informally, whereby consumers and service providers reach agreement regarding the dispute. Failing that, the CCTS can make a non-binding recommendation. If a non-binding recommendation is unsuccessful, the CCTS can make an order for monetary compensation.<sup>269</sup> The CCTS reports that "almost all of the premium text message complaints that come to us get resolved to the satisfaction of the parties."<sup>270</sup> It is possible that complaints that are brought to the CCTS are resolved by wireless service providers because the amount of the disputed charge would be disproportionate to the time or money it would take to engage in a mediated dispute resolution process with the CCTS.

In the CCTS' 2009-2010 Annual Report, the CCTS highlighted the issue of MPSs. The CCTS noted that among the main customer complaints are that they did not sign up, or that they did not know the frequency and cost of the messages, or that they are unable to subscribe. The report noted: "[g]iven that the Short Code program guidelines prescribe rules that should prevent all of these things from happening, the number of complaints is surprising."<sup>271</sup> The CCTS noted that almost all of the consumer complaints regarding MPSs are resolved to the satisfaction of the parties. Notably, the CCTS also enumerated their expectations of wireless service providers when they investigate complaints about MPSs:

Wireless providers are paid for billing and collecting from their customers on behalf of the companies that send customers the premium text messages (the content providers) When we receive a complaint from a customer about a premium text message, we expect the wireless provider to have looked into the customer's allegation and obtained evidence from the content provider sufficient to support the accuracy of the charges When we investigate such a complaint, we will expect the wireless provider to provide to us the evidence upon which it relied to support the accuracy of the charges, including the content provider's compliance with the Short Code program guidelines In any case in which the

---

<sup>267</sup> Telecom Regulatory Policy CRTC 2011-46 at para. 51.

<sup>268</sup> The CCTS made changes in their mandate in July 2010 to make their mandate "more inclusive and accessible to consumers, and to make it more balanced in tone and content. Under the original version, in order to file a complaint with CCTS a "complainant" had to be an "eligible complainant" and had to present an "eligible complaint." The default was that complaints were out of mandate unless the complaint and the party making it fit within the definitions. We have now "opened up" the process. Now, when a "customer" brings a complaint it is by default considered to be within our mandate, and is only excluded if it falls within the specific defined exceptions."

<sup>269</sup> For a description of the complaints process employed by the CCTS see <http://www.ccts-cprst.ca/en/complaints>. For the number of informal vs formal complaints procedures followed, see CCTS, "Annual Report" 2009-2010 at pp. 14-15 online: <http://www.ccts-cprst.ca/wp-content/uploads/2010/01/CCTS-Annual-Report-2009-2010.pdf>.

<sup>270</sup> CCTS, "Annual Report" 2009-2010 at p. 31 online: <http://www.ccts-cprst.ca/wp-content/uploads/2010/01/CCTS-Annual-Report-2009-2010.pdf>.

<sup>271</sup> CCTS, "Annual Report" 2009-2010 at p. 31 online: <http://www.ccts-cprst.ca/wp-content/uploads/2010/01/CCTS-Annual-Report-2009-2010.pdf>.

wireless provider is unable to demonstrate that the charges are proper, we will recommend that the provider waive them.<sup>272</sup>

While none of the consumers in PIAC's focus groups had contacted the CCTS regarding their MPS complaints, several consumers in PIAC's case studies did contact the CCTS, often after being referred to the CCTS by the media or by PIAC. These consumers reported mixed experiences:

Consumer R.C. contacted the CCTS who indicated that they would investigate his complaint, but that the only resolution he could achieve through the CCTS was potentially obtaining a refund. As R.C. was able to obtain a refund himself, he did not need the CCTS. In other words, the CCTS could not provide a systemic investigation into the MPS industry or MPS practices.<sup>273</sup>

After Consumer V.L. complained to the CCTS, her provider, Fido, agreed to refund the MPS charges. However, it is interesting to note that Fido objected to the complaint on the basis that they believed the complaint to be out of scope of CCTS' mandate. After considering the objection, the CCTS determined that the complaint was within scope and continued with its investigation. Fido contacted the consumer and reached a satisfactory resolution by agreeing to refund the charges.<sup>274</sup>

The CCTS provides a much-needed check and balance on the otherwise unopposed discretion of mobile premium service companies and wireless service providers to charge consumers. However, case studies indicate that some consumers are discouraged that the CCTS can only advocate for consumers on an individual basis and lacks the power to intervene at the macro level of the problem. PIAC is concerned that a wireless carrier would question the CCTS' jurisdiction to handle complaints about MPSs, particularly as recent changes broaden the definition of the CCTS' scope, but was encouraged that CCTS views complaints about MPSs as within scope.

Overall, as consumers become more aware of their ability to complain to the CCTS and as the CCTS begins to track consumer complaints in greater detail, it is hoped that more light will be shed on consumer problems with telecommunications services, and more consumers will find appropriate redress. If the CCTS continues to receive several complaints about MPSs, perhaps the CCTS could recommend a systemic inquiry into the issue.

---

<sup>272</sup> CCTS, "Annual Report" 2009-2010 at p. 32 online: <http://www.ccts-cprst.ca/wp-content/uploads/2010/01/CCTS-Annual-Report-2009-2010.pdf>.

<sup>273</sup> Consumer R.C. contacted PIAC through email.

<sup>274</sup> Case Study #5: V.L. provided PIAC copies of emails between the CCTS and FIDO regarding V.L.'s complaint. In an email from the CCTS to V.L., the CCTS indicated that FIDO had objected "to the complaint on the basis that the complaint is outside the scope of CCTS' mandate as per section 3.(h) unsolicited messages." The CCTS further explained that "The *Commissioner for Complaints for Telecommunications Services* has considered the objection but maintains its determination that the complaint is within scope and has determined that this complaint is properly before the CCTS." The CCTS investigated the complaint "pursuant to Section 6.11 of the Code." After FIDO contacted V.L. and resolved the issue, Fido informed the CCTS of the resolution in a follow-up email, but suggested that the CCTS did not follow proper procedure by proceeding with the investigation before resolving FIDO's objection to the CCTS' jurisdiction over the matter.

### ***v) Seeking Redress through the Competition Bureau***

While PIAC is aware that consumers have filed “enquiries” to the Competition Bureau, there are limits to the usefulness of individual consumers accessing the Bureau for assistance. Primarily, the Bureau is not a complaints resolution body and does not help consumers at the immediate, micro level with their individual complaints. The Bureau does not advocate on behalf of consumers to recover refunds from their wireless service providers or the MPS companies.

However, the Bureau does have the ability to provide a systemic, or macro level function with respect to addressing claims of false or misleading advertising of MPSs. In fact, the Bureau is the only legal authority with investigative and enforcement power to address false or misleading advertising in Canada. The Bureau can provide a systemic check and balance on advertising practices in the MPS industry, but PIAC is not aware of any involvement of the Bureau on this level, as of yet.

### ***vi) Seeking Redress through Provincial Consumer Protection Legislation***

Consumer protection legislation is a potential tool for individual consumers to use when seeking redress for improper MPS charges, but it is far from ideal. First, provincial consumer protection legislation does not address false or misleading advertising which is a central problem for consumers who assert they were misled about terms and conditions through advertisements. Second, the monetary amount of loss or damage must often be over minimum threshold of \$50. This would exclude many consumers who are disputing MPS charges that are less than \$50. Third, provincial consumer protection legislation does not address customer service practices that constitute a significant portion of consumer complaints. While there are consumer protection regulations to address issues with customer service in other jurisdictions, such as Australia, none exist in Canada, and no such measures are incorporated into provincial legislation. Lastly, it can be constitutionally challenging to use provincial legislation to attack what is traditionally a federal sphere – telecommunications. However, provincial legislation would rightly apply to the consumer contract, as this is within the jurisdiction of the province to legislate.

### ***vii) Seeking Redress through Voluntary Business and Professional Organizations***

The greatest problems consumers have seeking redress through voluntary organizations, is that: 1) companies’ participation in these organizations is voluntary; 2) an organization may only address certain aspects of an MPS, such as the advertisement or potentially objectionable content; 3) the relief provided is often limited; and 4) these organizations rarely have enforcement powers and have only persuasive power or the power to create bad publicity through public naming of companies.

For example, the Better Business Bureau (BBB) cannot compel a company to resolve a consumer complaint about an MPS, or to provide a refund, or to change its practices. The BBB could only publicly name companies that are considered by consumers to be trustworthy or not,

and can provide useful statistical and anecdotal reports of consumer complaints relating to MPSs.

Another example, the Advertising Standards Canada, may review an MPS advertisement for objectionable content, but also cannot compel a company to resolve a consumer complaint, provide a refund or change its practices.<sup>275</sup> In short, voluntary organizations provide a useful mechanism when companies are willing to participate in resolving such matters to consumers' satisfaction. They do not provide a useful mechanism for consumers beyond naming and shaming when companies are unwilling to resolve matters to consumers' satisfaction.

### **viii) Seeking Redress in Small Claims Court**

PIAC is not aware of any consumer actions to seek redress through small claims court. Union des consommateurs advises consumers that this is a potential option to pursue recovery. However, there are several reasons why seeking redress in Small Claims court may be difficult. First, consumers may consider the amount of time and effort it would take to see a matter through trial to be disproportionate to the amount they would recover if successful in court. Consumers would also be faced with the difficult question of which party to name in the suit – the wireless service provider, the aggregator, the content provider would all be possible defendants. Consumers would also face a power imbalance. From a legal perspective consumers would often be unrepresented in small claims court, fighting a company represented by counsel. Second, from an evidentiary perspective and as discussed above, consumers would have no proof that they did not subscribe or consent to an MPS. In summary, consumers have the option to sue in small claims court to recover improper MPS charges; however, a consumer who attempts this would be risking time and effort for a potentially small compensation or to resist a debt.

### **ix) Seeking Redress through Class Actions**

There is potential for consumers in the aggregate to seek redress through a class action lawsuit. At the time of writing, PIAC was unable to find a class action regarding improper MPS charges in Canada. There are many possible legal hurdles that are beyond the scope of this report. As well, a class action may be delayed while dealing with questions of contractually mandated arbitration and exclusion clauses, conflict of laws matters, and the uncertainty of recovery damages are potentially significant obstacles.<sup>276</sup> It is unclear why class actions against MPSs have not yet been attempted in Canada. However, it is possible that as consumers continue to be frustrated in their attempts to seek redress through wireless service providers or MPS companies, and as more light is shed on how this industry profits, class action counsel may consider unauthorized MPS charges as a potential test class action case in future for consumer redress.

---

<sup>275</sup> See above section III.A.iii). See also Advertising Standards Canada, Complaints Archive at the 4th Quarter 2008 and 2<sup>nd</sup> Quarter 2010 online: <http://www.adstandards.com/en/Standards/previousReports.asp>.

<sup>276</sup> *Dell Computer Corporation v. Union des consommateurs*, [2007] 2 S.C.R. 801, 2007 SCC 34 online: <http://scc.lexum.org/en/2007/2007scc34/2007scc34.html>. See also *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 online: <http://scc.lexum.org/en/2011/2011scc15/2011scc15.html>.

## **G. Problems with Transparency and Accountability**

Several examples demonstrate that the industry is not transparent about its self-regulation, leaving consumers with little assurance of the integrity of the system and little to no knowledge about how to exercise their rights with respect to MPSs.

### ***i) Lack of Transparency with Respect to Audits***

First, while the CWTA Guidelines indicate that the CWTA performs audits of MPS programs, PIAC was not able to ascertain through consultation with the CWTA the frequency or regularity at which audits are performed.

PIAC was also not able to ascertain the format audits take, or what aspects of functionality the audits test. PIAC was able to confirm that audits test to ensure that the double opt-in functions will work when consumers and companies want them to, but was not able to confirm that audits test to discover MPSs that improperly subscribe consumers without proper consent. For example, the CWTA tests to ensure that when a consumer sends a text message to a short code in response to a call to action, the consumer receives an information message asking for a YES or Y reply. Similarly, when the consumer replies with a text message indicating Y or YES or when the consumer enters the PIN into the online form to complete the “double opt-in,” the CWTA tests to ensure that the customer receives a confirmation text message indicating they are now subscribed. This tests for basic functionality and proves that the double opt-in works when it is used properly.

However, it is unclear whether and how the CWTA tests for *non*compliance. For example, where a consumer engages in the first opt-in and enters their mobile phone number online in response to a call to action, receives a PIN on their handset, but chooses not to enter the PIN online thus not engaging the double opt-in, it is unclear how the CWTA tests to ensure that consumers are not improperly subscribed and charged for the MPS. There is no indication that the CWTA is testing to detect *non*compliance.

The enigmatic nature of the CWTA audits – how they are conducted, how often they are conducted, and whether they test for noncompliance in addition to mere functionality – calls into question the CWTA’s role and ability to protect wireless consumers. Furthermore, there are many aspects that do not seem to be within the scope of CWTA’s audits, such as the content of MPS advertisements or MPS company responsiveness to customer complaints.

Also troubling is the lack of transparency about what is done with the audit results, and what specific action is taken as a result of finding a noncompliant MPS.

### **ii) Lack of Transparency with Respect to Compliance Enforcement**

PIAC was told in consultation with the CWTA that results of audits are given to wireless service providers in aggregate and given to the content provider or aggregator directly when a specific issue arises.<sup>277</sup> Through consultation with the CWTA, PIAC was not able to ascertain how often audit results were provided to wireless service providers in aggregate, nor was PIAC able to ascertain whether the CWTA has ever taken action in response to an aggregator's noncompliance, for example, suspending traffic on a short code, revoking a lease or deactivating the short code. In addition, it was not clear whether wireless service providers take any action based on audit results such as refunding consumers for charges accumulated while a short code was noncompliant. The uncertain use (or nonuse) of audits conducted by the industry to detect, communicate, and take action against noncompliant MPS results in a lack of transparency and accountability, and undermines both consumer protection and consumer trust.

### **iii) Lack of Transparency About Mobile Premium Service Companies**

The CWTA operates the website <http://www.txt.ca>, which provides information for businesses and consumers about text messaging in Canada. Included on this website is a list of "Current Text Messaging Programs" or list of short codes.<sup>278</sup> However, PIAC received stories from consumers about short codes that were not listed on this website. For example, consumers C.L., R.C., G.S., and L.M., are some of the consumers who contacted PIAC through email who had been subscribed to short code 33456, Skill2Thrill. Consumers subscribed to 33456 would be unable to find out more information about this MPS by accessing the CWTA's list of short codes. Skill2Thrill is not listed on the CWTA's site. While the short code number 33456 is listed, it is listed as "Chipperz" and the link does not take the consumer to Skill2Thrill's website, but rather, to a defunct site called "chipperz.com." Consumers V.L. and J.C. were subscribed to 88788, 2WayTraffic. The MPS 2WayTraffic is not listed on the CWTA's site, however the number 88788 is listed but as "Movie Entertainment & Television Quiz (METQZ)". Unfortunately, there is no link to the MPS company's site, and no further information on the company that operates 88788 or how to contact them. Consumers C.L. and S.L. were subscribed to 84040, Text Challenge. While short code 84040 appears on the CWTA's site, there is no link to the MPS company's site or further information on who the company is or how to contact them. Consumers B. and J.P. (case study #3) were subscribed to short code 66066, but this code is not listed on the CWTA's site. Consumer S.L. was subscribed to 14114, from Mobile Service. This short code is listed on the CWTA's site as "IQPad", but there is no link to the company's site, and no further information on who the company is or how to contact them. Several consumers, including R.C. and M.A., contacted PIAC about charges from the MPS company Solow Elite however the name Solow Elite and the short codes consumers' identified (23687 and 43687) are not listed on the CWTA's site.

PIAC notes that the list on <http://www.txt.ca> is not comprehensive or consistent in the information provided about current short code programs. In some cases, the information is inaccurate, listing a company that does not operate the short code. The site does not provide

---

<sup>277</sup> PIAC consultation with CWTA, 9 February 2011.

<sup>278</sup> See [http://txt.ca/english/current\\_codes.html](http://txt.ca/english/current_codes.html).

any contact information for consumers to contact the MPS company. For many short codes, either no link is provided to the MPS company or the link provided is no longer valid. For other short codes, the only information provided is the five or six digits of the short code and the name of the company. Notably, there is no pricing or frequency information provided, nor are links to Terms of Use provided for these short codes.

#### **iv) Lack of Accountability of Wireless Service Providers**

Further eroding accountability is the fact that there is no obligation on wireless service providers to ensure that a noncompliant MPS is brought into technical compliance. The U.S. model provides a stark contrast to the Canadian model in this respect. While this will be discussed in further detail in a later section of the report, the U.S. model is important to note here briefly. In the U.S., wireless service providers share responsibility for monitoring MPS for compliance with industry guidelines, along with the industry association's short code administrator, the CSCA.<sup>279</sup> American wireless service providers monitor MPSs for adherence to the Mobile Marketing Association's Consumer Best Practices and also provide guidelines respecting their relationship with MPS companies.<sup>280</sup> In the U.S., wireless service providers also provide transparent, publicly available guidelines with respect to how they audit and monitor MPSs; these describes the frequency of audits, describes various criteria that will trigger an audit, details the criteria on which MPSs are audited, scores each MPS in the audit, scores the MPS company's responsiveness to the audit results and compliance requests and conducts follow-up audits of an MPS afterward to ensure responsiveness and compliance.<sup>281</sup> While the results of this monitoring are not readily available to the public, if at all, this auditing may provide an important check and balance within the industry. In stark contrast, Canadian wireless service providers do not play a monitoring or auditing role for MPSs and continue to deny to consumers their profitable role in the MPS scheme.

The Canadian MPS industry leaves consumers with little to no redress through their wireless service providers. Wireless service providers' self-declared immunity from responsibility to assist consumers with disputed MPS charges exists despite the contractual relationship between consumers and wireless service providers, and despite the considerable profit-share that wireless service providers gain from the MPS arrangement. The CWTA's Guidelines include a Code of Conduct for aggregators to follow but remain silent on the obligations that wireless service providers have in monitoring MPSs and responding to consumer complaints with MPSs.

#### **a) Lack of Transparency About the Wireless Service Providers' Profit Share**

Wireless service providers mislead consumers about the profit-sharing arrangement when they contact their wireless service providers for assistance. In this way, wireless service providers deflect responsibility for assisting consumers. When consumers call their wireless providers to

---

<sup>279</sup> See the Common Short Codes Administration, "FAQs: Updated CSCA Application Process" online: [http://www.usshortcodes.com/updated\\_application\\_process.html](http://www.usshortcodes.com/updated_application_process.html).

<sup>280</sup> An excellent example is provided at: AT&T Mobility, "Customer Experience Policy Amendment to MMA Best Practices and Guidelines for 3<sup>rd</sup> Party Content Providers," July 2009 at pp. 18-22 online: [http://developer.att.com/home/develop/referencesandtutorials/whitepapers/ATT\\_Customer\\_Experience\\_Policy.pdf](http://developer.att.com/home/develop/referencesandtutorials/whitepapers/ATT_Customer_Experience_Policy.pdf).

<sup>281</sup> See the newest version of the MMA's Best Practices: Mobile Marketing Association, "U.S. Consumer Best Practices: Version 6.0," 31 March 2011 effective 1 June 2011 online: <http://www.mmaglobal.com/bestpractices.pdf>.

dispute MPS charges on their bills, they are repeatedly told that the wireless service provider has no choice, is an innocent, or is almost a victim in the whole scheme, and so, must charge the consumer for the MPS. These pat answers, which distort the true nature of the wireless service provider's role in the MPS scheme, are misleading and frustrating for consumers. Below are examples of comments received from consumers:

"I think they should have some sort of ownership or liability for that, because it's not really fair, they say 'oh we can't control it', 'well you can because you do when you get money for it, so you should be able to now.'"<sup>282</sup>

"Like I kind of always got the impression that they were doing me a favour by crediting my bill, you know. They're not upfront, they don't say they have a, like they definitely don't take any responsibility for it."<sup>283</sup>

"I contacted my provider (FIDO) to complain and get the charges removed. I was told that I had to contact the third party company myself to get the charges removed and that [FIDO] couldn't do anything about it because they were legitimate charges."<sup>284</sup>

"Fido refused to do anything...when I told them to decline any billing from these unauthorized 3rd party charges."<sup>285</sup>

"...the Bell contact would/could not do anything about recovery, not even their commission."<sup>286</sup>

"I feel so violated by Fido and their association with this third party...Obviously Fido has a business arrangement with this third party and I believe they get a percentage for billing. This is a scam and Fido should not be in business with these people."<sup>287</sup>

"How this is not considered a form of fraud similar to the toll fraud scams of the past that were prevalent is beyond me. The carriers pretend they are Visa and Mastercard, we just send you the bill. When in fact they know exactly what is going on otherwise how would they be passing the money through. A carrier has no obligation to act as a billing agent for these fraudsters yet they do.... I find the billing practice that allows this type of transaction to occur without the authorization of the person paying the bill totally unacceptable. And the deceit of the telecoms in their replies equally frustrating."<sup>288</sup>

Additionally, PIAC made calls to wireless providers' customer service lines in the fall of 2010 to get more information about MPSs and heard the same line parroted by agents – that the wireless service provider is being charged by the third party, and therefore has no choice but to

---

<sup>282</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 39.

<sup>283</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at pp. 39-40.

<sup>284</sup> Consumer C.W. contacted PIAC through email.

<sup>285</sup> Case Study #5: V.L.

<sup>286</sup> Case Study #3: B. & J.P.

<sup>287</sup> Consumer S.L. contacted PIAC through email.

<sup>288</sup> Consumer P.H. contacted PIAC through email.

charge the consumer.<sup>289</sup> Some agents said that they do not always know who the third party is or how the consumer can contact them, shifting responsibility to the consumer to find and contact the third party.<sup>290</sup> This is especially frustrating seeing as wireless service providers take up to 60% of the profits from the MPS scheme and wireless service providers play a role in approving these services to operate on their systems.

