

FEDERAL COURT OF APPEAL

B E T W E E N:

BELL CANADA, BELL MOBILITY INC., MTS INC., NORTHERNTEL,
LIMITED PARTNERSHIP, ROGERS COMMUNICATIONS PARTNERSHIP,
SASKATCHEWAN TELECOMMUNICATIONS, TÉLÉBEC, SOCIÉTÉ EN
COMMANDITE and TELUS COMMUNICATIONS COMPANY

Applicants

- and -

AMTELECOM LIMITED PARTNERSHIP, BRAGG COMMUNICATIONS INC., DATA &
AUDIO-VISUAL ENTERPRISES WIRELESS INC., GLOBALIVE WIRELESS
MANAGEMENT CORP., HAY COMMUNICATIONS CO-OPERATIVE LIMITED, HURON
TELECOMMUNICATIONS CO-OPERATIVE LIMITED, MORNINGTON
COMMUNICATIONS CO-OPERATIVE LIMITED, NEXICOM MOBILITY INC.,
NORTHWESTEL INC., PEOPLE'S TEL LIMITED PARTNERSHIP, PUBLIC MOBILE INC.,
QUADRO COMMUNICATIONS CO-OPERATIVE INC., QUEBECOR MEDIA INC.,
SOGETEL MOBILITÉ INC., THUNDER BAY TELEPHONE, VAXINATION
INFORMATIQUE, CONSUMERS' COUNCIL OF CANADA, DIVERSITYCANADA
FOUNDATION, MEDIA ACCESS CANADA, MOUVEMENT PERSONNE D'ABORD DU
QUÉBEC, PUBLIC INTEREST ADVOCACY CENTRE, CONSUMERS' ASSOCIATION OF
CANADA, COUNCIL OF SENIOR CITIZENS' ORGANIZATIONS OF BRITISH
COLUMBIA, OPENMEDIA.CA, SERVICE DE PROTECTION ET D'INFORMATION DU
CONSOMMATEUR, UNION DES CONSOMMATEURS, CANADIAN WIRELESS
TELECOMMUNICATIONS ASSOCIATION, COMMISSIONER FOR COMPLAINTS FOR
TELECOMMUNICATIONS SERVICES INC., COMPETITION BUREAU OF CANADA,
GLENN THIBEAULT, HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
GOVERNMENT OF MANITOBA, GOVERNMENT OF THE NORTHWEST TERRITORIES,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, ATTORNEY GENERAL OF
QUEBEC, GOVERNMENT OF YUKON, OFFICE OF THE PRIVACY COMMISSIONER OF
CANADA, CATHERINE MIDDLETON, TAMARA SHEPHERD, LESLIE REGAN SHADE,
KIM SAWCHUK, BARBARA CROW, SHAW TELECOM INC., TERRY DUNCAN, GLENN
FULLERTON, TANA GUINDEBA, NASIR KHAN, MICHAEL LANCIONE, ALLAN
MUNRO, FREDERICK A. NAKOS, RAINER SCHOENEN and DANIEL SOKOLOV

Respondents

APPLICANTS' REPLY

**(Motion for leave to appeal, to expedite, to authorize service by email
and to dispense with further service)**

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Motion for leave to appeal

1. The applicants note that their motion for leave to appeal is not opposed by any party.

Motion to expedite

2. The applicants' motion to expedite the motion for leave to appeal and, if leave to appeal is granted, the appeal is opposed only by the CRTC. The CRTC objects to expediting the appeal on two main grounds: that the appeal is not urgent and that the respondents would be prejudiced if the appeal is expedited. The Court should reject these arguments.

The appeal is urgent

3. As set out in the applicants' memorandum of fact and law, this motion and any appeal should be disposed of as quickly as possible in order to remedy the uncertainty currently prevailing in the marketplace.
4. Contrary to the CRTC's suggestion, the uncertainty that exists in the marketplace results from the possibility that the Wireless Code will apply retrospectively to contracts that were concluded before the Code comes into effect, including to contracts entered into before the issuance of the Wireless Code decision on 3 June 2013. There is no basis for the CRTC's suggestion that the benefit to the applicants of expediting the appeal is "scant to nonexistent." The undisputed evidence on the record is that wireless service providers have continued to enter into three-year fixed-term contracts with customers since the Wireless Code decision was issued, that at least SaskTel currently expects to continue to do so in the period leading up to the coming into force of the Code and that the industry's two busiest sales periods are upcoming.¹ Wireless service providers and their customers need certainty, as soon as possible, with respect to the rules that apply to those contracts and to all contracts entered into before the Wireless Code comes into effect.
5. The on-going uncertainty in the marketplace arising from the Wireless Code decision is not limited to fixed-term contracts. As is clear from section G.2(i)(b), the Wireless Code also applies to indeterminate-term contracts, including indeterminate-term contracts entered into

