



4 November 2016

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

CRTC reference 1011-NOC2016-0293

Dear Secretary General,

Re: *Review of the Wireless Code*, Telecom Notice of Consultation CRTC 2016-293 (Ottawa, 28 July 2016), 2016-293-1 (Ottawa, 23 September 2016), 2016-293-2 (Ottawa, 26 October 2016) – Forum response to interrogatories

- 1 The following is the response of the Forum for Research and Policy in Communications (FRPC) to the questions posed by the CRTC in its 20 October 2016 Requests for Information. The CRTC's questions are repeated before each response.
- 2 On a procedural note, the Forum notes that although Rogers submitted a request for an extension to the CRTC's 26 October 2016 deadline for responses on 20 October 2016, and its request was then supported by seven other parties to this proceeding in letters dated 21 October 2016, the CRTC did not respond to Rogers' request or other parties' letters of support until 26 October 2016. The Forum respectfully submits that when the CRTC issues six-day deadlines (which include two non-business days, being the weekend), it bears a duty to respond promptly to procedural requests, a duty that it failed to meet in this instance. The Forum urges the Commission to review its approach to procedural requests to provide timely guidance to those who participate in its proceedings.
- 3 Our responses to the CRTC's questions are set out in the following pages.

Prepaid Services

The CCTS¹ [*Commissioner of Complaints for Telecommunications Services*] submitted that “since the launch of [the *Wireless Code*], WSPs [*wireless service providers*] have expanded the ways in which “pre-paid” services are offered. In some cases, customers are not required to purchase and activate a prepaid card; instead they subscribe to pre-paid service in the same way that other customers subscribe to post-paid service. In some cases, WSPs’ offerings were substantially similar for both pre-paid and post-paid customers, the only difference between the two being the point in time at which the customer pays for the service.”

Q1 Explain what you consider to be the key differences between prepaid and postpaid services, if any.

- 4 Telecom Regulatory Policy CRTC 2013-271 noted that some differences between prepaid and postpaid services were “relevant”,² implying that other differences were irrelevant. It did not list these differences, however, and did not expressly state which differences were and which were not relevant.
- 5 Similarly, although Telecom Regulatory Policy CRTC 2013-271 referred to the “unique nature of prepaid services” which made it unnecessary “to empower” prepaid subscribers,³ the policy did not clearly set out the characteristics of this nature which made it unique.
- 6 Telecom Regulatory Policy CRTC 2013-271 also said with respect to the practices of some wireless service providers that “[p]repaid service customers face the same potential harm as postpaid service customers”,⁴ or face the same risks.⁵
- 7 The Forum does not consider that prepaid and postpaid services have key differences, but does agree that prepaid and postpaid wireless service users generally face the same risks – particularly with respect to the risk that the services they obtain from wireless service providers are overpriced, making the services unaffordable.
- 8 While the *Wireless Code* is not the solution to the problem of unaffordable services, the CRTC should nevertheless require wireless service providers through the mechanism of the *Code* to provide all wireless accountholders with
 - a paper copy of their prepaid contract on request⁶
 - a Critical Information Summary,⁷ because even if much of this “clear and concise information about important aspects of their wireless services”⁸ “would not apply to

¹ See paragraph 80 of its submission, dated 2 October 2016.

² *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271 (Ottawa, 3 June 2013, <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm>, ¶165.

³ *Ibid.*, ¶31.

⁴ *Ibid.*, ¶184.

⁵ *Ibid.*, ¶196.

⁶ *Ibid.*, ¶52.

⁷ *Ibid.*, see ¶76, in which the CRTC ‘encouraged’, but did not require, wireless service providers to provide the summary for prepaid services.

prepaid services”⁹ as “the contract delivery model of many prepaid services limits the benefits of a Critical Information Summary to consumers”,¹⁰ this summary “would greatly help consumers to quickly understand the fundamental aspects of their contracts”¹¹

- certainty about key terms and conditions of the contract, because even if prepaid wireless subscribers accept these terms and conditions every time they reactivate their service or top up their account,¹² all wireless “consumers need certainty that key contract terms and conditions will not change without their express consent during the commitment period”¹³
- clear notice of changes to wireless services,¹⁴ because the Forum agrees with the CRTC that it is “essential that [all wireless] customers have available to them as many choices as possible regarding how they can respond to the suggested change”¹⁵
- a trial period for the wireless services they were purchasing,¹⁶ so that all wireless subscribers have “the opportunity to properly review the terms and conditions of their contract to ensure that it meets their needs”, to “ensure reliable service in their home, office, or other location where they want to use their device”, and to “increase consumer choice”,¹⁷ and
- security deposit rules, in the event any are required, regardless of wireless service providers’ business models¹⁸

⁸ *Ibid.*, ¶168.

