



## Telecom Decision CRTC 2012-556

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Route reference: Telecom Notice of Consultation 2012-206

Ottawa, 11 October 2012

### **Decision on whether the conditions in the mobile wireless market have changed sufficiently to warrant Commission intervention with respect to mobile wireless services**

File numbers: 8661-C12-201204057; 8620-R28-201202598; 8661-P8-201116807

*In this decision, the Commission determines that the conditions for forbearance have not changed sufficiently to require the Commission to regulate rates or interfere in the competitiveness of the retail mobile wireless voice and data services market.*

*However, to ensure that consumers are able to participate in the competitive market in an informed and effective manner, and to fulfill the policy objectives of the Telecommunications Act, the Commission finds it necessary to develop a mandatory code to address the clarity and content of mobile wireless service contracts and related issues (the Wireless Code).*

*Concurrent with this decision, the Commission has issued a call for comments to establish the Wireless Code.*

#### **Introduction**

1. In April 2012, the Commission issued Telecom Notice of Consultation 2012-206, which initiated a public proceeding to consider whether the conditions for forbearance in the Canadian wireless market have changed sufficiently to warrant Commission intervention with respect to retail mobile wireless data and voice services (mobile wireless services).<sup>1</sup>
2. The Commission received submissions from Bell Canada; Bragg Communications Inc., carrying on business as EastLink; the Canadian Wireless Telecommunications Association (CWTA); the Commissioner for Complaints for Telecommunications Services Inc. (CCTS); the Communications, Energy and Paperworkers Union Of Canada; Consumer Protection BC; Data & Audio-Visual Enterprises Wireless Inc., carrying on business as Mobilicity; Globalive Wireless Management Corp., operating as WIND Mobile; the Government of the Northwest Territories;

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<sup>1</sup> In Telecom Notice of Consultation 2012-206, the Commission suspended consideration of applications from the Public Interest Advocacy Centre, on behalf of itself and the Consumers' Association of Canada, dated 22 December 2011, and from Rogers Communications Partnership, dated 8 March 2012, until such time as it makes a determination on the issue raised in the Notice of Consultation.

Grenier Verbauwheide Avocats Inc.; Le ministère de la Culture, des Communications et de la Condition féminine du Québec (Government of Quebec); Manitoba's Minister of Healthy Living, Seniors and Consumer Affairs (Government of Manitoba); MTS Inc. and Allstream Inc. (collectively, MTS Allstream); the Public Interest Advocacy Centre (PIAC) on behalf of itself and Canada Without Poverty and the Consumers' Association of Canada (collectively PIAC et al.); Public Mobile Inc.; Quebecor Media Inc. on behalf of its affiliate Videotron Ltd.; Rogers Communications Inc. (RCI); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc.; TELUS Communications Company (TCC); and Union des consommateurs. The Commission also received 246 comments from members of the public and 706 form letters of support for Commission intervention in the development of a code for mobile wireless services.

3. The public record of this proceeding, which closed on 14 May 2012, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings" or by using the file numbers provided above.

### **Positions of parties**

4. The Commission received over 970 submissions from mobile wireless service providers (WSPs), individuals and consumer advocacy organizations, provincial and territorial governments, and industry organizations on whether it should intervene in the development of a code to address consumers' concerns about mobile wireless services.
5. Parties were nearly unanimous in the view that, irrespective of whether the conditions for forbearance in the mobile wireless market have changed, the Commission should intervene in the development of a new code for mobile wireless services. Only SaskTel and one individual opposed Commission intervention in the development of a code for mobile wireless services.
6. Most parties submitted that it was not necessary for the Commission to make a finding of fact that the conditions for forbearance have changed to take action, noting that the Commission has the authority to require mobile WSPs to adhere to a code without regulating rates or interfering in the competitiveness of the mobile wireless services market.
7. Many 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). These parties argued that Commission intervention in the development of a code was necessary to address these consumer concerns.

