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Mr. John Traversy  
Secretary General  
Canadian Radio-television  
and Telecommunications Commission  
1 Promenade du Portage  
Ottawa, ON K1A 0N2

Dear Mr Traversy:

**Re: Application by Rogers Communications to Review and Vary *Telecom Decision CRTC 2014-528, Wireless Code - Clarification of how the Wireless Code applies to corporate wireless service plans***

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1. This application is made by Rogers Communications ("Rogers") pursuant to sections 24 and 62 of the *Telecommunications Act* and section 22 of the Canadian Radio-Television and Telecommunications Commission (CRTC) *Rules of Practice and Procedure*.
2. Rogers is seeking a review and variance of *Telecom Decision CRTC 2014-528, Wireless Code - Clarification of how the Wireless Code applies to corporate wireless service plans* (Decision 2014-528). Decision 2014-528 clarified when and how the code of conduct established under *Telecom Regulatory Policy 2013-271* (the "Wireless Code") applied to wireless customers who received their service through agreements with large companies and organizations ("Enterprises"). The Commission's clarification however revealed that several types of Enterprise agreements that were commonly understood to lie outside the scope of the Wireless Code were in fact governed by it. As a result, Rogers

discovered that it unknowingly entered into several agreements with Enterprises that contain terms that it now understands do not meet the requirements of the Wireless Code.

3. Rogers therefore asks the Commission to determine that agreements entered into with employees of Enterprises pursuant to umbrella agreements with the Enterprise, between December 2<sup>nd</sup>, 2013, and October 8<sup>th</sup>, 2014, whether classified in Decision 2014-528 as “employee purchase plans” or “corporate individual plans”, should be treated as enterprise contracts not subject to the Wireless Code until such time as their current term expires.

### **Background**

4. On October 11<sup>th</sup>, 2012, the CRTC released *Telecom Notice of Consultation 2012-557, Proceeding to Establish a Mandatory Code for Mobile Wireless Services*. A public hearing was subsequently held in February 2013 in which consumers, wireless carriers, and other interested parties had the opportunity to make submissions as to who the code should apply to and what it should include. All the parties that participated in the proceeding agreed that individual consumers should be protected by a wireless code. While there was some disagreement as to whether the Wireless Code would apply to small businesses, it was widely agreed that it would not apply to agreements entered into with medium-sized or large enterprises because they have the size and scale to negotiate special concessions, terms, conditions, and pricing not available to the ordinary consumer or small business customer.
5. The proceeding culminated on June 3<sup>rd</sup>, 2013, when the Commission issued the Wireless Code. The Wireless Code clearly applied to retail wireless service contracts with “customers”, which were defined as “*Individuals or small businesses subscribing to retail mobile wireless services*”.<sup>1</sup> The Commission’s decision noted that small business customers were covered by the Wireless Code because “*given their size and purchasing power*”<sup>2</sup> they have the same

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<sup>1</sup> CRTC Telecom Regulatory Policy 2013-271 (June 3, 2013). The Wireless Code – Definitions.

<sup>2</sup> CRTC Telecom Regulatory Policy 2013-271 (June 3, 2013), paragraph 27.

issues related to wireless services as individual consumers. The Commission however deliberately excluded corporate and commercial accounts because, as argued, these customers are better able to negotiate agreements, including pricing, due to their size and purchasing power.<sup>3</sup>

### **Rogers' Enterprise Agreements**

6. Based on Rogers' understanding of the Wireless Code, Rogers' enterprise sales team continued to enter into agreements with Enterprises and their employees after December 2<sup>nd</sup>, 2013, the date the Wireless Code came into effect, with the belief that such arrangements were not bound by the Code. These customers had the scale and bargaining power to negotiate special terms and prices for itself and its employees, which Rogers had understood to be the applicable test as to whether the Wireless Code applied to an agreement.

### **The TELUS Application**

7. On March 3<sup>rd</sup>, 2014, TELUS filed an application asking the Commission to clarify how the Wireless Code applied to three types of commercial plans: 1) Enterprise Plans, in which the Enterprise directly entered into a service arrangement with a carrier and was solely responsible for all charges; 2) Corporate Individual Plans, where the Enterprise negotiated the terms of the arrangement and then its employees entered into the agreement themselves but were subsequently reimbursed by the Enterprise for some or all of the charges; and 3) Employee Purchase Plans, where the Enterprise negotiated the rates and terms and then the employees directly entered into the agreements with the carriers themselves and were solely responsible for the account, including all charges. Telus argued that Enterprise Plans were clearly outside the scope of the Wireless Code while Employee Purchase Plans were clearly governed by it. With respect to Corporate Individual Plans, they suggested that the Wireless Code did not apply to such plans if the Enterprise repaid their employees at least 50% of the charges and/or had installed corporate software on the employee's device.

