

Appendix:

**Inaccuracies
in the Comments of
the Canadian Wireless Telecommunications Association
and TELUS Communications Company**

**re Notice No. DGTP-001-2014 —
Petition to the Governor in Council
concerning Telecom Decision CRTC 2014-101**

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Introduction

1. The DiversityCanada Foundation (“DiversityCanada”) and the National Pensioners Federation (collectively “the Petitioners”), hereby file these commentaries on inaccuracies in the Comments submitted by the Canadian Wireless Telecommunications Association (“CWTA”) and by TELUS Communications Company (“Telus”) with respect to Notice No. DGTP–001–2014 — Petition to the Governor in Council concerning Telecom Decision CRTC 2014–101. The Petitioners submit that not addressing a submission contained in the Comments does not indicate agreement with that position.

A. “The Commission based its decision on clear evidence and did not ignore evidence”

2. **CWTA (para. 3-4):** *There was more than sufficient evidence to support the CRTC’s key finding, namely that it would be wrong to force pre-paid wireless service providers to keep pre-paid wireless accounts open indefinitely without being topped up within seven days after their expiry. The Commission has twice refused the petitioners’ requests to adopt a rule forcing pre-paid accounts to be left open indefinitely. This is because the CRTC concluded, based on clear evidence, that the crux of the bargain between a pre-paid wireless service provider and their customer is the provision of a live wireless telephone number and 24-7 access to a wireless network for the relevant time period. ... The Commission reviewed samples of pre-paid wireless contracts as part of the record and found that this bargain was made clear to subscribers.*
3. **Telus (para. 65):** *For example, at paragraph 24 of TD CRTC 2014-101, the Commission noted that it required wireless carriers to provide sample contracts to the Commission during the Wireless Code proceeding and found that the “terms of those contracts clearly demonstrated that prepaid services are subject to both usage and time limits.”⁴⁹ Clearly the Commission gathered evidence from all parties, considered and analyzed how consumers might be affected by the terms of prepaid contracts and came to a reasonable conclusion that, despite the interests of the petitioners, the analysis of evidence bears the*

conclusion that prepaid services do have reasonable limits to which consumers must comply.

4. The Petitioners submit that no evidence was presented to the Commission clearly demonstrating that consumers with prepaid wireless, pay-per-use accounts agree to hand over their top-ups as consideration for access to the network.
5. Furthermore, the Petitioners submit that if the Commission had based its decision on “clear evidence” of the existence of such an agreement, the Commission was obligated to set out “the principal evidence upon which those findings were based”, as submitted in section 4(ii) of the Petition. The Petitioners submit that the Commission's failure to set out this evidence was one of the ways in which it breached its duty of procedural fairness.
6. The Petitioners note that the Wireless Services Providers (“WSPs”) generate all materials which form the agreements with consumers for the provision of prepaid wireless, pay-per-use services. Yet, the only evidence the CWTA could produce to support its claim that the Commission had been presented with “clear evidence” that consumers agree to hand over top-ups as consideration for network access was an excerpt from the Virgin Mobile Canada terms of service, quoted at paragraph 26 of the CWTA's comments.
7. The quote states: *...you must maintain a positive balance of funds in your Virgin Mobile account in order to use the Services. To add credit to your account you must “Top Up.” If your account carries a zero dollar (\$0) credit balance for more than one hundred and twenty (120) consecutive days from the expiry of your last “Top Up” it will be closed and your telephone number will be reassigned.*
8. The Petitioners submit that no part of this quote supports the CWTA's contention that this is clear evidence that consumers agree that when they make a top-up, what they are actually doing is paying for access to the network.
9. In fact, by itself, this quote supports the Petitioners' position that when prepaid wireless, pay-per-use consumers top-up, what they are actually doing is “adding credit” to their

account in order to “maintain a positive balance of *funds*” so that they can use these funds to pay for services as an when they use them.

