



## Telecom Regulatory Policy CRTC 2013-586

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### Requests for clarification on how the Wireless Code applies to tab contracts

File numbers: 8633-R28-201310820 and 8633-T66-201310812

*In this decision, in response to applications from Rogers and TELUS, the Commission clarifies that the Wireless Code applies to all contracts for retail mobile wireless voice and data services provided to individual and small business consumers, including tab contracts. The Commission also provides clarification on how the maximum early cancellation fee may be calculated for tab contracts, and what information must be included in a tab contract to ensure that each customer clearly understands whether they are subject to an early cancellation fee, and if so, how it applies. Finally, the Commission clarifies how cancellation fees are to be calculated in the case of early device upgrades.*

#### Background

1. The Commission established the Wireless Code, a mandatory code of conduct for wireless service providers, in *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013 (the Wireless Code Decision). The Wireless Code applies to all retail mobile wireless voice and data services (wireless services) provided to individual and small business consumers in Canada.
2. The Wireless Code establishes new requirements for wireless service providers (service providers) that will (a) ensure that consumers are empowered to make informed decisions about wireless services, and (b) contribute to a more dynamic marketplace by making it easier for consumers to take advantage of competitive offers.
3. Among other things, the Wireless Code limits the early cancellation fees (cancellation fees) that service providers can charge. The Wireless Code also requires that cancellation fees reach \$0 in 24 months or less, which will enable consumers to take advantage of competitive offers at least every two years. The Wireless Code establishes four formulas for calculating the maximum cancellation fee that a service provider may charge a customer for cancelling a contract early. These formulas vary based on the key elements of the wireless contract, notably whether the contract is for a fixed or an indeterminate term and whether or not a device is provided by the service provider at a reduced upfront cost when the customer enters into the contract (also referred to as a device subsidy).

4. The Wireless Code will come into effect on 2 December 2013 and will apply to (a) all new contracts signed as of that date, and (b) all existing contracts that are amended, renewed, or extended on or after that date. The Wireless Code will apply to all wireless contracts as of 3 June 2015.
5. In the Wireless Code Decision, the Commission indicated that if service providers or other parties were unclear about the application or interpretation of the Wireless Code, the Commission would provide guidance.

### **The applications**

6. The Commission received applications from Rogers Communications Partnership (Rogers) and TELUS Communications Company (TELUS), dated 22 July and 19 July 2013 respectively. Both applications requested clarification from the Commission on how the Wireless Code applies to wireless services with tab billing models (tab contracts). The applicants submitted that under a tab contract, the customer obtains a device at a reduced upfront cost and the amount of the device subsidy goes onto the customer's "tab." Thereafter, a percentage of the customer's monthly bill is used to "pay down" their tab.
7. Rogers submitted that it was seeking clarification regarding the use of tab contracts under the Wireless Code to subsidize wireless devices. Rogers does not currently offer a tab contract and did not propose any particular interpretation of the tab contract for Commission approval. Rather, the purpose of its application is to clarify how the Wireless Code's cancellation fee requirements apply to tab contracts. Specifically, Rogers requested that the Commission clarify the following:
  - Does the Wireless Code, specifically the cancellation fee requirement, apply to tab contracts?
  - If the Wireless Code applies, does the tab contract, specifically the reduction of the outstanding balance based on a percentage of the underlying monthly service fee, meet the requirements for the calculation of the cancellation fee?
8. In its application, TELUS submitted that it requires clarification from the Commission because tab contracts could be interpreted as contravening the Wireless Code's requirements. Specifically, TELUS requested that the Commission clarify that
  - monthly cancellation fee reductions can be made in unequal amounts, as long as each reduction is at least equal to the amount of the monthly reduction based on a straight line amortization;
  - the date included in the contract pursuant to section B.1(iv) of the Wireless Code, which indicates when the customer is no longer subject to a cancellation fee, can be an outside limit (i.e. no later than X); and

