

# **Telecom Notice of Consultation CRTC 2012-557**

## **Proceeding to establish a mandatory code for mobile wireless services**

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**Intervention of the Public Interest Advocacy Centre,  
Consumers' Association of Canada, Council of Senior  
Citizens' Organizations of British Columbia  
ABRIDGED**

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## EXECUTIVE SUMMARY

- ES1. The Public Interest Advocacy Centre (PIAC), Consumers' Association of Canada (CAC) and Council of Senior Citizens' Organizations of British Columbia (COSCO), together "PIAC/CAC/COSCO", are pleased to provide the Commission with comments on the issues raised by Telecom Notice of Consultation CRTC 2012-557, 2012-557-1, *Proceeding to establish a mandatory code for mobile wireless services*.
- ES2. The Wireless Code will define the marketplace conduct of retail wireless service providers and resellers of wireless services (WSPs) for some time to come. As such, PIAC/CAC/COSCO are optimistic that this process can lead to a fair, open and transparent set of rules for the wireless industry that will substantially benefit consumers and promote healthy competition in the retail wireless market. Canadians expect it.
- ES3. PIAC/CAC/COSCO wish to be considered parties to this proceeding and request to appear at the public hearing.
- ES4. PIAC/CAC/COSCO have provided overarching "Consumer Principles for a Wireless Code" to guide the Commission in its drafting of the Code. The Consumer Principles are: (1) neutrality; (2) liberty; (3) certainty; (4) transparency; (5) clarity; (6) accessibility; (7) fairness; (8) security; (9) comprehensiveness; (10) universality; (11) enforceability; and (12) efficacy/legitimacy.
- ES5. We believe in consistent consumer rights for all consumers in Canada and service provider responsibilities across provincial boundaries. We also believe that the Commission should consider measures adopted by provincial regulators and legislators as potential models in the design of the Commission's own Code.

### Content of the Wireless Code

- ES6. **Clarity of contract terms and conditions.** Contracts must be written in simple and plain language that is clear, concise and easily understandable by the average consumer. We encourage the use of understanding aids in contract summaries such as headers and icons. Greater transparency and clarity is needed regarding the components of the contract for wireless services. All charges should be clearly set out and itemized. The Commission should consider establishing a standardized way in which parties' rights and obligations are set out so that consumers are able to easily understand and compare WSPs' respective terms and conditions before signing a contract. We recommend distinguishing between the terms and conditions of the contract for the sale or lease of the handset or device to the consumer and the terms and conditions of the contract for the provision of wireless service to the

- consumer. Furthermore, we suggest that a summary of critical information should be provided to the consumer either as a separate document or prominently displayed above the full terms and conditions of the contract. Clarity is also required regarding "no contract" wireless services (such as pre-paid) which do in fact have terms and conditions associated with the service. Finally, PIAC/CAC/COSCO submit that contracts and service agreements must be provided in writing in paper format to the consumer at no additional cost. Where an agreement is reached over the phone, WSPs must retain evidence of the customer's explicit oral acceptance of a contract.
- ES7. Changes to contract terms and conditions.** We submit that unilateral changes by the WSP to "core terms and services" should be prohibited and thus void and of no effect. Where a WSP seeks to change "non-core terms and services", they must provide adequate notice to the customer before the change is effective. Where the consumer does not consent to the proposed changes to "non-core terms and services", the consumer must have the right to cancel the contract within a reasonable period. Written confirmation of changes to the contract should be provided to the customer immediately.
- ES8. Contract cancellations, expiration and renewal.** As PIAC/CAC previously submitted in its Part 1 application regarding the 30 day advance notice for termination of wireless service, there are no technical considerations to warrant 30 days advance notice of termination and the requirement restricts the availability of number porting to consumers. The 30 day advance notice requirements imposed by incumbent WSPs undermine competition and therefore should not be permitted under the Code. Early termination penalties appear to focus on stifling consumer choice and competition. We encourage the Commission to specify in the Code a mechanism for a simple and easily understandable calculation of termination charges that will apply if the customer decides to terminate a contract prior to the end of the term. At the expiry of the contract term, the wireless service should continue on a month-to-month basis on the same rate and conditions as specified in the contract. Customers should not be forced to renew an existing contract for an extended term.
- ES9. Clarity of advertised price.** PIAC/CAC/COSCO urges the Commission to include a provision that requires WSPs to display the total price for wireless services prominently, with greater emphasis on the "all-in" price than on the component costs. Fine print disclaimers cannot be used to supplement or modify information in the ad about prices. The Commission should consider whether the "all-in" advertised price should include caller ID and voicemail, since these are common features requested by the consumer. Restrictions should be placed on advertisements that use words such as "free" and "unlimited" unless they are truly free and unlimited. WSPs should be prohibited from charging customers for optional mobile wireless services not

ordered, and the WSP should always provide proof that the customer's consent was obtained for these services.

- ES10. Application of the Code to bundles of telecommunications services.** The Wireless Code must apply to all wireless service contracts, "bundled" or not.
- ES11. Notification of additional fees.** Consumers expect to be notified when they are about to incur charges that are not included in their monthly service plan and need better protection from wireless bill shock. The Wireless Code should require WSPs to notify consumers before the limit of a service agreement is reached and when the consumer is about to incur additional charges. PIAC/CAC/COSCO recommend notifications to subscribers when they have reached 50% and 80% of the limit. PIAC/CAC/COSCO recommends that the Wireless Code require WSPs to develop and implement usage management tools for customers, such as tools that set a default customer "spend" limit for additional charges that the customer can tailor to match their needs.
- ES12. Privacy policies.** The Wireless Code should not diminish privacy protections of Canadians that are already mandated by Commission decisions relating to telecommunications. The Code should require that customers receive an electronic notification message to their handset or email informing them when a carrier's privacy policy has changed in a significant way, with a link to an internet-based version. Privacy protection in wireless service is at a crucial stage, as technology enables the collection and use of highly sensitive personal information. We therefore urge the Commission to widen the scope of the inquiry to the level of privacy protection to be accorded to location data or to control behavioural targeting based on location data or other customer confidential data stored on the handset, or other information gathered from the customer-service provider relationship.
- ES13. Hardware warranties and related issues.** Warranty disclosure is critical to transparency and clarity for consumers. Further, WSP policies on unlocking phones should not form an additional barrier to a customer's liberty to switch to a different carrier or to use his or her phone while travelling internationally. Unlocking fees should be reasonable. Once a fixed-term contract has expired, a WSP should be required to provide that customer with the unlocking code free of charge. WSP policies that void hardware warranty for phones that are unlocked should be removed.
- ES14. Loss or theft of hardware.** Consumers need rules that provide clarity surrounding lost and stolen phones and wireless service provided when a device is lost or stolen. Changes in a mobile device should not constrain a customer's choice and flexibility with respect to his or her services.

**ES15. Security deposits.** The Wireless Code should mirror requirements for security deposits for wireline services. The Code should also require clarity in advertising that a security deposit will be required where the carrier is not satisfied with the creditworthiness of a customer. The Commission should set a low limit on requested security deposits to avoid exclusion of lower-income Canadians from post-paid service.

**ES16. Disconnection.** PIAC/CAC/COSCO submit that disconnections of wireless services are now equally serious for consumers as wireline disconnections and should be treated with the utmost seriousness. The Deposits and Disconnections Code should be made applicable to WSPs. In addition, WSPs should be required to offer a deferred payment plan prior to disconnection and the reconnection charge should be reasonable and capped. Where a disconnection occurs in error, service should be restored within 3 hours. WSPs should not be allowed to disconnect a customer in any case where the customer has an active complaint before the CCTS.

**ES17. Other issues the Wireless Code should address.** PIAC/CAC/COSCO also note systemic issues reported by the CCTS regarding customer service, namely failure to action, and billing issues. The Wireless Code should impose obligations on WSPs to ensure that customer complaints and requests are recorded, managed, and resolved in a timely and effective manner. The Wireless Code should also include a provision that clarifies WSP obligations with respect to accurate billing, namely that the WSP take reasonable steps to ensure that billing is accurate. Where a WSP is found to have not met these obligations, a systemic penalty could apply.

### **To Whom the Wireless Code Should Apply**

ES18. The Wireless Code should apply to the broadest range of wireless services and service providers as possible, including both Canadian carriers and resellers.

ES19. We believe that as a general principle, telecommunications service consumers' needs can be best served by a single national set of rules. We do not believe that the establishment of a situation in which wireless telecommunications services are sometimes governed by a Commission-developed Code and at other times by provincial statutes of varying content would constitute effective or efficient regulation. A patchwork of rules for consumers is not responsive to the needs of Canadian consumers. The responsibility for ensuring compliance with the Code should remain with a single regulatory authority.

### **How to Enforce and Promote the Wireless Code**

ES20. While we are strongly supportive of the work CCTS does to provide consumers with recourse when a dispute arises with a service provider, CCTS' current mandate and powers are inadequate to enable it to enforce a Wireless Code. The CCTS does not

have sufficient or appropriate powers to compel service providers to comply with the Commission's policies. Compliance with the Code cannot be achieved solely through individual complaints to entities such as the CCTS, the Commission or the courts. Therefore, the Commission should assume primary responsibility for the enforcement of the Wireless Code, supplemented with recourses to the CCTS.

- ES21. A starting point to ensure compliance is adequate public disclosure by WSPs and the CCTS. The Commission could also require non-compliance WSPs to develop an action plan and provide periodic audited reports of results.
- ES22. Relief must also be provided to individual consumers who are victims of breaches of the Code. This relief process must be accessible to Canadians. PIAC/CAC/COSCO support a mechanism that enables consumers to receive compensation for damages sustained in relation to breaches of the Wireless Code. The CCTS could be given greater flexibility to award damages in relation to Code breaches. We further submit that the CCTS should acquire the ability to award damages which serve a punitive purpose.
- ES23. Similar activities to promote the CCTS should be used to promote the Wireless Code among consumers.
- ES24. The Wireless Code should be implemented as soon as possible once the Commission has approved it.

### **How to Assess and Review the Wireless Code's Effectiveness**

- ES25.** We suggest that the number of times consumers cites the Wireless Code to WSPs, to the CWTA, to the CRTC, to the CCTS, and possibly to consumer groups such as PIAC could be useful measures of the awareness of the Code and the level of consumer recourse to its provisions. PIAC/CAC/COSCO also support a measure of the number of times a WSP attempts to change contractual term as defined in the Code, the corresponding number of consumers who consequently sought a remedy (exit or negotiated a different term or service) and number of complaints generated about the new contractual term. The CCTS could also report periodically on the Code's effectiveness. Ultimately, the effectiveness of the Code could best be measured at a particular point in time through the conduct of a proceeding in which the Commission invites comments from consumers and groups which represent their interests, the industry, and entities such as CCTS. We expect that parties who have worked with the code for a period of time should be able to provide useful input on the code's effectiveness and improvements which should be brought to the Code.
- ES26. A thorough review of the Code should be conducted by the Commission in a public hearing following a reasonable implementation period. PIAC/CAC/COSCO

recommend an initial year 3 years after implementation with regular reviews every 3 years.

## 1. INTRODUCTION

1. The Public Interest Advocacy Centre (PIAC), Consumers' Association of Canada (CAC) and Council of Senior Citizens' Organization of British Columbia (COSCO), together "PIAC/CAC/COSCO", are pleased to provide the Commission with comments on the issues raised by Telecom Notice of Consultation CRTC 2012-557, 2012-557-1, *Proceeding to establish a mandatory code for mobile wireless services*.
2. This proceeding represents an historic step forward for the rights of Canadian consumers.
3. The proposed Code of Conduct, a "mandatory code to address the clarity and content of mobile wireless service contracts and related issues"<sup>1</sup> (hereafter "Wireless Code" or "Code") will define the marketplace conduct of retail wireless services providers and resellers of such wireless services (collectively "WSPs", unless otherwise discussed separately) for some time to come.
4. PIAC/CAC/COSCO are optimistic that this process can lead to a fair, open and transparent set of rules for the wireless industry that will substantially benefit consumers and promote healthy competition in the retail wireless market. Canadians expect it.
5. The Commission has made extensive efforts to include increased public participation in this proceeding, given the day-to-day importance of retail wireless services to the average Canadian consumer. PIAC/CAC/COSCO strongly support this effort and we submit that the record will be and has already been substantially enhanced by this participation. PIAC on behalf of PIAC/CAC/COSCO has made efforts of its own to assist the general public with navigating this regulatory process and we will continue to do so during the course of the proceeding and throughout the public hearing.
6. PIAC/CAC/COSCO have used the public comments to inform and better express our submission and we are grateful to the public that made comments and to the Commission for facilitating this public participation.
7. PIAC/CAC/COSCO wish to be considered parties and appear at the public hearing.

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<sup>1</sup> See Telecom Notice of Consultation CRTC 2012-557, *Proceeding to establish a mandatory code for mobile wireless services* (11 October 2012), at para. 2 (hereafter "TNC 2012-557"). Online: <http://crtc.gc.ca/eng/archive/2012/2012-557.htm> See also Telecom Notice of Consultation CRTC 2012-557-1, *Proceeding to establish a mandatory code for mobile wireless services* (1 November 2012), which extended timelines and added additional public process ("TNC 2012-557-1").

## 1.1. Consumer Perceptions of the Wireless Industry

8. Based on the record of this proceeding, including the numerous public comments, it is clear that Canadian consumers presently view wireless service, in general, to have high and unfair pricing. There is a general perception of customer abuse at the hands of the WSP industry; many believe this is indicative of a lack of competition in the market.
9. The Commission has made it clear in TNC 2012-557 that rate regulation is not within the scope of this proceeding and that it is of the view that the competition in the mobile wireless market continues to be sufficient to protect the interests of consumers with respect to rates and choice of competitive service provider.<sup>2</sup>
10. While PIAC/CAC/COSCO do not dispute the Commission's rationale for dealing only with the matters within scope of this proceeding, we wish to take this opportunity to underline that the above concerns of consumers (as amply evidenced from the public comments) are difficult for them to separate from other service and contracting issues. PIAC/CAC/COSCO wish to acknowledge the frustration of consumers with the matters of pricing and competition which are out of scope but are related and matter deeply to consumers.
11. Nonetheless, PIAC/CAC/COSCO are of the view that the proposed Wireless Code is an essential element of a well-functioning retail wireless services market and that its adoption by the Commission and the industry should allow consumers to begin to place trust in the wireless industry and enable consumers to better assert their rights in the wireless industry, to promote healthy competition in the wireless market.

## 1.2. Consumer Principles for the Wireless Code

12. PIAC/CAC/COSCO consider that the Commission should be guided in its drafting of the Wireless Code by overarching principles that should promote healthy competition in the wireless market and benefit consumers . We therefore propose the following "Consumer Principles for a Wireless Code":<sup>3</sup>

### **Consumer Principles for a Wireless Code**

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<sup>2</sup> See Telecom Decision CRTC 2012-556, *Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services* (11 October 2012), at para. 21 ("TNC 2012-556"). Online: <http://crtc.gc.ca/eng/archive/2012/2012-556.htm>

<sup>3</sup> Some of these principles are adapted from PIAC's Payments System Principles: See [http://www.piac.ca/files/watchtower\\_final.pdf](http://www.piac.ca/files/watchtower_final.pdf) (at about p. 14).

**1. Neutrality**

- a. The Code should promote a healthy competitive market and a level playing field between service providers and between service providers and consumers;
- b. The Code should not entrench business models;<sup>4</sup>
- c. The Code should allow for industry innovation and flexibility; however, all technologies should be regulated by similar rules, insofar as possible.

**2. Liberty**

- a. Consumers should be empowered and in control of services whenever possible;<sup>5</sup>
- b. Consumer choice and ease of switching should be facilitated. There should be no unnecessary barriers to consumers exercising choice of carrier and services.<sup>6</sup>

**3. Certainty**

- a. Costs and terms of contracts; conditions of termination; and conditions for switching should be clearly outlined and maintained during term of agreement.<sup>7</sup>

**4. Transparency**

- a. Consumers should be provided with all contractual terms and pricing; risk allocation; and information on liability.

**5. Clarity**

- a. Contracts should be in simple, plain, user-friendly, legible, easy-to-understand language appropriate to the customer;<sup>8</sup>

**6. Accessibility**

- a. Contracts, billing and account- and service-related documents should be available to each consumer in a format that the customer chooses, that is accessible to their abilities and at no cost;
- b. Contracts, billing and account- and service-related documents should be available to each consumer in one place and be reasonably managed.

**7. Fairness**

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<sup>4</sup> For example, subsidized handsets or devices as a necessary purchase for extended service contracts.

<sup>5</sup> For example, unlocking of handsets on demand and free purchase of SIM cards; access to tools to monitor and manage spending (including right to set "cut off" of customer's own services at customer's own desired level) to protect against "bill shock".

<sup>6</sup> For example, penalties for early termination or unlocking – the principles of local number portability are a good model.

<sup>7</sup> Unless impossible to deliver, in which case the service provider should provide a comparable service of similar value to the consumer, judged on an objective basis (by the CRTC or CCTS).

<sup>8</sup> Carriers should consider using icons or other explanatory devices where possible; carriers should deliver contracts in the language of the customer to the extent reasonably possible.

- a. Contractual terms (excepting setting of price or description of core services to be delivered) should be offered in good faith and be reasonably balanced as between the parties, meaning service providers should not take advantage of superior bargaining power or experience in setting terms that are significantly imbalanced, to the detriment of the consumer;
- b. Contract terms should be reasonably necessary to protect the legitimate interests of the party advantaged by them;
- c. Consumers should benefit from the most favourable interpretation of all ambiguous terms.

**8. Safety and Security**

- a. Consumers should be protected by service providers from fraud, first- and third-party misrepresentations;
- b. Consumers should be protected from and given effective tools to manage unanticipated high charges ("bill shock").

**9. Comprehensiveness**

- a. The Code should be the first place a consumer needs to go to understand his or her rights.

**10. Universality**

- a. The Code should cover all wireless providers, all wireless services and include resellers.

**11. Enforceability**

- a. Consumers should have redress for individual problems encountered;<sup>9</sup>
- b. The Code should be enforced at a carrier level or for systemic problems to ensure compliance with Code.<sup>10</sup>

**12. Efficacy and Legitimacy**

- a. The Code should be reviewed for effectiveness for consumers, based on measurable criteria and Code should be updated regularly to adjust to new communications and market developments;
- b. Consumers should have clear, meaningful opportunities to provide comments on the functioning of the Code;
- c. The Code should be fair, persuasive, authoritative, and it should compare favorably with best-in-class comparable instruments worldwide.

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<sup>9</sup> For example by the CCTS.

<sup>10</sup> Likely by the CRTC with assistance, where appropriate, from other agencies such as the Competition Bureau or CCTS.

13. Throughout our submission, PIAC/CAC/COSCO have made reference to these guiding principles as we believe they lend coherence to the development of the Code and focus the discussion on the rights and interests of the consumer.
14. For PIAC/CAC/COSCO, the principles also underline the importance of consistent consumer rights and service provider responsibilities across provincial boundaries. We seek the highest consumer rights for all consumers in Canada, on an equal basis where that is possible, in particular, in federally-regulated industries such as telecommunications.
15. We have already expressed concern<sup>11</sup> that the imposition of requirements that differ between territorial jurisdictions in Canada could increase complexity and generate confusion for consumers. We support the implementation of consistent rules regardless of the jurisdiction in Canada in which a consumer finds herself or himself.
16. We also believe, as we have previously noted in this submission, that solutions to specific difficulties faced by wireless service consumers developed in other jurisdictions could provide useful precedents as the Commission drafts a proposed Code for national application. The Commission should consider measures adopted by provincial regulators and legislators as potential models in the design of the Commission's own Code.