Wireless service providers know the short code number, the company name, and the contact information for every MPS charge on every consumer bill. Wireless service providers also have access to the CWTA's list of short codes on <http://www.txt.ca>, though flaws with this list have been discussed above. It is dishonest for wireless service providers to allow their customer service representatives to repeatedly tell consumers that they do not know what is happening, or do not know who the MPS company is, or are not able to verify whether the consumer has actually double opted in, or are merely being billed themselves and so must pass on the charges to the consumer. It is particularly dishonest to point the finger at a "third party" when in fact the wireless service provider is the first and biggest party to profit from MPSs.

In the U.K., wireless service providers are transparent about their role and relationship to other players in the MPS scheme. For example, Vodafone has a "Code of Practice" for handling customer enquiries and complaints about premium rate services, non-geographic numbers and personal numbering services. In a section entitled "Where does the money go?", Vodafone spells out the nature of the profit-sharing arrangement. They state:

The money paid by users for services is shared between the telephone company carrying the service and the organisation providing the content. This arrangement is known as 'revenue sharing'. You pay for premium rate calls via your mobile phone bill or pay-as-you-go card in the normal way. We will then 'share' that money with the company providing the content.<sup>291</sup>

In contrast, Canadian wireless service providers fail to protect consumers with consistent and accurate internal practices for handling customer complaints about MPSs, and by obscuring the fact that they partake in the revenue sharing arrangement for MPSs. In fact, Canadian wireless service providers deny any part in the arrangement beyond collecting fees on behalf of the MPS

---

<sup>289</sup> For example, PIAC's research team spoke with Bell's customer service on July 23, 2010. He stated that Bell is charged by the MPS company, so Bell will charge the customer to recover the cost. PIAC's research team spoke with Telus' customer service also on July 23, 2010 and was told that because the third party charges Telus, Telus charges the customer.

<sup>290</sup> PIAC's research team spoke with a customer service agent from **Virgin** on July 26 2010. She stated that Virgin does not know who the company is who sends an MPS, unless it is MY Crush Luv or Text2Win for example. There are too many other companies and they don't have a list of them. PIAC's research team spoke with **Fido's** customer service on July 26, 2010 who stated that sometimes Fido has the MPS company's phone number or five digit code, but that there are so many MPS companies that Fido's list is not complete. He also said that some MPS companies may block their numbers even from Fido. He suggested that the police are able to investigate and get the MPS company's number for the customer. PIAC's research team spoke with **Telus'** customer service on July 23 2010 who stated that the MPS text message will usually give the short code number and customers can then Google the number to get the MPS company's 1-800 number. She said that "if" Telus can access the 1-800 number or the MPS company's website, they will provide that information to the customer. PIAC's research team spoke with James at **Koodo's** customer service on July 29 2010. He stated that when "STOP" doesn't work, the customer can report their problem to [phonebusters.com](http://phonebusters.com) (the Anti-Fraud Centre).

<sup>291</sup> Vodafone, "Our Code of Practice for handling customer enquiries and complaints about premium rate services, non-geographic numbers and personal numbering services" online: <http://www.vodafone.co.uk/consumer/groups/vodafoneukonline/documents/assets/vf052301.pdf>.

company. This claim is a distortion of their role, that is, one in which they directly profit from MPS more than any other entity in the MPS industry.

In summary, the industry – namely the CWTA and wireless service providers – has not provided transparency or accountability with respect to its internal mechanisms such as audits, monitoring, and compliance enforcement. The industry also has not required accountability through wireless service providers, a significant missing piece and an important one for consumers, as the wireless service provider is almost always the first contact for consumer disputes. Moreover, the industry has not provided transparency with respect to the true nature of the roles of the respective companies who profit from MPSs. This both destroys consumer trust, and harms consumers' ability to scrutinize and challenge industry self-regulation.

## VI. JURISDICTION OF THE CRTC TO REGULATE MOBILE PREMIUM SERVICES

### A. CRTC Regulation of Wireless Services

Prior to 1993, the CRTC had no general discretion to "forbear" from approving carrier rates before they were charged, even where it was satisfied that market conditions were such that a carrier's rates would be just and reasonable and free from unjust discrimination without the imposition of this requirement. In other words, for telecommunications services at that time, the CRTC approved "just and reasonable" rates and it was illegal to offer telecommunications services that were not offered at CRTC-approved rates or "tariffs." The passage of the *Telecommunications Act* ("the Act")<sup>292</sup> in 1994 conferred a general power on the Commission to "forbear" from regulating the companies under its jurisdiction, with discretion as to the extent to which it shall refrain. This meant there would be no price regulation, that is, the market would set the rate. As well, the Commission may only forbear where the Commission finds that to refrain would be consistent with the Canadian telecommunications policy objectives, which are listed in s. 7 of the Act.<sup>293</sup>

In 1994, the CRTC issued Telecom Decision 94-15 regarding the regulation of wireless services in Canada.<sup>294</sup> The Commission found that the cellular market was sufficiently competitive to

---

<sup>292</sup> S.C. 1993 (c. 38).

<sup>293</sup> Section 34 reads as follows:

34. (1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to the service or class of services.

(3) The Commission shall not make a determination to refrain under this section in relation to a telecommunications service or class of services if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

(4) The Commission shall declare that sections 24, 25, 27, 29 and 31 do not apply to a Canadian carrier to the extent that those sections are inconsistent with a determination of the Commission under this section.

The sections enumerated in s. 34(4) can be summarized as follows. Section 24: the offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission. Section 25: among other things, no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission, specifying the rate or the maximum or minimum rate, or both, to be charged. Section 27: among other things, every rate charged by a Canadian carrier for telecommunications service shall be just and reasonable, and the Canadian carrier shall not unjustly discriminate or give an undue or unreasonable preference in relation to the provision of a telecommunications service or the charging of a rate for it. Section 29: No Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting the interchange of telecommunications, the management or operation of facilities or the apportionment of rates or revenues. Section 31: no limitation of a Canadian carrier's liability in respect of a telecommunications service is effective unless it has been authorized or prescribed by the Commission.

<sup>294</sup> Telecom Decision CRTC 94-15, *Regulation of Wireless Services* (12 August 1994).

protect the interests of users, pursuant to s. 34(2) of the Act. The finding of sufficient competition was based upon an examination of general structural features of the cellular market, rather than upon a competitive assessment of each individual geographic market or territory of each of the cellular service providers. The Commission found as a fact that to refrain from exercising powers and performing duties under sections 25, 29 and 31 and subsections 27(1), 27(5) and 27(6) with respect to the provision of cellular service and personal communications services by Canadian carriers other than the incumbent telephone companies would be consistent with the Canadian telecommunications policy objectives. Thus, the Commission refrained from regulating wireless services but retained certain regulatory conditions.<sup>295</sup>

Pricing forbearance was extended to the incumbent telephone carriers who had wireless services in Telecom Decision 96-14.<sup>296</sup> The Commission examined the categorization of mobile wireless telecommunications services and concluded that, based on service attributes rather than underlying technology, mobile wireless telecommunications services properly fall within two categories of services for the purposes of determining the appropriate regulatory treatment: (i) mobile voice wireless telecommunications services that are connected to the public switched telephone network, such as cellular services, PCS, ESMR and satellite-based mobile services (public switched mobile voice services); and (ii) all other mobile wireless telecommunications services (other wireless services). Given the different nature and functionalities of the services falling within each category, the Commission determined that the two classes of services call for different degrees of forbearance. The Commission considered it necessary to continue to exercise its powers and perform its duties under ss. 24, 27(2), 27(3) and 27(4) of the Act in relation to public switched mobile voice services. The Commission forbore from exercising its powers pursuant to ss. 24, 25, 27, 29 and 31 of the Act in relation to other wireless services.

In its proceeding considering internet traffic management practices, the Commission considered whether its determinations with respect to internet traffic management practices should apply to mobile wireless data services, given that ss. 24 and 27(2) did not apply as a result of Telecom Decision 96-14. The Commission noted the increasingly important role of mobile wireless data services in Canada and stated its intention to review at a future date the appropriateness of reapplying s. 24 and s. 27(2) of the Act to mobile wireless data services.<sup>297</sup>

This review occurred in 2010, when the forbearance framework was modified for mobile wireless data services in Telecom Decision CRTC 2010-445.<sup>298</sup> The Commission determined that the offering and provision by Canadian carriers of mobile wireless data services shall be

---

<sup>295</sup> The Commission continued to exercise powers and perform duties under sections 24, 27(2) and 27(4) in relation to these wireless services. The Commission additionally found that sections 24, 25, 27, 29 and 31 do not apply to the provision of existing wireless services such as radio and paging services by Canadian carriers other than the telephone companies. This meant that the CRTC retained these "regulatory conditions."

<sup>296</sup> Telecom Decision CRTC 96-14, *Regulation of Mobile Wireless Telecommunications Services* (23 December 1996), subsequently extended to Bell's paging service in Telecom Decision CRTC 98-15, *Application by Bell Canada to Review and Vary Telecom Decision 96-14* (2 September 1998). Note that forbearance was extended to incumbent carriers but not in the case of incumbent in-house mobile service providers. Forbearance was extended to incumbent in-house mobile service providers in 1998 in Telecom Decision CRTC 98-18, *NBTel Inc. - Forbearance from Regulating Cellular and Personal Communications Services* (2 October 1998).

<sup>297</sup> Telecom Regulatory Policy 2009-657, *Review of the Internet traffic management practices of Internet service providers* (21 October 2009) at para. 115.

<sup>298</sup> Telecom Decision CRTC 2010-445, *Modifications to forbearance framework for mobile wireless data services* (30 June 2010).

subject to the Commission's powers and duties under s. 24 and subs. 27(2), 27(3) and 27(4) of the Act. The Commission noted that the framework for the application of these provisions to mobile wireless data services would be consistent with the forbearance regimes applicable to mobile voice services and to retail internet services:

The Commission considers that amending the forbearance framework to provide for such application is appropriate and will enable it to address, among other things, unjust discrimination and undue preference issues with respect to the provision of mobile wireless data services by Canadian carriers.<sup>299</sup>

## **B. Union des Consommateurs Application for Commission Intervention for MPS**

Quebec consumer group Union des consommateurs (Union) received several complaints from consumers regarding premium text messaging services. On January 21, 2009, Union filed an application to the CRTC seeking an order against the CWTA regarding the operation of text message short codes in Canada. Union received complaints from consumers who were billed for additional fees of \$16 to \$35 on their monthly bill for participation in short code programs to which some said they had not subscribed.<sup>300</sup> Union argued that existing procedures do not provide for reimbursement of charges disputed by subscribers for short code programs and do not prohibit wireless service providers from suspending wireless telephone service for non-payment of these charges. Union also argued that there is no effective way to resolve disputes, as there is no specific investigation procedure in place to allow the application of effective sanctions for violating the rule and code of conduct for short codes. Thus, Union asked the CRTC to order wireless service providers to waive reasonably disputed charges associated with text messages from short code programs and to task the CCTS to examine these complaints. Union also asked the CRTC to prohibit wireless service providers from suspending service to any subscriber who disputes charges associated with short code programs where the subscriber has made payments covering the cost of his or her subscription to the wireless telephone service. Accompanying its application, Union attached statements and invoices of customers with charges for MPS.

The Canadian Wireless Telecommunications Association, Bell Mobility Inc., Rogers Communication Inc. on behalf of Rogers Wireless Inc. and Fido, TELUS Communications Company and TMG Americas Inc. participated in the proceeding.

The CWTA and the companies explained the CWTA administration of the common short code initiative and argued that the rules provided sufficient consumer safeguards and sanctions for program providers. The CWTA and the companies argued that users cannot receive short code

---

<sup>299</sup> Telecom Decision CRTC 2010-445 at para. 7.

<sup>300</sup> Union des consommateurs, Requête Partie VII demandant que le CRTC émette une directive à l'endroit des fournisseurs de services sans fil, notamment Aliant, bell, Fido, MTS All Stream, NorthernTel Mobility, Rogers, Sasktel, Télébec Mobilité, Telus, Virgin Mobile, Koodo, Solo, Videotron, afin qu'ils adoptent une politique à l'endroit de leurs abonnés respectifs concernant les services de messagerie texte de numéros abrégés (21 January 2009).

messages without their express consent, which is “guaranteed” by a confirmation process that requires intentional action by users to indicate that they accept the terms and conditions of the service. As well, the CWTA and the companies argued that users can opt out of a program by sending a STOP message to the short code.<sup>301</sup>

The CWTA argued that any violation of the rules could lead to the application of sanctions for the program provider, including the removal of the short code. The CWTA explained its audit process of all active common short codes in 2007 and 2008. The audits consisted of a test of the opt-in procedure, a verification of the five key words including STOP, and a confirmation that the program was running.

26. Between May and September 2007, all active CSCs were audited. The audit did discover a number of CSC programs that were not in strict compliance with CWTA's rules. As problems were identified, CWTA notified the program operators seeking resolution. In all cases, issues were resolved in a timely manner to CWTA's satisfaction.

27. Between June and September 2008, all active CSCs were again audited. This audit identified a much smaller number of CSC programs that were not in compliance. As problems were identified, CWTA notified the program operators seeking resolution. In all cases, issues identified in the audit were resolved to CWTA's satisfaction.

28. A third audit of active CSC programs began in January 2009. To date, results have shown compliance levels improved again since the 2008 audit. Throughout the auditing process, CWTA has not identified any systematic abuse or disregard for the CSC rules.

29. In addition to the formal audits, CWTA enforces its rules on an ongoing basis by investigating issues as they are identified responding to complaints. CWTA has a documented procedure in place to respond to violations of the CSC rules and the applications of sanctions as necessary. In the vast majority of cases where a problem is identified a notification from CWTA is all that is required to bring about compliance. There have, however, been instances where program operators did not adequately address CWTA's concerns. In these cases, CWTA took enforcement action, including removal of the CSC.<sup>302</sup>

The companies argued that the CWTA processes, combined with the customer service processes of wireless service providers, properly addressed subscribers' complaints, noting that

---

<sup>301</sup> Canadian Wireless Telecommunications Association, Comments on Application to CRTC by Union des consommateurs regarding text messaging Short Codes, CRTC File #8620-U11-200901951 (26 February 2009).

<sup>302</sup> Canadian Wireless Telecommunications Association, Comments on Application to CRTC by Union des consommateurs regarding text messaging Short Codes, CRTC File #8620-U11-200901951 (26 February 2009) at paras. 26 to 29.

subscribers could turn to the CCTS to request an investigation of wireless service billing disputes.<sup>303</sup>

The CRTC has forborne from regulating wireless service providers because of their belief that the wireless industry is highly competitive, concluding that competition was sufficient to protect the interests of Canadian wireless consumers.<sup>304</sup> In December 2006, the Government-in-Council issued a Policy Direction to the CRTC, requiring the CRTC to allow market forces to operate and to avoid regulations that interfere with competitiveness unless absolutely required to avoid market failure.<sup>305</sup>

The CRTC thus decided that market forces and the industry self-regulation mechanisms of the CWTA and wireless service providers could be relied upon to protect consumers and the CCTS could be relied upon to resolve complaints about the billing of text messages from short codes.<sup>306</sup> Notably, the CRTC stated that it "considers the evidence presented by Union does not lead to the conclusion that market forces have systematically failed to resolve complaints about billing of text messages from short codes," demonstrating the extremely high threshold of "systematic failure of market forces" that would be required to convince the CRTC that its intervention was necessary to protect Canadian consumers. The CRTC thus denied Union's application for regulation to protect consumers against disputed short code charges.

In consulting with Union des consommateurs regarding their Part VII application, Union expressed dissatisfaction by the CRTC finding.<sup>307</sup> Union expressed that it is practically impossible to demonstrate a systematic failure in the system. Union believes that it demonstrated that the system is not fool proof, especially with respect to the double opt-in procedure required for consent. Union notes that they continue to receive complaints about MPS, showing that consumer complaints have not been resolved and self-regulation cannot be an adequate solution to protect consumers. Currently, when consumers contact Union regarding a complaint with a MPS, Union encourages consumers to contact their wireless service provider regarding the unauthorized charges and to request that the charges be reversed. Union also informs consumers to reply back to the MPS with a STOP message. Union also encourages consumers to request the contact information for the MPS from their wireless service provider and to contact the MPS to request a reimbursement and to stop the premium text messages:

Upon finding the name of the company, it is important for you to send them an email or call them in order to request that the text messages stop and the reimbursement of the fees charged to your cell phone account. Their main argument always seems to be that you were the person who owns the account at the moment it was registered online for a subscription to their services by participating in a trivia contest or IQ

---

<sup>303</sup> Comments filed by Rogers Communications Inc., Bell Mobility and TELUS Mobility on Application to CRTC by Union des consommateurs regarding text messaging Short Codes, CRTC File #8620-U11-200901951 (26 February 2009).

<sup>304</sup> Telecom Decision CRTC 96-14, *Regulation of Wireless Service*.

<sup>305</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, (December 2006).

<sup>306</sup> Telecom Decision CRTC 2009-445, *Union des consommateurs -- Application with regard to billing of text messages from short codes* (24 July 2009) at para. 13.

<sup>307</sup> Email from Union des consommateurs to PIAC on 23 February 2009 regarding its standard response to consumers who contact them to complain about a mobile premium service.

test and thus you are responsible for the fees. You may provide them with your account information should they request it and if you wish to do so. However they will just confirm that you were the account holder on a given date and confirm the registration online. If you are persistent about the fact that you never subscribe [*sic*] to such a service, you might be able to obtain a reimbursement.<sup>308</sup>

Union also encourages consumers to lodge a complaint to the CWTA. If the consumer is unsuccessful in obtaining a reimbursement of the charges and cancellation of the text messages, Union informs consumers of their ability to file a complaint with both their provincial consumer protection government agency and the CCTS. If these attempts to resolve the issue fail, Union tells consumers to send their wireless service provider and the MPS a Demand Letter or Formal Notice requesting the reimbursement of the charged fees and if the consumer receives a refusal, the consumer could take the company to Small Claims Court.<sup>309</sup> Union also strongly encourages consumers to file a complaint with the CRTC so that they become aware of the issues consumer face with MPS.

It is important to note that Union's application to the CRTC regarding billing of short code messages was filed and decided upon before the recent modifications to the forbearance framework for mobile wireless data services. Now, the forbearance framework for mobile wireless data services allows the Commission to address issues with respect to the provision of mobile wireless data services by Canadian carriers.

### **C. Analogy of Mobile Premium Services to 900/976 Pay-per-call Services**

A 900 service enables customers to connect to phone numbers that start with 1-900 for pay-per-call services. Pay-per-call voice services include live and pre-recorded services such as adult chat lines, vote casting, psychic consultations, horoscopes, soap opera updates, games, donations processing, sports scores, weather forecasts, translation and medical, legal or government services. These services are offered by third parties called "900 content service providers." 900 content providers pay the telephone companies to use their networks.

900 services draw an obvious analogy to mobile premium services. The content of the services is similar and result in additional charges for the consumer. As well, the carriers receive payment for allowing the content provider to use their networks. One notable difference is that the 900 service is charged on a pay-per-call basis, while MPSs are often charged on an ongoing subscription basis until the customer unsubscribes from the service. It may be helpful to better understand how the CRTC regulates 900 services.

---

<sup>308</sup> Email from Union des consommateurs to PIAC on 23 February 2009 regarding its standard response to consumers who contact them to complain about a mobile premium service.

<sup>309</sup> Union des consommateurs has a help kit on their website for consumers outlining action steps and precedents for demand letters. See online: [http://www.consoommateur.qc.ca/union-des-consommateurs/?page\\_id=292](http://www.consoommateur.qc.ca/union-des-consommateurs/?page_id=292) (in French only).

The 900 service is a tariffed network service provided by Aliant Telecom Inc., Bell Canada, MTS Allstream Inc. and TELUS Communications Inc. ("900 service carriers").<sup>310</sup> The operation of 900 services is governed by the tariffs of these providers and three agreements: the Service Provider agreement, the Accounts Receivable Management agreement and the Alternate Billing Arrangement agreement. The agreements define the business relationship between the 900 service carrier and the 900 content service provider. The Commission approved the tariffs and the agreements. The Service Provider agreement sets out the terms and conditions under which a 900 service carrier provides 900 service to 900 content service providers. This agreement defines network-related parameters, 900 service program number ownership and assignment, attributes of the preamble required for 900 service programs, and advertising. Under the Accounts Receivable Management agreement, the 900 service carrier bills 900 service callers on behalf of the 900 content service provider using the originating telephone number from which a 900 call is placed. The 900 service carrier pays the 900 content service provider the amount collected from the caller, less certain fees and chargebacks. Under the Alternate Billing Arrangement agreement, a 900 content service provider can bill 900 service callers directly using the call detail information provided by the 900 service carrier. Alternately, the 900 content service provider can contract out the functions of billing and collection to other organizations.<sup>311</sup>

There are a number of consumer safeguards in place for 900 services. Charges must be identified in all advertisements for 900 services. As well, when making a 900 call by phone or the internet, the consumer must receive clear and complete information on charges and when the charges will begin. The Commission specified that telephone companies have the responsibility of ensuring that the preamble text in the dialogue box for internet-based 900 services: be limited to a short, accurate and clear message; be easily legible; use plain language; use 12-point font size; be displayed to the internet user before the transfer occurs; and clearly indicate that by clicking on the "I Agree" box, or by otherwise clearly indicating their explicit consent, internet users are agreeing to be charged for accessing a 900 service program.<sup>312</sup>

When a consumer is billed for 900 services, the bill must fully describe all charges plus the time, date and length of each call.

The 900 content service provider must provide a toll-free number where a consumer can reach a live customer service agent to discuss issues pertinent to its 900 service program. Callers can try to resolve issues with the content service providers prior to complaining to their telephone company or the Commission.

Under the CRTC rules, 900 content providers and telephone companies providing 900 services must waive all reasonably disputed charges for first-time disputes with their customers. Companies must also tell these customers about the call blocking feature that prevents calls being made from their phone to 900 services. For subsequent disputes, the telephone

---

<sup>310</sup> Note that there are also 976 services, which are a pay-per call service provided only by Bell Canada in Ontario and Quebec. Rules for 976 services may differ, for example, provincial laws about what collection agencies are not allowed to do are part of the 976 rules but not the 900 rules. However, for the sake of simplicity in this report, they will be referred to "900 services" generally.