- the customer’s entire tab can be considered as the “device subsidy” for customers who upgrade their devices early.
9. The Commission received interventions regarding both applications from Bell Canada, the Public Interest Advocacy Centre (PIAC), the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic and the Open Media Engagement Network (CIPPIC/Open Media), l’Union des consommateurs (l’Union), and Vaxination Informatique (Vaxination). In addition, the Commission received an intervention from TELUS regarding Rogers’ application. The public records of these proceedings, which closed on 3 September 2013, are available on the Commission’s website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under “Public Proceedings” or by using the file numbers provided above.
  10. The Commission considers that the applications raise the following issues:
    - I. Does the Wireless Code apply to tab contracts?
    - II. Can the amount by which the cancellation fee is reduced each month vary when it exceeds the minimum required by the Wireless Code?
    - III. Can the amount by which the cancellation fee is reduced each month vary when it is based on an equal percentage of the customer’s monthly bill?
    - IV. What information must be specified in tab contracts with respect to cancellation fees?
    - V. How should the cancellation fee be calculated in the case of early device upgrades?

**I. Does the Wireless Code apply to tab contracts?**

11. Rogers submitted that during the Wireless Code proceeding, some carriers argued that the Wireless Code would not apply to tab contracts. Rogers noted that the cancellation fee rules only apply when a subsidized device is provided as part of a contract, but also stated that tabs are not necessarily part of a contract. However, Rogers submitted that if the tab contract model is considered a subsidy under an indeterminate contract, the Wireless Code could apply.
12. Parties generally agreed that the Wireless Code does apply to tab contracts.

**Commission’s analysis and determinations**

13. In the Wireless Code Decision, the Commission decided that the Wireless Code would “apply to wireless services provided to individual and small business consumers in all provinces and territories regardless of the status and business models of the WSP [wireless service provider].” Tab contracts are contracts for wireless services provided to individual and small business consumers. The tab is a mechanism that service providers use to offer devices to their customers at a reduced

upfront cost. The Wireless Code prescribes contractual terms and conditions for fixed and indeterminate contracts with device subsidies.

14. The Commission therefore reiterates that the Wireless Code applies to the provision of wireless services to individual and small business consumers, including services provided with tab contracts.

## **II. Can the amount by which the cancellation fee is reduced each month vary when it exceeds the minimum required by the Wireless Code?**

15. The Wireless Code sets out formulas that establish the maximum fee a service provider can charge when a customer cancels their contract early. The cancellation fee formula for an indeterminate term contract with a subsidized device is as follows:

The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, over a maximum of 24 months, such that the early cancellation fee is reduced to \$0 by the end of the period.

16. TELUS submitted that, under a tab contract, the cancellation fee reduction may vary from month to month, which could be interpreted as contravening the requirement that the cancellation fee be reduced “by an equal amount.” Tab contracts base the cancellation fee reduction on the customer’s service charges, which include both a fixed and a variable component.
17. TELUS argued that, according to its interpretation, the customer’s cancellation fee would always be reduced by at least a set minimum amount (based on a straight 24-month amortization). Therefore, the cancellation fee would be reduced to \$0 no later than 24 months from the beginning of the contract. TELUS submitted that its approach complies with the intent of the Wireless Code.
18. PIAC submitted that the Wireless Code establishes rules that must be interpreted in favour of the consumer. Therefore, PIAC submitted that customers should be able to reduce their cancellation fee more quickly than required by the Wireless Code.
19. CIPPIC/Open Media, l’Union, and Vaxination supported TELUS’ interpretation, noting that while the minimum cancellation fee reductions must be equal, this rule should not apply to additional amounts that reduce the cancellation fee to \$0 more quickly.
20. Bell Canada submitted that TELUS’ interpretation would enhance consumer choice and flexibility.