⁹ *Ibid.*, ¶169.

¹⁰ *Ibid.*, ¶169.

¹¹ *Ibid.*

¹² *Ibid.*, ¶187.

¹³ *Ibid.*, ¶186.

¹⁴ Because the CRTC did not require, but merely ‘expected’ wireless service providers “to provide wireless service to clearly publicize any change to their services.” *Ibid.*, ¶187.

¹⁵ *Ibid.*, ¶188.

¹⁶ *Ibid.*, ¶248.

¹⁷ *Ibid.*, ¶249.

¹⁸ *Ibid.*, ¶286.

Q2 Should the Wireless Code continue to distinguish between prepaid and postpaid services?

- 9 No, except that *Wireless Code* should specifically continue to require wireless service providers to “hold prepaid customers’ accounts open for at least seven days following the expiry of an activated card at no charge to give customers more time to “top up” their accounts and retain their prepaid balance.”¹⁹

¹⁹

ibid., ¶1350.

Trial Period

Q3 Provide your view, with supporting rationale, on Union des consommateurs' proposal²⁰ that:

- the trial period should be better publicized; and
- the limits on the trial period should be less restrictive.

In your answer, comment on the specific changes proposed by Union des consommateurs to section G.4. of the Wireless Code as set out below, with the proposed additions indicated bold text [*underlined text*]:

(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.

(ii) The trial period must start on the date on which service begins.

(iii) A service provider may establish reasonable limits on the use of voice, text, and data services for the trial period. [Translation] "These limits must correspond to at least half of the permitted usage under the contract selected by the customer.";

(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.

[Translation] (c) no additional conditions may be imposed on the customer"; and

(d) the trial period and its limits must be disclosed upon entry into the contract."

(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."

- 10 The Forum agrees that the trial period for wireless services should be better publicized, and that limits on the trial period should be less restrictive. The Union des consommateurs' June 2015 report on the *Wireless Code* notes that in one case representatives of the Union were

... interrogated for roughly four minutes by the salesperson (on why we wanted to cancel the service with extensive time needed to check the use of the device with the company by phone); the salesperson accused us of using 1 GB of data in just a day and a half (even though access to mobile data had not yet even been activated on the device) etc. Meanwhile, all along, the staff was becoming less and less courteous by the minute.²¹

- 11 Publicizing the trial period (without using "ridiculously small font" as the Union noted²² or by placing the information halfway through a multipage contract) would increase the chances that those who might benefit from it are able to do so, thereby responding to their economic and social requirements (as provided for by subsection 7(h) of the

²⁰ See paragraph 88 of its submission, dated 3 October 2016.

²¹ Union des consommateurs, *The Wireless Code: Who's the Winner?*, Presented to the Office of Consumer Affairs, Industry Canada (June 2015), at 81.

²² *Ibid.*.

Telecommunications Act). Trial periods should therefore be highlighted in the Critical Information Summary.

- 12 The Forum also notes that publicizing the trial period and identifying it explicitly in the Critical Information Summary (for all wireless service users) would increase the chances that the services and devices that wireless service users are considering actually meet their needs – thereby maximizing the efficiency, competitiveness and effectiveness of Canada's wireless telecommunications service providers (as envisaged by Parliament through subsections 7(c) and (f) of the *Act*).
- 13 Conversely, limiting the chances that wireless service users are permitted to discern that the services and devices for which they are contracting do not meet their needs, means that some wireless service providers will be earning income even though the service and equipment they provide to some subscribers do not meet their needs – thereby reducing the telecommunications system's efficiency, competitiveness and effectiveness.
- 14 The Forum supports the three changes proposed by the Union des consommateurs.
- a) with respect to the limits on permitted usage, we note the evidence submitted by the Coalition (and referenced below in response to question 4) demonstrates that in many cases, the levels of data currently allowed in trial periods can almost immediately be consumed by actions (such as patches) over which wireless service users have limited or no control. Users should therefore not be penalized for this activity (by being held to have breached the trial period limits on data, for instance). Therefore, and while the 50% of permitted usage limit would be a minimum value, the Forum prefers the Coalition's proposal for minimum limits that allow customers to experience the full functionality being offered.
- b) with respect to a prohibition on additional conditions being imposed on wireless service users using the trial period, the Forum agrees that additional conditions should not be imposed, as the imposition of such conditions effectively removes any benefits conferred by the *Code* for a trial period, from wireless service users.
- c) with respect to the disclosure of the trial period and its limits at the time of entry into the contract, the Forum agrees on the grounds that full disclosure benefits all parties to contracts, whereas non-disclosure is likely to benefit the party that drafted the contract. The Forum notes that wireless service providers should explicitly warn wireless service users about each requirements for the trial period – in particular the requirement to return devices with all of their original packaging, thereby requiring wireless service users to retain that packaging until they are satisfied with the terms of their contract.

