



July 2, 2019

Bob D'Eith
MLA for Maple Ridge-Mission
Parliament Buildings
Victoria, BC V8V 1X4

Re: Cell Phone Billing Transparency Public Consultation

Dear Mr. D'Eith,

I am writing to you on behalf of OpenMedia, a community-based non-profit organization that works to keep the Internet open, affordable, and surveillance-free. We work toward informed and participatory digital policy by engaging hundreds of thousands of people in protecting our online rights. Our community is comprised of nearly 235,000 people throughout Canada.

OpenMedia and our community members have been advocating for more affordable access to cell phone services for the past decade, have been active participants at the Canadian Radio-television and Telecommunications Commission (CRTC), and are participating in legislative processes like the current review of Canada's Broadcasting and Telecommunications Acts.¹ Our organization believes in public education and empowering individuals to take action on digital issues that impact their daily lives.

We commend the British Columbia government for initiating this important conversation on cell phone billing transparency, and consulting directly with residents on their lived experiences with their cell phone providers. We are pleased to participate in this process and hope that our input serves as a valuable resource for the provincial government to improve consumer protections for those living throughout British Columbia.

Below we will outline our key considerations that we believe are areas of concern the government should address in this consultation and any subsequent recommendations, advocacy, or legislation.

Cell phone contracts and billing

The lack of clarity in cell phone contracts and monthly cell phone bills is an issue that continues to negatively impact cell phone customers. This, in combination with misleading and aggressive sales practices, often results in frustration as customers experience prices that are unfair, unpredictable or higher than what they expected when initially signing up for cell phone

¹ OpenMedia Submission to the Broadcasting and Telecommunications Legislative Review Panel:
OpenMedia:
https://openmedia.org/sites/openmedia.org/files/openmedia_btlr_submission_jan_11_2019_2.pdf

services. “Bill shock”² is a common occurrence throughout Canada, and can put customers in a difficult position where they owe hundreds, if not thousands, of dollars³ to their cell phone provider for charges they were not made aware of before billing – and were therefore unable to plan for.

For this reason, we recommend that the B.C. government introduce provincial legislation that forces all cell phone providers to:

1. Ensure all contracts and bills are written in plain language that can be easily understood by all users.
2. Clearly inform the customer of the exact fees, including additional fees, they will incur when purchasing or making changes to a plan.
3. Limit fixed-term contract length to a maximum of 2 years.
4. Clearly separate the cost of the plan from the cost of the device in cell phone bills.
5. Eliminate cancellation fees for fixed-term contracts as long as the full cost of the device has been paid off.

The first three of these recommendations are already included in the federal Wireless Code of Conduct.⁴ However, the code’s weak enforcement mechanisms and loopholes are often failing to deliver these protections to wireless consumers in practice. This is why we are asking the B.C. government to implement these regulations at the provincial level in combination with strong enforcement mechanisms to ensure Big Telecom can’t find any workarounds.

Additionally, in the event that a future federal government repeals or makes significant changes to the Wireless Code, it is extremely important for these fundamental consumer protections to continue to exist at the provincial level.

Provinces like Quebec,⁵ Manitoba,⁶ and Newfoundland and Labrador,⁷ have already passed provincial level legislation to protect wireless service customers over the past decade, bringing greater protections to the people in these provinces. Ontario and Nova Scotia also had similar legislation, but these laws have since been repealed. Nova Scotia repealed them after the

² 'I was in shock': Why Canadians are still struggling with runaway cellphone charges: CBC: <https://www.cbc.ca/news/business/cellphone-bill-shock-crtc-wireless-code-1.3988211>

³ A \$5,000 Bell bill? Parents struggle with runaway wireless charges: CBC: <https://www.cbc.ca/news/business/parents-wireless-charges-phone-1.5077272>

⁴ The Wireless Code, simplified: Canadian Radio-television and Telecommunications Commission: <https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>

⁵ Bill 60: An Act to amend the Consumer Protection Act and other legislative provisions: National Assembly of Quebec: <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C51A.PDF>

⁶ Fairer Cellphone Rules for Manitobans: Government of Manitoba: <https://www.gov.mb.ca/justice/cp/cpo/info/cellphonelaws.html>

⁷ Distance Service Contracts: Government of Newfoundland and Labrador: https://www.servicenl.gov.nl.ca/consumer/consumer_affairs/distance_service_contracts.html



Wireless code came into place, while Ontario Premier Doug Ford recently scrapped the Ontario Wireless Services Agreements Act with the passage of the unpopular Bill 66.

