



Telecom Regulatory Policy CRTC 2013-598

PDF version

Route reference: Telecom Regulatory Policy 2013-271

Ottawa, 8 November 2013

Wireless Code – Request by Quebecor Media Inc. to review and vary Telecom Regulatory Policy 2013-271 regarding the definition of “indeterminate contracts”

File number: 8622-Q15-201310508

In this decision, the Commission denies Quebecor’s request to review and vary the Commission’s determination in Telecom Regulatory Policy 2013-271 that indeterminate contracts do not have a set duration and automatically renew each month.

The Commission also clarifies that, for indeterminate contracts with device subsidies that were signed prior to 2 December 2013, the existing early cancellation fee set out in the customer’s contract will continue to apply until either (a) the date that the cancellation fee reaches \$0 under the contract, (b) the date that the customer upgrades their wireless device, or (c) 3 June 2015, whichever occurs first.

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 residential and small business customers 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 differentiates between four main types of wireless contracts, primarily for the purpose of calculating the maximum early cancellation fee (cancellation fee) that a service provider may charge customers who cancel their contract before the end of the commitment period. These four types of contracts differ based on duration (fixed-term or indeterminate) and whether or not a subsidized device is provided as part of the wireless service contract. The Wireless Code defines indeterminate contracts as having no set duration and automatically renewing each month.

4. 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 application

5. The Commission received an application dated 16 July 2013 from Quebecor Media Inc. (Quebecor), on behalf of itself and its subsidiary Videotron G.P. (Videotron), requesting that the Commission review and vary the Wireless Code's definition of the term "indeterminate contracts." Quebecor submitted that the current definition constitutes an error in fact and that if the Wireless Code is implemented as written, Videotron will be subject to a competitive disadvantage and an unfair financial burden.
6. Specifically, Quebecor argued that the Wireless Code's assertion in the definition of "indeterminate contracts" that all such contracts renew automatically each month is incorrect, as Videotron's wireless contracts make no mention of automatic renewal. Quebecor submitted that an indeterminate contract remains in effect until one or both parties terminate it.
7. Quebecor requested that the Commission amend the definition of "indeterminate contracts" to remove the reference to automatic renewal. Alternatively, the applicant proposed that if the Commission considers that such contracts do renew monthly, the Wireless Code should be clarified so that the renewal of an indeterminate contract applies only when the customer is no longer subject to a cancellation fee.
8. The Commission received interventions regarding Quebecor's application from Bell Canada, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic and the Open Media Engagement Network (CIPPIC/Open Media), the Public Interest Advocacy Centre (PIAC), and Vaxination Informatique (Vaxination). The public record of this proceeding, which closed on 3 September 2013, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Is there substantial doubt as to the correctness of the Commission's determinations with respect to the renewal of indeterminate contracts?

9. Quebecor submitted that the Wireless Code's definition of "indeterminate contracts," when combined with the implementation provisions set out in paragraph 369 of the Wireless Code Decision, would result in all indeterminate customers being covered by the Wireless Code within the 31 days following its implementation on 2 December 2013 (i.e. at the time of their first monthly renewal). Quebecor argued that this implementation schedule contradicts the principle, set out in the Wireless Code Decision, that implementation of the Wireless Code should be proportional to the costs and resources required.
10. In addition, Quebecor submitted that the Wireless Code's implementation provisions unfairly disadvantage new entrants. The company argued that incumbent providers,

which predominantly offer 36-month fixed-term contracts, will have 18 months to transition their customers to contracts that conform with the Wireless Code's requirements.

11. Quebecor submitted that, due to these factors, the Wireless Code's implementation will carry significant financial costs for Videotron's operations. Specifically, the immediate reduction or elimination of cancellation fees will (a) increase the mobility (or churn) of Videotron's customers to other providers, and (b) increase Videotron's spending on device subsidies for customers who do not wish to switch providers.
12. Finally, Quebecor submitted that the Wireless Code is silent on whether customers with indeterminate contracts will need to be notified when their contracts change so as to comply with the Wireless Code. According to Quebecor, this near-simultaneous notification of all customers with indeterminate contracts, including the distribution of paper copies of the amended contracts, could lead to customer confusion during one of the busiest purchasing periods of the year. It would also entail administrative costs for Videotron due to an additional burden on its customer support network.

