



3 October 2016

Danielle May-Cuconato  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: *Review of the Wireless Code*, Telecom Notice of Consultation CRTC 2016-293  
(Ottawa, 28 July 2016) and 2016-293-1 (Ottawa, 23 September 2016)**

The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. We request the opportunity to appear before the Commission at its 6 February 2017 public hearing in the above-noted proceeding, to address the submissions of other parties and to respond to evidence and questions from the CRTC.

The Forum supports a strong Canadian communications system that serves the public interest. We welcome the opportunity to comment on the national *Code* of conduct established by the CRTC to set standards for the wireless industry, and look forward to reviewing other parties' submissions.

Our intervention is attached.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

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**From one-by-one remedies, to systemic compliance:  
Ensuring that the *Wireless Code* is fair for all**

**Comments by  
Forum for Research and Policy in Communications (FRPC)**

on

Review of the *Wireless Code*,  
Telecom Notices of Consultation CRTC 2016-293  
(Ottawa, 28 July 2016) and 2016-293-1 (23 September 2016)

3 October 2016

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## Executive Summary

- ES 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications.
- ES 2 While the *Wireless Code* has been generally successful in eliminating problems such as excessive early cancellation fees, it has been otherwise unsuccessful in empowering wireless service users to obtain better terms from their wireless service providers.
- ES 3 The Forum's recommendations for changing the *Code* are aimed at expanding the scope of information made available to those who use, subscribe to and pay for wireless services.

### I Introduction

- ES 4 TNoC 2016-293 provided eight weeks for interveners to consider their response to the CRTC's questions. (TNoC 2016-293-1 provided an unexpected additional week for comment at the request of Rogers, following CCTS' publication of an *Annotated Guide to the Wireless Code* on 22 September 2016.) The CRTC should continue to grant an eight- or nine-week intervention period for all broadcasting and telecommunications policy proceedings, to provide interveners with sufficient time to undertake research and analysis.
- ES 5 TNoC 2016-293 leaves the impression that the CRTC has predetermined the answer to the question it asks – how the *Wireless Code* is responding to Canadians' needs. Rather than asking *whether* the *Code* is effective, TNoC 2016-293 instead asks several times whether it *continues* to be effective – effectively answering its own question.
- ES 6 A pre-determination that the *Code* has been and is effective means that parties arguing anything else are either wasting their time, or must meet a very high threshold to change the CRTC's existing view. While it is too late to change the perception in this proceeding that the CRTC has already made up its mind, the CRTC's final determination in this proceeding should at least demonstrate that it heard and considered all parties' evidence.

### II The Wireless Code

- ES 7 Mobile phones have operated in Canada since the late 1940s. The CRTC decided that it would not regulate mobile telephone rates in October 1984, before Canada's first cellular telephone service was launched. It said users would likely benefit more if market forces governed mobile telephony's terms of services, than if these terms were regulated.
- ES 8 By 2005 Canadians' adoption of wireless technology lagged behind that of other OECD countries, and mobile phones were the subject of many complaints. From 2010 to 2013 five provinces introduced consumer laws to deal with the mobile phone complaints they were receiving.

- ES 9** In early 2012 Rogers told the CRTC that a national consumer *Code* was needed to give Canadians consistent experiences with their wireless agreements, and submitted a *Code* it had drafted.
- ES 10** After deciding in the fall of 2012 that it should not regulate mobile telecommunications, the CRTC said that Canadian consumers “may not have all the information” needed to navigate the mobile wireless market effectively and that a mandatory *Wireless Code* was needed to fulfill Parliament’s policy objectives for telecommunications. It said the *Code* would list consumers’ rights and wireless service providers’ responsibilities, and invited comments. More than 5,000 interveners submitted their views.
- ES 11** The CRTC’s *Wireless Code* came into effect in December 2013, but with a slightly different set of purposes: to set a baseline for industry behaviour, and to inform consumers of their rights and their responsibilities.
- ES 12** TNoC 2016-293 now says the *Code*’s objectives are “to make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts; to establish consumer-friendly business practices for the wireless service industry where necessary; and to contribute to a more dynamic wireless market.” TNoC 2016-293 asks more specifically if the *Code* has contributed to a better understanding by Canadians and WSPs of their rights and responsibilities in the retail wireless market, and whether it has minimized consumers’ barriers to switching WSPs.
- ES 13** In other words, the *Code*’s purposes have been changed twice in four years – shifting the source of responsibilities back and forth from wireless service providers to wireless service users.
- ES 14** When it published the *Code* the CRTC also said it would develop a plan to evaluate its effectiveness, whose results would “form part of a formal review” of the *Code* after its implementation. If it developed an evaluation plan for the *Code*, the CRTC did not publish it, although the CRTC has since said that compliance reports of wireless service providers and three CRTC-commissioned surveys are part of it.

### **III Issues in this proceeding**

- ES 15** TNoC 2016-293 sets out 5 issues to be considered in this proceeding and 13 issues that are out of scope. The Forum submits that 7 of the 13 out-of-scope issues are directly relevant to evaluating the *Code* – namely rates, competitiveness, false advertising, privacy obligations, CCTS’ role in administering the *Code*, CRTC’s enforcement role and CRTC’s AMPs power.

#### **A CRTC question 1: The effectiveness of the Wireless Code**

- ES 16** The *Code* has been generally effective in

- reducing and standardizing anti-competitive early cancellation fees
- requiring devices purchased from the wireless service providers as part of a wireless phone plan to be unlocked
- providing wireless service users with more certainty about the services they are purchasing from wireless service providers
- capping data and roaming charges and requiring notification when they are reaching their limits so that wireless service users can avoid excessive charges
- reducing the length of contracts from three years, to two, thereby permitting wireless service users to consider switching wireless service providers in 24 months instead of 36 months
- removing one-month cancellation requirements, and in
- providing CCTS with parameters for evaluating complaints about wireless service providers.

**ES 17** The *Code* has been generally ineffective in changing wireless service providers' behaviour and in creating a more dynamic market. Using churn among wireless subscribers as an indicator of market dynamics, we note that churn both rose and fell for Rogers, Bell and MTS from 2013 to 2015. Using rates as an indicator of market dynamism, we note that between 2013 and 2016 rates for Canadian wireless service users

- Increased, in the case of level 1 plans, more than in five comparator countries (Australia, France, Japan, the United Kingdom and the United States)
- Increased, in the case of level 2 plans, whereas rates in four comparator countries decreased
- Decreased, in the case of level 3 plans, but far less than in all five comparator countries.

**ES 18** In terms of wireless service providers' behaviour, we note that the CRTC's surveys found that

- A majority (from 49% to 55%) of wireless service users did not recall hearing or seeing anything about the *Wireless Code*; fewer than one in five users 'clearly' recall the *Code* (see Appendix 1, "1 Existence of the *Wireless Code*"), and
- In each of 2014, 2015 and 2016 fewer than one in five said they changed service providers in the previous two years, (see Appendix 1, #16, response to QB7).

**ES 19** There is no system-level empirical evidence showing that wireless service users have or exercise bargaining power in relation to wireless service providers. Using average revenues per user as an indicator of bargaining power, we note that these increased before and after the *Code*'s introduction for Bell and Telus, decreased before and after for Rogers, and both rose before and decreased after the *Code*'s introduction for MTS.

**ES 20** The Forum also notes that to the degree that systemic-level effects exist, they do not benefit all income groups equally. Average wireless expenditures – another indicator of market dynamics – for the lowest-income quintile of households increased after the

- Code's* introduction in six out of ten provinces; rates for the highest income quintile, on the other hand, decreased more than rates for the lowest income quintile in six provinces.
- ES 21** In our view the available evidence does not support the conclusion that the *Code* has resulted in a more 'dynamic' wireless market, or that is meeting Parliament's objectives for an affordable communications system for all.
- ES 22** Worse, the division of responsibilities between the CRTC and CCTS mean that while the CRTC purports to set policy for Canada, CCTS resolves wireless complaints one by one. The absence of anonymized complaints data from CCTS makes it impossible to know if the same complaints are recurring for the same wireless service providers. The *Annotated Guide to the Wireless Code* that CCTS published in mid-September 2016 offers guidance as to CCTS' understanding of the *Code*, and tends to reconfirm the conclusion that while individual complainants may have obtained some relief due to the *Code*, this relief is not available to all wireless service users. The fact that CCTS' annual reports refer to the same categories of complaints from one year to the next instead suggests that the net effect of the *Code* has been to perpetuate and reinforce the existing market dynamic.
- ES 23** Indeed, the resolution of complaints one by one appears to be leading towards a telecommunications system where CRTC policies are not systematically enforced for all – but only for the very small fraction of wireless service users who complain.

## **B CRTC question 2: The evolution of the retail mobile wireless market since the implementation of the Wireless Code**

- ES 24** TNoC's invitation to discuss the evolution of the retail wireless market is perplexing, because it then defines rates, competition in the wireless market, advertising practices and network infrastructure issues as out of scope. Previous CRTC policies have specifically referred to numbers of competitive suppliers, barriers to entry, pricing and movement in market share market when discussing characteristics of markets.
- ES 25** Reviewing wireless revenues indicates that wireless service providers were not clearly affected by the *Code*. Wireless average revenues per user (ARPU) of Bell and Telus increased before and the *Code's* introduction, decreased for Rogers before and afterwards, and rose for MTS before the *Code's* introduction while decreasing afterwards. If the *Code* was supposed to empower wireless service users to negotiate with their wireless service users to obtain the same or better service at a lower rate, wireless service providers' ARPU levels suggest this did not happen.
- ES 26** As for changes in wireless service users' needs, the CRTC's figures show that data are important to wireless service users and wireless service providers alike. Revenues from data grew by 124% between 2010 and 2014 (from \$3.9 billion, to \$8.7 billion). The CRTC's figures also show wireless service users' growing interest in shared or family plans.



**ES 27** The *Code* currently prohibits charges for data beyond certain thresholds, unless wireless service users agree to accept these charges. An emerging problem is that the user who is made aware of and consents to additional charges in a shared or family plan is not necessarily the person who pays the bills – leading to bill shock for the party who does pay the bills. The *Code*'s definition of 'customer' should be changed to distinguish between the person using voice or data and the 'account holder', the person who pays for that use, so that account holders have an opportunity to consent to potentially higher charges.

**C** **CRTC question 3: The content and wording of the *Wireless Code***

**ES 28** The Forum has made suggestions with respect to 14 issues, most of which are set out below:

1. The *Code* should include a preliminary statement of its purpose and objectives
2. Make the Critical Information Summary available to wireless service users before they buy
3. Provide more information in the Critical Information Summary (by adding information about, but not limited to, total monthly amount allocated to amortization of all financed wireless devices, total taxes payable each month, date when a trial period ends, individual one-time charges for mandatory and optional services chosen by the account-holder)
4. Permit use of "unlimited" to describe services without limit; require use of "generally unlimited" when 2.5% or more of wireless service users have exceeded the limit at least once in the preceding 12 months
5. Redefine 'customer' to consist of subscribers and accountholders and require wireless service providers to notify and obtain the consent of accountholders when data or other thresholds will be exceeded
6. Disallow the use of hyperlinks in written contracts which may (or at times, may not) lead to additional important contract information that, due to its online character, may change without notice although such changes affect issues cited in the Critical Information Summary; contracts should be complete and include all important information
7. Enforce the current requirements for trial periods (as some wireless service providers are introducing new conditions for these periods)
8. Distinguish between "subsidized devices" for which wireless service providers pay a majority or all of the costs, and "financed devices", for which wireless service users (accountholders) pay a majority or all of the costs through their monthly fees
9. Prohibit wireless service providers from charging one-time fees to wireless service users that move to a lower-priced plan
10. Require wireless service providers to clarify that users need not renew their wireless contracts if they wish to replace their devices
11. Include the bring-your-own-device discount in the Critical Information Summary

12. Include billing details about voice, data and roaming use and charges in the bill received by account holders
13. Expressly prohibit pay-to-pay practices
14. Prohibit anti-competitive unlocking fee charges

#### **D CRTC question 4: Consumer awareness of the Code**

**ES 29** The CRTC's surveys show that 46% of people in Canada were unaware of the *Code* in 2014, increasing to 52% in 2016. The CRTC should issue annual Information Bulletins about the three issues that CCTS reports as receiving the highest number of wireless complaints, setting out the CRTC's positions on these points, to promote awareness of the *Code*, CCTS and wireless service providers' responsibilities.

#### **E CRTC question 5: How the Wireless Code's effectiveness should be assessed and reviewed going forward**

**ES 30** The CRTC should re-evaluate the *Code* in 2020. Its determination in this proceeding should also state the *Code's* specific and measureable purposes, to facilitate the 2020 review and to give wireless service providers specific targets at which to aim.

**ES 31** The CRTC should publish annual report cards evaluating the *Code's* effectiveness, using criteria in the 2017 determination and measuring results using annual surveys and annual mystery-shopper performance evaluations of *Wireless Code*.

**ES 32** Having spent \$148,270 on three surveys whose results are largely irrelevant to any evaluation of the *Code*, the CRTC should invite interested parties and survey research experts to design a stronger, more reliable and more valid survey questionnaire, within 3 month of issuing its determination in this proceeding.

#### **IV Conclusions and recommendations**

**ES 33** The Forum agrees that the *Wireless Code* has been positive for wireless service users, as it has eliminated some of the worst, anti-competitive practices of wireless service providers, such as arbitrary and excessive early contract cancellation fees.

**ES 34** The *Code* has not made the wireless market more 'dynamic'. Where wireless service users in other nations studied by the CRTC have benefitted from lower wireless prices, Canadians have not. Although the *Code* has staved off any serious evaluation of the need to regulate wireless telecommunications in Canada, it has not promoted the systemic achievement of Parliament's objectives for Canadian telecommunications policy.

**ES 35** Without more fundamental changes to the regulation of wireless telecommunications in Canada – the discussion of which the CRTC has effectively prohibited in this proceeding – the *Code* will continue to fail to meet Parliament's objectives, struggling to promote systemic compliance, one complaint at a time.

## Summary of the Forum's Recommendations

Forum recommendation 1	The CRTC should provide minimum eight-week comment periods in all telecommunications and broadcasting policy proceedings	2
Forum recommendation 2	The CRTC's determination in this proceeding should clearly state the evidence considered by the Commission, its own findings of fact and its reasons.	2
Forum recommendation 3	The CRTC should not rely on 'shifting purposes' in its regulation of communications, but should clearly state the purpose of its regulatory frameworks when it first publishes them, in terms of the CRTC's statutory authority for those purposes	18
Forum recommendation 4	The CRTC should publish the evaluation plan for the <i>Wireless Code</i> which it committed to provide in TRP 2013-271	20
Forum recommendation 5	The CRTC should enforce the <i>Wireless Code</i> transparently, by including a page on its website that lists issues related to the delayed implementation of, and systemic non-compliance with, the <i>Wireless Code</i>	20
Forum recommendation 6	The CRTC should hold preparatory conferences to identify the issues that will be considered at public hearings, as provided for by section 37 of its <i>Rules of Practice and Procedure</i>	23
Forum recommendation 7	Section C.1(i) of the <i>Wireless Code</i> should be changed to require wireless service providers to offer potential customers a copy of the Critical Information Summary, even if they do not request it	33
Forum recommendation 8	To reflect the growing importance of family or shared wireless plans, and to minimize continuing levels of 'bill shock', the 'Key Terms' section of the <i>Code</i> should define and distinguish between 'account holders' and 'subscribers'	35
Forum recommendation 9	To reflect the growing importance of family or shared wireless plans, and to minimize continuing levels of 'bill shock', sections of the <i>Code</i> that require consent for additional charges should require notification of both the 'account holder' and 'subscriber', as well as the express consent of the 'account holder'.	35
Forum recommendation 10	To reflect the growing importance of family or shared wireless plans, overage charges should be levied by plan, not device	36
Forum recommendation 11	The CRTC's determination in this proceeding should state that wireless service providers may not attempt to invite wireless users to waive their rights under the <i>Code</i> via contract	41
Forum recommendation 12	Amend section A.3 of the <i>Code</i> to distinguish between "unlimited" and "generally unlimited" services	43
Forum recommendation 13	The CRTC should issue and publicize Information Bulletins identifying the wireless issues attracting the most complaints	

- and the wireless service providers receiving the most complaints about these issues 51
- Forum recommendation 14 The Code should require all wireless service providers to send copies of the complaints they receive to CCTS, so that it may report on the total number of complaints about wireless telecommunications being generated in Canada and determine whether other steps need be taken to ensure systemic compliance with Parliament's telecommunications policy for Canada 51
- Forum recommendation 15 The CRTC should include a reference to CCTS' *Annotated Guides to the Wireless Code* on the CRTC's webpage about the *Code* 52
- Forum recommendation 16 The CRTC should initiate its next public review of the *Code's* effectiveness in 2020 52
- Forum recommendation 17 The CRTC should establish measureable and specific targets for the *Wireless Code* 53
- Forum recommendation 18 The CRTC should publish annual statistics about the *Code's* effectiveness, using criteria from its determination in this proceeding to measure the *Code's* objectives 53
- Forum recommendation 19 The CRTC should invite interested parties and survey research experts to comment on an improved survey research design to evaluate the *Wireless Code* 54
- Forum recommendation 20 The CRTC should invite comments from survey research experts and interested parties on preliminary drafts of survey research conducted on its behalf, to strengthen the quality of analysis in the final, published research 55
- Forum recommendation 21 The CRTC should use a mystery-shopper approach to evaluate wireless service providers' practices and compliance with the *Wireless Code* 56
- Forum recommendation 22 The CRTC should publish statistical and financial summaries for the wireline and wireless telecommunications sectors, in the same way it publishes statistical and financial summaries for broadcasting sectors 57

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## I Introduction

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit, non-soliciting and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications.
- 2 The Forum supports a strong Canadian communications system, provided it serves the public interest. We define the public interest in terms of the legislative objectives set by Parliament for Canadian telecommunications in the 1993 *Telecommunications Act*. More specifically, the Forum advocates in the context of telecommunications for services that are more affordable and more accessible, increased Canadian ownership and diversity in ownership of telecommunications companies, growing employment opportunities for Canadians, increased data collection by the CRTC, and more access by the public to the statistics collected by the Commission.
- A** ***Procedural fairness improved by 8-week intervention period***
- 3 Since its formation in late 2013 the Forum has frequently raised concerns about the procedural fairness of the CRTC's public proceedings.
- 4 TNoC 2016-293 has not raised as many concerns for the Forum as other CRTC proceedings, particularly with respect to the time granted to interveners to draft and submit comments. While its proceeding overlapped a major broadcasting proceeding involving the renewal of the television licences of Canada's largest broadcasters, the CRTC provided the public with 45 working days (nine weeks) to consider the issues raised by TNoC 2016-293, along with access to related empirical opinion research that the CRTC commissioned in 2014, 2015 and 2016.<sup>1</sup> This period not only granted public interest organizations needed time to research their submissions, but also enabled them to balance demands on their time from other CRTC proceedings.
- 5 The Forum also notes that this past May the CRTC changed its approach to awarding costs in telecommunications proceedings, through an Information Bulletin: *Guidance for costs award applicants regarding representation of a group or class of subscribers*, Telecom Information Bulletin CRTC 2016-188 (Ottawa, 17 May 2016), <http://www.crtc.gc.ca/eng/archive/2016/2016-188.htm> (TIB 2016-188). The gist of this Bulletin is that organizations seeking to be reimbursed for their costs of participating in CRTC telecommunications proceedings must provide evidence demonstrating how their proposals represent classes of telecommunications subscribers.
- 6 TIB 2016-188 effectively requires public-interest organizations that do not have extensive membership, and that would otherwise be eligible to be compensated for their participation in CRTC proceedings, to undertake public-opinion research.

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<sup>1</sup> TNoC 2016-293 provided 40 working days; the one-week extension to the deadline granted in TNoC 2016-293-1 in response to a request by Rogers (in turn in response to the unexpected publication by CCTS of an *Annotated Guide to the Wireless Code* on 22 September 2016) brings the total time available to interveners in this proceeding to 45 working days, or nine weeks.

- 7 The CRTC should provide a minimum of eight weeks in all telecommunications and broadcasting policy proceedings, to maximize the quality of participation by all interveners.

**Forum recommendation 1 The CRTC should provide minimum eight-week comment periods in all telecommunications and broadcasting policy proceedings**

**B Predetermination of the Code's 'continuing' effectiveness?**

- 8 The Forum wishes to note, however, that while TNoC 2016-293 asks “*how the Wireless Code is responding to [Canadians'] needs*”, the CRTC appears to have already made up its mind on this point. TNoC 2016-293 asks “*whether it continues to be effective as the wireless market evolves*”,<sup>2</sup> invites comments on the Code’s “*ongoing effectiveness*”<sup>3</sup> and asks “*what changes*” should be made to “*enhance the Code's effectiveness*”.<sup>4</sup>
- 9 In other words, the CRTC’s Notice of Consultation presupposes that the *Wireless Code* has been and is effective. In fact, the CRTC appears to have made this determination about the effectiveness of the *Code* in 2015 when it said that “switching wireless service providers has become easier following the introduction of the *Wireless Code*, which, among other things, allows customers to unlock their devices and limits cancellation fees.”<sup>5</sup>
- 10 If the CRTC has already decided that the *Wireless Code* has been and is effective, parties arguing that the *Code* has been or remains *ineffective* either are wasting their time and resources by trying to change the CRTC’s collective mind, or must surpass an unreasonably high standard to convince the CRTC that it is in error.
- 11 If the CRTC has not predetermined that the *Wireless Code* has been and is effective, it should demonstrate its neutrality in its determination about its review of the *Wireless Code*. It should then also clearly state the evidence it has considered on each point, and the reasons for accepting or denying parties’ arguments on these points.

**Forum recommendation 2 The CRTC’s determination in this proceeding should clearly state the evidence considered by the Commission, its own findings of fact and its reasons.**

- 12 In the following section (Part II) the Forum provides an overview of the 2013 *Wireless Code*. We review the regulatory history of wireless telecommunications in Canada, describe the context in which the *Code* was developed, point out the CRTC’s shifting

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<sup>2</sup> *Ibid.*, preface [italics in original].

<sup>3</sup> *Ibid.*, App. 2, “1. The evolution of the retail mobile wireless market since the implementation of the *Wireless Code*”, last sentence [underlining added].

<sup>4</sup> *Ibid.*, App. 2, “2. The content and wording of the *Wireless Code*”.

<sup>5</sup> *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177 (Ottawa, 5 May 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-177.htm>, at ¶133.

purposes for the *Code*, and address the Commission's missing-in-action evaluation plan for the code.

- 13 In Part III we address the issues raised by the CRTC in TNoC 2016-293. Part IV presents the Forum's conclusions. The Forum's recommendations are listed following this submission's Executive Summary.

## II The 2013 Wireless Code

- 14 Today's *Wireless Code* exists because of decisions taken by the CRTC to forbear from regulating mobile phones, even before the wireless telecommunications that most Canadians now use, were launched in Canada.

### A *Wireless telephones: unregulated since 1981*

- 15 Mobile phones have been operating in Canada for almost 60 years. Car-based mobile telephones were available<sup>6</sup> in Canada in 1947,<sup>7</sup> but required human operators and had relatively limited range.
- 16 Cellphone technology – permitting telephone calls to be made while moving over greater distances – was first deployed for commercial use in 1969, through fixed public payphones on trains that ran between Washington and New York City.<sup>8</sup> Motorola

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<sup>6</sup> Tom Farley, "Mobile Telephone History" in "Future Mobile Phones", *Teletronikk* Vol.101 (3/4), 2005, [http://www.telenor.com/wp-content/uploads/2012/05/T05\\_3-4.pdf#page=24](http://www.telenor.com/wp-content/uploads/2012/05/T05_3-4.pdf#page=24), 22-34 at 23-24: AT&T launched commercial mobile radio-telephone service in Saint Louis, Missouri in 1946:

A centrally located antenna transmitted to mobiles moving across a wide area. The mobiles, all of them car based radio-telephones, transmitted to several receivers situated around the city. The traffic from the receivers and to the transmitter were connected by an operator at a central telephone office. MTS used six channels in the 150 MHz band with 60 kHz wide channel spacing. Unexpected interference between channels soon forced the Bell System to use only three channels. Waiting lists developed immediately in every one of the twenty five cities MTS was introduced.