10. Furthermore, the Petitioners submit that this quote from the Virgin Mobile terms cannot be read by itself as it is only part of the agreement with prepaid wireless, pay-per-use customers. Consumer groups presented the Commission with other pieces of evidence which form this agreement (a printout of the top-up page on Virgin Mobile's website, as well as Virgin Mobile's top-up card: Appendices D and E of the Petition).
11. This additional evidence showed that Virgin Mobile tells consumers: “Topping up is how you add cash to your Virgin Mobile prepaid account. When you have a prepaid phone, use your cash to make phone calls, buy ringtones, send text messages, download games... it's up to you.”
12. Again, the one contract the CWTA was able to cite clearly supports the Petitioners' submission that the agreement with prepaid wireless, pay-per-use customers is that when they add top-ups to their account balance, they are not making a payment for access to the network, but, instead, they are depositing cash into their accounts to use to purchase services and goods on a pay-per-use basis.
13. The Petitioners respectfully submit that this contradicts the industry's position that the Commission had clear evidence supporting the industry's claim, and that the Commission did not ignore evidence that was before it which supported the contrary position of the consumer groups.

B. “Top-ups constitute payment by prepaid wireless, pay-per-use customers for access to the network”

14. **Telus (para. 38-39):** *In reality, in the “pay-per-use” or pay-as-you-go model, a customer deposits money into account that allows the customer to draw upon it to pay for usage over a specified period of time. As shown in the below exhibit, pay-as-you-go offers include stipulations about the price and the valid time period. There is no doubt about the time frame in which customers are paying for their access to wireless services. Because the customer is paying for access to the wireless network, accounts cannot be refunded where consumers fail to make use of services nor can balances be held without expiry. In the Wireless Code proceeding the CRTC also found that for both postpaid and prepaid services consumers are purchasing access to the wireless network for a pre-defined period of time, so that there is no justification for eliminating expiry: “wireless services, including prepaid card services, provide access to the network for a specific period of time with specific usage limitations that are distinct for each aspect of the service.” [Emphasis added; exhibit and footnote marker omitted]*
15. Telus claimed that when prepaid wireless, pay-per-use customers top-up, what they are doing is “purchasing access to the wireless network” for a pre-defined period of time. However, Telus provided no evidence to support this claim.
16. The height of Telus' evidence is a chart showing four different top-up amounts with corresponding time periods and the words “Credit expiry (credits do not expire if you top up regularly).”
17. The Petitioners respectfully submit that nothing presented by Telus constitutes an express contractual term whereby the consumer agrees to hand over the top-up amount as consideration for access to the network.
18. Telus provided a link to the source of this exhibit at its website, which unfortunately, is broken. However, the Petitioners visited Telus' website and viewed a webpage which forms part of Telus' terms with consumers for prepaid wireless, pay-per-use services. The

Petitioners consider this to be part of the evidence provided by Telus and submit that the exhibit in paragraph 38 of Telus' Comment cannot be read in isolation, but must be read in conjunction with the following exhibit from Telus' website:

Rates by the minute or MB

Here are your pay-per-use rates if you don't buy a 30-day Prepaid rate plan or an add-on.

Voice	With a plan or add-on	Without a plan or add-on
Local airtime rate per minute	\$0.15	\$0.50
Long distance (within CA, or CA to US) per minute + local airtime rate	\$0.50 ⁴	\$0.50

Messaging	With a plan or add-on	Without a plan or add-on
Outgoing CA	Unlimited	\$0.30
Outgoing US & International	Unlimited	\$0.40
Incoming text	Unlimited	\$0.30
Picture CA & US	Unlimited	\$0.30
Video CA & US	Unlimited	\$0.30

Data	With a data plan or add-on	Without a data plan or add-on
Per megabyte (MB)	\$0.15 ⁵	\$2

Enhanced 911 Emergency Service Access	With a plan or add-on	Without a plan or add-on
30 Days Plus any provincial or municipal 911 fees of up to \$0.70 ⁶	\$0.75	\$0.75

