

Telecom Notice of Consultation CRTC 2012-557

Proceeding to establish a mandatory code for mobile wireless services

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

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John Lawford

Introduction

Mr. Chairman, Commissioners, Commission staff, other parties and Canadian wireless consumers, my name is John Lawford and I am Executive Director & General Counsel to the Public Interest Advocacy Centre. I am here today with Janet Lo, co-counsel at PIAC. Jean-François Léger, counsel, who is assisting us with this proceeding and also Alysia Lau, PIAC's articling student. We represent PIAC and the Consumers' Association of Canada, as well as the Council of Senior Citizens' Organizations of British Columbia. We ask that you refer to us as "PIAC/CAC/COSCO" and not the "consumer groups".

The time is now for the Commission, with the assistance of all the parties here and most importantly, the input from individual Canadians, to create a national wireless code for the benefit of all wireless consumers.

This hearing is about healing. It is about hope. It is about cooperation.

We can heal the sickness that has crept into the wireless market. Consumers are sick of termination penalties designed to keep them locked into long-term contracts. Consumers are tired of locked

handsets. Consumers are often in shock after opening a bill where roaming charges or overage fees have been applied.

There is now real hope that a comprehensive wireless code can change this market. Not two years ago consumers were in despair; even we were resigned to nibbling at the edges: challenging 30 day notice penalties and dreaming idly of price regulation.

Today, we feel the spirit of cooperation: we can create a Code that will work. This industry has in the past been openly hostile to the regulator and more shockingly, disdainful of its own customers. Consumers have come here today in a spirit of trust that the wireless companies will adopt a new attitude and change their reality.

To that end PIAC/CAC/COSCO have proposed twelve guiding Consumer Principles for this Code: Neutrality; Liberty; Certainty; Transparency; Clarity; Accessibility; Fairness; Security; Comprehensiveness; Universality; Enforceability; and Efficacy. Our position is aligned with these principles: we urge the Commission to ensure the Wireless Code is as well.

Our presentation will address five issues we feel are key to creating the best Code but that may be the most difficult or contentious. They are: notification and caps; changes to contracts; termination formula; unlocking; and enforcement. We have provided a chart, however, of our

position on all sections of the draft Code for your reference, in case these are not otherwise touched upon.

Before handing things to my colleagues let me first highlight three things regarding the application and implementation of the draft Code. First, the issue of the application of the Commission's draft Code to prepaid services. We see no reason why these customers taking prepaid wireless service should be left behind when the majority of rules proposed seek to regulate aspects of service that have no relation to how or when payment is made for them. Second, there should be no "grandfathering" of old contracts when the Code comes into force. Third, this Code should be put into place as soon as reasonably possible: wireless customers have spoken loudly and clearly that they want and demand better wireless contracts now.

Janet Lo

Notification and Caps for Additional Fees

Consumers are frustrated when they receive billing surprises from their wireless service provider. PIAC has conducted research on two specific sources of bill shock for wireless customers - mobile premium services and international data roaming - but we hear from many consumers who have experienced wireless "bill shock" for other services. All

consumers we speak with are united that they need safeguards to prevent bill shock.

We strongly support all of the provisions as drafted in the draft Code in D5 (notification of additional fees and tools to monitor and manage usage). Consumers expect and demand notifications, as well as the ability to suspend usage when they exceed planned monthly costs. The market has not developed these tools to meet consumers' needs. The Draft Code's pre-set monthly default threshold of \$50 for additional fees aligns with our objective of ensuring consumer security and protection from unanticipated high charges. In PIAC's data roaming survey, filed in our comments, 92% of consumers selected a cut-off threshold of \$50 or lower for additional data roaming fees. The option for consumers to customize the default cut-off is thus key to maximize consumer control, as we cannot generalize that all consumers can afford an additional \$50 on their monthly wireless bill. The ability to restrict features upon request must be required in the Code, as the market also does not offer these key mechanisms for consumer control.

Finally, we offer suggestions to strengthen provisions addressing mobile premium services and unsolicited wireless services charges. We suggest that the Code require wireless service providers to directly refund to the consumer any charges that the consumer has not consented to. Some consumers have told us that when disputing third party charges, their wireless service provider sends them to a third

party service provider to pursue a refund. This is not acceptable. If the service provider is the point of billing, then the service provider should also be responsible for crediting or refunding the customer where there is a dispute over charges. Further, the onus must be on the service provider to prove that all charges on the bill are legitimate, otherwise the charges must be waived. The only evidence of the purchase lies with the wireless service provider and the customer's attempt to access this information is often frustrated. We have heard several anecdotes from consumers that their service provider requires the customer to prove that they did not authorize a transaction for mobile premium services. This is unfair and can be corrected by requiring service providers to prove that all charges on the bill are legitimate.