## **2. THE CONTENT OF THE WIRELESS CODE**

### **2.1. Clarity of contract terms and conditions**

17. In TNC 2012-557, the Commission sought comments on: the content of a provision that contracts must be written in plain language; a provision that sets out specific issues that must be addressed in a contract to ensure clarity and completeness; and a provision that sets out how and when service providers must provide contracts or service agreements to customers.
18. In PIAC's comments to TNC 2012-206, we raised consumer concerns with "no contracts" marketing resulting in a lack of written copy of the terms and conditions of service, and unclear, dense and legalistic contractual language used by WSPs in their terms and conditions. CCTS' 2011-2012 Annual Report found that some customers claimed that their consent to receive service under a fixed-term contract was not valid because the service provider did not disclose material aspects of the terms or limitations

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<sup>11</sup> For example see discussion in paragraphs 2 and following of "Shared Position Statement" executed by representatives from Bell Canada, TELUS Communications Company, PIAC (acting for Canada Without Poverty and Consumers' Association of Canada) and Rogers Communications Inc., filed as Appendix 1 of Bell Canada's, Rogers Communications Inc's, TELUS Communications Company's and the Public Interest Advocacy Centre and Canada Without Poverty's respective submissions of 3 May 2012 in the Telecom Notice of Consultation CRTC 2012-206 proceeding.

related to the service.<sup>12</sup> In response to the Commission's consultation in the proceeding initiated by TNC 2012-557, many consumers expressed frustration with the ambiguity and lack of clarity regarding terms, conditions and prices.

19. The principles of clarity, certainty, accessibility and transparency are critical to informing consumers of their rights and the service providers' responsibilities and ensuring consumers are well-equipped to participate in the marketplace.

### **2.1.1. Provision that contracts must be written in plain language**

20. In PIAC's view, contracts must be written in simple and plain language.<sup>13</sup> This means that the contract should be clear and concise and easily understandable by the average consumer.<sup>14</sup> Furthermore, contracts could be more easily understandable by consumers with the use of clear headings presented cleanly in legible font-size. In addition, service providers should use understanding aids in contractual summaries such as icons or other explanatory devices to account low-literacy levels of many individuals. Also, service providers should provide contract summaries (and ideally entire contracts) in the first language of the customer where reasonably possible.<sup>15</sup>

### **2.1.2. Provision that sets out specific issues that must be addressed in a contract to ensure clarity and completeness**

21. Greater transparency and clarity is needed regarding the components of the contract for wireless services. Consumer frustration with the lack of clarity of the content of the contract arises most often, amongst other situations, when: (1) consumers are surprised by additional fees for services not included in their wireless service plan and believe that the charges were "hidden" or "buried"; (2) the calculation of cancellation fees/penalties is not clearly explained (contract cancellation issues are addressed in section 2.3 below); and (3) the standard-form contract imposes terms that are unfair to the consumer, such as terms that allow the WSP to unilaterally modify the price or a term or condition of the contract to the advantage of the WSP.

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<sup>12</sup> CCTS 2011-2012 Annual Report at p. 14. The CCTS reported that 410 of 2162 wireless complaints concerned non-disclosure of terms or misleading information about terms. Another 149 complaints concerned no consent provided for wireless services.

<sup>13</sup> This is supported by a number of interventions such as public Intervention #179, 269, 919, 868, 816, 547, 480, 690, 357, 553, 87, 446, 462, 835, 786, 358, 497, 49, 298 and 699

<sup>14</sup> CCTS 2011-2012 Annual Report stated: "We also continue to urge customers to take the time to read through the terms of the contract prior to agreeing to them. Service providers could make this task easier for customers by stating their terms in clear, concise and simple language." at p. 14.

<sup>15</sup> We note that in the CCTS Annual Report at p. 38, under "Out-of-Mandate" complaints, under Customer Service, Section 4.1, that 23 complaints concerned "Language barriers". While it is impossible to know the nature of these complaints, it is reasonable to assume some involved lack of materials in a primary language of a customer. The Australian TIO has identified a strong need for its services in several languages. See, for example, their online brochure:

[http://www.tio.com.au/\\_data/assets/pdf\\_file/0007/32398/18\\_November\\_Multicultural\\_Brochure.pdf](http://www.tio.com.au/_data/assets/pdf_file/0007/32398/18_November_Multicultural_Brochure.pdf).

22. While some WSPs appear to have attempted to improve the way in which they explain "included" wireless services and cancellation penalties for fixed-term contracts (in both advertising and contracts), not all WSPs have adopted consumer-friendly practices. PIAC submits that the contract should clearly set out each party's obligations. In particular, all charges should be clearly set out and itemized. All of the consumer's obligations should also be clearly set out in the contract. The Commission should also consider establishing a standardized way in which parties' rights and obligations are set out so that consumers are able to easily understand and compare WSPs' respective terms and conditions before signing a contract.

23. Furthermore, two distinct components should be separated and must be made clear to the consumer: (1) the terms and conditions of the contract for the sale or lease<sup>16</sup> of the handset or device to the consumer; and (2) the terms and conditions of the contract for the provision of wireless service to the consumer.

**2.1.2.1. Sale or lease of the handset or device**

24. If a handset or other device which is used to access wireless services<sup>17</sup> is provided to the customer, the terms and conditions of the sale or lease of the handset or device should be clearly described in the contract. The value of the handset or device should be clearly stated, along with the price (or value) of the handset or device and terms for which the customer has agreed to pay for or to lease the handset, such as the duration of the fixed-term contract and monthly cost for the handset. For example, if a smartphone is valued at \$360 and the customer agrees to pay the cost of the device over a 36-month period, it should be made clear that the customer agrees to pay \$10 per month over that period as a payment schedule for the full device cost. This is the approach taken in provincial legislation, which treats the device cost as an amortized debt, much like a mortgage.

25. Currently, WSPs promote monthly plans for the provision of wireless service to the consumer and the cost of the handset is "subsidized" through this monthly plan over the duration of the fixed-term contract. While some WSPs are working to better explain the "subsidization" practices to their customers and how these subsidization costs relate to cancellation fees, WSP practices still vary considerably. Varying practices are very confusing for consumers to navigate in the marketplace, frustrating their efforts to compare the cost of service, especially when the handset or device subsidy is not transparent. A Wireless Code provision requiring handset or device costs and payment plans as part of the consumer contract to be transparent and separately stated from the

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<sup>16</sup> In PIAC's view, there is much confusion, legally, over whether handsets or devices are "leased" or "sold" to consumers and that service providers unfairly leverage this confusion to justify policies such as a refusal to unlock handsets. We do not, at this stage, propose to attempt to answer this legal question, however, we reserve the right to address it more fully in our reply comments and at the oral hearing.

<sup>17</sup> Such as a tablet, wireless "USB connection stick", wireless "hub" or other wireless device which can be used with a cellular service.

cost of wireless service will have three key benefits in the marketplace: (1) better informed consumers who understand the costs associated with their contract for their handset and wireless service and how cancellation fees are tied to the cost of the device; (2) the promotion of competition amongst WSPs for the sale of handset devices; and (3) an increased ability by consumers to participate effectively in the competitive market by comparing prices for wireless handsets and wireless services.

26. PIAC/CAC/COSCO note that several provinces that have drafted or adopted legislation dealing with customer protection for wireless services require "a description of any cell phone provided by the supplier to the customer for free or by sale to the customer - whether or not at a reduced cost - along with a statement as to whether the cell phone is new or reconditioned, and whether the cell phone is locked."<sup>18</sup>
27. The contract should also clearly state any applicable warranties for the handset, as well as the WSPs' unlocking policies and fees, and the effect of unlocking the phone on warranties. (See section 2.8 for further discussion of hardware warranties and related issues.)

**2.1.2.2. The provision of wireless service**

28. The contract should prominently display summary information describing the wireless service provided under the contract (such as the voice minutes, SMS, and data included in the service and any optional services that have been added by the customer - and not including any device "subsidy" or lease or sale costs of handsets or devices) and any exclusions or important conditions, limitations, restrictions or qualification for these services (such as time restrictions or usage caps). Pricing information should also be prominently displayed in a way that clearly shows the minimum monthly charge payable for the wireless services provided under the contract with an itemized breakdown for the service. The minimum monthly charge should be stated. When a contract provides temporarily reduced or waived rates, the actual rate paid and the duration of the reduction or waiver should be clearly set out. In all cases, the actual rates (other than rates that vary with usage) that will appear on the customer's monthly invoice should be specified.
29. Where usage caps apply to services provided under the contract, the rate(s) for exceeding the caps should be clearly stated (on a per minute basis for voice, per SMS basis for SMS, and per MB basis for data). Customers should, at any time, have the ability to identify their usage for any usage-based service provided under contract.

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<sup>18</sup> See *Consumer Protection Act*, CCSM c C200 ("Manitoba Consumer Protection Act"), s 185(1)(n); *An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act, to Ensure Fairness in Cellular Telephone Contracts*, c 19 of the Acts of 2012 (Nova Scotia Cell Phones Act), s 25P(1)(m), *New Brunswick, Bill 35, Cellular Phone Contracts Act* ("New Brunswick Bill 35"), s 6(1)(l); *Ontario, Bill 82, An Act to strengthen consumer protection with respect to consumer agreements relating to wireless services accessed from a cellular phone, smart phone or any other mobile device*, 1st Session, 40th Legislature, 61 Elizabeth II, 2012 ("Ontario Bill 82"), ss 11-12.

30. For consumer clarity and the avoidance of doubt, a summary of critical information should be either provided to the consumer as a separate document to the full contract or prominently displayed above the full terms and conditions of the contract.<sup>19</sup>
31. This critical information summary should include:
1. the value of the handset (or other device) along with the price of the handset and the monthly handset payment and duration of the handset payment;
  2. whether the handset is unlocked or not;
  3. the **core wireless services** to be provided under the contract and the maximum monthly cost to the customer for all included services, and any limitations or qualifications for these core services;<sup>20</sup>
  4. where usage caps apply, the rate for exceeding these caps;<sup>21</sup> and
  5. when cancellation fees apply and how these fees are calculated.
32. Legislation that has been drafted, and in some cases adopted, by provinces who have attempted to provide better consumer protection for wireless services set out issues that must be clearly and prominently displayed in the contract. For example, Manitoba, Nova Scotia and New Brunswick, Ontario state that the "minimum monthly cost," defined as the amount the customer is liable to pay monthly under the contract, including all fees, charges, penalties, interest and other amounts or considerations not including government taxes regardless of the customer's usage of cell phone services under the contract, must be clearly stated.<sup>22</sup> Manitoba, Nova Scotia and New Brunswick stipulate that the minimum monthly cost should not reflect any temporarily reduced or waived rates or cost, such as for an initial period. The contract must also stipulate "additional use charges", which are any costs not included in the minimum monthly cost and "optional services", defined as services available under the contract that the customer

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<sup>19</sup> The Australian Telecommunications Consumer Protections Code C628:2012 requires suppliers to provide a summary of each of its offers to allow consumers to compare offers provided by each supplier which best suits their needs. The full requirements of the Summary of Offer are iterated in Rule 4.1.2 of the Telecommunications Consumer Protections Code. The summary must be comprehensible, drafted in plain language, use clear headings, no longer than two A4 pages and available as a standalone document.

<sup>20</sup> **Core services** are fundamental terms that have been agreed on between the consumer and the WSP, such as the number of local or national voice minutes and/or time of day or week restrictions, access to long distance and any included long distance minutes, the number of SMS or MMS (domestic and/or international included), access to data and applicable usage caps, any additional services to which the customer subscribes such as voicemail or call display. The **maximum monthly cost** for all included services is the cost calculated on the assumption that the customer has used all included services to the maximum limits, without exceeding the limit.

<sup>21</sup> As discussed below in section 2.2.2, these additional use rates are not included in the definition of "core terms and services".

<sup>22</sup> Manitoba Consumer Protection Act, s. 184(1); Nova Scotia Cell Phones Act, s. 25O(1)(c); New Brunswick Bill 35, s. 5(1); Ontario Bill 82, s. 2.

may opt to use but are not included in the calculation of the minimum monthly cost. The draft legislation in Nova Scotia further requires detailed description of what services are included in the "base services" (the services provided within the minimum monthly cost). The Canadian Wireless Telecommunications Association has stated that requiring the enumeration of all of these elements in the wireless service contract would require 28 pages.<sup>23</sup>

33. PIAC/CAC/COSCO submit that "additional use charges" and "optional services" should always be listed as terms and conditions of the contract. PIAC/CAC/COSCO submit it may be reasonable to not specifically require prominent display of "additional use charges" and "optional services" in the summary information accompanying or preceding the full contract if reliable and prominent notification mechanisms are consistently implemented to advise consumers when they are about to incur additional fees beyond their monthly service cost. PIAC/CAC/COSCO will further expand upon this in section 2.6 below.

#### **2.1.2.3. Prepaid Clarity**

34. Prepaid wireless services also experience severe disclosure shortfalls. Many providers of prepaid wireless services advertise "no contract" and other confusing descriptions of the relationship with customers.
35. As a first step, the Code should prohibit the practice of advertising or promoting a wireless service, whether prepaid or post-paid, as not involving a contract. There is a contract; however, the term may not be an extended term and payment may be required in advance (for prepaid). Nonetheless, for that payment and that term, the customer is entitled to service which the carrier must provide. There is therefore a contract in law. PIAC submits that describing such a relationship as "no contract" discourages consumers from seeking a remedy when they have not received their contracted service.

#### **2.1.2.4. Expiry of Prepaid Minutes**

36. One such irritant and lack of contracted service in prepaid service is, according to many intervenors,<sup>24</sup> the "expiry" of prepaid "minutes". These are cards which consumers buy and that typically promise \$10 to \$100 of prepaid service but such "minutes" of service must be used by the buyer within a preset time period from "activation" of the card. Even if a large balance is left at the end of the prepaid "expiry" period, these funds will be debited from the customer's account by the carrier even if the customer has not used the network services. Although such cards (a number of which are reproduced in Appendix D) refer to "expiry" of "funds" after a certain date (often "once funds are deposited into your account" -- the finer details of what time of day the funds expire, or

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<sup>23</sup> CWTA letter to Service Nova Scotia and Municipal Relations dated April 23, 2012, online: [http://cwta.ca/wordpress/wp-content/uploads/2011/09/CWTA-letter-to-Service-NS\\_April-23-20121.pdf](http://cwta.ca/wordpress/wp-content/uploads/2011/09/CWTA-letter-to-Service-NS_April-23-20121.pdf).

<sup>24</sup> See for example, interventions #269, 788, 177, 295, 669, 731, 778, 156, 763, 330, 141, 95, 999, 526, 133, 165, 276, and 670.

even what day funds are deposited or can be expect to be deposited is not listed). This lamentable lack of transparency means even the most conscientious prepaid customer constantly risks full confiscation of the "funds" remaining in an account. This is especially unfair to low-income customers or those that use prepaid as a method of managing household communications costs.

#### **2.1.2.5. Unfair terms**

37. PIAC submits that for greater certainty, the Wireless Code should prohibit the use of unfair terms in WSP consumer contracts. Stated differently, consumers expect the terms of a contract for wireless services to be reasonable and fair for both parties.<sup>25</sup> This means that the terms of the contract should not result in an advantage to the WSP (at the detriment of the customer) unless there is a legitimate reason to protect the interests of the advantaged party. Standard-form contracts, such as the ones used by WSPs, often reflect the significant imbalance of bargaining power between the service provider and the individual consumer as the consumer is not able to negotiate the terms and conditions of the contract.<sup>26</sup>
38. The content of provisions in the Wireless Code addressing changes to contract terms and conditions and contract cancellation, expiration and renewal will be addressed below in sections 2.2 and 2.3. Other examples of unfair terms include terms that allow the WSP to: avoid or limit the performance of the contract; vary the agreed-upon price without the right of the other party to terminate the contract; vary the characteristics of the service provided; unilaterally determine whether the contract has been breached; limit the consumer's right to redress, such as through the courts.

#### **2.1.3. Provision that sets out how and when service providers must provide contracts or service agreements to customers**

39. We note that all provinces who have drafted, and in some cases enacted, legislation to address wireless service contracts stipulate how and when service providers must provide contracts or service agreements to customers. However, there is no uniformity in the provincial legislation surrounding how and when contracts must be provided to consumers. For example, Manitoba, Nova Scotia and New Brunswick state that a contract must be provided in writing. Ontario requires a copy of the contract to be delivered to the consumer. Newfoundland and Quebec require the contract to be provided in paper form. Manitoba, Nova Scotia, and New Brunswick further state that the contract should be provided at no additional cost to the consumer.

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<sup>25</sup> See for example, interventions 527, 724, 617, 380, 140, 280, 463, 127, 342, 447.

<sup>26</sup> See for example, United Kingdom, Office of Fair Trading, "Unfair contract terms guidance" (OFT311) regarding the Unfair Terms in Consumer Contracts Regulations 1999, online: [http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft311.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft311.pdf). See also Australia, Schedule 2 of *Competition and Consumer Act 2010*, Act No. 51 of 1974 at ss 23-25.

40. Manitoba, Nova Scotia, and New Brunswick require that the consumer be given all copies of documents that constitute the contract before a contract is made and that the consumer be given reasonable time to review the documents and ask questions before requesting the customer to sign the contract.
41. Newfoundland and Labrador requires that the customer receive a copy "upon execution by both the supplier and the consumer" while Ontario requires the supplier to deliver a copy of the agreement to the consumer "as soon as practicable after entering into the agreement or by the prescribed time, if a time is prescribed". Manitoba also requires that the WSP make available copies of all documents that comprise the contract at no additional cost to the consumer within 15 days after the contract not made in person is entered into.
42. PIAC/CAC/COSCO submit that contracts and service agreements must be provided in writing to the consumer at no cost.<sup>27</sup> For greater clarity, PIAC/CAC/COSCO advocate for contracts to be provided in paper format to consumers as a safe contracting process. This formality is more than a formality, as it ensures that the consumer has a physical copy of their rights and the service providers' obligations under contract. Intervenors to this consultation have stated that despite repeated efforts to obtain an authoritative version of the contract that they thought that they had entered into, the service provider was unable to produce such a version, or presented several varying versions.<sup>28</sup> In such a case, one paper copy is substantial evidence of the terms agreed upon.
43. Nothing in the paper requirement would prevent a service provider from also forwarding to the consumer an electronic copy of the contract or in creating a web portal or other account tool for the consumer. Nor would it or should it reduce the right of a consumer seeking a format that was more accessible to the consumer (discussed more above) after the fact.
44. Consumers should be presented with the terms and conditions of the offered contract (or at the least a "critical information summary")<sup>29</sup> and be allowed a reasonable period of

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<sup>27</sup> Prohibition of charging for the copy of the contract is required to ensure all customers receive evidence of their contract and are not tempted to save a small charge for a printed copy. Likewise, service providers should be prohibited from offering an electronic equivalent and discounting for the electronic format customers, as some customers may take the electronic option without having real access to the electronic version, if only to save a small fee. A free printed copy should be provided in all cases.