Positions of parties

13. Bell Canada supported Quebecor's application, submitting that indeterminate contracts would not automatically renew in the absence of the Wireless Code's definition. Bell Canada also submitted that the different treatment of fixed-term and indeterminate contracts is arbitrary and asymmetrical. In addition, Bell Canada agreed that mass notification of customers could be disruptive for consumers and burdensome for service providers.
14. Bell Canada argued that the definition in question represents a failure to consider the fundamental principle, set out in the Wireless Code Decision, that implementation of the Wireless Code should be proportionate to the resulting costs to service providers. Bell Canada further submitted that the definition constitutes an error in law, as it is retroactive (affecting indeterminate contracts signed prior to the Wireless Code's coming into effect) and counter to the Policy Direction.¹
15. CIPPIC/Open Media, PIAC, and Vaxination opposed the application. PIAC submitted that it considers the definition of "indeterminate contracts" to be accurate: the services are billed monthly, customers can cancel their contracts at any time, and therefore the contracts are effectively month-to-month contracts. PIAC added that customers who are well-informed as to the duration of their commitment are better able to participate in the competitive market. PIAC also argued that the relief sought by Quebecor would limit consumers' access to the Wireless Code's protections and would be counter to the *Telecommunications Act* and the Policy Direction.

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

16. Vaxination submitted that the Wireless Code must distinguish between indeterminate contracts with device subsidies and those without subsidies. It argued that an indeterminate contract with a subsidy is effectively a term contract that expires when the subsidy reaches \$0. Vaxination submitted that the Wireless Code should be modified to clarify this principle, and that indeterminate contracts with device subsidies should receive the same protections as term contracts – namely, price certainty, notification prior to contract expiry, and the requirement for express consent before any contract extension.
17. PIAC and Vaxination argued that Quebecor chose to offer indeterminate contracts because of their favourable treatment under Quebec’s *Consumer Protection Act* and that it should live with the consequences of its business decisions. These parties submitted that provincial legislation offers less protection to customers with indeterminate contracts than to those with fixed-term contracts.
18. CIPPIC/Open Media argued that automatic contract renewal does not trigger the application of elements of the Wireless Code that relate to specific contractual provisions. They submitted that the Wireless Code’s implementation could take into account existing indeterminate contracts with device subsidies, as long as the 3 June 2015 implementation date (i.e. the date on which the Wireless Code will apply to all wireless contracts) applies.

Commission’s analysis and determinations

19. The Wireless Code was created following a significant and extensive public consultation, during which the Commission received submissions from consumer groups, service providers, and hundreds of Canadian cell phone users. The Wireless Code establishes acceptable industry practices regarding wireless services by imposing certain obligations on service providers and mandating certain terms and conditions for the provision of these services. To that end, the Commission included in the Wireless Code specific definitions to be used for the purpose of interpreting and applying the provisions in the Wireless Code. The Commission considers that a discrepancy between the wording in Videotron’s contracts and the definitions applied for the purposes of the Wireless Code does not, in and of itself, constitute a factual or legal error.
20. With respect to the burden on Videotron of implementing the Wireless Code, the Commission notes that much of the discussion in the proceeding that led to the Wireless Code Decision focused on the changes that service providers would be required to make (to their contracts, among other things) in order to comply with the Wireless Code Decision’s final determinations and the obligations set out in the Wireless Code. During the public proceeding, the Commission considered the burden on service providers, particularly the costs and resources required for implementation. The final determinations in the Wireless Code Decision reflect evidence filed by service providers as to the feasibility and cost of complying with the consumer safeguards set out in the Wireless Code.

