

Telecom Notice of Consultation CRTC 2016-293

Review of the *Wireless Code*

CRTC File No: 1011-NOC2016-0293

Intervention of Marina Pavlović, Mary Cavanagh, Sean Grassie, and Lora Hamilton

By submitting this intervention we are indicating our intent to become parties to this proceeding.

We also request an opportunity to appear at the public hearing.

3 October 2016

BIOGRAPHIES AND DISCLOSURES

Dr Mary Cavanagh is an Associate Professor and Acting Director of the School of Information Studies, Faculty of Arts, University of Ottawa. She is a co-principal investigator of the project “Mapping the Front End: Legal Information Seeking Practices,” which is funded by the Law Foundation of Ontario Responsive Grants Program.

Marina Pavlović is an Assistant Professor at the Common Law Section, Faculty of Law, University of Ottawa, where she is a member of the Center for Law, Technology and Society. She is a co-principal investigator of the project “Mapping the Front End: Legal Information Seeking Practices,” which is funded by the Law Foundation of Ontario Responsive Grants Program. *She is a consumer-groups appointed director on the Board of the Commissioner for Complaints for Telecommunications Services (CCTS) and is participating in this proceeding in her capacity as a researcher and not as a Director of the Board of Directors of CCTS. All information contained in this submission is based on her role as a researcher and not in her capacity as the Director of CCTS. No confidential or proprietary information of CCTS was used in the preparation of this submission.*

Sean Grassie is a second year student in the joint JD/MA program at the Common Law Section, Faculty of Law, University of Ottawa and Norman Paterson School of International Affairs, Carleton University. Sean holds a BA in Communications from Carleton University and is a Research Assistant with Professor Cavanagh’s and Professor Pavlovic’s project.

Lora Hamilton is a second year JD student the Common Law Section, Faculty of Law, University of Ottawa. She holds a Masters in Library and Information Studies from Dalhousie University. Lora is a Research Assistant with Professor Cavanagh’s and Professor Pavlovic’s project.

The findings from our Law Foundation of Ontario funded project “Mapping the Front End: Legal Information Seeking Practices” form the basis of our intervention. However, this submission has been prepared independently from the project and without any additional funding, for the sole purpose of contributing to the CRTC Telecom Notice of Consultation CRTC 2016-293: Review of the *Wireless Code*. The views expressed in this submission are of the authors and not of the Law Foundation of Ontario or the University of Ottawa.

Contact authors:

Professor Marina Pavlović, marina.pavlovic@uottawa.ca, 613-562-5800 x 2675

Professor Mary Cavanagh, mcavanag@uottawa.ca, 613-562-5800 x 7376

EXECUTIVE SUMMARY

We are a group of researchers at the University of Ottawa who are engaged in a research project on mapping consumer information seeking behavior, using consumer rights in mobile communications as a case study. Our intervention is based on preliminary findings of a mystery shopper research study which gathered what information mobile telecommunications consumers are given at the point of sale in a retail outlet. By the hearing, we will be able to present further findings on consumer information seeking behavior gathered through focus groups, follow-up interviews, and observation studies, which should assist the Commission in identifying the stakeholders and developing consumer literacy activities. Our mystery shopper research study found significant unavailability of information regarding consumer rights in the *Code* at the pre-purchase stage, which contribute to the consumers' unawareness of the *Code*. In particular, information regarding contract terms, unlocking the device, security deposits, and trial periods. Based on our preliminary findings, we urge the Commission to develop a more robust plan for raising consumer awareness of the *Code* and suggest several concrete steps.

INTRODUCTION

1. In accordance with the procedures set out in the Telecom Notice of Consultation CRTC 2016-293: Review of the *Wireless Code*, CRTC File No: 1011-NOC2016-we are pleased to offer our intervention in this proceeding. We are researchers at the University of Ottawa working in information studies and law. By submitting this intervention we are indicating our intent to become parties to this proceeding. We also request an opportunity to appear at the Commission's planned public hearing on 6 February 2017 in Gatineau, Quebec.
2. Our intervention is based on preliminary findings of a mystery shopper research study which gathered what information mobile telecommunications consumers are given at the point of sale in a retail outlet. The findings presented in this intervention are preliminary and the full analysis of both quantitative and qualitative aspects of the study will be available by the hearing. Additionally, by then, we will be able to present further findings on consumer information seeking behavior gathered through focus groups, follow-up interviews, and observation studies, which should assist the Commission in identifying the stakeholders and developing consumer literacy activities.