<sup>28</sup> See for example intervention #553.

<sup>29</sup> See Australian *Telecommunications Consumer Protections Code*, s. 4.1.2(a):

(a) Content: ensure the summary of the Offer is called a "Critical Information Summary" and includes the following information in the following order:

(i) includes a sub-heading 'Information About the Service', under which the following information is included:

A. a description of the Telecommunications Service to be provided under the Offer;

time to peruse the offer (during which the offer must be left open) before signing the agreement so that they have the opportunity to review and clarify their rights and the service providers' obligations before accepting the contract. Consumers should also be presented with the finalized copy of the terms and conditions of the contract after the contract is agreed upon.

45. Where an agreement is reached over the phone, WSPs must ensure that the terms are clearly explained and retain evidence of the customer's explicit oral acceptance of a contract. A written confirmation to the customer detailing the terms and conditions of the

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- B. whether the Offer depends on a bundling arrangement with other Telecommunications Services and, if so, a description of those other Services;"
  - C. whether there is any Telecommunications Good that the Customer must take as a mandatory component of the Offer, (so the Consumer has no choice as to that Telecommunications Good), what the mandatory Telecommunications Good is and if the Charge for the mandatory Telecommunications Good is not already built into the Offer pricing disclosed in the summary of Offer, then the separate Charge for this mandatory Telecommunications Good;
  - D. the minimum term applicable in respect of the Product set out in the Offer;
  - E. the inclusions, exclusions and any important conditions, limitations, restrictions or qualifications for that Offer, where applicable; and

(ii) includes a sub-heading 'Information About Pricing', under which the following information is included, where relevant:

- A. the minimum monthly Charge payable under the Offer (where calculable);
- B. the maximum monthly charge payable where calculable;
- C. the maximum Charge payable for early termination of the Offer;
- D. where the Offer is not unlimited, the cost (prior to any discounts being applied) of making a 2 minute Standard National Mobile Call (including flagfall where applicable);
- E. where the Offer is not unlimited, the cost (prior to any discounts being applied) of sending a Standard National Mobile SMS;
- F. where the Offer is not unlimited, the cost (prior to any discounts being applied) of using one megabyte of data within Australia;
- G. for an Included Value Plan, an estimate of the maximum number of Standard National Mobile Calls (each of two minutes in duration and including the flag-fall charge if applicable) that a Consumer may make within the Included Value Plan based on the cost described at clause 4.1.2(a)(ii)D and assuming the Customer does not use the included value for anything else using the wording "If you restricted your use solely to Standard National Mobile Calls each of minute in duration, you could make x number of calls"; and

(iii) includes a sub-heading 'Other Information', under which the following information is included where relevant:

- A. a link to the area on the Supplier's website where the customer can obtain call and data usage information or instructions on where the customer can obtain call and data usage information;
- B. warnings about roaming costs (both international costs and the circumstances in which additional Charges may be imposed in Australia when the service roams onto a different network);
- C. customer service contact details;
- D. information about how to access internal dispute resolution processes; and
- E. contact details for the Telecommunications Industry Ombudsman.

contract should be sent to the customer as soon as possible, and should offer the customer the ability to revoke consent within a reasonable period (at least one month or billing cycle, whichever is longer) if they believe the terms did not match what they agreed to over the phone.

## 2.2. Changes to contract terms and conditions

46. In TNC 2012-557, the Commission sought comments on the content of a provision that addresses the conditions under which a service provider may amend contract terms for mobile wireless services.

47. In PIAC's comments to TNC 2012-206, we raised consumer concerns with unilateral contract changes of major terms or service features with minimal or no notice to consumers, and unilateral price changes to services while under contract. The Manitoba Consultation Paper noted that some wireless contracts allow suppliers to increase costs to customers without notice, such as charging for services such as texting which were free or included in the original contract.<sup>30</sup> CCTS' 2011-2012 Annual Report noted that some customers alleged that their service provider changed a material component of their contract during their contract term and that they should therefore not be required to be bound by the contract.<sup>31</sup> In response to TNC 2012-557, some consumers felt that WSPs should not be allowed to amend the contract.<sup>32</sup> Other consumers felt that if a WSP wished to change the contract, the WSP should provide sufficient notice to the customer and the customer should have the right to exit the contract.<sup>33</sup>

### 2.2.1. Where changes benefit the consumer

48. In some cases, the WSP may amend the terms and conditions of the contract in a manner that benefits the customer by increasing their own obligations to the customer or by reducing the customer's obligations. For example, the WSP may include more wireless services in the customer's monthly plan, increase the cap of certain services (e.g. voice, SMS, data), or reduce the cost of the included services in the customer's monthly plan. Notification should be provided to the customer for all changes. In these cases, because the changes benefit the customer, the WSP does not need to offer the customer the right to exit the contract.

### 2.2.2. Where changes disadvantage the consumer

49. In our view, there are two types of changes that could disadvantage the customer: changes to "**core terms and services**"; and changes to "**non-core terms and services**". **Core terms and services** are fundamental terms that have been agreed on between the consumer and the WSP, such as the length of the contract, included

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<sup>30</sup> See Manitoba Consumer Protection Office, *Improving Consumer Protection in Cell Phone / Wireless Device Contracts Public Consultation Paper*, December 2010.

<sup>31</sup> CCTS 2011-2012 Annual Report at p. 14.

<sup>32</sup> See for example, interventions #683, 571, 716, 489, 804, 104, 137, 935, 104.

<sup>33</sup> See for example, interventions #720, 724, 774, 159, 140, 630, 262, 253, 566, 935, 489, and 451.

services and their limits,<sup>34</sup> and the maximum monthly cost to the customer for all included services.<sup>35</sup> **Non-core terms and services** are other terms that are not core, which could include rates charged for exceeding the limits of services included in the core service, or additional services to which the customer has not subscribed to (and thus are not included in their "core"), or terms relating to the privacy policy.

#### ***2.2.2.1. Changes to "core terms and services"***

50. In our view, contractual terms are unfair if they allow the WSP to unilaterally change a core term or service of the contract. Examples of changes to a core term or service include: a change to the term (duration) of the contract; a price change of the core services or its components (such as a data add-on, voicemail or call display); or a variation of the core service characteristics or limitations in a way that disadvantages the customer (such as lowering the caps on certain services or discontinuing services that were "unlimited").
51. The Wireless Code should prohibit terms that allow the WSP to unilaterally change core terms and services provided under the contract. If a WSP unilaterally amends a core term or service of the contract, the amendment would be void and of no effect. PIAC submits that the **core terms and services** should be intentionally narrowly defined, so as to reflect the customer's expectations of what must be absolutely guaranteed under the contract. This should not unduly burden WSPs, who should have planned investments to maintain the guaranteed core services at the promised costs for the duration of the customer's contract.

#### ***2.2.2.2. Changes to "non-core terms and services"***

52. The principles of certainty, transparency and liberty should be respected by provisions that address the conditions under which a WSP can change the contractual terms for wireless services. Preserving consumer liberty means ensuring the customer can choose to exit a contract without unnecessary barriers when the WSP seeks to change a non-core term of the contract in a way that advantages the WSP to the detriment of the consumer.<sup>36</sup> Examples of changes to non-core terms and services could include an

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<sup>34</sup> The included services and their limits would consist of, for example, the number of local or national voice minutes and/or time of day or week restrictions, access to long distance and any included long distance minutes, the number of SMS or MMS (domestic and/or international), access to data and applicable usage caps, and any additional services to which the customer subscribes such as voicemail or call display.

<sup>35</sup> This is the cost calculated on the assumption that the customer has used all included services to the maximum limits, without exceeding the limit.

<sup>36</sup> PIAC/CAC/COSCO insists on the right of the consumer to exit the contract under these circumstances without penalty beyond payment of what is owed to that date because there is no other effective or realistic consumer remedy. Consumers cannot expect an assessment of "damages" for, for example, a unilateral price change, or the revision of a service to no longer make it an affordable remedy. In effect, the customer is seeking rescission of the agreement and is not relying on any theory of fundamental breach. Many consumer protection statutes offer consumers a right of rescission where service providers

increase to the rates charged for exceeding a limit of an included core service,<sup>37</sup> or increasing the rates of services to which the consumer has not subscribed to as part of their core services (for example, if the customer has not subscribed to voicemail or call display).

**2.2.2.3. Notification of changes to "non-core terms and services" of the contract**

53. When the WSP seeks to change a term or condition of the contract that is not a core term or service, the WSP must provide notice to the customer prior to the change coming into force. Provincial legislation drafted to provide better consumer protection to consumers of wireless services generally require written notice 30 days prior to the effective date of the amendment.<sup>38</sup>
54. PIAC submits that a requirement for minimum 30 day notice of a proposed amendment to non-core terms and services is reasonable. This is especially important where the change disadvantages the customer even if the change is not a core service element.
55. Furthermore, notice should be provided in writing to the customer, clearly setting out all new terms or conditions, the amended term or condition as it reads at present, and how it will be read as amended. The notice should also state the date when the amendment will be in force and that no action by the customer will be taken as consent to the amendment after a specified, reasonable period. If the customer has the right to exit the contract if they do not agree with the amendment, this must also be clearly stated along with explanations of how the customer can cancel the contract.

**2.2.2.4. Consumer consent to proposed changes to non-core terms and services**

56. Where the WSP notifies consumers of a change to a non-core term and service and the consumer does not agree with the change, the consumer must have the right to cancel the contract without a termination fee or other penalty. For handsets or devices that are sold on credit or leased to the customer, the customer should have the option to retain the equipment and pay the amount established for payment at that point in the contract by the Wireless Code or to return the equipment with no charge, as elected by the customer.
57. A change to the non-core terms and services of the contract that disadvantages the customer must be accompanied by a consumer right to cancel the contract within a reasonable period. Some provinces allow the cancellation right to be valid for 30 days after the effective date of the amendment, while other provinces appear to allow the

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breach major contractual requirements; it is recognized that this is the only practical remedy open to the consumer.

<sup>37</sup> Manitoba's legislation includes such additional "overage" fees as a "material term" which cannot be unilaterally changed by the service provider (see Manitoba Consumer Protection Act, s. 185(1)(i)). PIAC/CAC/COSCO recognize this distinction. However, our model seeks to encourage the customer to define the core services that best match their needs in their contract as these will be unalterable.

<sup>38</sup> For example, *Consumer Protection Act*, RSQ, c P-40.1 ["Quebec Consumer Protection Act"], s 11.2(b).

cancellation right to be valid indeterminately where a material change is sought, and the cancellation right to be valid only for 30 days where a non-material change is sought.<sup>39</sup>

58. In PIAC/CAC/COSCO's view, a "reasonable period" would constitute a period in which the consumer has the opportunity to notice the full impact of the contract change and from that point decide whether or not to exercise their right to cancel the contract. This means that a while precise stipulation of a number of days may not be appropriate, the period provided to the customer should include a complete billing cycle. For example, a consumer may need to see the changes reflected in the next billing cycle to fully appreciate the impact of the change to their contract, such as where reductions have been made to included wireless services. Not all consumers regularly check their itemized bill, so a "reasonable period" may need to extend beyond a single billing cycle.

### **2.2.3. Changes to the contract initiated by the customer**

59. Consumers should be able to seek changes to their wireless service plan during their contract period.<sup>40</sup> A customer's needs may change during their contract period. Generally, WSPs must allow customers to change their contract if they are adding services to their monthly service plan (e.g. upgrading to a more expensive rate plan or adding a service such as call display or voicemail). Once these services are added, they then make up the **core services** of the contract. A customer may also seek to change the terms of the monthly service plan with their WSP based on offers by their WSP to new subscribers or competitive offers in the market made by competitors. Consistent with the Commission's mandate to promote reliance on market forces, this should not trigger a mid-stream renewal of the customer's contract (as discussed below in section 2.3).

60. Where a customer seeks to downgrade or remove core services included in their monthly plan, WSPs may charge fees presumably to cover their planning investment. Such fees should be reasonable and should not be used to "penalize" the customer for seeking a monthly service plan that better suits their needs. Furthermore, where a customer seeks to downgrade or remove core services included in their contract because the quality of service is substandard or they are moving to an area of the country where they cannot effectively use the service (e.g. where the customer has moved to a rural area or the North (including much of Canada's three territories) and the data component of their monthly plan is effectively unusable), the customer should be able to amend the core services and terms of their contract for a monthly service plan that better fits their needs without being penalized.

### **2.2.4. Copy of changes to contract**

61. Where a change to the contract is agreed upon by both the WSP and the consumer, written confirmation of the changes to the contract should be provided to the customer

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<sup>40</sup> See for example, interventions #161 and 463.

immediately. As with the provision of the initial contract, any new agreement should be provided at the time of the change in paper format and provided to the customer without unreasonable delay in another format more convenient to the customer. Where the change is agreed to over the phone, the WSP must ensure that changes to terms and conditions are clearly explained, along with any implications of changing the terms. The WSP must retain evidence of the customer's explicit oral acceptance of these changes and send a written confirmation of the changes are provided to the customer as soon as possible, and should offer the customer the ability to revoke consent within a reasonable time if they believe the terms did not match what was agreed to over the phone.

### **2.3. Contract cancellations, expiration and renewal**

62. In TNC 2012-557, the Commission sought comments on the content of a provision that addresses the conditions under which consumers may terminate their mobile wireless contracts early, including how cancellation fees may be applied.
63. The Commission also sought comments regarding a provision that addresses the conditions under which contracts may expire or be renewed automatically.
64. WSPs' termination policies and fees are a significant concern to Canadian consumers. In response to the Commission's online consultation in the proceeding initiated by TNC 2012-557, a large number of respondents described WSPs' contract termination policies and fees as frustrating, unfair and anti-competitive. Many consumers took issue, more particularly, with some WSPs' policy of imposing 30 days advance notice requirements when a consumer wants to cancel a contract, even at the end of the term of the contract or in instances in which the customer is subject only to a 30 day commitment to the service provider.<sup>41</sup> Many consumers took issue with the manner in which their WSP calculates termination fees and, in particular, with the level of termination fees faced by consumers as the period remaining in the term of a contract diminishes with the passage of time.
65. At the outset of this discussion, it is important to note that even a basic concept such as what appropriately constitutes "early" termination of a contract (and would therefore warrant the imposition by the WSP of a penalty) has been a source of controversy. This was recently exemplified by the response of some incumbent WSPs to our application filed pursuant to Part 1 of the *CRTC Rules of Procedure* before the Commission in December 2011 ("our Application").<sup>42</sup>

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<sup>41</sup> See Interventions #302, 678, 251, 935,262,461,14, 574 and 754.

<sup>42</sup> In their replies to our December 2011 complaint (or shortly after filing their reply) two of the incumbent Wireless Service Providers invited the Commission to initiate a process to develop "national standards" regarding a range of "transparency issues". In April 2012, the Commission suspended our application as it initiated a proceeding into the development of a wireless code. When it launched Telecom Notice of Consultation CRTC 2012-206 the Commission suspended consideration of our Application. In TNC 2012-556 the Commission noted that the issues raised in our Application "are covered by Telecom Notice of

### **2.3.1. What “early” termination means**

66. “Early” termination refers to the termination by a consumer of a contract which features an extended term prior to the end of that term. When a consumer enters into such a contract with a WSP, it is with the understanding that in exchange for making a long-term commitment, the WSP offers the customer a lower rate than would be the case if the consumer made no long term commitment. Rates offered by a WSP under such contracts may cover wireless usage and/or all or part of the cost of a handset or other device.
67. When a customer in an extended contract seeks to leave the contract “early”, the WSP typically specifies a “termination fee” (which is presumably a form of liquidated damages for administrative and provisioning costs). It is worth noting that since most WSPs have thousands of customers on long-term contracts, that it is quite likely the WSP has systems in place that make allow the WSP to efficiently process the termination, so that the actual measure of “damages” should be quite low. That is why, throughout our comments, we suggest the Commission limit the measure of termination fees to a low, reasonable amount that is affordable to most consumers.
68. Under current WSP practice, an extended term contract may feature a term from several months to several years in length. WSPs today who offer extended term contracts in the Canadian retail consumer marketplace typically do so for periods of 12, 24 or 36 months. Early termination should therefore appropriately refer to termination prior to the end of such extended term.

### **2.3.2. Imposition of advance notice requirements when a customer terminates service at the end of a contract or when the customer has not entered into a long term service commitment should be prohibited**

69. As the CCTS has reported in successive annual reports, some WSPs –primarily incumbent service providers – follow a practice whereby they have been imposing on their customers a requirement that the customer provide them one month’s advance notification whenever the customer terminates a wireless telephony service with such WSP. This requirement is imposed in addition to any early termination fee the WSP imposes when a customer terminates a contract prior to the expiry of its term.
70. This requirement is imposed by incumbent WSPs even when the customer wishes to terminate service with a WSP at the end of the term of a contract.

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Consultation 2012-557”. However, the Commission “closed” the file on our Application. We consider that the concerns underlying our Application remain fully relevant. We have attached a copy of our Application and our reply comments in Appendix A. We refer to our Application on a number of occasions in this submission as it describes a significant obstacle faced by consumers who wish to migrate their wireless service to another service provider at the end of, or after the end of, the term of a long term contract. We contend that such long term contracts are used extensively by incumbent WSPs, in part as a means of minimizing customer migrations.

71. In its 2009-2010, 2010-2011 and 2011-2012 Annual Reports, the CCTS deplored the industry's seeming inability to eliminate the problem.
72. We would have expected that the CCTS's expression of concern in 3 successive annual reports would have been more than sufficient to convince the WSPs in question to end this practice but this has not been the case. These WSPs simply ignored the CCTS's concerns.
73. In their responses to our Application, carriers such Bell Mobility, Rogers and MTS Allstream have vigorously defended their policy.
74. The problem faced by consumers continues to be substantial and appears to be growing.<sup>43</sup>
75. There are no technical considerations to warrant 30 days advance notice of termination. WSP systems clearly have the ability to process changes to a customer's account virtually instantly. Porting delays are considerably shorter than 30 days and a WSP's systems should be aware that the customer has left the WSP from the time the porting process occurs. Indeed, it is our understanding that WSPs do not impose a 30 day advance notice requirement when a customer wishes to *add* a service or feature which results in additional revenue for the WSP.<sup>44</sup> They impose this requirement only when the customer wishes to leave.
76. Avoiding the penalty is virtually impossible for most (if not all) consumers.<sup>45</sup>

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<sup>43</sup> In its latest, 2011-2012, annual report (at page 17), the CCTS notes that: "In 2011-2012, 9.3% of all issues raised by customers were about the requirement to provide thirty days' notice to cancel service. In addition, porting issues formed a large part of the 3.8% of issues related to customer-initiated cancellations."

<sup>44</sup> One participant in the Commission's on-line consultation expressed the concern as follows:

*Billing should be by the day and not by the month. If my account's been active for 1 month and 1 day, then I shall be charged 1 month a 1 day and not 2 months. 30 day notice is ridiculous. If I'm not required to give 30-day notification to join a service, then neither should cancelling it.*

(comment from "peugeot206" submitted on 13 November 2012 at 22:25).

