



Telecom Decision CRTC 2014-528

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Wireless Code – Clarification of how the Wireless Code applies to corporate wireless service plans

*In response to an application from TCC, the Commission **reiterates** that the Wireless Code applies to retail mobile wireless voice and data services provided to individuals and small businesses. This means that it applies to all wireless plans for such services where the contract is between (a) an individual and a service provider, or (b) a small business and a service provider. Further, the Commission **clarifies** that the Wireless Code applies to all contracts between an individual and a wireless service provider where the individual is responsible for some or all charges related to the contract.*

*Accordingly, the Commission **finds** that both “corporate individual plans” and “employee purchase plans,” as they are described by TCC, are wireless contracts between an individual and a service provider where the individual is responsible for some or all charges associated with the contract, including but not limited to roaming and overage charges. Thus, the Commission **clarifies** that the Wireless Code applies to “corporate individual plans” and “employee purchase plans” as described by TCC.*

The Wireless Code does not apply to “enterprise plans” as described by TCC, which are agreements between a service provider and a medium or large business where the individual using the service is not responsible for any of the charges incurred.

The clarifications in this decision will ensure that companies appropriately apply the Wireless Code to the wireless contracts they provide to individual consumers of retail wireless services.

Background

1. In *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013 (the Wireless Code policy), the Commission established the Wireless Code, a mandatory code of conduct for all providers of retail mobile wireless voice and data services (wireless services). The Wireless Code establishes requirements for wireless service providers (service providers) to (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. The Wireless Code came into force on 2 December 2013.

2. In the Wireless Code policy, the Commission stated: “the Wireless Code will 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 [service provider].”

3. The Commission also stated the following:

378. ...as with any new set of rules, there may be issues of interpretation that it has not anticipated. In order to ensure the greatest benefit to consumers, if any part of the Code or a consumer’s contract is ambiguous, or if it is unclear how the terms of the Code or the contract are to be applied, then the Code and the contract must be interpreted in a manner that is favourable to the consumer.

379. Moreover, if at any time [service providers] or other interested parties are unclear about the application or interpretation of the Wireless Code or this decision, they may seek guidance or interpretation from the Commission. The Commission reserves the right to issue guidelines of general application.

Application

4. On 3 March 2014, TELUS Communications Company (TCC) submitted an application seeking clarification of how the Wireless Code applies to two types of corporate wireless service plans (corporate plans) offered by TCC and other service providers: “corporate individual plans” and “employee purchase plans.”

5. The Commission received interventions regarding TCC’s application from Bell Mobility Inc. (Bell Mobility), the Public Interest Advocacy Centre (PIAC), Quebecor Media Inc. (Quebecor), and Rogers Communications Partnership (RCP). The public record of this proceeding, which closed on 15 April 2014, is available on the Commission’s website at www.crtc.gc.ca or by using the file number provided above.

How does the Wireless Code apply to corporate plans?

6. Corporate plans involve three parties: the individual consumer or end-user, the service provider, and the business or organization that negotiated the rate for the plan. Depending on the type of corporate plan, the individual consumer may be responsible for some or all charges associated with the account, and the plan may be used for business use only, a mix of business and personal use, or personal use only.

7. In its application, TCC referred to three types of corporate plans: “enterprise plans,” “corporate individual plans,” and “employee purchase plans.” TCC submitted that the Wireless Code clearly does not apply to “enterprise plans,” but that it is unclear whether or how it applies to “corporate individual plans” and “employee purchase plans.” TCC was concerned that ambiguity in whether the Wireless Code applies to these plans could result in service providers treating them inconsistently.

8. TCC submitted that the key issue to consider in determining whether the Wireless Code applies to a given type of contract is whether the contract is primarily for business or personal use.

Enterprise plans

9. TCC submitted that “enterprise plans” are corporate wireless plans where the contract is between a medium or large business and a service provider. The end-user of the wireless service, an employee of the medium or large business, has no contractual responsibility to the service provider and is therefore not responsible to the service provider for any charges associated with the account.
10. TCC submitted that it is clear that the Wireless Code does not apply to “enterprise plans” and did not request clarification regarding these plans.

Employee purchase plans

11. TCC submitted that an “employee purchase plan” is essentially a standard wireless contract between an individual and a service provider where the services are offered at preferred rates, usually because the individual is an employee or member of an organization. The contracted services are entirely for the individual’s personal use, and the individual is responsible to the service provider for all charges associated with the account.
12. TCC submitted that the Wireless Code should apply to “employee purchase plans,” since their main purpose is personal use and the employer does not pay for any of the cost of the plan.
13. Bell Mobility, PIAC, and Quebecor agreed that the Wireless Code should apply to “employee purchase plans,” since the contract is between the service provider and the individual end-user. Furthermore, the end-user is responsible for all charges associated with the account, and the device does not have access to corporate software.
14. RCP submitted that the Wireless Code should not apply to “employee purchase plans,” arguing that the primary customer of this type of plan is the corporation, since the terms and preferred rates would not be possible without the corporation’s bargaining power. RCP added that individuals are not obligated to purchase an “employee purchase plan,” and if they are unsatisfied with the contract requirements, they are free to sign a standard wireless service contract, which would be protected by the Wireless Code.

