

**Telecom Notice of Consultation CRTC 2016-293**

**Review of the *Wireless Code***

**CRTC File No: 1011-NOC2016-0293**

**Final Reply Marina Pavlović, Mary Cavanagh, Sean Grassie, and Lora Hamilton**

**27 February 2017**

## INTRODUCTION

1. We would like to thank the Commission for the opportunity to present our views and bring a research perspective to the review of the Wireless Code. The focus of our interest in this proceeding has been and continues to be how to strengthen the information environment of the wireless consumers, so that they feel and indeed are demonstrably more informed to make the best consumer decisions for themselves, each in their unique life situation and circumstances. Truly informed consumers are better able to navigate the wireless marketplace. However, the Code itself (whether it stays as is or is expanded) without sufficient information tools, appropriate information intermediaries, and evaluation infrastructure, will not lead to either more informed consumers or a more dynamic marketplace. Our final reply focuses on two issues—consumer empowerment through appropriate context-specific information mediation and a robust evaluation framework.

## CONSUMER EMPOWERMENT

2. Although the *Wireless Code* is intended to speak to individual consumers and “make it easier for [...] customers to obtain and understand the information in their wireless service contracts”<sup>1</sup> on a transaction-by-transaction basis, it is as a regulatory policy instrument that, in fact, speaks to and directs Canadian WSPs. The *Code* is both a legal instrument and an information object. As an information object, even its simplified version reads like an annotated legal text. In our view, the Code in its current expression is not readily accessible as an information source to inform the average Canadian wireless consumer.
3. Most of the WSPs that participated in this proceeding have taken a view that the awareness of the Code is adequate and that existing information is sufficient. The implicit logic in this and similar comments is that if the Code is *available*, it will automatically meet its intended goal to *inform* and *empower* wireless consumers to negotiate more effectively with their WSPs and within the marketplace more broadly.
4. However, there is compelling evidence in information literacy and consumer research to support the following propositions:

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<sup>1</sup> Telecom Regulatory Policy CRTC 2013-271, Wireless Code, preamble.

- a. Information needs are always situational and contextual. They do not easily transfer across time, space, and individual human experience. Aggregated and codified information needs and uses still require mediation (i.e., human intervention) to be effective.
  - b. Information objects (e.g., the *Wireless Code*) require a variety of diverse platforms for intermediation in order for the information to be available for effective retrieval and use by their intended audience.
  - c. The wireless marketplace is particularly complex and difficult for consumers to navigate independently. This complexity leads to their acquiring sub-optimal contracts with significantly reduced capacity to change providers or to improve contracts through negotiation.
5. Throughout the hearing, WSPs in particular (as well as Commissioners themselves<sup>2</sup>) noted that the *Code* is already accessible to consumers, because

“If you do a Google search of *Wireless Code* on the Internet the first thing you get [...] is a link to the CRTC’s webpage entitled ‘Your Consumer Rights for Mobile Phones the *Wireless Code* of Conduct’ and from there you can obviously link to as much detail as you would like to access.”<sup>3</sup>

First, having the *Code* appear at the top of a Google search page, does not necessarily mean that the *Code* is accessible to the majority of Canadians. Such a justification is, at best, simplistic and naïve. As the findings from the recent FRPC’s survey of 1500 Canadian wireless consumers found, not only that majority (79.4%) of Canadian wireless consumers are not aware of the *Code*, but for those that are, the knowledge of the *Code*’s existence does not necessarily lead to consumers being informed or familiar with the *Code*’s provisions.<sup>4</sup> Moreover, being informed does not necessarily lead to wireless consumers being empowered in their negotiations in the marketplace.

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<sup>2</sup> Vice Chair Menzies, Review of the *Wireless Code*, Transcript, Volume 1 (6 February 2017) at 1397

<sup>3</sup> Mr Malcolmson (Bell), Review of the *Wireless Code*, Transcript, Volume 2 (7 February 2017) at 1585 [emphasis added].

<sup>4</sup> Forum for Research and Policy in Communications, *Changing the 2013 Wireless Code: Canadians’ views in January 2017* (24 February 2017), <http://frpc.net/wp-content/uploads/2017/02/2017-Wireless-Code-FRPC-survey-24-Feb-2017-1.pdf> at 4-5.

6. In their undertakings, the WSP have expressed somewhat differing views on the content of CIS and its cost, as well as on the feasibility and cost of visually displaying in-store information about consumer rights under the Code and providing a leaflet copy of the simplified Code. The undertone of these submissions is that the existing tools (such as CIS) are sufficient and that there would be considerable costs for creating, implementing, and maintaining new tools. In principle, we agree with the other intervenors (such as the Coalition, Drs Middleton and Shepherd, and the FRPC), that a uniform CIS would benefit consumers. In our views, while necessary, the CIS is but a start. Notwithstanding the WSPs' general reluctance to increase the awareness activities, we strongly advocate for the development and implementation of *a systematic method* for consumers to review the terms of the *Wireless Code* before they enter into negotiations with the WSP (pre-purchase), as well as during their post-purchase assessment and problem solving. This mechanism should be designed for multiple formats and information behaviours. For example, in our Undertaking,<sup>5</sup> we have proposed an interactive web application similar to the BC Ministry of Justice Solution Explorer, which would guide the consumer through the decision points in purchasing or re-negotiating their mobile services. The application would assist wireless consumers in understanding their rights under the Code, diagnose problems, provide directly relevant “just in time” information, offer problem solving pathways, and self-help options. We would also like to emphasize that the cost of any future information tools, regardless of their format (interactive applications, leaflets, or videos) should not be either borne by or passed to the consumers.
7. In order for the Code to promote a more inclusive, flexible, and dynamic marketplace, responsibility for creating and mediating the information tools for raising consumer awareness should rest with the “shared [...] ecosystem.”<sup>6</sup> It should involve all stakeholders, with the Commission taking the leadership role. There is a dearth of valuable relevant information about the Code and the rights in the Code and there is a heavy onus on consumers to inform themselves about their rights. Furthermore, the information pathway heavily relies on the WSPs to provide Code-related information to consumers, which, as our Mystery Shopper research study demonstrated, is generally not met by the WSPs. The current model, defined through series of

