

# **Telecom Notice of Consultation CRTC 2012-557-1**

## **Proceeding to establish a mandatory code for mobile wireless services**

**Comments by Celia Sankar,  
lead plaintiff in a class action lawsuit on behalf of  
Bell Mobility prepaid wireless customers in Ontario,  
and Executive Director of the DiversityCanada Foundation**

**December 03, 2012**

## **Executive Summary**

As prepaid wireless customers represent almost a quarter of Canada's 27.4 million wireless customers and include many vulnerable consumers, they should be protected under the wireless code. The code should prohibit the unjustifiable practice whereby service providers expire the unused balances in prepaid wireless customers' accounts. However, if the practice is not prohibited, then the code must ensure service providers conduct the expiry in a fair manner by providing consumers with the precise day and time of expiry; by not operating with more than one expiry date; and, by giving consumers the benefit of the later expiry date, should more than one expiry date be communicated to consumers. The code should also make it mandatory that prepaid wireless customers be given detailed transaction information revealing the charges that were made to their account.

The wireless code should stipulate that any ambiguity in a contract must be decided in the favour of the consumer. It should also mandate that there be at least one level of escalation when dealing with complaints, and that this could be handled by phone, so as not to deter consumers pursuing their complaints.

The wireless ombudsman should be given the power to investigate the practices of telecoms. Twenty-five properly substantiated complaints of the same nature about one company should automatically trigger an investigation of that company's practices. Where the ombudsman finds the practices are unfair, it should be able to hand down a decision requiring the company to refund all affected consumers. If telecoms do not comply, the ombudsman should have a mandate to initiate civil lawsuits. The ombudsman's work should be integrated with the criminal justice system and, where warranted, results of its investigations should be turned over to the RCMP or the Attorney General of Canada for further action.

The cost to service providers to have the ombudsman review complaints or conduct an investigation should be sufficiently high so it serves as a deterrent. The wireless code should be promoted at points of contact between the consumer and the service provider, such as on the contract itself, on all bills and receipts, and from even the first stage of the complaint process. The ombudsman would need to better coordinate with other agencies to which consumers may complain so these agencies properly refer wireless consumers to the wireless ombudsman.

In order to measure the code's effectiveness, service providers should undergo periodic audits, and surveys should be conducted to determine consumer satisfaction with the code and the work of the ombudsman. The code should be reviewed at least every five years.

## **Introduction**

This exercise to develop a wireless code can be viewed as an acknowledgement that something is wrong, terribly wrong, in a sector which has an impact on the daily lives of close to 80 per cent of Canadians, and which has a pivotal role to play in our nation's development. The CRTC is to be commended for giving Canadians this opportunity to contribute to eradicating practices which harm wireless consumers and which are a disservice to Canada itself. This exercise is a recognition that all Canadians, and not just the telecom executives, have a stake in this industry; as we put forth our concerns and solutions, together, we can design a framework for our wireless sector that can be an example to the rest of the world in how to provide robust protection to consumers while gearing this economic driver for innovation and growth.

The absence of a wireless code resulted in my having to initiate a class action lawsuit in May, 2012, (Sankar v. Bell Mobility Inc, Ontario Superior Court of Justice, No. CV-12-452867-00CP). In the capacity of lead plaintiff, I represent some 500,000 consumers who have suffered losses estimated at \$100 million as a result of what we claim are unfair practices by Bell.

I am not a telecommunications policy wonk. Neither am I essentially a consumer activist. My participation in this exercise to develop a wireless code and the fact that I have spent the last year fighting on behalf of prepaid wireless cell phone users is a surprise even to me; it is wholly ironic – because anyone who knows me well, knows that I have long shunned owning or using cell phones.

That stance changed in 2011 when yet another birthday rolled around and people dear to me passed away. Acknowledging that I am neither invincible nor immortal, I relented to the prudence of carrying a cell phone in case of emergencies I might encounter during long, solitary walks in the forest surrounding Elliot Lake, the small Northern Ontario town where I live.

The purchase of a Virgin Mobile Canada prepaid wireless phone and the subsequent shock I experienced when I discovered the company had confiscated my balance ahead of the end of the promised expiry date drove me to the Internet for help in dealing with conduct I though unimaginable from such a large and established company. Online, I came to understand the wrong I had suffered was part of a widespread practice by Bell Mobility, which owns Virgin Mobile Canada. I also discovered that the prepaid wireless customer base, and thus those most likely to have been harmed by Bell's unfair practices, are some of the most vulnerable individuals in society, those who can least afford to have their funds taken from them or have their cell phone service cut off. These include pensioners, teenagers, minimum-wage workers, persons on disability, new immigrants and the unemployed. As a social justice advocate working through the DiversityCanada Foundation with precisely this target population, I am acutely aware that the most vulnerable are often the least likely to speak out against perceived injustice. This is why I felt compelled to launch the class action lawsuit and initiate other measures outside the courts to seek redress for prepaid wireless customers whose funds were unjustly taken by Bell.