<sup>7</sup> Bell introduced the first commercial mobile telephone service in Canada on 28 June 1947, with the *Globe and Mail* as its first subscriber: Bell Canada Enterprises, "Our History: From magneto to mouse" online: BCE.ca, <http://www.bce.ca/aboutbce/history>.

<sup>8</sup> Tom Farley, "Mobile Telephone History" in "Future Mobile Phones", *Teletronikk* Vol.101 (3/4), 2005, [http://www.telenor.com/wp-content/uploads/2012/05/T05\\_3-4.pdf#page=24](http://www.telenor.com/wp-content/uploads/2012/05/T05_3-4.pdf#page=24), 22-34 at 25:

[i]n January, 1969 the Bell System made commercial cellular radio operational for the first time by employing frequency reuse in a small zone system. Using public payphones. Passengers on what was called the Metroliner train service running between New York City and Washington, DC found they could make telephone calls while moving at more than 160 kilometers per hour. Six channels

- demonstrated the first handheld cellphone set in 1973.<sup>9</sup> Although an 88-cell wireless telephone system was launched in Tokyo in 1979,<sup>10</sup> the United States Federal Communications Commission did not approve Motorola's cellphone for public use for another five years, in 1984.<sup>11</sup>
- 17 The CRTC, meanwhile, began to consider its regulatory approach to mobile phones in late 1981, just before the federal government actually allotted spectrum for cellular use in late 1982.<sup>12</sup>
- 18 The issue of mobile phone regulation came up as the CRTC considered allowing subscribers to attach their own telephones to the networks of federally-regulated carriers. Several parties asked the CRTC to expand the definition of terminal equipment so as to allow private communications systems, including two-way mobile radio systems, to connect to the carriers' networks.<sup>13</sup>

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in the 450 MHz band were used again and again in nine zones along the 225 mile route. A computerized control center in Philadelphia, Pennsylvania, managed the system. Thus, the first cell phone was a payphone! As ... described ... in the Bell Laboratories' Record article on the project, "[T]he system is unique. It is the first practical integrated system to use the radio-zone concept within the Bell System in order to achieve optimum use of a limited number of radio-frequency channels."

<sup>9</sup> *Ibid.* at 23-24

<sup>10</sup> *Ibid.*, at 24.

<sup>11</sup> <http://www.cbc.ca/news/technology/5-major-moments-in-cellphone-history-1.1407352>  
A decade after Cooper made that first call, the U.S. Federal Communications Commission approved Motorola's DynaTAC phone for public use. In 1984, the first DynaTACs became available for consumers.

The handheld device weighed 0.8 kilograms and its rechargeable battery was reported to last about eight hours, according to a company information sheet from the 1970s. Pressing an "off-hook" button — so-called to symbolize picking up a standard telephone from its base — would start a phone call, while pressing an "on-hook" button would end the conversation.

<sup>12</sup> Industry Canada, "Archived—A Brief History of Cellular and PCS Licensing", online: Industry Canada, <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08408.html> <accessed 21 August 2016>:

On October 15, 1982 the Department of Communications (now the Department of Industry) issued Gazette Notice DGTN-006-82/DGTR-017-82, Cellular Mobile Radio Policy and Call for Licence Applications. This notice outlined the sub-allocation plan for the cellular spectrum in which: one 20 MHz block of cellular spectrum (sub-band B) was allocated to the local telephone companies in their operating areas; one 20 MHz block (sub-band A) was made available to other applicants; and two blocks of five (5) MHz of cellular spectrum were held in reserve for future use. ....

<sup>13</sup> *Attachment of Subscriber-provided Terminal Equipment*, Telecom Decision CRTC 82-14 (Ottawa, 23 November 1982).



- 19 In late 1982 the CRTC allowed telephone customers to attach their own equipment to the public-switched telephone network, but decided to consider the interconnection of private and public communications systems in a separate proceeding.<sup>14</sup> It asked for public comment on this issue a few months later, in January 1983;<sup>15</sup>
- 20 The federal government approved a cellphone application by CANTEL at the end of 1983.<sup>16</sup> A few months later, on 13 March 1984 it announced that it would also grant a cellular licence to a Bell Canada subsidiary “so that cellular service would evolve in as unregulated, and as competitive, an environment as possible.”<sup>17</sup>
- 21 Nine days later the CRTC allowed private communications systems to interconnect with the public-switched network, directing Bell Canada and BC Tel to negotiate the terms and conditions for interconnecting the public switched telephone network with CANTEL’s cellular systems.<sup>18</sup> The CRTC said its decision would probably increase consumer choice among wireless service providers and equipment, increase innovation and reduce prices.<sup>19</sup>
- 22 By October 1984 the CRTC had decided it was unnecessary for it to approve the rates charged by mobile telephone services like CANTEL, which had not yet been launched.<sup>20</sup>

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Radio Common Carrier Interconnection With Federally Regulated Telephone Companies* CRTC Telecom Public Notice 1983-14, dated 28 January 1983, (Public Notice 1983-14) [unavailable online, as are all CRTC notices and decisions issued before 1984].

<sup>16</sup> Industry Canada, “Archived—A Brief History of Cellular and PCS Licensing”, online: Industry Canada, <https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08408.html> <accessed 21 August 2016>.

<sup>17</sup> *CELLULAR RADIO - ADEQUACY OF STRUCTURAL SAFEGUARDS*, Telecom Decision CRTC 87-13 (Ottawa, 23 September 1987), <http://www.crtc.gc.ca/eng/archive/1987/DT87-13.htm>.

<sup>18</sup> *Radio Common Carrier Interconnection with Federally Regulated Telephone Companies*, Telecom Decision CRTC 84-10 (Ottawa, 22 March 1984), <http://www.crtc.gc.ca/eng/archive/1984/dt84-10.htm>.

<sup>19</sup> *Ibid.*:

... the interconnection of cellular and conventional public and private mobile radio systems to the PSTN is in the public interest. The Commission is of the view that such interconnection is likely to result in significant advantages, including increased consumer choice among mobile telephone services and equipment; increased access for paging and dispatch customers; technological developments, innovation and lower prices for users as competition develops; and increased opportunities for conventional system operators to offer more enhanced forms of mobile communications services.

<sup>20</sup> *Cellular Radio Service*, CRTC Telecom Public Notice 1984-55 (Ottawa, 25 October 1984), <http://www.crtc.gc.ca/eng/archive/1984/PT84-55.htm>:

- It based this decision “on [its] opinion that the benefits which users may derive from this innovative service are likely to be greater if the terms of its provision are governed, as much as possible, by market forces rather than by regulation.”<sup>21</sup> Bell Cellular and CANTEL launched their wireless cellular networks after this decision, in mid-1985.<sup>22</sup>
- 23 In 1989 the Federal Court of appeal overturned the CRTC’s decision to forbear from regulating wireless service providers.<sup>23</sup> The CRTC therefore began to require all “companies” within the meaning of the *Railway Act* – including cellular service providers – “to file tariffs governing the rates that they charge for their services.”<sup>24</sup>
- 24 By 1990, cellular services accounted for 2.9% of all complaints and inquiries received by the CRTC about telecommunications services.<sup>25</sup>

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... the Commission considers that as a matter of regulatory policy it is neither necessary nor desirable, at this time, that Cantel or an arms' length telephone company affiliate be required to file tariffs for the provision of cellular service to the public. This conclusion is based on the Commission's opinion that the benefits which users **may** derive from this innovative service are likely to be greater if the terms of its provision are governed, as much as possible, by market forces rather than by regulation. In the case of telephone company affiliates, this conclusion is also conditional on there being adequate safeguards to ensure that their cellular activities are at arms' length from, and are not cross-subsidized by revenues from, regulated telephone company activities. ...

<sup>21</sup> *Ibid.*, “Regulation of Cellular Service Providers”.

<sup>22</sup> Iain Marlow, “A phone so big it came with its own luggage”, online:

Globe & Mail (2 July 2010), <http://www.theglobeandmail.com/report-on-business/a-phone-so-big-it-came-with-its-own-luggage/article1389639/>, <accessed 21 August 2016>. The event was marked when the mayors of Toronto and Montreal called each other by cellphone on Canada Day.

<sup>23</sup> *Telecommunications Workers' Union v. CRTC and CNCP Telecommunications* (1989), 2 F.C. 280.

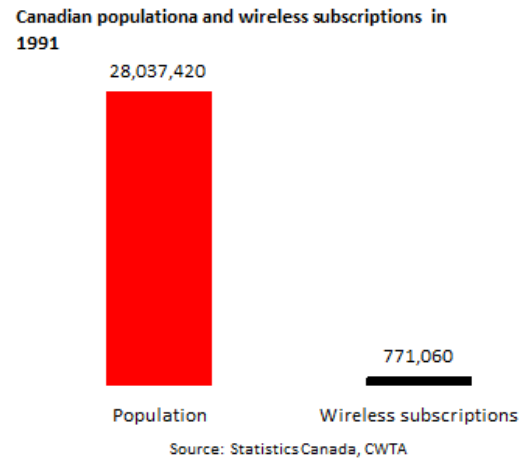
<sup>24</sup> CRTC, *Annual Report, 1989-1990*, at 48.

<sup>25</sup> *Ibid.*, at 44, Table B. At that time, the CRTC wrote that

[f]or both written and oral complaints, telephone companies are required to investigate and provide the Commission with a report within 20 days. This report is then analyzed by the CRTC to resolve the situation.

**Figure 1** Wireless subscriptions in 1991

25 By 1991 the CRTC found that cellular service was still in its infancy.<sup>26</sup> It therefore decided not to mandate the resale of wireless service, on the grounds that this might reduce wireless service providers' revenues and in turn, their expenditures on upgrading and expanding their wireless networks. At this time wireless companies were serving fewer than three-quarters of a million subscribers (**Figure 1**).



26 In 1993 Parliament passed the *Telecommunications Act*, not only empowering but also requiring the CRTC to forbear from regulating telecommunications services if users' interests were – or would be – protected by competition. Section 34(1) permits the CRTC not to regulate if such restraint “would be consistent with the Canadian telecommunications policy objectives”, while section 34(2) requires the CRTC not to regulate if it finds that a telecommunications service “is or will be subject to competition sufficient to protect the interests of users.”

27 Less than a year later, in August 1994, the CRTC again decided against regulating the rates and other aspects of wireless service,<sup>27</sup> except for wireless service provided by dominant telephone companies providing primary exchange service.<sup>28</sup> (The CRTC also decided to exempt dominant telephone companies' wireless services from rate

<sup>26</sup> *Resale and Sharing of Cellular Services*, Telecom Decision CRTC 91-8 (Ottawa, 30 May 1991).

<sup>27</sup> *Regulation of wireless service*, Telecom Decision CRTC 94-15 (Ottawa, 12 August 1994), <http://www.crtc.gc.ca/eng/archive/1994/DT94-15.HTM>. More specifically, it forbore from regulating mobile wireless services unless these were offered directly by a telephone company, but added it was “prepared to consider proposals from the telephone companies” for it to forbear from regulating their wireless services.

<sup>28</sup> See Telecom Decision CRTC 96-14, *infra*.

regulation two years later.<sup>29)</sup> The world's first smartphone was launched a few days later, in Las Vegas.<sup>30)</sup>

- 28 As Figure 2 shows, the number of wireless phone subscriptions in Canada began to grow after 1995, and within a decade were described as “ubiquitous.”<sup>31)</sup>

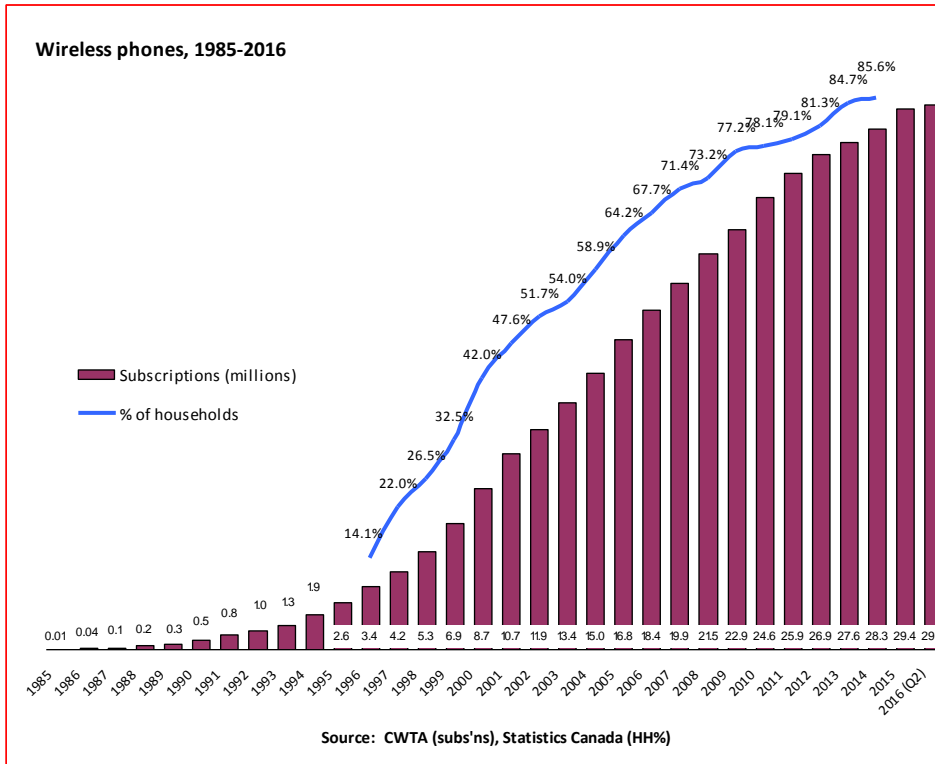
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<sup>29)</sup> *REGULATION OF MOBILE WIRELESS TELECOMMUNICATIONS SERVICES*, Telecom Decision CRTC 96-14 (Ottawa, 23 December 1996), <http://www.crtc.gc.ca/eng/archive/1996/dt96-14.htm>.

<sup>30)</sup> Doug Aamoth, “First Smartphone Turns 20: Fun Facts About Simon”, online: time.com *Time Magazine* (18 August 2014), <http://time.com/3137005/first-smartphone-ibm-simon/> (accessed 9 September 2016). IBM introduced a portable telephone with features that included a touchscreen, email capability and the ability to send faxes on 16 August 1994; it sold for \$1,100 and weighed 14 ounces.

<sup>31)</sup> Industry Canada, Office of Consumer Affairs, *Consumer Trends Update*, “The Expansion of Cellphone Services”, Fall 2006, d<https://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02267.html>.

**Figure 2 Subscriptions to wireless phones, 1985-2016**



29 Yet by 2005 Canadians’ adoption of wireless technology lagged behind that of other countries in the Organization for Economic Co-operation and Development (OECD).<sup>32</sup> Cellphones were in the top ten categories of complaints received by Ontario’s Ministry of Consumer Affairs, and Industry Canada noted that wireless phone “information, in the form of both advertising and contracts, can be difficult to compare and decipher, leading to consumer confusion.”<sup>33</sup>

30 The Minister of Industry subsequently appointed a panel to review the framework of Canada’s telecommunications policy, and make recommendations “on how to modernize it to ensure that Canada has a strong, internationally competitive

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

- telecommunications industry that delivers world-class services for the economic and social benefit of all Canadians.”<sup>34</sup>
- 31 In March 2006 the Telecommunications Policy Review Panel recommended the establishment of a telecommunications consumer agency (a “properly designed ombuds office”<sup>35</sup>) and within a month the federal Cabinet ordered the CRTC to submit annual reports on complaints about telecommunications services.<sup>36</sup>
- 32 In June 2007 the Commissioner of Complaints for Telecommunications Services (CCTS) was incorporated<sup>37</sup> by ten TSPs,<sup>38</sup> and began operations the following month.<sup>39</sup> The CRTC approved the CCTS’ mandate and governance structure in December 2007.<sup>40</sup>
- 33 Despite the existence of the CCTS, provinces were receiving complaints about mobile phones, and began to enact consumer-affairs legislation to deal with the cellphone

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<sup>34</sup> Telecommunications Policy Review Panel, *Final Report*, (March 2006), at iii, [https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\\$FILE/tprp-final-report-2006.pdf](https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/$FILE/tprp-final-report-2006.pdf).

<sup>35</sup> *Ibid.* at p. 6-8.

<sup>36</sup> *Order Requiring the Canadian Radio-television and Telecommunications Commission to report to the Governor in Council on Consumer Complaints*, P.C. 2007-533 (Ottawa, 4 April 2007), <http://publications.gc.ca/gazette/archives/p1/2007/2007-05-26/pdf/g1-14121.pdf>.

<sup>37</sup> Corporations Canada, *Federal Corporation History*, “Corporate Name History”.

<sup>38</sup> *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130 (Ottawa, 20 December 2007), <http://www.crtc.gc.ca/eng/archive/2007/dt2007-130.htm>, at ¶13: In response to the Order, certain telecommunications service providers (TSPs) - Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Canada Inc.; MTS Allstream Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Inc.; Saskatchewan Telecommunications; TELUS Communications Company; Virgin Mobile Canada; and Vonage Canada Corporation - established the Commissioner for Complaints for Telecommunications Services Inc. (the Agency). These TSPs were later joined by Bragg Communications Incorporated and are collectively referred to in this Decision as the Founding Members.

<sup>39</sup> CRTC, *Monitoring Report 2008*, at 26.

<sup>40</sup> *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130 (Ottawa, 20 December 2007), <http://www.crtc.gc.ca/eng/archive/2007/dt2007-130.htm>.

complaints they were receiving. Quebec was first in 2010,<sup>41</sup> followed by Manitoba and Newfoundland and Labrador in 2012,<sup>42</sup> and Ontario and Nova Scotia in 2013.<sup>43</sup>

- 34 Fearing “a patchwork quilt of different rules and regulations”, Rogers Communications Inc. (Rogers) told the CRTC in spring 2012 that “a national Consumer Code is critical to ensuring Canadians have consistent experiences with their wireless service agreements.”<sup>44</sup> It offered a draft Code “as a starting point for discussion”, suggesting that the CRTC form an Interconnection Steering Committee ... to further develop the Code and make adjustments as necessary.<sup>45</sup> The Public Interest Advocacy Centre then asked the CRTC for a full public proceeding to address the matter.<sup>46</sup>

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<sup>41</sup> Robert P. Metcalfe & Charles S. Morgan, mccarthy tetrault, “Québec's Bill 60: New Rules for Payment Cards, Extended Warranties and Long-Term Service Contracts”, (13 May 2010), [http://www.mccarthy.ca/article\\_detail.aspx?id=4884/](http://www.mccarthy.ca/article_detail.aspx?id=4884/)

<sup>42</sup> Manitoba, “Province proclaims new cellphone legislation to protect consumers” (News Release) 23 April 2012, <http://news.gov.mb.ca/news/print,index.html?item=13812&posted=2012-04-23>. The new legislation and its accompanying regulation entered into effect in September 2012. Rob Antle, CBC News “N.L. law targets cell, internet and cable contracts: Bill 6 came into effect on Sept. 27; aimed at aiding consumers” (19 February 2013), <http://www.cbc.ca/news/canada/newfoundland-labrador/n-l-law-targets-cell-internet-and-cable-contracts-1.1319526>.

<sup>43</sup> Ontario enacted the *Wireless Services Agreements Act, 2013*, S.O. 2013, c.8; Ontario, Ministry of Consumer Services, “Bill to Protect Wireless Customers Passes Final Vote”, Newsroom (30 October 2013), <https://news.ontario.ca/mcs/en/2013/10/bill-to-protect-wireless-customers-passes-final-vote.html>; Nova Scotia’s Bill No. 65, *An Act to Amend Chapter 92 of the Revised Statutes, 1989, the Consumer Protection Act, to Ensure Fairness in Cellular Telephone Contracts* received Royal Assent 17 May 2012 and entered into force on 1 May 2013, [http://nslegislature.ca/index.php/proceedings/bills/consumer\\_protection\\_act\\_amended\\_-\\_bill\\_65](http://nslegislature.ca/index.php/proceedings/bills/consumer_protection_act_amended_-_bill_65).

<sup>44</sup> Kenneth G. Engelhart, Senior Vice President – Regulatory, Rogers Communications Inc., *Re: Part 1 Application by Rogers Communications Partnership to implement a National Wireless Services Consumer Protection Code* (Toronto, 8 March 2012), [http://www.crtc.gc.ca/public/part1/2012/8620/r28\\_201202598/1683667.pdf](http://www.crtc.gc.ca/public/part1/2012/8620/r28_201202598/1683667.pdf).

<sup>45</sup> *Ibid.*, at ¶11.

<sup>46</sup> John Lawford, Counsel for PIAC, *Re: Part 1 Application by Rogers Communications Partnership to implement a National Wireless Services Consumer Protection Code*, (Ottawa, 9 March 2012), [http://www.crtc.gc.ca/public/part1/2012/8620/r28\\_201202598/1684694.pdf](http://www.crtc.gc.ca/public/part1/2012/8620/r28_201202598/1684694.pdf).

35 In April 2012 the CRTC asked whether it should intervene in retail wireless services,<sup>47</sup> deciding six months later that it should not.<sup>48</sup>

**B Context of the Wireless Code: regulating navigation, not prices**

36 When it decided in October 2012 not to intervene in mobile phone regulation the CRTC introduced the idea of a code to govern the information made available to wireless subscribers. The Commission acknowledged that

[m]any individuals cited concerns about the following: issues related to the competitiveness of the mobile wireless marketplace, such as choice of competitive service providers and the cost of mobile wireless services (including fees for data and roaming), the clarity of contract terms, the clarity of advertised prices, changes to contract terms, locked phones, phone theft, the quality of mobile wireless services and customer service, and terms related to cancelling contracts (including early termination fees). ...<sup>49</sup>

37 The CRTC concluded that “Canadian consumers may not have all the information they need to effectively navigate the competitive mobile wireless market”.<sup>50</sup> The Commission added that “market forces alone cannot be relied upon to ensure that consumers have

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<sup>47</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*, Telecom Notice of Consultation CRTC 2012-206 (Ottawa, 4 April 2012), <http://www.crtc.gc.ca/eng/archive/2012/2012-206.htm>.

<sup>48</sup> *Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services*, Telecom Decision CRTC 2012-556 (Ottawa, 11 October 2012), <http://www.crtc.gc.ca/eng/archive/2012/2012-556.htm>:

19. While parties did point to a number of studies that address the rates and competitiveness of the mobile wireless market, the Commission notes that market indicators demonstrate that consumers have a choice of competitive service providers and a range of rates and payment options for mobile wireless services.

20. The mobile wireless services market is subject to competition. As set out in the Commission’s 2012 *Communications Monitoring Report*, new entrants in the mobile wireless market continue to increase their market share and coverage. Companies continue to invest in new infrastructure to bring new innovative services to more Canadians. Moreover, the average cost per month for mobile wireless services has remained relatively stable.[7]

21. In light of the above, the Commission considers that competition in the mobile wireless market continues to be sufficient to protect the interests of users with respect to rates and choice of competitive service provider.

<sup>49</sup> *Ibid.*, ¶7.

<sup>50</sup> *Ibid.*, ¶23.



the information they need” for effective participation in the mobile phone market,<sup>51</sup> and that the CCTS had no mandate to deal with complaints about the clarity and content of mobile phone contracts.<sup>52</sup> It said that establishing a code for mobile phones fell within its jurisdiction under s. 24 of the *Telecommunications Act*, which enables the CRTC to impose conditions on the offering and provision of telecommunications services.<sup>53</sup>

38 The Commission added that a mandatory code was necessary “to ensure the fulfillment of the telecommunications policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act,... to ensure that consumers have the information and protection they need to make informed choices in the competitive market”<sup>54</sup> (

39 Table 1).

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada’s identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

...

(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

...

(h) to respond to the economic and social requirements of users of telecommunications services

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...

<sup>51</sup> *Ibid.*, ¶126.

<sup>52</sup> *Ibid.*, ¶124.

<sup>53</sup> *Ibid.*, ¶122.

<sup>54</sup> *Ibid.*, ¶127.