### **Commission’s analysis and determinations**

21. As noted above, the Wireless Code sets out the maximum cancellation fee that a service provider can charge as well as the maximum period during which such a fee may be applied. However, in the Wireless Code Decision, the Commission also

considered that it would be beneficial to consumers and the competitive market to allow service providers the flexibility to establish cancellation fees that are more advantageous to the customer than those set out in the Commission's formula.

22. The Wireless Code's cancellation fee provisions are meant to (a) limit the maximum cancellation fee that can be charged, (b) ensure that customers can cancel their contracts without penalty after 24 months, and (c) provide clarity for consumers by establishing a clear, standard, and transparent formula for calculating cancellation fees. The Commission considers that TELUS' interpretation is consistent with these principles and intentions, as it would ensure that the cancellation fee (a) never exceeds the maximum permitted by the Wireless Code, (b) is reduced to \$0 in 24 months or less, and (c) is reduced each month in a way that is clear, transparent, and predictable for the customer. In addition, TELUS' interpretation would allow customers to evaluate their options at 24-month intervals.
23. In light of the above, the Commission determines that cancellation fee reductions can, in any given month, exceed the minimum monthly amount set out in the Wireless Code, provided that the Wireless Code's requirements set out above are otherwise met.

### **III. Can the amount by which the cancellation fee is reduced each month vary when it is based on an equal percentage of the customer's monthly bill?**

24. Rogers submitted that under a tab contract, the monthly tab reduction and the associated cancellation fee reduction may vary from month to month. While the formula for calculating the cancellation fee reduction is constant, the customer's total monthly charges will rise and fall as a function of their usage. Therefore, the amount removed from their tab each month will also vary. Rogers argued that while the dollar amount deducted monthly is not "an equal amount," the reduction itself is both constant and predictable. Rogers acknowledged that any remaining cancellation fee balance would be eliminated by the carrier at the end of the 24-month contract period.
25. L'Union submitted that all monthly cancellation fee reductions should be fixed and equal, allowing consumers to reach a \$0 balance in 24 months. PIAC submitted that a Wireless Code-compliant tab contract could be designed under the current rules, which would allow the consumer to leave the service provider without penalty or charge after 24 months.
26. Several interveners, including PIAC, TELUS, l'Union, and Vaxination, noted that under Rogers' interpretation, service providers could choose to use a low percentage value, which would leave a substantial tab balance at the end of 24 months. This balance would constitute a barrier to switching providers, which could undermine the intent of the Wireless Code's cancellation fee provisions – namely, that customers have the opportunity to reconsider their service options at two-year intervals.

27. TELUS argued that its interpretation is more consumer-friendly than Rogers', since the customer is not required to carry a significant tab balance throughout the 24-month period. However, TELUS also submitted that overly strict limitations on tab reductions would eliminate the ability for service providers to come up with new, innovative means to subsidize consumer devices.
28. Bell Canada submitted that approval of both companies' applications would enhance the flexibility of indeterminate tab contracts, thus benefitting consumers.

### **Commission's analysis and determinations**

29. As noted above, the Wireless Code's cancellation fee provisions are meant to provide clarity for consumers by establishing a clear, standard, and transparent formula for calculating cancellation fees. At the same time, those provisions are designed to give service providers the flexibility they need to innovate and provide competitive offers to consumers.
30. During the Wireless Code proceeding, the Commission heard concerns that high cancellation fees are a barrier to customers who want to switch service providers. In order to address these concerns, the Wireless Code will limit cancellation fees to the value of the device subsidy and will require that the cancellation fee reach \$0 within 24 months.
31. The Commission notes that Rogers' interpretation is largely consistent with the principles underlying the Wireless Code's cancellation fee requirements: cancellation fees would be capped at the value of the device subsidy and would reach \$0 in 24 months. While the monthly cancellation fee reduction would not be an equal dollar amount, the reduction would be set based on an equal percentage of the customer's monthly bill.
32. The Commission acknowledges the concerns raised by interveners about barriers to switching providers. The Commission recognizes that allowing cancellation fee reductions to be based on an equal percentage of the customer's monthly bill could result in higher cancellation fees through most of the contract period. As noted above, however, total cancellation fees would be capped and would have to reach \$0 in 24 months. Furthermore, Rogers' approach could permit customers to benefit from larger subsidies than would otherwise be provided.
33. The Commission considers that the use of a constant, equal percentage would make cancellation fees sufficiently transparent and predictable for consumers. In addition, the requirement that the cancellation fee reach \$0 in 24 months or less ensures that consumers will have the opportunity to re-evaluate their options every two years.
34. The Commission is concerned that an overly restrictive interpretation of the Wireless Code's cancellation fee requirement could unduly limit innovation and the development of competing business models for device subsidies. On balance, the Commission considers that Rogers' interpretation would benefit consumers by