I shall, therefore, focus my initial comments on prepaid wireless services, and then I will comment more generally on provision in the wireless code that would benefit all wireless consumers.

## **To whom the Wireless Code should apply**

According to the CRTC's 2012 Communications Monitoring Report, prepaid wireless customers represent just under a quarter (22 per cent) of the 27.4 million wireless subscribers in Canada. This is a quite significant number of Canadians, and they should not be left without the protection the wireless code would provide.

Furthermore, it is arguable that this is the segment of the wireless market most in need of protection. Prepaid wireless services can be had without a credit card, and can be accessed with purchases as low as \$15, making this the cheapest way to have a cell phone. It is therefore often the only wireless option for customers with bad or no credit histories and/or very limited financial resources. Among this population are pensioners, teenagers, minimum-wage workers, persons receiving disability benefits, the unemployed and newcomers to Canada. Consumers in this vulnerable segment of the wireless market are least likely to have the knowledge, skills, wherewithal or inclination to individually fight unfair treatment at the hands of a major corporation.

So while the CRTC's notice for this consultation appears to be skewed towards wireless services for which customers sign individual contracts with their service provider, I would like to recommend that prepaid wireless customers also be provided protection under any wireless code that is developed.

Telecoms often promote prepaid wireless services by telling consumers they will not be under contract. The fact is, however, the relationship between the prepaid wireless customer and the service provider is governed by the service provider's standard form agreement, that is, their terms of service. This document is treated as a contract by the courts. Such a document provides the basis on which a wireless ombudsman may arbitrate disputes between customers and their service providers. The wireless code has a crucial role to play in ensuring 1) service providers present consumers with standard form agreements that are fair, and 2) these agreements are adhered to by wireless providers.

## **The content of the Wireless Code**

### *Recommendations specific to prepaid wireless services*

**Balance expiry:** Above all, the code should prohibit the practice of service providers confiscating the unused balances in the accounts of prepaid wireless customers. Prepaid balances are deposits made by consumers against future purchases of wireless services. If customers do not use their funds, there is no justification for the expiry of these balances.

At present, the expiry occurs – not because allowing the balances to remain intact poses any administrative or financial burden – but simply because the service providers decide the expiry should occur. This unfair practice forces customers to make further purchases and results in astronomical and unjustifiable profits for the wireless providers.

The cost and effort to maintain prepaid wireless customers' balances in the service providers' database

is insignificant, as is the cost to track customers' devices, according to Professor Srinivasan Keshav, who holds a Canada Research Chair in Tetherless Computing at the University of Waterloo. In an effort to provide a deeper understanding of this issue, I conducted a filmed interview with Professor Keshav, who presents a clear and easy-to-understand explanation of how the system works. A video of that interview may be viewed online at <http://bgomb.com/keshav.html>. A transcript of that video is included in support of this intervention as Appendix A.

However, if the CRTC does not agree to prohibit this practice, then the wireless code must lay down clear rules as to how the expiry of account balances must be handled.

- \* Service providers must indicate the precise date and time on which the expiry will occur.
- \* Service providers must be restricted to operating with only one expiry date.
- \* If the service provider somehow does operate with more than one expiry date, then the customer must be given the benefit of the later expiry date.

It may seem ludicrous that this should need to be spelled out. But such is the climate in which the wireless sector has functioned these past few years that Bell Mobility has been contravening precisely these three standards.

It has been Bell's practice to operate with two different expiry dates. There is an expiry date that results from the terms of service. However, to the detriment of consumers, it has been Bell's practice to directly communicate to customers an expiry date later than the date that would have resulted from the terms of service. When customers checked their account balance (via their phone or via the Internet), they would be shown the later expiry date. This deceived or tended to deceive customers into believing that the later expiry date was valid. However, Bell would confiscate prepaid wireless customers' funds based on the earlier of the two expiry dates. It is wholly unfair that Bell refuses to honour the later expiry date which it directly communicated to consumers. Appendix B provides a more detailed account of Bell Mobility's practice in this area.

In the absence of a wireless code and any other forum through which we could collectively seek redress that would include a refund of sums unfairly taken from us, Bell Mobility prepaid wireless customers in Ontario had to resort to filing a lawsuit to demand that Bell 1) change its behaviour and 2) refund customers who have suffered losses estimated at \$100 million as a result of what we claim are unfair practices.