Changes to Contract

One source of great frustration for consumers is unilateral contract changes to terms or services, such as unilateral price increases or reductions in usage limits while under contract. The draft Code attempts to provide clarity surrounding consumer rights if the service provider amends the contract. As drafted, both options allow service providers to unilaterally change any term of the contract.

Section D2.1 requires further improvements to work for consumers. As a starting point, consumers expect that when they commit to a contract for a term period, their wireless service provider will fulfill the terms of

the contract for the duration of that term. When the service provider unilaterally imposes a change to the terms of that contract such as a price increase or less included usage, this is viewed by consumers as a breach of fundamental terms of the contract and unfair. Section D2.1 of the draft Code should prohibit such changes. Certain key terms of the contract should never be unilaterally changed by the service provider: this could be achieved by prohibiting changes to the terms of the contract specified in D1.2 of the Draft Code. Where a service provider attempts to make such a change, the change would be void and unenforceable.

If the Commission opts for one of the two options as drafted, clarity is needed as to whether a “penalty” or “cost or monetary penalty” includes the “early termination fees” described in D3.3. Option 2 of the French version of the draft Code offers more clarity as prohibiting << frais ou pénalité pécuniaire >>, which would include << frais de résiliation anticipée >>. For consistency, the English version of the Wireless Code should accord with the French language and include “early termination fees”. Thus, if the Commission opts for one of these options, it should clarify that a customer who cancels their contract due to a unilateral change by their service provider can do so without paying “early termination fees”. Since a consumer cancellation at any time during a contract triggers the “early termination fees”, this clarity would provide distinct rights for consumers when the service provider unilaterally amends the contract.

If the Commission allows the service provider to amend any term of the contract, we strongly recommend that the onus fall on the service provider to secure express consent to the change, otherwise the change will be of no effect. This would effectively restore the balance of power between the consumer and the service provider and eliminate the practice of unilateral changes that consumers find offensive. If the service provider wants to change the contract, they must ask the consumer and the consumer must explicitly consent.

Jean-François Léger

Contract Expiry, Termination, Renewal

Conditions regarding the termination of contracts by consumers are a key consideration in meeting the Consumer Principles that John enumerated.

The Competition Bureau has expressed concern on the impact of switching costs arising from incumbent service providers' long term contracts. We have expressed similar concerns in this proceeding. The Bureau has proposed limiting both the term of long term contracts and the extent of termination charges.

The Commission has not, as yet, proposed a reduction in the length of the maximum term of long term contracts. A shorter term, combined with improvements in provisions governing termination charges would likely enhance the competitiveness of Canada's wireless services marketplace. We remain advocates of contract terms no longer than 24 months.

In Item D3.3, the Commission has set out 2 options regarding the calculation of termination charges. In our view both mechanisms very generously compensate the service provider for the value of the device subsidy. In today's marketplace, virtually all such subsidies offered by the incumbents focus on the handset or other device. Even with the benefit of the subsidies, however, consumers appear to be paying a significant premium for the privilege of avoiding paying for the device up-front.

Regarding the calculation of termination charges, Section D3.3, we prefer Option 2 as it appears to cover a broader range of scenarios and appears easier to explain.

We have three reservations regarding Option 2, however. First, terminology: the words "economic incentive" do not appear elsewhere in the draft Code. For greater certainty, we suggest the use of "device subsidy" which is used in key section D1.2 and in the Personalized Information Summary.

Second, in instances in which the consumer received no device subsidy, we question why the consumer should have to incur a charge when terminating (in this case, the lesser of \$50 or 10% of the monthly rate for unexpired months). If the customer received no device subsidy, we see no reason for penalizing her/him in this way.

Third: in the discussion concerning Monthly Term Service, the proposal that the minimum monthly credit be set on a 48 months basis appears to over-compensate the service provider unless the rate was set on the basis that the cost of the phone would be recovered over 48 months. As far as we know, today, no service provider recovers the cost of the handset or device over such a long period.