ABOUT THE PROJECT

3. Our project "Mapping the Front End: Legal Information Seeking Practices" is an 18-month project (January 2016–June 2017) funded by the Law Foundation of Ontario Responsive Grants Program. Using consumer rights in mobile telecommunications services as a case-study, the project studies consumers' everyday information seeking practices with an aim of connecting information users with information sources by developing consumer information literacy, awareness, and empowerment. Currently there are no frameworks or associated resource toolkits to assist people in identifying, accessing, and taking advantage of information resources and services to empower themselves to perceive "injurious experiences" (that is, experiences in which their rights are being infringed) and take action to resolve legal problems in a diffuse and often dizzying information landscape. This project addresses this knowledge gap by mapping everyday information seeking practices of mobile telecommunications consumers and by creating a toolkit for core information mediators, which are directly engaged in mediation of information seeking and access services. The project findings will be a first step in developing an

evidence-based information needs, access, and uses framework and an effective community-situated ‘first response’ infrastructure assisting in strengthening people’s capacity for self-guided information seeking, access, and evaluation of a complex array of information sources.

4. For the purpose of the project, we have identified three key phases of consumer transaction: pre-purchase information seeking, purchase (transaction) itself, and post-purchase problem solving.¹ The project is conducted in several stages. The first stage maps consumer information seeking practices during both pre and post purchase stages and is based on a mystery shopper research study, several consumer focus groups, follow-up interviews, and several observations studies. Preliminary findings of the mystery shopper study of information delivery at the point of sale form the basis of our intervention. Focus groups, follow-up interviews, and observations studies will be conducted between November 2016 and January 2017 and their preliminary findings and analysis will be available in time for the public hearing in February 2017. During the second stage of the project, we will develop an organizational toolkit primarily focused on information mediators, which is based on the data collection from the first stage, as well as a comprehensive review of online information resources, an online survey of information mediators, and a network map of various information mediators, that can be used in both pre-and post-purchase stages. The results of this survey and, more importantly, our broader project, could assist the Commission in developing consumer literacy, identifying various stakeholders which are already providing direct-to-consumer support (and education), and in building a mediated consumer support network of information mediators.

MYSTERY SHOPPER RESEARCH STUDY

Objective

3. The mystery shopper research study investigated how information flows from a service provider to a consumer at the critical point of sale—pre-purchase stage—of mobile telecommunications services. The mystery shopper approach has been used in a number of fields for research, such as

¹ Thank you to Professor Kernaghan Webb, Ted Rogers School of Business at Ryerson University, for feedback and discussion on this matter.

public health (known as “simulated or mystery patients”),² libraries,³ and a large variety of retail and service sectors.⁴ It is especially suitable for collecting data on information provision,⁵ assessing compliance with information disclosure obligations,⁶ consumer education, and policy reform.⁷ In Canada, to date, there has not been any rigorous research on consumer awareness of their rights acquired through retail telecommunications interactions, as the first and most crucial step in developing awareness of consumer rights and, in particular, the *Wireless Code*.

4. The 2014–2016 *Wireless Code Public Opinion Research*⁸ and 2014–2015 and 2015–2016 CCTS *Annual Reports*⁹ provide some broader insights into consumers’ awareness of the *Code*, service providers’ compliance with the *Code* obligations, and most common complaint issues. However,

² Karin V Rhodes & Franklin G Miller, “Simulated Patient Studies: An Ethical Analysis” (2012) 90:4 *Milbank Q* 706; Richard L Kravitz et al, “Influence of Patients’ Requests for Direct-to-Consumer Advertised Antidepressants: A Randomized Controlled Trial” (2005) 293:16 *J American Medical Assoc* 1995.

<http://jama.jamanetwork.com/article.aspx?articleid=200780&resultclick=1>

³ K Crowe and AK Bradshaw, “Taking a Page from Retail: Secret Shopping for Academic Libraries, Evidence Based Library and Information Practice” (2015) 11:1 *Evidence Based Library and Information Practice*, <https://ejournals.library.ualberta.ca/index.php/EBLIP/article/view/25311/20183>; P Calvert, “It’s a mystery: Mystery shopping in New Zealand’s public libraries” (2005) 54:1 *Library Review* 24.

⁴Michelle Ng Kwet Shing & Laura J Spence, “Investigating the Limits of Competitive Intelligence Gathering: Is Mystery Shopping Ethical?” (2002) 11:4 *Business Ethics: A European Review* 343; MP Watson, P Norris & AG Granas, “A Systematic Review of the Use of Simulated Patients and Pharmacy Practice Research” (2006) 14:2 *Intl J Pharmacy Practice* 83; 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>

⁵ V Minghetti and E Celotto, “Measuring Quality of Information Services: Combining Mystery Shopping and Customer Satisfaction Research to Assess the Performance of Tourist Offices” (2014) 53:5 *Journal of Travel Research* 565; 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>; Danielle Swain et al, “Assessing Information about Health and Social Care Services” (April 2007) *Pickier Institute Europe* <http://www.pickiereurope.org/wp-content/uploads/2014/10/Assessing-information-about-health-and-social-care-services.pdf>

⁶ 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>.