This lawsuit applies only to Ontario consumers, under Ontario's *Consumer Protection Act*. However, Bell Mobility is a national wireless provider, with some 1.7 million customers across the country at the time this practice appears to have been implemented and had its most adverse impact on consumers. The losses have occurred; it is a reality for pensioners, teenagers, minimum-wage workers and persons on disability that their funds (amounting to several hundreds of dollars for some individuals) have been unfairly taken from them by Bell, and that Bell continues to keep their funds.

While it is good that, at present, we are engaged in this exercise to ensure such practices are eradicated, we can not allow this wrong to go uncorrected. There is absolutely no justification for Bell keeping

these funds. This giant, wealthy corporation has a moral and legal obligation to return these funds to the men and women in their 70s and 80s, who live alone, and who faithfully took their pension money to top up their prepaid wireless balance in order to be sure that they could call for help in an emergency. Bell, whose parent company reports profits in the billions, has a moral and legal obligation to return the funds it unfairly took from teenagers who worked long hours after school, stacking grocery shelves or flipping burgers at minimum-wage, and then spent their hard-earned dollars to buy themselves airtime. Bell Mobility, whose parent company hands out billions in dividends to its shareholders, has a moral and legal obligation to give back the money it unfairly took from the new immigrants who trusted this large Canadian company and used their meagre savings to get a cell phone so potential employers could reach them as they try to start a new life in this First World nation called Canada. Since Bell refuses to live up to its obligations, we have had to resort to a consumer education and mobilisation campaign, under the auspices of the DiversityCanada Foundation, to demand that Bell give our money back. Through the website <http://BellGiveOurMoneyBack.com> or, for short, <http://bgomb.com>, and via other means, we will continue to make this demand until Bell sets right this wrong.

**Transaction details:** The wireless code should also stipulate that prepaid wireless customers must be provided with detailed information on the transactions that cause their balance to be reduced. Again, my experience with Bell Mobility's Virgin Mobile Canada has been that the company provides no information whatsoever on charges applied – customers are merely shown the dwindling funds in their account. This contravenes any standard of fairness. Bell takes funds out of customers' accounts to cover the cost of goods or services the company claims customers purchased, yet Bell provides no information to the customers as to what those goods or services are. Customers are left with no means of verifying whether the charges to their account are justified. This is obviously an unfair practice that the wireless code must eliminate.

#### *Recommendations for wireless services in general*

**Ambiguity in consumer's favour:** The overarching principle of the code should be that any ambiguity in individual contracts or standard form agreements must be decided in favour of the consumer. This is the standard that is enshrined in consumer protection legislation of several provinces and it is a principle of the courts. If telecoms understand that this is the basis on which the industry ombudsman will approach all disputes, they are more likely to review their contracts and standard form agreements to ensure they are written in unambiguous language that would not lead to losses for them down the line.

**Escalation of complaints:** The code should make it mandatory that a service provider offer at least one level of escalation when consumers complain. Additionally, the code should stipulate that customers should have the option to escalate the complaint over the phone. This is necessary to prevent companies implementing procedures that deter customers from pursuing their complaint. For example, Virgin Mobile Canada tells customers the only way they can have their complaint about their balance expiry escalated is if they send a written complaint to [expiry@virginmobile.ca](mailto:expiry@virginmobile.ca). This presents a barrier to certain segments of the market, such as seniors who do not use the Internet, and newcomers to Canada with limited English literacy skills.

## **How the Wireless Code should be enforced**

**Trigger for investigation:** It would appear that the Commissioner for Complaints for Telecommunications Services (CCTS), which currently handles wireless complaints, does so exclusively on an individual basis. The wireless code should authorize the wireless ombudsman to conduct an investigation into the practices of a service provider where a pattern of complaints about that service provider emerges. It takes 25 signatures for Canadians to prompt their Member of Parliament to raise an issue in the highest law-making body of this land. Thus, it would not be unreasonable that 25 – properly substantiated – complaints of the same nature about one company should automatically trigger an investigation of the company's practice in question. This would likely prove to be of benefit to the wireless ombudsman itself; it would mean that rather than inefficiently using resources to tackle hundreds of individual complaints about the same matter about the same company, the ombudsman could conduct one investigation and possibly bring a halt to the offence by the service provider and provide relieve to all affected customers.

**Refunds:** Consumers must not be made to bear the financial burden of the human errors, computer glitches, mismanagement, or wrongful acts that originate from service providers. The code must ensure that service providers return to consumers all revenues that have been unjustifiably collected.

Therefore, as a follow-on to investigative procedures by the wireless ombudsman, this authority should be in a position to hand down decisions prompting service providers to refund all consumers affected by offending practices. Where the service providers do not comply, like the Competition Bureau, the wireless ombudsman should have a mandate to commence legal action in the civil courts against offending service providers.