ensuring that they have diverse and flexible options for wireless services and devices, which would address a wide variety of consumer needs.

35. In light of the above, the Commission concludes that Rogers' interpretation is consistent with the principles and intentions of the Wireless Code's requirements regarding cancellation fees. The Commission therefore finds that the Wireless Code allows for monthly cancellation fee reductions to vary when they are based on an equal percentage of the customer's bill, provided that the Wireless Code's requirements set out above are otherwise met. Further, as indicated below, the Commission considers that the cancellation fee reduction must be clearly described to consumers in all cases.

#### **IV. What information must be specified in tab contracts with respect to cancellation fees?**

36. Both Rogers and TELUS requested clarification on how section B of the Wireless Code, which requires that certain information be included in the customer contract, applies to tab contracts. Specifically, the applicants requested that the Commission confirm how the following two elements should be presented in tab contracts:

- a) the amount by which the cancellation fee will decrease each month (section B.1.(iv)d.ii of the Wireless Code); and
- b) the date on which the customer will no longer be subject to the cancellation fee (section B.1.(iv)d.iii of the Wireless Code).

37. Both applicants submitted that for tab contracts, the amount required by element a) would not be a fixed dollar amount. TELUS added that under a tab contract, there is no set date on which the customer will no longer be subject to a cancellation fee.

38. This being the case, Rogers requested confirmation that it could meet the requirement set out at a) above by using an equal percentage of the customer's monthly bill. TELUS requested confirmation that the use of an outside date (i.e. no later than X) would be acceptable for element b) above.

#### **Commission's analysis and determinations**

39. In the Wireless Code Decision, the Commission determined that certain basic information must be included in all written wireless service contracts. This requirement will ensure that consumers have the information they need to understand their contractual obligations.
40. In accordance with the Commission's analysis and determinations set out under Issue III above, the cancellation fee provisions allow for variable monthly reductions, either over and above a minimum amount or based on a fixed percentage of the customer's bill.

41. In addition, the Wireless Code requires service providers to ensure that their customers are given clear and straightforward information on how the cancellation fee will apply to them. The Commission concludes that, for the purposes of section B.1.(iv)d.ii of the Wireless Code, the service provider must set out in its tab contracts either (a) the minimum amount by which the cancellation fee will reduce each month, or (b) the percentage amount that will be used to determine the monthly cancellation fee reduction.
42. In order to ensure clarity and transparency, where the cancellation fee reduction is not a fixed dollar amount, the Commission requires service providers to include, in both the contract and the critical information summary, an example of how this amount will be calculated. The Commission also expects service providers to offer their customers information and tools that they can use to calculate their own cancellation fee at any time during their contract.
43. Finally, as noted above, the cancellation fee provisions are intended to set out minimum standards for service providers. Therefore, the Commission considers that the date required to be included in the contract, indicating the date on which the customer will no longer be subject to the cancellation fee, can be presented as an outside date. As such, the contract could indicate that the customer's cancellation fee would reach \$0 no later than a specific date.