8. PIAC et al. submitted that the mobile wireless market has become increasingly confusing and frustrating for consumers. PIAC et al. further submitted that there is evidence of consumer concerns about mobile wireless services that a competitive market seems incapable of resolving without Commission intervention.<sup>2</sup> PIAC et al. noted that various provinces have or plan to introduce consumer protection legislation that addresses, among other things, mobile wireless services, which demonstrates that these provinces have received significant complaints regarding mobile wireless services. PIAC et al. requested that the Commission initiate a proceeding to develop an effective consumer protection code.
9. The CCTS, which is mandated to investigate and resolve consumer complaints about forborne telecommunications services, noted a continued growth in the number of mobile wireless-related consumer complaints it receives. During its last fiscal year and its current fiscal year to date, over 60 percent of complaints that the CCTS received involved mobile wireless services.<sup>3</sup> The CCTS submitted that codes can be of great assistance to the CCTS in fulfilling its mandate. The CCTS further submitted that, should the Commission determine to undertake the development of a national mobile wireless consumer code of conduct, the CCTS would be prepared to use it as an aid in the resolution of mobile wireless consumer complaints.
10. Many mobile WSPs and the CWTA cited concerns about amendments to provincial consumer protection legislation that directly or indirectly affects mobile wireless services. These parties considered that regulations that vary from province to province will add to customer confusion and increase compliance costs and inefficiencies for the mobile wireless industry. These parties submitted that the Commission should develop a code that would apply to all consumers, regardless of their province or territory of residence. In a joint submission, Bell Canada, PIAC et al., RCI, and TCC expressed similar concerns and submitted that by leading an initiative to develop such a code, the Commission would address the demand for consumer protection in the most economically and administratively efficient manner and would further the telecommunications policy objectives.
11. Certain parties, including the Government of Manitoba, submitted that the code developed by the Commission should meet or exceed provincial standards for mobile wireless consumer protection that have been legislated or are being presently introduced. The Government of Manitoba also submitted that the code developed by the Commission should provide sufficient enforcement capacities.
12. The Government of the Northwest Territories strongly supported the development of such a code on grounds that market forces are not sufficient to protect the interest of mobile wireless service consumers in the North.

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<sup>2</sup> Consumer issues cited by PIAC et al. included, among other things, clarity of contract terms, clarity around pricing for services (including promotional pricing, roaming charges, charges for premium Short Message Service (SMS), unilateral contract changes by service providers, contract termination fees, unlocking of mobile wireless devices, quality and availability of customer service, and customer recourse for complaints.

<sup>3</sup> The CCTS received approximately 8000 complaints about wireless services during that period.

13. The Government of Quebec submitted that, irrespective of the position taken by the Commission in this proceeding, it will retain its existing consumer protection legislation.
14. SaskTel submitted that the introduction of regulatory measures by the Commission in the mobile wireless market at this time would interfere with the competitive market forces in play today and would hamper innovation and progress relative to the global market. SaskTel noted that there is already a voluntary national code of conduct developed through the CWTA to which SaskTel is a signatory. SaskTel noted further that Commission intervention in terms of a mandated national code would lead to duplication and overlap of federal regulation with existing provincial legislation. SaskTel also submitted that the imposition of a national code would be inconsistent with the Policy Direction<sup>4</sup> as it would interfere with the operation of competitive market forces by introducing regulation upon regional carriers who are already operating with minimal provincial consumer legislation.

## Issues

15. The Commission considers that the following issues must be addressed:
  - I. Whether the conditions for forbearance have changed sufficiently to warrant the regulation of rates for mobile wireless services; and
  - II. Whether Commission intervention is appropriate in the development of a code for mobile wireless services.

## Commission's analysis and determinations

- I. *Whether the conditions for forbearance have changed sufficiently to warrant the regulation of rates for mobile wireless services*
16. The *Telecommunications Act* (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).<sup>5</sup>
17. In the mid-1990s, the Commission determined that it would allow market forces to guide the mobile wireless industry's growth and that it would forbear from further regulation of the mobile wireless industry. The Commission retains its regulatory

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<sup>4</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

<sup>5</sup> Subsection 34(2) of the Act

powers under section 24 and subsections 27(2) and 27(4) of the Act for retail mobile wireless voice and data services.<sup>6</sup>

18. The Commission notes many of the consumers who provided comments in this proceeding expressed concern about issues related to the competitiveness of the Canadian mobile wireless market, such as choice of service providers and mobile wireless service rates.
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.<sup>7</sup>
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. The Commission finds that there is no evidence that the conditions for forbearance have changed sufficiently to warrant Commission intervention with respect to mobile wireless service rates or competitiveness in the mobile wireless market. Pursuant to subsection 34(2) of the Act, the Commission must, therefore, continue to forbear in this regard. The Commission also considers that this approach is consistent with the Policy Direction, which requires that the Commission rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives set out in the Act.

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<sup>6</sup> 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 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.

<sup>7</sup> As set out in the Commission's 2012 *Communications Monitoring Report*: the advanced wireless network, which supports handsets such as smartphones and turbo sticks, is available to 99 percent of Canadians. In 2011, there were over 27 million mobile wireless subscribers. New facilities-based mobile WSPs are accessible to fifty-five percent of Canadians and have captured approximately four percent of wireless subscribers and two percent of market revenues in 2011, a hundred-percent increase over 2010.