This is essential because, at present, there appears to be a gap in the system, which does a great disservice to consumers, and tarnishes Canada's image as a First World nation built on the rule of law.

I have been told by representatives of the Competition Bureau that it will not usually seek consumer refunds where individual losses are under \$1,000. So what becomes of the consumers who have lost \$50, \$100, even \$900 due to unfair practices by telecom providers? They have to either bear the losses in silence, or commence a class action, which necessarily involves legal fees that eliminate the possibility of 100 per cent recovery of their funds.

Now, let's do the math. A company institutes a practice which results in, say, a million customers losing an average of \$5 a month over a period of three years before investigations by a regulatory body forces it to stop. The corporation would have collected \$180 million through this unfair practice. The Competition Bureau imposes its maximum penalty of \$10 million, but does not seek consumer refunds. Class action lawsuits are filed and are settled for, say, a total of \$80 million, and the corporation's legal bill amounts to a further \$10 million. That still leaves the corporation with \$80 million of unjust gains. This is incentive, indeed, for those who would exploit the gap in Canada's consumer protection system. Unless corporations are made to disgorge all of the unjust gains – unless they are made to give consumers their money back – the establishment of a wireless code and an ombudsman to enforce it would be an exercise in futility.

**Criminal prosecution:** Furthermore, in order to ensure the efficacy of the wireless code, provisions must be made to ensure that the work of the wireless ombudsman is integrated with the criminal justice system. Where investigations by the wireless ombudsman suggest that further enquiry is required, the matter should be turned over to the RCMP or another criminal investigation agency. Where investigations by the wireless ombudsman uncover evidence that provides the basis for a criminal prosecution, the ombudsman should refer the matter to the Attorney General of Canada for a determination as to whether a prosecution should be undertaken.

**Cost of complaints and investigations:** A further consideration should be the cost to service providers to have customer complaints reviewed or investigations conducted by the ombudsman. In its 2012 report, the CCTS expressed its bemusement that service providers were allowing complaints for which the solutions were “obvious” to go unresolved, resulting in consumers contacting the CCTS. The wireless ombudsman should structure its costs in such a way that it serves as a deterrent to the service providers. Otherwise, if the costs are not sufficiently high to be experienced as a penalty by the service providers, then the ombudsman may find itself being used by telecoms as merely an outsourced customer complaints agency to handle the most persistent customers.

### **How the Wireless Code should be promoted**

The wireless code should be promoted through consumer contact with service providers. Telecoms should be mandated to prominently alert consumers to the existence of the code and the ombudsman. All individual contracts and terms of service should be prefaced by and conclude with a prominently displayed statement such as: “The wireless sector is governed by a code, which is available online at.... If you are unable to resolve a complaint with us, you may refer the matter to the wireless ombudsman at....” All bills and receipts should include information to this effect. Telecoms should be mandated to inform every consumer who calls in with a complaint that the code and the ombudsman exist, even in the first instance of the complaint.

The benefit of this is two-fold: 1) consumers will be adequately informed of their rights and where to turn to for help if these rights are not respected, and 2) service providers will be acutely aware that consumers are informed of their rights and the method to seek redress and would likely be more willing to avoid situations which cause consumers to complain to the ombudsman, particularly if the cost to the service provider would be punishing.

Presumably the CCTS would continue to handle wireless complaints under the wireless code. If so, it would likely need to expand its operations and perhaps have a separate division dedicated to wireless complaints, which as it stands today, account for 60 per cent of all matters the CCTS reviews.

There would need to be much more aggressive efforts to make this wireless ombudsman known to the 27.4 million wireless customers. In its 2011-2012 report, the CCTS stated it handled 10, 878 complaints. That is approximately 0.04 per cent of prepaid wireless customers. Anyone with passing knowledge of the Canadian wireless sector would likely agree that customer satisfaction is nowhere near as high as a complaint rate of less than one percent would seem to suggest.



The low volume of complaints may be due to the fact that many, and, perhaps, the majority of Canadians don't even know the CCTS exists. I didn't until after I launched the class action lawsuit. And this is after I had sought redress through the CRTC, the Competition Bureau, the Ontario Ministry of Consumer Affairs, and Industry Canada. None of the representatives I spoke with at any of these bodies referred me to the CCTS. The ombudsman would need to improve coordination with these and similar agencies so that they serve as a frontline, channelling wireless complaints to the wireless ombudsman.

