



Telecom Notice of Consultation CRTC 2012-557

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Ottawa, 11 October 2012

Notice of hearing

28 January 2013
Gatineau, Quebec

Proceeding to establish a mandatory code for mobile wireless services

Deadline for submission of interventions/comments: 20 November 2012

File number: 8665-C12-201212448

*The Commission initiates a proceeding to establish a mandatory code for mobile wireless service providers to address the clarity and content of mobile wireless service contracts and related issues for consumers. The Commission invites detailed comments, with supporting rationale, on the contents of the code, to whom the code should apply, how the code should be enforced and promoted, and how the code's effectiveness should be assessed and reviewed, by **20 November 2012**.*

*The proceeding will include a public consultation, which will begin on **28 January 2013 at 9:00 a.m.**, at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.*

The Commission will also conduct an online consultation on the issues discussed in the proceeding.

Introduction

1. In Telecom Decision 2012-556, the Commission determined that it would be appropriate to develop a code for retail mobile wireless data and voice services (mobile wireless services) to ensure the clarity of mobile wireless service contracts and related issues for consumers. The Commission concluded that consumers need additional tools to better understand their basic rights, as well as their service providers' responsibilities with respect to mobile wireless services, in order to participate in the competitive market in an informed and effective manner.
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.

3. The Commission notes that, as a result of this proceeding, it could impose additional obligations on some or all mobile wireless service providers, including resellers, whether or not they are parties to this proceeding.

Background

The policy objectives and the Policy Direction

4. The Commission regulates the Canadian telecommunications industry with the goal of fulfilling the Canadian telecommunications policy objectives set out in the *Telecommunications Act* (the Act). These objectives include rendering reliable and affordable telecommunications services of high quality accessible to Canadians in all regions of Canada, responding to the economic and social requirements of users of telecommunications services, fostering increased reliance on market forces for the provision of telecommunications services, and ensuring that regulation, where required, is efficient and effective.
5. The Commission is required to exercise its powers and perform its duties under the Act in accordance with the *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives* (the Policy Direction).¹
6. The Policy Direction requires the Commission to rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives. When the Commission must rely on regulatory measures to achieve the telecommunications policy objectives, the Policy Direction requires the Commission to use regulatory measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. When the Commission implements non-economic regulatory measures, such as industry codes, the Policy Direction requires the Commission to implement these measures in as symmetrical and competitively neutral a manner as possible.

Regulation of the wireless industry

7. The Act states that where the Commission finds that a telecommunications service or class of services is or will be subject to competition sufficient to protect the interests of users, the Commission **shall** refrain, or forbear, to the extent that it considers appropriate, conditionally or unconditionally, from the exercise of any power or the performance of any duty under certain sections of the Act in relation to the service or class of services (emphasis added).²

¹ P.C. 2006-1534, 14 December 2006

² Subsection 34(2) of the Act

8. In the mid-1990s, the Commission determined that it would allow market forces to guide the wireless industry's growth and that it would forbear from further regulation of the wireless industry. However, the Commission retains its regulatory powers under section 24 and subsections 27(2) and 27(4) of the Act for retail mobile wireless voice and data services.³
9. Under section 24 of the Act, the Commission may impose any conditions on the offering and provision of any telecommunications service by a Canadian carrier.
10. Over the years, the Commission has imposed various conditions on mobile wireless service providers, pursuant to section 24 of the Act. These conditions include requirements related to 9-1-1 services, accessibility services for people with disabilities, and the requirement to be members of the Commissioner for Complaints for Telecommunications Services Inc. (CCTS).⁴ The Commission ensures that these conditions apply to resellers of mobile wireless services through their contracts with mobile wireless carriers.⁵

Consumer recourse for complaints about mobile wireless services

11. The CCTS is an independent, self-regulatory industry ombudsman. The CCTS's structure was reviewed, modified, and approved by the Commission in 2007. The Commission conducted a further review in 2010 to ensure that the CCTS was effective in fulfilling its mandate.
12. The CCTS's primary mandate is to resolve disputes between service providers and consumers about mobile wireless services, home phone services, and Internet services. The CCTS's mandate also includes publishing an annual report on

³ The forbearance framework was first established in Telecom Decision 94-15, and was refined in Telecom Decision 96-14. In a number of follow-up company-specific decisions and orders, such as Telecom Decision 98-19, Telecom Order 99-991, Order 2001-501, and Telecom Decision 2004-84, the framework was extended to the mobile wireless services provided by Canadian carriers that were not captured by Telecom Decisions 94-15 and 96-14. The Commission retained its regulatory powers under section 24 and subsections 27(2) and 27(4) of the Act for mobile voice services. In Telecom Decision 2010-445, the Commission amended the forbearance regime for mobile wireless data services to be consistent with the forbearance regime applicable to mobile voice services.