(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

...

(h) to respond to the economic and social requirements of users of telecommunications services

**Table 1**            **Legislative objects underlying the  
*Wireless Code***

40        The CRTC therefore called for comments on a mandatory code that would list subscribers' rights and service providers' responsibilities.<sup>55</sup> More than 5,000 individuals and organizations commented on TNoC 2012-557.<sup>56</sup>

41        The CRTC established the *Wireless Code* in mid-2013,<sup>57</sup> and it came into effect six months later (December 2013).

42        In November 2013 the CRTC required 36 Canadian carriers providing retail mobile wireless voice and data services to submit compliance reports,<sup>58</sup> and in a number of cases sent the carriers additional requests for information. Carriers' reports are posted online,<sup>59</sup> as are CRTC letters related to TNoC 2012-557 (these are listed in Appendix 2).

TNoC 2012-557

2. With this Notice of Consultation, the Commission initiates a proceeding to establish a mandatory code to address the clarity and content of mobile wireless service contracts and related issues (*the Wireless Code*). **The code developed as a result of this proceeding is intended to provide a clear and concise list of consumers' rights and service providers' responsibilities regarding mobile wireless services.**

<sup>55</sup>        *Proceeding to establish a mandatory code for mobile wireless services*, Telecom Notice of Consultation CRTC 2012-557 (Ottawa, 11 October 2012), <http://www.crtc.gc.ca/eng/archive/2012/2012-557.htm>:

<sup>56</sup>        The *Wireless Code*, Telecom Regulatory Policy CRTC 2013-271 (Ottawa, 3 June 2013), <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm>, at ¶9.

<sup>57</sup>        *Ibid.*

<sup>58</sup>        Director, Social and Consumer Policy, CRTC, *Re: Wireless Code Implementation – Compliance Reports*, (Ottawa, 26 November 2013), <http://www.crtc.gc.ca/eng/archive/2013/lt131126.htm>.

<sup>59</sup>        On a CRTC webpage related to 'closed telecommunications proceedings', under the 2012-557 proceeding ("Compliance reports"): <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?lang=eng&YA=2012&S=C&PA=t&PT=nc&PST=a#2012-557>.

**C** *Shifting purposes of the Wireless Code*

- 43 When the CRTC introduced the idea in 2012, it said the *Code* would list consumers' rights and wireless service providers' responsibilities. The *Wireless Code* that the CRTC finally published in 2013 instead shifted the burden of responsibility to consumers, away from wireless service providers:

The Commission considers that the two key objectives of the Wireless Code are to empower consumers by setting a baseline for industry behaviour, and to inform consumers of their rights and responsibilities, with the eventual goal of contributing to a more dynamic marketplace.<sup>60</sup>

- 44 Referring just once to wireless service providers' responsibilities in TRP 2013-271,<sup>61</sup> the CRTC's analysis<sup>62</sup> refers four times to consumers' responsibilities. The CRTC found that

"The Wireless Code will make it easier for individual and small business **consumers to get information** about their contracts with wireless service providers and **about their associated** rights and **responsibilities**, establish standards for industry behaviour, and contribute to a more dynamic marketplace." (Preface)

... **consumers** have a duty to inform themselves about their rights and obligations and **have the responsibility to ensure that they protect their economic interests** in the wireless marketplace ...." (para. 45)

... most parties agreed that **the Code should address consumers'** rights and **responsibilities** when their mobile device is lost or stolen ....(para. 193)

... **responsibility** rests **with consumers** to notify WSPs when their device has been lost or stolen. (para. 195)

- 45 The CRTC later confirmed that the burden of understanding their responsibilities lies entirely on consumers, and not on wireless service providers, in 2015:

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<sup>60</sup> *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271 (Ottawa, 3 June 2013), <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm>, at ¶389.

<sup>61</sup> *Ibid.*, at ¶188: 1 "... limiting customer options [when wireless service providers change their contracts] would simply perpetuate the imbalance of rights and responsibilities between WSPs and customers that was discussed at length during the proceeding"

<sup>62</sup> CRTC regulatory policies typically describe an issue being considered, set out summaries of some parties' views and then provide the CRTC's analysis or conclusions.

... **The Wireless Code established rules** for wireless service providers (WSPs) to empower consumers to make informed decisions about wireless services, and contribute to a more dynamic marketplace. **These rules include** minimizing barriers to switching service providers so that consumers can keep pace with technological progress and take advantage of competitive offers more frequently, and **ensuring that consumers understand their rights and responsibilities with respect to wireless services.**<sup>63</sup>

46 The CRTc has again ascribed slightly different objectives to the *Wireless Code* in this proceeding – namely the availability and comprehension of contract information, and making wireless business practices more ‘friendly’ to consumers. TNoC 2016-293 says the *Code* was introduced to

- make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;
- establish consumer-friendly business practices for the wireless service industry where necessary; and to
- contribute to a more dynamic wireless market.<sup>64</sup>

47 Where TRP 2013-271 previously referred only to consumers’ responsibilities, TNoC 2016-293 has returned to its 2012 position that consumers and wireless service providers each have responsibilities:

The Commission invites detailed comments, with supporting rationale, on whether the Code has contributed to a better understanding by Canadians and WSPs of their rights and responsibilities in the retail wireless market, and whether the Code has minimized consumers’ barriers to switching WSPs.<sup>65</sup>

....

48 In brief, the purposes specifically ascribed by the CRTc to the *Code* have changed twice in four years (see Table 2).

**Table 2 CRTc's shifting objectives for the Wireless Code**

CRTc objectives for the <i>Wireless Code</i>		
TNoC 2012-557	TRP 2013-271	TNoC 2016-293
Summary:	Summary Empower consumers Set baseline for industry	Summary Make it easier for customers to

<sup>63</sup> *The Public Interest Advocacy Centre and the Consumers’ Association of Canada - Application regarding the consistency of Rogers Communications Partnership’s “Rogers Next” and TELUS Communications Company’s “T-UP!” early upgrade programs with the Wireless Code*, Telecom Decision CRTc 2015-212 (Ottawa, 21 May 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-212.htm>, at ¶1.

<sup>64</sup> TNoC 2016-293, App. 2.

<sup>65</sup> *Ibid.*.

CRTC objectives for the *Wireless Code*

TNoC 2012-557	TRP 2013-271	TNoC 2016-293
List consumers’ rights and service providers’ responsibilities	Inform consumers of <ul style="list-style-type: none"> <li>• their rights</li> <li>• their responsibilities</li> </ul> Eventually contribute to more dynamic marketplace	<ul style="list-style-type: none"> <li>• obtain information in wireless contracts</li> <li>• understand information in wireless contracts</li> </ul> Set consumer-friendly business practices for wireless service providers Contribute to more dynamic wireless market
“The code developed as a result of this proceeding is intended to provide a clear and concise list of consumers’ rights and service providers’ responsibilities regarding mobile wireless services”	“The Commission considers that the two key objectives of the Wireless Code are to empower consumers by setting a baseline for industry behaviour, and to inform consumers of their rights and responsibilities, with the eventual goal of contributing to a more dynamic marketplace.”	“The Commission created the Wireless Code with the following objectives: to make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts; to establish consumer-friendly business practices for the wireless service industry where necessary; and to contribute to a more dynamic wireless market.”

- 49 The Forum is concerned that regulatory purposes that shift over time create uncertainty for those expected to meet its requirements, and for those expected to benefit from those requirements.<sup>66</sup>
- 50 When it devises regulatory frameworks and policies the CRTC should provide certainty to those it regulates and those on whose behalf it regulates, by setting out purposes that do not shift from one year to the next. The easiest way to do this would be to show that its policies are explicitly grounded in Parliament’s legislation policies (for telecommunications and for broadcasting).

<sup>66</sup> In *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, at ¶189. The Supreme Court of Canada’s shifting-purposes doctrine generally opposes arguments based on the idea that “the purpose of legislation may shift, or be transformed over time by changing social conditions. This submission is related to the argument that the emphasis should be on ‘effects’ rather than ‘purposes’.”

The Court noted that the practical difficulties of shifting purpose: that “[l]aws assumed valid on the basis of persuasive and powerful authority could, at any time, be struck down as invalid. Not only would this create uncertainty in the law, but it would encourage re-litigation of the same issues and, it could be argued, provide the courts with a means by which to arrive at a result dictated by other than legal considerations.”

The Court also noted that “[p]urpose is a function of the intent of those who drafted and enacted the legislation at the time, and not of any shifting variable.” (*Ibid.*, ¶191).

**Forum recommendation 3      The CRTC should not rely on ‘shifting purposes’ in its regulation of communications, but should clearly state the purpose of its regulatory frameworks when it first publishes them, in terms of the CRTC’s statutory authority for those purposes**

51      Clearly stating regulatory frameworks’ purposes will also assist the CRTC when it decides to evaluate the impact of those frameworks.

**D      *The CRTC’s evaluation plan***

52      When it released the *Wireless Code* the CRTC said that it would formally review the *Code* before December 2016.<sup>67</sup> The Commission said it

... considers it appropriate to develop an evaluation plan to evaluate the effectiveness of the *Wireless Code*, including the WSPs’ compliance reports referred to above. The results of this evaluation will form part of a formal review of the *Wireless Code* following its implementation.<sup>68</sup>

53      TNoC 2016-293 refers to the CRTC’s evaluation plan for the *Wireless Code*,<sup>69</sup> but does not provide a copy of the plan, explain why it did not publish the plan, or indicate

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<sup>67</sup>      *Ibid.*, at ¶393: “The Commission intends to initiate a formal review of the *Wireless Code* within three years of its implementation.”

<sup>68</sup>      TRP 2013-271, ¶392.

<sup>69</sup>      TNoC 2016-293, at ¶15:

Since the *Code*’s implementation, as part of its evaluation plan, the Commission has engaged an outside party to collect public opinion data on wireless issues and awareness of the *Code* and its administrator, the CCTS. The Commission also invites parties to this proceeding to comment on the *Wireless Code* Public Opinion Research 2014, the *Wireless Code* Public Opinion Research 2015, and the *Wireless Code* Public Opinion Research 2016.

whether it will publish the plan. TNoC 2016-293 does say, however, that three surveys it commissioned are part of the CRTC's evaluation plan<sup>70</sup> for the *Wireless Code*.<sup>71</sup>

- 54 The CRTC's decision not to publish its Wireless Code evaluation plan means that it is not known if or what other elements are included in the CRTC's evaluation plan.
- 55 Having failed to publish its own evaluation plan of the *Wireless Code*, the CRTC nevertheless asks parties in this proceeding to submit "... detailed comments, with

<sup>70</sup> An "evaluation plan" is mentioned in a recent CRTC *Three-Year Plan*. (The "Purpose of the Three-Year Plan" is to provide

... a rolling three-year horizon of key CRTC activities. The document is intended to provide Canadians, industry and other interested stakeholders and groups with important information to prepare for and participate in the CRTC's public processes. The communications environment evolves constantly. Accordingly, the CRTC may need to adjust its plan to respond to emerging issues.

(CRTC, *Three-Year Plan, 2016-2019*, "Purpose of the Three-Year Plan", <http://www.crtc.gc.ca/eng/backgrnd/plan2016/plan2016.htm>)

The CRTC's 2015 *Three-Year Plan, 2015-2018* mentions an "evaluation plan", but with respect to the CCTS:

2015-2016

...

Commissioner for Complaints for Telecommunications Services review

The CRTC will hold a public hearing to review the CCTS's structure and mandate, and to investigate how the CCTS could function as the ombudsman for complaints from customers of broadcasting distribution undertakings.

The CRTC will then publish the resulting decision, initiate any follow-up activities, as required, and develop an evaluation plan.

...

2016-2017

...

Commissioner for Complaints for Telecommunications Services review

The CRTC will monitor the effectiveness of the CCTS based on the evaluation plan on an ongoing basis.

....

The CRTC's 2016 *Three-Year Plan, 2016-2019* does not refer to any "evaluation plans".

<sup>71</sup> TNoC 2016-293, ¶15:

Since the Code's implementation, as part of its evaluation plan, the Commission has engaged an outside party to collect public opinion data on wireless issues and awareness of the Code and its administrator, the CCTS. The Commission also invites parties to this proceeding to comment on the Wireless Code Public Opinion Research 2014, the Wireless Code Public Opinion Research 2015, and the Wireless Code Public Opinion Research 2016.

supporting rationale, on when and how the Wireless Code should be reviewed in the future to ensure its continued effectiveness.”<sup>72</sup>

- 56 The absence of the CRTC’s published plan makes it difficult for parties in this proceeding to understand the foundation of the CRTC’s evaluation of the *Code*’s performance so far, and in particular on what criteria the CRTC has relied. The absence of a published evaluation plan raises concerns that the plan may not be measuring key issues. In the case of accessibility, for instance, did the CRTC’s three telephone-based surveys include hard-of-hearing or deaf respondents? Similarly, the *Code*’s shifting purposes raises concerns that the evaluation criteria chosen by the CRTC may change from one review to the next.
- 57 The Forum therefore recommends that the CRTC publish its evaluation plan by the end of October 2016. This will permit parties in this proceeding to provide informed comments on the plan in time for the public hearing now scheduled for early February 2017.

**Forum recommendation 4 The CRTC should publish the evaluation plan for the *Wireless Code* which it committed to provide in TRP 2013-271**

- 58 TNoC 2016-293 also states that the CRTC itself “enforces the Code by addressing issues related to delayed implementation and systemic non-compliance.”<sup>73</sup>
- 59 The notice does not provide any examples of the CRTC’s enforcement of the *Wireless Code*, however, and the Forum was unable to locate such examples by searching the CRTC’s website. As a result, wireless companies and the public are unable to obtain guidance from the CRTC on how the *Code* should be implemented, and how it is enforced.
- 60 The Forum therefore recommends that the CRTC set up a page on its website that lists issues related to delayed implementation of, and systemic non-compliance with, the *Wireless Code*.

**Forum recommendation 5 The CRTC should enforce the *Wireless Code* transparently, by including a page on its website that lists issues related to the delayed implementation of, and systemic non-compliance with, the *Wireless Code***

### III Issues in this proceeding

- 61 The CRTC’s notice of consultation sets out 5 issues that the CRTC wishes to address, and 13 that it does not wish to address.

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<sup>72</sup> TNoC 2016-293, App. 2, 4 (“How the *Wireless Code*’s effectiveness should be assessed and reviewed going forward”).

<sup>73</sup> TNoC 2016-293, at ¶11.



62 The general issues that the CRTC wants parties to address are:

1. The effectiveness of the Wireless Code
2. The evolution of the retail mobile wireless market since the implementation of the Wireless Code
3. The content and wording of the Wireless Code
4. Consumer awareness of the Wireless Code
5. How the Wireless Code's effectiveness should be assessed and reviewed going forward

63 The 13 issues described as being "outside the scope of this proceeding" are:

- 1 rates
- 2 competitiveness of the marketplace
- 3 wholesale issues
- 4 mobile device standards
- 5 Internet traffic management practices (being examined through a separate CRTC proceeding, TNoC 2016-192)
- 6 differential pricing (being examined by the Commission in a separate proceeding, TNoC 2016-192)
- 7 false advertising
- 8 privacy obligations of WSPs under the Personal Information Protection and Electronic Documents Act (PIPEDA)
- 9 network infrastructure issues;
- 10 the role of the CCTS as the administrator of the Code (addressed in Broadcasting and Telecom Regulatory Policy CRTC 2016-102)
- 11 participation in the CCTS by WSPs – these issues were examined as part of the review of the CCTS (Broadcasting and Telecom Regulatory Policy 2016-102); and
- 12 the CRTC's role in enforcement
- 13 the CRTC's new power to impose administrative monetary penalties (AMPs) on telecommunications service providers for violations of the *Act* or any decisions or regulations the Commission makes pursuant to the *Act*.

64 The Forum submits that the CRTC's list of out-of-scope issues is overly broad and unreasonable, as 7 of these 13 issues are directly relevant to an evaluation of the *Code's* performance. Our reasons follow:

- 1 Rates While the CRTC decided not to regulate wireless rates in 2012, TNoC 2016-293 expressly asks interveners "whether the Code has minimized consumers' barriers to switching WSPs" (Appendix 2). Prohibiting any discussion of rates unreasonably limits parties' submission of evidence regarding sections of the *Code* that already deal with rates, or recommendations for adding sections to deal with barriers to switching

wireless service providers, such as the rates charged for unlocking wireless telephone handsets.

2 Competitiveness of the marketplace Forbidding discussion of the impact of the *Code* on the competitiveness of the market is inconsistent with TNoC 2016-293's express request that interveners address the "evolution of the retail wireless market", and with any evaluation of the *Code's* achievement of the CRTC's objective that it "contribute to a more dynamic wireless market".

3 False advertising A strict prohibition on any discussion of false advertising will limit parties' ability to address sections of the *Wireless Code* dealing with wireless service providers' marketing and disclosure practices, thereby limiting the CRTC's ability to review the *Code's* effectiveness in helping wireless users obtain and understand the information in their contracts, and ensuring that wireless service providers' business practices are "friendly" to wireless users.

4 Privacy obligations As wireless telephone users' privacy rights are part of the notification requirements of the *Wireless Code*, prohibiting discussion of this aspect of privacy rights unnecessarily limits the CRTC's access to interveners' evidence on this point.

5 CCTS' role as Code administrator While the CRTC reviewed the CCTS' operations in 2016, parties' capacity to evaluate the effectiveness of the *Code* relies to a very large degree on data collected by the CCTS in its role as the administrator of the *Code*; prohibiting discussion of this aspect of the CCTS' role unreasonably restricts interveners' ability to evaluate the *Code's* performance by prohibiting discussion of the CCTS' continuing failure to publish data relevant to the *Code's* evaluation.

6 CRTC's enforcement role As TNoC 2016-293 purports to invite parties' comments on changes to 'enhance' the *Code's* 'effectiveness', a strict prohibition on any discussion of how the CRTC enforces this enhancement is patently unreasonable, particularly in light of the CRTC's own statement in TNoC 2016-293 (paragraph 11) that it "enforces the code by addressing issues related to ... systemic non-compliance."

7 CRTC's AMPs power As TNoC 2016-293 invites parties' comments on changes that would 'enhance' the *Code's* 'effectiveness' and also refers to the CRTC's enforcement of systemic non-compliance with the *Code*, prohibiting any discussion of the CRTC's power to penalize wireless service providers that breach or decline to be governed by the *Code* and thereby maximize the *Code's* effectiveness, is patently unreasonable.

65 While the Forum agrees with the Commission that matters already being addressed in other CRTC proceedings need not necessarily be raised a second time in this proceeding (unless relevant to the *Code*), the reasons noted above explain why the number of issues identified as out of scope is excessive. Going forward, the CRTC should use its authority under section 37 of its *Rules of Practice and Procedure* to hold a preparatory conference to address the issues that a public hearing will consider. A preparatory conference will give parties an opportunity to raise issues they believe warrant discussion, and to provide reasons for their suggestions.

**Forum recommendation 6 The CRTC should hold preparatory conferences to identify the issues that will be considered at public hearings, as provided for by section 37 of its *Rules of Practice and Procedure***

66 The remainder of this section responds to the CRTC's five questions regarding the *Code*'s effectiveness, evolution of the retail wireless market, changes to content and wording, and evaluation of the *Code* in the future.

67 The CRTC's questions are set out in red boxes below each section heading; Appendix 3 sets out the changes being proposed by the Forum, with respect to the current *Code*.

**A CRTC question 1: *The effectiveness of the Wireless Code***

*TNoC 2016-293, Appendix 2:*

*"The Commission created the Wireless Code with the following objectives:*

- *to make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;*
- *to establish consumer-friendly business practices for the wireless service industry where necessary; and*
- *to contribute to a more dynamic wireless market."*

*"The Commission invites detailed comments, with supporting rationale, on whether the Code has contributed to a better understanding by Canadians and WSPs of their rights and responsibilities in the retail wireless market, and whether the Code has minimized consumers' barriers to switching WSPs."*

68 The Forum considers that the *Wireless Code* has been effective in that it has set requirements for

- reducing and standardizing anti-competitive early cancellation fees for the majority of wireless service users (although some wireless service providers may effectively be imposing additional early cancellation fees on users who prepay for services; see Part III, Section C, below)
- ensuring more certainty that devices purchased from the wireless service providers as part of a wireless phone plan can be unlocked within a more reasonable period of time

- providing wireless service users with more certainty about the services they are purchasing from wireless service providers
- capping data and roaming charges and requiring notification when they are reaching their limits so that wireless service users can avoid excessive charges
- reducing the length of contracts from three years, to two, thereby permitting wireless service users to consider switching wireless service providers in 24 months instead of 36 months
- removing one-month cancellation requirements, and in
- providing CCTS with parameters for evaluating complaints about wireless service providers.

69 The *Wireless Code* has been largely ineffective in changing wireless service providers' behaviour, however. The evidence in UdC's report about actual sales experiences with Canada's major wireless service providers is that wireless service providers have not ensured that their sales representatives follow the *Code*'s provisions. The evidence in the *Annotated Guide to the Wireless Code* made public by CCTS<sup>74</sup> similarly continues to demonstrate that wireless service providers commit the same breaches of the *Code* again and again.

70 As for the overall impact of the *Code* in creating a more dynamic retail wireless market, the Forum notes that TNoC 2016-293 does not expressly define what the Commission means by "dynamic". Telecom Decision CRTC 2016-171 explains, however that the CRTC may believe that the removal of "unnecessary barriers to consumer choice" contributes "to a more dynamic marketplace."<sup>75</sup>

71 The evidence from the international price-comparison reports commissioned by the CRTC is that wireless service users in other countries are experiencing more dynamic market conditions without the *Code* but with rate-based regulation, than users in Canada are experiencing with the *Code* and without rate-based regulation.

72 Figure 3 shows that between 2013 and 2016, rates for Canadian wireless service users

- Increased, in the case of level 1 plans, more than in Australia, France, Japan, the United Kingdom and the United States
- Increased, in the case of level 2 plans, whereas rates in Australia, France, the US and the UK all decreased

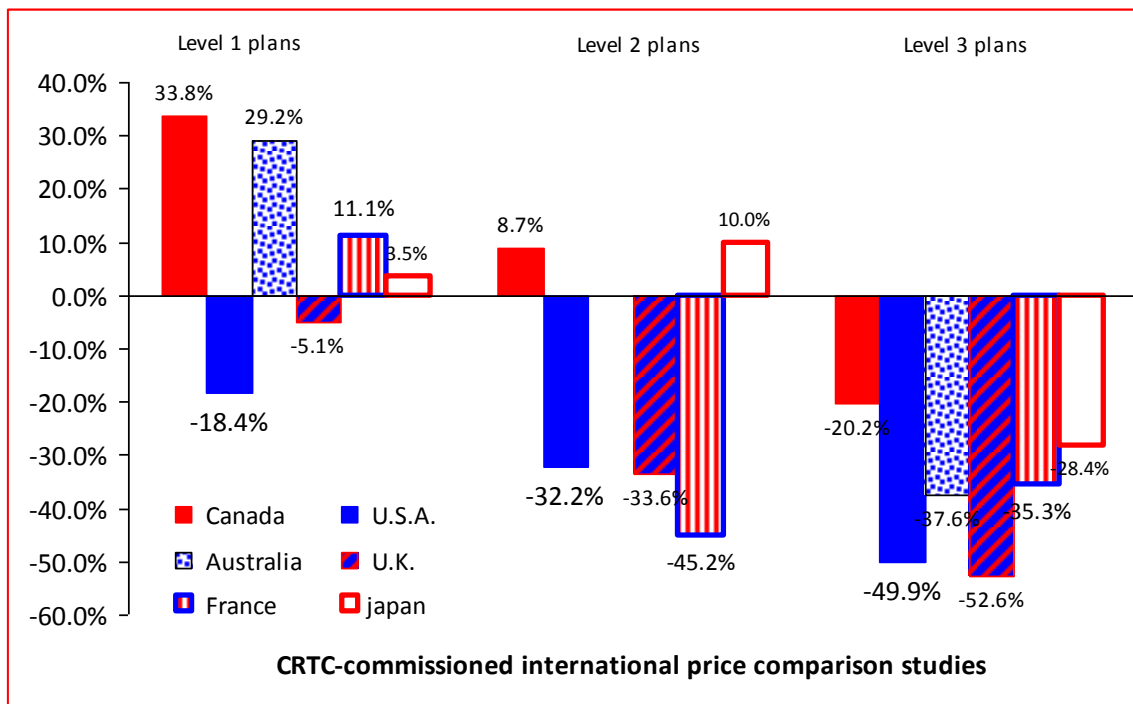
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<sup>74</sup> The CRTC postponed the deadline for submissions regarding TNoC 2016-293 due to Rogers' request for more time to review the CCTS' document, the second version of which ("Version 2.0") was made available online on 22 September 2016: see <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/AWC/en/Annotated-Guide-to-the-Wireless-Code.pdf>.