### **How the Wireless Code's effectiveness should be assessed and reviewed**

There are two aspects to assessing the code's effectiveness. The first is determining compliance by service providers and the second is determining how well the ombudsman is functioning. The first can be achieved through annual or biennial audits of service providers. The second could be achieved through feedback surveys among the subset of consumers who contacted the ombudsman as to how satisfied they were with the process, as well as surveys with a representative segment of the entire wireless market as to the effectiveness of the code as a whole. The information gathered from these exercises should feed into periodic reviews/revisions of the code. Given that the technology in this sector changes so rapidly and could easily give rise to issues not addressed in the code, intervals between reviews should not be greater than five years.

### **Conclusion**

There is, at present, a great deal of unnecessary tumult in the Canadian wireless market, which, it is widely contended, has resulted from a lax regulatory body allowing the industry free reign to give customers short shrift. If we were to calculate the man hours wasted in the customer complaints process, we would see how unhealthy and unproductive this is for Canada as a whole. Elimination of current excesses in the industry would mean that customers can happily use wireless services and simply go about their regular affairs, and telecoms can fully apply themselves to innovation and growth.

Rail, and then, roads were the infrastructure on which the economies of the past were built. Wireless is the platform on which the economy of the future will operate. We need a healthy, properly-functioning wireless system if Canada is to compete, or even lead in the global marketplace. The importance of developing a stringent wireless code that is rigorously enforced cannot be overemphasized: this is an exercise that is crucial to safeguarding future prosperity of Canada itself.

– END –

**Transcript of  
INTERVIEW  
WITH PROFESSOR SRINIVASAN KESHAV,  
CANADA RESEARCH CHAIR  
IN TETHERLESS COMPUTING,  
UNIVERSITY OF WATERLOO**

**Interviewer: Celia Sankar  
Date of interview: August 09, 2012  
Video available: <http://bgomb.com/keshav.html>**

**Sankar:** As we were looking at the issues, we... so, ah, the impression that some members of the public have about the cost of prepaid wireless services, ah, how valid is that opinion, that it costs a great deal for the telecommunications companies to keep the prepaid wireless customers on their books, or on their, in their service?

**Keshav:** So, I think that the, er, impression that people have that it costs a lot to maintain accounts indefinitely is based on the, er, er, way that records were kept in the old days, on ledgers and pieces of paper, in back offices, and if you had to look up an account, you would go to the back office and pull out a ledger and look it up and that would take time. Today, these, this information is kept in databases, and these databases are available, you know, throughout the day, at any time, and you can just look it up.

Just like you can do a Google search or any other search and find a piece of information in a hundredth of a second, you can get the same account information quite easily in a hundredth of a second. And just like the, er, providers like Facebook and Google and other places have hundreds of millions of accounts which are kept forever – free, in the same way there's absolutely no reason why a telecom provider couldn't keep these accounts at essentially no cost, forever. The cost to maintain an account, er, is too small to be measured. It would be a millionth of a cent, or something like that.

So any idea that is being put out that the providers... that it costs them something to maintain an account is, is ridiculous, you know. It flies against the face of everything we know in computer science, which is that the costs are low and dropping fast, very, very fast, by a factor of about a hundred every two years.

And so, er, you know, the expiry of minutes on the premise that it costs something to, to, to, to, to maintain this is just ridiculously wrong. And in fact this argument... I went and looked up the Internet, you know, to see what people have said, and the providers just dance around it, saying, "Everybody else does it". And that's true; everybody else does it because they are all making money off of this.

**Sankar:** Okay, but technically, what is involved here?

**Keshav:** Oh yeah. Sure. So technically speaking what we need is a... what's called a database in which we have a table. The table has a person's name, and it has the account number, and it has the expiry date or the amount of money left, okay. If all you keep is the person's name, the account number, and the amount of money left, it's just one row in this table. And we have a table which is going to have, let's say, a million, ten million, a hundred million rows? Er, it's not a big deal. We have tables with these number of entries, er, quite routinely used. And, ah, there is even free software that's available for doing this kind of thing: Big Table from Google, for example. And there are public data bases. But once the provider is invested in the data base, to maintain it and to keep it reliable, the marginal cost of an extra entry in the table is basically zero.

So that's the technical part, and so technically speaking it is like this. I am a provider, I have invested in a machine and the database and the software and everything from existing customers. Now I have a

customer who has bought minutes and so I am going to update this row and say so and so customer with this name and this credit card or whatever has bought this minutes, and this is how many minutes they have. Every time they use it we are going to update this table and say the number of minutes went down. When we have this data, which is being kept for the customers already, to add one more customer is very little effort, okay.

And in fact you have to do extra work to expire them because to go through and see everybody who is expired and take them out, actually is more work. To keep them in the table and to do nothing with them..., it's like saying it costs money to do nothing. I mean that's a ridiculous proposition. It costs money to search them and expire their minutes. But it doesn't cost them to do..., it doesn't cost you..., it costs practically nothing to do nothing.

