



FEBRUARY 27, 2006

BY ELECTRONIC MAIL (procedure@crtc.gc.ca)

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Re: Telecom Public Notice CRTC 2006-3 – Regulatory issues related to the implementation of wireless number portability

Dear Secretary General:

Virgin Mobile Canada is pleased to be able to participate in this process regarding the introduction of Wireless Number Portability (“WNP”) in Canada.

I: Introduction and Background

1. VMC is Canada’s first mobile virtual network operator (“MNVO”). The purpose of the following submission is to recommend to the CRTC that it: (a) require the use of marketing tools such as consumer education/publications regarding WNP by certain wireless service providers; and (b) extend the application of the current Incumbent Local Exchange Carrier (“ILEC”) “winback rules” for customers moving to MVNOs.
2. As VMC pointed out in its submission for Telecom Public Notice CRTC 2005-14, (Implementation of wireless number portability), just as the introduction of full wireless number portability on its own cannot be the single driver of competition in the wireless market, similarly, the existence of an MVNO without the support of other critical market conditions, including full wireless number portability, cannot on its own deliver a competitive environment. Today in Canada, the dominant carriers use handset subsidies combined with long-term contracts to constrain customer mobility. These act as an impediment to the development of full, robust competition. For the first quarter of 2005, Statistics Canada recently reported that despite its ever increasing popularity, the adoption rate of wireless telecommunications in Canada lags behind that of the United States by nearly three years.¹ Other recent studies point out that Canada ranks 27th in

¹ Statistics Canada, The Daily, Telecommunications Statistics, First Quarter 2005, p.2, available at www.statcan.ca/Daily/English/051004/d051004.pdf.

wireless penetration among the top 30 member countries of the Organization for Economic Co-Operation and Development (“OECD”)².

3. VMC was very pleased when the CRTC announced that WNP would be implemented in Canada by March 2007. VMC is of the view that it is customers who will benefit from the introduction of sustainable competition in the wireless market. In keeping with VMC’s customer focus, we are also of the view that customer choice, customer cost and customer service should be the driving forces in designing the implementation process for the introduction of wireless number portability in this country.

II: Consumer Education Regarding WNP

4. VMC respectfully submits that in the interests of consumer protection and the 2007 implementation of WNP, the CRTC should introduce rules and guidelines which would require wireless carriers to inform their customers about the impending introduction of WNP before such customers renew or enter into any wireless contract that will extend beyond March 2007. In this regard, VMC recommends a requirement for notification of WNP opportunities by wireless service providers who offer long-term contracts, at the point of sale, whether on-line, through a call centre, at retail outlets and in marketing effective immediately.
5. A consumer education program, including WNP information inserts as noted below, would be used to provide information about the current regulatory and competitive environment. Long-term contracts are a prevalent part of the offerings from dominant wireless providers in Canada. These long-term contracts effectively prevent customers from being able to take advantage of wireless number portability and ultimately act as an artificial barrier to enhancing competition and dynamic growth in the wireless sector. VMC submits that the requirement for information inserts regarding WNP should apply to all wireless service providers that offer long-term contracts and that there be a standardized format and content for the inserts.
6. The following information could be included in the WNP information inserts:
 - (a) a brief summary of WNP and the timing of its implementation;
 - (b) a statement that once WNP is implemented, customers will be able to switch wireless providers while maintaining their previous telephone number;
 - (c) the names of other wireless service providers and their general contact information.

Given that a substantial number of customers choose to pay their bills electronically, similar information should be posted in wireless service provider website notices (in close proximity to the part of the site where the electronic bill is paid). Where customers

² Seaboard Group, Lessons for Canada: Wireless Pricing- A Cross-National Survey: U.S., Canada, and Europe, July 2005 citing statistics from OECD Communications Outlook 2005, available at <http://www.sourceoecd.org>.

have consented, affected wireless service providers can e-mail or text message a customer directly to provide them with this information. In all instances, VMC submits that notices of the pending availability of WNP should be clearly posted at all wireless point-of-sale locations.

III: Winback restrictions

7. In the current regulatory regime, ILECs are prohibited from approaching their former customers who have become customers of competitive local exchange carriers (CLECs) for a period of twelve months for the purposes of winning them back. The Commission's "winback rule" is stated as follows:

...an ILEC is not to attempt to win back a business customer with respect to primary exchange service or local VoIP service, and in the case of a residential customer of local exchange service (i.e. PES or local VoIP service), with respect to any service, for a period commencing at the time of the local service request and terminating three months, in the case of a business customer, and 12 months, in the case of a residential customer, after that customer's primary local exchange service or local VoIP service has been completely transferred to another local service provider, with one exception: ILECs should be allowed to win back customers who call to advise them that they intend to change local service providers.³