<sup>75</sup> *Quebecor Media Inc. - Prohibition of 30-day cancellation policies - Application regarding pro-rated refunds for cancelled services*, Telecom Decision CRTC 2016-171 (Ottawa, 5 May 2016), <http://www.crtc.gc.ca/eng/archive/2016/2016-171.htm>, at ¶13.

- Decreased, in the case of level 3 plans, but far less than in Australia, France, the US, the UK and Japan.

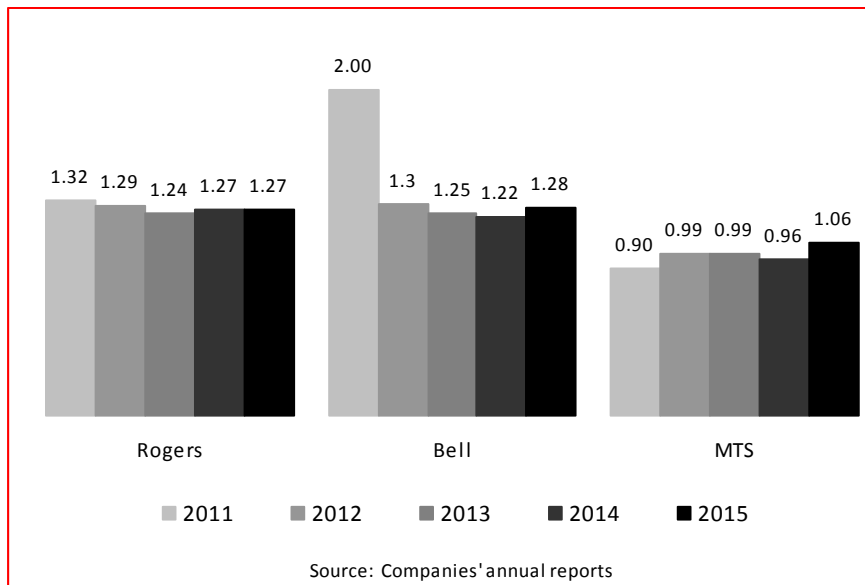
**Figure 3 CRTC-commissioned data on international wireless rate comparisons: change in prices from 2013 to 2016, for three different levels of wireless service**



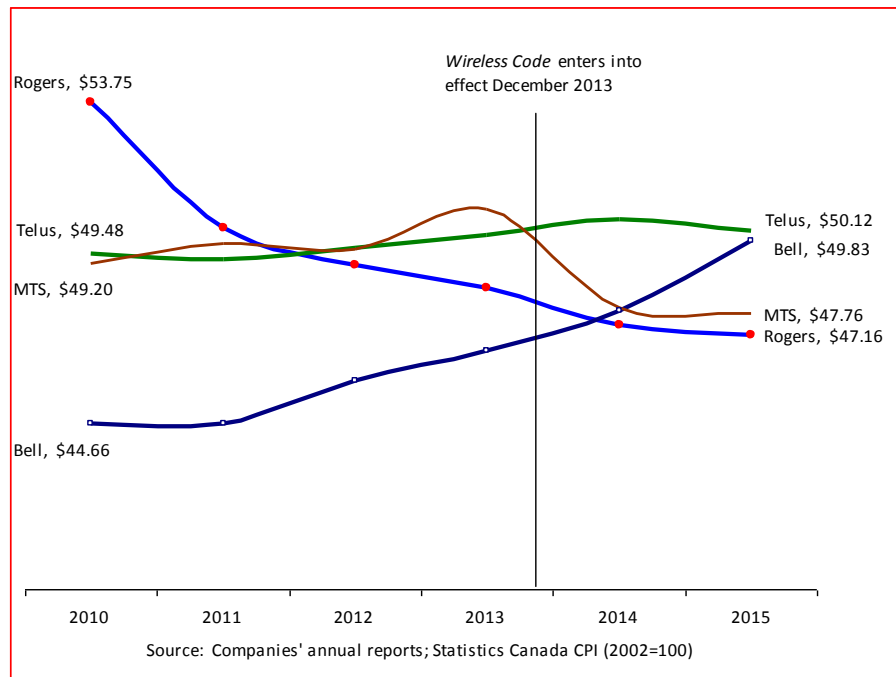
73 As for the CRTC’s 2016 description of the *Code*’s objectives – its contribution to a better understanding by Canadians and WSPs of their rights and responsibilities in the retail wireless market, and its minimization of consumers’ barriers to switching WSPs<sup>76</sup> - the evidence is at best mixed:

- A majority (from 49% to 55%) of wireless service users say they do not recall hearing or seeing anything about the *Wireless Code*; fewer than one in five users ‘clearly’ recall the *Code* (see Appendix 1, “1 Existence of the *Wireless Code*”)
- In each of 2014, 2015 and 2016 fewer than one in five said they changed service providers in the previous two years, (see Appendix 1, #16, response to QB7) and
- Churn among wireless subscribers both rose and fell for Rogers, Bell and MTS from 2013 to 2015 (see Figure 4).

<sup>76</sup> TNoC 2016-293, App. 2.

**Figure 4** Wireless churn for Bell, Rogers and MTS, 2011-2015

- 74 Moreover, and however well informed they may be thanks to the *Code*, there is no systemic empirical evidence to show that wireless service users either have or exercise bargaining power in their relations with wireless service providers.
- 75 If the *Code* had changed market dynamics, for example, one might expect that levels of wireless revenue per user (average revenue per user, or ARPU) Canada would have decreased for wireless service providers after the *Code*'s introduction – but that did not happen. Rather, as Figure 5 shows, ARPU increased before and after the *Code*'s introduction for Bell and Telus, while it decreased before and after for Rogers. The only company for which ARPU changed after the *Code* – increasing before its introduction and decreasing afterwards, was MTS (purchased by Bell in May 2016).

**Figure 5 Average wireless revenue per user, by TSP, 2010-2015**

- 76 Evidence of wireless service users' empowerment is also mixed when lower- and higher-income household expenditures are reviewed. Table 3 shows changes in household expenditures on wireless phone service between 2013 and 2014, for the lowest and highest income groups, by province.
- 77 We expected that if the *Code* benefitted all wireless service users to the same degree, changes in mobile phone service expenditures would be fairly uniform across the provinces, and across income groups.
- 78 Instead, average expenditures on mobile phone service increased between 2013 and 2014 for the lowest income households in six provinces (see italics in Table 3).
- 79 Moreover, from 2013 to 2014 rates for the highest income groups decreased more than the rates for the lowest income groups in six provinces (see bold font in Table 3). For example, mobile rates decreased by 2.4% for the 20% of households in Ontario with the highest income, but grew by 18.7% for the 20% of households in the province with the lowest income.

**Table 3** Change in household expenditures on mobile phone service, by province and quintile, 2013 to 2014

Change in households' expenditures on mobile phone service, 2013-2014, by province		
Province	% change 2013-2014	
	Lowest income quintile	Highest income quintile
NL	-5.0%	11.7%
PEI	-9.7%	14.8%
NS	<b>11.7%</b>	<b>-7.9%</b>
NB	<b>41.9%</b>	<b>18.7%</b>
QC	6.1%	11.1%
ON	<b>18.7%</b>	<b>-2.4%</b>
MA	<b>-4.0%</b>	<b>-7.9%</b>
SK	<b>27.1%</b>	<b>-1.2%</b>
AL	<b>24.6%</b>	<b>-5.7%</b>
BC	-11.3%	15.1%
Canada	<b>3.5%</b>	<b>0.7%</b>

Source: Statistics Canada, *Survey of household spending, , Canada, regions and provinces, by household income quintile*, CANSIM 203-0022

- 81 These data suggest that if the *Code* has empowered wireless service users to negotiate their rates downward – and there is no evidence to support this view – the *Code* has not empowered all users to the same degree. Lower-income wireless service users appear to be at a disadvantage compared to higher-income users.
- 82 It is also worth noting that even if all users had been equally empowered by the *Code* – and the data do not support this view – users did not in any event all begin from the same point.
- 83 From 2010 to 2013 wireless phone rates increased more for the lowest income quintile than for the highest income quintile, in seven provinces (see Table 4). In other words, wireless rate increases disproportionately affected lower-income wireless service users before the *Code*'s introduction. So if lower-income groups were empowered to reduce their rates (and as Table 3, above, showed, that was not true in six out of ten provinces), lower-income wireless service users had already experienced rate increases higher than those experienced by higher-income users.

**Table 4** Change in household expenditures on mobile phone service, by province and quintile, 2010 to 2013

Change in households' expenditures on mobile phone service, 2010-2013, by province		
Province	% change, 2010-2013	
	Lowest income quintile	Highest income quintile
NL	<b>94.1%</b>	<b>39.7%</b>



**Change in households' expenditures on mobile phone service, 2010-2013, by province**

Province	% change, 2010-2013	
	Lowest income quintile	Highest income quintile
PEI	<b>142.2%</b>	<b>31.6%</b>
NS	<b>49.3%</b>	<b>39.5%</b>
NB	36.3%	58.2%
QC	<b>33.3%</b>	<b>14.5%</b>
ON	<b>46.9%</b>	<b>40.0%</b>
MA	<b>54.4%</b>	<b>47.9%</b>
SK	38.6%	42.5%
AL	5.9%	26.2%
BC	<b>28.8%</b>	<b>5.8%</b>
Canada	<b>37.2%</b>	<b>29.3%</b>

Source: Statistics Canada, *Survey of household spending, , Canada, regions and provinces, by household income quintile*, CANSIM 203-0022

- 85 In our view, the evidence in this proceeding does not establish that the *Code* has empowered wireless service users by informing them of their rights and responsibilities.
- 86 It is equally clear, however, that the CRTC is very disinclined to even consider wireless rate regulation – to the point that TNoC 2016-293 specifically defines rates as being out of scope.
- 87 While the Forum has some sympathy for this position – the *Code* may somehow benefit the majority of wireless service users someday and should therefore be given time to achieve this success – it is unclear whether this position meets Parliament's objective for an affordable telecommunications system, for all.
- 88 Another, more fundamental problem, is that the separation of federal regulation of wireless communications into a policy organization (CRTC) and enforcement agency (CCTS) has, in combination with a complaints-based, after-the-fact approach to enforcement, fragmented the quality of telecommunications service across the country.
- 89 The current division of responsibilities means that the CRTC develops wireless policies, but does not implement them. CCTS implements the policies if it receives complaints, but does not publish results for each complaint (in an anonymized but publicly accessible database, for instance) – making it impossible for wireless service users and wireless service providers to know what CCTS' requirements are.
- 90 The result is the opposite of systemic enforcement: individual complainants whose complaints have merit may benefit from CCTS' decisions, but it is unknown whether these individual complaints change the behaviour of relevant wireless service providers. If wireless service providers repeat the same mistakes with different wireless service users, the result is not systemic enforcement of the CRTC's policies, but a fragmented

approach in which a tiny fraction of wireless service users benefit from the *Code* because they complain.

- 91 The fact that CCTS' *Annual Reports* appear to show the same problems recurring year after year tends to support the conclusion that instead of 'empowering' wireless service users, the net effect of the *Code* has been to reinforce the existing market power of Canada's wireless service providers. Companies like Telus, meanwhile, argue to the contrary that market conditions are growing more dynamic – referring to the “demonstrably high” “level of competitive rivalry in the market”.<sup>77</sup>
- 92 Canadians would benefit from a decision by the CRTC to define what it means by the term, 'dynamic market', and to clarify what it expects a dynamic market to achieve in the interest of wireless service users.

**B CRTC question 2: The evolution of the retail mobile wireless market since the implementation of the Wireless Code**

*TNoC 2016-293, Appendix 2:*

*“The retail wireless market continues to rapidly evolve. Marketing and business practices, consumer behaviour and preferences, and industry trends have changed since the Code was established in 2013.*

*For example:*

- *The popularity of family or shared plans is growing. According to the Wireless Code Public Opinion Research 2016, there has been a 5% increase in the use of family plans (up from 25% to 30% in 2016) at the expense of individual plans (down from 73% to 68% in 2016).Footnote 5 Notably, the report also indicates that Canadians with a family or shared plan are more likely to have made a complaint about their wireless services.*
- *Deloitte Global predicts that in 2016 consumers will sell or trade-in approximately 120 million used smartphones, generating more than \$17 billion for their owners, an increase from 80 million smartphones sold or traded-in in 2015.Footnote 6 International Data Corporation estimates that 5.3% of the smartphones currently in use by Canadians are second-hand devices handed down or sold to them from family members, friends, or strangers.*
- *The uses for smartphones and their capabilities are evolving and becoming increasingly sophisticated. For example, users can increasingly pay for products and services with their phone.*
- *According to the Wireless Code Public Opinion Research 2016, Canadians are increasingly describing data as being an “essential” component of their wireless service. This is supported by statistics from the Commission’s 2015 Communications Monitoring Report, which show that Canadians’ appetite to access mobile applications, multi-media services, social networking, Internet browsing, and other data intensive activities have driven wireless data growth to over 14.9% in 2014, and, on average, 22.4% over the past five years.*

<sup>77</sup> Telus, *Part 1 Application: Telecom Decision CRTC 2016-171*, (10 June 2016), at ¶13(c).

*The Commission invites detailed comments, with supporting rationale, on changes in the retail wireless market since the Code came into effect that necessitate modifications to the Code to ensure its ongoing effectiveness.”*

- 93 While it asks for comments on changes in the retail market for wireless services, TNoC 2016-293 does not define what it means by “market”, except to say without reasons that “rates”, “competitiveness of the marketplace”, “false advertising” and “network infrastructure issues” are all “outside the scope of this proceeding”.<sup>78</sup>
- 94 The CRTC’s broad prohibition on discussing rates, competition in the wireless market, advertising practices and network infrastructure issues makes little sense, not only because each of these characteristics is relevant to discussions about any economic market, but also because the CRTC has previously addressed these characteristics in its own evaluations of telecommunications markets. In 2000 the CRTC referred to the number of competitive suppliers, barriers to entry, pricing and movement in market share market when discussing characteristics of a competitive market.<sup>79</sup> More recently –

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<sup>78</sup> TNoC 2016-293, at ¶120.

<sup>79</sup> *SaskTel - Transition to federal regulation*, Telecom Decision CRTC 2000-150 (Ottawa, 9 May 2000), <http://www.crtc.gc.ca/eng/archive/2000/DT2000-150.htm>, at ¶68:

68. The Commission considers that the terminal equipment market in Saskatchewan exhibits all the characteristics of a competitive market. There are numerous competitive suppliers, low barriers to entry, aggressive pricing and customers are able to easily switch equipment suppliers in both the single-line and multi-line segments of the market.

...

76. Based on the evidence provided, the Commission is of the view that the toll and toll-free markets in Saskatchewan exhibit the characteristics of a competitive market. The Commission notes that consistent with its determinations in Decision 97-19, these markets are national in scope. There are no significant barriers to entry in toll markets in Saskatchewan, and a number of competitors, including facilities-based suppliers, have been providing long distance services in the province for some time. There also appears to be considerable price competition and movement in market share

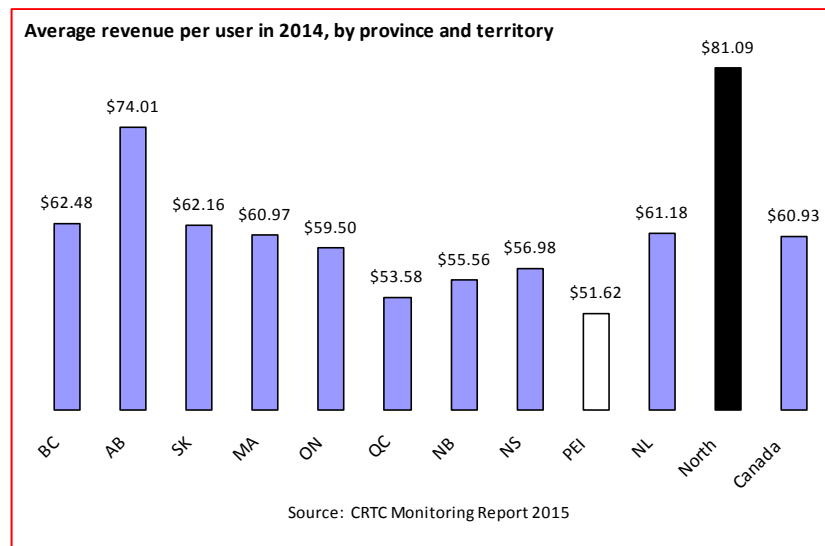
...

106. The Commission considers that the Internet services market in Saskatchewan is intensely competitive. Based on the evidence filed in this proceeding, there is significant price rivalry and movement of market share. Barriers to entry appear to be quite low, considering that numerous competitive ISPs (including small local and large national service providers) have entered the provincial market in a relatively short period of time. Moreover, based on the market share information submitted, the cable companies have a large share of the Internet services market, particularly in the major centres in the province. In Regina and Saskatoon, the cable companies are

just last year – the CRTC’s examination of the wholesale mobile wireless market referred to the number of wireless service providers,<sup>80</sup> as well as prices in the context of its analysis of the smallest group of products and geographic area where a firm can profitably impose a sustainable price increase.<sup>81</sup>

- 95 Foreclosing discussion about matters the CRTC itself has previously discussed in the context of ‘markets’ is arbitrary and, one fears, self-serving. This prohibition suggests rightly or wrongly that the CRTC worries that interventions discussing prices would establish the *Wireless Code’s* failure (compared either to regulation or the elusive-and-likely-imaginary-if-not-hallucinogenic truly competitive market) to protect consumers’ interests with respect to the prices they pay and the rates they are charged.
- 96 In fact, excessive wireless prices are already driving some to seek alternatives. The Canadian Broadcasting Corporation reported last year that expensive “cellphone plans in many Canadian provinces appear to be driving consumers toward a booming black market business.”<sup>82</sup> In 2014 – the latest data made available by the CRTC – ARPU ranged from just under \$52 per month in Prince Edward Island, to \$81.09 in the North (see Figure 6).

**Figure 6 Average ARPU in 2014, by province and the North**



the largest service providers. The Commission notes that the Internet market share data and other evidence on competitiveness submitted by SaskTel were not disputed by other parties.

<sup>80</sup> *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177 (Ottawa, 5 May 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-177.htm>, at ¶133.

<sup>81</sup> *Ibid.*, at ¶155.

<sup>82</sup> Sophia Harris, CBC News, “Consumers turn to booming black market for cheap cellphone deals”, (31 May 2016), <http://www.cbc.ca/news/business/black-market-cellphone-deals-1.3607245>.

- 97 Ironically, prohibiting discussion of basic market characteristics such as price may have brought the CRTC's administration of its responsibilities into disrepute, because price matters to Canadians. If the CRTC continues to forbear from regulating the rates of wireless services in Canada, wireless service users will seek alternatives.
- 98 In any event, the introduction of the *Wireless Code* did not have a clearcut impact on the revenues wireless service providers obtained from wireless service users. As Figure 5 showed (above), wireless ARPU was increasing for both Bell and Telus before the *Code's* introduction, and continued to rise afterwards. Wireless ARPU for Rogers decreased before and after the *Code's* introduction, while wireless ARPU for MTS<sup>83</sup> rose before 2014, and decreased thereafter.
- 99 Companies' ARPU levels do not clearly show that wireless service users have been empowered to negotiate lower rates with their wireless service providers.
- 100 The Forum therefore recommends that section C.1(i) of the *Wireless Code* be changed to require wireless service providers to offer potential customers a printed or electronic copy of the Critical Information Summary – without requiring the customer to know that they may request it (as the *Code* currently provides in section C.1(i)). Providing customers with key terms while they are examining alternative offers will permit them to comparison shop, and is key to their empowerment.

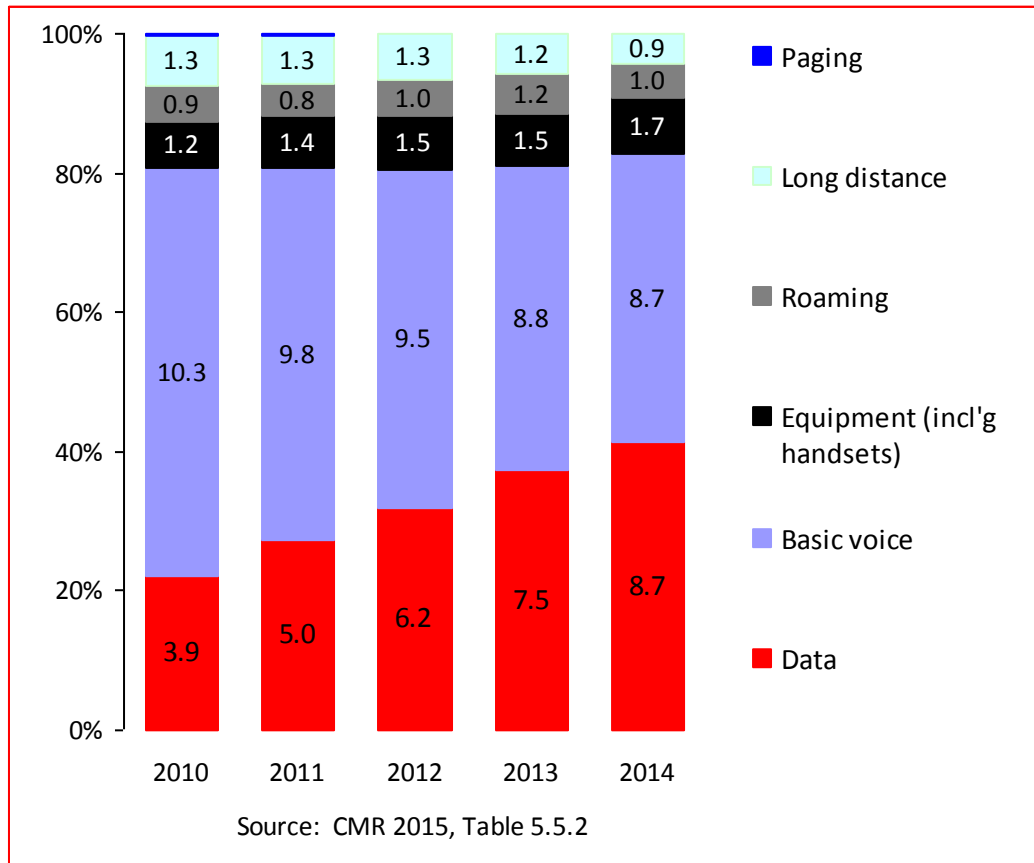
**Forum recommendation 7      Section C.1(i) of the *Wireless Code* should be changed to require wireless service providers to offer potential customers a copy of the Critical Information Summary, even if they do not request it**

- 101 As for the matters that the CRTC wishes to hear, TNoC 2016-293 refers to types of plans, sales of second-hand wireless devices, smartphone functionality, and Canadians' views about the utility of data in their wireless service. The CRTC presumably considers that changing the *Code* to address these issues will "ensure its ongoing effectiveness".
- 102 The Forum agrees that growing numbers of subscribers are using smartphones, which in turn increases their reliance on data, and in turn increases the popularity of family plans that permit the sharing of data and voice levels.
- 103 The CRTC's own data show that revenues from data have more than doubled (124% increase) from \$3.9 billion in 2010, to \$8.7 billion in 2014 (see Figure 7).

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<sup>83</sup> Wireless ARPU for MTS estimated using CWTA subscriber data and MTS wireless revenue data.