**Sankar:** That's the database side of it, what about the, ah, infrastructure, the telephone itself, what do they have to do to keep you connected, or, or do have to be connected for your minutes not to be...?

**Keshav:** No, you do not have to be connected for your minutes to expire. So the technical process is like this: when you dial a number, inside your phone you have, ah, something called the International Mobile Subscriber Identifier, IMSI, which is in your SIM card. Your SIM card has a number which is basically a phone number, okay. Think of it as a phone number and as this equipment identifier.

These identifiers are sent, ah, to the cell phone company, okay. The cell phone company gets this and it goes to a database, the database we'd talked about, called the Home Location Register, or HLR. And the HLR, the Home Location Register..., you look up the account information and you say, "Do they have minutes or not?" If they have no minutes, then it says, "Look, this is expired", you know. "There's no more minutes left. Your account is invalid", and your call will not go through.

If there are enough minutes, what happens is that, er, the check says, "Yes, it's okay. They can make a call". And then it will basically, it will say how many minutes you can make that call, okay. So at that point your call goes through. And when your minutes are, are, are used up it's going to say, "Okay. Your minutes are expired. Stop". Right.

And then you send what's called a call detail record; it's information which is sent to the HLR and that is going to decrement the minutes. So if you had 100 minutes and you used 20, then it will decrement it to 80. And that's all, that's all... that's what happens in that process.

If you don't have minutes expiry, what happens is that maybe five years from now you use your phone again and you make this... it goes to same database and, sure enough, you know, the table entry hasn't changed, you didn't do anything to it, so it just finds the same entry and says, "Sure, you know, it was 80 minutes, now the guy used 20 more minutes. It's down to 60 minutes".

In order to expire it, you have to run a process, which is going through and finding all the people, when they got the thing, it is 30 days past? If it is, then you are going and go and mark that entry as zero and then when they try to make a call it will look up the HLR and it will say, "Oh, this has zero time left" or "The minutes have expired so don't allow the call." So that's the technical process. That's why I meant

by saying to expire the minutes takes more work than to not expire the minutes. 'Cause to not expire the minutes, it is just sitting there. Right.

**Sankar:** Good, good, thank you very much. Because, ah, that, ah, that makes it clear that the profits that the phone companies are getting, ah, from their wireless services must be, ah, astronomical.

**Keshav:** Of course they are. You know, there was a recession from 2008 onwards, right? Which companies were advertising on the billboards? Which companies had full page ads in the newspapers? Were they car companies? No. They had no money; they had to get bailouts. Were they your Sears and this and that? No they were all hurting. All the ads were for the cell phone companies. Rogers, and Telus, and Bell were advertising everywhere. Why? Because they had the money.

If you look at it, the, the cell phone industry is... the cost and the prices they charge are completely out of whack, okay. The prices are way overprice.

To look at it, just look at India. You look at the telephone, the cell phone prices in India. It used to be the most expensive in the world: it was a dollar, sixty-five a minute for calls. Now to call anywhere in India, in India anywhere to anywhere, it's zero point six cents a minutes, something like that. Zero point six cents a minutes, and they are still making money. At zero point six cents a minutes they are still making money. There is so much money there because the technology has shrunk everything down to very small things. But people still think it's expensive. "Cell phone, oh yeah, it's expensive." Yeah, because they are screwing you. That's the truth of it. So, anyway....

**Sankar:** Okay, great. Now, ah, that's another important point. How do other countries handle the expiry of prepaid..., or do they expire prepaid minutes?

**Keshav:** I think that the prepaid minutes, er, is very uncommon in North America, because here the general tendency is to push people towards the monthly plans, which are far more lucrative, okay. So all cell phone companies measure themselves on this metric called ARPU, Average Revenue Per User. The ARPU is how they get measured on the stock market. This is how they get measured, so they really want to make it as high as possible.

In Canada the ARPU is about sixty dollars. On average, a consumer is spending sixty dollars on telecommunications, cell phones every month, including ring tones and this and that and all the other data feeds, and SMS and MMS and different plans. They want to push you as high as they can.

Other countries it's much lower, okay. There it's much lower mainly because they are going mostly prepaid. So if you look at India, like, I think ninety per cent of India is prepaid, not postpaid, okay. 'Cause people don't want to sign up for these expensive plans. The ARPU there was about eight dollars two years ago, eight dollars a month. It's dropping, I think, because prices are going down. ARPU is, I think, five dollars or four dollars.

Anyway, to come back to this. In places where you have mostly prepaid customers, you have to expire it to make any money. So, there, they want to expire it just because they want to make money,

otherwise they won't make money. But I think they give you a fairly long time for that. I can't remember what it is, it was over about a year or so. I don't know what the numbers are. I think in the UK, they certainly give you a year. And in Europe, you can actually pause your phone. You can turn it off and you can put it on hold and as long as you're not using the phone, it's turned off, you can actually keep the thing going indefinitely. You don't have a problem with that. So that isn't a, isn't a problem.

