



ISSN 1180-5218

**Legislative Assembly  
of Ontario**

Second Session, 40<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**

Deuxième session, 40<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Monday 21 October 2013**

**Journal  
des débats  
(Hansard)**

**Lundi 21 octobre 2013**

**Standing Committee on  
General Government**

Wireless Services  
Agreements Act, 2013

**Comité permanent des  
affaires gouvernementales**

Loi de 2013 sur les conventions  
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111 Wellesley Street West, Queen's Park  
Toronto ON M7A 1A2  
Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
Salle 500, aile ouest, Édifice du Parlement  
111, rue Wellesley ouest, Queen's Park  
Toronto ON M7A 1A2  
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Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 21 October 2013

Lundi 21 octobre 2013

*The committee met at 1408 in committee room 2.*

**WIRELESS SERVICES  
AGREEMENTS ACT, 2013  
LOI DE 2013 SUR LES CONVENTIONS  
DE SERVICES SANS FIL**

Consideration of the following bill:

Bill 60, An Act to strengthen consumer protection with respect to consumer agreements relating to wireless services accessed from a cellular phone, smart phone or any other similar mobile device / Projet de loi 60, Loi visant à mieux protéger les consommateurs en ce qui concerne les conventions de consommation portant sur les services sans fil accessibles au moyen d'un téléphone cellulaire, d'un téléphone intelligent ou de tout autre appareil mobile semblable.

**The Chair (Mr. Grant Crack):** Good afternoon, everyone. Members of the Clerk's office, legislative research, members of the government, opposition, third party, ladies and gentlemen, welcome to the Standing Committee on General Government. We're here for our second round of public consultations and deputations concerning Bill 60, An Act to strengthen consumer protection.

As the committee had previously discussed, presenters will have six minutes to present, and then each party will have eight minutes to ask questions and/or make comments. I would like to point out, prior to us beginning, to the members of the three parties that the deadline for amendments is tomorrow at noon for this particular bill, and that is as is set out in the orders from the House.

**TELUS**

**The Chair (Mr. Grant Crack):** Having said that, I would like to welcome, from Telus, Mr. Ian Bacque, director of government relations. Welcome, sir. Maybe what you could do is just reintroduce yourself for Hansard purposes, as well as the person accompanying you.

**Ms. Andrea Wood:** My name is Andrea Wood, and I'm the vice-president of legal services. Hello, everyone.

**The Chair (Mr. Grant Crack):** Welcome, Ms. Wood.

**Mr. Ian Bacque:** Thank you very much, Mr. Chairman, and good afternoon, everyone. Thank you for the opportunity to provide our comments on Bill 60. I'll

begin with a brief introduction of Telus and then outline our views on the bill.

Telus is a leading national telecommunications company, with 13.2 million connections with our customers, including 7.7 million wireless subscribers. Led by president and CEO Darren Entwistle since 2000, Telus has invested over \$24 billion in the province of Ontario in technology and operations during that same time period. Our network covers 99% of Ontarians, and the 4G LTE network currently covers 85%.

There are now over 8,000 Telus team members who live, work and serve in communities across Ontario. We embrace a "give where we live" and "customers first" philosophy, and are committed to exceptional client service. Telus SharePlus rate plans maintain our industry leading position on pricing transparency by making rate plans clear and simple.

This brings us to our comments on Bill 60, which is at slide 7. The page numbers may be a little difficult to see because of the colour of the font, but it's the slide with the whet owl that says "Wireless Regulation", beginning at that point.

MCS has been accessible and engaged with us, and we want to thank them for that, but we do have some outstanding concerns. Telecommunications is within federal jurisdiction, and we have a concern about the potential for a patchwork of different regulations. The CRTC wireless code does cover areas addressed in Bill 60. Ideally, there would be a single federal code to provide all Canadians with equal protection regardless of where they live. However, we are also here to address specific concerns with the bill if it is ultimately passed by the Legislature.

Our three key concerns, on slide 8, are (1) amendments within the term of the contract; (2) all-in price advertising; and (3) the scope of the act in section 3.

Amendments: Section 13 prohibits unilateral amendments to the contract by the carrier. The issue is that this could cover pay-per-use and optional services. The CRTC specifically addressed its mind to this and has asserted that no changes can be made unilaterally by the carrier to pricing that forms the agreement with the customer, and that pricing for PPU, pay-per-use, and optional services falls outside of the agreement. Again, the CRTC has explicitly directed that carriers should be permitted to amend non-key terms with notice to the

customer. This flexibility encourages innovation in services, and customers are protected.

In addition, a customer can cancel the contract at any time after 90 days, and the carrier must unlock the device. On slide 11, there's a good quote from the CRTC decision that details its reasons for taking this approach, noting that the customer has not committed to these services for the entire contract term. Based on discussions with MCS and some comments from some of you during last week's hearings, we are indeed hopeful that some clarity will be brought to this issue because a provincial law addressing exactly the same matter could simply not coexist with the wireless code. I should mention also, on amendments, that the wireless code requires uniformity of charges for all customers for the same services.

In terms of all-in pricing, the issue is that section 8 requires an all-in price to be the most prominent in an ad, but the challenge is that this is simply not how consumers think in terms of wireless rate plans; they think in terms of the monthly price. No other sector is required to advertise what is really a total contract cost, and this section will actually create confusion for consumers as opposed to reduce it. Remember that the consumer now has the right, under the wireless code, to cancel the contract at any time, making a total contract cost actually even less relevant to the customer. I would refer counsel to CRTC paragraph 326 of the decision that does say, in terms of the coexistence issue on this point as well, that no more rules regarding advertising would be brought in. Our marketing plans are national in scope, and this measure would drive costs for the business, and our request today is for this section to be removed.