**Figure 7 Wireless revenues (\$ billions) by component, 2010-2014**



104 A problem encountered by some wireless service users with a family plan is that individual members of the plan may exceed the data allowance of their plan and – when notified by their wireless service provider – agree to additional charges. The person consenting to increased charges, however, is not necessarily the account holder – the signatory to the actual agreement or contract with the wireless service provider. The result could be bill shock – the signatory’s unpleasant surprise upon discovering that a family member (possibly a minor unable to give legal consent) has authorized charges that significantly exceed expected charges.

105 The Forum is therefore recommending that the *Wireless Code* be changed in two ways.

106 First, the *Wireless Code* currently includes “Customers” as a key term, but does not clearly define it. It says that “customers” are “[i]ndividuals or small businesses subscribing to retail mobile wireless services”, but does not distinguish between those who pay for services – account holders, and those who obtain services – subscribers. The Forum is therefore recommending that the CRTc add definitions of ‘account holder’ and ‘subscriber’ to the Key Terms section of the *Code*. Adding these terms will ensure

that wireless service providers notify the correct parties to a contract, when consent to the amendment of that contract is required.

**Forum recommendation 8 To reflect the growing importance of family or shared wireless plans, and to minimize continuing levels of ‘bill shock’, the ‘Key Terms’ section of the Code should define and distinguish between ‘account holders’ and ‘subscribers’**

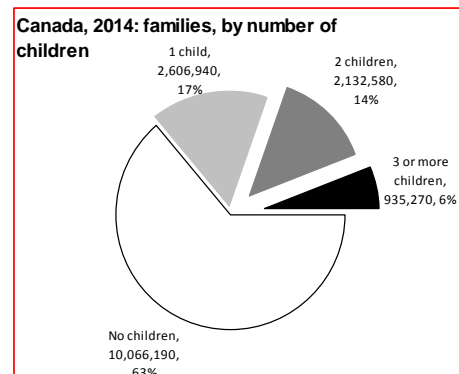
- 107 Second, the *Wireless Code* currently requires “the customer” to consent to data roaming charges above \$100 (*Code*, s. E.2(i)), and to data overage charges above \$50 (*Code*, s. E.3.(i)), but as ‘customer’ simply means subscriber, wireless service providers may believe that any member of a family or shared plan can consent to additional charges, even if they were not party to the shared- or family-plan contract.<sup>84</sup>
- 108 Sections E2 and E3 should be changed to require account-holders’ consent to additional charges. Such changes will ensure that the correct person – the one who is party to the agreement or contract – grants any required consent.

**Forum recommendation 9 To reflect the growing importance of family or shared wireless plans, and to minimize continuing levels of ‘bill shock’, sections of the Code that require consent for additional charges should require notification of both the ‘account holder’ and ‘subscriber’, as well as the express consent of the ‘account holder’.**

**Figure 8 Families in Canada, by number of children (2014)**

- 109 The Forum also agrees with CCTS’ position that wireless service providers must apply \$50 data caps “at the account level, rather than at the device level”.<sup>85</sup>

- 110 As Figure 8<sup>86</sup> shows, 6% of all families in Canada – more than 900,000 families – had 3 or more children in 2014. Suppose that half (50%) of these larger families subscribed to wireless service with devices for each family member, and that one in four (25%) of those subscribing families chose family plans. Then suppose that in just 10% of those family-



<sup>84</sup> CCTS’ *Annotated Guide to the Wireless Code*, “Annotation: Data Caps - Who is the Customer? (Section E2 and E3)” states CCTS’ view that “the customer” is the accountholder: “. When data caps are applied on the individual devices rather than at the account level, the accountholder (which is the person who is considered the customer) does not receive this protection. WSPs must ensure that the accountholder consents to the additional charges above the data cap and that the data cap is applied at the account level rather than on each device.”

<sup>85</sup> *Ibid.*

<sup>86</sup> Source of data: Statistics Canada, CANSIM Table 111-0015 (“Family characteristics, Low Income Measures (LIM), by family type and family type composition”).

plan subscriptions, two or more of the family members exceeded their data limits. If each of those families paid \$50 for each of two family members' devices, the total cost in one month would be just over \$1 million (\$1,169,088). In other words, wireless service providers could unreasonably take in more than half a million dollars in overage fees, in just one month, by charging at the level of the device, rather than at the level of the account.

**Table 5 Hypothetical costs of charging data overages by device, rather than by account**

<b>Families in Canada</b>	<b>2014</b>
Total families in Canada	15,740,980
Families with 3 or more children	935,270
If 50% of all families had cell phones	467,635
If 25% of those families had family plans	116,909
If 10% of those had 2 or more members exceeding data limits	11,691
Cost to families, of one \$50 overage charge, in one month	\$584,544
Cost to families, of two \$50 overage charges, in one month	\$1,169,088
Difference between 1st and 2nd overage charges:	\$584,544

- 111 The true costs of excessive data charges for larger families may well be higher – but whether higher or lower, charging data overage fees at the level of the device unreasonably transfers income from larger families, to wireless service providers.

**Forum recommendation 10 To reflect the growing importance of family or shared wireless plans, overage charges should be levied by plan, not device**

**C CRTC question 3: The content and wording of the Wireless Code**

*TNoC 2016-293, Appendix 2:*

*The Commission invites detailed comments, with supporting rationale, on what changes, if any, should be made to either the wording or the content of the Wireless Code and associated definitions to enhance the Code's effectiveness. For each proposed change, parties should outline the specific problem to be addressed, explain how the proposed change to the policy would address this problem, and propose specific wording to be included in the Wireless Code.*

- 112 The Forum has a number of suggestions for changing the Code.

**1 State the Code's objectives in the Code**

- 113 As noted above, the CRTC has had a series of shifting objectives for the Code. Apart from ensuring that the Code is always succeeding (because the targets are always moving), shifting objectives make it impossible to evaluate the Code's impact over time.



114 While nothing prevents the CRTC from either now or in the future adding to the Code's purposes, the CRTC should clearly state what the *Code* is currently intended to achieve, in the *Code*'s preamble.

115 The CRTC could say for instance, that

The purpose of this *Code* is to ensure that wireless service users are able to obtain information about their wireless service contracts and agreements before and after wireless service is purchased, the charges that may and may not be imposed as part of those contracts and agreements, the changes that may and may not be made to the services they are buying, the steps wireless service users may take if their mobile phones are lost or stolen, and means of contacting the industry ombudsman responsible for dealing with complaints about telecommunications services in Canada.

The objectives of this *Code* are, over time, to increase wireless service users' satisfaction with the terms of the wireless service they obtain in Canada including but not limited to the price they pay for wireless service, and to provide conditions in which the number of wireless service companies competing for wireless service users' business increases.

116 A clear statement of purpose will enable Parliament, the CRTC, and others to evaluate the degree to which the *Code* has achieved its purpose or purposes over time.

## 2 **Explaining the Code**

117 In September 2016 CCTS published version 2.0 of an *Annotated Guide to the Wireless Code*. As this *Guide* provides examples and guidance about CCTS' interpretation of the *Code*, the pre-ambule to the *Code* itself should alert wireless service users and wireless service providers about the *Guide*'s existence.

## 3 **Empower consumers by making the Critical Information Summary available before they buy**

118 In its 2014-15 annual report CCTS wrote that "Ensuring customers are well-informed about the services and products they agree to buy is vital in delivering a positive consumer experience."<sup>87</sup> Similarly TNoC 2016-293 notes that "In order for the Code to

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<sup>87</sup> CCTS, *Annual Report 2014-15*, at 12.

be effective, consumers must be aware of their rights and responsibilities under the Code.”<sup>88</sup> We also note, as UdC wrote in its June 2015 report, that

Most consumers were of the opinion that the critical information summary should be available before the contract is agreed to in order to make it easier to compare wireless services among the various service providers, and would allow consumers to more precisely know, before entering into the contract, what the parties’ commitments were..<sup>89</sup>

- 119 During the 2012/13 public hearing wireless service providers argued that the cost of giving potential customers a copy of the Summary would be high, but provided no actual evidence to support this statement. The result is that wireless service providers are very well aware of the plans and services that they and their competitors offer wireless service users, while wireless service users are far less aware of the intricacies and details of these plans and services. This disparity in knowledge is unfair and anti-competitive.
- 120 The costs to wireless service users of not having the Critical Information Summary to comparison-shop could easily be in the millions. CWTA reports that in 2015 there were 29.6 million wireless subscriptions in Canada. Suppose that, due to insufficient information before their wireless subscriptions were purchased, 1% of these subscriptions (296,003) paid \$1 more per month for wireless service than if they had had information enabling them to reduce their bills through comparison-shopping. An individual wireless service user might end up paying \$12 more per year – but the annual total for all 296,003 subscriptions would be \$3.6 million.

Total subscriptions in 2015 (CWTA): 29,389,553
1% of total subscriptions: 296,003
Total monthly cost of overpaying by \$1: \$296,003
Total annual cost of overpaying by \$1 per month: \$3,552,036

- 121 Rather than continuing to reward an uncompetitive market, the *Code* should serve the public interest by helping wireless service users to allocate their resources in an informed manner.
- 122 As the easiest way to inform potential wireless service users about the wireless services they may buy is through the Critical Information Summary, the Forum recommends that the Summary be changed to require wireless service providers to offer the Summary to wireless service users, before they sign a contract or reach an agreement with a

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<sup>88</sup> TNoC 2016-293, App. 2.

<sup>89</sup> Sophy Lambert-Racine, Union des consommateurs, *The Wireless Code: Who’s the Winner?: Final Project Report*, (Montreal, June 2015), at 56 [UdC report on *The Wireless Code*].

provider, in addition to providing the Critical Information Summary as part of a contract or agreement. Wireless service providers could, of course, advise wireless service users that the providers would not be bound by the Critical Information Summary they provide, as the plans and offers may change at any time. But wireless service users would, for the first time, have a tool available to enable them to shop with more information, thereby truly contributing to a more “dynamic” market.

#### **4 Provide more information in the Critical Information Summary**

**123** UdC’s analysis of the Critical Information Summary found significant variation in form among wireless service providers, and that their summaries were at times not brief, clear, complete or accurate.<sup>90</sup> CCTS has noted that some wireless service providers do not know whether changes to ‘related documents’ referenced in their contracts with wireless service users require their customers’ informed and express consent.<sup>91</sup> In the Forum’s view, the Critical Information Summary should include the following information:

- A title, to distinguish the Summary from any other part of a wireless service provider’s contract
- A statement that amendments to related documents mentioned by wireless service providers’ contracts which effectively change the terms and conditions referenced in Critical Information Summaries require wireless service users’ express and informed consent
- Total monthly amount allocated to amortization of all financed wireless devices
- Charges for data
- Total taxes payable for the service each month

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<sup>90</sup> UdC report on *The Wireless Code*, at 100.

<sup>91</sup> CCTS, *Annotated Guide to the Wireless Code*, “Annotation: What happens when changes to Related Documents impact Key Contract Terms and Conditions”:

For post-paid customers, the Code requires a WSP to provide customers with 30 days’ notice if it wants to change the “Related Documents”, defined by the Code as “any documents referred to in the contract that affect the customer’s use of the service provider’s services”. However, when a WSP seeks to change the customer’s “key contract terms”, it must obtain the customer’s informed and express consent. We have seen cases in which a WSP purports to make a change to “related documents”, but that change has the effect of changing the key contract terms. Thus, when a WSP changes its related documents, such as its privacy policy or Fair Use Policy, and that change alters the “key contract terms and conditions” of the customer’s contract, the WSP has effectively changed the key contract terms. In such cases WSPs must adhere to the requirements for making changes to key contract terms.

- Individual one-time charges (or fees, if there is a difference) for mandatory and optional services chosen by the signatory to the account<sup>92</sup>
- Identification of any device financed by the wireless service providers<sup>93</sup>
- Statement of the start and end dates of the contract<sup>94</sup>
- Specification of the date on which a trial period ends<sup>95</sup>
- Description of cancellation process (as otherwise wireless service plans may automatically default to monthly plans)<sup>96</sup>
- Discount offered if wireless service users bring their own device
- Whether a device financed by the wireless service provider is covered by a manufacturer's warranty<sup>97</sup>

124 We also agree with UdC that the *Code's* current legibility requirement should be changed from "easily readable font", to "easily readable font and font size".<sup>98</sup>

125 We agree with UdC that the Summary should include a statement to describe the current data and roaming caps, and to advise potential or actual account holders where they can obtain usage monitoring tools.<sup>99</sup> Like UdC, we were surprised to see an example in which Videotron's wireless contract purported to obtain customers' consent to overage charges, and suggest that the CRTC address this problem in its determination of this proceeding.

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<sup>92</sup> UdC report on *The Wireless Code*, at 57.

<sup>93</sup> UdC report on *The Wireless Code*, at 61.

<sup>94</sup> CCTS, *Annotated Guide to the Wireless Code*, Section B, Complaint Summary #10:  
Facts: A customer purchased a basic wireless service package from a WSP. The customer complained that he had no way of knowing when the contract would end.  
Investigation: We referred to the customer's contract and found that it did not contain a commitment period; the contract had a start date but no end date.  
Conclusion: We confirmed that the WSP breached section B.1(iv)c of the Code because all contracts must include the start date and end date of the contract.

<sup>95</sup> UdC report on *The Wireless Code*, at 81.

<sup>96</sup> *Ibid.*, at 84.

<sup>97</sup> *Ibid.*, at 60.

<sup>98</sup> *Ibid.*, at 57.

<sup>99</sup> UdC report on *The Wireless Code* noted inconsistencies in the information provided by wireless service providers in this regard, at 63-64.

126 The Forum agrees with UdC that all conditions for unlocking wireless devices should be provided in the Summary, rather than elsewhere in wireless service providers' contracts.<sup>100</sup>

**Forum recommendation 11 The CRTC's determination in this proceeding should state that wireless service providers may not attempt to invite wireless users to waive their rights under the Code via contract**

127 Finally, we agree with UdC that wireless service providers' contracts should define any abbreviated terms.<sup>101</sup>

**5 Unlimited should really mean unlimited**

128 During the 2012/13 proceeding many people asked the CRTC to stop wireless service providers from describing their wireless services as unlimited when there were, in fact, limits on the services which raised their costs, often unexpectedly.

129 The *Wireless Code* continues to permit wireless service providers to limit unlimited services. Section A.3.(i) prohibits wireless service providers from imposing any overage charges for "Unlimited" services purchased on an unlimited basis; but section A.3(ii) permits wireless service providers to limit unlimited services, as long as "these limits are clearly explained in the fair use policy."

130 CCTS agrees with this interpretation: in 2014/15 it found that a wireless service provider had breached the *Code* concerning unlimited services because it did not inform users that charges would be imposed for "excessive use" of unlimited services – not because services advertised as 'unlimited' were actually limited.

131 Describing limited service as "unlimited" is not just confusing, but misleading. Advertising Standards Canada (ASC) agrees. In 2015 it considered a complaint about WIND Mobile's advertising practices.<sup>102</sup> WIND advertised a wireless plan for \$44 month, "with a list of features that included: 'Unlimited Canada/US-wide Calling'. ASC agreed with the complainant that the advertisement was misleading, finding that:

132 To Council, the claim "Unlimited Canada/US Calling" conveyed the message that for the advertised price of \$44.00 per month customers would receive all of the listed features without limitation or restriction for no additional charge. Based on WIND's coverage map found elsewhere on its website, it appeared that the WIND network was primarily confined to large urban centres in Canada and a few in the US. For example, WIND

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<sup>100</sup> *Ibid.*, at 69.

<sup>101</sup> *Ibid.*, at 58.

<sup>102</sup> Advertising Standards Canada, "Ad Complaints reports – 2015", <http://www.adstandards.com/en/Standards/adComplaintsReports.aspx?periodyear=2015>.

customers located outside WIND's network would incur additional calling charges of \$0.15 per minute to the US. ...

133 ASC decided that

... potential WIND customers would not be aware from the advertisement that, depending on their location in Canada, they could incur extra costs for calls they make to the US. To Council, the limitations on the included calling areas was essential information that should have been prominently disclosed in the advertisement. Because it was not, Council unanimously found that the advertisement was misleading, omitted relevant information, and did not clearly state all pertinent details of an offer.

134 The *Code* should either only allow use of the term, 'unlimited' when no limits are placed on a service or when no overage charges are ever imposed for a service, or require wireless service providers to describe their services instead as "generally unlimited" when limits are placed on a service.

135 We suggest that a service be described as generally unlimited in cases where 2.5%<sup>103</sup> or more of wireless service users have exceeded the limit on a service at least once in the previous 12 months.

136 We therefore recommend that section A.3 of the *Code* be amended to include a third subsection:

(iii) A service provider must describe a service that may result in additional charges as "Generally unlimited" if it has levied overage charges for that service on 2.5% or more of its users in the previous calendar year.

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<sup>103</sup> The choice of any figure would be arbitrary – but in this case the Forum is relying on the properties of the familiar Bell curve, a probability distribution describing a normal population in which the majority of values being described cluster around the centre, with 2.5% of the values being at either extreme end of the curve. Since, in the case of use of a wireless service, it is reasonable to assume that 2.5% of users would not use a service at all, while the other 2.5% would make excessive use of a service, the Forum has suggested 2.5% as a threshold figure.

**Forum recommendation 12 Amend section A.3 of the Code to distinguish between “unlimited” and “generally unlimited” services****6 Data as a key term**

- 137 The *Wireless Code* should be changed to ensure that all users enjoy the same level of protection, particular with respect to data.
- 138 The CRTC’s survey research shows this is not now the case. In 2014, bills for greater-than-expected data usage affected a quarter (24%) of those who experienced ‘bill shock’; by 2016 data-usage bills affected more than a third (38%) of those who experienced ‘bill shock’. The CCTS has found that on occasion wireless service providers do not provide clear information about the price that subscribers will pay for data within their plans, or about the usage levels required to exceed the levels of data provided by their plans.<sup>104</sup>
- 139 Meanwhile, almost half (45%) of Canadians in 2016 considered data to be essential (Appendix 3, item 23).
- 140 As data usage is likely to continue to grow, bill shock about data charges is also likely to increase. The growth in family plan popularity means that account holders may be left unaware that data limits are being reached by the individuals using devices included in family plans, as the *Wireless Code* does not distinguish clearly between different types of customers. Instead it defines customers broadly as “Individuals or small businesses subscribing to retail mobile wireless services” (Definitions).
- 141 The *Wireless Code* should be changed to require wireless service providers to notify the party that holds and is responsible for the wireless account when limits are about to be exceeded, and to seek that party’s consent. That is, wireless service providers should notify accountholders, not just the subscribers actually exceeding the plans’ requirements.
- 142 The Forum also notes the concern of Mark Levaillant (Intervention 7), who suggested that data should be rolled over, or averaged on a yearly basis, and that wireless service users who do not use their entire data allotment should receive a credit for that unused part of their service. The CRTC should seek evidence about his suggestions to determine the feasibility, costs and benefits of their implementation.

**7 Use of hyperlinks in written contracts**

- 143 UdC notes that some wireless service providers’ contracts refer to information that is only available on the providers’ websites.<sup>105</sup> As the Canadian Internet Policy and Public

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<sup>104</sup> CCTS, *Annotated Guide to the Wireless Code*, Section B, Complaint Summary #8: “We discovered that the contract did not contain any information about how much data the customer was allowed to use as part of his data plan before he would incur overage fees.”

<sup>105</sup> UdC report on *The Wireless Code*, at 97.

Interest Clinic (CIPPIC) has pointed out, information that is only available from a website is necessarily unavailable to wireless service users when they sign their contract or reach an agreement with their provider.

144 CCTS also notes that at times, some wireless service providers do not disclose to subscribers that they may not be able to provide service to the areas where wireless service users live.<sup>106</sup> As a result, wireless account holders are not fully informed about the contract they are making, at the time they make the contract – especially if, although they have a mobile phone, they do not always have Internet access.

145 Since there is no maximum page-length for wireless or mobile contracts, the *Code* should require all terms to a contract to be included in the contract itself – including a statement about the likelihood that a wireless service user has service in the areas for which the user requires mobile service. Ensuring that the contract is complete will provide signatories to the contract with the information they need about its terms, as well as certainty (because a printed contract is less likely to change than a website).

## 8 Trial plans

146 The CRTC used the *Wireless Code* to permit subscribers to return financed devices and cancel their contracts, provided they did so within a given trial period.

147 UdC notes that wireless service providers may be imposing conditions on the trial period beyond those specified in the *Code*.<sup>107</sup> This is somewhat puzzling, given the CRTC's clarification in 2014 that penalties such as restocking fees should not be applied to subscribers seeking to cancel their contracts during trial periods.<sup>108</sup>

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<sup>106</sup> CCTS, *Annotated Guide to the Wireless Code*: "The WSP explained to us that it refers customers to the WSP's website in order to find a coverage map detailing where the WSP provides service. We reviewed the documents that the WSP had provided to the customer. We found that the customer's contract did not include information about how to access the WSP's coverage maps. "

<sup>107</sup> UdC report on *The Wireless Code*, at 80-81.

<sup>108</sup> Secretary General, CRTC, *RE: Wireless Code Implementation – Compliance Reports – Action Required*, Telecom Commission Letter Addressed to Barry Chapman (Bell Mobility Inc.), (Ottawa, 14 August 2014), <http://www.crtc.gc.ca/eng/archive/2014/lt140814i.htm>:

The Commission hereby clarifies for Bell that where the *Wireless Code* states "(iv) During the trial period, customers may cancel their contract without penalty or early cancellation fee if they have (a) used less than the permitted usage; and (b) returned any device provided by the service provider, in near-new condition, including original packaging" that "penalty" should be read to



- 148 The CRTC’s determination in this proceeding should clarify whether wireless service providers may set limits on the data and voice (minutes) use that may occur during a trial period, and whether providers may charge any fees with respect to the trial period (such as restocking fees).
- 9 **“Subsidized” devices: TANSTAAFL**
- 149 The Forum notes that an expression commonly used in the CRTC’s wireless proceedings is often inaccurate, namely, “subsidized device”. Devices purchased by wireless service users as part of their monthly service contract were described throughout the 2012/13 *Wireless Code* proceeding as ‘subsidized’, even though wireless service users paid for the device as part of their monthly service.
- 150 UdC’s report notes that “many service providers use terms that appear to suggest that a subsidized device provided as part of a contract constitutes a rebate, or a gift...”<sup>109</sup>
- 151 The 2012/13 *Wireless Code* proceeding established, however, that wireless service providers do not generally “subsidize” the wireless devices that they provide to subscribers: rather, subscribers pay for the devices through their monthly contracts. As the old saying goes, however, ‘there’s no such thing as a free lunch’(TANSTAAFL): wireless service account holders pay for most goods either directly (when device prices are clearly stated as part of a larger monthly bill) or indirectly (when device prices are not clearly stated but are part of a larger monthly bill).
- 152 In June 2016 Telus in fact explained that there are no true subsidies – where wireless service providers pay for wireless devices – when it told the CRTC that “the value of the subsidy is recovered in equal monthly instalments over the life of the contract.”<sup>110</sup>
- 153 Permitting wireless service providers to describe goods as “subsidized” when wireless account holders pay for most or all of the goods’ costs gives the misleading impression that the customer is not paying for the goods either at all, or to only a small degree. To minimize confusion, to increase clarity, and to promote truth in advertising, we therefore suggest that the *Code* describe devices whose price is initially paid by wireless service providers but ultimately paid by subscribers through their monthly or early

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include a “restocking fee” or other similar fee. As a result, a customer could not be charged a penalty, including a restocking fee, if they have met conditions (a) and (b) referenced above.

<sup>109</sup> *Ibid.*, at 73.

<sup>110</sup> Telus, *Part 1 Application: Telecom Decision CRTC 2016-171*, (10 June 2016), at ¶15: TELUS frequently sells customers a device as a part of contracts for post-paid services. When TELUS and a customer enter into a contract for wireless services that includes a device at a price that is materially lower than the retail price of the device, TELUS is in effect subsidizing the difference between the retail price and the contract price. Payments under the contract are generally structured so that the value of the subsidy is recovered in equal monthly instalments over the life of the contract. For example, in a 24 month contract which includes a \$480 device subsidy (typical for high-end devices which are most popular among Canadians), the subsidy of \$480 is recovered at the rate of \$20 per month, with that recovery embedded in the monthly service plan charges paid by the customer.