Ah, so, you know, I don't think that there should be... I think the different countries have different things, but, at the end of the day, you know, there's a mental mindset that, you know, it costs money so let's expire these cards out.

I should add that there is one cost that I had not talked about, but it occurs to me might be something that you might want to take into account, which is that if you have a phone that is on, you do actually have to track it. You have to know where it is, right, because somebody has to call you. And those tracking charges are kind of, er, not paid for by the minute, right. Even if nobody calls you, they are going to have to track you anyway, right. So wherever you carry the phone, they are going to track it. So if you turn the phone off, then they don't track you because they don't have to. But if your phone is on, it's charged, it is being tracked all the time, okay.

You could argue that there is a cost to tracking people and so this cost must be reflected: "If nobody is using it but it's being tracked all the time, that's a, that's a cost that has to be covered somehow and that's why we have to expire the minutes." It's a tricky situation because the cost of tracking is essentially very hard to measure, maybe impossible to measure.

What it is is that, er, every once in a while, perhaps five minutes, perhaps half hour, it depends, you are sending a little message saying "Here I am" and that's being updated in another location, another register called the Visitor Location Register. The telco companies could argue that these costs are very high, okay, and that's why, you know, they are doing it. That's why they could say, "Just turn the machine off; we're not tracking you". Right. "Then when you want to make a call, turn it on, use it, and turn it off again and then we're not tracking you again." Then the minutes shouldn't expire. Which is what they do in Europe.

So long answer, but what I am saying is that if they offered this, which says your minutes don't expire as long as you have the phone off in between, then they have no reason to expire the minutes because they are not even tracking you.

By the way, the tracking cost is very, very, very small. How do I know this? I know this because we have, what, seven billion, six billion phones on the planet. They are being tracked all the time. Nobody is sitting there saying, "Oh, this is a big expense. Let's charge people for tracking them". No. It's rolled into the cost of the minutes revenue. When you make a call, you are paying what is it? On a prepaid plan, 20 cents a minute, 30 cents a minute? The actual cost of that is basically one thousandth of a cent, or something. I don't know what it is. The 30 cents is actually for the cost of tracking you all this time, right. So I don't think they are losing money on that either. But, you know, that's the only argument they could possibly have.

**Sankar:** Fantastic, because you have covered two of my other questions in one. Because, ah, that's what the phone companies argued. Particularly with the presentation you made to the US Senate\*, they said, they countered, the phone companies countered that, ah, the infrastructure costs are what you didn't factor in. That's what they say.

**Keshav:** I did factor it in actually. They were wrong, they were completely wrong in their analysis. In that work and here what I am talking to you about, the cost of infrastructure is factored in and the reason is because the SMS and tracking both are actually, er, are services that are part of the infrastructure that is there anyway. They are sunk costs. You already have it. You happen to be using it for SMS or for tracking or whatever, but it's not like it was built specifically for this purpose. It's just already there. And it's priced in actually into this. I could go into the details more if you want, but in fact there isn't an additional cost. The only additional cost is the one line in the database. Everything else is, er, is fixed costs.

**Sankar:** Great. Well those were the main areas I had. Ah, without getting too technical, were there any other aspects of, ah, phones, prepaid wireless services, and, ah, this issue of, or this whole situation where the minutes are expired, in your whole studies, is there anything I haven't brought up that you think it's important that consumers bear in mind?

**Keshav:** Yeah. I think, er, prepaid wireless caters to a very interesting demographic. It's people who are either uncomfortable with cell phone technology or, you know, or don't want to... they want to use it as a standby or for emergencies, or they're poor and they don't want to overspend because they don't know how much they are going to spend if they have pay-as-you-go, er, sorry, a post-paid plan.

And, er, making money off of this demographic seems to be a bit extortionate, you know. You would think any company with a social conscience is not going to be trying to make money off of this demographic. These are the poor people, right. These are the people who can't afford it and they say, "Fine. I must have a phone. So, okay, I want to check the cheapest thing. Okay, what do I do? I'll get the prepaid plan." In, in Canada, I think, basically, it caters to the working poor, right.

**Sankar:** Students, and youth...

**Keshav:** Yeah, students and yeah. And people who say, "Okay, I have ten dollars, twenty dollars. I'm going to buy a plan, I'm going to use it," rather than, "Okay, I'm going to buy this thirty-dollars-a-month plan". because "I don't know if I'm going to have thirty dollars a month."

Given that they are making huge profits on existing post/paid customers, I think this is a demographic where they don't need to make so much money off, money from.