The final point, application of the act: The issue with section 3 on application of the act is that it affects customers living in other provinces if the person engaging in the transaction with the customer is located in Ontario. If that customer is in a province with its own consumer protection legislation, there would be an obvious question about what rules would apply. Last week, I believe, in the transcript a committee member asked whether this could be an incentive for carriers to relocate call centre representatives, and it could certainly have that unfortunate effect. Hopefully, ministries can work on this issue and harmonize with the wireless code.

In closing, the second-to-last slide is not about our submissions on Bill 60, but it's to advise you of a new program launched by Telus called Telus WISE. It helps to keep families and children safe online and provides advice on a wide range of topics, including cyberbullying and keeping your digital footprint clean. More information can be found at [telus.com/wisefinfo](http://telus.com/wisefinfo).

We want to thank you again for this important opportunity, and we look forward to any questions that you may have.

**The Chair (Mr. Grant Crack):** Thank you very much, Mr. Bacque and Ms. Wood, for those words. We will start with the opposition. Mr. McDonell.

**Mr. Jim McDonell:** Thanks for coming out today. You talked a little bit about the closeness of the code and

the bill. Maybe you could just go over what issues or problems this would lead if you're forced to deal with two codes that are slightly different.

**Ms. Andrea Wood:** Well, the advertising issue is one that we have expressly addressed. Our advertising is national, and we are not required to disclose full-term pricing in our ads. If Ontario does what it's intending to do or appears to be intending to do, we could be required to incur costs by creating campaigns that are no more helpful to Ontario consumers but that increase our costs.

The bigger issue from our perspective relates to unilateral amendments, and that is an area where the conflict between Ontario's Bill 60 and the code could really be difficult for us to accommodate within our business practices.

**Mr. Jim McDonell:** So you're suggesting that the monthly cost is really what consumers are looking for and what the industry is already providing? So it would be an easy fix?

**Ms. Andrea Wood:** That's right, sir.

**Mr. Jim McDonell:** I know that there are some other issues that are in conflict. Sometimes you'll see differences like that, and especially a national code, will likely lead to court challenges or issues. Any major ones that you can think of in the bill so far? Basically, almost all of the things that are covered in this bill are covered to a greater extent in the code.

**Ms. Andrea Wood:** Well, again, the unilateral amendment provisions are very problematic from the carrier's perspective and conflict with the express finding of the CRTC on amendments of rates relating to pay-per-use and optional services.

**Mr. Ian Bacque:** If I could also add commentary and follow up on Andrea's comments regarding the regulation-making power for notifications, the CRTC, again, directed its mind to this issue and dealt with the issue by imposing usage caps—overage caps. I think you heard from Rogers a multi-million dollar figure about the costs that they have incurred to come into compliance. We have also assessed a very large cap ex requirement that we would have to make in order to comply with a companion notification provision. That would be duplicative, in our submission to you, and it could not coexist with the way the CRTC has dealt with it. It would require deployment of capital away from network improvements to compliance.

**Mr. Jim McDonell:** If I understand what you're talking about there, sometimes the thought is that for companies like Telus, Rogers or Bell, a large cost is not a big deal. But unfortunately, what we're trying to do is also encourage small providers, and they would have the same huge costs, which sometimes more competition will not be able to handle up front. Any comments to that? Really, what I think the bill is trying to get is competition, and having issues like that where—I think there's apps that could be promoted by the different manufacturers, which already exist, that measure the amount of traffic you have and could be made somewhat obvious, I guess, by the carriers—so just what's there.

**Mr. Ian Bacque:** Actually, if I could just clarify, we actually have an outstanding My Account app. My wife and my son are both Telus customers independent of my service, and the app allows you, in real time, to see your usage. If you have a smart phone, it's with a tap of your thumb that you see where you are. Now, our new plans are all unlimited Canadian calling and unlimited Canadian texting, but it allows you to keep an eye, for example, on your data usage in real time.

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What I was addressing specifically is the possibility that had been discussed in the past that the ministry would require advance notification in a proactive way. We're hoping that that app would bring us into compliance, if a regulation were brought in that required that advance notification. But if it was what's called a "push notification," so looking and seeing would not comply, and we actually have to communicate directly at that 80% or 90% threshold, the capital requirement is enormous.

**Mr. Jim McDonell:** Another one: When we talk about slight changes in the code, one of the benefits we have here in Ontario is, for the most part, certain regions have a bilingual workforce, and we would like to think that we can be a great location for a call centre. But I see your issues: people calling across provinces—if they're from a different province, what code do you have to follow?—and the confusion around that. It would likely be a big disincentive to set these centres up here.

**Ms. Andrea Wood:** That's exactly right, sir.

**Mr. Jim McDonell:** Any other priorities that you think are problematic with this legislation?

**Ms. Andrea Wood:** We've identified the three that we think are the big issues.

**Mr. Jim McDonell:** A lot of the services say there are slight differences with the national code, and we think that's problematic. So we'd like to, through our committee amendments, make some of those changes, to make them in line, because I've seen some cases—the code, in most cases, is actually more stringent, or is capable of doing things just because it's a national code and it's a federal responsibility, which gives them the ability to legislate where we don't, really, in Ontario.