<sup>45</sup> One customer described his/her experience as follows:

*No more extra 30 days!*

*This has been mentioned by others, but it needs to be mentioned again because it is a total scam cash grab, and all the major carriers are doing it!*

*I recently finished a 3 year contract with Rogers and decided to switch carriers. I had completed my full 3 year term, no early cancellation. Follow me, if you will, as I describe*

77. The practice of forcing customers to provide 30 days advance notice of their intention to leave also means that the incumbent WSPs in question effectively impose on each of their long- (as well as short-)<sup>46</sup> term contract customers a contract term that is one month longer than the term associated with the rate as advertised by the WSP. A customer's 1, 12, 24 and 36 month rates are in reality rates for a commitment of 2, 13, 25 or 37 months. This is inconsistent with the principle we are advocating the Commission adopt in this proceeding that WSP contracts should be transparent to consumers. This is also an undue preference the WSPs in question are conferring upon themselves at the expense of their customers.
78. When we conducted research in preparation for the filing of our Application, we found that the 30 day notice requirement was typically not specified in service providers'

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*this crazy adventure: I was aware that I would have to pay an extra 30 days to Rogers, but I figured, no problem, I will just cancel my contract with Rogers, naively believing my phone would still work for those 30 days because I am clearly paying someone for something, and then when I near the end of the 30 days, go to the new carrier, port my number and start paying them. Voila! Simple right? Makes perfect sense, everyone gets their money, but I don't have to pay two carriers for the same month. Right? Right??!!*

*WRONG!!! The piece of "logic" (if I dare call it that) I was missing was that as soon as you cancel the plan with the first carrier, your cell number is gone and your service is gone, even though you are still paying them for another 30 days! It took me three different customer service reps from three of the major carriers for one to finally explain that clearly and without some kind of a bogus technical mumbo-jumbo statement. Thus, since your cell number is gone, aside from the rude fact that you have no cell service for 30 days, when you go to the new carrier your number no longer exists for them to port over to your new account, and you are then stuck with having to get a new number; something no one wants to do if you have had the same cell number for an extended period of time. And yes I checked, all the major carriers (Rogers, Telus, Bell) implement the same system, you can't escape. So the only options you have are to avoid paying two providers for the same month but lose your cell number, or suck it up and pay the extra just to keep your cell number with the new provider.*

*This is just plain wrong and a fabricated system to punish the client for switching carriers and extract a final bit of cash from them for a month while providing no service. There is no technical reason the system couldn't work as I originally expected, keeping your number in the system until ported. Even if the carrier decides to charge me the extra month for some bogus administrative whatever, my service and number should still exist for that month so I can move it to the new carrier when the time comes, but avoid the double payment. Better than that, the code should just prevent this kind of blatant cash grab.*

(submitted by "Lysrin" on 14 November 2012 at 08:38).

<sup>46</sup> The imposition of an early termination penalty in instances in which a customer has made no long term commitment to the service provider makes even less sense. Customers subject to month-to-month contracts do so presumably in order to ensure that they enjoy maximum flexibility. They typically pay the service provider's highest retail rates and enjoy no protection against rate increases or other charges to contract terms the WSP may introduce as time goes on.

advertising in a manner in which consumers would be warned about its existence at the outset but, instead, is typically buried in the fine print of detailed contractual conditions which generally require the customer to do research on the service provider's website. We submit that it is misleading for a WSP to advertise rates for 1, 12, 24 or 36 months when the WSP, in reality, imposes a penalty on customers who expect to be able to migrate their service without penalty at the end of these contract term and forces these customers either to remain with the service provider for a longer term or to give up number porting. Conveying misleading information in this manner is also unjustly discriminatory to the detriment of consumers.

79. The imposition of the 30 day advance notice requirement also significantly undermines the relevance of the number porting process approved by the Commission and renders virtually meaningless the porting intervals mandated by the Commission. The imposition by the incumbent WSPs of their notice requirement appears to be an attempt to simply re-define the porting implementation standard interval approved by the Commission from 2.5 hours<sup>47</sup> to 30 days.
80. Several participants in the Commission's consultation processes in this proceeding have underscored how the advance notice requirement restricted the availability to consumers of number porting<sup>48</sup>. Distorting the porting intervals mandated by the Commission constitutes a breach of a Commission direction. In an industry in which automated processes are commonplace and in which customer migrations between WSPs must be completed within a few hours<sup>49</sup>, the requirement imposed by the major wireless service providers on their customers to provide 30 days advance notice of their intention to migrate (or terminate service) is clearly a bad way of treating customers.
81. The 30 day advance notice requirements the major WSPs impose undermines competition and is unlikely to be eliminated through the operation of market forces. We note in this respect that in its latest (September 2012) *CRTC Communications Monitoring Report (the Monitoring Report (2012))*, the Commission reported that the three large WSPs (Bell Canada, Telus Communications Company and Rogers Communications Inc.) garnered a 93% share of the wireless services market.<sup>50</sup> New entrants for their part drew a 2% share of this marketplace.<sup>51</sup> As we noted in our

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<sup>47</sup> Wireless to wireless number porting interval mandated in Telecom Decision CRTC 2005-72.

<sup>48</sup> See Interventions #754, 274 and 461.

<sup>49</sup> Wireline to wireline migrations, which may include the transfer of a loop as well as completion of a number port, are completed within 2 days (per Telecom Decision CRTC 2003-48). Wireless to wireless number porting must be completed within 2.5 hours (per Telecom Decision CRTC 2005-72). In Decision 2005-72, the Commission further stated that this interval "may only be modified by mutual agreement." (paragraph 92).

<sup>50</sup> See Figure 5.5.5 *Wireless TSPs' revenue market share*. Incumbents' share rises to 98% if revenues generated by incumbent WSPs MTS Allstream, SaskTel, and smaller WSPs are considered.

<sup>51</sup> New entrants are the wireless entities that acquired spectrum in Industry Canada's 2008 AWS spectrum auction.

Application, new entrants appear to have understood that measures such as the 30 day advance requirement are disliked by consumers. Our research showed that, to date at least, new entrants appear to have eschewed such a requirement.<sup>52</sup> New entrants, however, hold a miniscule share of the marketplace. The Commission's Monitoring Reports over a period of years also suggest that new entrants have to date had difficulty in expanding market share. If major WSPs are allowed to continue to make it unnecessarily complicated and costly for customers to migrate to entrants, this situation is unlikely to improve. The major WSPs' advance notice requirement creates a barrier that harms customer choice and restricts competitors' ability to attract customers, thereby undermining the operation of market forces.<sup>53</sup> Harming customer choice in this manner and creating a barrier for competitors may subject customers and competitors to undue or unreasonable disadvantages in breach of section 27(2) of the *Telecommunications Act*.

### **2.3.3. When an "early" termination penalty could arise**

82. Early termination penalties, if they are to be permitted by the Commission, should solely arise in situations in which the customer has entered into a contract with an extended term. For clarity, an extended term contract is a contract with a term that exceeds one month (30 days) or one WSP billing cycle, whichever is the longest.

83. In these circumstances, however, advance notice requirements of the customer's intention to terminate, such as the 30 day minimum notice requirement the dominant WSPs impose on their departing customers, should not be permitted. Several provinces have implemented, or are in the process of implementing, legislative provisions that reflect this principle.<sup>54</sup>

84. Furthermore, in order to ensure that contract termination processes do not, specifically, undermine the operation of Commission-approved number porting processes and, more broadly, do not unduly undermine consumer choice, a termination notice should be deemed to have been received by the WSP (that the customer is leaving) on the date it is issued by the customer.<sup>55</sup> Several provinces have implemented, or are in the process of implementing, legislative provisions that reflect this principle as well.<sup>56</sup>

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<sup>52</sup> This situation could change, however. As Quebecor Media noted in its comments of 8 February 2012 (at paragraph 29) regarding our Application, unless the Commission prohibits the practice followed by the incumbents: "Les fournisseurs qui n'ont pas recours à ce qui constitue une mesure de retention excessive sont forcément pénalisés puisqu'ils perdent accès à bon nombre de clients potentiels qui se retrouvent captifs de ladite mesure, sans pouvoir protéger leur base de clientèle par le biais du même stratagème. »

<sup>53</sup> WSPs who are not incumbents appear to agree: see, for example, intervention of 3 May 2012 in the TNC 2012-206 proceeding by Bragg Communications Inc., carrying on business as Eastlink, at paragraphs 5-6.

<sup>54</sup> Manitoba, s. 196(1); Newfoundland and Labrador, s. 35.8(1); Québec, s. 214.6.

<sup>55</sup> A number of provincial legislators who have imposed conditions regarding WSP contracts have mandated this. See for example Manitoba, s. 196(1); Québec, s. 214.6; Ontario s. 17(1).

<sup>56</sup> *Ibid.*

85. Finally, as outlined in PIAC/CAC/COSCO's submissions on changes to contracts (under s. 2.2, "Changes to Contract Terms and Conditions" above), termination fees should not be charged where a WSP seeks to modify a non-core term or service and the customer exercises his or her corresponding right to terminate without a termination fee (and only reimburse the "unpaid for" amounts on any "subsidized" handset or device).

#### **2.3.4. Should the Commission set a cap on early termination penalties ?**

86. Canadians' responses to the Commission's public consultation confirm that Canadians consider WSPs' current practices regarding the setting of termination fees to be abusive and unfair to consumers.

87. Many consumers consider that the termination charges currently imposed by WSPs far exceed what a WSP should reasonably require a) to protect its investment in instances in which the WSP subsidizes a handset or device or, b) to represent a measure of liquidated damages for administrative and provisioning costs that may have been offered in exchange for, or were assumed in calculating a lower rate than for shorter-term contracts. As many consumers have observed in their comments in this proceeding, the termination charges and procedures imposed by major WSPs appear to primarily focus on impeding consumer choice and competition.<sup>57</sup> Consumers have also noted that the lower rates offered by WSPs typically relate only to the handset. Competition does not typically appear to be delivering lower network usage rates in conjunction with long term commitments.

88. Market forces appear to have provided insufficient incentives to encourage WSPs to compete over termination charges. In a dynamic contested marketplace, one would expect that competition would provide an incentive for service providers to moderate termination charges as they compete for customers. It has become evident to us, however, that WSPs – and in particular the majors – see no benefit for themselves in easing the process faced by customers who wish to terminate contracts in order, potentially, to migrate to competitors. Since incumbents hold a share of the marketplace which exceeds 90%, establishing barriers to customer migration appears to be more relevant to these WSPs than facilitating movement between service providers.

89. As the Commission is aware, several provinces have implemented, or are in the process of implementing, legislative provisions that, among other considerations, significantly curb the size of termination charges WSPs can impose on their customers.<sup>58</sup>

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<sup>57</sup> See Interventions #868, 54, 14 and 64.

<sup>58</sup> Manitoba, s. 197, Newfoundland and Labrador, s. 35.9, Québec, s. 214.7.

### **2.3.5. What maximum early termination penalties imposed by WSPs should be**

90. As several participants in the Commission's public consultation processes have noted, legislators in other jurisdictions have developed mechanisms which share a common characteristic of setting caps on termination charges.
91. As a starting point, we support limiting the length of long term contracts to no more than 24 months. Limiting the length of contract terms may potentially contribute to limiting consumers' exposure to termination charges.
92. While limiting the length of the term of a contract may, indirectly, have an impact upon the extent of termination charges faced by the consumer, the Commission also needs to address the manner in which termination charges are assessed.
93. In the Commission's public consultation processes, consumers in large numbers have raised objections to the way WSPs set termination charges in relation to contracts in which a monthly rate covers all or part of the cost of a handset or device supplied by the WSP and usage by the consumer of the WSP's service.
94. Several provinces have designed mechanisms to calculate termination charges in long term contracts. These mechanisms typically set termination charges on the basis of a calculation which reflects, alternatively, either the length of the proportion of the term which has passed,<sup>59</sup> or the period remaining in the term of the contract,<sup>60</sup> when the customer decides to terminate. In some instances, an absolute cap is also specified.<sup>61</sup>
95. PIAC/CAC/COSCO firstly submit that any termination charges should be reasonable. Consumer wireless contracts are effectively contracts of adhesion where consumer termination of service presumably is efficiently dealt with by WSPs.
96. Secondly, we also support the use of an absolute cap on termination fees. Some WSPs may be tempted to argue that the imposition of a cap may undermine competitors' flexibility to compete. We reject this contention. A cap provides a ceiling to the customer's potential exposure. It does not prevent service providers from competing by offering more attractive termination charges.
97. We encourage the Commission to specify in the Code a mechanism for the calculation of termination charges which is simple and easily understandable. The mechanism that will be applied in the event the customer decides to terminate a contract prior to the end of the contract's term should be clearly set out in the contract.<sup>62</sup> The mechanism should

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<sup>59</sup> Québec, s. 214.7.

<sup>60</sup> Newfoundland and Labrador, s. 35.9(2); Nova Scotia, s. 25AC.

<sup>61</sup> Québec, s. 214.7.

<sup>62</sup> As we have discussed earlier, the terms of the contract should be fully disclosed to the customer at the outset, the customer should be required to confirm acceptance of the contract and, to this end should be

be sufficiently simple and customers should be provided enough information to be readily able to calculate the termination charge they would face at any given time over the duration of the contract. The mechanism used should also enable customers in most instances to be able to calculate the termination charge themselves, without being forced to consult their WSP if they do not wish to do so. The Commission could consider requiring each WSP to provide an on-line tool which the customer could access using basic account information to calculate the cost of terminating his or her contract.

98. When the charges paid by a customer under a long-term contract cover all or part of the cost of a handset or device, the contract should disclose the cost of the handset or device against which the termination charge will be calculated. Additionally, if a portion of the cost of the handset or device was paid by the consumer at the outset of the contract, the contract should disclose the portion of the cost of the handset or device against which the termination charge will be assessed.
99. Where the charges payable by the consumer under the contract cover usage of the WSP's network service, the consumer's exposure to a termination charge for the usage component of the contract should be limited to usage incurred in the month in which the customer notifies the WSP of his/her intention to terminate, as of the date the customer issues the termination notice. As we discussed in our Application and earlier in this submission, advance notice periods should be eliminated.
100. Information such as that described above should also be available to the customer prior to the customer's decision to enter into the contract. Such information should be made available as the customer considers competitive alternatives. Disclosure of this information would stimulate competition.
101. We further advocate that a WSP should not, during the term initially negotiated with the customer, have the ability to extend or re-start the term of the contract.
102. Input provided by consumers in the course of the Commission's public consultation process suggests that WSPs make use of changes sought by the consumer or offered by the WSP to features of the handset or device or the service provided to, in effect, re-start the term of a contract in midstream, as of the date the change(s) come into effect. When a contract is re-started in this manner, the customer loses the benefit of the term which has elapsed. The result of such practice is to substantially increase the cost of the contract for the consumer and the size of the termination charges a consumer may face in relation to a contract covering a given service and/or device.

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provided a reasonable period of time to review the contract before confirming acceptance. The customer should have the ability to decide that he/she does not accept the terms proposed by the WSP and to terminate without termination penalty at this time.

103. Consistent with the Commission's mandate to promote reliance on market forces, the Commission should avoid practices such as mid-stream extensions. Such extensions undermine the operation of market forces by forcing the customer to remain with a WSP for a term which may be considerably longer than the term originally negotiated between the consumer and the WSP. Overly lengthy terms diminish the opportunities a consumer has to shop for a better deal and, similarly, reduce opportunities for competitors to solicit and earn the customer's business.

### **2.3.6. What should happen at the expiry of the term**

104. At the expiry of the term, the supply of wireless service by the customer's existing WSP should continue on a month-to-month basis at the same conditions and at the rate for usage specified in the contract. Where a contract included a charge to cover the cost of a handset or device (or the portion of the cost of the handset or device not paid for by the consumer at the outset of the contract), such charge should come to an end with the end of the term. Customers should not be forced to renew an existing contract for an extended term. Customers should also not be forced to enter into a new contract, nor should they be required to enter into a new agreement for a replacement handset or device.

105. The Commission should consider whether a requirement to provide the customer advanced notice that the customer's contract is coming to an end should be set out in the Code. We support such advanced notice for the reason that it would effectively serve to provide consumers an opportunity to assess their degree of satisfaction with the service their current WSP has been providing and to consider competitive alternatives as the end of their contract approaches, thus promoting the operation of competitive forces in the marketplace. The length of the notice should be sufficient to provide the customer a reasonable opportunity to investigate competitive alternatives.

### **2.3.7. Automatic contract renewal at the expiry of the original term**

106. Automatic renewal of a contract at the expiry of the original term, as a result of which a consumer's contract would be renewed for an *extended* term (whether such extended term corresponds to the original contract's term or another extended term) should be prohibited.<sup>63</sup>

107. A customer's existing WSP should be required to obtain the customer's specific prior consent before any extension of an existing contract takes place for an extended term. The customer should be provided a reasonable opportunity to review (and consent to) the terms and conditions of any renewal proposal made by the existing WSP. Consent should not be deemed to have been provided.

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<sup>63</sup> Namely, a term greater than one month or a billing cycle, whichever is longest.

108. Consumers should be provided as much flexibility as possible to consider competitive alternatives at contract renewal time. As discussed earlier, the customer should be provided reasonable advance notice that an existing contract is coming to an end. At the end of the term, service should continue to be provided on a month-to-month basis at the same terms and conditions,<sup>64</sup> in order to ensure that the consumer is not left without service (and that the customer does not lose his/her ability to port the number), unless the customer makes other arrangements. There should be no additional charge or fee for continuing service in this manner.

109. When service continues in this manner, however, the customer should have the ability to terminate the contract at any time without termination fee or other penalty.

## **2.4. Clarity of advertised price**

110. In TNC 2012-557, the Commission sought comments on the content of a provision that addresses clarity of advertised prices of services included in a contract, such as monthly and one-time charges for mobile wireless services, including optional services, devices, data and roaming, and any associated fees. The Commission also sought comments on a provision that service providers may not charge consumers for optional mobile wireless services they have not ordered.

111. PIAC's comments to TNC 2012-206 raised consumer concerns with disclosure and consumer understanding of promotional pricing and unnecessary, confusing or misleading charges such as the system access fee, government regulatory recovery fee and activation fees.

### **2.4.1. Clarity of advertised prices of services included in a contract**

#### ***2.4.1.1. Transparency in advertising – prohibit hidden extra charges and move to “all inclusive” pricing***

112. The Canadian Transportation Agency (CTA) recently issued proposed regulations that would require Canadian airlines to display the total price for airline travel, including all fees, taxes and other charges, such as fuel surcharges. The intent of the proposed regulations is “to provide greater transparency in air price advertising for consumers while providing a level playing field for all air service providers.”<sup>65</sup> The CTA hopes that requiring airlines to advertise “all-in” pricing will alleviate consumer confusion as to the total cost of an advertised air service and promote fair competition in respect of the prices charged by Canadian air carriers.

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<sup>64</sup> Other than the monthly rate which should be lower if the customer has completed reimbursing the WSP for the WSP's contribution to a handset or device.