- cancellation fees as ‘financed’ devices – not ‘subsidized’ devices. Referring to ‘subsidized’ devices implies that wireless service providers are performing acts of charity towards subscribers, when in fact they are engaged in a for-profit business relationship.
- 154 The *Code* should differentiate between cases where wireless service users pay for their device, and cases where wireless service providers pay for the device. It should include “financed device” as a separate Key Term, and require wireless service providers to inform account holders when devices are being “financed” – in that wireless service users are paying for most or all of the device as part of their monthly fees – and when they are truly being “subsidized”, in that wireless service providers are themselves paying most or the full cost of the device.
- 10 Fees for changing plans**
- 155 UdC noted that subscribers who purchased a plan and a device from Rogers and Telus, but then wished to move to a lower-priced plan, were charged one-time fees for this move.<sup>111</sup>
- 156 Whatever the fee’s true purpose, its effect seems anti-competitive – it may simply be in place to discourage subscribers (and accountholders) from negotiating terms that they can better afford.
- 157 The CRTC should question wireless service providers about this practice at the hearing and, depending on the evidence it hears, consider either prohibiting such fees by amending the *Wireless Code*, or by limiting them to a token amount.
- 11 Replacing devices**
- 158 UdC quotes Telus’ answer to the question, “Can I replace my device at any time?” and shows that Telus was telling subscribers who wanted to replace their device that they were required to “select a new device and sign up for a new commitment period.”<sup>112</sup>
- 159 The CRTC’s determination should clarify that wireless service subscribers need not renew their contracts with their wireless service providers if they wish simply to replace their devices (with devices that still work on their wireless service provider’s network).
- 160 As well, because mobile phones are now being sold without removable batteries,<sup>113</sup> the CRTC’s determination in this proceeding should for the sake of clarity set out its expectation that wireless service providers will neither impose excessive fees for battery replacement, nor use a battery-replacement request as a way to upsell a wireless service user to an extended or new plan.

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<sup>111</sup> UdC report on *The Wireless Code*, at 78.

<sup>112</sup> *Ibid.*, at 84.

<sup>113</sup> See “Removable vs. Non Removable Battery: Advantages & Disadvantages”, Editorial (24 June 2016), <http://www.virtuaniz.com/2016/06/removable-vs-non-removable-battery-phones/>.

**12** **Bring-your-own-device discount**

- 161 Ken Klak (Intervention 9) points out that while wireless service providers are offering discounts to wireless service users who own their own wireless devices, the size of the discount has fallen over time:

There needs to be a provision in the *Code* to ensure that the BYOD discount is reflective of the discount that you are given for purchasing a contract. When the *Code* first came out, \$20/month was the norm for a BYOD discount, reflecting an accurate \$480 trade-off on buying a contract to get a phone over time, and purchasing your own phone upfront. Under those terms, the market was quickly emerging for lower cost phones (between \$240 and \$450), and the overall phone market was becoming much more competitive, helping for the most part, lower income Canadians. All of the big three have now reduced the BYOD discount, to as low as \$5 a month. This clearly makes it financially difficult to purchase phones outright and as before the *Code*, pushes lower income users into contracts.

- 162 The Forum shares Mr. Klak's concern about the impact of pricing on lower-income telecommunications users. We suggest that the Key Terms in the *Code* be amended to advise potential wireless service users of the price of plans when they use devices they already own.

**13** **Billing details**

- 163 Mark Levallant (Intervention 7) points out that very little information is provided on wireless bills:

... When I get my bill, it just stated the amount that they want me to pay. To get a detailed listing of Data/txt/phonecalls I have to go to another page and then download a PDF. Its not view-able *[[sic]]* online in any form.

- 164 The Forum agrees that wireless service providers should provide more information in the bill they actually send to account holders, and in particular should inform account holders of the data, voice, messages and roaming levels of each user on an account.
- 165 Section E of the *Code* should be amended to include a requirement that wireless service providers state wireless service users' use of data, voice, messages and roaming in the billing period, in the bills they send to account holders.

**14** **Pay to pay**

- 166 Bell currently charges \$2 for customers to top up their pre-paid accounts, unless they do it online.<sup>114</sup>

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<sup>114</sup> Bell Mobility, "What are Bell Mobility's current one-time fees?", "Top up a prepaid account" - \$2.00, [http://support.bell.ca/Mobility/Rate\\_plans\\_features/What-are-Bell-Mobility-current-one-time-fees](http://support.bell.ca/Mobility/Rate_plans_features/What-are-Bell-Mobility-current-one-time-fees), accessed 7 September 2016.

167 The CRTC should prohibit this pay-to-pay practice by amending the *Code*. Specifically, section E should be changed to prohibit wireless service providers from levying charges or fees on account holders who/that pay their bills on time.

## 15 **Unlocking**

168 A review of unlocking fees set by four wireless service providers (Table 6) shows that these fees range from \$30 (WIND) to \$150 (Bell). Three companies do not state whether taxes are included or payable on unlocking fees. Bell has two rates - \$50, and \$150 in the case of account holders it required to provide a security deposit or on whom it placed a credit limit. The *Code* does not state that *Wireless Code* may discriminate among users who want their devices unlocked, based on Bell's decisions about credit. In the Forum's view, discriminating on the basis of Bell's credit decisions is an anti-competitive practice that bears disproportionately on lower-income wireless service users.

169 Moreover, and as UdC notes, while nothing in the *Wireless Code* permits wireless service providers to require subscribers' accounts to be in 'good standing' before they are entitled to have their purchased or financed device unlocked,<sup>115</sup> some companies have made this a precondition for unlocking.

**Table 6**                    **Unlocking fees, September 2016**

	<b>Telus</b>	<b>Bell</b>	<b>Rogers/Fido</b>	<b>Wind</b>
Unlock a device – standard	\$35 If subsidized device, must be active on Telus for 90 days; otherwise can be unlocked immediately	\$50	\$50 + taxes If subsidized device, must be active on network for 90 days; if purchased from Rogers, can be unlocked immediately	\$30 Must be on network for 90 days; if bought own device, can be unlocked immediately
Unlock a device – accounts with security deposit or credit limit	None	\$150	None	None

170 As the *Code* already states that wireless service providers must unlock devices provided as part of a contract no later than 90 days after the contract's start date (section F.1.(i)), the CRTC's decision should clearly state that this provision does not permit wireless service providers to impose additional conditions on wireless service users with respect to the standing of their account or alleged credit worthiness.

<sup>115</sup> UdC report on *The Wireless Code*, at 69.

**16 Cancellation fees**

- 171 The *Wireless Code* permits wireless service providers to charge wireless service users an early cancellation fee based either on the value of a device financed by the wireless service provider, or the lesser of \$50 or 10% of the minimum monthly charges for the remaining portion of a wireless service user's contract (when there are no subsidized devices).
- 172 CCTS reports, however, that some wireless service providers are effectively imposing additional charges on wireless service users who have cancelled their service. They are not reimbursing them for the price of wireless service (for which the users have already paid) falling after the cancellation date.<sup>116</sup> Telus argued this past June that the CRTC has authorized this practice.<sup>117</sup>
- 173 To provide all wireless service providers with the same information, the *Wireless Code* should be amended to prohibit the levy of service charges after the date on which a service is cancelled, and to require the reimbursement of pre-paid amounts.

**17 Remedy when complainants are dissatisfied with CCTS**

- 174 The *Wireless Code* explains clearly that complainants should contact their wireless service providers if they have complaints, and contact CCTS if they are dissatisfied with their providers' response.
- 175 The *Code* also refers to the CRTC – but merely as the *Code's* creator.
- 176 The *Code* does not explain whether those who are dissatisfied with CCTS' finding may appeal that finding to the CRTC – whose responsibility it is to enforce the *Telecommunications Act*.
- 177 The CRTC should include a statement about its final authority over CCTS.

**D CRTC question 4: Consumer awareness of the Code****CRTC 2016-293, Appendix 2:**

*In order for the Code to be effective, consumers must be aware of their rights and responsibilities under the Code. According to Wireless Code Public Opinion Research 2016, 45% of Canadians recalled hearing about the Code, down from 50% in 2015 and 52% in 2014. The Commission invites detailed comments, with supporting rationale, on whether any additional measures should be taken to enhance consumer awareness or understanding of the Code.*

<sup>116</sup> CCTS, *Annotated Guide to the Wireless Code*, "Section G. Complaint Summary #1: Confirmed breach of Section G.1(i)", "Annotation: WSPs must provide pro-rated refunds for cancelled services"

<sup>117</sup> Telus, *Part 1 Application: Telecom Decision CRTC 2016-171*, (10 June 2016), at ¶¶1-2.

- 178 The *Code* currently requires wireless service providers to describe how users may complain to CCTS, as part of key contract terms and conditions (S.B.1.(m)).
- 179 The CRTC's surveys show, however, that unawareness of the *Code* may have increased since 2014: 46% did not recall the *Code*'s existence in 2014; 52% did not recall its existence in 2016. The percentage of respondents who clearly recalled the *Code* may also have decreased over time: from 22% in 2014, to 14% in 2016.
- 180 The risks of growing unawareness of the *Code* are that wireless service users are deprived of the rights assigned to them by the *Code*, that they do not realize that remedies for misbehaving wireless service providers exist, and that in the longer term, wireless service providers' business practices remain or grow more 'unfriendly' towards wireless service users.
- 181 We note, for instance, a complaint described by CCTS' September 2016 *Annotated Guide to the Wireless Code* established that as of April 2014 the Critical Information Summary in one wireless service provider's post-paid two-year contract lacked at least three key terms: the contract's early cancellation fee, the amount by which the contract's early cancellation fee would decrease, and the date on which the subscriber would no longer be subject to that fee.<sup>118</sup>
- 182 Having addressed the matter with the wireless service provider, the final resolution described by CCTS focused solely on the single complainant: it is unclear whether the wireless service provider either complied with the *Wireless Code* going forward, or whether it compensated any other of its subscribers whose contracts were similarly deficient. The CRTC's after-the-fact, complaints-based regulatory framework for wireless service providers has left the majority of wireless service users bearing the burden of wireless service providers' non-compliance with the *Code*.
- 183 In the Forum's view it is unfair to require wireless service users to bear the burden of ensuring that, through complaints, wireless service providers comply with the CRTC's requirements.
- 184 The Forum recommends that the CRTC assume a greater and more public role in enforcing systemic compliance with the *Code*. As CCTS is now issuing two reports on its activities each year, rather than one, the CRTC should issue Information Bulletins about the three issues that each report describes as receiving the highest number of complaints, and should also identify the companies receiving the most complaints concerning these issues.

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<sup>118</sup> CCTS, *Annotated Guide to the Wireless Code*, Version 2.0 (22 September 2016): "Section C. Complaint Summary #2: Confirmed breach of Section C.1(ii)".

**Forum recommendation 13 The CRTC should issue and publicize Information Bulletins identifying the wireless issues attracting the most complaints and the wireless service providers receiving the most complaints about these issues**

- 185 Publicizing CCTS' findings about non-compliance with the *Code* may help to raise wireless service users' awareness of the *Code* – and will also make it more likely that wireless service users searching for assistance online will have their attention drawn to a CRTC bulletin, thereby helping to make them aware of their recourse to CCTS.
- 186 A second step that the CRTC could take, would be to require all wireless service providers to submit copies of the complaints they receive to CRTC – so that it may report not just on complaints that have not been addressed by wireless service providers, but on all complaints about wireless telecommunications in Canada. The regulator's awareness on the complete scope of complaints being received about wireless telecommunications in Canada will help it to decide whether it need take any measures to ensure systemic compliance with its requirements.

**Forum recommendation 14 The Code should require all wireless service providers to send copies of the complaints they receive to CCTS, so that it may report on the total number of complaints about wireless telecommunications being generated in Canada and determine whether other steps need be taken to ensure systemic compliance with Parliament's telecommunications policy for Canada**

- 187 A third step that the CRTC should take is to provide those who search its website, with links to CCTS' annual reports and its *Annotated Guide to the Wireless Code*.
- 188 The CRTC's website currently refers interested persons to CCTS' *Annual Reports*:

**Ensuring providers follow the rules**

Each year the [Commissioner for Complaints for Telecommunications Services](#) reports publicly on all consumer complaints about the Wireless Code. These reports list the types of complaints that have been resolved and what steps were taken to resolve them. Read their [annual and mid-year reports](#).

We made all providers report publicly on their compliance to ensure they were following the rules. You can read the results in the [Implementation Report Card \[PDF\]](#) which is based on the providers' [Compliance Reports](#).

(Source: <http://www.crtc.gc.ca/eng/phone/mobile/code.htm>)

- 189 The Forum recommends that this webpage be modified to include a reference to CCTS' annotated guide to the *Code*.

**Forum recommendation 15**    **The CRTC should include a reference to CCTS' *Annotated Guides to the Wireless Code* on the CRTC's webpage about the *Code***

**E**        ***CRTC question 5: How the Wireless Code's effectiveness should be assessed and reviewed going forward***

*CRTC 2016-293, Appendix 2:*

*The Commission invites detailed comments, with supporting rationale, on when and how the Wireless Code should be reviewed in the future to ensure its continued effectiveness.*

- 190        The CRTC will complete this first review of the *Wireless Code* four years after the *Code's* publication in 2013.
- 191        The Forum is generally concerned that the *Wireless Code* has failed to ensure that wireless rates are affordable for everyone in Canada, as Parliament requires under section 7(b) of the *Telecommunications Act*. This failure is unsurprising, because the *Wireless Code* was never intended to ensure that wireless rates are affordable – only to ensure that wireless service users are aware of their rights and their responsibilities.
- 192        Apart from the important issue of affordability, the Forum believes that the presence of the *Code* has benefitted telecommunications users by establishing a few elementary rules about many key elements of wireless service contracts, and by providing them with recourse to the CRTC. Wireless service providers have also benefitted from the existence of a standardized set of rules for wireless contracts, as CCTS' approach to complaints has also become more standardized. In brief, having the *Code*, however weak it has been in 'empowering' wireless service users, has been better than having no *Code* at all.
- 193        The Forum recommends that the CRTC's 2017 determination in this proceeding state that it will again invite public comment on the *Code's* effectiveness in 2020.

**Forum recommendation 16**    **The CRTC should initiate its next public review of the *Code's* effectiveness in 2020**

- 194        In the determination that it issues in this proceeding the CRTC should state the *Code's* specific and measureable purposes, to facilitate the 2020 review and to give wireless service providers specific targets at which to aim.



**Forum recommendation 17    The CRTC should establish measureable and specific targets for the *Wireless Code***

195    In the interim – in other words, before 2020 – the CRTC should also publish annual report cards evaluating the *Code's* effectiveness, using criteria that it sets out in its 2017 determination to measure the *Code's* objectives, in addition to information collected by annual surveys of wireless service users and mystery-shopper performance evaluations of wireless service providers.

**Forum recommendation 18    The CRTC should publish annual statistics about the *Code's* effectiveness, using criteria from its determination in this proceeding to measure the *Code's* objectives**

196    As for the question of 'how' the *Code's* effectiveness should be evaluated, the Forum notes that the CRTC has spent nearly \$150,000 on the three surveys (Table 7) referenced by CRTC 2016-293.

**Table 7            CRTC expenditures on the 2014, 2015 and 2016 surveys cited in CRTC 2016-293**

<b>Year</b>	<b>Company</b>	<b>Expenditure</b>
2014 survey	Harris/Decima Inc.	\$49,853.78
2015 survey	Harris/Decima Inc.	\$49,892.99
2016 survey	TNS Canada	\$48,523.33
<b>Total</b>	<b>3 surveys</b>	<b>\$148,270.10</b>

Source: see individual surveys (2014 at 5; 2015 at 6; 2016 at 7)

197    The surveys provided little information about the effectiveness of the *Code*, for the following reasons.

- The surveys do not ask respondents if they read their wireless contracts or agreements, casting serious doubt on answers to questions about the clarity of these contracts or agreements: only those who have actually read their contracts or agreements could decide if they seemed clear, but the surveys provide no way of knowing whether any of those who answered questions about clarity read these documents

- While the *Code* has 61 provisions,<sup>119</sup> the surveys ask just eleven questions about the *Code*, providing no information for most aspects of the *Code*
- The surveys' reliance on questions that did not fully specify the choices possible for each answer ("Please use a 7-point scale where 1 means extremely unclear and 7 means extremely clear") makes it unclear whether respondents were aware of and agreed that choosing 3 denoted 'neither clear nor unclear'
- The survey's reliance on bipolar, numbered-scale questions may have yielded inaccurate results, as the numbered, bipolar scale format is known to bias results by yielding higher levels of agreement,<sup>120</sup> and
- The surveys' reliance on questions with an end-point labeled format ("Please use a 7-point scale where 1 means extremely unclear and 7 means extremely clear") increased the chance of biased results<sup>121</sup>

198 The Forum urges the CRTC to invite interested parties and survey research experts to help design a stronger, more reliable and more valid survey questionnaire, within three months of issuing its determination in this proceeding.

199 Continuing to replicate its existing surveys wastes the CRTC's resources and other parties' time, because the survey questionnaire's poor design means that the survey results are inaccurate due to bias and other problems.

**Forum recommendation 19 The CRTC should invite interested parties and survey research experts to comment on an improved survey research design to evaluate the *Wireless Code***

200 Even if the CRTC surveys used a credible questionnaire (and they did not), reports of the results of the CRTC's surveys raise questions.

201 For instance, 925 people answered question QB1 in the 2016 survey, which refers to the clarity of contract language. The barchart in section 4.1.1 (page 13) describes the

<sup>119</sup> TNoC 2016-293, ¶7: "Altogether, the Code has 61 provisions divided into 10 sections ....".

<sup>120</sup> Elke Cabooter et al., "Scale format effects on response option interpretation and use", *Journal of Business Research* (2015), at 8-9:

... scale format components had an important impact on the use of response options, and thus on the response distributions. ... bipolar scale formats ... invoked more agreement. So response options with different numbers and bipolarity tend to push the responses to the positive end of the scales as the scales are seen as more symmetrical. ...

...  
If ... scale formats attract more extreme responses and/or more agreements, this may lead to bias.

<sup>121</sup> S. Dolnicar & B. Grün, "Translating" Between Survey Answer Formats. *Journal of Business Research* (2013), 66: 1298-1306.

About one third of the respondents who were first presented with a Likert five endpoint format and later with a Likert five verbal format moved from strongly agree and strongly disagree to agree and disagree, respectively (Figure 5a). Of the respondents who originally selected agree or disagree, however, only very few moved to strongly agree (8%) or strongly disagree (13%), respectively. These results provide empirical support for the previously expressed assumption that endpoint labeled formats stimulate extreme responses.

- responses for the sample base of 925 respondents, and shows 7% or 64 of these respondents answered “No contract/never read/DK/Refused”.
- 202 On page 14 Tables 4.1.1.a and 4.1.1.b again report on the clarity of contract language, this time breaking the results down by gender, age, region, education, language and ‘made a complaint’.
- 203 Both tables show the same sample base of 925 respondents – but the 7% or 64 respondents who answered “No contract/never read/DK/Refused” have disappeared. The barchart in section 4.1.1 establishes that at least some respondents did not read their contract, but Table 4.1.1.a leaves the impression that all respondents read their contract. Similarly, respondents who did not have a contract, did not read it, didn’t know about it or refused to answer also vanished from Tables 4.1.2.a and 4.1.2.b on page 16.
- 204 Publishing analysis of this quality does not establish that the CRTC cares about high-quality empirical research.
- 205 The CRTC should invite comments from survey research experts and interested parties on preliminary drafts of the results, to strengthen the quality of analysis in the final document.
- Forum recommendation 20 The CRTC should invite comments from survey research experts and interested parties on preliminary drafts of survey research conducted on its behalf, to strengthen the quality of analysis in the final, published research**
- 206 The CRTC should also use other empirical research methods to evaluate the *Code’s* impact.
- 207 As one purpose of the *Code* is to change wireless service providers’ behaviour, that behaviour should be evaluated. In this context the Forum notes the strengths of the ‘mystery shopper’ approach used by the Union des consommateurs (UdC) to study Canadian wireless service providers’ actual interactions with telecommunications users. It analyzed
- ... the practices of a group of Canadian service providers based on an examination of their contract documents, namely, the permanent copy of the contract and of the service terms and conditions, and all the other related documents to which the agreements that can be entered into with these service providers refer.<sup>122</sup>
- 208 The CRTC should use the UdC’s ‘mystery shopper’ method to obtain annual data about wireless service providers’ actual practices when negotiating contracts or agreements

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<sup>122</sup> UdC report on *The Wireless Code*, at 34.

with wireless service users, and to evaluate their compliance with relevant aspects of the *Wireless Code*.

**Forum recommendation 21 The CRTC should use a mystery-shopper approach to evaluate wireless service providers' practices and compliance with the *Wireless Code***

- 209 CCTS should continue to report the numbers of complaints it receives, and their subject. The 2014 and 2015 Communications Monitoring Report include data summarizing the number of contacts received by the Commission, by type of issue and type of service, but earlier reports did not. According to the 2013 Communications Monitoring Report the CRTC's correspondence tracking system did not monitor telecommunications complaints until 2012-13 (previous years' data showing as "N/A").<sup>123</sup>

**Table 8 Complaints about wireless services received by CRTC, 2013-2015**

CRTC complaints about wireless services					
Number of telecommunications-related contacts received by the CRTC, by type of issue and service					
Complaints about wireless services with respect to ....	CRTC 2013, Table 2.3.5	CRTC 2014, Table 5.1.4	CRTC 2015, Table 5.1.4	2014 complaints: % of total	% change, 2013 to 2015
	2012/13	2013	2014		
CRTC policies/decisions	334	1,688	1,113	15.2%	233.2%
Billing/rates	1,813	3,187	3,504	47.8%	93.3%
Quality of service	197	334	461	6.3%	134.0%
Provision of service	145	505	496	6.8%	242.1%
Terms of service	273	992	1,210	16.5%	343.2%
Other		651	552	7.5%	
Total	2,762	7,359	7,336	100.0%	165.6%
Contacts per 10,000 residential lines, subscribers or payphones	1	2.6	2.5		150.0%
CRTC, various years					
Billing, as % of total complaints	65.6%	43.3%	47.8%		

- 210 Assuming that the level of complaints received by the CRTC offers a general sense of Canadians' concerns about telecommunications, the absence of data about complaints from before the *Wireless Code's* publication makes it impossible to use these data to draw conclusions about Canadians' wireless concerns.
- 211 Without wishing to re-litigate the proceeding in which the CRTC reviewed CRTC' performance, the Forum again notes that access to an anonymized version of CCTS' complaints database would enable interested parties to contribute far more effectively to reviews of CCTS, and of the *Wireless Code*.

<sup>123</sup> See CRTC, Communications Monitoring Report 2013, Table 2.3.1 at 33.

- 212 We also note that the only statistics available to interested parties about Canadian telecommunications are published annually in the CRTC's communications monitoring reports. In the case of broadcasting, however, the CRTC also publishes separate reports for the television, radio and distributions sectors.
- 213 The same type of information should be published for Canada's telecommunications system.

**Forum recommendation 22 The CRTC should publish statistical and financial summaries for the wireline and wireless telecommunications sectors, in the same way it publishes statistical and financial summaries for broadcasting sectors**

#### **IV Conclusions**

- 214 Having reviewed the *Wireless Code* and the available evidence, the Forum agrees that it has had some positive effects for wireless service users. It has tamped down some of the worst industry practices being used several years ago, such as arbitrary and excessive early contract cancellation fees. These practices were anti-competitive.
- 215 But the *Code* has not acted as a surrogate for competition, protecting wireless service users' interests. It has not made the wireless market more dynamic. It has not reduced the price of wireless service in Canada. It has not promoted the systemic achievement of Parliament's objectives for Canada's telecommunications policy.
- 216 Rather than strengthening Canada's telecommunications system with systematically enforced rules to protect the public interest, the *Wireless Code* has attempted to promote such change, one complaint at a time.
- 217 In our view, the *Code* has served the very political purpose of, once again, staving off any serious evaluation of the necessity to regulate wireless telecommunications in Canada.
- 218 While this political purpose may well be tied to other objectives of the federal government – international trade negotiations, for instance – the CRTC is bound by law to meet the objectives of the *Telecommunications Act*. The *Code* has failed to meet these objectives, and without far more fundamental changes – whose discussion the CRTC has effectively prohibited in this proceeding – it will continue to fail to meet these objectives.