**Ms. Andrea Wood:** And expertise as well on pricing and wireless. We appreciate that, sir. Thank you.

**Mr. Jim McDonell:** Thank you.

**The Chair (Mr. Grant Crack):** Thank you very much, Mr. McDonell. We'll move to the third party. Mr. Singh?

**Mr. Jagmeet Singh:** Thank you. Good afternoon. It's a pleasure to see you again.

If I can just touch briefly on the three points that you began with, you indicated that there are three areas of concerns: amendments within the term of the contract, all-in pricing and the scope of the act. Let's start with the scope-of-the-act issues. One of the issues that was mentioned I think just at the tail end here by my colleague Mr. McDonell was about extraterritorial issues if you're calling from a different jurisdiction into this jurisdiction

and how it would work. Just a simple workaround, and tell me if this would work: if there was clarity that the consumer's place of residence would determine the applicable law. Would that help, would that assist, just clarifying that the consumer's own address, place of residence, where they use their phone, where their billing address is, language of that sort, would be a workaround that you would see that would address that inconsistency?

**Ms. Andrea Wood:** Yes, sir. The fix that we thought might be a constructive one is changing the words "person engaging in the transaction with the consumer is located" to "resides." So a simple fix, and one based on the principle that you articulated.

**Mr. Jagmeet Singh:** Okay. With the all-in pricing, that's something that—correct me if I'm wrong, but Quebec has different consumer protection laws that aren't consistent with the CRTC, so you have, I guess, a test case of having provincial legislation and a federal code coexisting. In Quebec, in terms of the pricing, is there a similar situation where there is a requirement to price that's different from your national campaign?

**Ms. Andrea Wood:** Relating to amendments of pricing?

**Mr. Jagmeet Singh:** No, just the pricing—the issue of—

**Ms. Andrea Wood:** The pricing in ads?

**Mr. Jagmeet Singh:** Yes, pricing in ads.

**Ms. Andrea Wood:** No. To my knowledge, there is no requirement in the Quebec legislation that we disclose the full cost of the contract during the entire term.

**Mr. Jagmeet Singh:** Okay. I guess the only complaint or the only real barrier—well, there are two parts to it. One is, your issue is that there will be an additional cost to that. The second is that it would create a lack of clarity in terms of what the consumer is getting into. I can see the cost issue. There would be an additional, separate campaign that you would have to work out for Ontario that's separate from the national campaign. But in terms of the clarity, what is your position on how that would be less clear, or am I misunderstanding your position? It's not that it's less clear—

**Mr. Ian Bacque:** I think it would be less clear because consumers are really just not used to looking at wireless pricing from a total contract cost perspective. The analogy I might use is that the ministry itself has placed an all-in pricing requirement in the retail automobile business—only on dealers, not on manufacturers, which has created a little bit of confusion of its own. But it requires that things that used to be called hidden fees, things that you didn't see—which we don't engage in ourselves at all—it requires freight and things like that to be included in the price.

You can imagine if you saw an ad that said, "Lease this nice motor vehicle for \$1,000 a month," and you suddenly made that industry say, "Lease this motor vehicle for \$48,000." It would be sort of eye-popping, and it would create confusion, so a monthly all-in price that's clear and simple, like we're already engaged in, is

obviously something that we would come into immediate compliance with, because we're already there. A total contract cost or a life-of-contract cost is somewhat confusing, and it's unnecessary, as I said, because you can get out of it anyway, at any time.

**Mr. Jagmeet Singh:** This point was brought up, and I just want to go into some more depth on it. You mentioned the issue surrounding notification of minutes, maybe overage or data overage. There's a certain cost associated with either a push system, where it's sent to the consumer's phone, or maybe a more or less active form of notification. In my understanding, the infrastructure already exists—if I'm wrong, please clarify—to provide the notification. What would be the cost of creating notifications where the consumer is aware that they're going over and having to send some sort of active expression that they understand that they're going over and that that would entail further costs? What would be the costs associated with that if that's something we're contemplating, and what would be an alternative workaround to provide that notification that wouldn't be as costly, in your mind?

**Mr. Ian Bacque:** The notification on data does exist, but the notification on voice—in previous iterations of the bill, that would have imposed the requirement on all contracts in the province of Ontario, not a prospective bill. Our price plans now all include unlimited calling and texting within Canada, so it wouldn't require a change for those customers, because we wouldn't have to be pushing notification to them. But in past versions of the bill, it was comprehensive for voice, text and data for all existing contracts. That was the real challenge when the large capital investment number was determined. I'm not in a position to answer the dollar figure amount for a number of reasons. Sorry.

**Mr. Jagmeet Singh:** Okay. The first issue that you raised with the amendments—that's something that I understand is currently in place in Quebec, where there has to be an agreement by the consumer before any contract change can be made. Am I correct, first of all, with that?

**Ms. Andrea Wood:** I'm not certain that that applies with respect to the services that we're describing, optional services and pay-per-use services.

**Mr. Jagmeet Singh:** My understanding is that it was. The analogy that was brought up by a previous deputation, unless I'm mistaken, was that while in Ontario, if you are travelling abroad and you were to be transitioned to a data plan, automatically an international data plan, you would simply be notified that you had been automatically put into this international data plan. But the issue is then, if this bill was passed, you couldn't be automatically transitioned to a plan. Even if was cheaper, you would still have to ask the consumer for permission, and they would have to click on a button saying, "Yes, I agree," and then it would work. That's what currently exists in Quebec, I understand.

**Ms. Andrea Wood:** Yes. I agree with you on that. Sorry, I misunderstood your question.

**Mr. Jagmeet Singh:** Has there been any difficulty—using Quebec as a test case—with that system? Has that not worked? Have you received any complaints in Quebec? Has that been a success or a failure or something in between in Quebec?

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**Mr. Ian Bacque:** I know that one of the reasons the CRTC exempted pay-per-use and optional services from the unilateral amendment provision was because, in Quebec, carriers were having to say, "We would like to give you something of benefit to you that does not increase your burden, but we're not allowed to by Quebec law." I think you heard that, as you mentioned, from the other delegation.