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<sup>5</sup> Undertaking by Mary Cavanagh, Marina Pavlovic, Sean Grassie and Lora Hamilton (University of Ottawa Researchers) in Telecom Notice of Consultation CRTC 2016-293: Review of the Wireless Code (16 February 2017) at paras 12–13.

<sup>6</sup> Chairman Blais in Renewals of Terrestrial BDUs, Transcript, Volume 2 (8 September 2016) at 1718.

narrowly defined market transactions between consumers and WSPs, is neither working nor is optimal. We call on the Commission to take the leadership role in coordinating the stakeholders and create responsive information tools for consumers.

## **ENFORCEMENT AND EVALUATION OF THE CODE**

8. Creating appropriate information tools is just a first step. As the Ontario Law Reform Commission observed back in 1972, “a right is only as strong as the remedy available to enforce it.”<sup>7</sup> The future success of the Code will depend on its enforcement. Or, The Code is enforced reactively, through individual complaints with to the CCTS. As an external complaint handler, CCTS lacks the power to proactively enforce the Code or require that systemic issues be corrected. We are of the view that those powers should continue to rest with the Commission, but that the Commission should take a more proactive role in the Code’s enforcement and develop and implement a more comprehensive evaluation framework and specific key performance measures.
9. The broad questions for further evaluation could include: How is the Wireless Code is making a difference (i.e., to inform and empower) consumers in the marketplace? Is Code awareness increasing? Do consumers actually read the Code? Do consumers who have read the Code feel more successful or empowered in their negotiations with providers? Are consumer rights being met by telecom providers overall. We share the view expressed by Drs Middleton and Shephard and the FRPC, that future enforcement of the Code requires a multi-prong approach.<sup>8</sup> Our proposed enforcement and evaluation measures are consistent with the ones they proposed.
10. First, the Commission should continue its Wireless Code Public Opinion Research but should significantly refine it, particularly in light of the recent FRPC public opinion research, as well as similar research done by the Financial Consumer Agency of Canada<sup>9</sup> and the Office of the

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<sup>7</sup> Ontario Law Reform Commission, Report on Consumer Warranties in the Sale of Goods (1972), [http://digitalcommons.osgoode.yorku.ca/library\\_olrc/83/](http://digitalcommons.osgoode.yorku.ca/library_olrc/83/) at p 23.

<sup>8</sup> Review of the Wireless Code, Transcript, Volume 3 (8 February 2017) at 3267.

<sup>9</sup> Financial Consumer Agency of Canada, *Financial Consumers’ Rights and Responsibilities – 2016; Final Report* (2016), [http://epe.lac-bac.gc.ca/100/200/301/pwgs-c-tpsgc/por-ef/financial\\_consumer\\_agency/2017/024-16-e/report.pdf](http://epe.lac-bac.gc.ca/100/200/301/pwgs-c-tpsgc/por-ef/financial_consumer_agency/2017/024-16-e/report.pdf)

Privacy Commissioner of Canada.<sup>10</sup> Second, the Commission should collect periodic (annual) WSP compliance reports, whose analysis and corresponding compliance measures should be made public. Third, the Commission itself should conduct Mystery Shopper studies, which are an appropriate mechanism for assessing regulatory compliance with disclosure requirement and have been used by other regulators, in particular in the financial sector.<sup>11</sup> Lastly, a variety of qualitative methods (such as focus groups and observation studies) should be used to provide further depth and guide the compliance, enforcement, and evaluation activities.

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<sup>10</sup> Office of the Privacy Commissioner of Canada, *Survey of Canadians on Privacy* (2014), [http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/office\\_privacy\\_commissioner/2015/2015-05-e/](http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/office_privacy_commissioner/2015/2015-05-e/)

<sup>11</sup> Ontario Securities Commission, “Mystery Shopping for Investment Advice: Insights into Advisory Practices and the Investor Experience in Ontario” (Sept 2015) <http://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf>; Financial Services Authority (United Kingdom) *Mystery Shopping Guide* (2006), <https://www.fca.org.uk/static/documents/fsa-mystery-shopping-guide.pdf>; Rafe Mazer, Xavier Gine & Cristina Martinez, “Mystery Shopping for Financial Services: What Do Providers Tell, and Not Tell, Customers about Financial Products?” (Oct 2015) *CGAP* <https://www.cgap.org/sites/default/files/Technical-Guide-Mystery-Shopping-for-Financial-Services-Oct-2015.pdf>.