Corporate individual plans

15. TCC submitted that a “corporate individual plan” is a wireless contract between an individual and a service provider where the services are offered at a preferred rate to an employee of a medium or large business. The services are mostly for business use, although personal use is possible. The individual is responsible to the service

provider for all charges associated with the account, but the individual's employer reimburses the individual for some, but not all, of the monthly recurring charges.

16. To obtain a "corporate individual plan" from TCC, an employer must reimburse employees for at least half of the monthly charges for services billed to the individual employee. The employer would not cover pay-per-use usage beyond the plan (including roaming charges, overage charges, etc.). In addition, each employee must use the services primarily for business purposes and sign a customer service agreement with an authorized TCC dealer.
17. TCC submitted that the Wireless Code should not apply to "corporate individual plans" as long as the following conditions are met: (a) the employer offers the end-user a stipend that covers more than half of the monthly recurring charges; and (b) corporate data is accessible from the device through the installation of a form of secure mobility device management software. TCC proposed that these conditions be included in all service providers' "corporate individual plans" in order to ensure that all such plans are treated equally. The company argued that when the contract meets these conditions, it is primarily a business agreement and the end-user is receiving the benefits associated with such an agreement.
18. Bell Mobility supported TCC's proposal and suggested adding a third condition that must be met in order for "corporate individual plans" to be exempt from compliance with the Wireless Code: "where employer, enterprise, or other entity has negotiated a corporate rate for its members who use the service primarily for business rather than personal purposes."
19. RCP submitted that the Wireless Code should not apply to "corporate individual plans," for the same reason cited in its position with respect to "employee purchase plans." The company also argued that end-users should not have the benefit of Wireless Code protection in addition to benefiting from the bargaining power of their employer.
20. PIAC and Quebecor submitted that the Wireless Code should apply to "corporate individual plans," with no exemption requirements, due to the fact that, as the end-user, the employee remains responsible for any additional or unexpected overage charges. PIAC submitted that a stipend is irrelevant to whether or not a plan should be covered by the Wireless Code, as it is not possible for the service provider to measure the stipend being paid to the end-user.

Commission's analysis and determinations

21. The Commission notes TCC's argument that the key issue to consider in determining whether the Wireless Code applies to corporate plans is whether the contract is primarily for business or personal use. However, the Wireless Code does not rule out application to contracts that are primarily for business use and applies to all contracts between small businesses and service providers as well as between individuals and service providers. Accordingly, in the Commission's view, the key issue to consider

in determining whether the Wireless Code applies is whether corporate plans are contracts between (a) individuals and service providers or (b) medium/large businesses and service providers.

22. The Commission considers that a wireless service contract is between an individual and a service provider when the individual enters into the contract and is responsible for some or all charges associated with the account, including but not limited to roaming charges, overage charges, and cancellation fees. For both “employee purchase plans” and “corporate individual plans,” the individual is responsible for certain charges related to the account. “Employee purchase plans” are primarily for personal use, and the individual is responsible to the service provider for all charges associated with the account. “Corporate individual plans” are primarily for business use, but the individual is responsible to the service provider for all charges associated with the account, despite being reimbursed by their employer for a certain portion of their minimum monthly charges. The individual is fully responsible for any charges exceeding the amount paid for by their employer, including but not limited to roaming charges and overage charges.
23. As noted above, in the case of both “corporate individual plans” and “employee purchase plans,” the individual is responsible to the service provider for charges associated with the account. Therefore, if the Wireless Code did not apply to these types of contracts, individuals with such contracts could be at risk of bill shock, higher cancellation fees, changes to key contract terms during the commitment period, etc., irrespective of the size or purchasing power of their employer.
24. In light of the above, the Commission **reiterates** that the Wireless Code applies to wireless services provided to individuals and small businesses. The Commission finds that this provision means that the Wireless Code applies to all wireless plans where the agreement is between (a) an individual and a service provider, or (b) a small business and a service provider.
25. The Commission **clarifies** that the Wireless Code applies to wireless plans 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.
26. Accordingly, the Commission **clarifies** that the Wireless Code applies to “corporate individual plans” and “employee purchase plans” as they are described by TCC. In both cases, the agreement is between a service provider and an individual who is responsible for some or all of the charges associated with the wireless contract.
27. As “enterprise plans” represent an agreement between a service provider and a medium or large business, and the individual using the service is not responsible for any of the charges incurred, the Wireless Code does not apply to such plans.

Secretary General