**Mr. Jagmeet Singh:** Right.

**Mr. Ian Bacque:** In terms of this bill, we've reviewed it in detail and we're actually fairly satisfied that section 13, subsection (13), addresses that for amendments to the contract, which we're, as I mentioned, hoping is interpreted—and this does need to be clarified in our submission—but only goes to the basic rate plan. So if we wanted to add something to your existing rate plan, not PPU and not optional services, that was of benefit to you, we believe under this bill we are allowed to do that, without—

**Mr. Jagmeet Singh:** Okay.

**Mr. Ian Bacque:** Most customers won't object strenuously to getting something good, right?

**Mr. Jagmeet Singh:** Right, right.

**The Chair (Mr. Grant Crack):** Okay. Thank you very much, Mr. Singh.

**Mr. Jagmeet Singh:** Thanks.

**The Chair (Mr. Grant Crack):** We'll move to the government side.

**Mr. Vic Dhillon:** Thank you very much for your presentation. How well do you feel that your customers understand the monthly costs of their cellphone use, especially when considering usage limits and cancellation fees and other fees?

**Mr. Ian Bacque:** I think, now, very well. The move some time ago to our "clear and simple" pricing model and our new SharePlus plans—it's very easy to understand: unlimited calling in Canada, unlimited texting in Canada. Really, the big decision that you make as a customer when you sign up with Telus is from a simple chart. How much data will you consume? Here's a corresponding cost. So I think now the agreements are very fair and transparent and understandable.

**Mr. Vic Dhillon:** So why would all-in pricing be—you stated that it would only confuse your customers. If they already understand, why would that be confusing?

**Mr. Ian Bacque:** An all-in monthly price would not confuse them, just so—I'm sorry if I wasn't clear on that. An all-in monthly price, so \$45 for unlimited calling, unlimited texting and a certain amount of data, a certain number of megabytes of data—that is actually advertising that we currently do and that wouldn't confuse the marketplace at all.

What would be confusing is that, in Bill 60, it requires carriers to multiply the monthly cost in the new world by

24, and so you would have a \$1,200 advertised price, possibly, plus the device. I think a lot of people would be saying, “This has gotten so expensive; what’s going on?” They might even think it’s that much per month, so I think that would cause a lot of confusion in the marketplace. When people are used to working on their monthly budget and they see an advertised price and they know that they can afford that advertised price, multiplying it by 24—because that’s the total contract cost required by section 8 of Bill 60—would create this almost shockingly large number.

**Mr. Vic Dhillon:** Now, the CRTC has stated that they’re open to working with the model alongside the provincial legislation and applying them both. So why would you object to that? Why do you think that we don’t need provincial legislation in different jurisdictions along with the CRTC code?

**Mr. Ian Bacque:** With respect to the advertising provision in particular or just in general?

**Mr. Vic Dhillon:** In general.

**Mr. Ian Bacque:** Well, in general, the CRTC has exerted its influence and has occupied the space in so many key areas of the telecommunications business model and our relationship with our customers that, to be honest, there’s very little room for provincial governments to occupy space that does not conflict with the federal provisions. If they occupy the same space, even if they say slightly different things, the CRTC has actually said that those cannot coexist. It has to be something that they have not exerted any jurisdiction over whatsoever.

**The Chair (Mr. Grant Crack):** Ms. Damerla?

**Ms. Dipika Damerla:** Ian and Andrea, thank you so much for coming. I just had a quick question. I was looking at your example here, which is on the all-in pricing. The difference that I see in the way you are presenting it is that \$45 isn’t the all-in price, because it’s actually \$47 a month. That would be the all-in price if you divided the \$45 down payment or whatever you want to call it for the phone.

I’m just wondering, would you be open to that sort of thing, where on a monthly basis you also build in the price that somebody is paying? Because that’s what we are really trying to capture, is the fact that it really isn’t \$45 a month. It’s more than that, because there is the cost for the equipment.

I’m in the market for a cellphone right now, and I can tell you it’s very, very confusing for me. I’m looking for a Samsung, for instance; the same phone is a hundred bucks, but the plan might be 30 bucks a month. At another place, the phone is zero dollars, but you get more data. It is confusing the way it is now, and to have something that can allow me to compare apples to apples would make it easier. Your thoughts on that?

**Mr. Ian Bacque:** Well, we actually make it very clear in the customer service agreement and in the online app that I was describing. With the touch of a button, every month you can see your device balance, so you know in real time the outstanding subsidy on that device, and it’s disclosed very clearly in the contract when you sign up—

the price that you’re paying for the device and the remaining balance.

What we’re really selling is access to our network, and we are fairly, transparently and in an all-in-price fashion currently advertising the cost of accessing that network for our services.

**Ms. Dipika Damerla:** But my question is, do you see the difference, that the all-in price on a monthly basis is actually \$47 a month, not \$45? That’s the rub of the issue.

**Ms. Andrea Wood:** I know you’re focused on the example that we have given. The advertising that is described in the example is actually the amount that you would be spending. You would be paying \$49 up front for your handset and then subsequently paying \$45 a month. We think that’s clear, because it gives you a clear picture of what’s expected from you when you come to us to become a Telus customer and then what you need to plan for in your monthly budget. The \$45 is actually the amount that you will be paying from your monthly budget going forward, once you’ve paid the \$49 for the handset.

**Ms. Dipika Damerla:** I guess we’re saying the same thing. I’m just saying that we are trying to capture that cost all together. That’s the whole idea of the all-in pricing, so while I see your point about having the different advertising campaign, I was just trying to make the point that the reason behind—whether you do it annualized or monthly, the idea was to capture the entire cost and not break it into “This is the cost for hardware, and this is the ongoing cost for airtime.”