<sup>311</sup> Telecom Decision CRTC 2005-19, *900 service - Agreements and consumer safeguards* (30 March 2005).

<sup>312</sup> Telecom Decision CRTC 2005-19 at para. 152.

companies will waive any unpaid charges but will provide relevant call detail information to the 900 content service provider, which can choose to pursue debt collection. Where a consumer is not satisfied with the response of their telephone company in the event of a disputed charge, the consumer can complain to the CRTC.

Where the telephone company has waived disputed charges, 900 companies are prohibited from making any attempt to collect the waived charges. The waived charges are to be absorbed by the 900 service provider by means of a debit to its account. This is also known as the "chargeback." If chargebacks attain a certain level as a percentage of total billing for a specific 900 service program for a given period of time (i.e. three consecutive months), the telephone companies will terminate the program.

Telephone companies providing 900 services must offer a call-blocking feature to all of its telephone customers. The feature restricts access from the customer's telephone lines to 900 services. Telephone companies must offer the blocking feature for free the first time the consumer requests the blocking feature. After that, the company can charge a maximum of \$10 for any further requests to add or remove the feature. Notably, in the proceeding examining consumer safeguards for 900 services, Bell Canada submitted that for a five-month period in 2002, customer service representatives handling calls regarding 900 services processed 1,360 complaints per month with approximately 78% of calls being first-time occurrences. Approximately 62% of customers subsequently subscribed to call blocking and most customers, approximately 88%, were provided with a credit.<sup>313</sup>

The CRTC also set maximum rates, charges and regulations to reduce the risks for 900 callers. The maximum rate for calls to psychic lines is \$6 per minute. The maximum charge for games of chance is \$5 per call. Providers of games of chance or sweepstakes must tell callers about any alternative ways of playing the game that do not involve calling a 900 number, so as to help callers avoid unnecessary 900 charges.

The telephone company cannot disconnect the customer's phone if there are 900 service arrears if the customer has paid for the part of their phone bill that covers local service, 911, call display and other calling features they may subscribe to. The telephone company may limit the customer's long distance calls or use other legal means to try to recover outstanding amounts, but the telephone company cannot cut off local service.

The telephone companies are also required to monitor 900 content providers and cut off content providers that do not comply with all terms and conditions. The companies are also not to purchase the accounts receivable of 900 content service providers Accounts Receivable Management agreement if, in the company's reasonable opinion, the 900 service programs are or could potentially be fraudulent, deceptive or misleading.

900 content service providers must also respect the privacy wishes of the caller. The caller must be given an opportunity to decline to have their name or other information used for any further marketing purposes by a third party.

---

<sup>313</sup> Telecom Decision CRTC 2005-19 at para. 140.

The Commission also required telephone companies to provide information on their websites and in an annual billing insert using clear and concise language with a text of at least 12-point font size in a public education plan to increase public awareness of consumer rights with regard to 900 services. The public awareness information must include: a reminder that parents should caution their children to not call 900 numbers without permission; a reminder that 900 services and long distance area codes beginning with '8' are provided for a charge to callers, unlike toll-free services; information about the availability of call blocking; and a statement that consumers may contact the Commission to seek resolution of an unresolved dispute with a 900 content service provider or the 900 service carrier.<sup>314</sup>

Many of these consumer safeguards are protections that consumers requested in PIAC's focus groups and case studies for MPSs. Given the similarities of MPSs to 900 services and given the modified regulatory environment for mobile wireless data services, it may be time for the Commission to rethink whether it has a role to play in the regulation of MPSs.

---

<sup>314</sup> Telecom Decision CRTC 2005-19 at para. 164.

## VII. INTERNATIONAL COMPARISON

### A. United Kingdom

#### i) *Compliance and Monitoring*

PhonepayPlus is a regulatory body with responsibility for enforcing its Code of Practice, which regulates the use of MPSs in the U.K.<sup>315</sup> PhonepayPlus requires clear and accurate pricing information, honest advertising and service content and appropriate and targeted promotions.<sup>316</sup> It investigates MPS complaints and has the power to fine MPS companies, issue formal reprimands, ordering companies to come to it for prior approval, and bar the individual behind a company from running other services under a different company name.<sup>317</sup> Consumers can also search for a short code number on PhonepayPlus' website. PhonepayPlus informs consumers through their website, when an MPS company is under investigation for any reason and of any action PhonepayPlus is taking.<sup>318</sup> PhonepayPlus may at times require an MPS company to refund consumers. Due to pervasive problems with MPS companies and aggregators who "consistently cause harm," the industry has instituted a mandatory registration scheme in force as of 2011. PhonepayPlus' Registration Scheme comes into effect in the fall of 2011, and requires that all MPSs be registered in order to carry on business. The registration scheme will identify individuals who are behind breaches of the Code of Practice "so that future potential business partners are fully aware of their track record and can then make an informed risk assessment of doing business with them."<sup>319</sup> Additionally, wireless service providers in the U.K. may also be members of the Office of the Telecommunications Ombudsman, a free and independent service that investigates complaints and attempts to resolve disputes between consumers and wireless service providers.<sup>320</sup>

#### ii) *Comparison with Canada*

While Canadian consumers can access an ombudsman-like complaint body, the CCTS, Canadians do not benefit from the regulatory measures that U.K. consumers enjoy. Particularly, Canadian consumers do not enjoy the protection of an independent regulator with the power to enforce industry codes. Additionally, there is no Canadian regulator with the power to fine noncompliant MPSs, issue formal reprimands, require pre-approval of MPS companies or bar individual aggregators from operating services. The MPS industry in Canada does not inform consumers of investigations into MPS companies or any action taken against these companies. The MPS industry in Canada also does not provide an up-to-date, comprehensive search

---

<sup>315</sup> See PhonepayPlus at <http://www.phonepayplus.org.uk/About-PhonepayPlus.aspx>. For the most recent Code of Practice see <http://www.code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>. For a description of PhonepayPlus see Vodafone, "Our Code of Practice for handling customer enquiries and complaints about premium rate services, non-geographic numbers and personal numbering services" online:

<http://www.vodafone.co.uk/consumer/groups/vodafoneukonline/documents/assets/vf052301.pdf>. See also PhonepayPlus at <http://www.phonepayplus.org.uk/About-PhonepayPlus.aspx>.

<sup>316</sup> PhonepayPlus, Code of Practice online: <http://www.code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>.

<sup>317</sup> *Supra* note 188.

<sup>318</sup> PhonepayPlus provides the public with names of companies who have committed violations and describes the violations and regulatory intervention taken. These are available through lists of adjudications and names of prohibited persons online: <http://www.phonepayplus.org.uk/For-The-Public/Adjudications/Search-adjudications.aspx>.

<sup>319</sup> See <http://www.phonepayplus.org.uk/News-And-Events/News/2011/4/PhonepayPlus-Registration-Scheme-opens.aspx> at pp. 5-6).

<sup>320</sup> See Ombudsman Services online: <http://www.ombudsman-services.org/communications.html>.

system, for consumers to use to locate contact information for MPS companies, short code numbers, current and prior regulatory investigations into noncompliance, and regulatory interventions imposed on noncompliant MPS companies.

## **B. United States of America**

### ***i) Leasing and Administration of Short Codes***

In the U.S., the Wireless Association (formerly called the Cellular Telecommunications & Internet Association) is the industry body appointed to serve as the short code administrator. As administrator, the Wireless Association has granted the Common Short Code Administration (CSCA) a license to assign short codes.<sup>321</sup> The CSCA licenses short codes to MPS companies (aggregators, content providers) for three, six and twelve months at a time.<sup>322</sup> Additionally, the CSCA maintains a database for its own use, listing available, reserved, and registered CSCs, and provides an online directory for public use that lists short code programs operating in the U.S.<sup>323</sup> MPS companies can choose to list their programs in the registry, which is promoted as a place to advertise to the public and the industry.

In the U.S., individual wireless service providers review short code applications and decide whether or not they are interested in launching them. Aggregators and content providers negotiate directly with individual wireless service provider to agree to carry an MPS.

### ***ii) Compliance Monitoring***

As mentioned briefly above, the CSCA and the Mobile Marketing Association (MMA) encourage MPS to conform to the MMA's Consumer Best Practices.<sup>324</sup> The CSCA employs monitoring agents who identify MPS in violation of industry established Consumer Best Practices. Aggregators and content providers who are found to be noncompliant with best practices are in jeopardy of losing access to new and existing short codes. In addition, wireless service providers in the U.S. also monitor MPS for adherence to the Mobile Marketing Association (MMA) Consumer Best Practices.<sup>325</sup> In the past, each of the four major wireless carriers in the U.S. had developed its own MPS best practices manual, however in the summer of 2009, the

---

<sup>321</sup> The following information has been taken from the website of the Common Short Code Administration online:  
<http://www.usshortcodes.com>.

<sup>322</sup> For the process of leasing a short code see CSCA, "Obtaining a CSC" online:  
[http://www.usshortcodes.com/csc\\_obtain\\_a\\_csc.html](http://www.usshortcodes.com/csc_obtain_a_csc.html).

<sup>323</sup> For the registry see CSCA, "Official CSC Directory" online:  
<https://www.usshortcodes.com/csc/directory/directoryList.do?method=showDirectory&group=all>.

<sup>324</sup> For the CSCA's information on best practices see CSCA, "Best Practices" online:  
[http://www.usshortcodes.com/csc\\_best\\_practices.html](http://www.usshortcodes.com/csc_best_practices.html). See also the newest version of the MMA's Best Practices: Mobile Marketing Association, "U.S. Consumer Best Practices: Version 6.0," 31 March 2011 effective 1 June 2011 online:  
<http://www.mmaglobal.com/bestpractices.pdf>.

<sup>325</sup> Each major wireless carrier had developed and used a kind of "carrier playbook" of MPS best practices. This has now been consolidated into the Best Practices provided by the MMA. An excellent example of the former playbook used by AT&T is provided at: AT&T Mobility, "Customer Experience Policy Amendment to MMA Best Practices and Guidelines for 3<sup>rd</sup> Party Content Providers," July 2009 at pp. 18-22 online:  
[http://developer.att.com/home/develop/referencesandtutorials/whitepapers/ATT\\_Customer\\_Experience\\_Policy.pdf](http://developer.att.com/home/develop/referencesandtutorials/whitepapers/ATT_Customer_Experience_Policy.pdf).

MMA released a U.S. Consumer Best Practices that consolidated the respective guidelines and codes of conduct, providing a more standardized, single reference for wireless providers.<sup>326</sup>

Also in the spring of 2009, the Wireless Association introduced changes to the short code monitoring and compliance structure, including launching a short code media monitoring process “to validate that promotional materials used to market short codes comply with the industry’s Consumer Best Practices,” and engaging the services of Wireless Media Consulting Inc. to provide the monitoring.<sup>327</sup> Unfortunately, the results of this monitoring are not readily available on Wireless Media Consulting Inc.’s website, so the process and results lack necessary transparency. However, the monitoring may still provide a layer of “checks and balances” within the industry that does not currently exist in Canada. Other improvements introduced in 2009 include registry redesign and expanded distribution of red alerts.<sup>328</sup> Registry redesign involves gathering more information on each MPS during the registration process and providing that information to wireless carriers and monitoring agents to determine compliance with Best Practices.<sup>329</sup> Expanded distribution of red alerts means providing daily red alerts “of the most egregious violations of Industry Best Practices” not only to carriers, as was previously the case, but also to aggregators and content providers.<sup>330</sup> Generally, the CSCA explains that the industry has been moving toward “a more efficient top-down process for the definition, review, and compliance with established best practices of CSC Campaigns.”<sup>331</sup> It is evident that wireless service providers play a significant role in compliance monitoring for MPSs, from developing their own MPS best practices in earlier years, to assisting in the development of the standardized, cross-carrier MMA Best Practices, to monitoring and compliance, .

Overall, the Wireless Association and the Common Short Code Administration (CSCA) perform similar functions in the U.S. as the CWTA performs in Canada. In addition, both the American and Canadian industry associations are active in various advocacy activities on behalf of the wireless industry. In the U.S., the Wireless Association advances the financial and competitive interests of the industry by writing position papers, submitting filings with the FCC, conducting research, writing amicus briefs, advising politicians, holding conventions and events and more.<sup>332</sup> In Canada, the CWTA is also active in regulatory tribunals such as the CRTC and consultations before Industry Canada, hiring researchers to write on the wireless industry, participating in conferences to promote the wireless industry and more.<sup>333</sup> This advocacy work on behalf of the wireless industry demonstrates the agenda of these organizations, and rightly so. They are industry bodies representing the interests of industry.

---

<sup>326</sup> MMA, “Mobile Marketing Association Releases new Version of U.S. Consumer Best Practices for Cross-Carrier Mobile Content Services” 1 July 2009 online: <http://mmaglobal.com/news/mobile-marketing-association-releases-new-version-us-consumer-best-practices-cross-carrier-mobi>.

<sup>327</sup> CTIA - The Wireless Association, “The Wireless Association Launches Common Short Code Media Monitoring Process,” 15 June 2009 online: <http://ctia.org/media/press/body.cfm/prid/1825>.

<sup>328</sup> MTCnet.com, “CTIA Upgrades Common Short Code Auditing and Monitoring Initiative,” 4 April 2009 online: <http://www.tmcnet.com/submit/2009/04/05/4107648.htm>.

<sup>329</sup> *Ibid.*

<sup>330</sup> *Ibid.*

<sup>331</sup> See [http://www.usshortcodes.com/updated\\_application\\_process.html](http://www.usshortcodes.com/updated_application_process.html).

<sup>332</sup> FTC, “Advertising and Marketing” online: <http://business.ftc.gov/advertising-and-marketing>. For a copy of the FTC Act see <http://www.ftc.gov/ogc/ftcact.shtm>.

<sup>333</sup> FTC, “Welcome to the Office of Congressional Relations” online: <http://www.ftc.gov/ocr/index.shtml>.

The critical distinction between the U.S. and Canada is with respect to the roles played by wireless service providers. In the U.S., wireless service providers monitor and enforce MPS compliance with industry best practices and other guidelines. In Canada, there is no arrangement, system, manual, best practices guideline or even expectation that wireless providers monitor or enforce compliance. In fact, in Canada, wireless service providers still deny to consumers their role in the MPS scheme.

### ***iii) Regulation and Legal Oversight***

The Federal Trade Commission (FTC) has the legal authority to oversee MPSs in several ways. For example, the FTC handles consumer protection related to false or misleading advertising.<sup>334</sup> The Office of Congressional Relations represents consumer issues (which have the potential to include consumer issues related to aspects of MPSs) to Congress.<sup>335</sup> The FTC's Bureau of Consumer Protection (BCP) has the mandate of protecting consumers against unfair, deceptive or fraudulent practices.<sup>336</sup> The BCP enforces a variety of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the FTC.<sup>337</sup> Its actions include individual company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education.<sup>338</sup> In addition, the BCP contributes to the FTC's on-going efforts to inform Congress and other government entities of the impact that proposed actions could have on consumers.<sup>339</sup> The BCP also has both investigative and law enforcement authority.<sup>340</sup>

The FTC collects consumer complaints and compiles them with complaints filed with the Internet Crime Complaint Center, Better Business Bureaus, the Canadian Anti-Fraud Centre, the U.S. Postal Inspection Service, the Identity Theft Assistance Centre, and the National Fraud Information Center, among others. These complaints are compiled in the Consumer Sentinel Network and a summary report is published every year. The 2010 Consumer Sentinel Network Data Book showed an increase in consumer complaints about fraud on telephone bill, with 1,782 complaints in 2008 totalling \$1,234,009 lost compared to 3,862 complaints in 2009 with a total of \$848,246 lost and 4,632 complaints in 2010 with a total of \$1,184,975 lost.<sup>341</sup> Under the fraud category of "Telephone and Mobile Services," the Consumer Sentinel Network included complaints about charges for calls to "toll-free" numbers, unauthorized charges such as charges for calls consumers did not make, unauthorized switching of consumers' service providers, misleading pre-paid phone card offers.<sup>342</sup> The Consumer Sentinel Network noted an increase in these complaints, with 10,184 complaints received in 2008, to 13,557 complaints received in 2009, to 37,388 complaints received in 2010.<sup>343</sup> A further breakdown of complaints about Telephone and Mobile Services show 4 complaints about "Mobile Text Messaging" in 2009,

---

<sup>334</sup> FTC, "About the Bureau of Consumer Protection" online: <http://www.ftc.gov/bcp/about.shtm>.

<sup>335</sup> *Ibid.*

<sup>336</sup> *Ibid.*

<sup>337</sup> *Ibid.*

<sup>338</sup> *Ibid.*

<sup>339</sup> *Ibid.*

<sup>340</sup> *Ibid.*

<sup>341</sup> Federal Trade Commission, Consumer Sentinel Network Data Book for January to December 2010 (March 2010) at p. 8 online: <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>.

<sup>342</sup> *Ibid.* at p. 74.

<sup>343</sup> *Ibid.* at p. 75.

compared to 2,520 complaints in 2010. As well, the Consumer Sentinel Network received 4 complaints about “Mobile Unauthorized Charges or Debits” in 2009, compared to 775 complaints in 2010.<sup>344</sup> It is likely that consumer complaints about MPSs would have been categorized as “Mobile Text Messaging” or “Mobile Unauthorized Charges or Debits.”

The FTC could not confirm or deny that they are investigating any MPS cases or provide numbers specifically regarding complaints about MPSs.<sup>345</sup> Currently, when the BCP receives complaints about MPSs they put consumers in touch with groups such as the BBB who might be able to mediate complaints.<sup>346</sup> However, if necessary, the FTC would have the ability to pursue an MPS company either through litigation, such as an injunction to stop the MPS company from continuing certain activities, or through administrative channels and rulemaking.<sup>347</sup>

Canada maintains sectoral regulation by industry at the federal level with no single agency acting as a one-stop shop or generally exercising consumer protection powers. There is no federal agency responsible for representing consumer issues to the Government *per se* or making and enforcing trade regulation rules specific to consumer protection. There is no agency taking administrative and court action in the consumer interest or equivalent to the BCP in Canada.

#### **iv) U.S. Class Actions**

The class action bar in the U.S. has been pursuing relief for U.S. consumers who allege they have been improperly charged for MPS. As a result of the a class action lawsuit against Jamster, U.S. consumers were able to access refunds for up to three months of improper MPS charges related to improper disclosure of MPS terms of service.<sup>348</sup> Jamster is currently running MPSs in Canada. A class action involving Mobile Messenger involved tens of thousands of U.S. consumers who were ultimately awarded refunds for up to three months of improperly charged MPS.<sup>349</sup> Mobile Messenger is also currently running MPSs in Canada.

Another well-known class action has resulted in stays to other lawsuits pending its outcome.<sup>350</sup> In early 2011, Verizon Wireless filed a lawsuit in federal district court in Phoenix, Arizona alleging fraud with respect to MPS run by the companies Cylon, Jawa and Eyelevel Holdings.<sup>351</sup> Verizon has set up a “Third-Party content Subscription Refund Program” for U.S. consumers who were signed up and charged for the MPS which did not meet Verizon Wireless’ standards for the disclosure of pricing and subscription information.<sup>352</sup> The number of consumers affected

---

<sup>344</sup> *Ibid.* at. p. 80.

<sup>345</sup> *Ibid.*

<sup>346</sup> *Ibid.*

<sup>347</sup> *Ibid.*

<sup>348</sup> *Re Jamster Marketing Litigation.*, MDL No. 1751 (S.D. Cal.), consumers were able to access refunds for unauthorized charges relating to mobile content from Jamster.

<sup>349</sup> *Gray v. Mobile Messenger Americas, Inc., et. al.*, No. 2008-CV-61089 (S.D. Fla.).

<sup>350</sup> *Walker v. OpenMarket*, No. 64272-3-1 (WA).

<sup>351</sup> *Verizon Wireless v. Jason Hope et al.*, Case 2:11-cv-00432-SRB (AR). See also IB Times Staff Reporter, “Verizon Sues Premium SMS Fraud Conspirators, Offers Refund,” 10 March 2011 IB Times online:

<http://www.ibtimes.com/articles/121040/20110310/verizon-verizon-wireless-premium-sms-fraud-jason-hope-wayne-destefano-cylon-jawa-eyelevel-vodafone-3.htm>.

<sup>352</sup> <https://www.premiumsmsrefunds.com/Documents/THIRD%20PARTY%20CONTENT%20REFUND.pdf>.

in these lawsuits indicates that tens of thousands, if not hundreds of thousands of consumers want redress for improper MPS charges.

While the class action regime is newer and less developed in Canada than in the U.S., class actions may be a viable avenue of redress for Canadian consumers improperly charged for MPSs. The most obvious reason for this is that “certification of a class action can transform individually non-viable claims into collectively viable claims because class actions are a means by which rights that go otherwise unasserted on an individual level can be asserted in the aggregate.”<sup>353</sup> As mentioned in the previous section, it is unclear why no MPS class actions have been attempted yet in Canada. However, it is possible that the problems consumers face seeking redress through other mechanisms (small claims, competition law, nonexistent regulatory oversight), and the example of successful class actions in other jurisdictions (such as the U.S.) could lead consumers toward seeking redress through the class action mechanism in the future.

## C. AUSTRALIA

Two primary bodies have oversight of the MPS scheme in Australia: the Telecommunications Industry Ombudsman (TIO) and the Australian Communications & Media Authority (ACMA). Each will be addressed in turn.

### *i) The Telecommunications Industry Ombudsman*

The TIO is a free and independent alternative dispute resolution scheme for small business and residential consumers in Australia who have a complaint about their telephone or internet service.<sup>354</sup> Established in 1993 and provided for under a federal Act of Parliament, the TIO is operated by Telecommunications Industry Ombudsman Ltd., and is independent of industry, the government, and consumer organizations.<sup>355</sup> The TIO has jurisdiction to investigate and resolve complaints about virtually all telecommunications services. For the purposes of this report, the TIO’s jurisdiction includes complaints about wireless phone services, MPSs, and compliance with the Customer Service Guarantee Standard and the industry Codes of Practice. Complaints about MPSs are dealt with by the content service provider in the first instance and any unresolved complaints can be escalated to the independent complaints handling body, the TIO, which offers a free complaints-handling service to consumers. The TIO also compiles statistics, creates reports on consumer complaints, and publishes these reports each quarter and each year, listing the service providers and types of complaints. Additionally, the TIO may refer systemic problems, identified through complaint statistics, to the Australian Communications & Media Authority, the Australian Competition and Consumer Commission, the Privacy Commissioner, or other appropriate bodies.

