

FEDERAL COURT OF APPEAL

BETWEEN:

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

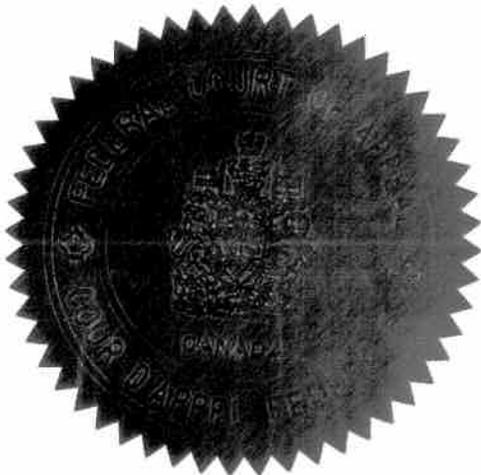
Appellants

- 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

NOTICE OF APPEAL



TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellants. The relief claimed by the appellants appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellants. The appellants request that this appeal be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date October 1, 2013 Issued by JAKE SCHUIZ - REGISTRY OFFICER
Local Registrar
Address of
local office: 180 Queen Street West
Suite 200
Toronto ON M5V 3L6

TO: **Attorney General of Canada**
c/o The Administrator
Federal Court of Appeal
180 Queen Street West
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Toronto, Ontario M5V 3L6

AND TO: **Canadian Radio-television and Telecommunications
Commission**
55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2

AND TO: **Respondents**
(By email at the addresses listed on Schedule A)

APPEAL

THE APPELLANTS APPEAL to the Federal Court of Appeal from Telecom Regulatory Policy CRTC 2013-271, issued by the Canadian Radio-television and Telecommunications Commission (“CRTC”) on 3 June 2013, establishing the Wireless Code (the “Wireless Code decision”), insofar as it purports to give the Wireless Code retrospective application to wireless service contracts entered into between wireless service providers and their customers before the Wireless Code comes into force.

THE APPELLANTS ASK:

- (a) that the second sentence of paragraph 369 of the Wireless Code decision, which purports to give the Wireless Code retrospective application, be struck out; and
- (b) that they be granted their costs of the appeal.

THE GROUNDS OF APPEAL are as follows:

The appellants’ participation before the CRTC

1. The appellants are wireless service providers. They were parties in the CRTC’s *Proceeding to establish a mandatory code for mobile wireless devices*, Telecom Notice of Consultation 2012-557, as amended by Telecom Notices of Consultation 2012-557-1, 2012-557-2, 2012-557-3, 2012-557-4 and 2012-557-5 (the “Wireless Code proceeding”), which led to the Wireless Code decision.

The Wireless Code

2. The Wireless Code sets out mandatory requirements applicable to most wireless service contracts.
3. These include the requirements that an early cancellation fee must not exceed the value of the device subsidy received by the customer, and that the early cancellation fee be amortized over a maximum of two years such that the early cancellation fee after two years will be zero. In effect, therefore, under the Wireless Code customers may terminate their wireless service contracts after two years without paying any cancellation fee.

Coming into force of the Wireless Code

4. The Wireless Code decision provides that:
 - (a) “all aspects of the Wireless Code will take effect on 2 December 2013”; and
 - (b) “the Wireless Code should apply to all contracts, no matter when they were entered into, by no later than 3 June 2015.”

Retrospective application to pre-existing contracts and interference with vested rights

5. If the Wireless Code decision applies to all contracts by 3 June 2015, then it will apply retrospectively and interfere with vested rights. Any contract that was entered into before 2 December 2013 and that terminates after 3 June 2015 will be subject to the Wireless Code.
6. The effect of the application of the Wireless Code to pre-existing contracts will be to override significant terms of these contracts.

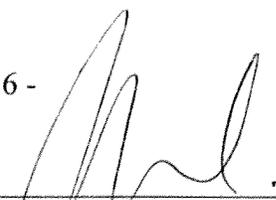
CRTC has no power to engage in retrospective rule-making or to interfere with vested rights

7. The CRTC has no power under the *Telecommunications Act* to engage in retrospective rule-making or to interfere with the appellants’ vested rights.
8. Even where an administrative body has jurisdiction to engage in retrospective rule-making, rules will not be given retrospective effect unless they clearly express that intention.
9. The CRTC exceeded its jurisdiction and erred in law by purporting to render the Wireless Code retrospectively applicable to contracts entered into between wireless service providers and their customers before the Wireless Code comes into force on 2 December 2013.

Appeal lies to this Court

10. By section 64 of the *Telecommunications Act*, S.C. 1993, c. 38, an appeal lies to this Court from a decision of the CRTC on any question of law or of jurisdiction, with leave of the Court.
11. Leave to appeal the Wireless Code decision was granted on September 24, 2013.

October 1, 2013



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Media Access Canada on behalf of the Access 2020 Group of Accessibility Stakeholders	bmilligan@mediac.ca
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