⁴ The CRTC has expanded the requirement that telecommunications service providers (TSPs) be members of the CCTS over time. In Telecom Decision 2007-130, the CRTC required all TSPs with annual Canadian telecommunications service revenues exceeding \$10 million to be members of the CCTS. In Telecom Decision 2010-921, the Commission expanded the membership requirement to all TSPs that offer services within the scope of the CCTS's mandate. In Telecom Regulatory Policy 2011-46, the Commission specified that TSPs that were not yet members of the CCTS by 1 December 2010 were required to become members of the CCTS five days after the date on which the CCTS informs the Canadian carrier that the CCTS has received a complaint about the Canadian carrier falling within the scope of the CCTS's mandate.

⁵ The Commission requires resellers of telecommunications services to adhere to section 24 conditions by requiring Canadian carriers, as a condition of providing telecommunications services to resellers, to include in their service contracts or other arrangements with such service providers, the requirement that the latter, and any or all of their wholesale customers and subordinate wholesale customers, abide by these conditions.

complaints, identifying trends in complaints that may warrant further attention by the Commission or the government, and enforcing industry codes of conduct and standards. While the CCTS is mandated to address adherence to contract terms, the CCTS is not mandated to address the clarity or content of the contracts. The CCTS currently enforces two industry codes through its dispute resolution processes: the Canadian Wireless Telecommunications Association's (CWTA) Code of Conduct for Wireless Service Providers⁶ and the Commission-approved Disconnection and Deposit Code for forborne home phone services.

13. In order to ensure that residential and small business consumers across Canada have access to the CCTS's dispute resolution processes, the Commission requires all telecommunications service providers that serve such customers to be members of the CCTS. The CCTS can require a service provider to provide a customer with an explanation or apology, an undertaking to do or cease doing specific activities with respect to the customer, or monetary compensation up to \$5,000.

Call for comments

14. In light of the Commission's determination that it is appropriate to establish a mandatory code to address the clarity and content of mobile wireless service contracts and related issues for consumers, the Commission invites detailed comments, with supporting rationale, on the following:

- I. The content of the Wireless Code
- II. To whom the Wireless Code should apply
- III. How the Wireless Code should be enforced and promoted
- IV. How the Wireless Code's effectiveness should be assessed and reviewed

I. The content of the Wireless Code

15. The Commission is of the preliminary view that the Wireless Code should address (1) clarity of contract terms and conditions, (2) changes to contract terms and conditions, (3) contract cancellation, expiration and renewal, (4) clarity of advertised prices, (5) application of the code to bundles of telecommunications services, (6) notification of additional fees, (7) privacy policies, (8) hardware warranties and related issues, (9) loss or theft of hardware, (10) security deposits, and (11) disconnections, as set out in more detail below.

⁶ The CWTA code is a voluntary code, developed by CWTA members. In the proceeding that led to Telecom Decision 2012-556, the CWTA submitted that the Commission should establish regulations for wireless contracts in Canada.

Clarity of contract terms and conditions

- a provision that contracts must be written in plain language; a provision that sets out specific issues that must be addressed in a contract to ensure clarity and completeness;⁷ and a provision that sets out how and when service providers must provide contracts or service agreements to customers.

Changes to contract terms and conditions

- a provision that addresses the conditions under which a service provider may amend contract terms for mobile wireless services.

Contract cancellation, expiration and renewal

- a provision that addresses the conditions under which consumers may terminate their mobile wireless contracts early, including how cancellation fees may be applied; and a provision that addresses the conditions under which contracts may expire or be renewed automatically.

Clarity of advertised price

- a provision that addresses clarity of advertised prices of services included in a contract, such as monthly and one-time charges for mobile wireless services, including optional services, devices, data and roaming, and any associated fees.
- a provision that service providers may not charge consumers for optional mobile wireless services they have not ordered.

Application of the Code to bundles of telecommunications services

- a provision that the Wireless Code would apply equally to mobile wireless services purchased separately or as part of a bundle of telecommunications and broadcasting distribution services.

Notification of additional fees

- a provision that addresses the conditions under which their provider must notify customers that they have exceeded the limits of their service agreements and will incur additional fees; and a provision that consumers with capped or metered billing of mobile wireless services be provided with adequate tools to monitor usage

⁷ Issues to be addressed could include, among other things, whether any company policies, such as “fair use” policies, apply to a contract.