⁷ 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>.

⁸ HarrisDecima, *Wireless Code Public Opinion Research: Quantitative Research Report* (April 2014), <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2014/057-13-e/report.pdf>; HarrisDecima, *Wireless Code Public Opinion Research 2015* (March 2015), <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2015/044-14-e/report.pdf>; TNS Canada, *Wireless Code Public Opinion Research 2016* (March 2016), <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2016/034-15-e/report.pdf>

⁹ Commissioner for Complaints for Telecommunications Services, *Driving The Positive Change: Annual Report 2013-14*, <https://www.ccts-cprst.ca/documents/annual-reports/2013-2014>; Commissioner for Complaints for Telecommunications Services, *Making the Tough Calls: Annual Report 2014-15*, <https://www.ccts-cprst.ca/documents/annual-reports/2014-2015>.

these sources do not provide specific paths that clearly demonstrate how consumers should expect to access—or in few cases have already accessed—meaningful information about the *Code* that can directly and positively impact their commercial interactions with service providers. The Commission’s 2014–2016 *Wireless Code Public Opinion Research* is narrowly focused on measuring the prompted awareness of the *Wireless Code*, overall impression of the clarity of contract, and explanation of early cancellation fees. The overall prompted awareness of the *Code* decreased from 52% in 2014, 50% in 2015, to 45% in 2016; conversely, the unawareness of the *Code* increased from 46% in 2014, 48% in 2015, to 52% in 2016.¹⁰ And what was measured was only whether the consumers “recall[ed] hearing or seeing anything about the *Wireless Code*,” rather than the awareness of the particular rights in the *Code*. The overall understanding of the clarity of contracts was relatively steady with 66% in 2013, 68% in 2015, and 66% in 2016 of those surveyed finding their contracts clear to understand, or 16% in 2014, 15% in 2015, and 14% in 2016 finding their contracts unclear and difficult to understand.¹¹ When testing the clarity of contracts and consumers’ understanding of the contractual terms, the survey presumed service provider’s compliance with Section B.1 of the *Code* that the consumers were given a copy of the contract, but did not inquire whether and at what stage in the transaction the consumers had an opportunity to review the contract or whether the contractual terms were explained to them at the time of purchase. The understanding of the early cancellation fees (ECF) improved slightly, with 50% in 2014, 56% in 2014, and 55% in 2016 finding the explanation about ECF clear to understand and 32% in 2014, 27% in 2015, and 28% in 2016 finding the explanation unclear or difficult to understand.¹² The surveys presumed that the consumers would routinely receive ECF explanation, since they asked whether the “service provider clearly explained any fees that would be applied to cancel their contract agreement early.” The non-disclosure of contract terms has been continuously rising as the most common issue consumers complain about to the CCTS. In 2013–2014 the non-disclosure of terms was the

¹⁰ HarrisDecima, *Wireless Code Public Opinion Research: Quantitative Research Report* (2014) at p 26; HarrisDecima, *Wireless Code Public Opinion Research 2015* at p 31; TNS Canada, *Wireless Code Public Opinion Research 2016* at p 46.

¹¹ HarrisDecima, *Wireless Code Public Opinion Research: Quantitative Research Report* (2014) at p 17; HarrisDecima, *Wireless Code Public Opinion Research 2015* at pp 24–25; TNS Canada, *Wireless Code Public Opinion Research 2016* at p 13.

¹² HarrisDecima, *Wireless Code Public Opinion Research: Quantitative Research Report* (2014) at pp 18–19; HarrisDecima, *Wireless Code Public Opinion Research 2015* at pp 25–26; TNS Canada, *Wireless Code Public Opinion Research 2016* at p 15.

second most commonly complained about issue at 10.1% of all issues with a 74% rise in frequency from the previous year.¹³ In 2014–2015, non-disclosure of terms rose 46.8% from the previous year, to 12.8% of all complaints, becoming the leading complaint issue.¹⁴

5. The objective of our mystery shopper research study was to gather and comprehensively assess what information mobile telecommunications consumers are given at the point of sale and how information flows from service providers to consumers during the pre-purchase stage. In particular, we examined whether that information was sufficient for consumers to make informed choices regarding mobile telecommunications services. While the project’s objective was not to assess the telecommunications service providers’ compliance with the *Wireless Code*, as the main regulatory instrument of consumer rights in mobile telecommunications services, the *Wireless Code* was necessarily an important factor and an informational core of our study design. The mystery shopper approach facilitated an inside look into industry practices and should assist in analyzing whether the consumers are truly “better informed”¹⁵ and “empower[ed] to [...] make informed decisions”¹⁶ in a post-*Wireless Code* world. Our preliminary findings from the mystery shopper research study show that the rights provided in the *Wireless Code* are generally not communicated to the consumers at the pre-purchase stage, although the *Code* requires that the information is provided to consumers only after the transaction (purchase) itself.