Q4 Provide your views, with supporting rationale, on the Coalition's proposal²³ that

- **the trial period should be extended to 30 days; and**
 - **the *Wireless Code* should set minimum limits that allow customers to experience the full functionality on offer.**
- 15 The Forum supports the Coalition's proposal to extend the trial period to 30 days, and to set minimum limits that allow wireless service users to experience the full functionality being offered by their wireless service providers.
- 16 The rationale for our support with respect to functionality is based on the Coalition's evidence that the usage required for software updates (91 MB in the example provided by the Coalition) – which should be provided by wireless service providers pursuant to the *Code* – and apps such as Bell's customer support service (24 MB), generally exceed the limits set by providers for trial period usage to a significant degree. Wireless service users may therefore wind up exceeding trial usage levels without having 'used' their devices or plans at all in the manner envisaged (*i.e.*, through telephone calls, texting, e-mailing, streaming or searches etc.) In our view, this is unreasonable because it unfairly prevents wireless service users from ensuring that the service and device they wish to buy actually meets their needs.
- 17 With respect to the duration of trial periods, and while it is fair to say that a majority of Canadians live in a relatively small number of urban centres, a significant number of Canadians live in more rural areas, or areas in the North, requiring them to travel back and forth to retail outlets of wireless service providers over greater distances and/or in more inclement weather. A longer trial period would give rural wireless service users a more reasonable opportunity to test the services and devices they hope will work for them, and to return to their wireless service providers if their service or device does not work as hoped.

²³

See paragraph 356 of its submission, dated 3 October 2016.

Q5 Provide your views, with supporting rationale, on proposals²⁴ by the Canadian Wireless Telecommunications Association (CWTA), SaskTel, and Québecor Média (Vidéotron) that:

the *Wireless Code* should allow WSPs to charge a restocking fee upon cancellation by the customer during the trial period.

In your answer, you may address the following issues raised by the parties:

- **would allowing a restocking fee stop customers from abusing the trial period?**
- **what evidence, if any, is there of customers abusing the trial period?**
- **the trial period requirement only applies when a wireless device is purchased as part of a contract for wireless services: does this disadvantage WSPs compared to third-party device retailers?**

18 The Forum does not believe that allowing wireless service providers to charge stocking fees to wireless service users who wish to cancel their contracts during the trial period will eliminate abuse, because no evidence has been led to prove either that 'abuse' is happening or that wireless service providers are unduly burdened if such abuse is happening.

19 The Forum also does not accept the proposition that wireless service providers that sell wireless service users wireless devices are disadvantaged because trial periods do not apply to third-party device retailers of such devices. In our view, the purpose of the *Wireless Code* and the *Telecommunications Act* (under whose authority the *Code* was ultimately established) is to protect the rights and interests of wireless service users, not to provide wireless service providers with a business model equivalent to or symmetrical with that of retailers that are unregulated by the CRTC.

20 The Forum instead supports Telecom Regulatory Policy CRTC 2013-271's statement at paragraph 249 "... that WSPs should be permitted to require any device returned within the trial period to be returned promptly and in its original working order." In our view, this requirement was sufficient then and is sufficient now to protect the interests of wireless service providers and wireless service users.

²⁴ See paragraphs 31-33 of the CWTA's initial submission, paragraphs 18-20 of SaskTel's initial submission, and paragraphs 35-40 of Videotron's initial submission, all dated 3 October 2016.

Q6 Provide your views, with supporting rationale, on Vidéotron's proposal²⁵ that the *Wireless Code* should set new limits on the trial period such that customers may only cancel without penalty if they have also returned any gifts with purchase prior to cancellation.

If you support this proposal, provide examples of the types of incentives or gifts that a customer should be required to return if they cancel their service during the trial period.