¹ Meldrum affidavit, paras. 20-22, Motion Record, Tab 5.

before the issuance of the Wireless Code decision on 3 June 2013. In the case of indeterminate-term contracts where a device subsidy was provided, the application of the Wireless Code as of 2 December 2013 may have the effect of changing the amount of the subsidy repayment on the customer's next bill after 2 December 2013.² Wireless service providers and their customers need to know on an urgent basis whether the Wireless Code applies to those contracts. Consumers under both fixed-term and indeterminate-term contracts with outstanding device subsidies that were entered before the coming into force of the Code will not be able to exercise fully informed consent about their wireless-service purchasing decisions until the legal issues surrounding the improper retrospective application of the Code raised in this application are finally settled by the Court. The public interest strongly favours resolving this legal uncertainty as soon as possible.

6. The CRTC also argues that the applicants' use of the full 30-day period to bring their motion for leave to appeal somehow diminishes the urgency of the appeal. Yet this delay is attributable to confusion regarding the application of the Code arising from the CRTC's own public statements. It was not until 18 June 2013, 15 days after the Wireless Code decision was issued, that the CRTC publicly stated that it intended the Wireless Code to apply on a mandatory basis to all contracts as of 3 June 2015.³ The Wireless Code decision itself suggested that the application of the Code to pre-existing contracts would be optional.⁴ The CRTC bolstered the interpretation that the application of the Code to pre-existing contracts would be optional when it stated publicly on 6 June 2013 that the Code would not apply to pre-existing contracts.⁵ The applicants served their motion materials on the CRTC, the respondents and the other participants on 2 July 2013, two weeks after they learned that, contrary to its earlier statement, the CRTC intended the Code to apply to pre-existing contracts. In these circumstances, the timing of the filing of the applicants' motion materials should have no bearing on the motion to expedite.

² Wireless Code, Section G.2(i)(b), Motion Record, Tab 2.

³ Letter from CRTC staff to CWTA, Exhibit B to the Meldrum affidavit, Motion Record, Tab 5B.

⁴ Wireless Code decision, para. 369, Motion Record, Tab 2.

⁵ Printout from CRTC's Twitter account, Exhibit C to the Meldrum affidavit, Motion Record, Tab 5C.

Any prejudice to the respondents is speculative

7. The CRTC relies heavily on the supposed prejudice to the numerous respondents to the appeal, some of which may be self-represented individuals. Yet none of the named respondents other than the CRTC has opposed to the motion to expedite. Given the silence of these parties with respect to the proposed timetable, the Court should reject the CRTC's suggestion that they would be prejudiced if the appeal were expedited.

8. In light of the urgency of resolving the uncertainty that has arisen in the marketplace as a result of the CRTC's Wireless Code decision, the applicants maintain that their proposed timetable is reasonable. However, as the CRTC pointed out, the proposed timetable contains a typographical error: the applicants propose that the joint book of authorities be filed within five days of service of the respondents' memoranda of fact and law (and not of the applicants' memorandum of fact and law).

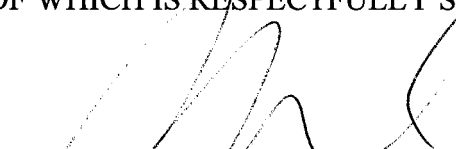
9. But if the Court is not prepared to expedite the appeal at this time, at a minimum it should defer making a decision on expediting the appeal (if leave is granted) until after the respondents who intend to participate in the appeal have filed notices of appearance. Expedition of the appeal could then be revisited based on complete information as to the number and nature of parties to the appeal, and not based on speculation as to whether participants before the CRTC, who might or might not participate in the appeal, might be prejudiced by an expedited timetable. The applicants request that they be permitted to make further submissions at that time if necessary.

Service by email

10. The applicants respectfully request an order validating service of this Reply on the respondents by email. They will shortly submit a report to the Court concerning service by email, and serve the report on the respondents.

July 30, 2013

ALL OF WHICH IS RESPECTFULLY SUBMITTED



John B. Laskin / Myriam Seers

Lawyers for the Applicants