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**Appendix 1 The Wireless Code and CRTC survey research results**

Wireless Code and survey results	CRTC surveys (and sample size) 2016: n=925 2015: n=1,005 2014: n=1,289	Results (and error rates) 2016: + or – 3.2%, 95% of the time 2015: + or – 3.1% , 95% of the time 2014: + or – 2.7% , 95% of the time			
1. <i>Existence of the Wireless Code</i>	1. “Do you recall ... hearing or seeing anything about” the <i>Wireless Code</i> ?”, and if so, how (QB8, QB8a)	2016: 2015: 2014:	Clearly 14% 19% 22%	Vaguely 31% 31% 30%	Do not recall 52% 48% 46%
2. <i>A1 Service providers should use plain language</i>	2. Did you find the contract you signed or agreement you made was “clear and easy to understand” (QB1) – does not ask if respondent read contract	No change 2016: 66% 5-7 {clear} 2015: 68% 5-7 {clear} 2014: 66% 5-7 {clear}			
	3. Billing issues/errors/mistakes	Cause of ‘bill shock’ = billing errors 2016: 12% 2015: 12% 2014: 4%			
	4. Not given the plan promised (QB6a)	Cause of ‘bill shock’ = not receiving plan promised 2016: 8% 2015: 2% 2014: 4%			
3. <i>A2(i) Prices must be clear and show whether taxes are included</i>	5. “Additional/unexpected fees” (QB6a)	Cause of ‘bill shock’ – additional/ unexpected fees 2016: 7% 2015: 6% 2014: 10%			
	6. Roaming charges – international (QB6a)	Cause of ‘bill shock’ – international roaming charges 2016: 16% 2015: 14% 2014: 21%			
4. <i>A3(i) No overage charges for unlimited services</i>	7. Greater than expected data usage (QB6a)	Cause of ‘bill shock’ – greater than expected data usage 2016: 38% 2015: 30% 2014: 24%			
5. <i>B1(i) Permanent copy of contract</i>					
6. <i>B1(i)(c)(3) Accessible version</i>					
7. <i>B1(i)(a) Key contract terms clearly stated</i>					

<i>Wireless Code and survey results</i>	CRTC surveys (and sample size) 2016: n=925 2015: n=1,005 2014: n=1,289	Results (and error rates) 2016: + or – 3.2%, 95% of the time 2015: + or – 3.1% , 95% of the time 2014: + or – 2.7% , 95% of the time
8. <i>C(i) Critical Information Summary with permanent contract</i>		
9. <i>D1(i) No changes to key terms and conditions without informed consent</i>	8. “Have you ever become aware that your service provider changed your plan without expressly making you aware of how the terms and conditions had changed” (QB3)	No change 2016: 17% yes 2015: 16% yes 2014: 19% yes
Does not address <i>Wireless Code</i>	9. “which one element or service of your contract would most upset you if changed by your service provider without you being consulted or informed first” (QB10)	Element most cited by respondents 2016: Data – 27% 2015: Data – 19% 2014: - no data
10. <i>D1(ii) Customer able to decline changes to key terms</i>		
11. <i>D2(i) 30 calendar days’ notice to change other contract terms</i>		
12. <i>D2(ii) Notice must explain change and date of effect</i>		
13. <i>E1(i) Clear notification when device is roaming and roaming rates</i>	10. “Have you experienced ‘bill shock’, meaning a surprisingly high bill, during the last year?” (QB6)	2016: 24% yes 2015: 29% yes 2014: 28% yes
14. <i>E2(i) National and international data roaming charges suspended when they reach \$100 in one billing month, unless customer expressly agrees to pay additional charges</i>		
15. <i>E3(i) Data overage charges suspended after \$50 unless customer expressly</i>		If yes, % from data change 2016: 38% yes 2015: 30% yes



<i>Wireless Code and survey results</i>	CRTC surveys (and sample size) 2016: n=925 2015: n=1,005 2014: n=1,289	Results (and error rates) 2016: + or – 3.2%, 95% of the time 2015: + or – 3.1% , 95% of the time 2014: + or – 2.7% , 95% of the time
<i>agrees to pay additional charges</i>		2014: 24% yes
16. <i>E4(i) No charges for services to which user has not subscribed</i>		
17. <i>E5(i) Unsubscription methods for premium services must be explained</i>		
18. <i>F1(i) Locked devices included in contract must be unlocked at least 90 days after contract signed</i>		
19. <i>F2(i) Warranties on devices must be explained</i>		
20. <i>F3 Service suspension/restoration if devices are lost/stolen then located/replaced</i>		
21. <i>G1 Early cancellation fees before commitment period ends</i>	11. “how clearly did your service provider explain any fees that would apply if you cancel your contract or agreement early” (QB2)	2016: 55% clear {5-7} 2015: 56% clear {5-7} 2014: 50% clear {5-7}
22. <i>G2, 3 Early cancellation fee calculation</i>		
23. <i>G4 Free cancellation during trial period</i>		
24. <i>G5 How to cancel</i>		
25. <i>G6 Extension of service at end of contract</i>		
26. <i>H Security deposits</i>		
27. <i>H1.I Disconnection</i>		
28. <i>H1.I.3 Expiration of pre-paid cards</i>		
Measures # of those who say they have complained about their wireless services in past year	12. “Have you made a complaint about your wireless services in the past 12 months?” (QB4)	Yes 2016: 21% 2015: 23% 2014: no data

<i>Wireless Code</i> and survey results	CRTC surveys (and sample size) 2016: n=925 2015: n=1,005 2014: n=1,289	Results (and error rates) 2016: + or – 3.2%, 95% of the time 2015: + or – 3.1% , 95% of the time 2014: + or – 2.7% , 95% of the time
Measures # of those who recall to whom they directed a complaint about their wireless service in past year	13. To whom did you complain in the last 12 months? (QB4a)	
Measures satisfaction with how complaint resolved	14. “How satisfied were you with how your complaint was resolved?” (QB4b)	Dissatisfied (3, 2, 1) 2016: 45% 2015: 43% 2014: 47%
Measures awareness of CCTS	15. “How aware are you of your right to complain about issues you are experiencing with your wireless service provider to the Commissioner for Complaints for Telecommunications Services – the CCTS?” (QB5)	2016: 36% satisfied {5-7} 2015: 44% satisfied {5-7} 2014: 37% satisfied {5-7}
Measures # of those who remember changing wireless service providers in previous 24 months, whether this process was easy or difficult, and why it was easy or difficult	16. “Have you changed wireless service providers in the last two years?” and if so, why, was it easy or difficult and why was it easy or difficult (QB7, QB7a, QB7b, QB7c)	% who changed in last 2 years 2016: 18% 2015: 18% 2014: 18%
		% who changed & said it was difficult 2016: 13% 2015: 16% 2014: 16%
		Of those who said it was difficult, why? (reason with highest %) 2016: 55% - cost of ending contract 2015: 45% - cost of ending contract 2014: 52% - cost of ending contract
Measures type of wireless plan	17. Type of plan – individual, or family plan? (QB9a)	
Measures type of wireless plan	18. Is it monthly, pre-paid, or pay as you go? (QB9b)	

<i>Wireless Code</i> and survey results	CRTC surveys (and sample size) 2016: n=925 2015: n=1,005 2014: n=1,289	Results (and error rates) 2016: + or – 3.2%, 95% of the time 2015: + or – 3.1% , 95% of the time 2014: + or – 2.7% , 95% of the time		
Measures % who know if calling minutes are included in plan	19. Are calling minutes included? (QB9c1)	Yes 2016: 87% 2015: 87% 2014: no data		
Does not address <i>Wireless Code</i>	20. Is text messaging included? (QB9c2)	Yes 2016: 91% 2015: 91% 2014: no data		
Does not address <i>Wireless Code</i>	21. Are data included? (QB9c3)	Yes 2016: 73% 2015: 70% 2014: no data		
Does not address <i>Wireless Code</i>	22. Plan due to employer or association? (QB9d)	2016: 2015: 2014:	Yes 7% 5% No data	No 93% 94% No data
Does not address <i>Wireless Code</i>	23. Importance of data (QB11)	Essential (7) 2016: 45% 2015: 40% 2014: no data		
Does not address <i>Wireless Code</i>	24. Importance of calling minutes (QB11)	Essential (7) 2016: 51% 2015: 50% 2014: no data		
Does not address <i>Wireless Code</i>	25. Importance of text messaging (QB11)	Essential (7) 2016: 53% 2015: 53% 2014: no data		

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**Appendix 2 Letters from the CRTC regarding *Wireless Code* compliance (2013 to September 13 2016)**

Proceeding to establish a mandatory *Code* for mobile wireless services: Commission letters related to Notice of Consultation 2012-557

Source:

[http://www.crtc.gc.ca/otf/eng/2012/8665/c12\\_201212448.htm?\\_ga=1.2235061.481707473.1466337109](http://www.crtc.gc.ca/otf/eng/2012/8665/c12_201212448.htm?_ga=1.2235061.481707473.1466337109)

- 1 2015-05-07 – [Commission Letter](#) Description: Letter addressed to Rogers Communications Partnership – Subject: *Wireless Code* Implementation – Compliance Reports – Confirmation Required
- 2 2015-05-07 – [Commission Letter](#) Description: Letter addressed to Bell Mobility Inc. – Subject: *Wireless Code* Implementation – Compliance Reports – Confirmation Required
- 3 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Bell Mobility Inc. – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 4 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Bruce Telecom – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 5 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Hay Communications Co-operative Limited – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 6 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Huron Telecommunications Co-operative Limited – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 7 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Quadro Communications Co-operative Inc. – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 8 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Rogers Communications Partnership – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 9 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Saskatchewan Telecommunications – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required

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- 10 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Tuckersmith Communications Co-operative Limited – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 11 2014-08-14 – [Commission Letter](#) Description: Letter addressed to Wightman Telecom Ltd. – Subject: *Wireless Code* Implementation – Compliance Reports – Action Required
- 12 2014-06-06 – [Commission Letter](#) Description: Letter addressed to Glenn R Grubb (Huron Telecommunications Co-Operative Limited) – Re: *Wireless Code* Implementation – Compliance Reports
- 13 2014-06-06 – [Commission Letter](#) Description: Letter addressed to Kolos Gugan (Wightman Telecom Ltd.) – Re: *Wireless Code* Implementation – Compliance Reports
- 14 2014-06-06 – [Commission Letter](#) Description: Letter addressed to Cindy Hicks (Rogers Communications Partnership ) – Re: *Wireless Code* Implementation – Compliance Reports
- 15 2014-06-06 – [Commission Letter](#) Description: Letter addressed to Barry Stone (Quadro Communications Co-operative Inc. ) – Re: *Wireless Code* Implementation – Compliance Reports
- 16 2014-05-30 – [Commission Letter](#) Description: Letter addressed to Guillaume Marcille (Lynx Mobility Inc.) – Re: *Wireless Code* Implementation – Compliance Reports
- 17 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Mr. Don Woodford, Bell Mobility Inc. – Re: *Wireless Code* Implementation – Compliance Reports
- 18 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Jamie Greenberg (Public Mobile Inc.) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 19 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Teresa Griffin-Muir (MTS Inc.) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 20 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Lisa Jackson (Wind Mobile) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 21 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Kolos Gugan (Wightman Telecom Ltd.) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 22 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Dennis Béland (Vidéotron s.e.n.c.) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports

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- 23 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Rob Van Aaken (Tuckersmith Communications Co-operative Limited) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 24 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Tom Woo (TELUS Communications Company) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 25 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Stephen Scofich (TbayTel) – 2012-557 – Subject : *Wireless Code* Implementation – Compliance Reports
- 26 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Sophie Houde (Sogetel Mobilité inc.) – 2012-557 – Subject : *Wireless Code* Implementation – Compliance Reports
- 27 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Robert Hersche (Saskatchewan Telecommunications) – 2012-557 – Subject : *Wireless Code* Implementation – Compliance Reports
- 28 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Cindy Hicks (Rogers Communications) – 2012-557 – Subject : *Wireless Code* Implementation – Compliance Reports
- 29 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Barry Stone (Quadro Communications Co-operative Inc.) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 30 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Richard Banks (Morningson Communications Co-operative Limited) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 31 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Samer Bishay (Ice Wireless Inc.) – 2012-557 – Subject: *Wireless Code* Implementation – Compliance Reports
- 32 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Mr. Glenn R Grubb, Huron Telecommunications Co-Operative Limited – Re: *Wireless Code* Implementation – Compliance Reports
- 33 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Ms. Angela Schneider, Hay Communications Co-operative Limited – Re: *Wireless Code* Implementation – Compliance Reports
- 34 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Mr. Jonathan E. Scott, Execulink Telecom Inc. – Re: *Wireless Code* Implementation – Compliance Reports

- 35 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Ms. Stacey Langley, Bragg Communications Incorporated (Eastlink) – Re: Wireless *Code* Implementation – Compliance Reports
- 36 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Mr. Bart Cameron, Bruce Telecom – Re: Wireless *Code* Implementation – Compliance Reports
- 37 2014-05-22 – [Commission Letter](#) Description: Letter addressed to Mr. Jim Janssens, Brooke Telecom Co-operative Ltd. – Re: Wireless *Code* Implementation – Compliance Reports
- 38 2014-02-04 – [Procedural Letter](#) Description: Letter addressed to the Distribution List – Re: Wireless *Code* Implementation – Accessibility Reports
- 39 2013-11-26 – [Procedural Letter](#) Description: Letter addressed to Distribution List – Re: Wireless *Code* Implementation – Compliance Reports

**Appendix 3 Revisions proposed by the Forum for the *Wireless Code***

Changes proposed are indicated by italics and/or yellow highlighting

<b>The Wireless Code</b>		
	<p>The Canadian Radio-television and Telecommunications Commission (CRTC) has created this <i>Wireless Code</i> (the <i>Code</i>) so that consumers of retail mobile wireless voice and data services (wireless services) <i>and retail mobile wireless voice and data service providers</i> will be better informed of their rights and obligations contained in their contracts with wireless service providers (service providers).</p> <p>The <i>Wireless Code</i> will</p> <ul style="list-style-type: none"> <li>(i) make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;</li> <li>(ii) establish consumer-friendly business practices for the wireless service industry where necessary; and</li> <li>(iii) contribute to a more dynamic wireless market.</li> </ul> <p>The <i>Code</i> applies to all wireless services, whether purchased on a stand-alone basis or as part of a bundle, and whether purchased in person, online, or over the phone. All service providers must comply with the <i>Code</i>. All sections of the <i>Code</i> apply to postpaid services. The following sections of the <i>Code</i> also apply to prepaid services: A. 1-3; B. 2; E. 1, E. 4, and E. 5; F. 1-4; G. 1-4; and J. 1.</p> <p>Definitions of terms used in the <i>Code</i> are provided at the end of the <i>Code</i>. Defined terms are indicated in <b>italics and bold</b> the first time they appear in the <i>Code</i>.</p> <p>If any part of the <i>Code</i> or the customer’s contract is ambiguous, or if it is unclear how the terms of the <i>Code</i> or the contract are to be applied, then the <i>Code</i> and the contract must be interpreted in a manner that is favourable to the customer.</p> <p>You can find a copy of the <i>Code</i> with examples of its interpretation on the website of the Commissioner of Complaints for Telecommunications Services (CCTS): <a href="http://www.ccts-cprst.ca/wp-content/uploads/pdfs/AWC/en/Annotated-Guide-to-the-Wireless-Code.pdf">http://www.ccts-cprst.ca/wp-content/uploads/pdfs/AWC/en/Annotated-Guide-to-the-Wireless-Code.pdf</a></p> <p>A customer who believes that their service provider is not adhering to the <i>Code</i> should first try to resolve the problem directly with the service provider. If the customer is not satisfied with the service provider’s response, they can contact the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) as follows:</p> <p>Mail: P.O. Box 81088, Ottawa ON K1P 1B1                      Website: <a href="http://www.ccts-cprst.ca">www.ccts-cprst.ca</a>                      Toll-free: 1-888-221-1687                      TTY: 1-877-782-2384</p>	<p>Ensure that sellers and buyers are each aware of their rights and obligations</p> <p>Notifies wireless service users and wireless service providers that an annotated copy of the <i>Code</i> exists</p>



	Email: response@ccts-cprst.ca Fax: 1-877-782-2924	
	Customers who are dissatisfied with the CCTS' response or its process may contact the CRTC at: Telecommunications – Wireless Services CRTC Ottawa, ON K1A 0N2	Explain that CCTS' decisions may be appealed to the CRTC
<b>Purpose and objectives of this Code</b>		
<b>1. Purpose</b>	<i>The purpose of this Code is to ensure that wireless service users are able to obtain information about their wireless service contracts and agreements before and after wireless service is purchased, the charges that may and may not be imposed as part of those contracts and agreements, the changes that may and may not be made to the services they are buying, the steps wireless service users may take if their mobile phones are lost or stolen, and means of contacting the industry ombudsman responsible for dealing with complaints about telecommunications services in Canada.</i>	
<b>2. Objectives</b>	<i>The objectives of this Code are, over time, to increase wireless service users' satisfaction with the terms of the wireless service they obtain in Canada including but not limited to the price they pay for wireless service, and to provide conditions in which the number of wireless service companies competing for wireless service users' business increases.</i>	
<b>A. Clarity</b>		
<b>1. Plain language</b>	(i) A <b>service provider</b> must communicate with <b>customers</b> using plain language. (ii) A service provider must ensure that its <b>written contracts</b> and <b>related documents</b> , such as <b>privacy policies</b> and <b>fair use policies</b> , are written in a way that is clear and easy for customers to read and understand.	Note that "customer" should be defined to include subscribers and account holders
<b>2. Prices</b>	(i) A service provider must ensure that the prices set out in the <b>contract</b> are clear and must indicate whether these prices include taxes.	
<b>3. Unlimited services</b>	(i) A service provider must not charge a customer any <b>overage charge</b> for services purchased on an unlimited basis and described as "Unlimited". (ii) A service provider must not limit the use of a service purchased on an unlimited basis unless these limits are clearly explained in the fair use policy. (iii) A service provider must describe a service that may result in additional charges as "Generally unlimited" if it has levied overage charges for that service on 2.5% or more of its users in the previous calendar year.	Adds provision to distinguish between unlimited and generally unlimited services
<b>B. Contracts and related documents</b>		

<p><b>1. Postpaid service contracts</b></p>	<p>(i) A service provider must give the customer a <b>permanent copy</b> of the contract and related documents at no charge in the following circumstances:</p> <p>a. If the contract is agreed to in person, the service provider must give the contract and related documents to the customer immediately after the customer agrees to the contract.</p> <p>b. If the contract is not agreed to in person (i.e. if it is agreed to over the phone, online, or otherwise at a distance), the service provider must send the contract and related documents to the customer within 15 calendar days of the customer agreeing to the contract. If a service provider fails to do this, or if the terms and conditions of the permanent copy of the contract conflict with the terms and conditions that the customer agreed to, the customer may, within 30 calendar days of receiving the permanent copy of the contract, cancel the contract without paying an <b>early cancellation fee</b> or any other penalty.</p> <p>c. The service provider must also provide the customer with a paper copy of the contract upon request at no charge, at any time during the <b>commitment period</b>.</p> <p>(ii) The permanent copy of the contract and related documents must be a paper copy, unless the customer expressly and knowingly decides that an electronic copy is acceptable.</p> <p>(iii) A service provider must provide a customer with a copy of the contract in an alternative format for people with disabilities upon request, at no charge, at any time during the commitment period.</p> <p>(iv) Contracts for postpaid services must set out all of the information listed below in a clear manner (items a-m):</p> <p><b>Key contract terms and conditions</b></p> <p><b>a.1 the start and end date of the contract</b></p> <p><b>a.2 confirmation that the wireless service provider provides mobile service in the areas where the wireless service user is most likely to be using the mobile phone</b></p> <p>a.3 the services <b>and data</b> included in the contract and any limits on the use of those services that could trigger overage charges or additional fees;</p> <p>b. the <b>minimum monthly charge</b> for services included in the contract;</p> <p><b>b.1 the minimum monthly charge for services and for data included in the contract when a customer uses his/her/its own device(s)</b></p> <p>c. the commitment period, including the end date of the contract;</p> <p>d. if applicable</p> <p>i. the total early cancellation fee;</p> <p><b>i.i fees for changing plans, if any (and there should be none, as this practice should be prohibited)</b></p>	<p>Adds reference to</p> <p>Fees for changing plans</p> <p>Financed devices</p> <p>Fees for plans when customers already own their own devices</p> <p>Include data, as part of services, as a key contract term</p>
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	<p>ii. the amount by which the early cancellation fee will decrease each month; and</p> <p>iii. the date on which the customer will no longer be subject to the early cancellation fee;</p> <p>e. if a <b>subsidized or financed device</b> is provided as part of the contract,</p> <p>i. the retail price of the device, which is the lesser of the manufacturer’s suggested retail price or the price set for the device when it is purchased from the service provider without a contract;</p> <p>ii. the amount the customer paid for the device; and</p> <p>iii. the fee to unlock the device, if any;</p> <p><b>Other aspects of the contract</b></p> <p>f. an explanation of all related documents, including privacy policies and fair use policies;</p> <p>g. all one-time costs, itemized separately;</p> <p>h. the trial period for the contract, including the associated limits on use;</p> <p>i. rates for <b>optional services</b> selected by the customer at the time the contract is agreed to;</p> <p>j. whether the contract will be extended automatically on a month-to-month basis when it expires, and if so, starting on what date;</p> <p>k. whether upgrading the device or otherwise amending a contract term or condition would extend the customer’s commitment period or change any other aspect of the contract;</p> <p>l. if applicable, the amount of any security deposit and any applicable conditions, including the conditions for return of the deposit; and</p> <p>m. where customers can find information about</p> <p>i. rates for optional and <b>pay-per-use services</b>;</p> <p>ii. the device manufacturer’s warranty;</p> <p>iii. tools to help customers manage their bills, including notifications on data usage and <b>roaming</b>, data caps, and usage monitoring tools;</p> <p>iv. the service provider’s service coverage area, including how to access complete <b>service coverage maps</b>;</p> <p>v. how to contact the service provider’s customer service department;</p> <p>vi. how to make a complaint about <b>wireless services</b>, including contact information for the <b>Commissioner for Complaints for Telecommunications Services Inc. (CRTC)</b>; and</p> <p>vii. the <i>Wireless Code</i>.</p>	
<p><b>2. Prepaid service contracts</b></p>	<p>(i) A service provider must inform the customer of all conditions and fees that apply to the prepaid balance.</p>	

	<p>(ii) A service provider must explain to the customer how they can</p> <ul style="list-style-type: none"> <li>a. check their usage balance;</li> <li>b. contact the service provider’s customer service department; and</li> <li>c. complain about the service, including how to contact the CCTS;</li> </ul> <p>(iii) A service provider must provide this information separately if it does not appear on a prepaid card or in the written contract.</p> <p>(iv) If a device is provided as part of a prepaid service contract, a service provider must also inform the customer of</p> <ul style="list-style-type: none"> <li>a. where applicable             <ul style="list-style-type: none"> <li>i. the total early cancellation fee;</li> <li>ii. the amount by which the early cancellation fee will decrease each month; and</li> <li>iii. the date on which the customer will no longer be subject to the early cancellation fee;</li> </ul> </li> <li>b. the retail price of the device, which is the lesser of the manufacturer’s suggested retail price or the price set for the device when it is purchased from the service provider without a contract;</li> <li>c. the amount the customer paid for the device;</li> <li>d. the fee to unlock the device, if any; and</li> <li>e. where customers can find information about device upgrades and the manufacturer’s warranty.</li> </ul> <p>(v) A service provider must give the customer a copy of the contract in an alternative format for people with disabilities upon request, at no charge, at any time during the commitment period.</p>	
<p><b>C. Critical Information Summary</b></p>		
<p><b>1. Critical Information Summary</b></p>	<p><i>(i) A service provider must offer a <b>Critical Information Summary</b> to those who inquire about their wireless services, and must provide the Summary when they provide a permanent copy of the contract for postpaid services. [Should be in Key Terms: This document summarizes the most important elements of the contract for the customer.]</i></p> <p>(ii) A service provider must ensure that the Critical Information Summary contains all of the following:</p> <ul style="list-style-type: none"> <li>a. a complete description of all <b>key contract terms and conditions</b> (see item B. 1. (iv) a-e listed above);</li> <li>b. the total monthly charge, including rates for optional services selected by the customer at the time the contract is agreed to;</li> <li>c. information on all one-time charges and additional fees; and</li> <li>d. information on how to complain about the service provider’s wireless services, including how to contact the service provider’s customer service department and the CCTS.</li> </ul> <p>(iii) A service provider must ensure that the Critical Information Summary</p>	<p>Add term requiring provision of Summary to all who inquire about their services</p> <p>Define Critical Information Summary in key terms</p>