Methodology and study design

6. The study used an ethnographic approach, using mystery shoppers to collect data through actual encounters in the field. These encounters took place between researchers posing as average consumers and staff at retail telecommunications stores (participants). “Mystery shopping studies involve the use of mystery shoppers who are trained and/or briefed to observe, experience and measure any customer service process by acting as a prospective customer and

¹³ Commissioner for Complaints for Telecommunications Services, *Driving The Positive Change: Annual Report 2013-14* at p 11.

¹⁴ Commissioner for Complaints for Telecommunications Services, *Making the Tough Calls: Annual Report 2014-15* at p 11.

¹⁵ *Wireless Code*, preamble

¹⁶ Telecom Regulatory Policy CRTC 2013-271: The *Wireless Code* at pars 2, 91, and 167.

undertaking a series of pre-determined tasks to assess performance against specific criteria, reporting back on their experiences in a comparable and consistent way.”¹⁷

7. Typically, mystery shoppers conceal their true identity and the purpose of their interaction, so that the participants are unaware that they are under evaluation.¹⁸ By its very nature, mystery shopper studies involve an element of deception, since the participants are unaware of researchers’ data collection and the project is conducted without explicit consent from individual participants. In light of the research objective to gather and assess information presented to consumers during pre-purchase of mobile telecommunications services, it was critical that we received unaltered and unfiltered information, exactly as presented to consumers at the time of purchase at a retail telecommunications outlet. The absence of informed consent by retail staff for data collection was absolutely necessary to maintain the validity, integrity, and veracity of the data. A stringent application of informed consent would have undermined the purpose of the project and would impact the quality of the data. If the participants were informed about the purpose of the study and required to consent to data collection, the information provided would necessarily be altered to meet the researcher’s expectations and, as a result, would not mirror an average consumer’s experience. In order to accurately answer the research question, the project required the researchers to “blend in” to the broader group in order to gain authentic access.¹⁹
8. The project received an approval from the University of Ottawa Research Ethics Board (“Ethics file #04-16-10”). In addition, it fully complied the European Society for Opinion and Marketing, Mystery Shopping *Codes* and Guidelines, as well as the Market Research Society, Guidelines for Mystery Shopping Research. The project was carefully designed not to expose individual service providers, incur additional transaction costs, or produce any negative reputational impact. First, senior management (regulatory contact) of the surveyed telecommunications providers was informed about the mystery shopper study at least two weeks in advance of the visits by both

¹⁷ ESOMAR, “World Research *Codes* and Guidelines: Mystery Shopping Studies” (2005) https://www.esomar.org/uploads/public/knowledge-and-standards/Codes-and-guidelines/ESOMAR_Codes-and-Guidelines_MysteryShopping.pdf; MRS, “Guidelines for Mystery Shopping Research” (2014) <https://www.mrs.org.uk/pdf/2014-09-01%20Mystery%20Shopping%20Research%20Guidelines.pdf>

¹⁸ Michelle Ng Kwet Shing & Laura J Spence, “Investigating the Limits of Competitive Intelligence Gathering: Is Mystery Shopping Ethical?” (2002) 11:4 *Business Ethics: A European Review* 343; ESOMAR, “World Research *Codes* and Guidelines: Mystery Shopping Studies” (2005) https://www.esomar.org/uploads/public/knowledge-and-standards/Codes-and-guidelines/ESOMAR_Codes-and-Guidelines_MysteryShopping.pdf

¹⁹ John Flood, “Socio-Legal Ethnography” in Reza Banakar & Max Travers, eds, *Theory and Method in Socio-Legal Research* (Oxford: Hart Publishing, 2005) 33. http://www.w.johnflood.com/pdfs/Socio_Legal_Ethnography_2005.pdf

email and a letter sent by postal mail. The letter informed the providers about the nature, purpose, and scope of the project, and the timeframe for the study (e.g. one potential visit per location during the length of our study). The letter also informed the providers that a general and anonymized report on their own retail outlets could be provided to them upon request. Of the six surveyed providers, to date, three providers requested a generalized anonymized report. Second, the data was collected anonymously and scrubbed of identifying information to protect the identity of individual research participants (front-line retail staff), as well as the identity of individual telecommunications providers. We only collected the information that was necessary for project tracking: name of the provider, location of the provider's retail outlet, and the date and time of the visit. The identity of individual employees and their personal information was not collected during the in-store interaction. The visits were not audio-visually recorded. The collected data was then further scrubbed of identifying information and will be reported anonymously. Any reporting (in this submission and in the future) includes only the total number of telecommunications providers surveyed (6), number of mystery shopper visits per provider (2), total number of visits (12), location of the visits (Ottawa-Gatineau), and the date span during which the study was conducted (15 July to 15 September 2016). The individual names of the service providers will not be reported, nor will any other information that may lead to identifying the providers (e.g., their market share, coverage area, etc).