21. The Commission also notes that the Wireless Code's provisions apply to wireless services "regardless of the status and business models of the [wireless service provider]." The Commission noted in the Wireless Code Decision that business models can and do change frequently, and that it would therefore be inappropriate to tailor the Wireless Code's provisions based on particular models in the market. A service provider takes a variety of factors into account and weighs the costs and benefits of each business model to determine which one best suits its objectives.
22. The Commission considers that Videotron's decision to choose a particular business model or a particular type of contract does not constitute a competitive disadvantage. Furthermore, the Commission considers that the definition accurately reflects the characteristics of indeterminate contracts and is appropriate for the purpose of defining the scope of the obligations set out in the Wireless Code. Therefore, the Commission finds that Quebecor has not demonstrated any substantial doubt as to the correctness of the Wireless Code's characterization of indeterminate contracts as month-to-month contracts that automatically renew.
23. In light of the above, the Commission does not consider that there is substantial doubt as to the correctness of its determinations with respect to the renewal of indeterminate contracts. As such, the Commission **denies** the application by Quebecor to review and vary the Wireless Code.

Cancellation fees

24. The Wireless Code is intended to improve clarity and transparency in the wireless services market, and to provide consumers with the information they need to make informed choices. It must therefore help consumers understand their rights, enable service providers to understand their responsibilities, and allow for the Commissioner for Complaints for Telecommunications Services Inc. to administer the Wireless Code and to address complaints.
25. In particular, the Commission considers that it is important that wireless customers clearly understand how cancellation fees may apply. However, the Commission notes that the record of this proceeding reveals concerns regarding the application of the Wireless Code's cancellation fee rules to indeterminate contracts where 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).
26. The Commission therefore considers that certain clarifications are necessary in order to ensure that all parties understand the implementation of the Wireless Code. The Commission also considers that these clarifications will address concerns expressed on the record of this proceeding.
27. In this regard, the Commission notes that section G.2(i) of the Wireless Code reads, in part, as follows: "When a subsidized device is provided as part of the contract, (...)
b. for ***indeterminate contracts***: 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.”

28. The Commission notes that Quebecor’s cited costs of implementing the Wireless Code within a month following 2 December 2013 relate in large part to implementation of the cancellation fee requirements for indeterminate contracts with device subsidies. The Commission notes that, for such contracts, cancellation fees are payable only if a customer chooses to cancel their contract before the end of the term set out in the contract. If, prior to 3 June 2015, a customer wishes to cancel a contract signed before 2 December 2013, they will have to pay the cancellation fee specified in the contract. Thus, for an indeterminate contract with a device subsidy signed before 2 December 2013 and effectively renewing after that date, the cancellation fee payable as set out in the contract would not change.
29. Accordingly, in such a situation, the customer’s cancellation fee obligation would remain in place until the earliest of (a) the date that the cancellation fee reaches \$0 under the current indeterminate contract, (b) the date that the customer upgrades their wireless device, or (c) 3 June 2015.
30. As of 3 June 2015, the applicable cancellation fee for any customer wishing to exit their contract would be calculated as per the terms set out in section G of the Wireless Code. For additional clarity, that calculation would take into account the number of months that have elapsed since the signing of the contract and the amount of the original device subsidy.

Promotion and awareness of the Wireless Code

31. As noted above, Quebecor submitted that the Wireless Code does not specify whether customers with indeterminate contracts will need to be notified when their contracts become subject to the Wireless Code.
32. The Commission notes that its determinations to ensure the effective and universal promotion of the Wireless Code are set out in paragraph 385 of the Wireless Code Decision. These requirements include the obligation for service providers to add a notification regarding the consumer checklist² to their billing statements. The Commission expects that, as part of this notification, service providers will indicate to their customers (a) the date that the Wireless Code comes into effect, and (b) the date that the Wireless Code applies to their contract. To clarify further, the obligation to provide a permanent copy of the contract, set out in sections B.1(i)a. and B.1(i)b. of the Wireless Code, is not engaged upon automatic renewal of a contract.

Secretary General

² The consumer checklist is a document that highlights the most important aspects of the Wireless Code for consumers of wireless services. The checklist, which is entitled Your Rights as a Wireless Consumer, is set out as Appendix 2 to the Wireless Code Decision.