---

<sup>353</sup> Janet Lo, “A Criminal Rate of Interest: Updating Garland for Consumers” January 2011 online: [http://www.piac.ca/downloads/GarlandUpdate\\_FINAL.pdf](http://www.piac.ca/downloads/GarlandUpdate_FINAL.pdf).

<sup>354</sup> PIAC email consultations with the Australian Communications & Media Authority (ACMA) throughout 2010-2011. See also the Telecommunications Industry Ombudsman’s website online: [http://tio.com.au/about\\_tio.htm](http://tio.com.au/about_tio.htm), last updated 24 March 2011 and the the Australian Communications & Media Authority’s website online: [http://www.acma.gov.au/WEB/LANDING/pc=TELECOMMUNICATIONS\\_MAIN](http://www.acma.gov.au/WEB/LANDING/pc=TELECOMMUNICATIONS_MAIN).

<sup>355</sup> TIO online: [http://tio.com.au/about\\_tio.htm](http://tio.com.au/about_tio.htm).

Like the CCTS in Canada, the TIO in Australia is authorized to investigate complaints about the provision or supply of telephone or internet services. Also, like the CCTS, the TIO aims to settle disputes quickly in a fair, objective and non-bureaucratic way, having regard to the law, to good industry practice, and to what is fair and reasonable in the circumstances. In Canada, the CCTS can make non-binding recommendations up to the value of \$5,000 and binding decisions where the consumer consents to the decision. In comparison, the TIO has the authority to make Binding Decisions up to the value of \$30,000, and Recommendations up to the value of \$85,000.

The structure of the TIO is designed to ensure its independence. It is governed by a Council and a Board of Directors of Telecommunications Industry Ombudsman Ltd, and is managed by an independent Ombudsman, currently Simon Cohen, who is appointed by the Board on the recommendation of Council. The Council is comprised of five TIO member representatives and five consumer representatives, with an independent Chairman. While the Ombudsman has responsibility for the day to day operations of the scheme, the Council provides advice to the Ombudsman on policy and procedural matters.

If it is helpful to think in such terms, the Australian TIO operates similarly to the Canadian CCTS – as a complaints handling body, with both informal and formal complaint resolution processes. Some important differences exist however, such as the TIO's greater enforcement powers; stronger repercussions for Australian telecommunications companies who fail industry standards; greater independence of TIO Board members (five consumer representatives on the TIO Board compared to two consumer representatives in Canada's CCTS Board); a more comprehensive legislative and regulatory regime in Australia protecting telecommunications consumers; and a greater mandate for the TIO to take action on systemic problems.

## ***ii) Tracking Problems with Mobile Premium Services in Australia***

During the 2007/2008 financial year, complaints to the TIO from consumers about their telephone and internet services increased by approximately 46.1%.<sup>356</sup> Of particular interest to the TIO was the fact that 9.3% of these complaints (totalling 13,900) were about Mobile Premium Services (MPS).<sup>357</sup> While 96% of MPS complaints to the TIO were resolved after referral to their service provider's senior level of complaint, the steady increase in MPS complaints prompted the TIO to conduct a project to identify why consumers so frequently sought the TIO's assistance to resolve complaints about MPSs.<sup>358</sup>

As such, the TIO began a three-week survey of consumer complaints about MPSs. As the TIO explains, data collected was based on complainants' reports to the TIO at first contact.<sup>359</sup> As is standard practice, complainants were referred to their relevant service provider's senior level of complaint.<sup>360</sup> As the TIO explains, the majority of complaints were not corroborated by formal investigation; however, "given the size of the complaint sample and the consistency of

---

<sup>356</sup> Telecommunications Industry Ombudsman, "Complaint Data Analysis" 17 September 2008 at p. 3 online: <http://tio.com.au/FAQ/MPS%20Drivers%20Report%20%28External%20Copy%29%202009-01-22.pdf>.

<sup>357</sup> *Ibid.*

<sup>358</sup> *Ibid.* at p. 4.

<sup>359</sup> *Ibid.*

<sup>360</sup> *Ibid.*

complainants' responses to the question set," the data provided significant insight into consumers' experiences with MPSs.<sup>361</sup> The TIO's research highlights common and troubling aspects of consumers' experiences with MPSs. These results parallel reports by Canadian consumers in PIAC's case studies and focus groups and in the Canadian media.

### ***iii) The TIO's Research***

Over a period of three weeks, 523 MPS complaints were recorded. 491 complaints (96%) were about subscription services.<sup>362</sup> 97% of those customers claimed that they had not knowingly agreed to the subscription, and only 26% were able to identify how they had requested the initial premium-rate text message they had received.<sup>363</sup> Of the complainants who reported making attempts to stop receiving disputed MPSs, only 55% stated that these attempts had been successful and 38% claimed not to have been given the option to opt-out at all.<sup>364</sup> Of the complainants who had successfully contacted the content supplier to try to resolve their complaints, 86% reported that the content supplier had not resolved their complaints. Of the complainants who had contacted their wireless service provider, 56% stated that this had not resolved their complaints. Amounts in dispute ranged from \$2.75 to \$2,325.00. A significant number of complainants (36%) were disputing more than \$60 in charges.

As a result of their research, the TIO concluded that consumers are confused about the concept of "subscription" Mobile Premium Services; that mechanisms for cancelling MPSs are not readily available or straightforward; and that content suppliers and wireless service providers may not be addressing complaints about MPS promptly or efficiently.

In the years following the TIO's research, certain consumer protection measures have been introduced in Australia, resulting in a significant decline in MPS complaint numbers. These measures will be discussed later in this section, but to better understand the consumer protection scheme, it is important to first understand another important industry regulator, the ACMA.

### ***iv) The Australian Communications & Media Authority***

The ACMA does not deal with consumer complaints, but has responsibility for ensuring that content service providers and wireless service providers comply with their obligations under the industry's regulatory code. As such, the ACMA undertakes its own monitoring and compliance activities, identifying potential breaches of the code, recurring and systemic problems with services, and the providers that are responsible for problematic services. MPS suppliers who fail to comply with the rules run the risk of penalties of up to \$250,000 in the case of a breach of the code or \$10 million in the case of a breach of an ACMA service provider determination.

Wireless service providers also undertake their own monitoring of compliance by their contracted parties with the terms of their contracts and also the industry's regulatory code obligations as their contracts require compliance by their contracted parties with the code.

---

<sup>361</sup> *Ibid.*

<sup>362</sup> *Ibid.* at p. 5.

<sup>363</sup> *Ibid.*

<sup>364</sup> *Ibid.* at p. 6.

The regulatory code mentioned above is the Mobile Premium Services Code.<sup>365</sup> The Code includes the basic rules about the costs terms and conditions and advertising upon which MPSs can be offered. The code also includes a requirement for a 'double opt-in' mechanism (subscription MPSs may not commence until mobile phone users have confirmed their request for the service via an action independent of the initial request) and a prohibition on advertisements targeted at children under fifteen years of age. Additionally, the code requires the registration of all service providers on a register with the industry body to assist consumers in identifying the service provider and how to contact them direct to resolve their complaint or query using the number prefix for the service.

The ACMA has also made two recent service provider "determinations" (like administrative decisions or rules) which industry must comply with. There first is a requirement for all wireless service providers to provide the capability to bar all MPSs and to provide information about the availability of MPS barring at various times throughout the lifecycle of ownership of a mobile phone.<sup>366</sup> The second determination is a "do not bill" determination which provides for the ACMA to direct all service providers not to bill customers of specified premium numbers for a period up to three years where the ACMA determines that mobile phone customers may suffer significant financial detriment.<sup>367</sup>

#### **v) Consultation with the Australian Communications & Media Authority**

PIAC consulted with the ACMA throughout 2010-2011 in order to understand the ACMA's role and experience in the Australian MPS regulatory regime. The information provided below summarizes the ACMA's responses to PIAC's questions about oversight of the MPS scheme in Australia and issues facing MPS consumers.

The ACMA considers that the current Australian regulatory regime is working well and has resulted in a significant decline in complaint numbers which is expected to continue into the future. However, there is still room for improvement. While the Mobile Premium Services Code has been proven to be effective in reducing complaint numbers, the ACMA has recommended to industry, as part of the recent code review, that it improve the rules for transparency of prices,

---

<sup>365</sup> See <http://www.commsalliance.com.au/Activities/mps>

<sup>366</sup> Subsection 7(2)(c) of the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)* requires that a mobile carriage service provider must not charge the customer a fee for barring all premium SMS and MMS services. The ACMA also included a requirement that if a customer opted for premium SMS and MMS barring that there should be no loss of other services. This requirement at subsection 7(2)(d) was included to prevent mobile carriage service providers from only offering a limited barring capability. For example prior to the determination, some mobile carriage service providers could provide premium SMS and MMS barring but at the loss of non premium SMS and MMS text messaging services. The barring of all premium SMS and MMS services at the request of a mobile phone customer is on the basis of number prefixes. Premium SMS and MMS services in our numbering plan only operate on the 191, 193-197 and 199 number ranges. These number prefixes do not offer free services but are used because they are permitted to charge a higher than normal charge for sending an SMS or MMS. The barring has no impact on free or standard rate SMS or MMS messaging using non premium number ranges. The intention being to only bar premium SMS and MMS numbers not any other type of numbers. The determination is available online: <http://www.frlt.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/asmade/bytitle/3074416A04A9C785CA2576DF007F126F?OpenDocument&VIEWCAT=item&COUNT=999&START=1>.

<sup>367</sup> This determination permits the ACMA to issue an interim do not bill order to a provider not to bill for specified MPS numbers for a period of 60 days while the service is being investigated. Should the service be found to have breached the Code and the content provider has acted in a way that is significantly detrimental to the interests of customers or consumers, the do not bill order may operate for a period up to three years. The ACMA can also vary a do not bill order to include additional MPS numbers or remove MPS numbers to minimise the risk of a content provider from moving the service to new MPS number. The determination is available online: <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/all/whatsnew/182039F26A7C81E3CA257770000E6E25?OpenDocument>.

terms and conditions of subscription services, and develop rules which give customers greater control over the amounts they spend on premium SMS and MMS services.

The ACMA noted that there has been a significant decline in complaint numbers following several important measures: 1) the introduction of the Mobile Premium Services Code, which commenced on 1 July 2009; 2) two recent determinations made by the ACMA (including the ability to bar MPSs and the do not bill determination); and 3) the monitoring and compliance work the ACMA has undertaken. The number of complaint issues about premium SMS and MMS services peaked in the September quarter of 2008 at 9,850 and dropped by 85% in the June quarter of 2010 to 1,509 complaint issues.

#### ***vi) Comparisons Between Australia and Canada***

Canada and Australia do not have vastly different MPS markets. In fact, many of the players are the same (e.g. companies such as Sybsase, Mobirok etc). Australia's market is larger, with approximately 286 MPS companies and 2000 MPS programs operating in Australia compared to approximately 600 MPS programs operating in Canada. One might argue that the larger number of MPSs operating in Australia could mean Australia has a greater need for regulatory and legislative oversight; and Canada's smaller market could mean more ability to rely on industry self-regulation. However, the reverse could also be true – because Canada is a smaller market, there is even less incentive for companies to comply with industry standards and for noncompliance to exist. As demonstrated in this report, noncompliance does exist. Australia has developed the option for consumers to block MPS programs without blocking text messaging altogether, and PIAC believes that the same technology is not out of Canada's reach. The Canadian wireless industry has simply chosen not to pursue this feature and not to provide it to consumers.

More to the point, one salient factor is identical in both countries – consumers are consumers. Consumers in both countries need protection from poor industry practices, unfair policies and noncompliance. Australia has taken multiple steps to protect consumers through its wireless industry association's participation; through the TIO's independent complaints handling process, statistical reporting, research, and systemic intervention; through the ACMA's resolutions, determinations, and independent oversight; through a customer service protection code<sup>368</sup> and more.

Canada, by comparison, has developed a self-regulatory model: where the industry association that advances its own interests is also supposed to look out for consumers; where the complaints handling body does not track or report MPS noncompliance and does not intervene to investigate systemic issues; where the CRTC has chosen not to regulate MPSs; where no telecommunications customer service protection code exists; where the failure of customer service to resolve consumer complaints is a matter of "competition" in the market rather than a basic requirement for all service providers; and where consumers can neither block MPSs nor prevent improper billing even while noncompliant MPS companies are under investigation.

---

<sup>368</sup> See [http://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0014/1346/C628\\_2007.pdf](http://www.commsalliance.com.au/_data/assets/pdf_file/0014/1346/C628_2007.pdf).

The result for Canadian consumers is that while there are noncompliant MPS companies in operation, consumers have very little recourse. Even when the CWTA is aware that a program is noncompliant, the CWTA does not attempt to alert consumers or require companies to refund the improperly collected monies to consumers.<sup>369</sup> The CWTA suggests that it alerts wireless service providers to noncompliant MPSs, however wireless service providers do not take positive action to protect their consumers from noncompliant MPSs. There is no requirement that the MPS company, the aggregator, or the wireless service provider attempt to alert consumers, cease to bill consumers, or refund the improperly collected monies to consumers. These are critical missing pieces in the Canadian MPS scheme.

Consumers in PIAC focus groups were asked to comment on the regulatory model of MPSs in Canada.<sup>370</sup> Consumers in PIAC focus groups pointed out the conflict of interest in industry self-regulation and their skepticism about consumer protection in a self-regulated industry. They stated:

“It’s simply going to be protecting the companies but not the consumers.”<sup>371</sup>

“I think it’s tough to find legitimacy in an industry trying to regulate itself. Especially one where there’s not much competition to being with and they sort of regulate in sort of shady ways.”<sup>372</sup>

Consumers in PIAC focus groups were also concerned that the results of audits performed by the CWTA are not published, and suggested that names of noncompliant MPSs should be made public, similar to the Australian model. They stated:

“...it is kind of dodgy that they don’t publish the results. If it’s an audit then it should be public information.”<sup>373</sup>

“R: ...but why don’t they publish results, what have they got to hide?”

R: ...It’s smoke and mirrors, that’s all it is.

M: [Name], what’s your reaction to this?

R: Yeah, I agree with both of them. They represent themselves so it’s hard to sort of remain objective in the in the situation. And, yeah, as well, they’re not publishing the results. Why not?”<sup>374</sup>

---

<sup>369</sup> PIAC consultation with CWTA, 9 February 2011: The CWTA confirmed that they do contact consumers when a MPS company is noncompliant, nor does the CWTA require noncompliant companies to refund improperly collected monies to consumers.

<sup>370</sup> Consumers in PIAC’s focus groups were told the following for discussion: The CWTA administers all of the MPS allowed to reach Canadian consumers. A smaller group within the CWTA, called the Short Code Council, is made up of representatives from each of the major phone companies. This Council reviews and approves all MPS in Canada, which the CWTA then keeps a list of. All MPS in Canada agree to comply with the CWTA Code of Conduct for Short Codes, which describes practices regarding how MPS must be advertised, the double opt-in process for subscription, and how consumers can unsubscribe. The CWTA enforces this Code of Conduct and audits MPS practices but does not publish the results.

<sup>371</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 61.

<sup>372</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 44.

<sup>373</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 50.

<sup>374</sup> Consumer Focus Group, 5 October 2010 Toronto 5:30 pm at p. 44.

“If they enforce something against one of these companies sending out MPSs, I’d like to know about it. If I’m subscribing to that company, they’re still charging me, but these guys were caught doing something bad.”<sup>375</sup>

“I think we should have names of the companies that had the most complaints.”<sup>376</sup>

“There should be someplace you can go before you subscribe to this company, before you subscribe to this and send them your money, you should be able to call somebody or check some list to make sure that they’re not a bad supplier.”<sup>377</sup>

In PIAC focus groups, participants were presented with explanations of the Australian and Canadian regulatory models for MPSs.<sup>378</sup> Consumers expressed approval for the regulatory model in Australia and measures enacted there, that they felt were essential missing pieces in Canada. They stated:

“I think where the accountability comes in is that, yes, there is an independent regulator. That’s where the difference comes into it, and that’s when I can expect more, I guess, accountability on behalf of the phone company because they’re now being reviewed, rather than our model where they’re being reviewed by their own representatives.”<sup>379</sup>

“C’est meilleur, c’est indépendant parce qu’ils ont en fait un régulateur indépendant dans la surveillance de cette industrie, je ne sais pas si c’est une association qui est gérée par les fournisseurs de service ou quoi, mais il y a un régulateur indépendant. Les statistiques et toutes les plaintes je pense qu’ils sont mieux protégés que les Canadiens.”<sup>380</sup>

“I think it [the Australian model] would be fairer to the consumers. At least the consumer would have a voice somewhere. Industry generally doesn’t like that because ignorance is bliss and an ignorant consumer is the best pocket you can pick, but I think its’ much better than what we have now.”<sup>381</sup>

---

<sup>375</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 51.

<sup>376</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 56.

<sup>377</sup> Consumer Focus Group, 5 October 2010 Toronto 8:00 pm at p. 46.

Consumers in PIAC’s focus groups were presented with the following text for discussion:

In Australia, there is an industry code that governs the MPS sector that sets out detailed rules and procedures to protect consumers. Under the Code, MPS content suppliers have the obligation to resolve consumer complaints and refer customers to the Ombudsman if the customer is not satisfied with the resolution. As well, a separate industry regulator implements a monitoring regime to ensure industry compliance and takes enforcement action when required. The biggest difference between the Australian and Canadian model is that Australia’s code has reference to the Ombudsman and is enforced by the regulator, whereas the Canadian code is enforced by the industry association.

The Australian Ombudsman publishes statistics on complaints and names MPS that are not compliant with the law. Statistics on complaints on MPS in Canada are not compiled and not published. Companies that are not compliant with the industry code are not named. What do you think about this?

<sup>379</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 70.

<sup>380</sup> Consumer Focus Group, 14 October 2010 Montreal 5:30 pm at p. 45.

<sup>381</sup> Consumer Focus Group, 12 October 2010 Vancouver 8:00 pm at p. 71.

“...we don’t even know who to complain to right now as it is, and we don’t have anyone to follow up with, no one to take responsibility for any of it. So this [Australian] model would do all of that.”<sup>382</sup>

“C’est mieux qu’au Canada au moins il y a quelqu’un qui protège le consommateur, au Canada c’est les industries, il y a quelqu’un qui protège les industries.”<sup>383</sup>

## **D. Summary of International Comparisons**

The self regulatory model in other jurisdictions is often complemented with robust government consumer protection regimes or more developed case law initiated by governments, the class action bar, and wireless service providers themselves; such is the case in the U.S. In other jurisdictions, such as Australia and the U.K., there is co-regulation between industry and an independent regulator with legislative authority to compel compliance, as well as expanded roles of complaints bodies or ombudsman, who track and report on consumer complaints specific to MPSs and addressing systemic problems within the MPS industry.

Globally, multiple countries are responding to the need for increased consumer protections regarding MPSs. Considering consumer complaints about the Canadian MPS scheme and the comparatively strong consumer protection measures other jurisdictions, it is apparent that the Canadian industry, governments and regulators need to revisit the issue of regulating MPSs.

---

<sup>382</sup> Consumer Focus Group, 12 October 2010 Vancouver 5:30 pm at p. 58.

<sup>383</sup> Consumer Focus Group, 12 October 2010 Montreal 8:00 pm at p. 49.

## **VIII. CONCLUSION & RECOMMENDATIONS**

This report demonstrates that despite a lack of industry recognition of, and attention to, such matters, problems experienced by consumers are real and pervasive, and demand a concerted response. Consumers experience a myriad of problems from lack of clarity in advertising about MPSs, to issues with unauthorized subscriptions or subscriptions without adequate knowledge and consent, and unsuccessful attempts to unsubscribe from MPSs. Consumers are frustrated when they attempt to dispute charges for unauthorized MPSs or for charges that continue despite unsuccessful attempts to unsubscribe. Wireless service provider customer service can be unhelpful or provide inaccurate information to the consumer, and fail to take responsibility for the fact that the wireless service provider is a profiting party from the MPS scheme. Consumers rarely have better luck in disputing such charges with the MPS company, as they may experience difficulty identifying and contacting the company. Consumers are frustrated in their attempts to access information about the subscription in order to dispute the charge, both through their wireless service provider and the MPS company. Consumers are still largely unaware of their right to pursue complaints to the CCTS and the CWTA does not play a role in consumer dispute resolution for MPSs.

### **A. RECOMMENDATIONS**

#### **Consumers need the CRTC to regulate mobile premium services and implement consumer safeguards**

Given the extent of issues that consumers have experienced with various aspects of MPSs from beginning to end, from advertising to subscription to unsubscription to billing to complaint resolution, it is now time for the CRTC to reconsider whether they have a regulatory role to play regarding MPSs. The CRTC previously examined MPSs in an application filed by Union des consommateurs and decided in Telecom Decision 2009-445 that there was no systematic failure of market forces and thus intervention was not necessary to protect Canadian consumers. The CRTC stated that market forces and industry self-regulation mechanisms of the CWTA and wireless service providers could be relied upon to protect consumers and the CCTS could be relied upon to resolve complaints about the billing of text messages from short codes. PIAC's report shows several consumers who have been unsuccessful in relying on the CWTA and wireless service providers to protect their interests. Rather, the CWTA and wireless service providers have been unhelpful to these consumers, refusing to acknowledge or investigate problems or passing on responsibility for these problems to a third party. While the CCTS is able to help consumers resolve billing disputes, not all consumers are aware of their right to pursue their complaint to CCTS and consumers could only complaint to CCTS if their issue relates to billing. Consumers need and expect comprehensive protection for all aspects of MPSs, from false and misleading advertising to subscription, to unsubscription, to billing, and complaint resolution. The CRTC is the best placed regulator to implement safeguards for consumers with respect to MPSs.