The existing pieces of legislation in other provinces to protect cell phone users can be used as a useful point of reference for what additional customer protections the B.C. government could provide to its constituents.

Business practices

Misleading sales practices in Canada have been well documented and sparked widespread public outcry to the extent that it eventually forced the government to demand the CRTC investigate⁸ these practices in detail. The results of the investigation⁹ were unsurprising, with the CRTC finding that misleading and aggressive sales practices “occur to an unacceptable degree”.

Forty percent of people who responded to the CRTC’s online survey reported having experienced sales practices by telecommunications companies in Canada that they consider to be aggressive or misleading. The leading cause of consumer frustration was the mismatch between what consumers think they will get and what they actually receive.

This clearly highlights the need for cell phone providers to drastically improve their advertising and sales standards to communicate their offerings to the customer in a clear and transparent manner. This would ensure that the customer clearly understands what they are signing up for and exactly how much it will cost them over the contract period.

Therefore, we recommend the B.C. government introduce provincial legislation that forces cell phone providers to:

1. Advertise the full cost of a plan, including all extra fees the customer will have to pay.
2. Clearly outline any restrictions or limitations related to a cell phone plan.
3. Clearly outline the length of a special or promotional price and the full price the customer will have to pay once the special or promotional price ends.

Additionally, we recommend that the B.C. government force cell phone companies to clearly define and restrict the use of advertising keywords, such as ‘unlimited’ or ‘5G’ to avoid misleading customers about the actual nature of the service.

⁸ Ottawa orders CRTC to investigate reports of 'aggressive' telecom sales practices: CBC: <https://www.cbc.ca/news/politics/crtc-telecom-sales-practices-investigation-1.4706260>

⁹ CRTC acknowledges Big Telecom’s sales practices are problematic, but without any commitment for next steps: OpenMedia: <https://openmedia.org/en/crtc-acknowledges-big-telecoms-sales-practices-are-problematic-without-any-commitment-next-steps>

For instance, Bell and Rogers recently introduced more generous data plans advertised as ‘unlimited’ and ‘infinite’, respectively. However, this advertising wording is misleading as the plans are not unlimited in reality. The data speeds are significantly throttled once a user exceeds their data cap, significantly limiting what the user is able to do with their device. A truly unlimited plan would not, in any way, have a data cap.

In the case of Rogers, once users go over their cap, they’ll be bumped from the 4G LTE to the 3G network, and throttled in speed down to 256 kbps.¹⁰ For comparison, the average speed¹¹ on Rogers’ 4G LTE network is 42mbps. This means users would be bumped to 0.5% of the average speed they received before they hit their data cap. Thus, the quality of service after users hit their data cap is simply incomparable.

These plans offering large buckets of data would be more accurately described as “no data overage” plans, as in the case of Telus’ equivalent plan.¹² Cell phone providers should be liable for clearly disclosing exactly what speed customers will be throttled to once they have gone over their data cap.

Similarly, AT&T in the United States rolled out a network confusingly labelled ‘5G Evolution’¹³ — even though it wasn’t actually 5G — to market its newest 4G towers.¹⁴ This resulted Sprint suing AT&T for false advertising.¹⁵

This kind of situation, where cell phone providers take advantage of the ‘5G’ connectivity hype to overcharge and mislead customers with regards to the technology that they are actually using could easily take place here. A solid preventative framework here will avoid misleading advertising that could harm customers in the interest of Big Telecom’s profits.

Create strong enforcement mechanisms

As mentioned above, one of the most problematic aspects of the Wireless Code is its lack of strong enforcement mechanisms and penalties to hold cell phone providers accountable. Despite there being a federal complaints mechanism in place through the Commission for Complaints for Telecom-Television Services (CCTS), a vast majority of customers remain unaware of it, and it requires individuals to each file individually even to counter systemic company-wide issues. Additionally, this tends to be a slow and difficult process, which requires

¹⁰ Rogers Introduces Infinite Wireless Plans With No Overage Charges: Rogers:
<https://about.rogers.com/2019/06/12/rogers-introduces-infinite-wireless-data-plans-no-coverage-charges/>

¹¹ CANADA Mobile Network Experience Report February 2019: Opensignal:
<https://www.opensignal.com/reports/2019/02/canada/mobile-network-experience>