<http://www.telus.com/en/on/mobility/prepaid/plans/index.jsp>

19. As can be seen, Telus establishes with prepaid wireless, pay-per-use customers an agreement whereby they pay a per-minute rate for each call, set rate for each text etc, as and when they use the service. There is no agreement that either the full top-up or the unused portion of the top-up constitutes payment for a charge called “access to the network”.
20. Furthermore, the Petitioners submit that where a top-up card is used, the terms on the card also form part of the agreement. As Appendix E of the Petition shows, Telus places a value of 50 dollars on the top-up card in the evidence and states: “Once deposited into your account, card value is valid for 60 days”
21. So by its written terms, Telus creates the expectation in consumers that the cash funds from the top-up are deposited into their prepaid wireless pay-per-use account and that this cash can be used to pay for each call, text, etc.
22. The Petitioners respectfully submit that the evidence on the record of this Petition as well as the proceeding before the Commission disproves the industry's claim that adding a top-up to a prepaid wireless account equates handing over consideration for a charge called “access to the network.”

C. “Gift cards are fundamentally different to top-ups”

23. **CWTA (para. 9):** *It is incorrect to compare pre-paid wireless cards to gift cards, as DCF has done. Once activated, pre-paid wireless services are live – a phone number is active and connected to the network. The user’s location is continually communicated to network towers, and voice and data services are actively available for the end user. The more appropriate comparison is between pre-paid wireless service and postpaid wireless service. Most post-paid plans provide an allowance of a number of minutes, texts or data megabytes per month. It is commonly accepted that post-paid subscribers do not get to redeem any minutes, texts or data megabytes they did not use each month. Where pre-paid differs from postpaid is its flexibility of offerings (e.g. unlimited use for 30 days, or time and usage for 30, 90 or 365 day periods). For example, based on offers currently in the market, a consumer could acquire one year of network access for \$100, which could provide an emergency phone for the equivalent of \$8.33/month, but with the added flexibility of using the \$100 of voice, text or data services when needed. ...*
24. **Telus (para. 48-49):** *...they also offer for the Governor in Council an improper consumer service corollary by stating that prepaid cards are analogous to gift cards or prepaid credit cards. In fact prepaid wireless service cards are dissimilar, in that by using a prepaid card a consumer is purchasing access to wireless services, so that once activated the service purchased through the card has been rendered. Prepaid credit cards and gift cards instead allow customers to purchase goods at a future time of their choosing and are cash equivalents. These differences are highlighted when considering basic principles in contract law. Because gift cards may be used at a future date by a consumer for any variety of goods available at a retail location, the contractual purchase of goods is not completed until the gift card is turned over to a retailer. Instead with prepaid wireless, once a customer activates prepaid service through a plan or pay-as-you-go pass, the customer has immediate access to mobile services and has the capability to use the communications services available through the wireless network. As a result, the customer is immediately provided with a purchased service upon activation.*

25. The Petitioners submit that the claim that gift cards and prepaid wireless, pay-per-use accounts are fundamentally different is inaccurate.
26. The industry states that the distinction between the two is that immediately as a top-up is applied to a prepaid wireless, pay-per-use account it constitutes payment for network access, whereas a gift-card allows consumers to deposit funds to be used for future purchases.
27. As the previous sections have shown, there is no evidence to support the claim that a top-up constitutes payment for network access as such a contractual term is not present in the agreements with consumers for prepaid wireless, pay-per-use services.
28. Conversely, the evidence supports the Petitioners' position that WSPs promote top-ups as a means whereby consumers can add funds to prepaid wireless accounts for use when making future purchases.
29. Furthermore, the Petitioners submit that an examination of the functioning of prepaid wireless, pay-per-use accounts will highlight the implausibility of the industry's claim that topping up constitutes the immediate payment of consideration for network access, instead of depositing funds into an account for future purchases.
30. The Petitioners note the fundamental nature of consideration: it changes hands, and once that happens, it ceases to be available to the party that offered it.
31. If the industry is claiming that immediately as it is applied to an account, a top-up constitutes consideration for access to the network, then this sum would become the property of the WSP, and would not be available to the consumer for future purchases.
32. Yet the evidence from Telus, above, and in Appendices D and E of the Petition clearly demonstrates that the funds in prepaid wireless pay-per-use accounts are available to consumers; and WSPs tell prepaid wireless, pay-per-use customers, as Virgin Mobile did that "Topping up is how you add cash to your ... prepaid account. When you have a

prepaid phone, use your cash to make phone calls, buy ringtones, send text messages, download games... it's up to you.”

