



February 12, 2019

Hon. Todd Smith, MP
Minister of Economic Development, Job Creation and Trade
College Park 18th Flr
777 Bay St
Toronto, ON
M7A 1S5

Cc:
Hon. Catherine Fife, MP
Critic, Jobs, Employment, Research and Innovation
Room 154
Main Legislative Building, Queen's Park
Toronto, ON
M7A 1A5

Re: Repeal of the Wireless Services Agreements Act under Bill 66

Dear Minister Todd Smith and opposition critic Hon. Catherine Fife,

We are writing to you on behalf of OpenMedia, a community-based organization that works to keep the Internet open, affordable, and surveillance-free. We work toward informed and participatory digital policy by engaging hundreds of thousands of people in protecting our online rights.

Our community consists of nearly 235,000 people throughout Canada, including over 100,000 people living in Ontario. Our community has taken action on issues related to digital privacy, free expression and access to the Internet and mobile services.

Our primary focus is on connectivity and telecommunications issues at the federal level. However, we are greatly concerned about schedule 7 of Bill 66, which will repeal the Ontario Wireless Services Agreements Act (WSAA), which is why we are writing to you today.¹

Repealing the WSAA will strip the people of Ontario of important protections and narrow the avenues for complaints when it comes to unfair and predatory practices by wireless service providers. Since the WSAA came into force in 2014, wireless service rules at the federal level have been strengthened, but there are still aspects in which they do not reach the standard of the WSAA.

¹ Bill 66, Restoring Ontario's Competitiveness Act, 2018, Government of Ontario:
<https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-66>



This submission is to request that the government of Ontario stop the passage of Bill 66 in its current form, and keep the WSAA in place. In this submission we describe why the WSAA is an important piece of legislation in Ontario that should not be repealed.

Context of wireless services market in Canada

People in Canada pay some of the highest wireless service fees in the world and have been subject to notoriously misleading and predatory contracts.² In fact, a recent report by Tefficient shows that our wireless service providers are making the most revenue per gigabyte in the world. This report also shows an unsurprising correlation between high prices in Canada and low data usage.³

And high prices are not the only problem facing people in Canada. For decades we have seen countless examples of people being taken advantage of by wireless service providers through predatory contracts, hidden fees, and misleading advertising and sales practices.⁴

Despite the high cost of owning a cell phone and the low customer confidence in the industry, people have no other choice but to keep buying plans from the same wireless service providers. Having access to a cell phone and a data plan has become as necessary, if not more, as having access to a vehicle or public transportation. It is a key part of participating in our modern society.

Unfortunately however, due to an extreme lack of competition and the failure by provincial and federal governments to better regulate the industry, people have been forced to sign on to these contracts and pay exorbitant fees to have access to a cell phone with a data plan. Three year contracts, massive cancellation fees, hidden charges and predatory overage fees were the norm in cell phone contracts until the WSAA and the federal Wireless Code of Conduct came into place. Even then, examples of predatory contracts and misleading sales tactics are common throughout Canada and Ontario.

Nationally, Bell, Telus and Rogers account for 92.3% of the revenue the wireless market.⁵ Market concentration has slightly improved with the introduction of smaller regional competitors like Freedom Mobile, but most people in Canada have limited choice in their providers. The

² Price Comparisons of Wireline, Wireless and Internet Services in Canada and with Foreign Jurisdictions - 2018 Edition, Ministry of Innovation, Science and Economic Development Canada:

<http://www.ic.gc.ca/eic/site/693.nsf/eng/00169.html>

³ China and India shift to 4th gear – leave many mature markets in the dust, Tefficient:

<https://assets.documentcloud.org/documents/5685020/OpenMedia-BTLR-Submission-Jan-11-2019.pdf>

⁴ CBC investigation into sales practices at major telcos prompts growing calls for public inquiry, CBC:

<https://www.cbc.ca/news/business/crtc-public-inquiry-telecom-high-pressure-sales-1.4498973>

⁵ Media And Internet Concentration In Canada, 1984-2017, Canadian Media Concentration Project:

<http://www.cmcrp.org/wp-content/uploads/2019/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932017-01062019.pdf>

situation worsens for people in rural areas, who often only have access to one or two providers, if any at all.

This market concentration has given companies leverage over customers when it comes to setting prices and contracts. More often than not, people have no choice but to sign on to expensive contracts and remain with the same providers, as there are no other options available to them.

In response to multiple complaints and scandals, provinces including Quebec, Manitoba, Newfoundland and Labrador, and Nova Scotia, as well as the federal government, have passed legislation to protect wireless service customers over the past decade.⁶

These laws have greatly improved the conditions under which wireless service customers sign contracts. Thanks to this patchwork of legislation across the country, most people can now sign a cell phone contract knowing the minimum charges they will incur, that their contract will not change without their consent, and that they have the choice to cancel their contract for a reasonable fee when a better deal becomes available from a different provider.

Ontario passed the Wireless Services Agreements Act in 2013 with this very purpose in mind – to protect the people of Ontario from predatory contracts and misleading advertising from telecommunications companies. This was a landmark piece of legislation that gave people in Ontario some peace of mind when it came to signing on to a wireless service contract.

Since then, other provinces have also enacted their own provincial laws to regulate wireless service contracts and the Canadian Radio-television and Telecommunications Commission passed the national Wireless Code of Conduct in 2013 with a further update in 2017.

How the WSAA protects wireless service customers

The question now is whether the WSAA is still relevant given the federally regulated Wireless Code of Conduct. We argue that it remains relevant and should stay in place.

While it is true there is much overlap between the provincial and federal regulations, the WSAA is still an important piece of legislation that fills sizeable gaps that the Wireless Code of Conduct leaves.