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<sup>3</sup> CRTC Telecom Regulatory Policy 2013-271 (June 3, 2013), footnote 5.

8. On October 8<sup>th</sup>, 2014, the CRTC issued *Telecom Decision CRTC 2014-528, Wireless Code - Clarification of how the Wireless Code applies to corporate wireless service plans* (Decision 2014-528). In it, the Commission confirmed that the Wireless Code does not apply to Enterprise Plans where a medium or large business pays all the charges incurred by the individual using the service.<sup>4</sup> However, it went on to clarify that the Wireless Code did apply “*where the individual is responsible for some or all of the charges related to the account (including but not limited to roaming charges and overage charges), irrespective of the size of their employer.*”<sup>5</sup>
9. As a result, the Commission determined that both Corporate Individual Plans and Employee Purchase Plans were subject to the requirements of the Wireless Code, because in both cases there is an agreement between the service provider and the end user who is responsible for some or all of the charges associated with the agreement.<sup>6</sup>

### **Review and Variance of Decision 2014-258**

10. The tests for a review and vary application are restated in *Telecom Information Bulletin CRTC 2011-214*. In order for the Commission to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to:
- (i) an error in law or in fact;
  - (ii) a fundamental change in circumstances or facts since the decision;
  - (iii) a failure to consider a basic principle which had been raised in the original proceeding; or
  - (iv) a new principle which has arisen as a result of the decision.
11. Rogers respectfully submits that there is substantial doubt as to the correctness of Decision 2014-528. The Wireless Code and Telecom Regulatory Policy CRTC

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<sup>4</sup> CRTC Telecom Decision 2014-528 (October 8, 2014), paragraph 27.

<sup>5</sup> CRTC Telecom Decision 2014-528 (October 8, 2014), paragraph 25.

<sup>6</sup> CRTC Telecom Decision 2014-528 (October 8, 2014), paragraph 25-26.

2013-271 were not clear with respect to the type of contracts under consideration in this application. There was no information provided in Telecom Regulatory Policy CRTC 2013-271, or in the Wireless Code itself, that suggested that wireless service agreements entered into under the umbrella of an Enterprise agreement, could still be bound by the Wireless Code. Accordingly, in Rogers' submission, a new principle arose as a result of the decision.

12. As mentioned above, since December 2<sup>nd</sup>, 2013, Rogers has been entering into agreements with enterprises and their employees, based on the understanding that these agreements are exempt from the Wireless Code. Consequently, Rogers is a party to contracts with employees of enterprise customers that have different provisions than the Wireless Code in some respects, particularly the requirement for a maximum two-year term and termination charges based on such a term. Most of the agreements extended to the employees of these business customers are for three-year terms. The contract lengths were in fact negotiated and chosen by the Enterprise. The Enterprise then extended to their employees the benefit of specialized pricing that is discounted far below the typical consumer pricing, as well more favourable device subsidies and hardware upgrade policies. These concessions were only made available to the employees because of the agreement that their employer has entered into with the wireless service provider.
13. Rogers was surprised by the Commission's rulings in Decision 2014-528 where it determined that customers subscribing to wireless services under an enterprise agreement are subject to the Wireless Code. Rogers considered the Wireless Code to have no application to such agreements as the business customers are *"able, through size and purchasing power, to better negotiate agreements"* for their business and employees. We therefore understood that we were free to negotiate special pricing and terms with these business customers that could be extended to their employees.

14. Rogers therefore requests that the Commission determine that contacts entered into with employees of Enterprises pursuant to an umbrella agreement between Rogers and the Enterprise, between December 2<sup>nd</sup>, 2013 (the date the Wireless Code came into effect) and October 8<sup>th</sup>, 2014 (the date Decision 2014-528 was issued), whether classified in Decision 2014-528 as “employee purchase plans” or corporate individual plans”, should be treated as Enterprise contracts not subject to the Wireless Code until such time as their current term expires. Rogers entered into these agreements in good faith, believing that they were covered by the exclusion of Enterprise agreements from the Code. As a result, they should run their course as the parties to agreement negotiated.

### **Conclusion**

15. In conclusion, Rogers had understood that agreements with employees of enterprise customers were not covered by the Wireless Code, because of the Enterprise’s bargaining power. We entered into a number of agreements after December 2<sup>nd</sup>, 2013, based on this understanding.
16. For this reason, Rogers requests the Commission to determine that agreements entered into with employees of Enterprises pursuant to umbrella agreements with the Enterprise, between December 2<sup>nd</sup>, 2013, and October 8<sup>th</sup>, 2014, whether classified in Decision 2014-528 as “employee purchase plans” or “corporate individual plans”, should be treated as enterprise contracts not subject to the Wireless Code until such time as their current term expires.

Yours very truly,



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Senior Vice President – Regulatory  
KE/de