- 21 The Forum was perplexed by Vidéotron's proposal, primarily because its terminology is confusing. In our view, the public is likely to understand 'gifts' as the term is normally used – meaning voluntary transfers of property from one party to a second, without involving payment or other consideration from the second party to the first, and meaning that transfers are complete at the time of transfer, so that recipients may return gifts to their donor if they wish, but are not required to do so. This customary meaning means that wireless service users may not realize that that the 'gift' that Vidéotron "gave" them, is in reality a fishing hook or contractual incentive in which Vidéotron actually rights over this property and which they must return if they wish to sever their contract. Vidéotron's meaning of 'gift' stretches the concept well beyond its true meaning, and is perverse. Other terminology – such as 'free' accessories – raises similar concerns, if it not clearly specified by wireless service providers to wireless service users that 'free' does not actually mean 'free', but rather, 'returnable'.
- 22 The Forum was also surprised by Vidéotron's proposal, as the decision of wireless service providers to offer wireless service users 'gifts' ("tout cadeau", "le cadeau") appears to fall within the scope of companies' business plans. Companies that wish to encourage wireless service users to sign contracts with them are free to give their subscribers products or services – or not. They should not be allowed through the device of a federally-mandated *Code* of behaviour to transform the transfer of property into the loan of property.
- 23 Finally, Vidéotron's proposal was surprising because the only evidence offered to support it was the idea that the *Wireless Code* and the *Television Service Provider Code of Conduct* should operate symmetrically. Specifically, Vidéotron provided no evidence about
- a) the number of wireless service users who are cancelling their wireless service
 - b) the number of these users who received any 'gift' in addition to their subscription from their wireless service provider
 - c) the number of users who cancelled their service pursuant to the *Wireless Code*
 - d) the number of users who cancelled their service and did not return such gifts
 - e) the cost (not the price) to wireless service providers for gifts that consumers kept, and did not return, or

²⁵ See paragraph 39 of its submission, dated 3 October 2016.

- f) whether wireless service providers deduct the price they paid for such gifts from their taxable income (in which case, taxpayers would already be partially or fully subsidizing wireless service providers' offer of such 'gifts').
- 24 The absence of such evidence makes it difficult to evaluate and reach a conclusion about the degree to which wireless service providers are unduly burdened when some of their wireless service users cancel their service within the trail period. In our view, the Commission requires at least that evidence before deciding there are good reasons to add to wireless service users' existing obligations under the *Code*. The Forum therefore does not support the introduction of new limits about so-called 'gifts', to the *Wireless Code*.
- 25 The Forum also opposes Vidéotron's proposal because a wireless service user's failure to return an inexpensive or low-cost 'gift' could result in costs to the user that outweigh the cost to the wireless service provider of the 'gift'. The costs to wireless service providers are likely minimal – but the costs to individual wireless service users would be disproportionately high if their loss or misplacement of a 'gift' requires them to remain in and pay for a contract that does not meet their needs.
- 26 If the CRTC nevertheless adopts Vidéotron's idea despite the absence of any evidence in support of it, the Commission must ensure that a 'gifts'-must-be-returned clause not enable wireless service providers either purposefully or inadvertently to use the device of a misleadingly named 'gift' to deny wireless service users the protection of the *Wireless Code*. It should, for example, require wireless service providers to identify such 'gifts' to wireless service users as incentives, rather than 'gifts', and should require wireless service providers to explicitly enumerate and price such 'gifts' in wireless service users' contracts and in the Critical Information Summary.
- 27 Moreover – and while we would oppose it for the reasons stated above – if the *Code* were amended with respect to financial incentives (aka, Vidéotron's 'gifts'), it should limit the return requirement to items of sizeable worth. It could, for instance, require wireless service users to return incentives whose total value exceeds half or more of the total price of the contracts with respect to which the 'gifts' were offered. The *Code* should then also require wireless service providers to provide wireless service users with the value of the incentive (to avoid having an ordinary pencil mislabelled as a \$200 'gift'), and to prove that they brought this requirement to the attention of wireless service users when they agreed to their contract with their wireless service providers

Software Updates and Security Patches

An individual²⁶ raised concerns about access to software updates and security patches on the record of the proceeding:

“I think you need to address the issue or at least consider asking the carriers and/or handset manufacturers to release critical security updates to their mobile operating systems, particularly android. Users of Apple iPhones, Windows Phone, Google Nexus phones, and Blackberries get their security updates directly from the manufacturer bypassing the carriers altogether. Bottleneck seem to be at the carrier approval and testing stage prior to release to customers. Carriers should be mandated to release and update the phones firmware and security updates in a timely fashion so Canadians privacy and security is maintained.”

Q7 Provide your views, with supporting rationale, on whether the *Wireless Code* should include new requirements relating to device software updates and security patches.

If you consider that the *Wireless Code* should specifically address these issues, provide proposed wording to reflect your views.

28 The Forum agrees that the *Wireless Code* should address the issue of software updates and security patches, and suggests the following text be added in section F (Mobile device issues) of the *Code*:

5. Operating systems updates and security patches	(i) A service provider that provides a device or devices to an account-holder as part of a contract must provide or allow to be provided operating system updates and security patches provided by the device or operating system manufacturer within forty-five (45) days of the release of said updates or patches.
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If you have any questions about the Forum's responses to the questions posed by the CRTC, please let the undersigned know.

Sincerely yours,



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²⁶ Elton Fong, intervention number 72, dated 10 August 2016.