¹² Cell phone plans in Toronto ON: Whistle Out:
<https://www.whistleout.ca/CellPhones/Search?minutes=-1&sms=-1&data=10000&simonly=true&supplier=Bell,Telus,Rogers&tab=postpaid&includefeatured=false&enforcemaximumresultlimits=false&address=Toronto%2bON>

¹³ AT&T declares itself ‘world leader’ in 5G despite 0 consumer devices: Venture Beat:
<https://venturebeat.com/2019/06/06/att-declares-itself-world-leader-in-5g-despite-0-consumer-devices/>

¹⁴ AT&T plans to swap LTE logo with ‘5G E’ on some 4G Android phones: Venture Beat:
<https://venturebeat.com/2018/12/21/att-plans-to-swap-lte-logo-with-5g-e-on-some-4g-android-phones/>

¹⁵ AT&T settles 5G E false advertising lawsuit with Sprint: CNET:
<https://www.cnet.com/news/at-t-settles-5g-e-false-advertising-lawsuit-with-sprint/>

customers to first demonstrate that they were not able to resolve the issue with the company directly.

Strong enforcement mechanisms are essential to ensure Big Telecom abides by consumer protection guidelines and that customers have an efficient means to voice their complaints about their cell phone providers and resolve them.

We recommend that the B.C. government:

1. Integrate the protections found in the CRTC's Wireless Code of Conduct into the B.C. Consumer Protection Act, and build additional protections, to give people in B.C. a robust consumer rights framework.
 - a. The federal Wireless Code of Conduct should be seen as a floor, not a ceiling. By both adopting the full Wireless Code, and addressing existing gaps to build in additional protections, the B.C. government can establish a robust world-class consumer rights framework for all B.C. residents accessing telecommunications services. British Columbia has the chance to set a standard that other provinces can follow.
2. Create an accessible and reliable complaints mechanism for customers.
 - a. This could take the form of an informational agency or service that informs customers of their rights and how to enforce them, and/or an awareness campaign of the complaint processes available to customers both through the CCTS and the B.C. government.
3. Establish significant fines and penalties for companies that violate customer rights.
 - a. Currently, the highest penalty for an infraction under the Wireless Code is a compensation for the customer up to \$5,000.¹⁶ For companies worth billions, this small amount is not nearly sufficient to deter Big Telecom from predatory practices.
4. Establish a full private right of action, including class action lawsuits, for any violation of B.C.'s consumer protections.
 - a. Passing strong consumer protections isn't enough – any meaningful protections must have teeth. The best way to do this is to empower ordinary citizens to bring their own lawsuits against companies that violate their rights.
 - b. The establishment of a full private right of action will build on the existing federal protections, and provide an effective new avenue for B.C. residents to seek recourse when their rights are violated. It will also provide a critical adjunct to governmental enforcement, and will decrease the province's need for new enforcement resources.

Cost and value

¹⁶ Complaints process explained: CCTS:
<https://www.ctcs-cprst.ca/for-consumers/complaints/complaints-process-explained/>



It is no secret that people in Canada keep paying some of the highest prices in the world¹⁷ compared to their international counterparts. This is hurting our economy, worsening the affordability crisis, and deepening Canada's digital divide.

The exorbitant cost of data in Canada has users strictly monitoring and limiting their usage to avoid costly overage fees. While the average user in Canada is using a meagre 2 GB of data per month, in countries like Finland the average user is using an abundant 14 GB per month.¹⁸ Yet Canada's major telecoms are pocketing¹⁹ roughly \$40 per Gigabyte whereas companies in Finland are only pocketing \$1.51 per Gigabyte. That means our telecoms are making 23 times as much per Gigabyte as the telecoms in Finland, and 70 times as much²⁰ as the telecoms in India. These numbers speak for themselves.

The cost of mobile services is so high in Canada that it is not uncommon for visitors and residents from foreign countries to retain their mobile services from back home, as it is cheaper to pay for roaming fees than to get a mobile plan in Canada. The lack of mobile affordability has even sparked a black market²¹ for cell phone plans as people find themselves desperate to find a better deal.

Another important point to take into consideration is that for a lot of lower income people, mobile phones are the only means²² to connect to the Internet. That demands a far more generous data allowance to meet their needs than higher income individuals who also have access to significantly more data on a wireline home Internet connection.

We are aware that cell phone pricing and affordability cannot be sufficiently addressed by the provincial government alone. However, we ask that the B.C. government use its leverage and the results of this consultation to both do everything that is within its power, as well as strongly pressure the federal government take action on issues within federal jurisdiction to ensure that everyone in Canada has access to reliable and affordable mobile services.