Privacy policies

- a provision that addresses how service providers must disclose, and notify customers of amendments to, their privacy policies.

Hardware warranties and related issues

- a provision that addresses how service providers disclose hardware warranty policies and extended warranty policies; a provision that addresses how service charges will apply while the handset is being repaired; and a provision that addresses the conditions under which a handset may be unlocked.

Loss or theft of hardware

- a provision that addresses how service charges and contract terms will be applied if the customer's handset is lost or stolen.

Security deposits

- a provision that addresses the conditions under which a service provider may request a security deposit; a provision that establishes a maximum amount for security deposits; and a provision that establishes the conditions under which a service provider must return security deposits.

Disconnection

- a provision that addresses the conditions under which a service provider may disconnect mobile wireless services.

16. The Commission invites detailed comments, with supporting rationale, on the above issues and any other specific provisions that would enable consumers to better understand their rights with respect to mobile wireless services. Comments should outline the specific problem to be addressed, explain how the proposed provision would address this problem, and propose specific wording to be included in the Wireless Code.

II. To whom the Wireless Code should apply

17. The Commission specifically calls for comments, with supporting rationale, on the following:

- Should the Wireless Code apply to both Canadian carriers and resellers;

- Should the Wireless Code apply to both pre-paid and post-paid wireless services; and
- Should the application of the Wireless Code be suspended in provinces or territories which the Commission determines have legislation that provides substantially similar protections for mobile wireless consumers.⁸ If so, how should the suspension of the Code be applied (e.g. based on the consumer's province or territory of residence or on the province or territory where the consumer signed or otherwise entered into the contract)?

III. How the Wireless Code should be enforced and promoted

18. The Commission specifically calls for comments, with supporting rationale, on the following:

- Who should enforce the Wireless Code (e.g. the Commission, the CCTS, or other)?
- What mechanisms should be used to ensure compliance with the Wireless Code?
- What recourse and remedies should be available to consumers if their service provider does not comply with provisions in the Wireless Code (e.g. liquidated damages clause)?
- What mechanisms should be used to promote the Wireless Code among consumers?
- When should the Wireless Code be implemented?

IV. How the Wireless Code's effectiveness should be assessed and reviewed

19. The Commission specifically calls for comments, with supporting rationale, on the following:

- How should the Wireless Code's effectiveness be measured? What performance measurements should be monitored?

⁸ This approach has been used by the federal government with respect to privacy protection legislation. Paragraph 26(2)(b) of the *Personal Information Protection and Electronic Documents Act (PIPEDA)* allows the Governor in Council to issue an Order exempting an organization, a class of organizations, an activity or a class of activities from the application of PIPEDA with respect to the collection, use or disclosure of personal information that occurs within a province that has passed legislation that is substantially similar to PIPEDA. Industry Canada has developed a set of criteria to determine what is 'substantially similar' and the Governor in Council has issued orders exempting organizations within certain provinces from application of PIPEDA.

- When and how should the Wireless Code be reviewed to ensure its ongoing effectiveness for consumers?

Procedures for participation and filing submissions

20. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* SOR/2010-277 (the Rules of Procedure) apply to the Commission's proceedings. For help understanding the Rules of Procedure, see the *Guidelines on the CRTC Rules of Practice and Procedure*.⁹

Interventions and reply comments

21. Wireless carriers are made parties to this proceeding and may file interventions with the Commission by **20 November 2012**.¹⁰ As set out in paragraph 3, the Commission notes that, as a result of this proceeding, it could impose additional obligations on some or all mobile wireless service providers, including resellers, whether or not they are parties to this proceeding.
22. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission by **20 November 2012**.
23. In accordance with section 26 of the Rules of Procedure, interventions **must indicate whether the person wishes to appear at the public hearing**. The intervention must also indicate on the first page of the intervention any special requests regarding such appearance at the public hearing, as described below. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the hearing. Interventions will be posted on the Commission's website shortly after they are filed.
24. Interveners are permitted to coordinate, organize and file, in a single submission, interventions of other interested persons who share their position but do not wish to appear at the hearing as a "Joint Supporting Intervention." More information on how to do so and a template for the covering letter to be filed by the parties can be found in Telecom Information Bulletin 2011-693. **Parties are encouraged to use this method rather than form letter campaigns and petitions, as it improves efficiency for the Commission and parties alike and ensures that all interveners filing jointly are aware that their personal information will appear on the Commission's website.**

⁹ The Rules of Procedure set out, among other things, the rules for the filing, content, format and service of interventions and interrogatories, the procedure for filing confidential information and requesting its disclosure, and the conduct of the public hearing. Accordingly, the procedure set out in this notice must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

¹⁰ A wireless carrier is a facilities-based provider that owns or operates spectrum that it uses to provide mobile wireless service in Canada. A list of wireless carriers is available on the Commission's website.

