



Telecom Decision CRTC 2021-98

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Wireless Code – Application to device financing plans

The Commission determines that device financing plans fall under the scope of the Wireless Code, given the inextricable link between device financing plans and wireless service plans. Further, it determines that the required repayment of the balance of a device financing plan ultimately constitutes an early cancellation fee for the purposes of the Wireless Code. The full protections of the Wireless Code will thus apply to device financing plans.

*The Commission **directs** wireless service providers to update their contracts, sales and training material, and any other documentation to ensure that their device financing plans and wireless service plans comply with rules relating to early cancellation fees as of one month following the publication of this decision.*

Finally, to inform future reviews of the Wireless Code, the Commission requests that the Commission for Complaints for Telecom-television Services Inc. begin tracking complaints related to device financing plans in its annual and mid-year reports and ensure that such complaints are counted separately from other early cancellation fee-related complaints.

Introduction

1. In July 2019, some wireless service providers (WSPs) made new device financing plans available in the wireless market. Device financing plans provide customers with the ability to pay for a device in monthly instalments, until the device is fully paid for.
2. To better understand these plans, Commission staff issued a request for information (RFI) [letter](#) to the WSPs that offer services within the scope of the Wireless Code on 16 July 2019. The WSPs' RFI responses indicated the following:
 - Bell Mobility Inc. (Bell Mobility), Iristel Inc. (Iristel), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) were offering device financing plans, and additional WSPs indicated that they planned to offer them in the future.
 - The WSPs offering device financing plans submitted that these are separate contracts from wireless service plans.

- The purpose of a device financing plan is to enable customers to pay for a device in monthly instalments, so that the customer no longer makes any device-related payments once the balance of the device financing plan is fully paid.
 - When device financing plans were introduced in the market, RCCI and TCI offered the plans with both 24- and 36-month terms. Other WSPs stated that they are considering making device financing plans with 36-month terms available as well.
 - Bell Mobility, Iristel, and TCI offered device financing plans with fixed-term wireless service plans only, while RCCI offered them with indeterminate month-to-month wireless service plans.
 - The device financing plans offered by Iristel and TCI can be combined with a device subsidy, but those offered by Bell Mobility and RCCI cannot.
 - The WSPs offered device financing plans only in conjunction with a wireless service plan (i.e. a customer could not obtain a device financing contract without also getting a contract for wireless services).
3. Based on its preliminary analysis of the responses received, the Commission issued a [letter](#) on 2 August 2019 in which it noted its concerns that these device financing plans, including those with 36-month terms, may not be consistent with the Wireless Code. The Commission also included in its letter an expectation that all WSPs would cease offering device financing plans with terms longer than 24 months until the Commission had had an opportunity to complete a full review of the practice.
 4. Further to this letter, the Commission initiated a proceeding (the proceeding) through Telecom Notice of Consultation 2019-309, in which it noted that certain WSPs had begun to, or expressed the intention to, offer wireless service plans accompanied by device financing plans with terms of up to 24 months, and of up to 36 months in some cases.
 5. The Commission stated that a preliminary analysis of the information it had received to date suggested that certain device financing plans, including those with 36-month terms, may not be consistent with the Wireless Code. In particular, the Commission noted its concern regarding customers having to pay the remaining balance of their device financing plan immediately if they wished to change to a different wireless service plan or WSP in cases where the device financing plan term was longer than the wireless service plan term.
 6. The Commission called for comments on whether device financing plans, including those with terms longer than 24 months, are compliant with the Wireless Code. In particular, the Commission included specific questions on how the provisions of the Wireless Code on early cancellation fees contained in sections G.1. to G.3., and the associated definitions, apply to device financing plans.

7. The Commission also asked each of the WSPs offering device financing plans, namely Bell Mobility, Iristel, RCCI, and TCI, to show cause why they had not committed a violation by offering device financing plans that may be in contravention of the Wireless Code, and, if they were found to have committed a violation, why a mandatory order requiring them to cease offering device financing plans that are non-compliant with the Wireless Code should not be issued against them.