## **V. How should the cancellation fee be calculated in the case of early device upgrades?**

44. The Wireless Code requires that, for the purposes of calculating the cancellation fee,
  - the value of the device subsidy is the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to; and
  - the retail price of the device is the lesser of the manufacturer's suggested retail price or the price set for the device when it is purchased from the service provider without a contract.
45. TELUS submitted that the definition of "device subsidy" limits the customer's ability to upgrade their device before completely repaying their tab. TELUS provided the example of a customer with an initial \$150 tab balance who has paid \$100 of their tab and is left with a \$50 balance. This customer would be able to upgrade their device, putting an additional \$100 towards the cost of a new device on their tab.
46. However, TELUS submitted that under the Wireless Code's definition, the value of the device subsidy would be limited to \$100, rather than the full \$150 tab amount. In TELUS' view, this would force the service provider to require repayment of the existing tab before permitting a device upgrade, so as to be able to consider the entire tab as the subsidy for the purpose of calculating the cancellation fee. TELUS



submitted that its interpretation would ensure that customers are offered a simple, flexible device upgrade.

47. CIPPIC/Open Media argued that there is no difference between (a) requiring the customer to repay the outstanding subsidy before upgrading, and (b) paying extra for the new device. However, CIPPIC/Open Media and Vaxination argued that it is important to clearly terminate the original contract before beginning a new one. These interveners submitted that TELUS' interpretation would confuse consumers by suggesting that the original agreement continues with the new device subsidy.
48. CIPPIC/Open Media argued further that approval of TELUS' application in this regard would risk creating loopholes or exceptions in the cancellation fee formula, which would lead to less transparency for consumers. In addition, certain interveners noted that requiring customers to repay their original subsidy when they upgrade their device would not impose any additional costs on customers.
49. PIAC and l'Union expressed concern that rolling over subsidies from one device to another could increase the amount of customers' bills, increase cancellation fees, and put consumers into a cycle of debt.

#### **Commission's analysis and determinations**

50. As described above, tabs are a mechanism that service providers use to offer customers devices at a reduced upfront cost. The Commission notes that in many cases, a customer's tab is equivalent to their device subsidy. However, the Commission is concerned that TELUS' interpretation could allow cancellation fee repayment to last beyond a 24-month period and could also lead to less transparency for consumers because the fact that a device upgrade creates a new contract would be obscured.
51. Under TELUS' interpretation, customer cancellation fees would still be based on the value of the device subsidy. However, cancellation fees could extend beyond the 24-month limit set out in the Wireless Code. In TELUS' example, the existing \$50 balance would be rolled over into a new 24-month period, restarting the "clock" for another 24 months. Although this would not occur without customer consent, the Commission considers that it could undermine the clarity that the Wireless Code is intended to provide.
52. The Commission agrees with interveners that this continuous cycle could undermine transparency for consumers regarding device upgrades. The Wireless Code requires that service providers clearly indicate whether a device upgrade could extend the term of the customer's contract. Allowing customers to upgrade their device without clearly concluding their current contract and device relationship could reduce the certainty that this requirement was meant to provide. At all times, customers must be aware that an upgrade represents a completely new contract with new obligations, rather than a continuation or extension of their original agreement.

53. In addition, the Commission notes TELUS' argument that approval of its request would simplify device upgrades. However, from the consumer's perspective, paying off a tab or receiving an additional subsidy amounts to an accounting difference; at the time of device upgrade, the amount owing is identical in both cases. TELUS itself noted that when customers wish to upgrade, the obligation they face is exactly the same.
54. The Commission does not consider that the Wireless Code's requirements complicate early device upgrades. Rather, the Commission considers that service providers could choose to simplify early device upgrades and permit customers to take advantage of their full tab amount when upgrading their device, while remaining compliant with the Wireless Code and ensuring that consumers fully understand the impact of device upgrades on their obligations.
55. In light of the above, the Commission finds TELUS' interpretation regarding early device upgrades to be inconsistent with the principles and intentions underlying the Wireless Code's requirements.

Secretary General