25. All parties who filed interventions may file reply comments with the Commission, by **5 December 2012**. A reply must be limited to responding to interventions filed by other parties and must not introduce new proposals.
26. The Commission may request information in writing from mobile wireless service providers, the CWTA, the CCTS, or any other person during the course of this proceeding.
27. The Commission encourages interested persons or parties to monitor the record of this proceeding on the Commission's website for additional information that they may find useful when preparing their submissions.

On-line consultation

28. To facilitate further engagement of Canadians, the Commission will also be conducting an online consultation on the issues discussed in this proceeding. The Commission will host a website that will allow the public to engage in discussion on issues and questions relating to this proceeding. Details of the online consultation will be announced shortly on the Commission's website.
29. Following the online consultation period, transcripts will be available on the Commission's website at www.crtc.gc.ca. The record of the online consultation will be made part of the record of this proceeding.

Public Consultation

30. The Commission will hold a public hearing, beginning on **28 January 2013 at 9:00 a.m.** at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec, to address the matters set out in this Notice of Consultation. The hearing is expected to last up to 5 business days.
31. As noted above, the public hearing will be held in the National Capital Region. However, parties may participate from the Commission's regional offices via videoconference. Parties interested in doing so are asked to indicate, at the time they file their interventions, the regional office where they wish to appear. A list of the Commission's regional offices is included in this notice.
32. The Commission will consider requests by parties who cannot appear at one of the Commission's regional offices to participate from another location, where circumstances may warrant, via telephone or videoconference. Parties must request to do so in their intervention, and provide reasons why telephone or videoconference from another location would be necessary.
33. Persons requiring communications support, such as assistive listening devices and sign language interpretation, who wish to participate in the public hearing, are requested to inform the Commission at least **20 days** before the commencement of the public hearing so that the necessary arrangements can be made.
34. An organization and conduct letter providing directions on procedure with respect to the public hearing will be issued prior to the commencement of the public hearing.

Final written comments

35. Following the public hearing, parties may have an opportunity to file brief final written comments in reply to submissions at the public hearing on any matter within the scope of this proceeding. Final written comments, including an executive summary, are not to exceed 15 pages.

How to file submissions

36. You must send your submissions to the Secretary General of the Commission using **only one** of the following means:

by completing the
[Intervention/comment/answer form]

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

37. Submissions longer than five pages should include a summary.
38. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify parties if their submissions are received after the deadline. Late submissions will not be considered by the Commission and will not be made part of the public record.
39. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets.
40. Each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
41. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.
42. The Commission will not formally acknowledge interventions or comments. It will, however, fully consider all submissions, which will form part of the public record of the proceeding.

Important notice

43. All information provided as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.
44. The personal information provided will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
45. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
46. The information provided to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information provided as part of this public process.

Examination of documents

47. Electronic versions of the documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file number provided at the beginning of this notice or by visiting the "Public Proceedings" section of the Commission's website. The documents are accessed by selecting "View all proceedings open for comment," then clicking on the "View entire record" link associated with this particular notice. All interventions are also available on the Commission's website, at the same location, by clicking on the "Interventions" link associated with this particular notice.
48. Documents are also available during normal office hours at the Commission offices and documentation centres directly involved with these applications or, upon request, within two working days at all other Commission offices and documentation centres.

Location of CRTC offices

49. Submissions may be examined or will be made available promptly upon request at Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
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Regional offices

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Secretary General

Related documents

- *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, 11 October 2012
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Modifications to forbearance framework for mobile wireless data services*, Telecom Decision CRTC 2010-445, 30 June 2010
- *Review of the Commissioner for Complaints for Telecommunications Services – Decision on membership*, Telecom Decision CRTC 2010-921, 8 December 2010
- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007
- *Prince Rupert City Telephones – Cellular service forbearance*, Telecom Decision CRTC 2004-84, 21 December 2004
- *CRTC refrains from regulating O.N. Telcom's delivery of mobile wireless services*, Order CRTC 2001-501, 29 June 2001
- Telecom Order CRTC 99-991, 13 October 1999
- *Forbearance from Regulation of Mobile Wireless Services Provided by Municipally Owned Telephone Companies*, Telecom Decision CRTC 98-19, 9 October 1998
- *Regulation of mobile wireless telecommunications services*, Telecom Decision CRTC 96-14, 23 December 1996
- *Regulation of wireless services*, Telecom Decision CRTC 94-15, 12 August 1994