Recent modifications to the forbearance framework for mobile wireless data services now may allow the CRTC to address issues with respect to the provision of mobile wireless data services by Canadian carriers. In light of the modification to the mobile wireless data services forbearance framework and the consumer experience detailed in this report, the CRTC should reconsider its previous decision not to regulate MPSs. PIAC recommends that the CRTC initiate a public proceeding regarding mobile premium services to study the relationship between MPSs, the CWTA, wireless service providers, the efficacy of current consumer protection in this area, and to solicit consumer experiences regarding these services.

Mobile premium services for wireless mobile phone are analogous to 900 services for landline phone, as the content of the services is similar, involves a third party providing content, and requires the phone or wireless carrier to receive payment for allowing the content provider to use their networks. The CRTC should consider implementing similar consumer safeguards for MPSs as currently exist for 900 services. If the CRTC were to implement analogous consumer safeguards for MPSs, the following important consumer safeguards would be needed:

- the CRTC would examine and approve agreements between wireless service providers and MPS companies or aggregators;
- requirements for clearly identifying charges in all advertisements about MPSs;
- requirements for wireless service providers to ensure that the opt-in message is clear and accurate, easily legible, use plain language and clear font size in order to secure explicit consent to the charges before opting consumers into the service;
- requirement for wireless service providers to clearly identify and describe all MPS charges on customer bills including the time and date of each text message, and to provide a toll-free number for the MPS where the consumer can reach a live customer service agent to discuss issues;
- the CRTC would implement a rule requiring the wireless service provider to waive all reasonably disputed charges for first-time disputes with their customers;
- for subsequent disputes, the wireless service provider would waive any unpaid charges but provide relevant text message detail information to the MPS company who can choose to pursue debt collection;
- where the wireless service provider waives charges for MPSs, the waived charges are to be absorbed by the MPS company by means of a debit to its account, also known as a “chargeback”;
- where chargebacks attain a certain level as a percentage of total billing for a specific MPS program for a given period of time, the wireless service provider will terminate the program;
- wireless service providers would not be allowed to terminate or disconnect a customer’s account for unpaid and disputed MPS charges;
- a requirement for wireless service providers to provide a blocking feature for MPS messages to their customers for free and a requirement that wireless service providers inform their customers about the blocking service;
- the CRTC could also set maximum rates to reduce the risks for MPS customers, especially for games of chance, where there should be a requirement that the MPS

company tell customers of alternative ways to play the game that do not involve subscribing to an MPS;

- the CRTC would require wireless service providers to monitor MPSs and to cut off MPSs that do not comply with all terms and conditions or where the MPS programs are or could potentially be fraudulent, deceptive or misleading;
- a requirement that wireless service providers provide information on their websites using clear and concise language in a public education plan to increase public awareness of consumer rights with regard to MPSs.

At minimum, the CRTC should task the CCTS or the CRTC Interconnection Steering Committee (CISC) to conduct a systemic review of MPSs or to develop a new code of conduct for these services.

\* \* \* \* \*

### **The CCTS should continue to investigate complaints about MPSs and track numbers of consumer complaints about MPSs**

The CCTS provides help for many frustrated Canadian telecommunications consumers. It is promising that CCTS has enumerated its expectations of wireless service providers to investigate consumer complaints and to obtain evidence from the MPS sufficient to support the accuracy of the charges. However, many consumers reported to PIAC that they did not receive a proper investigation of MPS charges at the wireless service provider level. In one case advanced to CCTS, a wireless service provider objected to CCTS' ability to address a consumer complaint about MPS charges on the basis that it was outside the scope of CCTS' mandate. PIAC believes this is incorrect and PIAC hopes that CCTS continues to investigate cases of improper MPS charges as consumers file complaints and that more consumers will turn to CCTS when they are frustrated by the wireless service provider.

While CCTS can assist consumers with issues for billing of MPSs, the CCTS has its limitations. CCTS cannot address consumer complaints about MPS advertisements especially if they are false or misleading, inadequate knowledge or consent, negative option billing, the terms and conditions of MPSs, or pricing of these services. Thus, consumers cannot rely on CCTS to resolve all of their problems with MPSs. Consumers do not just want to be refunded for improper charges, consumers have also strongly expressed a desire for systemic change related to several aspects of MPSs. PIAC recommends that the CCTS continue to investigate consumer complaints regarding improper MPS charges. Additionally, CCTS should closely monitor the quantity and types of complaints received about MPSs and report this information to the CRTC and the public. Given that many consumers detailed problematic experiences with wireless service provider customer service when complaining about MPSs such as misinformation or unwillingness to assist, the CCTS should track complaints about customer service and failure to action consumer complaints.

Finally, PIAC recommends that the CCTS be given greater powers to make recommendations on systemic issues that they observe through the collection of consumer complaints about telecommunications services.

\* \* \* \* \*

## **Industry self-regulation of MPSs by the CWTA is not strong enough to protect consumers**

Currently, the only body that monitors the MPS industry is the CWTA. The CWTA also represents wireless service providers' interests. The fact that the CWTA profits from MPSs by leasing short codes and also facilitates its member wireless service providers' interests in collecting profits from short codes points to an obvious conflict of interest in the CWTA's ability to protect consumers against unauthorized charges and improper billing for MPSs. However, PIAC recommends that the following changes could be implemented by CWTA to better protect Canadian consumers.

### Advertisements

One major criticism of the CWTA Guidelines is that many aspects and stated requirements for MPSs are not enforced by the CWTA. For example, the CWTA provides minimum standards for MPS advertisements in their Common Short Code Application Guidelines, however the CWTA does not enforce these standards. The CWTA should monitor MPS advertisements for compliance with the Application Guidelines and at minimum, investigate consumer complaints about MPS advertisements. The CWTA cannot simply refer consumer complaints to the Advertising Standards Council or the Television Bureau.

### Opting into a subscription

In Canada, mobile premium service messages should be delivered in English or French, whichever language the consumer opted to receive them in. If the consumer opts to subscribe to a service, the information message and help message must be provided to the consumer in the language of their choice.

In information messages sent to consumers before requiring the double opt-in, subscription MPSs must make clear to consumers that the service is a subscription. PIAC recommends that the CWTA Application Guidelines require the information message to use the words "ongoing subscription" or "abonnement" where the consumer has opted to receive the service in French. This is especially important for promotions where a consumer would not expect a subscription, such as for participation in a contest or promotion. This requirement would help ensure that consumers have adequate knowledge and prior to consenting to service subscriptions.

The double opt-in that is completed via the combination of handset and online mechanism is especially problematic for consumers. The double opt-in should not be allowed to occur within banner or pop-up advertisements. Consumers should only be able to complete the double opt-in on a static website that is permanent and can be easily accessible to the consumer should they wish to print or revisit the terms and conditions or unsubscribe from the service.

A double opt-in completed through the handset combined with an online mechanism must capture enough information from the consumer as to properly authenticate that they authorized the subscription. As far as PIAC can tell, the only information that the MPS company collects to

substantiate a subscription via an online mechanism is the consumer's IP address, which can be easily discovered from any previous online interaction with the consumer. The CWTA's Application Guidelines provide no guidance regarding the use of PIN for authentication in online subscription mechanisms and must be modified to specify proper practices and safeguards regarding the assignment and security of the PIN. The CWTA must require more robust authentication practices, and also require MPS companies to have an independent person conduct a periodic review of security practices surrounding an authentication process and to implement a complaints-handling procedure for authentication concerns.

### Unsubscription

The CWTA should clarify rules regarding promotions and rounds for MPSs. When a promotion or round ends, all subscription consumers should be automatically unsubscribed from the MPS.

The CWTA should require MPS companies to allow consumer to unsubscribe via the online mechanism through which they subscribed.

When a consumer subscribes to an MPS that is billed on a monthly basis and the consumer unsubscribes before the billing month is over, the consumer should only be charged for service provided on a pro-rated basis.

### Transparency and Compliance

Given the obvious conflict of interest in the CWTA acting as a licensing and administrative entity that profits from the MPS industry, the CWTA should at minimum provide greater transparency regarding audits and investigations for noncompliance. To foster greater consumer confidence in MPSs, the CWTA should be open about how often they conduct audits, what aspects of MPSs are tested and the release the results of the audit to the public. Where a noncompliant company is found, the company should be named and the resulting disciplinary action should be reported. It is not clear to PIAC that all aspects that are required by the CWTA Common Short Code Application Guidelines are monitored for compliance. If an MPS is being investigated for suspected noncompliance by the CWTA, charges for messages sent during the investigation period should be waived. Where noncompliance is found, the CWTA must flag noncompliant MPSs to wireless service providers and consumers must not be billed for premium messages sent while the MPS is noncompliant.

Given the conflict of interest that the CWTA has as a profiting member of the industry, PIAC prefers that an independent body be charged with monitoring the MPS industry for compliance and that the results of monitoring be made public. The independent body would be transparent about how frequently it monitors the industry and what aspects it monitors. As well, results would be public, including how many MPSs were found to be noncompliant. The independent body should work with an organization with enforcement power, possibly the CWTA, to ensure that its findings of noncompliance are immediately rectified and that affected consumers are not billed.

The CWTA must maintain an up-to-date list of all short codes on their <http://www.txt.ca> website. In addition, the CWTA should provide up-to-date information about each of the MPS companies

to wireless service providers so customer service representatives can better assist consumers. The list on <http://www.txt.ca> must list each short code along with the MPS company that operates the short code. At minimum, a working link should be provided to the MPS company's website along with a 1-800 number for the MPS company where the consumer can reach a live customer service agent for assistance. It is preferable to also display a description of the nature of the MPS, a link to Terms & Conditions for the service and pricing information for the MPS.

### Consumer Complaints

If the CWTA continues to take responsibility for the leasing and administration of short codes through the Common Short Code Application Guidelines and Aggregator Code of Conduct, then they must implement an effective mechanism to accept and investigate consumer complaints about MPSs. Such a mechanism must be consumer friendly and genuinely investigate consumer claims that they did not subscribe to such a service or could not unsubscribe from the service. The CWTA cannot simply wash its hands of such consumers by referring them to the Commissioner for Complaints for Telecommunications Services or to the MPS company. Additionally, the CWTA should publish aggregate statistics about consumer complaints, including: how many complaints were received by the CWTA, how many complaints were investigated, how many MPSs were found to be noncompliant and the enforcement actioned against noncompliant MPSs.

\* \* \* \* \*

### **Wireless service providers need to play a larger role and take responsibility for protecting their consumers**

As noted, wireless service providers are an active party in the MPS industry, from their role as a member of the CWTA and as a profiting party of these services, their role as a billing agent for these services, and their position of first-contact for a consumer who runs into an issue with an MPS.

### Advertisements

First, wireless service providers must make necessary changes to the MPS advertisements posted on their websites. Wireless service providers should bring these advertisements into compliance with CWTA standards for online and call-to-action advertisements.

There should be public education available on wireless service provider websites regarding MPSs using clear and concise language that also details consumer rights with regard to MPSs.

### Unsubscription

When a customer calls their wireless service provider to complain about unauthorized charges for MPS, the wireless service provider must inform the customer about how to unsubscribe from the service. The wireless service provider should process the STOP request on the consumer's behalf if the consumer requests this to be done. The wireless service provider should not be able to refer the customer to the MPS company for issues with unsubscribing without offering to

process the STOP request, as the consumer will continue to incur unauthorized charges and may not have success contacting the MPS company.

### Billing

Consumers must have detailed billing with respect to mobile premium services. Wireless service providers should ensure that their billing practices for MPSs are clear. At minimum, the customer's bill should clearly state: the name of the company; the short code number; a toll-free contact number for the company where the customer can call to reach a live customer service agent; the number of premium text messages received and the price per message; and details surrounding the customer's subscription to this service such as whether the customer opted in via the handset or through a PIN on an online mechanism and the date and time of opt-in.

Wireless service providers should not be able to threaten disconnection of wireless customers who have unpaid MPS charges that they are disputing with the provider or through CCTS.

### Evidence of MPS authorization

When a consumer disputes the MPS charge, the wireless service provider must provide the consumer with his or her transaction record of the premium text messages sent and received upon request. Included in this record should be details of the consumer's alleged opt-in, including the date, time, mechanism, and authentication that the consumer provided to subscribe to the service.

Pre-paid wireless customers must receive some form of notice that their pre-paid account is being debited for an MPS. Many of the pre-paid consumers who contacted PIAC regarding this study noted that they only used their wireless phone in the case of emergencies and thus they had accumulated very high premium text message charges before noticing the problem. One possible mechanism could require pre-paid wireless consumers to "unlock" the premium text messaging function before being able to subscribe to an MPS. As well, pre-paid wireless customers must receive the premium text message transaction record from their wireless service provider upon request.

### Customer Disputes About MPS charges

Wireless service providers cannot absolve themselves from responsibility because these charges are described as "third party charges." The reality is that wireless service providers take a substantial cut of the profits from these services and thus cannot claim they have no ability to assist their customers who claim they did not subscribe to an MPS or are having difficulty unsubscribing from an MPS. When a consumer contacts the wireless service provider with a complaint that they did not participate in an MPS they have been billed for, the wireless service provider must at minimum:

- investigate whether the customer opted in to the MPS;
- check to ensure that the customer does not have a recycled number with previous MPS subscriptions that have not yet been unsubscribed;

- provide the customer with the transaction record including details of the opt-in mechanism via which the customer allegedly subscribed;
- provide the customer with information about the MPS including the short code number, the name of the MPS company, the MPS company's contact number, and the website where the customer can find the terms and conditions for the service;
- assist the customer with unsubscribing the service (and perform the unsubscription on behalf of the customer if the customer requests);
- escalate the consumer complaint if the dispute is not resolved.

Some wireless service providers may waive MPS charges the first time a customer disputes these charges. This should be consistent practice for all wireless service providers. When a consumer disputes an MPS charge, the wireless service provider should waive all reasonably disputed charges but provide relevant text message detail information to the MPS company who can choose to pursue debt collection.

### Monitoring and Auditing

Wireless service providers must play a larger role in monitoring and auditing MPSs. Wireless service providers should at minimum flag MPS companies that receive the most consumer complaints to the CWTA or independent regulator so that investigative and enforcement action can be undertaken. Where a wireless service provider knows an MPS to be noncompliant with terms and conditions or where the MPS programs are or could potentially be fraudulent, deceptive or misleading, the wireless service provider must waive or refund any charges billed to consumers of that service and cut off the MPS. Where an MPS is being investigated for suspected noncompliance, the wireless service provider should cease billing for all premium text messages sent during the investigation.

### MPS Blocking Feature

Wireless service providers must offer MPS blocking to their subscribers. Such a blocking feature would mean that only premium messages or non-standard rate messages are blocked. As a result, a consumer would not be charged for any MPS, because they would not be able to receive them. This blocking service should be offered for free to consumers. If a consumer has activated the blocking feature and wishes to subscribe to an MPS, they would first need to disable the blocking feature.

PIAC notes that all international jurisdictions surveyed in this study have wireless service providers that offer an MPS blocking feature for consumers that does not affect the regular texting function. Countries surveyed were the United States, Australia, and the United Kingdom.

### New Entrants

PIAC recommends that new wireless entrants do not agree to offer MPSs on their networks until safeguards are implemented to protect consumers against unauthorized subscriptions and better accountability mechanisms are implemented to ensure MPS compliance.

\* \* \* \* \*

## **Mobile premium service companies need to be more accountable for their services and should ensure that their services comply with the new Canada Anti-Spam Law**

MPS programs must examine their online authentication methods for subscription MPSs and ensure that their authentication mechanisms are adequately robust to ensure that consumers are protected from unauthorized subscriptions. MPS programs should implement consumer complaint processes to deal with complaints about unauthorized subscriptions and have periodic reviews conducted by an independent organization to ensure that their authentication process is secure and safe for consumers.

For games of chance or sweepstakes, the MPS company should clearly state describe alternative ways to enter the contest without incurring charges for premium text messages.

The MPS company or aggregator must clearly provide a toll-free phone number for the consumer in the event of disputes, which must enable the consumer to reach a customer service representative for assistance. The consumer should be able to access this information upon request to their wireless service provider, by texting INFO or AIDE to the short code, by visiting the online mechanism through which they subscribed, and on the CWTA's website that lists all short codes at <http://www.txt.ca>.

MPS companies should seriously consider the application of the newly passed Canada Anti-Spam Law (or "CASL", formerly known as the *Electronic Commerce Protection Act* and the *Fighting Internet and Wireless Spam Act*).<sup>384</sup> The Act was passed on December 15, 2010 and will come into force later in 2011. CASL applies to all electronic messages with any commercial content, including text messages, and places the burden on the sender to demonstrate that it received consent prior to sending a commercial electronic message. The availability of implied consent is limited and in most cases, express consent will be required. Notably, CASL gives the CRTC the ability to impose administrative monetary penalties of up to \$1 million per violation for individuals and \$10 million for businesses. CASL also provides statutory damages of \$220 per commercial electronic message. These statutory damages are coupled with a private right of action, which allows individuals to sue anyone who violates the law. This should be incentive for the MPS industry to update its practices for opting consumers into receiving MPS messages and to ensure that all premium text messages comply with the new anti-spam law. Regulations for CASL should be forthcoming soon and should be studied closely by the MPS industry and CWTA for the form and criteria that will be required to obtain express consent.

\* \* \* \* \*

---

<sup>384</sup> *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Act, the Competition Act, the Personal Information and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, online: [http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2010\\_23/FullText.html](http://lois-laws.justice.gc.ca/eng/AnnualStatutes/2010_23/FullText.html).

## **The Competition Bureau has a role to play in investigating MPSs for compliance, particularly for MPSs that advertise as a one-time service but provide a subscription**

The Competition Bureau should examine the compliance of MPS ads with the rules on false and misleading advertising. Online pop-up advertisements and television advertisements cause the most concern because terms and conditions may not be adequately disclosed to the consumer.

The Competition Bureau should also investigate claims of misleading and false advertising, especially for MPSs that appear to provide a one-time service (e.g. a contest entry, to receive a quiz result or a gift certificate promotion) but in effect subscribe a consumer to an ongoing subscription service. PIAC notes that the Canadian Anti-Fraud Centre describes these types of schemes as "continuity scams" and hopes that the RCMP and the CAFC continue to monitor consumer reports about fraudulent unauthorized text messaging charges.

## **B. AREAS FOR FURTHER RESEARCH**

PIAC identifies several areas for research advancing from this report. First, PIAC is particularly concerned about the validity of contracting via text messaging, and the legal questions such a practice raises. Second, it will be important to monitor the effectiveness and applicability of CASL to MPS in the near and ongoing future, as CASL may provide new abilities for Canadian consumers to challenge MPS subscriptions that they did not authorize. Third, with mobile payments becoming more prevalent and third party charges to wireless phone accounts becoming a quasi payment method, further research into the need for consumer protection measures specific to the mobile payment realm will be critical. For example, American consumer group Consumers Union recently published a report highlighting how American consumer protections vary widely for different mobile payment methods. If mobile payment transactions are linked to credit cards or debit cards, consumers are entitled to federal protections, however when mobile charges are linked to another form of payment, consumers may not enjoy any legal protections. The report shows examples of premium SMS based transactional payments, such as Amazon TextPayMe which can be used to purchase physical and digital goods. Consumers Union called on wireless carriers to make sure consumers are protected from mobile payment fraud and mistakes by adopting strong safeguards in customer contracts.<sup>385</sup> Further research on the use of wireless phone accounts to pay for products, content and services should be viewed in light of all other broader discussions on mobile payments in general. Fourth, the proliferation of online lotteries and contests raises considerations requiring in-depth research, including the phenomenon of contests promoting but not actually awarding prizes, ethical concerns about lotteries and their contribution to social ills, ethical concerns about games targeting youth, and necessary consumer protection measures. Fifth, more thorough investigation and debate into the ethics of companies targeting MPS toward children and teens is warranted. Research into any and all of these areas will no doubt

---

<sup>385</sup> Consumers Union, "Mobile Pay or Mobile Mess: Closing the Gap Between Mobile Payment Systems and Consumer Protections" (June 2011), online: [http://www.defendyourdollars.org/2011/06/mobile\\_payments\\_could\\_be\\_risky.html](http://www.defendyourdollars.org/2011/06/mobile_payments_could_be_risky.html).

provide an important evolutionary contribution to the public discourse and the existing body of policy and legal research surrounding consumer protection in telecommunications services.

IX. APPENDIX : FOCUS GROUP SUMMARY

FINAL  
REPORT

Consumer Perspectives on Mobile Premium  
Services

*Prepared for:*

Public Interest Advocacy Centre (PIAC)

*December 2010*

pn 6718



**ENVIRONICS**  
RESEARCH GROUP

33 Bloor St East

Suite 1020

Toronto, ON M4W 3H1

## Table of Contents

|                                |   |
|--------------------------------|---|
| <b>Introduction</b> .....      | 1 |
| <b>Executive Summary</b> ..... | 4 |
| <b>Detailed Findings</b> ..... | 8 |

### Appendices

A: Discussion Guide

B: Recruitment Screener

## Introduction

### Background and research purpose

The Public Interest Advocacy Centre (PIAC) has undertaken a study of Canadians' attitudes towards Mobile Premium Services or Short Codes; this goal of this project is to examine mobile premium services in Canada, advertising practices related to these services and whether there is sufficient information in assisting consumers to make informed decisions about the use and costs of these premium services.

Short codes are add-on services to short messaging service text messages. Some of these short codes can cost consumers a premium to receive their messages, known as “mobile premium services” which consumers might unknowingly subscribe to in order to play an online contest or win prizes. There are many informative, entertaining and fun services consumers can buy by sending a SMS or text message to a short code using their wireless device. For example, consumers can buy jokes, horoscopes, get online quiz results and participate in contests. However, recent media attention has focused on consumer complaints with these mobile premium services, suggesting that consumers are misled by advertisements for these services and do not understand that these services are by subscription and differ from regular incoming SMS messages. Consumers are upset about the charges seen on their wireless bills for these premium mobile services and have had difficulty unsubscribing from receiving premium text messages. A recent application by l’Union des consommateurs to the CRTC did not succeed in finding regulatory guidance for these services in Canada.