<sup>65</sup> Regulatory Impact Analysis Statement, Regulations Amending the Air Transportation Regulations and the Canadian Transportation Agency Designated Provisions Regulations (2012), Canada Gazette I, 1833, s. 4.

113. The Competition Bureau announced in June 2011 that Bell Canada had agreed to discontinue making what the Bureau alleged to be misleading representations contrary to the civil deceptive marketing provisions of the *Competition Act*. The Bureau alleged that since 2007, Bell charged higher prices than advertised for many of its services, including home phone, internet, satellite television and wireless because the prices advertised by Bell were not available as mandatory fees, such as those related to TouchTone, modem rental and digital television services were “hidden from consumers in fine-print disclaimers.” The Bureau’s news release stated:

Bell’s website had been advertising a bundle for home phone, internet and television services starting as low as \$69.90 per month. However, it was impossible for customers to buy the bundle for the advertised price. In fact, the lowest possible price, including the mandatory fees, was \$80.27 – approximately 15% higher than advertised. Customers purchasing any of the services individually were also faced with the same misleading information, as additional fees were excluded from those advertised prices as well.<sup>66</sup>

114. Bell did not accept the allegations made by the Competition Bureau, but agreed not to contest these allegations for the purpose of the settlement.

115. Many interventions from the public to this proceeding asked for all-in-one pricing, which includes all fees.<sup>67</sup> PIAC/CAC/COSCO urge the Commission to include a provision that requires WSPs to display the total price for wireless services prominently. This “all-inclusive” total price must include the maximum monthly cost for core services and all mandatory fees, with greater emphasis on the all-inclusive price than on the component costs. This would mean that fine-print disclaimers cannot be used to supplement or modify information in the advertisement about prices, such as stating mandatory fees that are not included in the prominently displayed advertised price.<sup>68</sup> Furthermore, the bundled price cannot be advertised unless the fact that it is a bundled price is clearly identified in the advertisement and not stipulated in a disclaimer.

116. Notably, provinces that have drafted legislation aimed at improving consumer protection for wireless services require the price advertised to include the “minimum monthly cost” or an “all-inclusive cost” excluding tax. Some provinces specify that more

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<sup>66</sup> Competition Bureau, News Release, “Competition Bureau reaches agreement with Bell Canada requiring Bell to pay \$10 million for misleading advertising” (28 June 2011), online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html>.

<sup>67</sup> See for example, interventions #442, 357, 172, 282, 95, 271, 142, 188, 68, 95, 149, 162, 563, 106, 946, 795, 688, 478, 189, 566, 60, 135, 794, 14, 389, 65, 816, 272, 314, 89, 868, 162, 169, 180, 206, 561, 919, and 687.

<sup>68</sup> PIAC notes that fine print disclaimers are a common industry practice in advertising. Consumers have difficulty reading fine print, find the language of the disclaimers challenging to understand, and consumers often do not review the fine print. See for example, focus group comments from PIAC’s report, “Consumers and Mobile Premium Services” at p. 57.

emphasis must be placed on the minimum monthly cost than on the amounts that make up the minimum monthly cost.<sup>69</sup>

**2.4.1.2. The "all-in" advertised price should include caller ID and voicemail**

117. Most WSPs consider caller ID and voicemail optional calling features and do not usually include the price of these services in the advertised monthly price. However these optional services are important features for many consumers.<sup>70</sup> Caller ID can cost an additional \$8 per month and voicemail can cost an additional \$5 to \$8 per month. PIAC/CAC/COSCO are aware that these services are traditionally classified as "optional services" under wireline price regulation and price caps. However, many wireless consumers now consider these services to be basic and essential for wireless service. This makes sense, as wireless service, as opposed to wireline service, generally does not have an answering machine included in the handset (voicemail is only at the carrier end) and caller ID is necessary as there is no white pages directory that can be consulted to identify callers otherwise than through the handset. These features could however, add an additional \$16 per month to the advertised minimum monthly cost. PIAC therefore suggests that the "all-in" advertised price should include caller ID and voicemail where offered to the consumer, unless the WSPs can demonstrate that subscription to these services is not sufficiently high to suggest that these are not basic services for consumers.

118. For further clarity, PIAC is not suggesting that all wireless service packages be mandated to include caller ID and voicemail. Consumers should be able to choose not to subscribe to these services if they do not want them (and consequently should not pay for these services if they choose not to subscribe to them). Thus, if "all-in" prices for wireless services are to include caller ID and voicemail, if the customer chooses not to subscribe to these services, their minimum monthly cost will be the "all-in" advertised price less the cost of caller ID and voicemail.

**2.4.1.3. Advertisements for "free" handsets**

119. Notably, the Australian Telecommunications Consumer Protections Code restricts the use of the word "free" in advertisements for services. We urge the Commission to include similar restrictions on advertisements for "free" services or handset devices, as this further adds to consumer confusion surrounding cancellation charges. The handset is not "free" if the cost of the device is "subsidized" in the monthly

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<sup>69</sup> See for example provincial legislation adopted in Quebec and Manitoba.

<sup>70</sup> See for example, interventions #896, 692, 616, 154, 95, 408, 491, 374, 458, 965, 884, 360, 161, 220, 521, 886, 794, and 153. Caller ID seems particularly important for wireless subscribers as it allows consumers to manage their usage of voice minutes, for example by only answering calls from numbers they recognize, as voice minutes are often offered on a capped basis and of course, in Canada, service providers charge for incoming calls.

plan. It would be preferable, as stated above in section 2.1, if the monthly payment for the device is clarified as separate from the price paid for monthly service.<sup>71</sup>

#### **2.4.1.4. Advertisements for “unlimited” services**

120. In its 2011-2012 Annual Report, the CCTS noted that some service providers offer plans that purport to provide “unlimited” service such as unlimited long distance calling or unlimited internet bandwidth consumption. However, it noted that most unlimited plans are subject to “fair use” or “acceptable use” policies in small print at the bottom of the advertisement, which may also be referenced in the provider’s Terms of Use. Providers offering unlimited plans reserve the right to determine what constitutes “fair” or “acceptable” or “reasonable” use of the unlimited plan, and providers remove customers from the plan if their use exceeds these parameters, though the parameters are not articulated more specifically.<sup>72</sup>

121. PIAC notes that consumers have been confused that advertisements of “unlimited text messages” or “unlimited incoming text messages” do not include the costs of third party premium text messaging services.<sup>73</sup> Similarly, some interventions to this proceeding commented on the confusing nature of limits on “unlimited” services.<sup>74</sup>

122. Notably, the Australian *Telecommunications Consumer Protections Code* includes a rule that restricts suppliers’ ability to use terms such as “unlimited” or “no catches” in advertisements for services.

123. The Commission should include a provision that only allows advertisements for “unlimited” services where there are truly no limitations attached to the use of the service.

#### **2.4.2. Charges for optional mobile wireless services not ordered**

124. PIAC agrees that the Wireless Code should include a provision that prohibits service providers from charging customers for optional mobile wireless services not ordered. Furthermore, the burden should not fall on the customer to prove that they did not order the service. The WSP must be able to prove that the customer consented to

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<sup>71</sup> This was stated by some interveners; for example, see Interventions #792 and #52.

<sup>72</sup> The CCTS states at p. 18 of their Annual Report: “So what are the parameters? Another good question. Typically the advertisement and the Terms of Use do not describe the details of the policy. In particular, they don’t tell you the level at which you are deemed to be over-using the unlimited plan. Many providers reserve to themselves the right to decide.” CCTS suggests that service providers make explicit any limitations that unlimited plans are subject to by setting out “fair use” policies and describing the consequences to the customers should the policy be applied. CCTS recommends that service providers implement internal policies and maintain records that enable them to demonstrate that they apply “fair use” policies reasonably.

<sup>73</sup> See PIAC’s report, “Mobile Premium Services: Consumers and Mobile Premium Services”, cited *infra*, at pp. 47 and 60.

<sup>74</sup> See for example, interventions #78, 911, 552, 566, 49, and 761.

the order for service.<sup>75</sup> Such proof should be found in the customer's contract or bill. The WSP should always be able to demonstrate that the customer's consent was obtained in the event the contract has been modified over time. Should PIAC/CAC/COSCO's proposal of a requirement for service providers to provide customers with a printed copy of the contract, there should be primary evidence available to the parties of the existence - or not - of an added term.

## 2.5. Application of the Code to bundles of telecommunications services

125. In TNC 2012-557, the Commission sought comments on "bundles of telecommunications services", in particular: a provision that the Wireless Code would apply equally to mobile wireless services purchased separately or as part of a bundle of telecommunications and broadcasting distribution services.

126. PIAC/CAC/COSCO submit that bundles of telecommunications or telecommunications and broadcasting services should be governed by the Wireless Code to the extent possible to govern the wireless-only aspects of that bundle and to ensure that service providers do not seek to avoid application of the Wireless Code by rolling wireless services into a larger bundle.

127. In fact, we do not see this requirement as a major impediment to most of the proposed Wireless Code. The sections of the Code that apply to wireless service contracts will apply the wireless contract portion of the bundle. Under PIAC/CAC/COSCO's proposal, WSPs will not be permitted under the Code to offer wireless services without providing to the customer a wireless contract. Therefore, the customer will have a wireless portion of the bundle - the wireless contract - that is governed by the Wireless Code. We note that the Deposits and Disconnections Code

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<sup>75</sup> This was an issue raised in PIAC's report on mobile premium services. Consumers reported trouble seeking redress for unauthorized billing of premium text messaging services, as WSPs required the customer to prove that they did not authorize the transaction. However, consumers reported problems securing a detailed transaction record from their WSP to verify that they had actually opted in to the third party billing. Consumers are troubled by the underlying assumption that they agreed to purchase the mobile premium service unless they can prove otherwise. The onus should not be on the customer to prove that they did not authorize the transaction. In the context of premium text messages, PIAC found on pp. 90-91 that "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 frustrated. The onus must fall on the MPS company and the wireless service provider to prove that the MPS charges are legitimate." The CCTS in its 2009-2010 Annual Report at pp. 32-33 detailed consumer issues with premium text messaging, finding that a main customer complaint was that the customer did not sign up to receive the service. The CCTS stated that they expect the WSP to have looked into the customer's allegation and obtained evidence from the content provider sufficient to support the accuracy of the charges. In its 2010-2011 Annual Report, the CCTS stated that it continued to receive complaints on the topic of premium text messaging and in 2011-2012, the CCTS reported 589 complaints about premium text messaging.

for wireline services presently applies in this manner to wireline service offered as part of a bundle equally to wireline only accounts.

128. Areas where the Wireless Code will have to take account of bundles are limited, in most cases, to where there is a calculation of the "value" of the subsidy of a handset in relation to a total contractual amount for wireless. Carriers may argue that a discount given for subscription to multiple services should affect the overall price of the wireless services either up or down depending on the nature of the calculation. PIAC/CAC/COSCO does not see why the Wireless Code could not make such calculations based on the charges for a similar wireless only plan and adjust for the bundle discount. In short, there is no major impediment to stipulating that the Wireless Code apply to all wireless service contracts, "bundled" or not.
129. The public process intervenors have called consistently for the amounts used to calculate the bundle to be broken out by service in a transparent manner.<sup>76</sup> This would assist the calculation referred to above.
130. Numerous other public comments focused on the desirability of "unbundling" of handset and service costs. PIAC/CAC/COSCO has dealt with this issue in section 2.1 of our comments.
131. Finally, PIAC/CAC/COSCO agree with one intervenor who stated that "forced bundles" of telecommunications services, in particular a requirement to take a potentially costly data plan, in order to activate or access certain voice features, such as Caller ID, or text features, such as SMS, are unfair to consumers and should be prohibited bundling under the Wireless Code.<sup>77</sup>

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<sup>76</sup> See Intervention #161: "A provision that addresses clarity of advertised prices of services included in a contract, such as monthly and one-time charges for mobile wireless services, including optional services, devices, data and roaming, and any associated fees. Agreed, on a line by line basis and NOT bundled together."

and see Intervention #687: "I was in Australia recently and they print in large, bold type the total contract sum on their offers. This way it doesn't matter what silly introductory rate is being offered, what price the handset is being offered, whether the deal is bundled with something else, or any other devious marketing ploy. The total contract sum you will pay is right in front of you.

I also think this is very good for folk that are on a tight budget. The difference between \$40 a month and \$70 a month doesn't sound that much, but a \$1080 difference between two different 3 year contracts, is, well 1000 bucks."

<sup>77</sup> See Intervention #646: "No forced minimal set of features. No plan should force a consumer to have a data-plan bundle attached to it. If I cannot have caller-id and incoming SMS as part of my base-plan for a normally functioning phone, then carriers should not be allowed to bundle features or not allow one to reject features."



not evolved to provide similar bill shock protection tools for Canadian consumers. Therefore, it is appropriate that the Wireless Code mandate practices to better protect consumers against bill shock.

135. One way to better protect consumers against bill shock is through improving transparency through requiring clarity in advertising and notification tools for additional charges. Bill shock can also be avoided if consumers are provided with tools to better manage and monitor their spending limits, effectively putting control back in the hands of the consumer.

**2.6.1. Conditions under which the provider must notify consumers of additional fees**

136. As stated above in section 2.1 (clarity of contract terms and conditions), the implementation of reliable and prominent notification mechanisms to advise consumers when they are about to incur additional fees beyond their monthly service cost would greatly enhance the transparency of costs to consumers and provide consumers with greater clarity and certainty for the monthly bill.

137. Consumers expect to be notified when they are about to incur charges that are not included in their monthly service plan, as has been made clear by the public interventions to this proceeding.<sup>81</sup> This is also supported by PIAC's research on consumer experiences with mobile premium services and data roaming.<sup>82</sup>

138. Draft legislation in Ontario proposed to require wireless service providers to have a system in place to provide advance notice to the consumer that the consumer's use of a service would result in an additional cost above the minimum monthly cost. The draft legislation required the notice to be reasonably close to the time at which the consumer accesses the service that would incur an additional cost.<sup>83</sup>

139. The Federal Communications Commission found that notification alerts could help avoid bill shock. Namely, notification alerts should let consumers know when they are approaching the limits of their voice, SMS and data plans and when they are about to incur roaming charges.<sup>84</sup> The FCC reached an agreement with major American wireless service providers to require carriers to provide free alerts to subscribers when

<sup>81</sup> See for example, interventions #935, 40, 60, 819, 115, 528, 886.

<sup>82</sup> See PIAC report on mobile premium services at pp. 60-61. # ##### ##### ### ## #####  
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<sup>83</sup> See for example, Ontario Bill 82, s. 13.

<sup>84</sup> FCC Consumer and Governmental Affairs Bureau, "White Paper on Bill Shock" (2010), online: <http://transition.fcc.gov/stage/Bill-Shock-White-Paper.pdf>.



spend management tool to customers at no additional cost.<sup>90</sup> Examples of Australian "spend management tools" include:

- Access to usage information that is near to real-time (defined as not older than 48 hours);
- Choice of a product that features cessation of telecommunications service or form of control or limit to stop charges;
- Call barring or restrictions on certain telecommunications services (such as more expensive services);
- Provide usage charge advice before or during the use of a high value telecommunications service;
- Pre-paid services;
- Hard caps; and
- Reducing broadband internet download speed when the usage limit is reached.<sup>91</sup>

144. Usage management tools are particularly important for consumers to monitor data use, as these measurements are challenging for consumers to accurately estimate.<sup>92</sup> The CCTS has noted that it is challenging for consumers to confirm their data usage with precision, such that when they suspect an error, they cannot confirm that the amount for which they are being billed is correct. CCTS in its 2010-2011 Annual Report stated: "We do not believe that it is appropriate that customers should have to simply accept a provider's assertion about the amount of data used."<sup>93</sup>

145. Efforts have been made abroad to assist consumers with managing additional charges for international data roaming. Consumers also expect spend management tools to be made available to assist them with monitoring international data roaming charges.<sup>94</sup> This was supported by a number of public interventions for this proceeding.<sup>95</sup>

146. European roaming regulations, in addition to regulating the wholesale and retail rates for voice, SMS and data roaming, implemented consumer safeguards to prevent

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<sup>90</sup> For greater certainty, the Australian Telecommunications Consumer Protections Code states that suppliers must ensure access to at least one spend management tool that is not dependent on internet access at s. 6.5.1(d).

<sup>91</sup> Australia Telecommunications Consumer Protections Code at s. 6.5.

<sup>92</sup> #####. The CCTS has also previously noted that customers struggle to understand the amount of data consumed when sending emails, web-surfing or downloading content from the internet. See CCTS 2010-2011 Annual Report at pp. 24-26.

<sup>93</sup> CCTS 2010-2011 Annual Report at p. 26.

<sup>94</sup> #####.

<sup>95</sup> See for example interventions #40, 377, 716.

bill shock for international roaming charges.<sup>96</sup> The EU regulations impose on wireless service providers a monthly default cut off limit for data roaming fees of €50 per month. Customers are free to set an alternative limit for their monthly roaming fees if they choose. In addition to receiving notifications as the consumer uses a proportion of the monthly limit, the consumer's wireless data plan is suspended when they reach their monthly limit until they are made aware of the charges and consent to having their wireless data plan reactivated (therefore consenting to further charges). The Groupe Speciale Mobile Association (GSMA) committed to working with wireless operators to adopt similar consumer transparency and safeguard mechanisms. The GSMA is working on: standardized measures to notify customers of data roaming rates when they arrive in another country; implementing a monthly data roaming spend limit to help consumers manage their roaming bill; and sending alerts as their data usage approaches the limit, and temporary suspension of data service when the usage exceeds the spending limit.<sup>97</sup>

147. PIAC recommends that the Wireless Code require WSPs to develop and implement usage management tools for customers. We recommend that WSPs implement default set customer "spend" limits for charges that accrue in addition to the minimum monthly cost for wireless service. When the consumer reaches the spend limit, service that would incur additional charges would be suspended until the customer consents to further charges. Ideally, the tools would allow for tailoring by the consumer to modify the spend limit to match their own tolerance level for additional charges beyond their monthly minimum cost for wireless service. Tools that set a spend limit for consumers would at minimum help consumers by preventing egregious instances of bill shock.<sup>98</sup>

148. These tools are especially important for consumers who hold accounts for multiple devices, such as parents and guardians and employers. For example, PIAC heard from several consumers who requested access to a free blocking service for premium text messaging services. The call for this feature was strongly emphasized by parents and guardians who felt that their children were very susceptible to misleading advertisements for premium text services and did not appreciate that these services had the potential to accumulate additional fees quickly.<sup>99</sup>

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<sup>96</sup> European Union, "Regulation on roaming on public mobile telephone network within the Community", Regulation (EU) No. 531/2012.

<sup>97</sup> GSMA, "GSMA launches data roaming transparency initiative" (June 24, 2012), online: <http://www.gsma.com/newsroom/gsma-launches-data-roaming-transparency-initiative/>.

<sup>98</sup> See for example, Ellen Roseman, "Rogers tells client she owes \$2 million in roaming fees" (11 November 2012), online: <http://www.ellenroseman.com/?p=1436>.

<sup>99</sup> See p. 43 of PIAC's "Consumers and Mobile Premium Services" report. A.H. was told by her WSP that it was her responsibility to talk to her daughter about not subscribing to premium text services, refused to refund charges, and said they would not block or disallow future charges to be billed to her account. PIAC notes that the WSP now offers a blocking feature for all short code messages (premium and free).