8. Assuming that as a matter of policy the CRTC maintains the above winback rule, VMC respectfully submits that the rule should be extended to apply to situations where customers switch to MVNOs. As discussed in greater detail below, the rationales for applying winback restrictions in the ILEC/CLEC context are paralleled in this context.
9. Several policy objectives and arguments have been advanced for applying winback restrictions to ILECs where they compete for services offered by other telecommunications providers. We understand these to be as follows:
 - (i) **Entry Issues:** Winback activities are harmful to the development of a fully competitive market and create another obstacle to entry;
 - (ii) **Customer Information Advantage:** ILECs have access to customer contact information and other customer information such as calling patterns, and telecommunication preferences, the use of which unfairly disadvantages new market participants who are attempting to develop relationships with those customers;
 - (iii) **New Technology:** Even where a new market participant is able to offer a new technology, ILECs would likely be able to offset the competitive advantages of the new technology by means of either price reduction or by reintroducing the technology themselves on an even larger scale.

³ Telecom Decision CRTC 2005-28-1, paragraph 5.

Winback in the wireless industry

(i) Entry issues

10. The Canadian wireless market is effectively dominated by three established national wireless carriers and a few regional providers. In addition to barriers such as spectrum licensing, access and costs associated with establishing a full national wireless infrastructure, new wireless providers face additional difficulties in establishing a business in an environment where long-term contracts and equipment subsidies have become the norm.
11. In a Letter Decision entitled *Commission Decision regarding CRTC Interconnection Steering Committee dispute in competitive winback guidelines* issued on April 16, 1998, the Commission stated that it was of the view that asymmetrical winback restrictions ought to be placed on ILECs in order to protect consumers and ensure effective market entry. VMC is of the view that similar reasoning can be applied to the wireless environment for the reasons set out below.

(ii) Customer Information Advantage

12. Without restrictions on winback, there is incentive for established industry players to engage in competitive activities that have an adverse impact on the entry of new competitors, a result of which is consumer disadvantage. One reason ILECs in particular benefit from winback activity is that in having prior knowledge of the particular preferences and contact information of former customers, they are able to leverage such information in order to re-capture such customers.
13. In Telecom Decision CRTC 2002-1, Call-Net Enterprises Inc. argued that the ILECs' activities in the local exchange market, including their winback practices, were a significant contributing factor to the impairment of local competition.⁴ In its conclusions, the Commission found that without winback restrictions in place, ILECs would have the ability to win back customers before their local service was completely transferred to a CLEC because of their ability access to customer specific information.⁵ Absent winback restrictions, this unfair advantage also impacts new wireless service providers.
14. In a later decision, the Commission agreed that if a new market participant is to have a reasonable chance at building and maintaining a stable customer base, it must have a reasonable opportunity to demonstrate the quality and reliability of its services. The Commission extended the winback period to 12 months⁶ noting that this would allow CLECs a reasonable opportunity to demonstrate the quality and reliability of their services and that it should have a minimal impact on the marketing ability of the ILECs.⁷

⁴ TD CRTC 2002-1, paragraph 3.

⁵ TD CRTC 2002-1, paragraph 13.

⁶ TD CRTC 2004-4, paragraph 119.

⁷ TD CRTC 2004-4, paragraphs 112, 123.

This earlier Commission reasoning is especially relevant to the growth of further competition and penetration in the wireless industry.

(iii) New Technology--The VoIP example

15. As in the ILEC/CLEC context, in Telecom Decision CRTC 2005-28 the Commission conceded that the same concerns regarding the potential for anti-competitive conduct by ILECs arise in the ILEC/VoIP service provider context as well.⁸ As most local VoIP customers will be former ILEC primary exchange service ("PES") customers, the ILECs would possess customer specific preferences and contact information and could leverage these for winback strategies. Given that this was also found to be a problem in the ILEC/CLEC context, the Commission decided that winback rules rightly extended to ILECs seeking to win back VoIP customers before they had a chance to sufficiently evaluate the new service.⁹ Again, as in the ILEC/CLEC context, the Commission recognized the need to allow a competitive service provider an adequate length of time to demonstrate the reliability and quality of its services.¹⁰
16. The Commission also qualified this decision by saying that in applying winback rules in the ILEC/VoIP context, VoIP customers would not be precluded from switching back to an ILEC if they were dissatisfied with their services. Winback rules only operate to prevent an ILEC from approaching a customer who has switched local residential services to win them back, not in situations where a customer contacts the ILEC.¹¹

WNP implementation and winback

17. The introduction of WNP in March 2007 will likely further stimulate the telecommunications market and drive new opportunities for customer mobility among service providers. Winback rules could also enhance these benefits. Several of the policy rationales for the implementation of WNP parallel those applicable to the winback rules, specifically that they may enhance competition, are required to protect consumers and will promote the public interest.

Yours truly,



Kevin Derbyshire
Vice-President and General Counsel, Virgin Mobile Canada

⁸ TD CRTC 2005-28, paragraph 254.

⁹ TD CRTC 2005-28, paragraph 255.

¹⁰ TD CRTC 2005-28, paragraph 255

¹¹ TD CRTC 2005-28, paragraph 260.