**Ms. Andrea Wood:** I guess you have to ask yourself what really helps consumers with their budgeting and their financial planning. Perhaps this is an area where our view is that understanding what is required of them on day 1 when they pay for the handset and then what is required of them monthly thereafter is the clearest and easiest for them to support their financial planning.

**Ms. Dipika Damerla:** All right. How much time do I have?

**The Chair (Mr. Grant Crack):** Ten seconds.

**Ms. Dipika Damerla:** Ten seconds? Well, thank you so much.

**The Chair (Mr. Grant Crack):** Mr. Bacque and Ms. Wood, thank you very much for coming forward. It’s been very informative. I wish you all the best. Thank you.

**Mr. Ian Bacque:** Thank you.

**Ms. Andrea Wood:** Thank you very much.

DIVERSITYCANADA FOUNDATION  
NATIONAL PENSIONERS AND SENIOR  
CITIZENS FEDERATION

**The Chair (Mr. Grant Crack):** DiversityCanada Foundation is our next presenter. I’d like to welcome Celia Sankar. We’ll let you take the floor and perhaps introduce those accompanying you. We welcome all three of you.

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**Ms. Celia Sankar:** Good afternoon. I am Celia Sankar, director of the DiversityCanada Foundation, and I thank the committee for the opportunity to comment on Bill 60. With me, to my left, is Mr. Ray Kindiak, the legal counsel for DiversityCanada. With me as well is Mr. John Gatens, first vice-president of the National Pensioners and Senior Citizens Federation. Ray will commence our presentation.

**Mr. Ray Kindiak:** Thank you, Celia. Established in 2004, DiversityCanada is a not-for-profit organization based in Elliot Lake that works to protect the rights and promote the interests of the disadvantaged, the vulnerable and the marginalized.

We are here today to ask you to protect the most vulnerable sector of the wireless market—that is, prepaid wireless consumers—and you can do this by stating unequivocally that Ontario’s consumer protection legislation, which bans expiry dates on cash balances, also applies to the cash balances of prepaid wireless consumers.

This past June, the CRTC issued its wireless code, which included a section that endorsed expiry dates on prepaid wireless accounts. DiversityCanada has challenged the CRTC’s decision. On its own behalf and on behalf of the pensioners’ federation, DiversityCanada has asked that the CRTC review and rescind this section of the code. We feel confident that the CRTC will reverse that section of its decision, which we argued was incorrect and unreasonable, results in unjust enrichment of the wireless services providers, and is contrary to the Telecommunications Act.

DiversityCanada applauds the move by the Ontario Legislature to ensure that consumers in this province have adequate protection with respect to their agreements for wireless services.

Bill 60, as it stands, however, does not make any specific mention of prepaid wireless service agreements, nor does the Consumer Protection Act. In the absence of such a statement, consumers are forced to resort to the courts to assert the rights that they are entitled to.

**Ms. Celia Sankar:** In my personal capacity as a consumer, I have launched a class action lawsuit against Bell Mobility, which was certified by the Ontario Superior Court earlier this month. Any statements I make today are my own and are not intended to bind the class, by the way.

In our claim, prepaid wireless consumers assert that the cash balances in our accounts are protected under the gift card regulations of the Ontario Consumer Protection Act. However, taking legal action is time-consuming and costly, and this also puts an unnecessary burden on the judicial system.

**Mr. Ray Kindiak:** Going forward, this can be avoided by an unequivocal statement in Bill 60 that underscores that the gift card regulations apply to wireless services agreements.

Ontario consumers were thankful to their elected representatives when the law was passed to protect the cash

balances of prepaid purchase cards. There is simply no justification for prepaid, pay-per-use agreements for wireless services being treated differently to prepaid purchase agreements in all other sectors in Ontario.

Thank you. Now I pass you over to John.

**Mr. John Gatens:** Thank you very much. I thank all of you for allowing us to sit in and have a voice at this hearing. I do represent the National Pensioners and Senior Citizens Federation, and I must say, first of all, that we are absolutely in agreement with my colleagues to the left.

The National Pensioners and Senior Citizens Federation is pleased to submit these comments to the hearing on Bill 60, the Wireless Services Agreements Act, 2013. Established in 1945 and incorporated in 1954, the National Pensioners and Senior Citizens Federation is a democratic, non-partisan, non-sectarian organization composed of 350 seniors’ chapters and clubs across Canada, with a collective membership of more than one million Canadian seniors and retired workers who have an interest in the outcome of these proceedings.

Prepaid wireless services are used by a significant number of pensioners and senior citizens because it appears to be the least expensive and most convenient way for them to acquire mobile services. For pensioners on fixed incomes, every dollar counts. This is why they choose prepaid, pay-per-use offerings, which, according to the way they are promoted, appear to be an economical manner to use mobile services.

Under this business model, the cellphone companies promise that consumers can place funds into their accounts and decide what to spend it on. It is not right that pensioners or any other consumers are told after a period of time that their cash has expired and that they must forfeit their unused funds to the wireless service providers.

This practice causes enormous economic harm to pensioners. First, the pensioners are made to pay for more services than they actually need. By stating that a cash balance will expire if it is not topped up, the wireless service providers force consumers to continually purchase more top-ups, even if they already have enough funds in their account for any services they may use or wish to use.

After only a year after acquiring a prepaid, pay-per-use cellphone, a pensioner may have as much as \$100 in cash in his or her prepaid wireless account. Obviously, after a few years, account balances can be quite substantial. These funds could have been put to much better use for goods and services that pensioners actually need, such as health care or home heating, for example.