*II. Whether Commission intervention is appropriate in the development of a code for mobile wireless services*

22. The Commission notes that while it forbore from regulation of the mobile wireless market, it retains its regulatory powers under section 24 of the Act. Section 24 of the Act enables the Commission to impose any conditions on the offering and provision of any telecommunications service by a Canadian carrier, such as the requirement to be a member of the industry self-regulatory agency, the CCTS.
23. The Commission considers that the record of this proceeding demonstrates that Canadian consumers may not have all the information they need to effectively navigate the competitive mobile wireless market. In this regard, the Commission notes the significant consumer concerns raised by individuals, consumer groups, and mobile WSPs with respect to the clarity of mobile wireless contracts.
24. The Commission further notes that the CCTS cites mobile wireless services, specifically clarity around contract terms, as a significant source of consumer complaints. The Commission also notes that, last year, complaints to the CCTS regarding mobile wireless services outnumbered complaints about all other telecommunications services combined. The Commission considers that the complaints about mobile wireless services are disproportionately high compared to those about other telecommunications services with similar household adoption rates, such as broadband Internet services. As a result of the Commission's requirement that mobile WSPs participate in the CCTS, residential and small business consumers across Canada have recourse to the agency's dispute resolution processes.<sup>8</sup> The Commission notes, however, that while the CCTS is mandated to address adherence to contract terms, the agency is not mandated to address the clarity or content of the contracts.
25. Moreover, although certain provinces have introduced consumer protection legislation, these protections are not available to all Canadians across the country, and may not address issues unique to the mobile wireless services market.
26. The Commission notes SaskTel's concerns that a mobile wireless code is not necessary, would interfere with market forces, and would be inconsistent with the Policy Direction. However, the Commission also notes the near-unanimous view of consumer groups, individual consumers, and other mobile WSPs that Commission intervention in the development of a mobile wireless code is necessary to address consumer concerns that a competitive market cannot resolve. The Commission

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<sup>8</sup> The Commission has expanded the requirement that telecommunications service providers (TSPs) be members of the CCTS over time. In Telecom Decision 2007-130, the Commission 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.

shares the view that market forces alone cannot be relied upon to ensure that consumers have the information they need to participate effectively in the competitive mobile wireless market. The Commission also shares these parties' view that a code that addresses the clarity and content of mobile wireless contracts and related issues would not interfere with market forces and would be consistent with the Policy Direction.

27. In light of the above, the Commission considers that it is necessary, to ensure the fulfillment of the telecommunications policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act,<sup>9</sup> to impose a section 24 condition that all mobile WSPs abide by a mandatory code to address the clarity and content of mobile wireless service contracts and related issues, to ensure that consumers have the information and protection they need to make informed choices in the competitive market.
28. Therefore, in Telecom Notice of Consultation 2012-557, also issued today, the Commission has initiated a proceeding to establish a mandatory code to address the clarity and content of mobile wireless service contracts and related issues.

#### *Other matters*

29. The Commission notes that the issues raised in the Part 1 applications by PIAC, on behalf of itself and as counsel to Consumers' Association of Canada, dated 22 December 2011, and Rogers Communications Partnership, dated 8 March 2012, are covered by Telecom Notice of Consultation 2012-557. As a result, the Commission has closed these files.

#### **Consistency with the Policy Direction**

30. The Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives set out in the Act. The Policy Direction also requires the Commission to regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary to meet these policy objectives.
31. The Policy Direction states that the Commission, in exercising its powers and performing its duties under the Act, shall implement the policy objectives set out in section 7 of the Act, in accordance with the Policy Direction.

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<sup>9</sup> The cited policy objectives of the Act are

7(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;

7(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;

7(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; and

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

32. Consistent with subparagraph 1(a)(i) of the Policy Direction, the Commission considers that market forces alone cannot be relied upon to ensure that consumers have the information they need to participate effectively in the competitive mobile wireless market.
33. Consistent with subparagraph 1(a)(ii) of the Policy Direction, the Commission considers that the development of a code for mobile wireless services is efficient and proportionate to its purpose, and minimally interferes with market forces. In this regard, the Commission considers that the most efficient, least intrusive way of achieving the objective of ensuring consumers understand their rights and responsibilities with respect to mobile wireless services is the development of a code.
34. The Commission considers that the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act are advanced by the regulatory measures established in this decision. In particular, the Commission notes that the development of a code for mobile wireless services will address the needs of consumers across Canada while relying on market forces to the greatest extent possible.
35. With respect to subparagraph 1(b)(iii) of the Policy Direction, which requires that regulatory measures that are not of an economic nature be implemented, to the greatest extent possible, in a symmetrical and competitively neutral manner, the Commission considers that the development of a code for mobile wireless services is symmetrical across all mobile WSPs, irrespective of the technology used, the geographical market in which they operate, or the size of the company.

Secretary General

### **Related documents**

- *Proceeding to establish a mandatory code for mobile wireless services*, Telecom Notice of Consultation CRTC 2012-557, 11 October 2012
- *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, 4 April 2012
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *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