Data collection

9. We selected six telecommunications providers using a number of factors and used two different scenarios for a total of 12 visits (one visit per scenario per provider) between 15 July and 15 September 2016 in the Ottawa-Gatineau area. Two realistic scenarios presented a typical interaction between a consumer and telecommunications service provider regarding a new plan in a retail telecommunications venue. Scenario number one involved only a service plan, while scenario two involved both the subsidized device and a service plan. The scenarios replicate common in-person consumer interactions regarding a wireless service contract, such as inquiries about different cell phone plans, price points, data limits, and information about devices. The visit mimicked a typical consumer inquiry and did not create any additional staffing demands or use any additional time or resources that otherwise would not have been assigned to a typical off-

the-street customer inquiry. Depending on the nature of the interaction, the scenarios also included problem-solving queries at the point of sale, for example posing a hypothetical to the employee and asking for information to resolve the issue, understand next steps, etc.

10. Two researchers conducted all twelve visits, each taking ownership of one scenario for all six providers, to maintain consistency. They posed as average consumers inquiring about a new wireless service contract. One researcher acted as a consumer, interacting with a service provider employee, while the other researcher acted as a friend, observing the interaction. They posed as consumers inquiring about a new plan, but stopped short of purchasing a new service contract. Immediately after each interaction, each researcher individually completed a detailed ten-page checklist, after which they jointly completed a single checklist, marking any areas of disagreement. Those twelve checklists have further been reduced into two composite lists—one for each scenario. Each researcher also created a subjective narrative account of each visit, which will be color *Coded* and analyzed for broader themes.

Limitations

11. The mystery shopper research study is the one of several data collection methods for our mapping of consumer information seeking. The study is a first systematic inquiry into what information is being communicated to consumers in the pre-purchase stage, before the *Code*'s obligations formally take effect in a consumer-service provider relationship. Therefore, it offers a valuable insight into provider-consumer information sharing during the pre-purchase stage, as the key point in consumers' decision making.
12. There are several limitations to the study. The sample size included six providers with retail outlets (and service coverage) in the Ottawa-Gatineau area. Each scenario was used (tested) only once per provider to a total of twelve visits. While the researchers conducting the study were posing as average consumers, they were *not* average consumers—they were highly aware of the consumer rights/providers' obligations in the *Wireless Code*, were highly educated, and spoke English fluently. While the interaction replicated a typical consumer experience regarding a mobile service plan, it stopped short of signing a contract, which, under the *Wireless Code*, is a key factor in triggering certain consumer rights or, conversely, provider's obligations.

PRELIMINARY FINDINGS: UNAVAILABILITY OF INFORMATION

13. *The Wireless Code* sets the minimum standards for consumer protection in wireless telecommunications services and is effectively the most important regulatory instrument for consumer rights for wireless telecommunications services. Therefore, it was necessarily an important factor in the study design. However, from the point of view of everyday information seeking and use in Canada's digital economy and digital society, the *Wireless Code* is an inner core of information provision for all citizens regardless of when and with whom they last purchased their mobile phone contract. The consumers' rights, or conversely, providers' obligations, set in the *Wireless Code* and the information disclosure related to them should in fact be the informational minimum (or the floor) that is communicated to consumers. The preliminary findings of our mystery shopper study are that the majority of, if not all, surveyed providers at the pre-purchase stage did not provide information that is required by the *Wireless Code*, although the *Code* requires information or document disclosure only at the purchase stage (that is, after the contract was entered into). The *Wireless Code* is an important step in strengthening consumer protection laws and its importance to consumers' substantive rights cannot be overstated. In Telecom Regulatory Policy CRTC 2013-271, the Commission set several objectives for the *Code*: ensuring that consumers "will be better informed of their rights and obligations contained in their contracts with wireless service providers;"²⁰ empowering "consumers to make informed decisions about wireless services;"²¹ and "making it easier for consumers to take advantage of competitive offers."²² Our preliminary findings are that the crucial information necessary to meet the *Code*'s objectives was not available to consumers during the pre-purchase stage, which considerably diminishes consumers' capacity to compare various offers, make informed choices, and understand their rights.
14. Based on the still early results of our investigation, we argue that the lack of consumer awareness of the *Code* and, perhaps more importantly, their rights in the *Code* (or conversely, providers' obligations in the *Code*) is a significant problem that ought to be addressed. The low awareness of the *Code* and the high incidence of problems raise the importance of consumer education and capacity building. If consumers are unaware of the very rights that are intended to protect and

²⁰ *Wireless Code* Preamble

²¹ Telecom Regulatory Policy CRTC 2013-271 at para 2.