Second, not only do pensioners unnecessarily have to spend these funds; under the practice of prepaid wireless balance expiry, they unnecessarily lose these funds. Even if a pensioner has faithfully topped up on every expiry date in the past, if any circumstance causes him or her to miss just one top-up, the wireless provider will seize all the funds in that account. In this way, pensioners have lost hundreds of dollars individually and millions of dollars collectively. This just isn’t right.

National Pensioners, therefore, urges members of this Legislative Assembly to enact legislation that will protect pensioners and senior citizens from this unacceptable situation whereby their cash balances are confiscated by wireless services providers on purported expiry dates.

**The Chair (Mr. Grant Crack):** Thank you very much. We'll go to Mr. Singh, from the third party.

**Mr. Jagmeet Singh:** First and foremost, I want to thank you all for taking the time to be here and for raising this issue.

I have a couple of questions. One is that I think this is a significant issue. I didn't turn my mind to it, so I thank you for raising it. I'm curious—and not in a bad way, just out of curiosity—why this has been identified as an issue for pensioners specifically, and why it has come to light through that avenue. I think this is just an issue that would affect, really, all consumers, so it's going to be an issue. What about the prepaid type of product triggered pensioners or folks of that background to pay attention to it?

**Mr. John Gatens:** From my own point of view, once one becomes a pensioner and you're on a fixed income, let me tell you, very, very much every penny counts.

I guess what's happening today is that the access to regular telephones, especially when you go out of the main big areas—cities, towns etc.—becomes more difficult. We've found that seniors are forced to adopt the modern type of contact, and that's cellphones.

They're expensive enough, by the way, when you're on a fixed income. You might think it's a very reasonable expense, but quite frankly, on a fixed income it's quite high and quite costly.

Anything that is taken away from that or reduced in any way whatsoever affects seniors, and it definitely affects them. We speak to seniors from one end of the country to the other. We just came out of our convention, where seniors came from each and every province. They let us know, directly and indirectly, how they feel about these kinds of things.

**Mr. Jagmeet Singh:** Okay. And my two questions that I want to make sure that I—one is just back on the same point: Why do you find pensioners or seniors are using the prepaid phone? The second question, just so it's out there, so you can answer whenever you're ready: Do you have a proposal for what type of amendment you'd like to see in the act, just something that would copy the gift card—if you have an exact language for it, you can tell it to us now and also submit it. That way, we can help get it in.

Go ahead with both questions—

**Mr. John Gatens:** I believe that my colleagues certainly presented an alternative to that, using the consumers' gift card issue as an example as to where it should never run out. We should never run out of the value of the goods or services that are promised on that card. Quite frankly, that would satisfy us; there's no question about it. In regard—

**Mr. Jagmeet Singh:** Why do seniors use prepaid cards?

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**Mr. John Gatens:** Because I do believe that, if it isn't in practice, it's seen as the easier, the better way or the more economical way. It certainly appears that way, until the end of the day, when they find out, whether they've forgotten or not—and they do tend to forget—and they run out of time or opportunity and, lo and behold, they've lost that money—actually, the money they've put out for that.

**Mr. Jagmeet Singh:** Ms. Sankar, I think you were about to add.

**Ms. Celia Sankar:** Yes. John did quite well in encapsulating that idea of why seniors choose the prepaid cards, prepaid wireless services: because it's the least expensive. Whereas a monthly plan may be something like \$45 per month, prepaid top-up would be—there are some as low as \$10 per month. For someone on a very limited budget, that's the first choice. Seniors, of course, are on fixed incomes.

In terms of the specific addition to Bill 60, we can provide exact wording. We'd be happy to supply that. But the idea is simply to include a statement which says that prepaid wireless services or wireless services—the gift card regulations apply to wireless services.

Right now, wireless services providers try to act as though they are exempted from that, and they're conducting themselves in a way as if they should be exempt from that. We would like to have a clear and definitive statement in Bill 60 that we already assert as consumers that we have that protection—that's what the class action lawsuit says. We would like, going forward, that Bill 60 would make that clear statement that all suppliers in Ontario, when they offer future performance agreements or gift cards, let's say—a popular term for them—are not allowed to charge fees for these cards and they're only allowed to deduct funds when the consumers actually make purchases.

**Mr. Jagmeet Singh:** And so, just to encapsulate some of the concerns, one is that if you don't top up at the right time or right intervals, you lose the amount of whatever money that you had in the prepaid service. The second is that if, for whatever reason, it expires or if you don't do the top-up, the unjust enrichment is that the money flows back to the wireless provider and the individual, the consumer, doesn't get it. Am I covering the main issues?

**Ms. Celia Sankar:** Yes. We've handed out some exhibits which show the actual prepaid cards, the top-up cards, and included in that, in the handouts, there are also screen shots from phones. These are messages that are sent to consumers as to what their account balance would be at any particular time. There's one as well from Virgin Mobile that says, in the second bank of comments, "Your cash balance of \$58.60 will expire."

This is clear. The communication from the wireless providers to the consumers is clear that we're dealing with cash balances. The gift card regulations protect the cash balances. Your cash cannot expire, and the cell-phone providers have been trying to evade that legislation.