## 2.7. Privacy policies

149. In TNC 2012-557, the Commission sought comments on "privacy policies", in particular: a provision that addresses how service providers must disclose, and notify customers of amendments to, their privacy policies.
150. Privacy protection in wireless service is at a crucial stage. The addition of mobile data services on smartphones along with location-based services and location-sensing apps means that consumers now can potentially be assisted with location specific services but also are vulnerable to being tracked by their own wireless devices and the network of their service provider.<sup>100</sup>
151. This new reality is added to the privacy concerns inherent in the use of telecommunications generally, concerns that have prompted the Commission to issue several decisions that are based on the privacy policy objective in subs. 7(i) of the *Telecommunications Act* and which are more stringent than those that would be required solely under the regime outlined in the Personal Information Protection and Electronic Documents Act (PIPEDA).
152. PIAC submits that any Wireless Code should not diminish privacy protections of Canadians that are already mandated by Commission decisions relating to telecommunications. In particular, there are rules prohibiting telecommunications service providers (now including all wireless providers as well as wireline providers) from disclosing confidential customer information (CCI) without the express consent of the customer, except in certain specified circumstances.<sup>101</sup> This Code should not affect those rules. Those rules are based on the higher standard set by subs. 7(i), which require the Commission "to contribute to the protection of the privacy of persons". PIPEDA merely instructs covered entities to balance privacy expectations with business use of data in a manner that would be reasonable to an average person. PIPEDA permits implicit consent; this is generally not the case for customer confidential information, which requires the explicit consent of customers, in one of the following ways:

Express consent may be taken to be given by a customer where the customer provides:

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However, other WSPs have not evolved to offer similar premium text blocking features, even though this is a common feature offered by WSPs in other countries. See also interventions #927 and 729.

<sup>100</sup> See, in the U.S., the CTIA's "Best Practices and Guidelines for Location-Based Services" (Ver. 2.0 - March 23, 2010) that notes "The Guidelines rely on two fundamental principles: user notice and consent." The CWTA has no guidelines.

<sup>101</sup> See, most recently, Telecom Regulatory Policy CRTC 2009-723, *Regulatory measures associated with confidentiality provisions and privacy services* (25 November 2009) at para. 6.

- written consent;
- oral confirmation verified by an independent third-party;
- electronic confirmation through the use of a toll-free number;
- electronic confirmation via the Internet;
- oral consent, where an audio recording of the consent is retained by the carrier;  
or
- consent through other methods, as long as an objective documented record of customer consent is created by the customer or by an independent third party.<sup>102</sup>

153. PIAC is concerned that some wireless providers may again claim that PIPEDA is adequate protection for customer confidential information and indeed, perhaps also for "transactional" information about the customer, such as location data. We urge the Commission therefore to resist requests to widen the scope of the inquiry under the present proceeding to consider more than the notification to the customer of privacy policy changes. The Commission should instead initiate at a later date a separate proceeding on the level of privacy protection to be accorded to location data or to control behavioural targeting based on location data or other customer confidential data, stored on the handset<sup>103</sup> or other information gathered from the customer-service provider relationship.

154. Regarding notification of changes to privacy policies, PIAC suggest that the Code require that customers receive an electronic notification message to their handset or email informing them when a carrier's privacy policy has changed in a significant way and providing a link to an internet-based version. For those customers that receive communications in paper or alternate format, service providers should include a hard copy (or alternate format copy) of the complete new privacy policy

## **2.8. Hardware warranties and related issues**

### **2.8.1. Hardware warranties**

155. Warranty disclosure is critical to transparency and clarity for consumers. The provinces of Manitoba, Newfoundland and Nova Scotia (passed though not yet in force) have all enacted legislation that requires wireless providers to orally disclose any applicable existing manufacturer or other warranty on a cell phone before offering an

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<sup>102</sup> See Telecom Decision CRTC 2005-15, *Part VII application to revise Article 11 of the Terms of Service* (17 March 2005), modifying CRTC Telecom Decision 2003-33-1.

<sup>103</sup> See Interenor #609: "The most important for me would be that we are in the age of using wireless to do some of the most important and rudimentary things in our lives. My opinion is that wireless companies should no longer have the ability to tie devices to their network only. By letting wireless companies avoid open use of devices we put our peoples' privacy and security at risk. When a person moves to another wireless carrier they automatically dispose of their wireless device because it is not able to move to the new carriers' network. Very few people know how to completely erase their information on these devices, so now a malicious person or country that is doing the recycling of these devices has all kinds of personal and now to come banking information. What is to prevent the inappropriate use of these devices to steal personal data and become the previous person that recycled the wireless product?"

additional or extended warranty for sale.<sup>104</sup> The Manitoba and Nova Scotia acts further state that WSPs must explain what is covered under the existing warranty (or warranties), how a customer can make a claim under that warranty, as well as how long that warranty lasts.<sup>105</sup> At the request of the customer, WSPs would also, in all three provinces, have to inform the customer on how to obtain details of the existing warranties.<sup>106</sup> The Newfoundland Act also states that failure to disclose applicable warranties before offering additional warranties constitutes an “unfair business practice.”<sup>107</sup>

### 2.8.2. Service charges for repairs

156. Legislation in Manitoba, Quebec, Newfoundland and Nova Scotia set out that WSPs may not charge their customers for services they are deprived of during the repair of “goods” sold, leased or supplied to the customer at the making of the contract, if:

- The goods are necessary for the use of the services;
- The goods are still under warranty; and
- The supplier did not provide a replacement free of charge.<sup>108</sup>

157. The Newfoundland and Labrador Act further states that suppliers may not charge customers a fee for providing replacement goods during a repair.<sup>109</sup> However, the Manitoba and Nova Scotia statutes stipulate that the repairs provisions noted above do not apply if the damage caused to the goods under repair was caused by the customer.<sup>110</sup> These types of provisions are vital to ensuring the security of wireless customers.

### 2.8.3. Unlocking policies

158. The ability to “unlock” one’s phone is critical to consumer liberty to have control over his or services and to have the choice and the freedom to switch to a different

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<sup>104</sup> See: *Consumer Protection Act*, CCSM c C200 [“Manitoba Consumer Protection Act”], s 187; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 [“Newfoundland and Labrador Consumer Protection Act”], s 35.13; and *An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act, to Ensure Fairness in Cellular Telephone Contracts*, c 19 of the Acts of 2012 [Nova Scotia Cell Phones Act], s 25R.

<sup>105</sup> Manitoba Consumer Protection Act, s 187(a); and

Nova Scotia Cell Phones Act, s 25R(a).

<sup>106</sup> Manitoba Consumer Protection Act, s 187(b);

Newfoundland and Labrador Consumer Protection Act, s 35.13(2); and

Nova Scotia Cell Phones Act, s 25R(b).

<sup>107</sup> Newfoundland and Labrador Consumer Protection Act, s. 35.13(3).

<sup>108</sup> Manitoba Consumer Protection Act, s 204(1);

Newfoundland Consumer Protection Act, s 35.12(1);

Nova Scotia Cell Phones Act, s 25A1(1); and

*Consumer Protection Act*, RSQ, c P-40.1 [Quebec Consumer Protection Act], s 214.5.

<sup>109</sup> Newfoundland Consumer Protection Act, s 35.12(2).

<sup>110</sup> Manitoba Consumer Protection Act, s 204(2); and

Nova Scotia Cell Phones Act, s 25A1(2).

carrier in the market. Many consumers who responded to this public consultation wrote that they had little choice when it came to handset sellers and that some WSPs would not provide all of their network features to customers who had purchased their own unlocked handsets separately.<sup>111</sup> Respondents believed that phones purchased from WSPs ought to be provided unlocked and free for the customer's own use from the very start of the contract.<sup>112</sup> Within incumbent WSP practices, customers typically sign a fixed-term contract in exchange for receiving a handset free of charge or at a discounted rate. Customers therefore already "pay off" the cost of their handset by agreeing to subscribe to a WSP for a fixed number of years, typically three. Thus, it is PIAC's submission that WSP policies on unlocking phones should not form an additional barrier to a customer's liberty to switch to a different carrier or to use his or her phone while travelling internationally. Furthermore, once a fixed-term contract has expired, a WSP should be required to provide that customer with the unlocking code free of charge.<sup>113</sup>

159. Most incumbent WSPs require their customers to have subscribed with their carrier for anywhere between 90 days and 1 year before the WSP agrees to unlock their phones. In some cases, WSPs do not allow unlocking at all. PIAC/CAC/COSCO submit that this requirement serves only to prevent customers from leaving their WSP and should be eliminated, particularly when, in most cases, customers have already signed a fixed-term contract with their carriers. It is unreasonable to impose a 90-day subscription requirement on a customer who merely wishes to unlock his or her phone to use it while travelling abroad. Furthermore, incumbent WSPs typically charge customers a \$50 fee to unlock their phones. PIAC/CAC/COSCO submit that this fee is unreasonable and should be scrutinized by the Commission. In most cases, unlocking a phone is a simple process – WSPs must merely provide customers with an unlocking code – and does not justify an unreasonably high fee. PIAC/CAC/COSCO would recommend eliminating this fee or requiring that WSPs justify the additional charge in order to ensure that the amount imposed on customers is both necessary and reasonable. Finally, in some WSP policies, unlocking a phone voids any hardware warranty previously attached to it. There is no reason why unlocking a phone should affect its manufacture warranty, and PIAC/CAC/COSCO recommend the removal of these types of policies.

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<sup>111</sup> See: TNC 2012-557 Interventions #12 and #412.

<sup>112</sup> See: TNC 2012-557 Interventions #12, #13, #65, #177, #309, #343, #412, #664, #723, #804, and #938.

<sup>113</sup> This is echoed by many public comments to this consultation, including TNC 2012-557 Interventions #39, #218, #225, and #799.

## 2.9. Loss or theft of hardware

160. The problem of cell phone theft is increasing.<sup>114</sup> In April 2012, the U.S. Federal Communications Commission announced it would create a centralized database to prevent the use of stolen smartphones and tablets, citing that 30% to 40% of all robberies in major cities involve cell phones (40% of all robberies in NYC, 38% of robberies in Washington D.C.).<sup>115</sup> The desire for a similar initiative in Canada was expressed in several public responses to this consultation.<sup>116</sup> The Canadian Wireless Telecommunications Association (CWTA) finally announced the institution of a new device verification process in response to pointed letters requesting action from the Commission that will deny service to any device that is on the GSMA “blacklist.”<sup>117</sup> The CWTA also launched the website designed to be a “hub of resources” for Canadians to learn how to secure their data.<sup>118</sup> However, the CWTA does not plan to have new device verification scheme in place until late September 2013.

161. Nonetheless, rules that provide clarity surrounding wireless services and lost or stolen phones are needed. They will improve consumer certainty, transparency, and security. The CCTS has indicated that many customers feel they should not have to pay for their monthly service after their handset is lost or stolen, and do not understand why an early termination fee (ETF) applies when they wish to cancel their service in these situations.<sup>119</sup> Although customers may be required to offset the cost of their lost or stolen handset, it is important that changes in mobile device do not constrain a customer’s choice and flexibility with respect to his or her services. For instance, customers should have the option to downgrade to a less expensive plan or eliminate certain aspects of their plans to meet their needs. Although a type of downgrading fee may apply, it should be reasonable and should not effectively penalize the customer who wishes to change his or her plan.<sup>120</sup> Other public comments have also noted that the process of obtaining a new handset should mirror that of merely “upgrading” one’s phone and that no additional charges ought to apply.<sup>121</sup>

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<sup>114</sup> Commissioner for Complaints for Telecommunications Services, *Annual Report 2011-12* (2012), online: CCTS <<http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2011-2012/CCTS-Annual-Report-2011-2012.pdf>> [CCTS Annual Report 2011-12] at 17.

<sup>115</sup> Federal Communications Commission, “Announcement of New Initiatives to Combat Smartphone and Data Theft” (10 April 2012), online: FCC <<http://www.fcc.gov/document/announcement-new-initiatives-combat-smartphone-and-data-theft>>.

<sup>116</sup> See: TNC 2012-557 Interventions #68, 134, 269 and 744.

<sup>117</sup> Canadian Wireless Telecommunications Association, “Canada’s Wireless Carriers Take Action to Help Battle Smartphone Theft” (8 November 2012), online: CTWA <<http://cwta.ca/blog/2012/11/08/canada%E2%80%99s-wireless-carriers-take-action-to-help-battle-smartphone-theft/>>.

<sup>118</sup> <http://www.protectyourdata.ca/>

<sup>119</sup> CCTS Annual Report 2011-12 at 18.

<sup>120</sup> This is echoed in other public responses to this consultation. See, for example: TNC 2012-557 Intervention #161. Please also see our submission at section 2.2.3.

<sup>121</sup> See: TNC 2012-557 Intervention #935.

## 2.10. Security deposits

162. Security deposits for wireline services presently are governed by the terms of the Deposits and Disconnections Code, approved in Telecom Decision CRTC 2011-702, CISC non-consensus report – Draft Deposit and Disconnection Code (14 November 2011). As can be gathered from the title of the decision, the CISC Committee struck to develop the Code was not unanimous in its deliberations. PIAC generally supported the addition of Code requirements, as they were the replacement of tariffed requirements for security deposits with the Code, which had been removed in previous forbearance decisions.

163. The wireline Deposits and Disconnections Code, in relation to deposits, provides:

### Article 2: Deposits

2.1 If the Company chooses to offer the option of a deposit, the total amount of any deposit provided by or for a customer to the Company in relation to the Services shall not exceed the sum of:

- (a) three months of anticipated charges for the Services; and
- (b) the total cost of any equipment provided by the Company to customer in respect of the Services.

2.2 If the Company requests a deposit, the Company shall provide the customer with the reasons for requesting a deposit and shall keep a record of those reasons for as long as the Company is holding the customer's deposit.

2.3 The Company shall review the continued appropriateness of the customer's deposit at six month intervals. When the Services are terminated or the conditions that originally justified the deposit are no longer present, the Company shall promptly refund the deposit, with interest calculated in accordance with Section 2.3, retaining only any amount then owed to it by the customer.

2.4 For the purposes of Section 2.3, the interest on the customer's deposit shall be calculated, using at the Company's discretion either:

- (a) the overnight rate of the Bank of Canada that is then in effect plus 1.25%, on the basis of the actual number of days in a year, being 365 or 366, as the case may be, accruing on a monthly basis, or
- (b) the deposit interest rate applicable to deposits for regulated Services in the Company's CRTC approved tariffs if the Company has such tariffs

164. PIAC/CAC/COSCO submit that at the least, the Wireless Code mirror these requirements for wireline service.<sup>122</sup>
165. However, in addition, the Wireless Code should also make clear in advertising that a security deposit will be required where the carrier is not satisfied with the creditworthiness of the consumer.<sup>123</sup> The consumer should be so advised as this is effectively a cost of service for many customers.
166. The Commission may have fewer concerns about the amount of security deposit to be requested (since customers may opt for pre-paid service). However, the Commission should set a low limit on requested security deposits to avoid exclusion of lower-income Canadians from post-paid service. The "three months service," limit, if selected, should be calculated on the basis of the minimum monthly base charge for the service without the addition of extras not requested as part of the plan by the customer. PIAC also suggests that it is unfair to customers to require a security deposit in the full amount of any "subsidy" in the case of handsets or devices that are sold or leased over time. Instead, a reasonable amount of deposit should be calculated for the handset or device based on the "value" of the handset subsidy amortized on a per month basis relative to the length of the anticipated contract. Again, PIAC would suggest up to 3 months deposit may not pose an insurmountable barrier to customers on a two year contract; two months may be more appropriate for a one year term.
167. Finally, interest on security deposits should be paid. The customer's deposit is used by the company in its operation and if not required to offset unpaid service costs, is a form of forced lending that should acknowledge the value of the customer's money.

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<sup>122</sup> For example, in this proceeding there have been complaints that security deposits have not been "promptly refunded" as required by the above Code (as there is no Code presently): "Int#437 I do not have a contract but when I tried to cancel my service because they had lied to me about upgrading and when I was to receive my security deposit, I was told (by a supervisor) to pay off the remaining \$58.00 before I could cancel my service. When I did this I expected to receive my security deposit a month or two later as I was told. To my dismay I found out a month and a half later they had reactivated my service and had begun billing me anew, so I called to inquire as to what was going on I explained my situation but used a curse word then was told "that is strike one" amazed and angered I hung up and sent them an e-mail instead with no profanity with no response I feel they will just continue to bill me as they did in the past. I don't know how I am supposed to quit this no-contract cellphone when I asked was lied to then reconnected."

<sup>123</sup> See Int#169: "This code should ensure that advertising and promotional materials are factual and contain all important information. WIND Mobile recently ran an advertising campaign stating that everyone would be approved for service and can get devices for \$0 (complete with showing images of high-end, desirable devices). What they did not make clear was that deposits would be collected for some customers, and that the majority of available devices (including those pictured in the advertising campaign) were not available for \$0. Even by stating that devices start at \$0 is misleading, and causes problems for both the customer and the sales staff."

## 2.11. Disconnection

168. In TNC 2012-557, the Commission sought comments on disconnection of wireless services, in particular: a provision that addresses the conditions under which a service provider may disconnect mobile wireless services.

169. PIAC/CAC/COSCO submit that disconnections of wireless services are now equally serious for consumers as wireline disconnections and should be treated with the utmost seriousness. Many customers have only a cellphone for communication.

170. The Commission has treated wireline disconnections as a very serious matter over the years:

In *Disconnection of Telephone Service for Unpaid Debts of Others*, Telecom Decision CRTC 77-14, 24 November 1977 (Decision 77-14), the Commission expressed its view on the seriousness of disconnection of basic telecommunications service. In Decision 77-14, the Commission stated:

Disconnection of basic telephone services is an extremely serious action, the adverse effects of which, from an individual subscriber's standpoint, can in many cases far exceed any possible pecuniary return to the company. In the Commission's view, where the telephone involved is the only service furnished to the subscriber, disconnection should never occur except in clear cases of a breach of the regulations<sup>4</sup>, and only upon notice to the subscriber of the tariff provisions relied upon with an opportunity given to the subscriber to make representations to the company and, if necessary, to the Commission.<sup>124</sup>

171. Now, wireline disconnections are governed by the Deposits and Disconnections Code, approved in Telecom Decision CRTC 2011-702, *CISC non-consensus report – Draft Deposit and Disconnection Code* (14 November 2011). This Code provides the following in relation to disconnections of wireline service:

Article 3: Disconnection of Services

3.1 If the grounds for disconnecting the customer are failure to pay, The Company may disconnect a customer's service only where the customer:

- (a) fails to pay an account of the customer that is past due, provided it exceeds fifty dollars or has been past due for more than two months;
- (b) fails to provide or maintain a reasonable deposit or alternative when required to do so pursuant to this Code; or

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<sup>124</sup> Telecom Decision CRTC 2004-31, *Terms of Service - Disconnection for partial payment of charges* (11 May 2004).

- (c) agreed to a deferred payment plan with the Company and the customer fails to comply with the terms of a deferred payment plan.