33. The Petitioners respectfully submit that in assessing the plausibility of the industry's claim, the Governor in Council should consider the accounting practices by which all WSPs must abide with respect to prepaid wireless account balances.
34. WSPs must record prepaid wireless account balances as liabilities; they can only record funds from these accounts as income as and when use is made of the service (e.g. calls are made, texts are sent/received, ringtones are downloaded), or when they seize funds in customers' accounts on purported expiry dates.
35. If it were true that top-ups deposited by consumers into their prepaid wireless accounts, in fact, constituted immediate payment for access to the network, there would be no obstacle preventing any WSP from i) immediately taking these sums out of consumers' accounts; and ii) recording all top-ups as well as remaining and accumulated account balances as income.
36. Yet prepaid wireless, pay-per-use accounts function in such a manner that consumers have the funds available to them and they use these funds to make future purchases of wireless services and electronic goods. And, throughout this time, these funds are recorded by WSPs as liabilities to consumers.
37. In other words, prepaid wireless, pay-per-use accounts are promoted to consumers as functioning in the same manner as gift cards and indeed do function in the same manner as gift cards.
38. The Petitioners submit that the claim that prepaid wireless, pay-per-use accounts are fundamentally different from gift cards is disproved by i) absence of evidence of a contractual term setting out that top-ups constitute payment for access to the network; ii) the promotion by WSPs of prepaid wireless, pay-per-use accounts as a payment method whereby consumers can deposit funds for future purchases of a variety of services and

goods available via the wireless network; and iii) the actual functioning of prepaid wireless, pay-per-use accounts, the balance in which WSPs must treat as a liability rather than income, and which consumers have available to them and, indeed, use to make future purchases of a variety of services and goods available via the wireless network.

D. “There is no unjust enrichment”

39. **Telus (para. 67):** *...when assessing whether a juristic reason exists for the enrichment, consistent with the ruling of the Supreme Court of Canada in Garland, TELUS believes that its clearly outlined contract provisions when customers purchase prepaid services, such as those that outline the cost and service period as shown in the above Exhibit, provide the parties with a reasonable expectation that the expiry of services means that any remaining funds of a customer will be retained by the WSP as the customer is paying only for access to the network over the stated time period and the use of associated communications services. As the stated in Garland, one juristic reason for finding that the enrichment was justified is the presence of a contract, as there is between WSPs and its customers. Therefore, based on the above judicial test it appears no unjust enrichment can be found as customers receive the benefit of network access for which they have contractually agreed to pay. [Footnote markers omitted]*
40. The Petitioners submit that evidence in section B, above, negates Telus' claim that consumers accept that their top-ups constitute payment for access to network. Therefore, the Petitioners submit that there is no reasonable expectation that WSPs would take the unused portion of a top-up as payment for access to the wireless network.
41. The Petitioners submit that based on the information WSPs place on top-up cards and websites, consumers have the reasonable expectation that top-ups do not constitute payment for anything, since they are the means whereby consumers deposit funds into their accounts in order to pay for individual calls, texts, ect, as and when such use is made of the service.

42. Based on these clear contractual terms, it is unreasonable for Telus to claim unused funds as payment for a charge (ie “access to the network”) the consumer has not agreed to. Since there is neither a contract authorizing WSPs to take unused funds as payment for network access nor a reasonable expectation that WSPs should take unused funds as payment for network access, there is no juristic reason for WSPs to seize unused funds in consumers' prepaid wireless, pay-per-use accounts. Thus, the Petitioners submit, WSPs unjustly enrich themselves through the practice of applying expiry dates to the cash funds in the accounts of prepaid wireless, pay-per-use customers.