A major focus of this project is on how these mobile premium services are advertised to consumers, how these services are explained to consumers when consumers subscribe to

them, supply standards in the provision of mobile premium services, and how consumers can unsubscribe and opt out of mobile premium services, including an examination of the consumer experience of complaint resolution and disputing these charges will be examined.

The project results are intended to provide further clarity on the issue of mobile premium services for consumers, building on the CRTC application by l'union des consommateurs. This research should be of interest to the CRTC and also to the Commissioner for Complaints of Telecommunications services (CCTS) in determining whether consumer complaints are handled in the appropriate manner.

In support of this project, PIAC engaged Environics Research Group to conduct qualitative research (focus groups) with Canadians who are cell phone customers and who have either had experience with MPSs or are aware of these services. The focus groups were be designed to explore consumer views and experiences with mobile premium services, mobile premium service advertisements and disclosure, with a view to determining whether the receipt of these services met their expectations and if not, how consumers unsubscribed from these services. As well, the research examines Canadian consumers' reactions to Australia's recent Code and Guidelines regime for their mobile premium service industry.

## Methodology

A total of four (6) focus group session were conducted in Montreal, Toronto and Vancouver, two groups in each city. In all groups, participants either currently subscribe or have subscribed in the past to Mobile Premium Services on their cell phone, or are familiar with MPS and/or know people who have subscribed to them.

| Location  | Date and Time             | Language |
|-----------|---------------------------|----------|
| Toronto   | Tuesday, Oct. 5, 5:30 pm  | English  |
| Toronto   | Tuesday, Oct. 5, 8:00 pm  | English  |
| Vancouver | Tuesday, Oct. 12, 5:30 pm | English  |

|           |                            |         |
|-----------|----------------------------|---------|
| Vancouver | Tuesday, Oct. 12, 8:00 pm  | English |
| Montreal  | Thursday, Oct. 14, 5:30 pm | French  |
| Montreal  | Thursday, Oct. 14, 8:00 pm | French  |

For each session eight people were recruited using a screener developed in consultation with the client team. Each focus group session was approximately two hours in length and was conducted according to a discussion guide developed in consultation with the client team. A \$75 cash incentive was given to each participant in appreciation. (See Appendix for Recruitment Screener and Discussion Guide).

Derek Leebosh, Vice President, Environics Research Group, acted as Project Director and moderated all focus groups.

All qualitative research work was conducted in accordance with the professional standards established by the Marketing Research and Intelligence Association (MRIA – previously the Professional Market Research Society and the Canadian Association of Market Research Organizations).

## Statement of limitations

The objectives of this research initiative are exploratory and therefore best addressed qualitatively. Such research provides insight into the range of opinions held within a population, rather than the weights of the opinions held, as would be measured in a quantitative study. The results of this type of research should be viewed as indicative rather than projective.

## Executive Summary

This executive summary presents the key findings of qualitative research conducted by Environics Research group on behalf of the Public Interest Advocacy Centre on the topic of Canadian consumer perspectives on mobile premium services for cell phones (MPS) This

qualitative research comprised six focus groups (two in Montreal, two in Toronto and two in Vancouver) conducted between October 5 and 14, 2010, with Canadians who either currently subscribe or have subscribed in the past to Mobile Premium Services on their cell phone, or are familiar with MPS and/or know people who have subscribed to them.

## **Personal Experiences of MPSs**

Participants were aware of many different kinds of MPSs, but very few were familiar with the term MPS, and they did not spontaneously think of MPS when they think of text messages that carry extra costs. The MPS mentioned by participants included: daily horoscopes, news, sports and weather services, contests, dating services, charity donation campaigns, and transit or municipal parking meter information.

Most subscribed out of curiosity or because they thought the service offered would be useful, but others said that they had subscribed “by accident” without realizing that they had done so. Some mentioned subscribing to an MPS without realizing that they were subscribing to a paid service. Most appeared to have been aware that it would cost money, but not all were aware of how much it would cost or how many messages they would receive. Some who had plans that included unlimited texting thought that any messages they would receive would be covered under their plan.

Many mentioned that they had received more texts than they had anticipated and some noted that following their subscribing to an MPS, they began receiving an increased number of “spam” texts promoting other MPSs.

Few recalled a “double opt-in” process; most simply received a confirmation message saying they would now receive the content they had subscribed to.

Many participants did not realize how much they were being charged until they received their bills, and for many of these participants, the actual amount of the charges for MPSs was both unexpected and disconcerting. Some remember paying a flat monthly fee ranging from \$10 to \$15 per month for their subscription, while others were billed on a per message basis, with the fee per message ranging from 25 cents/message to 2.50/message. Those who use prepaid cards said that they received no indication that the charges were being deducted from their cards.

Participants mentioned becoming aware of the MPSs that they had been subscribed to through a number of different methods. While some had heard about these services through word of mouth, most responded to advertising of some kind. Some participants said that the ads they responded to fully disclosed the costs of subscribing, and others indicated that when they responded to the ad, they were sent a disclosure notice that contained information about the cost of the MPS, but many said the ads did not indicate the number of texts that a subscriber might expect to receive.

Many participants mentioned ads for MPS that do disclose the terms and conditions of subscription do so in a manner that makes it difficult for the average person to absorb the information being provided. Participants in Quebec often face an additional difficulty in that many of the ads they receive in text or email are in English.

Most participants had gone through the process of unsubscribing from an MPS. For some, the process was relatively easy, but others experienced considerable difficulty. A common complaint was that despite cancelling they were charged for the entire month. Some suggested that instructions on unsubscribing should be a part of every MPS text message.

Participants had little experience with any formal dispute resolution process in dealing with MPSs. Most felt that if there were a difficulty; they would most likely first contact their cell phone company to try to resolve a dispute over MPS subscriptions or billings. There was little awareness among participants of the Commissioner for Complaints for Telecommunications Services (CCTS).

The most common complaints among participants involved: misleading ads or solicitations; lack of disclosure about the cost and volume of texts they would be receiving; “spam” messages promoting other MPSs; and difficulties in unsubscribing.

## **The MPS industry in Canada**

Most participants do not have a positive perception of the MPS industry, nor of the part that wireless/cell phone providers play in the industry. It was generally assumed that wireless providers profit from the MPS industry. Many viewed the MPS industry as a profit-grabbing scheme in which the goal is to make money at the expense of the consumer rather than provide

a quality service. The process of supplying MPS content is seen as a largely automated service, not requiring much manpower or investment of time past the initial set-up

Most participants did not have any expectation that telecommunications providers would monitor MPS content suppliers for fraud or other abuses. However, it was clear that many participants wanted telecommunications companies to be held responsible for the actions of the MPS content providers that make use of the wireless infrastructure to distribute their products, and be required to act in the interests of consumers when problems arise.

Participants were unaware of the Canadian Wireless Telecommunications Association (CWTA) or the Short Code Council, but upon being informed, expressed considerable cynicism at the idea of those who benefit from the activities of MPS content suppliers regulating them. There was general agreement that it would be far preferable to have either an independent regulatory body or clear government oversight of such an industry association in a regulatory position. Participants were also concerned that the results of audits performed by the CWTA are not published, and that any code of conduct administered by a self-regulating industry association with no government oversight or consumer input would be toothless.

Most felt that, at a minimum, a code of conduct for the MPS industry should require a double opt-in subscription process, full disclosure of all costs, easy and immediate termination of contract, a clear method of dispute resolution, and assistance from cell phone providers to customers in dealing with MPS content suppliers. Some also felt that cell phone providers should be required to inform customers about MPSs so that they can make informed decisions.

Participants suggested publication of names, fines, and, where applicable, reparations as appropriate penalties for non-compliance with the code of conduct or any other behaviour that violates consumers' rights.

When asked to consider the question of consumer responsibility in the issue of MPS subscriptions, most agreed that the responsibility of an MPS content supplier to deal fairly with consumers took precedence over the principle of caveat emptor.

There was no awareness among participants about the website [www.txt.ca](http://www.txt.ca); upon being informed of its existence, many felt that it should be the responsibility of all those in the MPS industry to inform cell phone customers about the website.

## **Perceptions of Australian Model**

Most participants expressed considerable approval for the Australian model, and felt that a similar regulatory system should be in place in Canada. Some felt that perhaps these responsibilities could be taken on by the CCTS.

Of particular importance to participants was the idea of annual publication of the number of complaints made each year and the names of non-compliant MPS content suppliers and, where applicable, their parent companies. Participants also responded positively to the fine structure and the arbitration process, and many were interested the option of blocking MPS messages as in the Australian system.

## **Detailed Findings**

This report presents the findings of qualitative research conducted by Environics Research group on behalf of the Public Interest Advocacy Centre on the topic of on mobile premium services for cell phones (MPS) This qualitative research comprised six focus groups (two in Montreal, two in Toronto and two in Vancouver) conducted between October 5 and 14, 2010, with Canadians who either currently subscribe or have subscribed in the past to Mobile Premium Services on their cell phone, or are familiar with MPS and/or know people who have subscribed to them.

## **Awareness and experiences with MPS**

### **Text Messages: Usage**

Participants mentioned a variety of cell phone providers: Bell, BBM, Telus, Fido, Koodo, Rogers, and Videotron. Some also have Blackberry and use Blackberry Messenger to text with other Blackberry users for free.

Participants also have a variety of cell phone plans. Some have plans with unlimited texting, others have plans where a specific number of texts received or sent per month are free, and they pay a set fee for each message over that number for specific numbers of texts per month. Some have, or have had in the past, plans where they paid for out-going messages but not for incoming messages. Some use pre-paid cards from which their calls and other charges are deducted.

The number of text messages they send and receive ranges from a low of 20 to 25 per week to “all the time” – some mentioned receiving and sending as many as 100 messages per day or more, but the typical text user tends to send and receive somewhere between 20 and 80 messages a day. Many noted that they are texting more often than they did five years ago, and a number of them said that they prefer to text rather than use email or the phone for many of their communication requirements.

I live on my phone. I basically I'm always on it. I have my plan through Telus. I've been with them since it was ClearNet. At one point I used to, I had a company phone when I worked for a company that they had to Rogers but when I decided to go independently, I just kept my Telus phone and got a Blackberry. I have the data plan, unlimited text, unlimited web, unlimited everything.

I have an unlimited plan with Rogers for incoming and outgoing, but I also have a Blackberry so I use a lot of the Blackberry Messenger. But I text probably 80 percent more than I ever actually use the phone.

When asked about text messages that involve extra charges, participants did not spontaneously mention MPS. Some mention that International texting carries extra charges, and that text messages with attached media cost more.

## **General Experience of MPS**

When asked specifically about MPSs, participants recognized the concept and mentioned various kinds of MPS they have subscribed to in the past. However, very few were familiar with the term MPS, and most were not generally aware of all the kinds of text messages included under the classification of MPS.

The MPSs mentioned by participants included:

- Daily horoscopes, news, sports and weather services
- Contests on Radio or TV
- Donation campaigns to relief funds and charities
- Transit information – bus and streetcar scheduled times
- Dating services
- Parking information service provided by their municipality that allows them to find out how much time is left on a parking meter

Most subscribed out of curiosity or because they thought the service offered would be useful to them – this was particularly true of news, weather and sports alert and digest services.

Some said that they subscribed “by accident” – they clicked on something they saw on a website and unknowingly validated the subscription. Others found they had subscribed to something they had not wanted by accidentally entering the wrong short code. Some thought they were making a one-time request for a horoscope for one day, or the score for a specific game, and were quite surprised to find they were receiving messages every day, or even more frequently.

I wasn't expecting to be getting texts. I thought it was just going to be a one time thing for free. I used to call the talk line for my horoscope and they don't have it any more so I sent a text. I wanted my horoscope for that one day and it just kept coming.

I wasn't originally aware that I was actually signing up for anything by putting in my cell number to access scores, or whatever it was. I didn't expect to receive any, so it was surprising when it did start. But everything was kind of new.

You'll get those things where you want into log into a web page and it's like, oh, just quickly give us your cell number and then we'll let you access the whole range of whatever you wanted to access. You do that and little do you know what you just signed up for.

Most who intentionally subscribed appear to have been aware that it would cost them money, but not all were aware of how much it would cost or how many messages they would receive. However, some had no idea that they would be charged for the MPS messages.

Well, I knew that I was going to get charged, because it was part of the ... I had actually signed up for those updates.

I didn't know I was getting charged, I was just getting annoyed with the text messages after a while, and when I called Telus they said, yeah, you're getting charged.

## **Experience of MPS subscription process**

While some participants did not remember the subscription process, either because it had been several years since they had subscribed to any MPS or because they did not know how they had ended up with an unwanted subscription, other participants remembered either subscribing through a website or by responding to an ad or promotional message.

The horoscope one was an online ad. And then it would be just the same as a bus ad, where you text the number and then it just gives me a detailed list of what I'm going to get. And it will say text this number if yes, that number for no. And if I text the number for yes, then it just says thank you and this process is going to start, and then I start getting them.

The contest, I think it was a yes or no answer and so you text the word "yes" or the word "no" to five digits. And then they text you back saying, we received your text and you've been put into this contest.

Most said that they when they subscribed, they did not receive any indication about the number of messages they would receive. However, a few – primarily those who had subscribed to a service linked to a known organization such as a professional hockey team or a news or sports channel – did say that they had been fully informed about volume of texts and cost.

Yeah, it said it'd cost 99 cents per text and you would get one text after each game with the score. And I just felt because it was Leafs TV, it was sort of reliable, legitimate.

Some mentioned subscribing to an MPS without realizing that they were subscribing to an ongoing, for-pay service.

Actually there was one that I remember signing up, well I didn't realize I was signing up, but it was a contest. And if you text something to a certain number, you would have been entering the contest. But all of a sudden, I started getting several requests to enter continuously or some were emails and when I did get the bill I realized that it was something that I was paying like \$2.00 a text to send or receive.

I inadvertently signed up for some horoscope thing. Clicking away at work on the computer, click, click, click, click. The next thing I know I'm getting this stuff – oh, this is really cool, this is fun, oh yeah, read my horoscope, and whatever else came with it. Anyway, a month went by and I got the bill and I didn't realise even that month that that's what it was, because I didn't look at my bill, I just paid it.

Some who had plans that included unlimited texting thought that any messages they would receive would be covered under their plan, and were surprised to discover that they were being charged for MPS text messages.

I have unlimited texting and I would definitely have expected not to pay because it was a text, regardless of what was there.

Many mentioned that they had received more texts than they had anticipated when participating in contests, or subscribing to various other MPSs. A number of participants also noted that

following their subscribing to an MPS, they began receiving an increased number of “spam” texts promoting other MPSs.

Few participants recalled going through a “double opt-in” process – for most, their recollection is that they simply received a confirmation message saying they would now receive the content they had subscribed to. Some, however, did recall receiving a confirmation code that they had to enter on a website or a message they had to reply to in order to confirm that they had chosen to subscribe to the service. Some also recalled receiving reminder messages concerning their subscription on a monthly or less frequent basis.

I got a confirmation. It didn't give me a number or anything, it just said congratulations, you're entered to win. And I think there actually was another one on the day of the draw saying you didn't win.

Participants were shown an example of a double opt-in confirmation message. Some participants recalled receiving a confirmation message similar to the example provided, but others did not find the example at all familiar. Some noted that they did not go to a website at any point in the subscription process.

Some found the information in the confirmation message clear and felt they would be able to follow the instructions, but others found the sample confirmation message unclear, and were not sure how they should proceed to confirm a subscription based on the information provided.

I mean it's pretty up front with it's going to be \$2.00 a question and you're going to get four questions a week. So you know right way that that's \$8.00 you're having to pay at a very minimum per week to enter that.

I don't know if I have to go to the website to put it in or just send a text with my PIN to the short number that it sent. To me this is sort of confusing, my PIN is 1550, okay, so what do I do with it? Do I go to the help? I don't know.

So if you already know the webpage then you can go in and find out the place to enter you PIN and do the trivia things. And if you have questions then you go to that skilltothrill.com.

## Billing of MPS

Many participants reported that they did not realize how much they were being charged until they received their bills, and for many of these participants, the actual amount of the charges for MPSs was both unexpected and disconcerting. Some, however, noted that it took them several months to notice the actual cost of the MPS they had subscribed to, because their monthly bills had not been significantly out of line with their expectations.

At the end of the month, really. Just subscribed to it, I thought it was fun and then at the end of the month you kind of look at it and that's when I was like, you've got to try to stop it.

It was the second bill for me because I didn't really notice it. I knew that the bill was a lot but I didn't really go over it. I waited until the next month and then I knew.

Some remember paying a flat monthly fee ranging from \$10 to \$15 per month for their subscription, while others were billed on a per message basis, with the fee per message ranging from 25 cents/message to 2.50/message.

For most, the premium service fee was a separate item on their cell phone bill and was usually labeled premium services or something similar. Some indicated that their bill also indicated how many MPS messages they had received, but did not break the charges down by specific service or provider.

I mean depending on how your bill's set up, but, you see this code that's different from the regular bill.

I think there's a separate line for it, like it segregates it on your bill so that, because it's not considered ...

Those who use prepaid cards said that they received no indication that the charges were being deducted from their cards – their only clue that they were being charged for something was when their cards “ran out” of minutes unexpectedly.

## Advertising of MPS

Participants mentioned becoming aware of the MPSs that they had been subscribed to through a number of different methods. While some had heard about these services through word of mouth, most responded to advertising of some kind. The most commonly mentioned forms of advertising included:

- Contest promotions on radio and TV stations
- Text message solicitations from their wireless provider or from MPS content suppliers
- Email solicitations from MPS content suppliers
- Ads on public transit or billboards
- Internet/website banner ads

Some participants said that the ads they responded to fully disclosed the costs of subscribing, and others indicated that when they responded to the ad, they were sent a disclosure notice that contained information about the cost of the MPS. However, some noted that they had seen ads that simply said “regular fees apply,” and that this had led some to believe that they would not be billed because they had an unlimited texting plan and thus “regular fees” would not apply to them.

... because you think that you're getting unlimited texts but the fact is that you're not really being charged for the fact that it's text, you're being charged by this third party for the content that they're supplying you with, whatever information it is.

Well, they just say, you know, text in to win, regular text messages apply. So it depends on your plan.

Most also reported that the ads they were aware of generally did not indicate the number of texts that a subscriber might expect to receive on a daily or monthly basis

Many participants mentioned that in general, most ads for MPS that do disclose the terms and conditions of subscription do so in a manner that makes it difficult for the average person to absorb the information being provided – that disclosure is in the “fine print.” Television ads generally either show terms and conditions in very small print and for a very short period of time, making them difficult or impossible to read, or the terms and conditions are read in a speeded-up voice-over that makes it very hard to decipher and grasp any details. Internet ads generally present terms and conditions in very fine print that is difficult to read on a small computer screen.

I did have to dig around. Like, it wasn't in a very obvious place. They tell you what they're going to send you basically, but in terms of the cost you really have to look for it.

I think from like back in the day there were these really weird commercials, like, the late night ones, I think they do tell you how much it is but it's kind of like at the end of the commercial where they basically like speed read and you're like what.

No, it's very basic, just for what you would get, the word, and it doesn't really talk about details, they aren't really there. Or if they are they're very fine print.

Participants in Quebec often face an additional difficulty in that many of the ads they receive in text or email are in English and this means that they may not fully understand the information in them, which makes them even more vulnerable to misunderstanding the costs involved in subscribing.

Participants were shown print examples of two website advertisements for MPS - # 1 (Ringtones) and #2 (Love Calculator), and asked to comment on the information provided in the ads about charges, subscribing and unsubscribing.

Many found the sample ads lacking in a full disclosure of costs and number of texts one could expect to receive, or felt that some aspects of the ads were confusing or misleading. Some agreed that all the information on costs was there, but was presented in a fashion that made it not at all easy to figure out exactly how much one would be billed.

I think this is pretty good. The Love Calculator is very straightforward for the terms and conditions. It tells you how to stop it. But it doesn't tell you how many times you'll get it in a day.

Well, one of the things I saw, "The customer will receive daily content at \$1.50 per messages sent." It wasn't really specified how many messages you get. You might get ten. So ten a day would be \$15.00 a day.

Even on the Love Calculator, "standard text messaging may apply". So above the \$1.50 per message it's more. But you don't know how much more. You couldn't put a number on it.

You can read this and think, it's just a one-time message; find out if you and your lover are compatible. And then you read it and it says, receive complete compatibility results as well as daily loves scores. So that could definitely mislead some people.

## **Unsubscribing**

Most participants had gone through the process of unsubscribing from an MPS. For some, the process was relatively easy, but others experienced considerable difficulty in finding out how to cancel their subscription, and some had problems in actually canceling even after finding out the steps required.

I did reply to that, I just actually put STOP, or I don't know if it's stop I guess at that point, and again I thought it would help but it didn't. Yeah, and I didn't know what to do at that point. And then I went in and complained at Rogers at that point and they said well we can't control it because you're subscribing to it and I'm like no I'm not. And it was just an ongoing battle. That's really my word against there's because for all they know I did sign up for it. But I told them I do not know where this is coming from.

Well, they just kept texting me, and then one of them said, you know, reply "stop" to finish or to conclude or something like that. So I did and I then never got them again, which I was happy about at that point.

I remember trying to get it to stop at first, because it didn't say reply stop or whatever. So I don't know if I went back online and found the company that was sending them. But eventually, I got a message saying ... or did I phone somebody? I think I may have actually talked to an actual person and they said just reply "stop". Because that wasn't provided to say that's how you unsubscribe.

Reasons for cancelling subscriptions varied. For some, the service was not as interesting or useful as they had expected it to be, or they became bored with it. Others unsubscribed because they became annoyed with the volume of texts they were receiving. Some felt that they had subscribed by accident or without understanding the nature of the contract, and unsubscribed as soon as they realized the costs involved.

Most found instructions on canceling their subscription in one of the messages they received, but others said that they had to contact their cell phone provider for assistance in unsubscribing, and a few said they had to search on the company website or contact it by phone in order to get instructions on how to unsubscribe.

There wasn't any indicator to stop the text message for horoscope. So I think I went back and ... I think there was the name of the company within the text. I went online and stopped it from there.