3.2 At least 14 days prior to disconnection, unless the circumstances contemplated in Sections 3.3(b) or 3.3(c) exist, the Company must provide reasonable notice to the customer, stating:

- (a) the reason for the proposed disconnection and the amount owing (if any);
- (b) the scheduled disconnection date;
- (c) where the reason for disconnection is a failure to pay, the availability of a deferred payment plan if the Company typically offers such plans;
- (d) the reconnection charge, if any; and
- (e) the telephone number of a Company representative with whom the disconnection or any dispute may be discussed.

If the customer has provided the Company with an email address where they can be notified and where the customer has provided express consent to this form of notification in relation to disconnection, the Company may elect to provide the disconnection notice by email to such email address.

3.3 At least twenty-four hours prior to disconnection, the Company must advise the customer that disconnection is imminent, except where:

- (a) repeated attempts to advise the customer of imminent disconnection have failed;
- (b) immediate action must be taken to protect the Company from network harm;
- (c) the Company has a reasonable suspicion that fraudulent activity has occurred, is occurring, or is likely to occur with respect to customer's Services (For the purposes of this section and the Code generally, a failure to pay arrears for the Services is not, by itself, to be considered "fraudulent activity"); or
- (d) otherwise required by the order of a competent public authority.

3.4 Except with customer consent or in exceptional circumstances, disconnection may occur only on weekdays days between 8 a.m. and 9 p.m. or on weekends between 9 a.m. and 5 p.m., unless the weekday or weekend day,

as applicable, precedes a statutory holiday in which case disconnection may not occur after 12 noon.

3.5 Where it becomes apparent that disconnection occurred in error or was otherwise improper, the Company must restore the Services during business hours on the next working day, at the latest, unless exception circumstances do not permit this, and no reconnection charges shall be levied.

3.6 The Company may not disconnect the customer's Services where there is a dispute regarding the basis of the proposed disconnection, provided:

- (a) payment is being made for the undisputed portion of the Services;  
and
- (b) the Company does not have reasonable grounds for believing that the purpose of the dispute is to evade or delay payment.

3.7 If the customer has a dispute relating to the disconnection of Services, the reason for the disconnection of Services, or any other issue relating to a deposit, and the customer has not been able to resolve the dispute with the Company, the customer can lodge a complaint with the Commissioner for Complaints for Telecommunications Services Inc. (CCTS), an independent third-party complaints resolution service. Information about the CCTS is available at [www.ccts-cprst.ca](http://www.ccts-cprst.ca) or by calling 1-888-221-1687.

172. While PIAC/CAC/COSCO support a version of this Code to be made applicable to WSPs, who presently have no Code and many complaints regarding cavalier disconnections. However, given the seriousness of the consequences for customers of wireless service who are disconnected, we have several concerns with the wireline Deposits and Disconnections Code, and would recommend it be strengthened in the following ways:

1. WSPs should be required to offer a deferred payment plan prior to disconnection;
2. The reconnection charge should not be left at the discretion of the WSP but should be reasonable and should be capped: in no case should it be more than the amount required by a customer required by a customer for a security deposit on the service plan in question;
3. Where disconnection was occurred in error or was otherwise improper, service should be restored within 3 hours<sup>125</sup>;

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<sup>125</sup> We base this interval on the LNP timing requirements; surely a number can be reconnected to the same carrier as quickly as it can be ported to another.

4. The company should not be permitted to disconnect any customer, in addition to the stipulations in section 3.6 above, in any case where the customer has an active complaint before the CCTS.

173. Finally, we note that wireless customers should be able to call from their otherwise disconnected wireless handset or device an always accessible company complaint line and be directed to a disconnection service officer (see s. 3.2) and that the customer should not be required to find a wireline telephone or another person's wireless telephone to make a disconnection complaint.<sup>126</sup> Mistaken disconnects do happen.

## 2.12. Other issues the Wireless Code should address

### 2.12.1. Customer service issues and failure to action

174. Customer service forms a key part of a consumer's experience with his or her service provider. Yet, it remains one of the most common issues arising out of consumer complaints. In its 2011-2012 Annual Report,<sup>127</sup> CCTS found that service providers failed to respond to 42.7% of customer complaints that it had received.<sup>128</sup> CCTS writes, "We also scratch our heads about the number of complaints that come to us in which the solution seems so obvious that we cannot understand how or why the service provider did not resolve them when first contacted by the customer."<sup>129</sup> Complaints about customer service – and failure to action especially – have equally emerged in many public responses to this consultation.<sup>130</sup> Failure to action was found to be a particular

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<sup>126</sup> See Int #638: "Regarding rules for interruption of service: On May 30, 2003, I was at home, where I lived alone. I did not have a landline (a wired phone connected to a telephone line). I only had a cell phone, using Rogers as my service provider. At that time I was in SARS quarantine, so I could not leave my home. On May 29, my fiancé had taken possession of a condominium that we had purchased. As I was in quarantine, I was unable to attend. Back to May 30, early in the afternoon my fiancé had gone to the new condo to meet with a contractor, and I attempted to call her there. However, I was unable to do so, as I had discovered that my service from Rogers had been disconnected. This was done without any prior notice or warning, and done while my account was fully paid up and in good standing. I was able to contact Rogers by dialing 611 on my cell phone. They were unable to explain why my service was disconnected. However, they advised me that they could reinstate my service, but only if I called them from a landline. They did not explain why they could not reinstate my service as a result of my request from my cell phone. I explained that this was my only available means of telephone communications, as I was confined to my home as a result of my quarantine. I was forwarded to others at Rogers, and had to explain the situation a few times. Later, the only way I was able to reach my fiancé was to send an email to my brother, who in turn called my fiancé, who by then as very upset because I was unreachable. Eventually, after almost three hours, Rogers reinstated my service. Firstly, I do not think that a carrier should be allowed to discontinue a service without prior notice or explanation, when an account is in good standing. Secondly, I do not think that a carrier should be allowed to demand that a customer contact them from a landline in order to be granted customer service."

<sup>127</sup> Commissioner for Complaints for Telecommunications Services, *Annual Report 2011-2012* (2012), online: CCTS <<http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2011-2012/CCTS-Annual-Report-2011-2012.pdf>>.

<sup>128</sup> *Ibid* at 20.

<sup>129</sup> *Ibid* at 3.

<sup>130</sup> See: TNC 2012-557 Interventions #30, 219, 229, 246, 437, 700, 739 and 900.

problem when customers tried to cancel their services; in some cases, their services were actually reactivated.

175. Failure to respond to a customer request or complaint is a systemic problem that should not be left to CCTS alone to resolve. As CCTS noted above, a key problem is a lack of response from service providers to customer complaints. Countries such as Australia have introduced specific rules that address service provider complaints handling processes. In Australia, the *Telecommunications Consumer Protections Code*<sup>131</sup> (TCP) requires service providers to provide a complaint handling process that is accessible, transparent and free of charge, imposing obligations such as:

- The specification of response times for all individual steps in the management of complaints, including:
  - Acknowledgement of a complaint within 2 working days of receipt;
  - Advisement of the consumer or former customer of the proposed resolution of their complaint within 15 working days from the date the complaint is received; and
  - Completion of all necessary actions to deliver the resolution offered within 10 working days of the consumer's or former customer's acceptance of that resolution;<sup>132</sup>
- Internal prioritization and escalation processes which are clear and accessible to consumers;<sup>133</sup>
- Adequate resources to ensure service provider complaints handling processes meet Code obligations;<sup>134</sup> and
- Systematic record keeping of complaints.<sup>135</sup>

176. Furthermore, the TCP imposes general customer service requirements, including obligations to monitor wait times, seek to increase first contact resolution of inquiries, keep records of interactions between a supplier and customers that are accessible to staff, and ensure that staff are appropriately trained to address and seek to resolve common customer queries.<sup>136</sup>

177. PIAC/CAC/COSCO submit that the Wireless Code proposed in this consultation should also impose obligations on WSPs to ensure that customer complaints and requests are recorded, managed, and resolved in a timely and effective manner. PIAC's

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<sup>131</sup> Communications Alliance, *Telecommunications Consumer Protection Code (2012)*, C628:2012, online: Communications Alliance <[http://commsalliance.com.au/\\_\\_data/assets/pdf\\_file/0017/33128/TCP-C628\\_2012\\_May2012-Corrected-July12.pdf](http://commsalliance.com.au/__data/assets/pdf_file/0017/33128/TCP-C628_2012_May2012-Corrected-July12.pdf)>.

<sup>132</sup> *Ibid*, s 8.2.1(a).

<sup>133</sup> *Ibid*, s 8.1.1(a)(x).

<sup>134</sup> *Ibid*, s 8.4.

<sup>135</sup> *Ibid*, s 8.5.1(a).

<sup>136</sup> *Ibid*, s 4.6.1.

own report on mobile premium services (MPS) found that Canadian customers encountered numerous challenges when attempting to cancel mobile premium services.<sup>137</sup> Many WSPs would refer customers to MPS companies, which either could not be reached or would refer customers back to their WSPs. Cancellation of the services spanned from days to months, and many customers were not informed of their ability to escalate their complaints or bring them before a body such as the CCTS.

178. WSPs should be responsible for having adequate systems in place to attempt to resolve their complaints efficiently, at first instance, to the customer's satisfaction. A failure to comply with such an obligation under the Code should result in systemic penalties.<sup>138</sup>

### 2.12.2. Billing issues

179. Accurate billing continues to be a leading complaints issue. In its Annual Report, CCTS revealed that billing errors accounted for 50.8% of all complaint issues raised by customers between 2011 and 2012,<sup>139</sup> a rise from the years of 2010-2011 (45%) and 2009-2010 (44%).<sup>140</sup> The most frequent billing complaints ranged from problems with double billing and billing for services that were cancelled or not requested to billing at higher rates or without discounts or promotions.<sup>141</sup> In a particular case study on double billing, CCTS questioned why the WSP had not conducted an investigation when it had first received the customer's complaint, and stressed that the customer should not have had to bring the complaint to CCTS.<sup>142</sup> Other public interventions submitted in response to this consultation have identified several issues, including:

- Cases of double billing or overbilling;
- Long wait times and the need to make several complaints before a billing issue is resolved;
- Difficulty with the idea that customers should be the only party that must diligently review their bills to ensure accuracy; and
- A dearth of penalties that are imposed on WSPs when billing errors occur.<sup>143</sup>

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<sup>137</sup> Eden Maher & Janet Lo, *Paying a Premium: Consumers and Mobile Premium Services* (2011), online: PIAC <[http://www.piac.ca/telecom/consumers\\_need\\_better\\_safeguards\\_for\\_mobile\\_premium\\_services/](http://www.piac.ca/telecom/consumers_need_better_safeguards_for_mobile_premium_services/)>.

<sup>138</sup> In Australia, for instance, failure to comply with the TCP could result in a civic penalty under the Telecommunications Act 1997 of up to \$250,000: *Telecommunications Act 1997*, Act No. 47 of 1997, ss 121 and 570.

<sup>139</sup> Commissioner for Complaints for Telecommunications Services, *Annual Report 2011-12* (2012), online: CCTS <<http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2011-2012/CCTS-Annual-Report-2011-2012.pdf>> at 11.

<sup>140</sup> Commissioner for Complaints for Telecommunications Services, *Annual Report 2010-2011* (2011), online: CCTS <<http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/CCTS-Annual-Report-2011.pdf>> at 18.

<sup>141</sup> *Ibid* at 13.

<sup>142</sup> *Ibid*.

<sup>143</sup> See: TNC 2012-557 Interventions #41, 585, 776 and 805.

180. As a result, PIAC submits that the Wireless Code should include a provision that clarifies WSP obligations with respect to accurate billing. This rule would be critical to ensuring consumer control, certainty, and security. In PIAC's opinion, this rule should provide that WSPs have an obligation *to take reasonable steps to ensure that billing is accurate*. Where a customer complains about a billing error, WSPs would have the responsibility to show that they had taken reasonable steps to ensure accuracy of that bill. Where reasonable steps were not taken, a WSP would face an administrative penalty.

### 3. TO WHOM THE WIRELESS CODE SHOULD APPLY

#### 3.1. Application to both Canadian carriers and resellers and to both pre-paid and post-paid wireless services

181. In order for the code to be genuinely effective, it should apply to the broadest range of wireless services and service providers as possible.

182. Canadian carriers and resellers should both be subject to the Code. They should be subject to the entirety of the Code, with only those very slight modifications necessary where the Code's provisions were practically impossible for a reseller to apply.

183. Attempts to exclude resellers could potentially significantly undermine the effectiveness of the code and quickly become a source of confusion for consumers as well as for service providers. Determining whether a service provider is providing service as a reseller (and therefore subject – or not, to the Code) should not be a task imposed on consumers.

184. We also note that the remedies provided by the CCTS apply to all telecommunications service providers. Having a code that only governed a subset of these providers would not mesh with the present redress mechanism of the CCTS and would confuse and frustrate customers.

185. Moreover, a regime in which some wireless service providers are subject to the Code while others are not would not lead to efficient and effective regulation<sup>144</sup> and would likely result to regulation that is not symmetrical or competitively neutral<sup>145</sup>. We are also concerned that excluding resellers may provide an incentive for service providers to structure themselves so as to minimize the coverage of the Code. This would not be a desirable outcome.

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<sup>144</sup> This would be inconsistent with section 7(f) of the *Telecommunications Act*.

<sup>145</sup> Contrary to the Governor-in-Council's Order Issuing a *Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, para 1(b)(iii).

186. The Commission has the ability to ensure that entities that are not Canadian carriers are made subject to the Code even if it has concerns over jurisdiction. There is ample precedent for this. The Commission typically addresses this issue by requiring Canadian carriers from whom resellers purchase underlying services and facilities to set out the obligations in question in the supply contracts they enter into with resellers.
187. With respect to the Commission's question regarding the applicability of the Code to pre- as well as post-paid services, while specific provisions of the Code may vary as between pre-paid and post-paid services, both types of services should be subject to the Code. The effectiveness of the code would potentially be significantly undermined if the Code is made to apply to one but not both types of services.

### 3.2. Application of the Wireless Code in provinces

188. In TNC 2012-557, the Commission sought comments regarding the following issue:

Should the application of the Wireless Code be suspended in provinces or territories which the Commission determines have legislation that provides substantially similar protections for mobile wireless consumers. If so, how should the suspension of the Code be applied (e.g. based on the consumer's province or territory of residence or on the province or territory where the consumer signed or otherwise entered into the contract)?<sup>146</sup>

189. In a footnote in the passage reproduced above, the Commission cited as a precedent a provision of the *Personal Information Protection and Electronic Documents Act*<sup>147</sup> (PIPEDA) which contemplates exemption from the application of provisions of PIPEDA in a province that has passed legislation that is "substantially similar" to PIPEDA.
190. As we noted in our submission of 14 May 2012 in the proceeding initiated by Telecom Notice of Consultation CRTC 2012-206<sup>148</sup>, PIAC and CAC are national consumer protection organizations. We are, first and foremost, advocates for the protection of consumer rights.
191. We represent the interests of consumers before federal regulators such as the Commission. We also represent the interests of consumers before provincial regulators in several of the provinces. We consider that the provinces have an important jurisdiction in consumer protection largely stemming from their constitutional authority over property and civil rights in each of the provinces.

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<sup>146</sup> Paragraph 17, footnote omitted.

<sup>147</sup> S.C. 2000, c. 5, as am.

<sup>148</sup> *Proceeding to consider whether the conditions in the Canadian wireless market have changed sufficiently to warrant Commission intervention with respect to retail wireless services*

192. Provinces such as Manitoba and Québec (and others) have taken decisive steps to protect consumers from abuses by WSPs which the Commission had been reluctant to address. In this submission, we have invited the Commission to consider the substance of the measures adopted by these provinces when it drafts its own code.
193. The Commission's proposal that application of the Wireless Code be "suspended in provinces or territories which the Commission determines have legislation that provides substantially similar protections for mobile wireless consumers" raises significant issues.
194. At the outset, we are skeptical regarding the relevance to the telecommunications sector of a mechanism such as that set out in section 26(2) of PIPEDA referenced by the Commission. We note in this respect, first, that the mechanism in question is a component of the statute. Parliament created this mechanism. There is no comparable mechanism in the *Telecommunications Act*. Second, the mechanism set out in PIPEDA does not empower the Privacy Commissioner to make a determination that provincial legislation is "substantially similar" to Part 1 of PIPEDA but assigns this responsibility to the Governor-in-Council. Parliament's decision that the determination in question should be made by the Governor-in-Council (and not by the Privacy Commissioner) makes an important distinction. Moreover, the Commission under the *Telecommunications Act* has been given specific powers. These powers do not appear to include making determinations regarding the similarity of provincial statutes to its own determinations. Third, Parliament has also not given the Commission jurisdiction to refrain from exercising its powers and carrying out its responsibilities in the event the Commission finds that a province has adopted regulatory measures substantially similar to the Commission's own regulatory measures. Fourth, when Parliament has given the Commission the ability to cede or delegate powers to another entity, it has done so explicitly<sup>149</sup>. We interpret the Commission's proposal to "suspend" the operation of its wireless code in provinces which have adopted substantially similar legislation as a form of delegation. In those provinces in which the Commission finds legislation which provides "substantially similar protections for mobile wireless consumers" the Commission would, in effect, delegate to the province authority to protect wireless service consumers. We expect that, at a minimum, modifications to the *Telecommunications Act* would be required in order for the Commission to have the authority to implement a mechanism analogous to that set out in section 26(2) of PIPEDA.
195. Additionally, while it is not our intention to attempt to put forward in this submission a legal opinion regarding the respective boundaries of provincial and federal

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<sup>149</sup> For example, in sections 41.1 and ff., and in 46.1 and ff. and 71.

authority in relation to telecommunications,<sup>150</sup> it is our understanding that the Supreme Court of Canada and prior to it, the Privy Council have repeatedly confirmed the broad range of the federal government's exclusive jurisdiction over telecommunications<sup>151</sup>, including wireless communications<sup>152</sup>. Rate setting and the setting of service features and characteristics have been found to be a component of the federal government's exclusive jurisdiction over telecommunications undertakings.<sup>153</sup> The service providers whose services would be governed by the wireless code are all interprovincial telecommunications undertakings.

196. We question whether the Commission's decision to forbear from requiring WSPs to file and seek approval of tariffs setting out rates, terms and conditions in the early 1990s could have resulted in creating provincial jurisdiction over these same rates, terms and conditions where none may previously have existed.

197. In any event, when the Commission forbore in the wireless telephony marketplace the 1990s, it retained powers under section 24 of the *Telecommunications Act*. The Commission has also continued to be subject to section 47 of the *Act* which requires it to exercise its powers "with a view to implementing the Canadian telecommunications policy objectives."

198. In Decision 2012-556, the Commission found that market forces in the wireless marketplace had proven inadequate to ensure that the objectives set out in paragraphs 7(a), (b), (f), and (h) of the *Act* were being met and, acting pursuant to section 24, it determined that a compulsory wireless code should be developed.

199. We welcome the Commission's decision to develop a compulsory code to govern the conduct of wireless service providers in the marketplace. While we have yet to see the result of the Commission's effort, we believe that as a general principle, telecommunications service consumers' needs can best be served by a single national set of rules.