E. “Unjust enrichment was outside the scope of the Wireless Code Proceeding”

43. **CWTA (para. 28):** *DCF/NPF’s third argument is that the Commission made an error in law by concluding in TD 2014-101 that DCF/NPF’s “unjust enrichment” argument was out of scope. DCF/NPF’s argument seems to be that allowing WSPs to expire outstanding pre-paid balances results in these customers paying rates that are not “just and reasonable”, as required under section 27(1) of the Telecommunications Act. Further, because the Telecommunications Act is the CRTC’s “enabling” or governing statute, the Commission was required to consider this argument. There are two reasons why this argument is incorrect and should also be dismissed: (i) section 27(1) was irrelevant because that power is and was forborne during the Wireless Code proceeding; and (ii) “just and reasonable rates” was not identified by the CRTC as an issue within scope of TNC 2012-557.*
44. The Petitioners submit that it is inaccurate to state that unjust enrichment was out of the scope of the Wireless Code Proceeding.
45. As the Petition points out, at paragraphs 118-120, the Commission was not only presented with submissions about “just and reasonable rates” with respect to unjust enrichment, but was presented during the Wireless Code Proceeding as well as the proceeding that led to Telecom Decision CRTC 2014-101 with submissions concerning paragraph 15 of the Notice of Consultation.

46. The scope of the Wireless Code Proceeding was established by Telecom Notice of Consultation 2012-557. Paragraph 15 of this document states that the Commission would consider including in the Wireless Code: “a provision that service providers may not charge consumers for optional mobile wireless services they have not ordered.”
47. In section 4.0 of the Reply Comments submitted in the review and vary proceeding, the Petitioners demonstrated that during the Wireless Code Proceeding, the Commission was presented with submissions that i) showed that prepaid wireless balance expiry results in service providers charging consumers for “access to the network”, although consumers have not agreed to be charged for such a line item; ii) the scenario referred to in paragraph 15 of the Notice of Consultation fits the Court's description of unjust enrichment.
48. The Petitioners submit that the terminology used (whether that of the Notice of Consultation or that of the Court, or that of the *Telecommunications Act*) should not be determinative. Fundamentally, all describe a scenario in which WSPs illegitimately take the funds of prepaid wireless, pay-per-use customers because the customers did not agree to order or be charged for “access to the network”.
49. The Petitioners submit that having stated in the Notice of Consultation that Commission should consider including in the Wireless Code “a provision that service providers may not charge consumers for optional mobile wireless services they have not ordered,” the Commission erred in finding that unjust enrichment was out of scope of the Wireless Code Proceeding.

F. “The Commission could not consider the absence of a juristic reason for balance expiry as it has forborne from regulating wireless services”

50. **CWTA (para. 29):** *First, it is legally incorrect to assert that section 27(1) was relevant. Contrary to DCF/NPF’s claim, the issue of whether or not pre-paid wireless rates charged to consumers are “just and reasonable” would only have been relevant during the TNC 2012-557 proceeding if the Commission exercised its section 27(1) powers over wireless service rates at the time of that proceeding. However, the CRTC has continuously forborne from exercising its “just and reasonable rates” power in respect of wireless services, including pre-paid services, dating back to the 1990s.⁹ As recently as October 2012,¹⁰ the Commission reconfirmed its long-standing finding that competition continues to protect the interests of users of wireless services and thus reaffirmed its decision to forbear from exercising its section 27(1) just and reasonable rates powers. In other words, the Commission would have first needed to issue a determination to “unforbear” and reassert its section 27(1) powers to make rulings on the reasonableness of pre-paid rates as requested by DCF/NPF. Indeed, it would have been a jurisdictional and legal error for the Commission to have made rulings on DCF/NPF’s just and reasonable rates submissions without first having determined to unforbear under section 34(3) of the Telecommunications Act.*
51. As stated above, the Petitioners submit that the terminology used (whether it was that of the Notice of Consultation, the Court, or the *Telecommunications Act*) should not have been determinative of the Commission's decision as to whether to take into consideration the absence of a juristic reason for balance expiry when deciding not to prohibit this practice.
52. As shown above, paragraph 15 of Telecom Notice of Consultation 2012-557 made this issue part of the Wireless Code Proceeding. The Petitioners submit that even if the relevant provision in paragraph 15 had not been included in the Notice, the submissions made on behalf of prepaid wireless, pay-per-use consumers during the Wireless Code Proceeding required that the Commission take the issue into consideration, even in a forborne wireless marketplace.