Well I was getting about I think five to eight a day for about a week. I even, like I said, text them back; forget this bullshit, cut me out of this thing. And they weren't caring. They didn't care until I phoned Telus and they said just put the word, stop. So within two days, they stopped. They didn't stop instantly, it took about two or three days of the subject reporting to them, stop, stop and then after about the third, they stopped

For many, unsubscribing was easily done once they knew the steps to take, but others encountered difficulty. Some said that they were unable to cancel their subscriptions even though they had followed instructions and sent a "stop" message to the MPS content supplier. A common complaint was that despite canceling, often after only being subscribed for a few days, they were charged for the entire month.

I replied stop, but I think I did it maybe the 5th or the 6th of the month, like early on, but I got charged for the whole month. So that was the kind of unpleasant part of the

experience. They had stopped it right away, but they still charged me for the whole month.

Some suggested that in order to facilitate the unsubscription process, instructions on unsubscribing should be a part of every text message sent by a MPS content supplier.

Participants were shown an example of a message or ad that they might receive and asked whether the ad makes it clear how they stop or unsubscribe from an MPS. Most found the instructions fairly clear, although a few wondered whether they just needed to text “stop,” or if there was a “trick” to it and they had to text “stop to end” or “stop 2” in order for the cancellation to take effect. Most assumed they would just need to hit “reply” to send the cancellation message in order for it to take effect.

## **Dispute resolution**

Participants had little experience with any formal dispute resolution process in dealing with MPSs. Some had experienced difficulties in terms of either having subscribed under conditions they considered at best accidental and at worst fraudulent, and others had experienced billing issues and difficulties in cancelling their subscription, but in general, they had taken these issues to their wireless or cell phone provider for resolution. A very few had managed to contact the MPS content supplier directly, but most noted that there is generally no easy way to contact an MPS content provider directly.

That’s what I worry about; can you actually reach them anywhere? Like they give you a short code and a help line, who are you really talking to though? Like that’s why I think the best people to talk to are your cell phone providers but even then they can’t really, they don’t even offer, I don’t even remember them offering oh call this person.

Among those who had not experienced any significant problems to date with an MPS, most said that they would most likely first contact their cell phone company to try to resolve a dispute over MPS subscriptions or billings.

There was little awareness among participants of the Commissioner for Complaints for Telecommunications Services (CCTS). Some have heard the name of the organization, but do

not really know what they do. No one had contacted the Commissioner's Office over a complaint.

## Evaluation of Personal MPS Experience

Many did not find the MPS they had subscribed to of particular use or value – in fact, some used terms such as “bad value” and “annoying” to describe the MPSs they had experience with. Some, however, did find the services they subscribed to be good value; in most instances, the services seen as providing good value to subscribers were those associated with well-known television networks such as CNN or TSN, or with municipal services such as transit or parking services.

To me it's a gimmick because, as you said, there was a time when we didn't have text. Now that I saw the evolution of text and seeing, for 15 cents you can ... whatever, weather, which is totally silly. Like, weather updates, great! And it's such a gimmick. They figured out now one way to make 15 or 20 cents from everybody.

The deal I take issue with is the fact that it's subversive and it relies on a negative billing feature. You don't know what you don't know until it's there and then it's really difficult to shut the thing off.

Most participants spoke about MPSs that they have been subscribed to in the past, but relatively few are currently subscribed to any of these services. Some specifically described their use of MPSs as something they did when they were young, had recently gotten their first cell phone and were excited by the things available on their new toy – and in some cases, were not paying the charges themselves.

And I just wanted to try, like it was just random. I was 16/17 years old back then. Yeah, I just liked to try new things. And then I got annoyed and just cancelled it.

The most common complaints focused on such issues as:

- Misleading ads or solicitations that did not make it clear that by responding to a text or entering their cell number on a website that they were subscribing to an ongoing for-pay service

- Lack of disclosure about the true number of texts they would be receiving – and paying for
- A noticeable increase in “spam” messages promoting other MPSs, some of which they were charged for
- Difficulties in unsubscribing from a service they did not want to receive

I don't like the fact that you don't really know what it's costing you. Like none of them told me at the time.

I feel like once you sign up for them or you're somehow involved in it, it just continues, it won't stop. So unless you actually complain to the company then they won't stop it.

I thought it'd be fun but then afterwards when you try to unsubscribe and you get all these unrelated messages, dating messages or whatever the case ...

Many of those with smartphones noted that they now use their phones to access on the internet for free the same kinds of material they originally received via MPS messages.

Well, I just used to get trivia and news. But I kind of stopped doing that once I got a smart phone because I can just go online and check, so I stopped paying for that.

## The MPS industry in Canada

### General perceptions of MPS Industry

Most participants do not have a positive perception of the MPS industry, nor of the part that wireless/cell phone providers play in the industry. It was generally assumed that providers, who collect MPS charges on behalf of the MPS content suppliers, send only a percentage of the bill to the MPS suppliers and keep a percentage for themselves.

Well, I would think Telus forwards them a certain percentage that they make when the customer pays the bill, right? It's probably the company, I would guess, gets more than 50% probably, maybe 70%.

I think they probably have some kind of revenue sharing arrangement. Probably they're paying a flat fee.

Participants also expressed feelings ranging from annoyance to anger that the wireless provider assumes no responsibility for the actions of MPS content suppliers but nonetheless acts essentially as an agent of the content supplier, and takes a cut of the profits.

If they're going to be making money, if they're going to be an official agent between you know this ring tone provider and the end-consumer, and they're making a cut out of that, then just like a real estate agent, just like a travel agent, they have a certain amount of legal responsibility involved as well.

Many viewed the MPS industry as a profit-grabbing scheme in which the goal is to make money at the expense of the consumer rather than provide a quality service. Participants tended to feel that companies who offer MPS content rely on the people not realizing how much the premium services will cost, and not paying attention to their cell phone bills.

I feel like they hope that a lot of people don't go through their bills and a lot of things get unnoticed, which does happen a lot of the time.

The process of supplying MPS content is seen as a largely automated service, not requiring much manpower or investment of time past the initial set-up, thus providing the supplier with maximum profit at minimum expense.

A program that will automatically send things out, and probably to make money of course they have to sell it to certain providers.

I would assume that for, like, horoscope of the day, one person probably wake up at 6:00, find a horoscope, punch it in, and then send it out two hours later.

Some also suspect that MPS content providers sell the phone numbers of their subscribers to other businesses as a secondary source of income, a practice that is viewed negatively by most.

Because they probably sell, or maybe the entire thing is the same company and they have different branches for different kinds of text messages. And then they would sell it or give it to other companies.

## **Industry Monitoring of MPS**

Participants were informed that telecommunication/wireless companies approve all of the MPS in Canada, contract with the MPS companies, agree to collect charges from customers on behalf of MPS companies, and receive a share of the profits.

Most participants seemed to feel that if telecommunications companies monitor MPS suppliers, it would primarily be to establish the volume of messages ensure that they get their percentage of the profits, but not for their accountability to subscribers. They did not have any expectation that telecommunications providers would monitor MPS content suppliers for fraud or other abuses.

So it's not to their advantage to action anything because they're still in a position of making profit.

I'm sure they monitor them to know what could be in it for them, how much they could make, how much more they could make

In fact, some felt it is ingenuous, and possibly even duplicitous, for telecommunications companies to claim they have no connection with or control over MPS content providers, while making money off them.

But the thing is they don't really, when you ask them about it they don't, they act like it's so separate of them, they have nothing to do with it ...

I think they should have some sort of ownership or liability for that, because it's not really fair, they say oh we can't control it, well you can because you do when you get money for it, so you should be able to now.

A few were aware of the CRTC ruling that states that telecommunications companies are not responsible for the content of MPS text messages, and pointed this out as an indication of how little concern there is in the telecommunications industry as a whole and the MPS industry in particular for the concerns of consumers.

Are they responsible for content, are they responsible for their customers getting in trouble, are they supposed to protect customers? And the CRTC, I believe, said no. No. If you can turn on your computer, whatever happens is your problem.

It was clear that many participants wanted telecommunications companies to be responsible for the actions of the MPS content providers that make use of the wireless infrastructure to distribute their products. Many felt that their wireless provider should be able to handle cancellation issues for them. Some suggested that there should be a legal requirement that when you enter into a contract with a cell phone provider, you are informed about MPS messages and associated costs. Others felt that their cellphone provider should be obligated to provide information about the meaning, charges, obligations, terms and conditions of an MPS offer carried on their system.

Ultimately if Rogers is responsible for this stuff getting to your phone, providing the highway for it to get to your phone ... They should be able to cut it off. I mean if you have a contract signed with a premium messaging service company Rogers should have some sort of clout in saying okay this person doesn't want it.

I think also when you get your phone they could warn you, you know, be aware that this exists.

Maybe that should be the accountability characteristic of the phone provider for allowing them to reach us. It should be printed on their bill to say, be careful about this.

## **MPS regulatory environment**

Participants were unaware of the Canadian Wireless Telecommunications Association (CWTA) or the Short Code Council, but upon being informed about the Council and the Code of Conduct for Short Codes, participants expressed considerable cynicism at the idea of those who benefit from the activities of MPS content suppliers regulating them.

It's simply going to be protecting the companies but not the consumers. I don't like the fact that consumers are barely mentioned in this.

It's sort of a violation of trust.

There was general agreement that it would be far preferable to have either an independent regulatory body or clear government oversight of such an industry association in a regulatory position.

I mean there's no government involvement, there's no state involvement, consumer body involvement...

I think it's tough to find legitimacy in an industry trying to regulate itself. Especially one where there's not much competition to begin with and they sort of regulate in sort of shady ways.

Participants were also concerned that the results of audits performed by the CWTA are not published, and suggested that some way of making public the names of MPS content suppliers who are not compliant with the Code of Conduct should be undertaken.

... and it is kind of dodgy that they don't publish the results. If it's an audit then it should be public information.

If they enforce something against one of these companies sending out MPSs, I'd like to know about it. If I'm subscribing to that company, they're still charging me, but these guys were caught doing something bad

I think we should have names of the companies that had the most complaints.

There should be someplace you can go before you subscribe to this company, before you subscribe to this and send them your money, you should be able to call somebody or check some list to make sure that they're not a bad supplier.

## **Code of Conduct**

A number of participants indicated that in their opinion, a code of conduct for MPS content suppliers is essentially worthless if it is backed by a self-regulating industry association with no government oversight or consumer input.

Well it's a fictitious code of conduct, I mean it's not backed by anything, it's a paper tiger if you like, code of conduct, oh, well we're self regulated so who cares.

The cell phone companies themselves are making however much money off of every text and they're not going to care if the MPSs are following the Code of Conduct.

Many wanted to know exactly what the code of conduct entailed, and felt that it should be publicized so consumers can know what is expected of an MPS supplier. Most felt that, at a minimum, a code of conduct for the MPS industry should contain the following requirements:

- Double opt-in subscription process
- Full disclosure of all costs
- Easy and immediate termination of contract
- A clear method of dispute resolution
- Easily obtainable means by which subscribers can contact MPS content suppliers
- Cell phone providers to provide assistance to customers in dealing with MPS content suppliers

They should be obligated to at least give us a phone number of someone we can talk to and say call this person and they can give you the information.

But yeah, they definitely need to make things clearer to people so that people are aware of exactly how much they're going to end up paying before they jump into something.

Exactly what a consumer has the right to expect and what process they have for problem resolving and what processes they have and venues they have available to them for restitution if there's a serious situation because otherwise it has no teeth.

I think they should have some means of addressing consumer concerns within the short code counsel. You know, what stood out to me is CWTA it represents the commercial interests of wireless providers, so that just reeks of just, like, we're watching out for ourselves.

It was also suggested that incoming premium text messages could be marked in some way so that customers know that if they accept such messages, they will be paying for them – but that allows them to refuse such messages, much as a telephone service customer can refuse to accept a collect call.

## **Penalties**

Participants suggested publication of names, fines, and, where applicable, reparations as appropriate penalties for non-compliance with the code of conduct or any other behaviour that violates consumers' rights.

Many felt that above all, the threat of publication of names would tend to make MPS content suppliers obey the code of conduct – and that for those who did violate the code, publication would enable consumers to avoid MPS content suppliers who had be shown to be disreputable.

There should be a fine and they should be listed. Just like when you call the Better Business Bureau to ask about such and such a company, they'll tell you; that company has a record of you know, not providing the service that they've been contracted, they've got a bad reputation, whatever.

Well, we definitely need some kind of rating system, absolutely. You don't have to get into specific specifics unless there's a case against them but at least have something for the general public to look up quickly and easily and rate their services.

## **Consumer Responsibility**

When asked to consider the question of consumer responsibility in the issue of MSP subscriptions, participants tended to take the position that "Consumers are responsible for their own actions, BUT..."

... it just depends on how they present that too. Did they make it easy for the consumer to understand how to unsubscribe? Did they make it easy for the consumer to know that ...?

We should be aware of what we're doing, you know, because we pay the bill. But when you're misled about the amount, I think that would be my concern.

Well you know, it's an open market out there and buyer beware is still a valid rule. If this supplier is offering a genuine product that people genuinely want and they state all the

terms and conditions up front, in clearly readable and understandable English, not legal gibberish then yeah, it is the consumer's responsibility to read what they're getting into before they sign on the dotted line.

Most agreed that there were a number of situations and conditions under which the responsibility of an MPS content supplier to deal fairly with consumers took precedence over the principle of caveat emptor. Among these were:

- When providers are duplicitous, deliberately fraudulent, or fail to disclose important information concerning fees and volume of messages
- When the required information is provided, but in such a way that the consumer will not be able to read, understand, or in some cases find that information
- When it is not clear that one is subscribing to an on-going service, rather than paying for a one-time message
- When children or teenagers are involved
- When unsolicited and unexpected premium messages are received

There was no awareness among participants about the website [www.txt.ca](http://www.txt.ca); upon being informed of its existence, many felt that it should be the responsibility of all those in the MPS industry to inform cell phone customers about the website.

## Perceptions of Australian Model

Participants were given a description of the Australian regulatory system for MPS content suppliers which included the following points:

- In Australia, there is an industry code that governs the MPS sector that sets out detailed rules and procedures to protect consumers.
- Under the Code, MPS content suppliers have the obligation to resolve consumer complaints and refer customers to the Ombudsman if the customer is not satisfied with the resolution.
- As well, an independent regulator monitors the industry to ensure compliance and takes enforcement action when required.
- The Australian Ombudsman publishes statistics on complaints and names MPS that are not compliant with the law.
- The Australian Ombudsman also has the authority to make legally binding decisions and recommendations which may have financial penalties.
- The Australian independent regulator also has a compliance monitoring system and has the ability to penalize a non-compliant company up to \$250,000 for breaching the code.
- The regulator has created a rule that requires wireless phone companies to provide an option for consumers to block receipt of MPS. The block can be lifted at any time at the request of the consumer.

Most participants expressed considerable approval for the Australian model, and felt that a similar regulatory system should be in place in Canada.

I think where the accountability comes in is that, yes, there is an independent regulator. That's where the difference comes into it, and that's when I can expect more, I guess, accountability on behalf of the phone company because they're now being reviewed, rather than our model where they're being reviewed by their own representatives.

I think it would be fairer to the consumer. At least the consumer would have a voice somewhere. Industry generally doesn't like that because ignorance is bliss and an ignorant consumer is the best pocket you can pick, but I think it's much better than what we have now.

Because we don't even know who to complain to right now as it is, and we don't have anyone to follow up with, no one to take responsibility for any of it. So this model just would do all of that.

A few wondered whether the statistics so collected and the names of non-compliant MPS content suppliers would be easy for the average person to find, and others questioned the length of time it might take to resolve a complaint; however, most felt that Canadian consumers would be much better protected if similar regulations and processes were in place in this country. Some felt that perhaps these responsibilities could be taken on by the CCTS.

Of particular importance to participants was the idea of annual publication of the number of complaints made each year and the names of non-compliant MPS content suppliers and, where applicable, their parent companies.

In Canada they don't publish anything because they don't want to show you that they're not living up to what they should be doing. And in Australia they publish these complaints as well which is a big thing I think, because companies that are in compliance they don't name them in Canada so there's no incentive for Canadian companies to be good ...

Participants were also in agreement, for the most part, that if fines of the degree allowed in the Australian model were imposed for non-compliance in Canada, it would be a significant deterrent and protect consumers more effectively than the Canadian model does. A few, however, were concerned that even with such a deterrent, Some MPS content suppliers would still "cross the line" in order to make a profit.

The concept of an ombudsman who would represent the public interest and make binding decisions was also seen as an improvement over the Canadian system.

Many participants were also interested in having the option of blocking MPS messages as in the Australian system. Some commented that this would be particularly useful for parents who have provided their children with cell phones and would want to protect them from being enticed into subscribing to MPSs.

If you don't want it, I mean if you have the ability to block someone's phone number from calling you why not be able to block a company from getting a hold of me?



October 12, 2010

**Discussion Guide  
EnviroNics Research  
Attitudes towards Mobile Premium Text Services  
PN 6718  
Public Interest Advocacy Centre**

**1.0 Introduction to Procedures (10 minutes)**

Welcome to the group. We want to hear your opinions. Not what you think other people think – but what you think!

Feel free to agree or disagree. Even if you are just one person among eight that takes a certain point of view, you could represent millions of Canadians who feel the same way as you do.

You don't have to direct all your comments to me; you can exchange ideas and arguments with each other too.

You are being taped and observed to help me write my report.

I may take some notes during the group to remind myself of things also.

The host/hostess will pay you your incentives at the end of the session.

Let's go around the table so that each of you can tell us your name and a little bit about yourself, such as what kind of work you do if you work outside the home and also can you tell us who your wireless (cell phone) provider is and whether you are on a plan or pre-paid.

**2.0 Awareness and experiences of MPS (20 minutes)**

As you probably know from the questions we asked when we invited you to this focus group. We are going to be talking about mobile text messaging services tonight. I'd like you to each tell me a bit about how often you send or receive text messages of any kind on your cell phone and also what sort of arrangement you have for paying for text messages (i.e. are they part of your plan? do you pay for each one you send or receive?)

Are all text messages the same or are there some that cost more than others? How so?

Before we invited you to these sessions had any of you ever heard of “mobile premium services” (MPS)? What are they?

Here is the official definition of an MPS: *“Mobile premium services (MPS) are also known as premium text messages and are initiated through special numbers, usually five digit numbers called “short codes”. MPS are text messages and picture/video messages that cost a premium, meaning they cost more than a standard text message. Some MPS are subscriptions where you receive messages on a regular basis such as a joke of the day. Subscriptions usually have an automatic renewal until you cancel the service. Other MPS are pay-per-use services such as texting a vote to a contest on TV, or texting a request to a radio station. MPS fees can range from 15 cents per message to a couple dollars per message to \$10 per month or much more. The fees are billed to your mobile phone bill or deducted from your pre-paid credit.”*

I know that most of you have had some experience with these Mobile Premium Services. Let’s go around the table and you can tell us about your experience or what you know about them.

**IF NO PERSONAL EXPERIENCE WITH MPS:** What do you know about these services and how? (i.e. seen ads? have friends who get them? News stories? etc.)

**IF SUBSCRIBE TO MPS:** What kind of MPS do you or have you received or subscribed to? (i.e. jokes, horoscope, news, game, sports, chat, flirt, quiz/survey, coupons/discounts, etc.)

How long have you/did you subscribe to the MPS service?

Why did you decide to sign up for the service?

What is your general impression of the MPS you subscribe to? Is it a good or bad experience and good or bad value?

How many MPS text messages do you or did you receive (average per week/month)?

Did you expect that volume of messages?

Did the content of the messages match your expectations?

### **3.0 Billing of MPS (10 minutes)**

How much did your MPS cost (per message)?

Did the cost of the MPS match your expectations? Why/why not?

Did you always know you would pay extra for each txt message if you subscribed to one of these services, or did you ever think it was covered by your plan?

When did you first realize you were being charged for the MPS?

How do you get billed? Is it on your cell phone bill? Where on the bill does it appear?

Was it clear on your bill what the charge was for?

## 2.0 Advertising of MPS (10 minutes)

How did you first learn about the MPS service? Was it word of mouth? Did you see an ad? **IF YES:** What kind of ad did you see? **PROBE:** print ad, TV ad, Internet banner ad, ad on Facebook etc....?

**ASK ALL WHO SAW AN AD:** Did the ad say anything about how much the service would cost? Did it say how many text messages to expect per month?

Did the ads provide enough information about the service? **IF NOT:** What was missing?

Were there any “terms and conditions” provided at the bottom of the ad or provided in links from the ad? Did you read them? (**IF NOT**, why not?)

I am going to show you a couple of examples of ads for MPS. Take a look at these ads that would have appeared on websites. *Provide print examples of website advertisements for MPS - # 1 (Ringtones) and #2 (Love Calculator)*

What do you think of the information about the service on these ads? Is anything missing or unclear?

When looking at these ads, can you easily figure out how much the service will cost you?

## 3.0 MPS subscription process (10 minutes)

I want to go back to discussing **how** you each actually signed up for the service. How many of you remember how you signed up? How many of you either don't remember or don't know how you signed up for this service?

What exactly was the process?

**PROBE:** Did you give your phone number to a website to sign up for the service? Did you reply to a text message on your cell phone? Did you play a quiz or game online and enter your phone number?

When you subscribed to the service, were you reminded how much the service would cost?

Did you receive a PIN number or a confirmation message that confirmed that you wanted to subscribe for this service (aka: double opt-in)?

Here is an example of a confirmation message you might have had when you subscribed. *Provide print example of PIN number or confirmation messages - #3 (Your PIN is 1550)*

What do you think about this message? Do you know what this message wants you to do or is trying to say?

What would you do if you received one of these confirmation messages?

Have any of you received a monthly subscription reminder message? (NB: This serves as the automatic renewal message)

#### **4.0 Impressions of the MPS industry economy (10 minutes)**

I want to explore the whole issue how the MPS “industry” works in terms of how they make money and who makes money. How do you think the system works for MPS? Who is making money and how? How do you think mobile premium services make money?

What about the wireless service providers (meaning the phone companies)? What is their involvement or role? **PROBE:** Do they make money from delivering MPS to the customer?