**Mr. Jagmeet Singh:** Okay. Just to give you a bit of a time frame—sorry to put this on you—our amendments have to be in by tomorrow. So if you can give us—

**Ms. Celia Sankar:** We will comply with that.

**Mr. Jagmeet Singh:** Yes. If you could give us the language that you'd like by today, so that we can ensure that we get it to the legislative—

**Ms. Celia Sankar:** Absolutely, we will be happy to provide that.

**Mr. Jagmeet Singh:** I'd be interested in looking at that, so if you could send that to us as soon as possible.

**Ms. Celia Sankar:** Yes.

**Mr. Jagmeet Singh:** Any other questions? Thank you.

**The Chair (Mr. Grant Crack):** Thank you, Mr.—

**Mr. Jagmeet Singh:** Is there anything else you'd like to add? How much time do we have left?

**The Chair (Mr. Grant Crack):** You've got 44 seconds.

**Mr. Jagmeet Singh:** Okay. Well, just thank you so much for being here.

*Interjections.*

**The Chair (Mr. Grant Crack):** Thank you, Mr. Singh. We'll move to Mr. Dhillon from the government side.

**Mr. Vic Dhillon:** Thank you for appearing before the committee today. Bill 60, with its strong cancellation remedies and a clear message of the consumers' rights to get timely refunds—how do you feel that will help consumers?

**Ms. Celia Sankar:** Our major focus is on prepaid wireless consumers and we believe that Bill 60 is an excellent piece of legislation. However, the absence of specific mention of our primary concern, which is the prepaid account balance expiry, the absence of specific language on that, forces consumers into the courts to assert the rights they already have. This is costly for consumers, and it's costly for taxpayers because it's a burden on the justice system.

It's absolutely necessary for the Legislature to take advantage of this opportunity to ensure that we don't have to go through that costly, time-consuming process to assert our rights, that they are clearly stated in Bill 60.

**Mr. Vic Dhillon:** Does your organization believe that the consumer is better protected by having two levels of legislation, one at the national and one at the provincial level?

**Ms. Celia Sankar:** During the wireless court proceeding before the CRTC, Quebec stood up and asserted its jurisdiction over consumer protection matters. There were some court cases such as MuchMusic—in the handout I do cite those court cases involving MuchMusic and Whistler Cable Television and Rogers cable TV, in which the courts stated quite clearly that where there are matters that are not specific to telecom regulations or broadcast regulations but where they deal with pure contract matters—private law—then the CRTC does not have jurisdiction. This would appear to substantiate the position of Quebec that the CRTC may have its wireless

code, but the provinces have jurisdiction over consumer contract matters.

It would be a great tragedy if any province were to be scared off by the statement by the CRTC that its wireless code prevails if there's a conflict between the two. For that reason, the consumers in Ontario look forward to this Legislative Assembly robustly protecting consumers through Bill 60.

**Mr. Vic Dhillon:** Thank you. I believe my colleague has a question.

**Mrs. Donna H. Cansfield:** Thank you for your presentation. In particular, I guess maybe because I'm a senior, you hit home. I have a very large constituency of seniors and consistently all of the questions are around the issues of income and how they are able to use their income to their best advantage. To think that they'd have to prepay and then if they don't use it, they lose it, is actually a little unconscionable to me.

What I would like to ask you to do—if you haven't considered it already, how would you address this through an amendment to this bill?

**Ms. Celia Sankar:** Yes, we'd be quite happy to supply exact wording and we'll do that immediately after. Before the end of the day, we will send to the Clerk our—

**Mrs. Donna H. Cansfield:** Thank you very much. I would be very interested to be able to see that type of an amendment. Part of our responsibility is to protect consumers and to be able to provide best practices in that process. Certainly, when you look at the amount of money—because you're right, they're not going to necessarily—I remember when I gave my daughter a phone, it was to use it in an emergency, not expect she's going to use it every day. It was, "When you have an emergency, honey, give me a call." Yet to think that I had to prepay for that and if she didn't call, I lost that money—there's something fundamentally wrong with that. Even in a capitalist society, there's something fundamentally wrong with that.

So I look forward to your amendment.

**Ms. Celia Sankar:** Yes, we will.

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**Mr. Ray Kindiak:** If I may add, as with all legislation, sometimes there's some lack of clarity, and given, of course, the burgeoning of the entire wireless sector, this makes it more relevant to have clarity related to this current bill, as it would basically apply to the consumer protection legislation that's existing already. So the legislation is there; we just have to tie it together.

**Mrs. Donna H. Cansfield:** If you're going to add some clarity, even just figuring out the bill would help, because it is complicated. Then, of course, when you phone to get someone, it's "Touch 1," "Touch 2," and when you touch 2, it's "Touch 1" again, and you go through this litany. It would be nice occasionally to talk to a human being as opposed to trying to deal with—and it's very, very frustrating for seniors; it's just a process they're not used to going through. Then, of course, the

assumption is that everybody has a computer, and it's a really poor assumption to make.

**The Chair (Mr. Grant Crack):** Thank you very much. We will move to Mr. McDonell, from the opposition.

**Mr. Jim McDonell:** Thank you for coming. Just to understand that prepaid plan today, the top-ups are only required if there's not enough money on it for the next month? How does that—I see expiry dates here, and you have a substantial amount of money on the card.

**Ms. Celia Sankar:** If I understood, your question is how does the top-up work if you have a \$50 card?

**Mr. Jim McDonell:** Yes.

**Ms. Celia Sankar:** Different providers have different amounts. Generally, the lowest amount—some say it's \$10 and others have a \$15 amount. You purchase the card and that amount, they say, you can use within a 30-day period. If you do not use all of the funds you have deposited into your account to make calls, send text messages, buy games, apps etc.—if you don't use up all of that in the 30 days—then one of two things can happen. On the 30th or 31st day, they will claim all of the amount as their own. They confiscate your funds.

However, if you top up before—let's say you top up on the afternoon of the 30th day—then whatever was remaining there will be carried over into the next 30-day period that you would have created by topping up a subsequent time.

**Mr. Jim McDonell:** Is that only when there's not enough money to pay for the next month's service?

**Ms. Celia Sankar:** It's always up to the consumer, so if you—

**Mr. Jim McDonell:** An example: If it's a \$50 card and you're using it and you're down to \$45 but the next month is worth \$10, then would it continue on until that card is out or until you don't have enough money to pay for the service amount?