The other view of it, by the way, is when I buy a prepaid card, let's say I buy a card for one hundred dollars. I'm giving them one hundred dollars to put in the bank, where it's making interest, right. They give me one hundred dollars worth of service, but they are making all the interest for themselves, right. If I take three months to use it and they expire the minutes, they are going to make some money from me, but if they keep it three years, they actually got a loan from me for one hundred dollars on which

they are paying no interest.

Now multiply this by a million: a million prepaid customers each putting one hundred dollars; a hundred million dollars of capital that they can go and put in a hedge fund and make a lot of money on, right. It's kind of, er, they are getting it both ways. They are getting the money up front, the cash up front. They're getting all the profits from it up front and they are expiring the minutes and taking the money away from you for no good reason.

You know, and this is a place where I think Canada's regulators are asleep on the job, you know. The CRTC has shown over and over again that they are basically pro-business. They don't give a damn about consumers and this is one more reason for..., one more case of it, of this.

I'll give you a very specific example: before the iPhone was introduced in Canada, Rogers was charging something like five thousand dollars a gigabyte, five thousand dollars a gigabyte for airtime, for data transfer. This was in 2006, 2007. And across the border, in the US, they were charging thirty dollars. And I was like, "Are you crazy? How could...?". "Oh. It's very expensive to support it." And I said, "Look, you go fifty miles South and there, you know, they charge thirty dollars. Here you charge five thousand dollars?" "Oh, it's a big country." I said, "This is ridiculous." Well, when iPhone came to Canada, Rogers dropped their price overnight from five thousand dollars to thirty dollars. Okay. It was not some magic in technology; it was the marketplace saying, "Look...", you know.

So the consumers in Canada are getting screwed in roaming charges; they are getting screwed in prepaid cards; the CRTC is just looking the other way.

It's, it's, it's, er, something that you know... the problem is the people who are getting ripped off are the poor people and they don't have enough of a voice to, to make themselves heard. The rich people have the iPhones and so they made enough of a stink and, you know, the iPhone, the prices have dropped.

But the prepaid cards, the expiry date, is something that, it's something... nobody is campaigning on it. It's not on anybody's radar screen; no politician is campaigning on it. People just say, "Fine. It must be the case like this everywhere" and, er, "There must be some reason, you know. These guys are smart technical people. They must have some technical reason," – which is not true.

– END –

---

\* In 2009, Dr Keshav testified to the U.S. Senate Subcommittee on Anti-Trust, Competition Policy and Consumer Rights that the estimated cost of carrying a text message based on the network equipment required and the billing costs, was "very unlikely" to exceed a third of a cent, yet telecom providers were charging customers as much as 20 cents per message (representing a markup of over 6,500 percent).



## **Bell Mobility's Prepaid Wireless Expiry Practices**

With respect to the expiry of prepaid wireless account balances, Bell Mobility operates with two different expiry dates.

The first expiry date is arrived at by virtue of the terms of service. For example, Virgin Mobile Canada states in its terms that a \$15 top-up expires 30 days after purchase/activation. However, from personal observation and from the complaints of others, a clear pattern emerges and reveals that it is Bell's practice to communicate to consumers an expiry date that is later than the one dictated by the terms of service. The later expiry date is shown to customers when they access their account balance via their phones or the company's web portal.

To illustrate, here are the balance expiry dates for my personal \$15 purchases from Virgin Mobile Canada (for which I retain documented proof):

<b>Date of activation</b>	<b>Expiry date according to terms</b>	<b>Expiry date displayed by Bell</b>
August 03, 2011	September 02, 2011	September 03, 2011
January 19, 2011	February 18, 2011	February 19, 2011
April 29, 2011	May 29, 2011	May 30, 2011

Prior to my initiating the Ontario class action lawsuit on behalf of prepaid wireless customers, Bell provided no time of expiry, just the expiry date. Customers would read on their cell phones, for example: "Balance Expiry Date: May 30, 2011". This would lead Bell's customers to believe – as any reasonable person would – that they had until midnight of the stated expiry date to use or top up and preserve their account balance.

However, when customers accessed their accounts on the stated expiry date to use or preserve their balance, they would discover their balance was zero, meaning Bell had confiscated the customers' funds. Complaints to Bell were answered with a statement that the customer had forfeited the balance because the expiry date, according to the terms of service, had already passed.

The lawsuit was filed in May of this year. To the best of my recollection and based on my personal experience with Virgin Mobile Canada, it appears that sometime in June, Bell began providing the date and precise time of expiry (eg June 20, 2012 at 4:32 pm) via its web portal; it appears that sometime in late November, Bell began providing the precise time of expiry as well via the phone.

-- END --