Do you think they monitor the mobile premium text services?

In fact, telecommunication/wireless companies approve all of the MPS in Canada, contract with the MPS companies, agree to collect charges from customers on behalf of MPS companies, and they get a share of the profits. Does that surprise you?

Is there any problem with that? Is there any conflict of interest?

#### **6.0 Unsubscribing from MPS (10 minutes)**

Here is an example of message or ad you might get (*show #4 “Premium rate service by TMG”*).

Is it clear in this ad how to stop or unsubscribe from the service?

Have any of you ever unsubscribed from an MPS or wanted to do so?  
What was the experience like?

How exactly did you unsubscribe from the service? (i.e. text "STOP"? call a number? dispute through phone company? Etc...)

Did it ever take more than one attempt to unsubscribe? How many?

Did you successfully unsubscribe from the service? Did the messages stop?

Were any of you billed for txt messages even after unsubscribing from the service?

Were any of you ever billed for unsubscribing from the service?

### **7.0 MPS dispute resolution (10 minutes)**

How many of you would say that you ever had any sort of a dispute relating to MPS - either in trying to unsubscribe or disputing the fees?

**IF YES:** How did you try to resolve the dispute?

**PROBE:** Did you try approaching you cell phone provider? **IF YES:** What were you told by customer service? Were you satisfied with this resolution?

Were you told you could complain to the Commissioner for Complaints for Telecommunications Services (CCTS)? Did you? Have you ever heard of the CCTS?

Did you try to contact the MPS or short code provider about the dispute? Were you successful in contacting them? What was your experience with them and were you satisfied with this resolution?

Where else did you try to resolve an MPS related dispute?

**PROBE:** Competition Bureau, Canadian Wireless Telecommunications Association? Consumer groups? Better Business Bureau? Media? Law enforcement (police or Phone Busters)? A lawyer?

### **8.0 MPS regulatory environment (10 minutes)**

The Canadian Wireless Telecommunications Association (CWTA) is an industry association, meaning an organization created by the businesses that operate wireless services in Canada, which represents the commercial interests of wireless providers. Have you heard of them? **DISTRIBUTE:**

*The CWTA administers all of the MPS allowed to reach Canadian consumers. A smaller group within the CWTA, called the Short Code Council, is made up of representatives from each of the major phone companies. This Council reviews and approves all MPS*

*in Canada, which the CWTA then keeps a list of. All MPS in Canada agree to comply with the CWTA Code of Conduct for Short Codes, which describes practices regarding how MPS must be advertised, the double opt-in process for subscription, and how consumers can unsubscribe. The CWTA enforces this Code of Conduct and audits MPS practices but does not publish the results.*

What do you think about this regulatory model?

What information do you need to see to be assured that CWTA is adequately monitoring the operation of MPS?

What kinds of practices do you think should be required in the Code of Conduct?

**PROBE:** Ads? (What should be included in the advertisements? More specific descriptors of costs?) Subscription process? (What should be required in the subscription mechanism? Is double opt-in enough?) Unsubscribe process? (Was it too hard to unsubscribe?)

If an MPS is not complying with the Code of Conduct, what penalties should there be?

**PROBE:** pay a fine? (**IF YES:** How much?), what about being “named,” do you think non-compliant companies should be named? What about compensating customers – do you think a non-compliant company should be required to compensate customers? Do you think non-compliant companies should be prevented from billing customers for charges for these services?

How often should the CWTA review MPS for compliance?

If not the CWTA, who else should be responsible for regulating MPS in Canada?

What kind of regulations should be in place for wireless service providers?

What kind of help do you expect from your wireless service provider?

Should there be regulations that require wireless service providers to help consumers that have problems with MPS?

In Australia, they have a system in place. DISTRIBUTE

*In Australia, there is an industry code that governs the MPS sector that sets out detailed rules and procedures to protect consumers. Under the Code, MPS content suppliers have the obligation to resolve consumer complaints and refer customers to the Ombudsman if the customer is not satisfied with the resolution. As well, an independent regulator monitors the industry to ensure compliance and takes enforcement action when required. The biggest difference between the Australian and Canadian model is that Australia’s code is enforced by both an Ombudsman and an independent regulator,*

*whereas the Canadian code is enforced by the industry association, meaning the wireless companies themselves.*

*The Australian Ombudsman publishes statistics on complaints and names MPS that are not compliant with the law. In contrast, statistics on complaints on MPS in Canada are not compiled and not published. Companies that are not compliant with the industry code are not named in Canada.*

What do you think about this?

Should our Canadian telecom complaints organization (CCTS) be required to log the number of complaints they receive about MPS?

Should the companies that are being complained about be named by CCTS?

The Australian Ombudsman also has the authority to make legally binding decisions and recommendations which may have financial penalties. The Australian independent regulator also has a compliance monitoring system and has the ability to penalize a non-compliant company up to \$250,000 for breaching the code. Do you think these powers mean better protection for consumers?

Do you think the Australian model of mandatory referral of unresolved complaints to an independent regulator who had enforcement powers would do a better job than the current industry self-regulatory model that Canada has? Why or why not?

In Australia, the regulator created a rule that requires wireless phone companies to provide an option for consumers to block receipt of MPS. The block can be lifted at any time at the request of the consumer. Is this a good idea? Should we import this rule to Canada?

If wireless service providers provided a mobile premium service blocking option would you take it?

## **9.0 Consumers responsibility (10 minutes)**

How much responsibility should the consumer take when it comes to MPS?

**PROBE:** If the consumer does not read the full terms & conditions of the service and subscribes to the service, should he or she be fully responsible for all of the charges?

If the consumer ignores the MPS because they think it is spam and does not text back "STOP", then should they have to pay for the service?

If the consumer does not realize that the messages cost money but continue to participate until they see their bill at the end of the month, should they have to pay for the service?

Would increased consumer education help solve this problem? Is more consumer education the solution to the MPS problem?

Have you ever heard of <http://www.txt.ca>?

This is a website set up by the CWTA to provide information for consumers about text messaging and MPS administration. Have you ever visited it? Did it provide helpful information?

Do you think CWTA or the wireless phone companies have the responsibility to better promote this website?

**Thank you for your participation**

---

**Environics Research Group Limited  
Focus Groups on Attitudes towards Mobile Premium Services  
Public Interest Advocacy Centre  
PN6718**

**Recruitment for Group Discussion**

Respondent Name: \_\_\_\_\_

Home #: \_\_\_\_\_

Business #: \_\_\_\_\_

Group #: \_\_\_\_\_

Recruiter: \_\_\_\_\_

---

**GROUP 1**

Toronto  
Tuesday, Oct. 5  
5:30 pm  
Subscribe to/aware of MPS

**GROUP 3**

Vancouver  
Tuesday, Oct. 12  
5:30 pm  
Subscribe to/aware of MPS

**GROUP 5**

Montreal  
Thursday, Oct. 14  
5:30 pm  
Subscribe to/aware of MPS

**GROUP 2**

Toronto  
Tuesday, Oct. 5  
8:30 pm  
Subscribe to/aware of MPS

**GROUP 4**

Vancouver  
Tuesday, Oct. 12  
8:30 pm  
Subscribe to/aware of MPS

**GROUP 6**

Montreal  
Thursday, Oct. 14  
8:30 pm  
Subscribe to/aware of MSP

**Recruit 8 participants per group. At least 6 must currently subscribe to Mobile Premium Services on their cell phone or have done so in the past. The other 2 can be people with cell phone who are familiar with MPS and/or know people who have subscribed to them.**

---

**NOTE TO RECRUITERS:** Mobile Premium Services have various names including premium messages, premium text message services and text message subscriptions. Common MPS include “joke of the day” or horoscopes or updates to sports scores or news. These service are subscriptions that authorize a company to send a certain number of messages per day or per week to your cell phone. The fees are higher than you would pay for regular text messages on your phone bill, and range from 15 cents to a few dollars per message. Although the subscription is almost always with a different company, it is billed to your cell phone bill or deducted from your pre-paid credit. These charges are in addition to standard messaging rates and often appear separately on your phone bill. MPS subscriptions are initiated through special numbers, usually 5 digit numbers called ‘Short Codes’. You can sign up for these subscriptions by texting the short code from your cell phone or by agreeing to the service (knowingly or unknowingly) on a website.

Hello, I'm \_\_\_\_\_ from Research House. We are telephoning to invite people to be a paid participant in a group discussion about some issues relating to cell phone services in Canada.

1.     **INDICATE:**            Male            1  
                                  Female         2

**IDEALLY A MIX OF MEN AND WOMEN, BUT IT ALL DEPENDS ON THE DEMOGRAPHIC OF PEOPLE WHO SUBSCRIBE TO MPS – SO NO HARD QUOTAS**

2.     Do you, or does any member of your household, work for [READ LIST]?

A market research company

A telecommunications (i.e.: phone, cable or cell phone) company

A government agency that regulates telecommunications

**IF YES TO ANY, THANK AND TERMINATE, IF NO TO ALL, CONTINUE**

3.     In general, how much attention do you pay to news about current events and public policy issues? **READ**

A great deal of attention

01 – **CONTINUE**

Some attention

02 – **CONTINUE**

A little attention

03 – **TERMINATE**

No attention at all

04 – **TERMINATE**

DK/NA

99 – **TERMINATE**

4.     Do you have a cell phone which you pay the bill for?

Yes

No     **THANK AND TERMINATE**

---

5. Do you ever send or receive text messages (SMS) on your cell phone?

Yes

No **THANK AND TERMINATE**

6. Do you now or have you ever in the past subscribed to or received any kind of a “premium text message service” where you were billed a nominal extra fee per text message sent to you? (NB: Common examples of these include “joke of the day” or horoscopes or updates to sports scores or news or weather etc...).

Yes

No **SKIP TO Q. 8**

7. Which premium text message services do you or did you receive?

---

**IF NO, ASK:**

8. Have you ever been solicited to subscribe to a premium text message service where you pay a nominal extra fee per text message, or do you have any friends who have ever subscribed to or received one of these services?

Yes, have been solicited for premium text messages

Yes, have friends who have subscribed to premium text messages

No **THANK AND TERMINATE**

**MAXIMUM TWO PER GROUP WHO DO NOT OR HAVE NOT EVER SUBSCRIBED TO MPS BUT HAVE BEEN SOLICITED OR KNOW PEOPLE WHO HAVE SUBSCRIBED**

**ASK ALL**

9. Could you please tell me what is the last level of education that you completed?

- Some High School only.....1
- Completed High School.....2
- Trade School certificate.....3
- Some Post secondary.....4
- Completed Post secondary.....5
- Graduate Degree.....6

**GET MIX**

- 
10. We have been asked to speak to participants from all different ages. So that we may do this accurately, may I have your exact age please? \_\_\_\_\_.

**WRITE IN**

- Under 18.....1 **TERMINATE**
- 18-24 years of age.....1
- 25-29 years of age.....2
- 30-39 years of age.....3
- 40-49 years of age.....4
- 50-69 years of age.....5
- 70 years or more.....6 **TERMINATE**

12. What is your occupation?

\_\_\_\_\_

Type of Job

\_\_\_\_\_

Type of Company

**IF MARRIED ASK: WHAT IS YOUR SPOUSE'S OCCUPATION?**

\_\_\_\_\_

Type of Job

\_\_\_\_\_

Type of Company

13. Which of the following categories best corresponds to the total annual income, before taxes, of all members of your household, for 2009? **READ**

- 01 – Under \$30,000
- 02 - \$30,000 to \$60,000
- 03 - \$60,000 to \$80,000 **GET MIX**
- 04 - \$80,000 to \$100,000
- 05 - \$100,000 to \$150,000
- 06 - \$150,000 and over
- 99 – REFUSE/DK/NA **TERMINATE**

14. Participants in group discussions are asked to voice their opinions and thoughts, how comfortable are you in voicing your opinions in front of others? Are you...(read list)

- Very comfortable.....1 **– MIN 5 PER GROUP**
- Fairly comfortable.....2
- Not very comfortable...3 **- TERMINATE**
- Very uncomfortable.....4 **- TERMINATE**

15. Have you ever attended a focus group or a one-to-one discussion for which you have received a sum of money, here or elsewhere?

---

Yes            1  
No             2 → (SKIP TO Q.18)

**IF YES ASK:**

16.    When did you last attend one of these discussions?

\_\_\_\_\_ **(TERMINATE IF IN THE PAST 6 MONTHS)**

17.    How many focus groups or one-to-one discussions have you attended in the past 5 years?

\_\_\_\_\_ **(SPECIFY)**

**IF MORE THAN 5, TERMINATE**

18.    Sometimes participants are also asked to write out their answers on a questionnaire. Is there any reason why you could not participate? If you need glasses to read, please remember to bring them. (Add hearing impairment)

Yes.....1 – **TERMINATE**  
No.....2

---

**NOTE: TERMINATE IF RESPONDENT OFFERS ANY REASON SUCH AS SIGHT OR HEARING PROBLEM, A WRITTEN OR VERBAL LANGUAGE PROBLEM, A CONCERN WITH NOT BEING ABLE TO COMMUNICATE EFFECTIVELY.**

---

**INTERVIEWER TELL RESPONDENT  
PLEASE BRING ALONG SOME FORM OF IDENTIFICATION AS YOU MAY BE  
ASKED TO SHOW IT.**

**IMPORTANT:**

The session is 2 hours in length, but we are asking that all participants arrive 15 minutes prior to the start time of the session. Are you able to be at the research facility 15 minutes prior to the session time?

Yes.....1  
No.....2 – **TERMINATE**

I would like to invite you to a group discussion on :

---

The session will last 2 hours in total and you will receive \$75 to thank you for your participation, location:

**INTERVIEWERS:** Tell respondent that it is a small group and anyone who does not show or cancels at the last minute will compromise the project. Make sure they know we feel their opinions are valuable and we are serious about finding out what they have to offer.

**NOTE:** PLEASE TELL ALL RESPONDENTS THAT THEY WILL RECEIVE A CONFIRMATION CALL THE DAY PRIOR TO THE SESSION. IF FOR SOME REASON THEY HAVE NOT HEARD FROM US THEY SHOULD CONTACT US AT \_\_\_\_\_. IF THEIR NAME IS NOT ON THE ATTENDANCE FORM THEY WILL NOT BE ADMITTED TO THE GROUP.

---

## X. APPENDIX B: COMPETITION BUREAU COMMENTS

The Competition Bureau provided comments to PIAC just prior to publication on June 23, 2011. PIAC is very appreciative of the Bureau's time and efforts to respond to PIAC's inquiry regarding MPSs. As best as PIAC could, PIAC incorporated the Competition Bureau's comments into the report. The rest of the Bureau's comments are summarized below.

The Competition Bureau has investigated online advertisements in past. The Bureau pointed to examples such as Project False Hope, which is an enforcement and education initiative that targets cancer-related health fraud. In February 2009, the Bureau announced its action against unproven cancer treatment sold online by Bioenergy Wellness Inc.<sup>386</sup> In this case, the company agreed to stop making unsubstantiated claims regarding products used to treat or prevent cancer, to offer full refunds to customers, and to post corrective notice on company websites. The Bureau also noted that in their January 2010 "CB in Brief" publication, they announced enforcement action against a man who operated an alleged online job opportunity scam, which made representations with respect to finding employment in the oil and gas industry. The man now faces criminal charges related to the making of materially false and misleading representations, in addition to other charges.<sup>387</sup>

The Bureau noted that they have jurisdiction under the *Competition Act* to enforce criminal and civil provisions prohibiting misleading representations and deceptive marketing practices in promoting the supply or use of a product or any business interest. The Bureau notes:

Any representation, in any form, which is false or misleading in a material respect, is prohibited. A representation is material if it leads a person to a course of conduct that, on the basis of the representation, he or she believes to be advantageous.<sup>388</sup>

The *Competition Act* focuses on representations made to the public promoting a business interest. It does not matter what the medium is; the Bureau focuses on the message. The Bureau provides guidance to businesses and consumers regarding its expectations for compliance. There is no general regulation that stipulates the content or format of advertising. The Bureau also provides more detailed guidance for advertising on the internet in the form of enforcement guidelines.<sup>389</sup> The *Competition Act* would apply to online advertising and the enforcement guidelines provide some criteria that the Bureau would examine if presented with a specific case. Each case is examined on a case-by-case basis.

PIAC asked the Bureau for its views on MPSs that appear to promote a one-time service (such as a contest entry or to receive a game score) but where the fine print or terms and conditions indicate that the consumer will be automatically signed up for an indefinite subscription. The

---

<sup>386</sup> Competition Bureau, "Project False Hope", online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02614.html>.

<sup>387</sup> Competition Bureau, "Alberta Man Arrested for Breach of Consent Agreement", online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03348.html>.

<sup>388</sup> Competition Bureau, "Application of the *Competition Act* to Representations on the Internet: Enforcement Guidelines" (18 February 2003), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01213.html>.

<sup>389</sup> Competition Bureau, "Application of the *Competition Act* to Representations on the Internet: Enforcement Guidelines" (18 February 2003), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01213.html>.

---

Bureau was unable to provide a definitive answer to this example, as they examine each case on a case-by-case basis. When the Bureau considers whether a representation is false or misleading, it looks at the general impression the representation creates as well as its literal meaning. The general impression cannot be contradicted by a disclaimer.

The Bureau noted that they provide guidelines on the application of the *Competition Act* to consumer rebate promotions which could assist in understanding what the Bureau expects for disclosure to consumers about pricing and terms and conditions.<sup>390</sup> In these guidelines, the Bureau provides examples of false or misleading representations regarding inadequate disclosures, rebates disguised as the sale price or regular price, and discounts on future purchases disguised as rebates. These guidelines note best practices such as prominent and clear disclosure of all conditions, limitations and exclusions that could contradict the consumer's general impressions and presentation of pricing information that consumers will effectively pay. Information necessary for the consumer making a decision to purchase must be provided in a clear and conspicuous way. Small print is taken into consideration – there cannot be a disclaimer contradicting the main message and companies must be careful what they put in their disclaimers. Claims cannot be qualified with a footnote. The Bureau does not provide guidelines on the size of font for fine print.

Regarding promotional contests, the Competition Bureau has general guidelines regarding adequate and fair disclosures.<sup>391</sup> The Bureau defines “promotional contest” as “any contest, lottery, game of chance or skill, or mixed chance and skill, or disposition of any product or other benefit by any mode of chance, skill or mixed chance and skill for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest.” Notably, the Bureau states that:

Contest promoters must provide adequate and fair disclosure of:

- The number and approximate value of the prizes;
- The area or areas to which the prizes relate;
- The skill testing question requirement (if there is one);
- The contest closing date; and
- Any important information relating to the chances of winning such as the odds of winning.

The Bureau also notes in its guidelines *Criminal Code* prohibitions on requiring the product or service to be purchased as a sole condition of contest participation:

While the *Competition Act* does not directly prohibit a requirement that participants pay money or other valuable consideration in order to participate in a contest, it is prohibited under the *Criminal Code* to require that a product or service be purchased as the sole condition of contest participation. Unless other

---

<sup>390</sup> Competition Bureau, “The Application of the *Competition Act*, the *Consumer Packaging and Labelling Act* and the *Textile Labelling Act* to Consumer Rebate Promotions: Enforcement Guidelines” (31 March 2009), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03136.html>.

<sup>391</sup> Competition Bureau, “Promotional Contests”, online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02118.html>.

---

means of entry are available, such as using a “reasonable hand-drawn facsimile” or obtaining entry forms by means other than making a purchase, contests with purchase requirements are illegal under the Code.<sup>392</sup>

The Bureau noted that they do receive a significant number of complaints from consumers about premium text messaging or advertisements for premium text messaging. The Bureau estimated that they had received 100 complaints in the past year. Most complaints raise billing issues, such as the consumer asserting that they did not order or did not realize that they had subscribed to an MPS. Some consumers raise issues with the terms and conditions of these services. The Bureau noted that complaints about MPSs are increasing and they expect to continue seeing an increase in complaints with the growth of mobile messaging.

The Bureau could not state whether they have investigated any MPSs. If they take enforcement action against an MPS, the action would be publicized on the Bureau’s website. PIAC noted that it had not found any announcements of enforcement action against MPS companies.

The Bureau encouraged PIAC to refer consumers with complaints about MPSs to the Competition Bureau. The Competition Bureau considers complaints to be confidential information. The Competition Bureau may refer consumers to other bodies such as the CCTS or the CWTA based on their understanding of what the agency could do to assist the consumer but will not pass along a consumer complaint because of confidentiality requirements.

The Bureau decides which complaints or practices are a priority for investigation based on its available resources. The Bureau strives to take action in a timely fashion with high impact for Canadians based on what is important.

When examining whether a practice is deceptive or misleading, the Bureau does not examine whether the practice is compliant with industry self-regulation. The Bureau examines whether an industry player is in compliance with the statutes. In past, the Bureau has examined industry standards and the claims made with respect to the industry standard. For example, the Bureau investigated and took enforcement action against companies that made a variety of energy efficiency claims in the sale and promotion of hot tubs and spas, conveying the impression that the products were eligible for certification by the ENERGY STAR program. The Bureau determined that they were not.<sup>393</sup>

PIAC asked whether the *Competition Act* would apply to misrepresentations or omissions made during a customer’s interaction with customer service after a charge has been billed. The Bureau stated that if such claims were brought to their attention, the Bureau would examine whether the claims were false and misleading in a material respect, the general impression arising from the claim, and who made the claim. However, they typically focus on claims made to influence a consumer’s purchasing decision.

Finally, PIAC asked the Bureau for its views on the interplay between the jurisdictions of the CRTC and the Competition Bureau. The Bureau stated that the CRTC does not currently

---

<sup>392</sup> Competition Bureau, “Promotional Contests”, online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02118.html>.

<sup>393</sup> Competition Bureau, “Competition Bureau Cracks Down on Unsupported Energy Savings Claim”, (25 June 2009), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03088.html>.

---

regulate wireless services or mobile premium text messaging. The Bureau does not view that there is dual jurisdiction at this time, thus the Competition Bureau may regulate if there is a particular false or misleading representation that raises concerns under the *Competition Act*. Had there been an interplay, they would need to determine the CRTC's responsibility for mobile premium text messaging.