⁶ Fairer Cellphone Rules for Manitobans, Government of Manitoba:

<https://www.gov.mb.ca/justice/cp/cpo/info/cellphonelaws.html>;

An Act to amend the Consumer Protection Act and other legislative provisions, National Assembly of Quebec:

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2009C51A.PDF>

Distance Service Contracts, Service NL:

https://www.servicenl.gov.nl.ca/consumer/consumer_affairs/distance_service_contracts.html#14

What exactly is the WSAA regulating in the first place?

The WSAA regulates the contracts between wireless service providers and customers as well as the advertising used by the provider. The WSAA states that the contract must be written in plain language that the customer can understand and include, among other things:

- The regular or minimum cost of the customer's monthly plan
- A description of the limits and restrictions the plan may have
- A description of extra fees and how they are calculated⁷

The Act also prevents wireless providers from changing the terms of the contracts without the user's consent and caps cancellations fees to \$50.

When it comes to advertising, the Act regulates the ads providers use to sell their products to ensure users are not being misled. All advertising must prominently include the minimum monthly cost plus any extra fees that come as part of the plan.⁸

At around the same time as the WSAA became law in Ontario, the CRTC passed the Wireless Code of Conduct, which created a national set of rules to regulate wireless service contracts. The wireless code brings similar rules seen in Ontario's WSAA to the national stage, including some additional rules not found under the WSAA, like a 15-day trial period and requiring companies to unlock phones sold to customers.⁹

However, the Wireless Code of Conduct lacks strong enforcement mechanisms. Part of the problem is that it reviews complaints on an individual basis through the Commission for Complaints for Telecom-Television Services (CCTS), an industry-funded association that has weak enforcement powers. This means that if a company is systematically violating the code of conduct, each case has to be reviewed individually with each customer submitting their own individual evidence. Furthermore, under the wireless code the highest penalty for infraction is for a company to compensate the customer up to \$5,000.¹⁰

In other words, the CRTC code of conduct is rather toothless when it comes to enforcement. The WSAA, on the other hand, has much more punitive enforcement mechanisms that allow the government to fine a company up to \$250,000 and gives users the ability to file class action

⁷ Your rights when signing a wireless service contract, Consumer Protection Ontario: <https://www.ontario.ca/page/your-rights-when-signing-wireless-service-contract>

⁸ See 7

⁹ The Wireless Code, simplified, CRTC: <https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>

¹⁰ Commission for Complaints for Telecom-television Services (CCTS), CRTC: <https://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>



lawsuits in cases when the company is systematically violating the law.¹¹ Not having the ability to file class action lawsuits would be a huge loss for customers in Ontario.

Why we oppose the repeal of the Wireless Services Agreements Act

The OpenMedia community has been fighting for greater access to affordable wireless service for years. We have been working with our community to push for more competition, greater consumers protections and better service for people in Canada. While we have a long way to go before we fully achieve this goal, regulations under the WSAA and the Wireless Code of Conduct have been a positive step toward giving people in Canada some assurance as to what they are signing on to when they buy a new cell phone plan.

Despite this, industry lobbyists have for years been calling for these regulations at the provincial level to be repealed and for the Wireless Code of Conduct to be the only set of rules nationally.¹² With the exception of Nova Scotia, their calls have gone unanswered.¹³ Whether that is a result of the mistrust people and government have of the industry or simply a bureaucratic oversight is hard to say.

What is clear, however, is that the WSAA does indeed provide rules around advertising not found at the federal level and has stronger enforcement mechanisms. This means that repealing the Act will take away protections from the people of Ontario and will give them fewer avenues to resolve contractual issues with their service providers.

The industry complains that provincial regulations make it more difficult for them to comply by a different set of rules, when in reality the rules between the WSAA and the CRTC are similar in most respects aside from the rules around advertising. This means that the only reason why the industry would want this legislation to be repealed is that it has stronger enforcement mechanisms.

In other words, companies are looking to go back to the days of tying customers to unfair, misleading and predatory contracts with impunity. Repealing the WSAA does not help the people of Ontario in any way and is instead a way to make it easier for big telecommunications companies to take advantage of their customers.

¹¹ Wireless Services Agreements Act, 2013, S.O. 2013, c. 8, Government of Ontario:
<https://www.ontario.ca/laws/statute/13w08>

¹² Ontario enacts protection for wireless customers, Toronto Star:
https://www.thestar.com/business/2014/04/02/ontario_enacts_protection_for_wireless_customers.html

¹³ Amendments to Cellphone Legislation, Government of Nova Scotia:
<https://novascotia.ca/news/release/?id=20141023004>

*OpenMedia is a community-based organization that works to
keep the Internet open, affordable, and surveillance free.*



That is why 5,800 OpenMedia community members have emailed their MPPs or Minister Todd Smith using OpenMedia's email tool calling on the Ontario government to stop the passage of Bill 66 and protect Ontario's Wireless Services Agreements Act.¹⁴

On behalf of our community, we would like to ask that the government of Ontario stop the passage of Bill 66 in its current form to maintain the consumer protections under the Wireless Services Agreements Act.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodrigo Samayoa", written over a horizontal line.

Rodrigo Samayoa
Digital Campaigner, OpenMedia

A handwritten signature in black ink, appearing to read "Laura Tribe", written over a horizontal line.

Laura Tribe
Executive Director, OpenMedia

¹⁴ Stop Bill 66: Save Ontario's Wireless Consumer Protections, OpenMedia:
<https://act.openmedia.org/scrap-bill-66>
Demand your MPP Save Our Wireless Consumer Protections, OpenMedia:
<https://act.openmedia.org/scrap-bill-66-mpp>