**Ms. Celia Sankar:** How it works is that it's always up to the consumer. If you buy a 30-day card, a card that has that purported expiry date on the 30th day, then you either use all of your funds—if you use all of it by day 20, then you have nothing more to use for the other 10 days. If, on the 30th day, you have funds remaining, you top up and you can continue to use those funds plus the new funds or, if you don't top up, the company is going to confiscate whatever you have remaining.

**Mr. Jim McDonell:** I haven't your amendment here, but would it be reasonable to assume—because the company has to keep your account open and your number—that there's a time frame that they would be required to keep that account there. I'm assuming that if you have a phone, you're going to try to use it every month. You might miss the odd month but—

**Ms. Celia Sankar:** Yes, that's a very good and interesting question. There are different models used in the market. For instance, Mobilicity has a system whereby if you don't top up and you have a zero balance for 90 days, then you lose your phone number but you don't lose your account. If you have a zero balance, you'd lose

that. As well, if you had funds on your account—let's say you had \$10 remaining—but you did not use your phone, you didn't top up, you didn't appear at all, they won't confiscate your funds. Your funds will always remain there, but you'd lose your phone number.

The incumbents, the big three, operate in a different way. They confiscate your funds and they re-harvest the phone number as well. But Mobilicity, by its business model, has shown that it is not necessary to confiscate the funds in a consumer's account in order to re-harvest the phone numbers.

**Mr. Jim McDonell:** I'm just wondering if there's a solution here, because I realize there's a second phone, or a phone a senior may have. They may not want to use the phone because it is expensive. It is an extra charge. There needs to be some system where you could keep the phone, use it in emergency, but to be fair to the supplier, if you're going to keep the account, keep the phone number available for the few times they use it. There's probably a monthly fee that's required to maintain that, whatever that may be.

**Ms. Celia Sankar:** Well, again, these are very important points. There are several issues here. Maintaining the phone number, or keeping the phone number available for use, is completely separate to the issue of maintaining the cash balance in an account.

The way the system is operated here in Canada by Mobilicity and also Public Mobile: You can maintain whatever cash is in the balance, and you can re-harvest the phone numbers. The two do not have to be linked. Outside of Canada, in the European Union, this is how the system operates as well.

People who are not using their phones would lose the phone number, but whatever cash balance remains in their account remains there forever. When you want to use those funds again, you go back to the wireless provider and you get a new phone number, and you can continue to use the cash balance. So preventing or prohibiting the expiry dates on prepaid cash balances will not affect the availability of phone numbers for use in the system.

**Mr. Jim McDonell:** And I guess where I'm coming in from is, I appreciate that money should not run out of an account, but if you have a plan where there's a fee that belongs to the system, maybe \$5 or \$10 a month, that would continually happen and eventually run your card out.

**Ms. Celia Sankar:** Okay. Again, I'm glad we're getting into this, because there are two points here. First, if we go back into the Bill 60—

**Mr. Jim McDonell:** I'm just kind of wondering two things. Is that an acceptable solution, to have that in place? I mean, no question, the money should continue on. But if you're going to have the phone and belong to the system, there's usually a charge, minimal, at that, but it's something that would use it up. And when that money is used up, then there should be an allowance for a time, not forever, but to keep your number as well, because people do like to keep their numbers.

**Ms. Celia Sankar:** Okay. Thank you very much for that question. If we go back to Bill 60, and to the legislation that's already on the books, DiversityCanada is saying that there's already legislation that covers this entire situation, and the gift card regulation—that piece of legislation—says that there can be no fees applied to future performance agreements. This is what prepaid wireless service is: a future performance agreement. No other retailer, no other supplier is allowed to charge any fee for having a gift card, or a credit, electronic credit or whatever form that future performance takes for recording the amount. So they are not supposed to charge any fee under the current legislation.

The other side, the other point on that question, is that we had an expert—one of the leading North American experts—during the CRTC hearings testify on behalf of DiversityCanada. He was able to go through the figures and show that it's actually pennies per day, per month, in terms of the cost of maintaining a consumer account on the wireless system.

So in terms of there being any great cost to be recovered, that's yet to be seen. In fact, DiversityCanada has asked the CRTC to use its powers to demand that cost information of the wireless providers. We have asked for them to provide the precise cost for maintaining a prepaid wireless account. Then we would look at that and see whether account balance expiry can be justified on that basis of cost recovery.

One final point on that: When you have prepaid wireless balance expiry, a customer may have as much as \$500 on their account. The wireless provider would take that entire balance, even if it were for a year.

**Mr. Jim McDonell:** I don't disagree with that. That's a good point.

**Ms. Celia Sankar:** Yes.

**Mr. Jim McDonell:** I don't disagree. I was just wondering about maintaining the plan.

**Ms. Celia Sankar:** But does \$500 to maintain 30 days on a prepaid wireless plan seem justifiable or reasonable?

**The Chair (Mr. Grant Crack):** Okay. Thank you very much. Very informative. As well, thanks to the members of the three parties.

**Ms. Celia Sankar:** Thank you.

**The Chair (Mr. Grant Crack):** You're welcome. There was a request made by a member for an amendment. I would ask that the amendment and the wording come to the Clerk so that she can distribute it to the three different parties. That would be much appreciated.

**Ms. Celia Sankar:** I just want to say thank you for the opportunity. We, as consumers, appreciate the opportunity to make input to this proceeding.

**The Chair (Mr. Grant Crack):** On behalf of the committee, you're very welcome. Thank you very much.

There being no further business, this meeting is adjourned.

*The committee adjourned at 1511.*







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