	<p>a. accurately reflects the content of the contract;</p> <p>b. is either provided as a separate document from the written contract or included prominently on the first two pages of the written contract; and</p> <p>c. is clear and concise (does not exceed two pages), uses plain language, and is in an easily readable font <i>and font size</i>.</p>	
<b>D. Changes to contracts and related documents</b>		
<b>1. Changes to key contract terms and conditions</b>	<p>(i) A service provider must not change the key contract terms and conditions of a postpaid wireless contract during the commitment period without the customer's informed and express consent.</p> <p>(ii) When a service provider notifies a customer that it intends to change a key contract term or condition during the commitment period, the customer may refuse the change.</p> <p>(iii) As an exception, a service provider may only change a key contract term or condition during the commitment period without the customer's express consent if it clearly benefits the customer by either</p> <p>a. reducing the rate for a single service; or</p> <p>b. increasing the customer's usage allowance for a single service.</p>	
<b>2. Changes to other contract terms and conditions or related documents</b>	<p>(i) If, during the commitment period, a service provider wishes to change other contract terms and conditions or the related documents, it must provide the customer with at least 30 calendar days' notice before making such changes.</p> <p>(ii) This notice must explain the change and when it will take effect.</p>	
<b>E. Bill management</b>		
<b>1. International roaming notification</b>	<p>(i) A service provider must notify the customer <i>and account holder</i>, at no charge, when their device is roaming in another country. The notification must clearly explain the associated rates for voice, text messaging, and data services.</p> <p>(ii) Customers may opt out of receiving these notifications at any time.</p>	Add "account holder" Permit customers to opt out of roaming notifications; require account holders to be notified
<b>2. Cap on data roaming charges</b>	<p>(i) A service provider must suspend national and international data roaming charges once they reach \$100 within a single monthly billing cycle, unless the <del>customer</del> <i>account holder</i> expressly consents to pay additional charges.</p> <p>(ii) A service provider must provide this cap at no charge.</p>	Change "customer" to "account holder"
<b>3. Cap on data overage charges</b>	<p>(i) A service provider must suspend data overage charges once they reach \$50 within a single monthly billing cycle, unless the <del>customer</del> <i>account holder</i> expressly consents to pay additional charges.</p> <p>(ii) A service provider must provide this cap at no charge.</p>	Change "customer" to "account holder"
<b>4. Unsolicited wireless services</b>	(i) A service provider must not charge for any device or service that the <del>customer</del> <i>account holder</i> has not expressly purchased.	Change "customer" to "account holder"

<b>5. Mobile premium services</b>	(i) If a customer contacts their service provider to inquire about a charge for a mobile premium service, the service provider must explain to the customer how to unsubscribe from the mobile premium service.	
<b>6. Bill contents</b>	<i>(i) The bills that wireless service providers send to account holders must state their usage of data, voice, messages and roaming in the billing period, for each device that is part of the account holders' plan, contract or agreement</i>	Require bills to include basic usage information
<b>7. Payment fees</b>	<i>(i) wireless service providers must not levy charges or fees for account holders who or that want to pay their bills and do so within the payment period provided.</i>	Prohibit pay-to-pay practices
<b>F. Mobile device issues</b>		
<b>1. Unlocking</b>	(i) A service provider that provides a <b>locked device</b> to the customer as part of a contract must a. for subsidized devices: unlock the device, or give the customer the means to unlock the device, upon request, at the rate specified by the service provider, no later than 90 calendar days after the contract start date. b. for unsubsidized devices: unlock the device, or give the customer the means to unlock the device, at the rate specified by the service provider, upon request.	
<b>2. Warranties</b>	(i) A service provider must inform the customer of the existence and duration of a manufacturer's warranty on a device before offering an extended warranty or insurance on that device.	
<b>3. Lost or stolen devices</b>	(i) When a customer notifies their service provider that their device has been lost or stolen, a. the service provider must immediately <b>suspend</b> the customer's service at no charge; and b. the terms and conditions of the contract will continue to apply, including the customer's obligation to pay i. all charges incurred before the service provider received notice that the device was lost or stolen; and ii. either the minimum monthly charge (and taxes), if the customer continues with the contract, or the applicable early cancellation fee, if the customer cancels the contract. (ii) If the customer notifies the service provider that their device has been located or replaced and requests that their service be restored, the service provider must restore the service at no charge.	
<b>3.1 Replacing devices</b>	<i>(i) A service provider must permit account holders to replace their device at any time, without signing up for a new commitment period, provided the account holder's device functions with the service provider's network.</i>	Prohibits wireless service providers from requiring customers to sign up for a new commitment period when they replace their device

<p><b>4. Repairs</b></p>	<p>(i) A service provider must suspend wireless service charges during device repairs upon request if all of the following conditions are met:</p> <ul style="list-style-type: none"> <li>a. the device was provided as part of a contract with the service provider and is returned to the service provider for repair;</li> <li>b. the device is under the manufacturer’s or the service provider’s warranty;</li> <li>c. the service provider did not provide a free replacement device for use during the repair; and</li> <li>d. the customer would incur an early cancellation fee if they were to cancel their wireless services.</li> </ul>	
<p><b>G. Contract <i>changes</i>, cancellation and extension</b></p>		
<p><b>1.1 Downgrading or upgrading plans</b></p>	<p><i>(i) If an account holder wishes to change plans before the end of the commitment period, the service provider must not charge the customer any fee or penalty for the change.</i></p>	<p>Prohibits wireless service providers from imposing fees on changing plans</p>
<p><b>1.2 Early cancellation fees – General</b></p>	<p>(i) If <del>an account holder a customer</del> cancels a contract before the end of the commitment period, the service provider must not charge the <del>account holder customer</del> any fee or penalty other than the early cancellation fee. This fee must be calculated in the manner set out in sections 2. And 3. Below.</p> <p>(ii) When calculating the time remaining in a contract to determine the early cancellation fee, a month that has partially elapsed at the time of cancellation is considered a month completely elapsed</p> <p><i>(iii) when account holders cancel a service or services, wireless service providers must not continue to charge account holders for services they do not receive after the date of cancellation for services (s)he does not receive.</i></p>	<p>Section 1.2(iii) prohibits wireless service providers from retaining partial payments for pre-paid services; wireless service users should be reimbursed on a pro-rated basis for payments for pre-paid service</p>
<p><b>2. Early cancellation fees – Subsidized device</b></p>	<p>(i) When a <del>subsidized</del> <b>financed</b> device is provided as part of the contract,</p> <ul style="list-style-type: none"> <li>a. for <b>fixed-term contracts</b>: The early cancellation fee must not exceed the value of the <b>device subsidy</b>. The early cancellation fee must be reduced by an equal amount each month, for the lesser of 24 months or the total number of months in the contract term, such that the early cancellation fee is reduced to \$0 by the end of the period.</li> <li>b. for <b>indeterminate contracts</b>: The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, over a maximum of 24 months, such that the early cancellation fee is reduced to \$0 by the end of the period.</li> </ul> <p>(ii) When calculating the early cancellation fee,</p> <ul style="list-style-type: none"> <li>a. the value of the device subsidy is the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to; and</li> </ul>	

	<p>b. the retail price of the device is the lesser of the manufacturer’s suggested retail price or the price set for the device when it is purchased from the service provider without a contract.</p>	
<p><b>3. Early cancellation fees – No subsidized device</b></p>	<p>(i) When a subsidized device is not provided as part of the contract,</p> <p>a. for fixed-term contracts: The early cancellation fee must not exceed the lesser of \$50 or 10 percent of the minimum monthly charge for the remaining months of the contract, up to a maximum of 24 months. The early cancellation fee must be reduced to \$0 by the end of the period.</p> <p>b. for indeterminate contracts: A service provider must not charge an early cancellation fee.</p>	
<p><b>4. Trial period</b></p>	<p>(i) When a customer agrees to a contract through which they are subject to an early cancellation fee, a service provider must offer the customer a trial period lasting a minimum of 15 calendar days to enable the customer to determine whether the service meets their needs.</p> <p>(ii) The trial period must start on the date on which service begins.</p> <p>(iii) A service provider may establish reasonable limits on the use of voice, text, and data services for the trial period.</p> <p>(iv) During the trial period, customers may cancel their contract without penalty or early cancellation fee if they have</p> <p>a. used less than the permitted usage; and</p> <p>b. returned any device provided by the service provider, in near-new condition, including original packaging.</p> <p>(v) If a customer self-identifies as a person with a disability, the service provider must extend the trial period to at least 30 calendar days, and the permitted usage amounts must be at least double the service provider’s general usage amounts for the trial period.</p>	
<p><b>5. Cancellation date</b></p>	<p>(i) Customers may cancel their contract at any time by notifying their service provider.</p> <p>(ii) Cancellation takes effect on the day that the service provider receives notice of the cancellation.</p>	
<p><b>6. Contract extension</b></p>	<p>(i) To ensure that customers are not disconnected at the end of the commitment period, a service provider may extend a contract, with the same rates, terms and conditions, on a month-to-month basis.</p> <p>(ii) A service provider must notify a customer on a fixed-term contract at least 90 calendar days before the end of their initial commitment period whether or not the contract will be automatically extended.</p> <p>(iii) At the time that a service provider offers a customer a device upgrade, the service provider must clearly explain to the customer any changes to the existing contract terms caused by</p>	



	accepting the new device, including any extension to the commitment period.	
<b>H. Security deposits</b>		
<b>1. Requesting, reviewing, and returning a security deposit</b>	<p>(i) If a service provider requires a security deposit from a customer, the service provider must</p> <ul style="list-style-type: none"> <li>a. inform the customer of the reasons for requesting the deposit;</li> <li>b. keep a record of those reasons for as long as the service provider holds the deposit;</li> <li>c. specify in the written contract the conditions for the return of the security deposit;</li> <li>d. review the continued appropriateness of retaining the deposit at least once per year; and</li> <li>e. return the security deposit with interest to the customer, retaining only any amount owed by the customer, no more than 30 calendar days after             <ul style="list-style-type: none"> <li>i. the contract is terminated by either the customer or the service provider; or</li> <li>ii. the service provider determines that the conditions for the return of the security deposit have been met.</li> </ul> </li> </ul> <p>(ii) A service provider must calculate interest on security deposits using the Bank of Canada’s overnight rate in effect at the time, plus at minimum one percent, on the basis of the actual number of days in a year, accruing on a monthly basis.</p> <p>(iii) A service provider may apply the security deposit toward any amount past due and may require customers to replenish the security deposit after such use in order to continue providing service.</p>	
<b>I. Disconnection</b>		
<b>1. When disconnection may occur</b>	<p>(i) If the grounds for disconnecting a customer are failure to pay, a service provider can disconnect a customer’s postpaid service only if the customer</p> <ul style="list-style-type: none"> <li>a. fails to pay an account that is past due, provided it exceeds \$50 or has been past due for more than two months;</li> <li>b. fails to provide or maintain a reasonable security deposit or alternative when requested to do so by the service provider; or</li> <li>c. agreed to a deferred payment plan with the service provider and fails to comply with the terms of this plan.</li> </ul> <p>(ii) Except with customer consent or in other exceptional circumstances, disconnection may occur only on weekdays 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 precedes a statutory holiday, in which case disconnection may not occur after noon. The applicable time is that of the customer’s declared place of residence.</p> <p>(iii) If a service provider disconnects a customer in error, the service provider must restore service to the customer by the end</p>	

	of the next business day and must not impose reconnection charges.	
<b>2. Notice before disconnection</b>	<p>(i) If a service provider intends to disconnect a customer, it must notify the customer before disconnection, except in cases where</p> <ul style="list-style-type: none"> <li>a. action is necessary to protect the network from harm; or</li> <li>b. the service provider has a reasonable suspicion that fraud is occurring or likely to occur.</li> </ul> <p>(ii) In all other cases, a service provider must give reasonable notice to the customer at least 14 calendar days before disconnection. The notice must contain the following information:</p> <ul style="list-style-type: none"> <li>a. the reason for disconnection and amount owing (if any);</li> <li>b. the scheduled disconnection date;</li> <li>c. the availability of deferred payment plans;</li> <li>d. the amount of the reconnection charge (if any); and</li> <li>e. contact information for a service provider representative with whom the disconnection can be discussed.</li> </ul> <p>(iii) A service provider must provide a second notice to advise a customer that their service will be disconnected at least 24 hours before disconnection, except if</p> <ul style="list-style-type: none"> <li>a. repeated attempts to contact the customer have failed;</li> <li>b. action is necessary to protect the network from harm; or</li> <li>c. the service provider has a reasonable suspicion that fraud is occurring or likely to occur.</li> </ul>	
<b>3. Disputing disconnection charges</b>	<p>(i) A service provider must not disconnect a customer if</p> <ul style="list-style-type: none"> <li>a. the customer notifies the service provider on or before the scheduled disconnection date listed in the notice that they dispute the reasons for the disconnection;</li> <li>b. the customer pays the amount due for any undisputed portion of the charges; and</li> <li>c. the service provider does not have reasonable grounds to believe that the purpose of the dispute is to evade or delay payment.</li> </ul>	
<b>J. Expiration of prepaid cards</b>		
<b>1. General</b>	<p>(i) A service provider must keep open the accounts of customers with prepaid cards for at least seven calendar days following the expiration of an activated card, at no charge, to give the customer more time to “top up” their account and retain their prepaid balance.</p>	

The Canadian Radio-television and Telecommunications Commission (CRTC) has created this Wireless Code (the Code) so that consumers of retail mobile wireless voice and data services (wireless services) will be better informed of their rights and obligations contained in their contracts with wireless service providers (service providers).

The Wireless Code will

- (i) make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;
- (ii) establish consumer-friendly business practices for the wireless service industry where necessary; and
- (iii) contribute to a more dynamic wireless market.

The Code applies to all wireless services, whether purchased on a stand-alone basis or as part of a bundle, and whether purchased in person, online, or over the phone. All service providers must comply with the Code. All sections of the Code apply to postpaid services. The following sections of the Code also apply to prepaid services: A. 1-3; B. 2; E. 1, E. 4, and E. 5; F. 1-4; G. 1-4; and J. 1.

Definitions of terms used in the Code are provided at the end of the Code. Defined terms are indicated in **italics and bold** the first time they appear in the Code.

If any part of the Code or the customer’s contract is ambiguous, or if it is unclear how the terms of the Code or the contract are to be applied, then the Code and the contract must be interpreted in a manner that is favourable to the customer.

A customer who believes that their service provider is not adhering to the Code should first try to resolve the problem directly with the service provider. If the customer is not satisfied with the service provider’s response, they can contact the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) as follows:

Mail: P.O. Box 81088, Ottawa ON K1P 1B1  
 Website: [www.ccts-cprst.ca](http://www.ccts-cprst.ca)  
 Toll-free: 1-888-221-1687  
 TTY: 1-877-782-2384  
 Email: [response@ccts-cprst.ca](mailto:response@ccts-cprst.ca)  
 Fax: 1-877-782-2924

**Customers who are dissatisfied with the CCTS’ response may contact the Canadian Radio-television and telecommunications Commission (CRTC) as follows:**

....

The Wireless Code – Definitions		Proposed change
<b>Account holder</b>	<i>The person who or small business that signs and assumes responsibility for a wireless contract</i>	Adds reference to account holders
<b>Canadian Radio-television and</b>	A public organization <i>responsible for systemic enforcement</i> that regulates and supervises the Canadian broadcasting and telecommunications	Add reference to systemic enforcement

<b>Telecommunications Commission (CRTC)</b>	systems to ensure that Canadians have access to a world-class communication system.	
<b>Commissioner for Complaints for Telecommunications Services Inc. (CCTS)</b>	An independent organization dedicated to working with customers and their telecommunications service providers to resolve complaints relating to their telecommunications services. The CCTS responds to and resolves complaints from customers in order to ensure that they are treated in a way that is consistent with the <i>Wireless Code</i> ; and (ii) collects data on complaints related to the <i>Wireless Code</i> . This data will be published on the CCTS' website at <a href="http://www.ccts-cprst.ca">www.ccts-cprst.ca</a> .	
<b>Commitment period</b>	The term or duration of the contract. For fixed-term contracts, the commitment period is the entire duration of the contract. For indeterminate contracts, the commitment period is the current month or billing cycle.	
<b>Contract and written contract</b>	A contract is a binding agreement between a service provider and a customer to provide wireless services.  A written contract is a written instrument that expresses the content of the contract.	
<b>Critical Information Summary</b>	This document summarizes the most important elements of the proposed or actual contract for the customer	
<b>Customers</b>	Individuals or small businesses <b>who subscribe to retail mobile wireless services or who hold retail mobile wireless accounts ("account holders")</b>	Includes account holder in definition of customer
<b>Device subsidy</b>	The difference between (i) the lesser of the manufacturer's suggested retail price of a device or the price set for the device when it is purchased from the service provider without a contract; and (ii) the amount a customer paid for the device when they agreed to the contract.	
<b>Disconnection</b>	The termination of wireless services by a service provider.	
<b>Early cancellation fee</b>	A fee that may be applied when a customer's service is cancelled before the end of the commitment period.	
<b>Fair (or acceptable) use policy</b>	A policy that explains what is considered to be unacceptable use of the service provider's wireless services and the consequences of unacceptable use (e.g. using the service to engage in an activity that constitutes a criminal offence). Violations of a fair or acceptable use policy may result in (i) disconnection	

	or service suspension; or (ii) a modification of the services available to the customer.	
<b>Financed device</b>	<i>A wireless device that is sold to a customer by a service provider as part of a contract and for which charges are included in the contract. A wireless device that is (i) purchased by the customer at full price; or (ii) not purchased as part of the contract is not a financed device.</i>	Clarifies that wireless service account holders pay for some devices through their contracts
<b>Fixed-term contracts</b>	Contracts that have a set duration (usually one, two, or three years).	
<b>Indeterminate contracts</b>	Indeterminate contracts do not have a set duration. They automatically renew each month.	
<b>Key contract terms and conditions</b>	The elements of the contract that the service provider cannot change without the customer's express consent. Key contract terms and conditions are listed in section B. 1. (iv) a-e of the Code.	
<b>Locked device</b>	A wireless device that is programmed to work only with the network of the service provider that sold the device to the customer.	
<b>Minimum monthly charge</b>	The minimum amount that customers will have to pay for wireless services each month if they do not use optional services or incur any additional fees or overage charges. This charge may be subject to taxes, as set out in the contract.	
<b>Mobile premium services (or premium text messaging services)</b>	Text message services that customers may subscribe to for an additional charge, usually on a per-message basis.	
<b>Optional services</b>	Services that a customer can choose to add to their wireless plan, usually for an additional charge, such as caller ID or call forwarding.	
<b>Overage charge</b>	A charge for exceeding an established limit on the use of a service.	
<b>Pay-per-use services</b>	Services that a customer can choose to add to their wireless plan, such as international roaming, which are typically measured and charged on a usage basis.	
<b>Permanent copy</b>	An inalterable copy (e.g. a paper copy or PDF version) of the contract, as of the date of signing or the date of the latest amendment.	
<b>Postpaid services</b>	Wireless services that are paid for after use, usually upon receipt of a monthly bill.	
<b>Prepaid services</b>	Wireless services that are purchased in advance of use, such as the use of prepaid cards and pay-as-you-go services.	

<b>Privacy policy</b>	A policy that explains how service providers will handle customers' personal information.	
<b>Related documents</b>	Any documents referred to in the contract that affect the customer's use of the service provider's services. Related documents include, but are not limited to, privacy policies and fair use policies.	
<b>Roaming</b>	The use of wireless services outside the service provider's network area.	
<b>Service coverage maps</b>	An illustration of the extent of the service provider's network, showing where coverage is available.	
<b>Service provider</b>	A provider of retail mobile wireless voice and data services.	
<b>Subsidized device</b>	A wireless device that is sold to a customer by a service provider at a reduced price as part of a contract, and for which no charges are included in customer's bill.  A wireless device that is (i) purchased by the customer at full price; or (ii) not purchased as part of the contract is not a subsidized device.	Clarifies that wireless service account holders pay for some devices through their contracts
<b>Suspension (of a customer's service)</b>	A temporary halt in wireless service that can result from a lack of payment or hitting a pre-determined spending or usage limit. The customer's account and contract remain in force during service suspension.	
<b>Unlimited services</b>	The unlimited use of specific services (e.g. unlimited local calling), for a fixed price.	
<b>Wireless services</b>	Retail mobile wireless voice and data services.	

## Appendix 2

### Your Rights as a Wireless Consumer

The CRTC's **Wireless Code** comes into effect on **2 December 2013**. The Wireless Code establishes basic rights for all wireless consumers and puts new requirements on service providers. The Wireless Code significantly limits cancellation fees and requires your service provider to unlock phones, to offer a trial period for wireless contracts, and to set default caps on data charges to help you avoid bill shock.

Do you know your rights? This checklist will help you to understand the most important things that the Code does for you. For more information, visit the CRTC's website at [www.crtc.gc.ca/](http://www.crtc.gc.ca/), where you can find the Wireless Code, which explains all of your rights as a wireless consumer in greater detail.

Do you pay a bill *after* you use your wireless service? If so, you use *postpaid services*, and you have the right

- to cancel your contract at no cost after a maximum of two years

- to cancel your contract and return your phone at no cost, within 15 days and specific usage limits, if you are unhappy with your service
- to have your phone unlocked after 90 days, or immediately if you paid in full for your phone
- to have your service suspended at no cost if your phone is lost or stolen
- to receive a Critical Information Summary, which explains your contract in under two pages
- to receive a notification when you are roaming in a different country, telling you what the rates are for voice services, text messages, and data usage
- to limit your data overage charges to \$50 a month and your data roaming charges to \$100 a month
- to pay no extra charges for a service described as “unlimited”
- to refuse a change to the key terms and conditions of your contract, including the services in your contract, the price for those services, and the duration of your contract

Your contract must

- use in plain language and clearly describe the services you will receive
- include information on when and why you may be charged extra

Do you pay before you use your wireless service? If so, you use prepaid services, and you have the right

- to cancel your contract at no cost after a maximum of two years
- to cancel your contract and return your phone at no cost, within 15 days and specific usage limits, if you are unhappy with your service
- to have your phone unlocked after 90 days, or immediately if you paid in full for your phone
- to have your service suspended at no cost if your phone is lost or stolen
- to receive a notification when you are roaming in a different country, telling you what the rates are for voice services, text messages, and data usage
- to a minimum seven-day grace period in order to “top up” your prepaid card account and retain your balance

Your contract must

- use plain language
- clearly describe the conditions that apply to your prepaid balance and how you can check your balance

**Are you a person with a disability?** If so, you have the right to a copy of your contract in an alternative format at no charge and to a longer (30-day) trial period to ensure that the service and phone meet your needs.

*Is your service provider respecting your rights? If you are unsure, you have the right to complain. First, try to resolve the issue with your service provider. If you are still unsatisfied, contact the [Commissioner for Complaints for Telecommunications Services Inc.](#)*

Mail: P.O. Box 81088, Ottawa ON K1P 1B1

Website: [www.ccts-cprst.ca](http://www.ccts-cprst.ca)

Toll-free: 1-888-221-1687

TTY: 1-877-782-2384

Email: [response@ccts-cprst.ca](mailto:response@ccts-cprst.ca)

Fax: 1-877-782-2924

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