200. We do not believe that the establishment of a situation in which wireless telecommunications services are sometimes governed by a Commission-developed code and at other times by provincial statutes of varying content would constitute effective or efficient regulation.

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<sup>150</sup> We reserve the right to offer such a legal opinion in reply or at the oral hearing.

<sup>151</sup> See for ex., *Toronto v. Bell Telephone Company* [1905] A.C. 52 (P.C.); *Bell Canada v. Québec (Commission de la santé et de la sécurité du travail)* [1988] 1 S.C.R. 749 (*Bell v. Québec*); *Alberta Government Telephones v. Canada* [1989] 2 S.C.R. 225; *Téléphone Guèvremont Inc. v. Québec (Régie des télécommunications)* [1994] 1 S.C.R.878.

<sup>152</sup> *Re: Regulation and Control of Radio Communication in Canada* [1932] A.C. 304 (P.C.) (the *Radio Reference*).

<sup>153</sup> See for ex. *Bell v. Quebec* discussion at paras. 240 and 254; *Public Service Board v. Dionne* [1978] 2 S.C.R. 191 at 197.

201. We note in this respect that current individual provincial statutes do not cover all of the same matters. Individual provincial statutes also do not cover all of the matters which we expect will be addressed in Commission's wireless code. Individual elements of an individual statute may thus provide "substantially similar protections for mobile wireless consumers" in one province while elements of a provincial statute in another province may meet the same standard but in relation to other matters. Finally, the Code as designed by the Commission may rely upon several sections to achieve its desired outcome in any one situation, meaning implementation with cross-referencing to supposedly "substantially" similar provincial legislation (which would be subject to constant change at the will of the legislatures) could truly be a daunting task.

202. If Parliament (or the Commission if it had the authority to do so) implemented a mechanism analogous to that in PIPEDA, the Commission would need to refrain from applying its wireless code in differing circumstances in each province. Consumers would face a situation in which their rights in relation to their wireless service could in some instances be governed by a federal code, in other instances by provincial legislation.<sup>154</sup> Despite the Commission's best efforts to determine what "substantially similar protections for mobile wireless consumers" means, we expect that such a situation would soon result in different protections in different locations.

203. This would result in a patchwork of rules for consumers (as well as for service providers) depending upon their location. We do not believe that this would be regulation that would be responsive to the needs of Canadian consumers.

204. We also believe that responsibility for ensuring compliance with rules such as those we expect to be specified in the Wireless Code should remain with a single regulatory authority. . We discuss in the next section how the code should be enforced and promoted.

## **4. HOW SHOULD THE WIRELESS CODE BE ENFORCED AND PROMOTED**

### **4.1. Who should enforce the Wireless Code**

205. Parliament has assigned to the Commission responsibility to implement the provisions of the *Telecommunications Act* and, to this end, it has given the Commission a range of powers and duties. It has also set policy objectives and it has directed the

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<sup>154</sup> We are also dubious that the Commission has the authority to, on behalf of the federal government, agree to any delegation of powers to the provinces in an area of shared jurisdiction, and we consider nearly the entire field of telecommunications to be exclusively federal jurisdiction in any case.

Commission to exercise its powers and perform its duties in a manner which promotes the achievement of these objectives.

206. As discussed earlier, it is our view that Parliament has specifically defined the instances in which the Commission could delegate its powers. The enforcement of a wireless code is not one of these instances.
207. With specific reference to potential enforcement of a wireless code by the CCTS, while we are strongly supportive of the work that the CCTS is doing in providing consumers a recourse in instances in which a dispute arises with a service provider which the consumer is unable to resolve through direct negotiation, we believe that the CCTS's current mandate and powers are inadequate to enable it to enforce a wireless service provider code of conduct. We note, in this respect, that in its intervention in the proceeding initiated by TNC 2012-206, the CCTS described its role as follows:
- the mandate of CCTS includes receiving, investigating and resolving consumer complaints, including wireless complaints, in the forborne market. Where Codes of Conduct exist in the forborne market, CCTS uses them in its dispute resolution activities to assess the conduct of the service provider in the context of the complaint at hand, and such Codes can be of great assistance to CCTS in these activities. Should the Commission determine to undertake the exercise of developing a national wireless consumer code of conduct, CCTS would likewise be prepared to use it as an aid in the resolution of wireless consumer complaints.
208. We interpret the CCTS's comments as an acknowledgement that in the performance of its complaint resolution function, a wireless code which sets standards for WSP conduct would be useful. We also interpret the CCTS's comments as an acknowledgement that its mandate in its current form is to resolve individual disputes, not to ensure service provider compliance with regulatory policies or directions. In our view, the CCTS does not currently have sufficient (or appropriate) powers to compel service providers to comply with the Commission's policies.
209. We also caution the Commission against making the assumption that compliance with a code could be achieved solely through individual consumer complaints to entities such as the CCTS, the Commission or the courts.
210. We submit, first, that it would be unfair to expect consumers to assume on their own the burden of bringing service providers into compliance through the initiation of complaints, whether to the CCTS, the Commission or the courts. While we acknowledge the efforts of the creators of the CCTS to create streamlined processes, we reiterate the CCTS's current mandate is to resolve disputes, not ensure compliance with regulatory

policies. Reliance on complaints also runs the risk of leading to uneven or even haphazard enforcement.

211. We also submit, secondly, that in any case, relying solely on complaints to achieve compliance is likely to prove ineffective. We cite as an example of such ineffectiveness the CCTS's expressions in its annual reports for the last 3 years of increasing frustration over incumbent WSPs' 30 day notice of intention to terminate requirement. It appears that despite multiple complaints to the CCTS and individual decisions from the CCTS in response to such complaints, WSPs have maintained their requirement and have indeed continued to defend it<sup>155</sup>. Decisions from the CCTS have not provided sufficient incentive for incumbent WSPs to abandon the policy.<sup>156</sup>

212. We submit that the 30 day termination notice requirement is a good example of an instance in which WSPs have made a business decision that the cost to them of handling complaints – from their customers as well as to the CCTS, is less than the benefit they derive from having in place a policy which provides them an additional month of service charges from their departing customers and which dis-incentivizes countless customers from migrating to a competitor at the end (or after the end) of the term of their contracts.

213. In light of the above, we consider that the Commission should assume primary responsibility for the enforcement of the wireless code. The Commission would exercise this responsibility on an ongoing basis based on information it collects from service providers. The Commission's responsibility for the enforcement of the code should, however, be supplemented with recourse to the CCTS. We do not consider that either the Commission or the CCTS acting alone can ensure compliance with a wireless code. We discuss in the next section mechanisms which could be used to ensure compliance.

## **4.2. Mechanisms that could be used to ensure compliance**

214. Before discussing mechanisms that could be used to ensure compliance, a discussion regarding mechanisms which could be used to measure compliance may be useful.

215. Periodic reports such as the Commission's annual *Communications Monitoring Report*, the CCTS's *Annual Report*, as well as reporting of performance such as that supplied in the *Investigations, compliance, and enforcement* discussion found in the Commission's *Report on the Operation of the National Do Not Call List* provide ongoing information which can be useful in identifying trends and developments. Periodic reporting of compliance with the code would also be useful.

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<sup>155</sup> See for example submissions, respectively, from Bell Mobility, TELUS Communications Company, Rogers Communications Partnership, MTS Allstream Inc. and Saskatchewan Telecommunications, dated 9 February 2012 in response to our Application of 22 December 2011.

<sup>156</sup> Nor did our 22 December 2011 complaint to the Commission.

216. The Commission could track compliance by seeking periodic information from WSPs regarding the complaints they handle internally which involve alleged breaches of the Code. Sections 37(1)(b) and 37(2) of the *Telecommunications Act* provide the Commission authority to request such information as it may require to perform its duties under the *Act*, which are not forborne.
217. The Commission could also make use of information from the CCTS regarding wireless code-related complaints it handles. To this end, the CCTS could modify its recently upgraded complaints-tracking software to include categories defined by the Wireless Code.
218. Information regarding code compliance (or non-compliance) should be provided to the public. Service providers who generate complaints and the volume of complaints directed to each such WSP should be disclosed. Information so collected and disclosed should have sufficient granularity to enable consumers to be able to associate quantities of complaints originated and the specific provisions of the code raised in complaints. Consumers should be able to determine that a particular service provider is attracting a disproportionate number of complaints regarding a specific provision of the code. We expect that such granularity would assist not only consumers and the Commission but also WSPs themselves in identifying areas of their customer service which could be improved. The availability to consumers of such information would enhance the operation of market forces and benefit consumers.
219. With respect to measures which could be used to ensure compliance, we believe that a good starting point is adequate public disclosure, which we discussed above.
220. The *Telecommunications Act* provides the Commission a variety of means of ensuring compliance by Canadian carriers with its directions. Such measures could include requiring a non-compliant WSP to develop an action plan and to provide periodic audited reports of its results. The Commission could in addition or alternatively, require a member of a WSP's senior management to certify the veracity of the report(s).
221. Means of ensuring compliance by service providers who are not Canadian carriers could be specified in the service provider's underlying services/facilities or interconnection agreements with Canadian carriers.

### **4.3. Recourse and remedies available to consumers if their service provider does not comply with provisions in the Wireless Code**

222. Mechanisms available to the Commission to ensure compliance with its directions, however, may not be adequate or appropriate to provide relief to individual consumers victims of breaches of the code.

223. Potential recourses under the *Telecommunications Act* for the recovery of damages sustained in instances in which a Canadian carrier is in breach of a Commission direction are, in our view, unwieldy and likely inaccessible for most consumers as they entail the initiation of a lawsuit.<sup>157</sup>
224. If, after some time under the new Code the Commission were to note systemic issues not being addressed, it would perhaps be expedient to request changes to the *Telecommunications Act*, comparable to those amendments in relation to the National Do Not Call List and telemarketing rules, and recent anti-spam rules, providing for an administrative monetary penalty power to be granted to the Commission to assist in enforcement of such systemic issues with the Code.
225. In the meanwhile, while we recognize that the subject matter of this proceeding does not include an examination of the CCTS's mandate or powers, the Commission has invited comments regarding remedies available to consumers in the event of a breach of the wireless code.
226. As discussed above, we consider that the CCTS's mandate and powers may not currently be adequate to enable it to enforce a wireless service provider code of conduct. The CCTS, however, could provide a mechanism to enable consumers to receive compensation for damages sustained in relation to breaches of the wireless code. Providing consumers adequate recourses should be a part of any strategy adopted by the Commission to enforce the code. Modifications of the CCTS's current powers would be required, however.
227. Before discussing what the Commission could do to adapt the CCTS to enable it to address claims based on breaches of the wireless code, we consider that a discussion of damage claims in relation to breaches of the code would be appropriate.
228. While damages sustained as a result of a breach of the code could take a variety of forms, we expect that in many instances breaches such as failures to disclose information required to be disclosed under the code or the imposition of contract terms that are inconsistent with the terms of the code may in many instances result in compensation limited to the refund of overpayments by the consumer. An order releasing the customer from a contract along with a refund may similarly compensate the customer for direct damages sustained.

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<sup>157</sup> The recourse is identified in section 72 of the Act and is available for the recovery of a "loss or damage as a result of any act or omission that is contrary to this Act or any special Act or a decision or regulation made under either of them". It is unclear to what extent this recourse would be available to compensate a consumer as a result of a loss sustained as a result of a breach of the wireless code at issue in this proceeding. At a minimum, we would expect that in order for a recourse to be available under this provision, the code would have to have been the subject of a decision by the Commission.

229. Service providers will no doubt argue that an order requiring the WSP to refund an overpayment by the consumer or an order releasing the customer from a contract constitutes a significant sanction. We question, however, the significance of such individual awards in creating an incentive for service providers to take corrective action to correct a breach of the code. This is especially so if continuation of the breach may present a lucrative opportunity for the service provider (as may, we submit, be the case with the 30 day notice requirement the incumbent WSPs continue to impose on customers who want to leave them).

230. We also note in this respect that unless volumes of complaints regarding a specific provision of the code reported to the Commission are substantial, a breach may not appear "on the Commission's radar screen" (even in the event the Commission implements reporting requirements such as those we have suggested in the previous section). Significant damage awards may be the only remedy available to ensure compliance.

231. In these circumstances, we invite the Commission to consider issuing a directive to the CCTS member service providers which would require them to alter the CCTS's constating documents to provide the CCTS greater flexibility to award damages in relation to code breaches.

232. We submit that the CCTS should acquire the ability to award damages which serve a punitive purpose in instances in which a service provider is found to have breached the code. It is our understanding that the CCTS is currently prohibited from doing this<sup>158</sup>.

233. We would also encourage the Commission to consider adding to the CCTS's ability to obtain information from WSPs in order to ensure that the CCTS has the ability to more fully investigate complaints regarding alleged breaches of the wireless code. More specifically, in the event that the CCTS determines that a breach of the code has taken place, the CCTS should have the ability to require a service provider to provide such information the CCTS may require to enable the CCTS to determine whether the breach in question may have affected more than one customer and to determine the number of customers affected. The CCTS should also be able to obtain follow-up information that could be used to enable it to identify repeated instances in which a given WSP practice results in consumer complaints.

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<sup>158</sup> See section 12.2(b) of the CCTS Procedural Code, filed as Appendix 13(a) in Response to Interrogatory 31 May 2010 CCTS(CRTC)30Apr10-1 TNC 2010-247 (the Procedural Code). Similarly, the fact that an alleged breach has been brought to the Commission's attention and/or been the subject of a Commission determination (notably a determination finding that a breach had taken place) should not preclude a consumer from seeking damages before the CCTS. Section 8.2(b) of the Procedural Code would currently appear to preclude this.

234. The Commission should also consider an alteration to the CCTS's procedures so as to do away in relation to proceedings regarding breaches of the wireless code with restrictions which prohibit the CCTS from considering or taking action with respect to a single complaint filed by or on behalf of more than one customer<sup>159</sup>. The objective of this change would be to provide the CCTS with the ability to consider complaints regarding breaches of the wireless code filed on behalf of a group or class of customers or in which the facts lead the CCTS to consider that a class of customers may be subject to the same breach. In such instances, the CCTS should also have the ability to direct a serviced provider to make refunds to a group or class of customers.

235. Changes such as those described above would enable the CCTS to award damages which serve as a genuine incentive to the service provider to discontinue a practice which is in breach of the wireless code. They would also enable the CCTS to award compensation to customers who may have been victim to a breach as a group or class.

#### **4.4. Mechanisms used to promote the Wireless Code among consumers**

236. When the CCTS was established, the Commission issued directives to telecommunications service providers to promote the CCTS among consumers. Activities service providers were directed to pursue included publication in billing invoices, prominent mention in websites, and periodic reminders.

237. We support similar measures, with tighter reporting requirements, be undertaken by the Commission to ensure public awareness of the Wireless Code is built by the WSPs. The capabilities of smartphones and other wireless devices also should be exploited to ensure that users are made aware of the wireless code and can conveniently access its content.

#### **4.5. When the Wireless Code should be implemented**

238. The wireless code should be implemented as soon as possible once the Commission has approved it. We expect that Commission approval will be required for a "go live" date.

239. While service providers will no doubt argue that they will need an extended period to train personnel and alter systems, the response of the public to the Commission's consultation process, as well as the large and growing number of complaints submitted to CCTS regarding wireless service providers' service offerings and practices warrant expeditious implementation.

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<sup>159</sup> See section 6.17 of the CCTS Procedural Code. Section 6.18 appears to potentially provide such discretion. We submit that clear language should be used to avoid any ambiguity.

## **5. HOW THE WIRELESS CODE'S EFFECTIVENESS SHOULD BE ASSESSED AND REVIEWED**

### **5.1. Measuring the Wireless Code's effectiveness and monitoring performance measurements**

240. In this submission, we have advocated the development of a code which reflects a set of underlying principles. The principles stem from concerns raised by consumers in their communications with us, in complaints before the CCTS, and in input to the Commission in the context of the consultation processes conducted in this proceeding. Our Application in December 2011 as well as complaints we have received regarding wireless service provider practices and the comments to the Commission of concerned consumers suggest that wireless service provider business practices leave considerable room for improvement.
241. We recognize, however, that measuring the effectiveness of the Code will pose a challenge. We expect that with the adoption of an effective code, the volume of wireless service complaints to entities such as CCTS may initially increase.
242. As noted above in relation to section 4.2, provided information-gathering systems were set up and public reporting required, certain performance measurements could be of use in determining the effectiveness of the Code.
243. We would suggest that the number of times consumers cites the Wireless Code to WSPs, to the CWTA, to the CRTC, to the CCTS, and possibly to consumer groups such as PIAC could be useful measures of the awareness of the Code and the level of consumer recourse to its provisions.
244. PIAC/CAC/COSCO also support a measure of the number of times a WSP attempts to change contractual term as defined in the Code, the corresponding number of consumers who consequently sought a remedy (exit or negotiated a different term or service) and number of complaints generated about the new contractual term.
245. We consider that ultimately, the effectiveness of the Code could best be measured at a particular point in time through the conduct of a proceeding in which the Commission invites comments from consumers and groups which represent their interests, the industry, and entities such as CCTS. We expect that parties who have worked with the code for a period of time should be able to provide useful input on the code's effectiveness and improvements which should be brought to the Code. We further expect that this effectiveness review could be run in conjunction with the proceeding (described below) to review the Code.

246. In the interval, the Commission could request CCTS to report periodically on the code's effectiveness. We recognize that such reporting would likely only address the effectiveness of the code in assisting CCTS to dispose of complaints brought before it. This could, however, prove to be useful information: if the code is ineffective in a given area, CCTS reporting could provide the Commission (and consumers and the industry) notice of this.

## **5.2. When and how to review the Wireless Code to ensure ongoing effectiveness for consumers**

247. As discussed above, the Commission could consider periodic reporting from CCTS regarding its experience with the Code. CCTS could be directed to report in areas such as, for example, the effectiveness of the code in promoting the resolution of consumer complaints early in CCTS's process, the impact (after an initial period) of the code on volumes of complaints in specified areas of service, service providers' compliance with the code, etc.

248. A more thorough review of the code should be conducted by the Commission following a reasonable implementation period. We believe that a period of three years would be appropriate. The period should be sufficiently long to enable consumers and the industry to become familiar with the Code and to acquire sufficient experience to be able to identify areas, if any, which could be improved. The period should also be sufficiently lengthy to cover at least one contract cycle. The objective here would be to ensure that the code's effectiveness in relation to all stages of contract negotiation, performance, termination and renewal could be assessed. As discussed above, the proceeding should also provide consumers, groups which represent their interests as well as industry participants and entities such as the CCTS to provide input.

249. PIAC/CAC/COSCO therefore suggest that the initial review of the Code take place within 3 years of its implementation, and that regular reviews thereupon take place every 3 years unless a longer period, perhaps 5 years, were found to be more suited to the continued existence of the Code.

**APPENDIX A: PIAC's Part 1 application and reply on 30 days notice requirement for wireless cancellation**

Filed as a separate document.

**APPENDIX B: PIAC Report on the Consumers and Mobile Premium Services**

Filed as a separate document.

**APPENDIX C: PIAC Report on Consumers and Wireless Data Roaming**

Filed in confidence as a separate document.

**APPENDIX D: Prepaid Wireless Service Cards**

Filed as a separate document.

\*\*\* End of Document \*\*\*