53. The Petitioners submit that (as noted in footnote 3 of the Petition) as an administrative tribunal, the Commission is required to ensure its decisions are legal, reasonable and fair.
54. The Petitioners submit that the Commission could not turn a blind eye to the illegitimacy of the practice of prepaid wireless balance expiry, simply because of its forbearance order, as the industry suggested the Commission was compelled to do.
55. It is the Petitioners' submission that if the Commission had decided its forbearance order precluded considering prohibiting prepaid wireless balance expiry under section 27(1), the Commission could nevertheless have considered the issue under section 24 of the *Telecommunications Act*.
56. The Commission has retained its powers under section 24, which states: “The offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.”
57. The Wireless Code Proceeding was established under this section.
58. Furthermore, the Petitioners respectfully submit that the Commission correctly made the charging for services without a juristic reason part of the Wireless Code Proceeding (in paragraph 15 of the Notice), despite the fact that rates are not regulated as a result of the forbearance order.
59. Thus the Petitioners submit that the industry is incorrect to claim that the Commission's forbearance order precluded the Commission from making a determination that prepaid wireless balance expiry should be prohibited as it resulted in consumers being charged for services in the absence of a juristic reason for such charges.

G. “There is no undue disadvantage as the policy is applied to all prepaid wireless customers”

60. **Telus (para. 70):** *However should the Governor in Council find that section 27 (2) of the Telecommunications Act does apply when WSPs keep remaining funds in consumer balances after prepaid wireless services expire, TELUS maintains that as the entire class of prepaid customers are treated in the same manner that no undue or unreasonable disadvantage can be found. Using the valid test for 27 (2) claims, first requires that a preference or disadvantage be found between a person. However as TELUS applies the expiry policy to all prepaid customers, and as in fact the CRTC found that expiry applies to both prepaid and postpaid consumers equally,⁵⁶ there can be no preference or disadvantage found between those in the class. Thus, the claim must fall at the first branch of the test. [Footnote marker omitted]*
61. The Petitioners submit that Telus' claim that all prepaid customers are treated the same and there is no undue or unreasonable disadvantage is inaccurate.
62. As was stated by Vaxination and the Petitioners in the proceeding that led to Telecom Decision CRTC 2014-101, the claim that the remaining balance in a prepaid wireless account is payment for network access results in the WSP charging indeterminate rates. Therefore one customer may pay very little or nothing for the “network access” charge and another may pay an exorbitant fee, with no justification for the difference in the charges.
63. As Vaxination submitted during the review and vary proceeding: “Taken to extreme, a customer who keeps a phone for emergency use only and diligently contributes to his prepaid account every month for a few years may have accumulated a balance of \$1000 which would be confiscated if the customer misses just one month of payment. Meanwhile, a customer with a \$1 balance, gets no fee/confiscation he if adds \$10 to his balance. This scenario shows the flaws in the practice of confiscating an indeterminate amount of money at the discretion of the carrier, a practice condoned by section J of the Wireless Code.”

64. The Petitioners submit the Commission erred in failing to consider this issue and in failing to prohibit prepaid wireless balance expiry in order to ensure that WSPs' prepaid wireless, pay-per-use services complied with section 27(2) of the *Telecommunications Act*.