¹⁷ Media and Internet Concentration in Canada, 1984-2017: Canadian Media Concentration Research Project:

<http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932017-01062019.pdf>

¹⁸ Canada's Wireless Providers Make Most Revenue Per GB In The World: Study: Huffington Post:

https://www.huffingtonpost.ca/2019/01/29/wireless-prices-canada-world_a_23656279/

¹⁹ Canada's Wireless Providers Make Most Revenue Per GB In The World: Study: Huffington Post:

https://www.huffingtonpost.ca/2019/01/29/wireless-prices-canada-world_a_23656279/

²⁰ Canada's Wireless Providers Make Most Revenue Per GB In The World: Study: Huffington Post:

https://www.huffingtonpost.ca/2019/01/29/wireless-prices-canada-world_a_23656279/

²¹ Consumers turn to booming black market for cheap cellphone deals: CBC:

<https://www.cbc.ca/news/business/black-market-cellphone-deals-1.3607245>

²² Home Internet Is Becoming a Luxury for the Wealthy: OneZero:

<https://onezero.medium.com/home-internet-is-becoming-a-luxury-for-the-wealthy-c7420b2b1548>



The timing for this attention on cell phone affordability is critical, as the CRTC is currently reviewing the state of the wireless market in Canada, with an upcoming hearing in January of 2020. This review has great potential to open up the door to new providers known as Mobile Virtual Network Operators (MVNOs) that could inject much needed competition to the market. MVNOs would lease unused spectrum from the national providers and resell services to customers at a lower price. This is a common business model in other countries like the U.S. and the U.K.

OpenMedia's community involvement

As part of the government's announcement of its plan to improve consumer protections for cell phone users, OpenMedia launched an online petition highlighting the recommendations we have made in this written submission and prompted our supporters to also take the government's official survey. Nearly 3,000 people in British Columbia endorsed our petition at <https://act.openmedia.org/bc-cell-plans> calling on the government for improved customer protections and transparency in the cell phone market. (See Appendix A for petition text and exact number of signers.) We will be delivering this petition to you in person next week during our stakeholder meeting.

Conclusion

Once again, we commend the B.C. government for its initiative to improve protections for cell phone users. We believe that this effort can go a long way in making sure that British Columbians are treated fairly by their cell phone providers and get the most value out of their contracts.

We appreciate the opportunity to have our voices heard directly by your representatives and we are looking forward to discussing the issue in more detail next week at our stakeholder meeting. Please let us know if you have any questions that you would like us to address during that meeting.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Marie Aspiazu". The signature is written in a cursive, flowing style.

Marie Aspiazu
Campaigner and Communications Specialist, OpenMedia



Appendix A: Original petition text at <https://act.openmedia.org/bc-cell-plans> and signatures number.

To the B.C. Government,

People in Canada pay some of the highest cell phone bills in the world and are often subject to predatory contracts and misleading advertising. We call on the B.C. government to improve cell phone customer protections by:

Increasing contract and billing transparency

- Ensure cell phone contracts and bills are written in plain language that can be easily understood by all users.
- Clearly inform the customer of all the fees they will incur when purchasing or making changes to a plan.
- Separate the cost of the plan from the cost of the device in cell phone bills.
- Eliminate cancellation fees for term contracts as long as the full cost of the device has been paid off.
- Limit contract length to a maximum of 2 years.

Improving advertising and sales standards

- Advertise the full cost of a plan, including all extra fees.
- Clearly outline any restrictions or limitations relating to a cell phone plan.
- Clearly outline the length of a special or promotional price and the full price the customer will have to pay once the promotional period ends.
- Define the use of advertising keywords, such as 'unlimited' or '5G' to prevent misleading advertising.

Creating strong enforcement mechanisms

- Create an accessible and reliable complaints mechanism for customers.
- Establish significant fines and penalties for companies that violate customer rights.
- Integrate consumer protections found in the CRTC's Wireless Code of Conduct into the B.C. Consumer Protection Act to give people in B.C. the ability to launch class action lawsuits when companies violate customer rights.

Finally, we recognize that issues of cell phone affordability cannot be sufficiently addressed by the provincial government alone. We urge the B.C. government to pressure the federal government to take action to ensure everyone has access to affordable and reliable wireless services.

2,972 Concerned Citizens