Regarding automatic renewals, Item D3.4, we favour Option 1, provided that the following sentence is added after the second sentence: "A fixed-length contract cannot be extended or renewed during its term by a service provider unless a consumer provides express consent before the contract expires." The change we are proposing would do away with situations in which the consumer is misled into a new 3 year contract mid-term without explicit consent, as often happens today.

Alysia Lau

Unlocking

We believe unlocking one's phone is central to consumers' liberty to have control over their services and to be able to select the carrier that best suits their needs. We echo the individual public comments made throughout this proceeding that have consistently stressed that phone locking should not be allowed at all. Many consumers noted that when they sign a fixed term contract, they are obligated to pay termination charges if they decide to end the contract early. They see prohibitions or constraints on unlocking as additional, and unnecessary, restrictions on their use of their phone. The wireless service providers have put forward a variety of reasons for locking their phones. We find the carriers' arguments difficult to reconcile given the range of inconsistent unlocking policies followed by different providers. The wireless carriers have not proven that the practice of locking is based on genuine technological or subsidy recovery requirements.

We sympathize with many of the individual public respondents who said that unlocking should be allowed from Day One. Between Options 1 and 2 proposed by the CRTC, we prefer Option 1. However, we would modify Option 1 so that it allows consumers to unlock their phones immediately. We are also concerned that Option 1 allows service

providers to set any rate they wish when a customer requests to unlock his or her phone: a high fee could render the right to unlock meaningless. We have suggested Option 1 provide that service providers only be allowed to charge a rate based on cost recovery to a reasonable amount. Finally, the Commission, directly or through CCTS, should also monitor unlocking fees to ensure they are not exceeding cost recovery. As noted by the Competition Bureau, unlocking should not effectively operate as a barrier that prevents customers from switching carriers.

Jean-François Léger

Enforcement

We believe that achieving the Guiding Consumer principles to which John referred earlier, will require a Code which is based upon effective enforcement. We have some suggestions in this respect.

We agree with the recommendation in the Draft Code that primary enforcement responsibility be exercised by CCTS. Based on experience to date, CCTS has proven to be efficient and responsive in dealing with consumer complaints. We expect that enforcement of the Code could add to CCTS's workload and this should be reflected in matters such as staffing and budgeting for the organization.

In the Draft Code, the Commission has adopted without change the remedies CCTS is currently authorized to exercise. We encourage the Commission to consider giving CCTS additional flexibility. For example, CCTS should have the ability to hear complaints filed on behalf of a group or class of customers. CCTS should also have greater flexibility in granting compensation. It is our understanding that today, CCTS can only compensate for direct losses.

Under the current CCTS process, customers must be specifically identified in a complaint and must have authorized that the complaint be filed on their behalf individually in order to be entitled to relief. For a carrier, being found to be in violation of the Code in such circumstances means that even though a practice may have harmed many customers, only the consumer (or consumers) who originated the complaint would be entitled to a remedy.

This approach will provide little incentive for carriers to comply with the Code. We note in this respect that some of the carrier practices which we hope the Code will stop have been very lucrative. For example, CCTS complained in three successive annual reports about carriers' requirement for 30 days advance notice of a customer's decision to terminate a contract, without effect on the incumbent service providers' practices. We filed a complaint before the Commission about the 30 day notice requirement and still nothing happened until in this proceeding the incumbent service providers

finally decided to abandon the practice. Giving CCTS the flexibility we propose would add to the impact of CCTS decisions on carriers, to the benefit of all consumers.

We trust the CRTC will monitor the reports of CCTS regarding Code compliance and will be both active on its own initiative and responsive to applications from concerned parties about widespread or fundamental Wireless Code violations, as stated in draft Code section C1.

John Lawford

Conclusion

PIAC/CAC/COSCO believe that this hearing is a unique opportunity to create a durable, workable and fair Wireless Code that will truly protect all Canadian wireless consumers for a long time to come. We must seize this opportunity and work through the hard questions now. Our responsibility is to respond to the needs of wireless consumers. You, as Commissioners, must consider how to crystallize these needs in a Code of Conduct that service providers will respect and uphold and that the CRTC will steward. We come in hope today that you can heal the retail wireless market and we all are here, consumers, carriers and governments, to work together towards that goal.

We now welcome your questions. Nous sommes maintenant prêts à répondre à toutes vos questions.

Merci; thank you.