²² Telecom Regulatory Policy CRTC 2013-271 at para 2.

empower them, it is virtually impossible for them to perceive when their rights are being violated and effectively advocate for themselves

15. The ability of consumers to make informed decisions about their wireless service hinges upon the availability of information and is severely impaired when key information is not communicated to consumers. In our interactions with six service providers, we found a significant dearth in the information provided to consumers, in particular regarding information that the *Wireless Code* requires be disclosed upon signing the contract. Certain categories of crucial information were consistently not provided in our interactions with the wireless service providers. It is unrealistic to expect consumers to find this information for themselves, especially since they are not typically given access to the contract prior to sign-up or there have not been any large-scale activities focused on raising awareness of the consumers' rights in the *Code*.

Selected results

Access to the contract prior to signing

16. Section B.1 of the *Wireless Code* requires that service providers must provide “the customer a permanent copy of the contract and related documents” immediately after the in-person transaction or no later than fifteen days, in remote (telephone or internet) transactions. Section C.1 also requires that the service providers must provide the customers with the critical information summary “when they provide a permanent copy of the contract.” Both of these provisions require a copy of the contract and the critical information summer be provided to consumers only *after* they have agreed to a wireless service plan. In Telecom Regulatory Policy CRTC 2013-271 the Commission stated that the “consumers have a duty to inform themselves about their rights and obligations.”²³ The *Wireless Code* provisions on clarity and content of contract should “facilitate consumers’ understanding of their contracts”²⁴ and should assist consumers in making “informed decisions about wireless services.”²⁵ Additionally, the Commission noted that a contract provides “proof of the content”²⁶ of what was agreed to

²³ Telecom Regulatory Policy CRTC 2013-271 at para 45.

²⁴ Telecom Regulatory Policy CRTC 2013-271 at para 45.

²⁵ Telecom Regulatory Policy CRTC 2013-271 at para 2.

²⁶ Telecom Regulatory Policy CRTC 2013-271 at para 49.

between a consumer and a provider and could be used as evidence of the terms in case a future dispute.²⁷

17. The terms of contract and/or critical information summary would have applied to all twelve mystery shopper visits. *Not a single provider out of the twelve visits discussed or presented the consumers (mystery shopper researchers) the Critical Information Summary. Only one provider out of the twelve visits showed the consumers a copy of the contract and briefly pointed out certain terms, without explaining them.* In fact, in order to show a copy of the contract to the consumers, the salesperson had to use a key to retrieve a copy of the contract from a locked cabinet. When asked, the salesperson did not allow the consumers to take a copy of the contract with them.
18. In our view, keeping service agreements (literally) under a lock and key is not consistent with the spirit of the *Wireless Code*, which emphasizes access to information and consumer-friendly practices to facilitate consumers' informed decision making. Although we understand the expense involved in providing a full paper copy of contracts to all potential customers, it is nonetheless incumbent upon providers to be as transparent as possible. How can we expect a consumer to make informed decisions if the information they need to make those decisions is withheld until they have committed to a particular service plan?
19. Providing the terms of service for wireless contracts in-store and prior to sign-up would contribute to the stated objectives of the *Code*, and would also limit consumer complaints by promoting a more comprehensive understanding of wireless contracts at the point of sale. Many providers already produce pricing and other brochures, so it is certainly feasible to create similar paper documents (or provide links to an electronic version) which present a sample (generic) version the Critical Information summary and the terms and conditions contained in each wireless service contract.

Unlocking the device

20. Section F.1 of the *Wireless Code* requires that service providers offering locked devices must give the customer the means to unlock the device upon request. In scenario two of our Mystery Shopper Research Study, which we used once with each of the six surveyed providers, we

²⁷ Telecom Regulatory Policy CRTC 2013-271 at para 49.

inquired about a subsidized device on a two-year plan. *Four out of the six service providers did not discuss unlocking at all.* Only one provider fully explained how to unlock the phone and how much it would cost to do so. In our view, one cannot have the “means” to unlock their device if they are not aware of or do not fully understand the unlocking process or its cost. Without the knowledge of the unlocking process and its implications, the consumer will not be in a position to request it.