H. “Seizure of funds in consumers' accounts is required to ensure telephone numbers are not wasted to prevent over-reporting of subscribers”

65. **Telus (para. 45):** *Because of the need to balance and manage network services to all customers, TELUS must create expiry for prepaid plans so that a large number of consumers with prepaid wireless services are not accessing the wireless network for indefinite periods over time. Clearly understanding the date at which consumers may halt service, as is possible with expiry, allows WSPs to provision their networks and services based on a complete picture of consumer demand. By eliminating expiry WSPs would have to support customers for an unknown period of time making planning and prioritizing network services next to impossible.*
66. **CWTA (para. 10):** *Prohibiting the time and usage business model for pre-paid wireless would fundamentally alter the nature of pre-paid wireless service, and would be impossible for many service providers to comply with. Service would entail indefinite network access, and maintaining dormant accounts would result in a never-ending increase of unused telephone numbers. These unused numbers would also technically count as wireless subscribers as carriers could never be certain if five people held five numbers, or if one person held all five. And the subsequent over-reporting of subscriber bases would run Canada's publicly-trade service providers afoul of securities regulations.*
67. The Petitioners submit that there is no legitimacy to the industry's claim that it is impossible to remove the phone number assigned to a customer (and thus remove a subscriber from the WSP's subscriber base) unless the funds in the customer's account are seized through prepaid wireless balance expiry.

68. As one of the Petitioners submitted during the Wireless Code Proceeding: “The databases for prepaid wireless accounts can be designed in such a way that some other unique information (perhaps the customer's email address; or a sequentially generated autonumber) is used as the primary identifier for each customer. If this is done, then the field containing the customer's phone number becomes just like any other field in which information can be added or deleted at any time without consequence. The wireless provider will still have a unique and easily retrievable record of the customer, which includes the amount in the customer's account.
69. “This is not just abstract theory. What the incumbents portray as an almost insurmountable difficulty, new entrant Mobilicity has already implemented.
70. “As the company explained at the hearing, customers have a “wallet” in which they place their pay-per-use funds. These funds never expire. However, if customers disappear and do not purchase time-plus usage packages to use Mobilicity's services over a 90-day period, their phone numbers are re-harvested.
71. “This does not affect Mobilicity's record of who they are and how much money is stored in their account. Customers can return at any time, get or bring a new phone number, and can continue using the funds that had always been sitting there, as recorded in Mobilicity's database.”

I. “If prepaid wireless balance expiry were prohibited, wireless providers may withdraw this service or raise costs”

72. **CWTA (para. 5):** *If implemented, DCF’s position would fundamentally alter the economics of pre-paid service, forcing carriers to seriously consider whether to continue making such services available. If pre-paid wireless service providers were to stop offering this type of service it would result in a loss of an attractive service option for many consumers for whom post-paid services are not a viable option.*
73. **Telus (para. 3):** *Yet should expiry be eliminated, the business case for offering the service with its current features becomes vastly more difficult to justify, so that consumers may experience changes in service and higher rates as a result. Eliminating prepaid service expiry, then, would likely result in services contrary to the petitioners wishes and contrary to public interest provisions.*
74. First, the Petitioners submit that the paramount public interest issue in this matter is that WSP should not be permitted to seize funds in consumers' accounts when there is no juristic reason permitting such seizure, as currently occurs with prepaid wireless balance expiry.
75. Second, the Petitioners note that the industry's proposition is unreasonable: it is telling the Governor in Council that either WSPs be given an exemption from the rule of law or they will withdraw prepaid wireless services or make the service more costly for consumers.
76. The Petitioners submit that the WSPs have felt confident enough to put such a scenario before the Governor in Council because of the lack of competition in the Canadian wireless market.
77. The Petitioners submit that with greater competition, should Telus and the WSPs which are part of the CWTA exit the prepaid wireless, pay-per-use market, this would open up opportunities for new entrants to provide such services to consumers who choose to acquire wireless services via this payment arrangement.

78. Similarly, the Petitioners submit that should Telus and the CWTA members choose to raise the cost of prepaid wireless, pay-per-use services to unreasonable levels, this would create an opportunity for a new entrant to make inroads into the prepaid wireless, pay-per-use market by offering more attractive rates.
79. As such, the Petitioners note the current efforts underway to introduce more competition in the Canadian wireless marketplace, and submit that more competition is needed to ensure that consumers will have better services and more choice when the illegitimate practice of applying expiry dates on prepaid wireless account balances is prohibited.

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