Trial period

21. Section G.4 of the *Wireless Code* requires providers to offer customers a trial period of at least 15 days, during which time customers are able to determine if the provider’s service “meets their needs,” “ensure reliable service,” and “increase consumer choice.”²⁸ During the 15-day trial period, customers can cancel the contract without penalty if they meet certain conditions, such as using less than the permitted data and voice usage limits and returning the subsidized device. The trial period would have applied to all twelve mystery shopper visits, since it was relevant for both scenarios. *Not a single provider out of the twelve visits mentioned or discussed trial periods.* The cool-off or trial period is an important consumer protection right that allows consumers to cancel a contract within the prescribed period without any penalties. The option to cancel during the trial period gives consumers an ability to test out a service without being locked in for the duration of the term if the service does not meet their needs. Cancellation within the trial period is particularly important when subsidized devices are part of a service contract. Consumers without knowledge of the 15-day trial period may be stuck with a subsidized device that does not meet their needs. In our view, if consumers are informed of the trial period, they are more likely to pay close attention to the characteristics and quality of their wireless service, the use of the device, and their usage habits during the first 15 days. If the consumers are dissatisfied with the service or find that it does not meet their needs, the trial period provides an easy way to return the subsidized device, modify their current agreement, or change providers. If the consumers are not informed about the 15-day trial period, the first time they are likely to assess whether the service meets their needs is when they receive the first bill. Cancelling or changing the service at that stage would be costly for consumers, since they would incur early cancellation fees.

²⁸ Telecom Regulatory Policy CRTC 2013-271 at para 249.

Security Deposit & Credit Check

22. Section H.1 of the *Wireless Code* provides that service providers which require security deposits must inform their customers of the reasons for this policy and specify conditions for returning the deposit. The *Wireless Code* is silent on credit checks. However, in Telecom Regulatory Policy CRTC 2013-271 the Commission acknowledged that providers may examine situation-specific considerations—such as the customer’s credit rating—when determining the appropriate security deposit amount. The commission further noted, that:

The Commission considers that information relating to the security deposit, including the reasons for requesting it, as well as the conditions for reviewing the appropriateness of the deposit and conditions for its return, must be clearly communicated to consumers. The Commission will monitor security deposit-related complaints to the CCTS to ensure that security deposits do not become a barrier for consumers to access to wireless services.²⁹

23. Most Canadian service providers reserve the right to check a customer’s credit and/or to request payment of a security deposit as a prerequisite to a postpaid wireless contract. The security and credit checks would have applied to all twelve mystery shopper visits, since in both scenarios we were looking at a post-paid two-year contract. *Not a single provider out of twelve visits mentioned security deposit.* Since our researchers/mystery shoppers were not offered an opportunity to review the contract, we are unable to determine whether the six surveyed providers have and/or use security deposit policies. *One provider out of twelve visits mentioned credit checks.* In that interaction, the salesperson mentioned in passing that there would have to be a credit check, but did not provide any details about the process or if a security deposit would apply. Security deposits and credit checks are particularly impactful for students, new Canadians, and low-income consumers who may not have a credit history or whose prior credit history may act as an obstacle in obtaining a post-paid service. Informing consumers on these policies would set consumers’ expectations and would allow them to look into alternatives.

²⁹ Telecom Regulatory Policy CRTC 2013-271 at para 285.

ANSWERS TO QUESTIONS FOR DISCUSSION

I. Effectiveness of the *Code*

24. Based on our preliminary findings, we strongly believe that the effectiveness of the *Code* and the specific consumer rights in the *Code* hinge upon not only the consumers' awareness of the *Code*, but, more importantly, their awareness of the rights in the *Code*. The *Wireless Code* is an important step forward in consumer protection in telecommunications. However, the existence of the *Code* is just a first step. For it to be effective, the consumers, as the users of wireless telecommunications services, need to be not only aware of it, but also need to understand the rights in the *Code* and how they impact their transactions with the service providers. In Telecom Regulatory Policy CRTC 2013-271, the Commission directed service providers to, among other things,

a) ensure that their customer service representatives are (i) knowledgeable of the *Wireless Code*; (ii) able to effectively describe the *Code*'s provisions; and (iii) able to explain recourse options for customers;

b) provide prominent links to the consumer checklist on their websites – on their home page and on all pages on which their wireless service plans and offerings are described;

25. Our research found little or no evidence of either of these activities. In fact, as we explained in paras above, crucial information was not communicated to consumers nor were they directed to any other sources of information. Further, *not a single provider out of the twelve visits mentioned the Wireless Code*. We urge the Commission to consider reinforcing these directions as well as considering other recommendations that would contribute to raising the awareness of the *Code*, which, in turn, would enhance its effectiveness. Below we offer some concrete suggestion on increasing the awareness of the *Code*.

III. The content and Wording of the *Wireless Code*

B. contracts and related documents; C. the critical information summary; F. Mobile device issues; G. Contract cancellation or extension; and H. Security deposit

26. Based on our preliminary findings that relate to these specific issues, we argue that consumers' awareness of the rights in the *Code* is essential. We strongly believe that the *Code* should reinforce existing directions and build additional recommendations that would foster more transparent information sharing between the providers and consumers during the pre-purchase stage. In particular, it is essential to enable consumers to consult and review the terms of the contract and the critical information summary at the pre-purchase stage, before signing a contract. Only then would consumers truly be able to assess the suitability of a particular plan for their needs and to compare offers between various competitors. In addition, we suggest that the Commission builds in a more robust regime whereby the providers are strongly encouraged (or required) to explain to consumer specific rights in the *Code*.

IV. Consumer awareness of the *Wireless Code*

27. As we have expressed throughout the submission, consumer literacy—consumer awareness of the *Code* and the rights in the *Code*—is essential for consumers' empowerment and their ability to make more informed choices. As the Chairman Blais noted in a recent hearing, information provisioning is a “shared responsibility ecosystem”³⁰ and is composed of diverse stakeholders—the Commission, as the regulator; service providers; consumers; consumer organizations; and a variety of other information mediators, each of which plays a distinct role in this shared space. However, based on our preliminary findings, currently there is very little information *sharing* between providers and consumers. Rather, the onus is heavily on consumers to inform themselves about their rights, which is an arduous task, since there are no signposts about the *Code*'s existence or its content.
28. We believe that the Commission's approach in raising consumer awareness of the *Code* should be evidence-based and should engage all relevant stakeholders through a variety of means. Our mystery shopper study was just the first step in the mapping consumer information seeking behavior and it uncovered that crucial information was not provided to consumers during their pre-purchase inquiries. By the hearing, we will be able to present further findings on consumer information seeking behavior gathered through focus groups, follow-up interviews, and

³⁰ Broadcasting Notice of Consultation CRTC 2016-197 , Transcript, Hearing September 8, 2016
Volume: 2 at 1718

observation studies, which should assist the Commission in identifying the stakeholders and developing consumer literacy activities.

29. We would also recommend cross-pollination and cross-disciplinary dialog regarding consumer literacy activities, by considering consumer literacy activities and programs that have been used in other industries and sectors. For example, Financial Consumer Agency of Canada has been quite active in designing, delivering, and evaluation various programs targeted at consumer financial literacy.³¹ In fact, in 2014 FCAC appointed the first Financial Literacy Leader, with a mandate “to engage, collaborate and coordinate activities with stakeholders from the public, private and non-profit sectors, including academics and educational institutions, in order to support and contribute to initiatives that strengthen the financial literacy of Canadians.”³² We believe that some of these activities could be added to the existing mandate of the CRTC Chief Consumer Officer.

V. How the *Wireless Code*'s effectiveness should be assessed and reviewed going forward

30. As the Commission noted in Telecom Regulatory Policy CRTC 2013-271, complaint data “provide[s] limited insight into the effectiveness of the provisions set out in the *Wireless Code*.”³³ CCTS administration of the *Code* is reactive in nature—a consumer has to experience a problem, identify it as a problem, unsuccessfully attempt to resolve with the service provider, and then complain to the CCTS, which, in turn, has to confirm a *Code* breach. The data provided in the CCTS Annual and Mid-Year Reports is useful, but is limited to the consumer-provider post-purchase interaction. We urge the Commission to develop a more robust evaluation plan that would include a variety of activities. For example, but not limited to, a more detailed public opinion survey (focusing on the awareness of the specific rights in the *Code*); independently assessing providers’ compliance with the *Code* through several activities, including mystery shopper research conducted by the Commission (similarly to what is being done in the financial

³¹ See, for example, Financial Consumer Agency of Canada, *National Strategy for Financial Literacy – Count me in, Canada* (2014), <http://www.fcac-acfc.gc.ca/Eng/financialLiteracy/financialLiteracyCanada/strategy/Pages/home-accueil.aspx>

³² Financial Consumer Agency of Canada, Financial Literacy Leader, <http://www.fcac-acfc.gc.ca/Eng/financialLiteracy/financialLiteracyCanada/Pages/Leader-Chef.aspx>.

³³ Telecom Regulatory Policy CRTC 2013-271 at para 391

industry³⁴); and a variety of self-reporting activities by the providers, including providing the Commission with the copies of the contracts and critical information summaries.

31. We thank the Commission for considering our submission and would be pleased to provide further information on identifying stakeholders and specific steps in raising consumer awareness and literacy based on our project's further data collection and findings.

End of document

³⁴ See, for example, 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>.