Regulatory background

8. The Commission regulates the Canadian telecommunications industry with the goal of fulfilling the Canadian telecommunications policy objectives (policy objectives) set out in section 7 of the *Telecommunications Act* (the Act).¹ The Commission is required to exercise its powers and perform its duties under the Act in accordance with the 2006 Policy Direction² and the 2019 Policy Direction³ (collectively, the Policy Directions). The 2006 Policy Direction states, among other things, that the Commission should rely on market forces to the maximum extent feasible and regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary. The 2019 Policy Direction provides, among other things, that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation.
9. The Act also grants the Commission the authority to impose conditions on the offering and provision of any telecommunications service by Canadian carriers under section 24, and by any other person under section 24.1. It is pursuant to these powers that the Commission created the Wireless Code in Telecom Regulatory Policy 2013-271 (the Wireless Code Policy), which was subsequently reviewed in Telecom Regulatory Policy 2017-200 (the Wireless Code Review). The Wireless Code is established as a mandatory code of conduct that governs the relationship between WSPs and their customers. It protects Canadians in several important ways, including by limiting certain fees, requiring the provision of information to consumers, and enabling Canadians to take advantage of competitive offers. The Wireless Code was created after the Commission determined that it was necessary to impose certain conditions in the competitive marketplace to protect the interests of consumers and to contribute to the dynamism of that marketplace, thereby furthering the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act.⁴

¹ See subsection 47(a) of the Act.

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

³ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁴The cited policy objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (b) to render reliable and affordable telecommunications services of high quality

The proceeding

10. The Commission received interventions from 10 WSPs currently providing services within the scope of the Wireless Code, namely Bell Mobility; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Iristel; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); RCCI; Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); TBayTel; TCI; and Xplornet Communications Inc. (Xplornet); as well as from the Coalition for Cheaper Wireless Service (CCWS) [composed of the Public Interest Advocacy Centre, the Association of Community Organizations for Reform Now Canada, the National Pensioners Federation, and the Canadian Association of Retired Persons]; the Competition Bureau; the Manitoba Coalition (composed of the Aboriginal Council of Winnipeg, the Consumers' Association of Canada [Manitoba Branch], and Winnipeg Harvest); l'Union des consommateurs (l'Union); and six individuals.
11. The interventions touched on a number of matters raised in Telecom Notice of Consultation 2019-309, including
 - the application of the Wireless Code to device financing plans as they currently exist;
 - benefits and concerns related to device financing plans;
 - jurisdictional matters; and
 - proposals regarding how device financing plans could be compliant with the Wireless Code.
12. Interveners also provided views on issues that were out of scope of the proceeding, such as proposals to modify the Wireless Code to account for device financing plans or to allow longer device amortization periods either for device financing plans or for device subsidies.
13. On 30 August 2019, the Commission issued a second RFI [letter](#) to the four WSPs identified in Telecom Notice of Consultation 2019-309 (i.e. Bell Mobility, Iristel, RCCI, and TCI), as well as SaskTel, in which it sought more detailed information about their device financing plans. The five WSPs submitted that they had complied with the expectation to stop offering device financing plans with terms longer than 24 months.

accessible to Canadians in both urban and rural areas in all regions of Canada; (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and (h) to respond to the economic and social requirements of users of telecommunications services.

Issues

14. The Commission has identified the following issues to be addressed in this decision:

- Do device financing plans fall under the scope of the Wireless Code?
- Do the existing provisions of the Wireless Code apply to device financing plans? If so, how?
- Are device financing plans, including those with terms longer than 24 months, compliant with the Wireless Code?
- Would a prohibition on device financing plans be inconsistent with the Policy Directions?

Do device financing plans fall under the scope of the Wireless Code?

Positions of parties

15. Bell Mobility, RCCI, SaskTel, TBayTel, and TCI argued that devices are not purchased as part of wireless contracts and, thus, device financing plans do not fall under the purview of the Wireless Code. RCCI further argued that since device financing plans are not contracts as defined in the Wireless Code, none of the provisions and definitions of the Wireless Code apply.
16. Bell Mobility and RCCI submitted that the Wireless Code did not contemplate the introduction of device financing plans into the Canadian market. In this regard, the Wireless Code defines wireless services as “retail mobile voice and data (including text) services.”
17. Relying on the RFI responses provided by the WSPs offering device financing plans, the CCWS, Eastlink, Iristel, the Manitoba Coalition, Shaw, l’Union, and Videotron argued that device financing plans and wireless service plans are decidedly interconnected and constitute the whole wireless service contract. These parties therefore argued that device financing plans do fall under the purview of the Wireless Code.
18. Iristel submitted that industry experience suggests that consumers view device financing as an integral component of wireless services. Iristel noted that it offers device financing plans that are linked to wireless service plans and that such financing plans are not offered on a stand-alone basis. In Iristel’s view, device financing plans can represent a device subsidy given the amount of financing provided pursuant to these plans and given the fact that devices are offered at a discount. The company argued that customers should continue to benefit from the protections afforded them by the Wireless Code.
19. The Manitoba Coalition argued that in their current iteration, device financing plans and wireless service plans are not functionally separate; therefore, the Wireless Code

protections apply to device financing plans. The CCWS also noted that the Wireless Code expressly states that it “applies to all wireless services, whether purchased on a stand-alone basis or as part of a bundle,” submitting that device financing plans are one such bundle.

20. An individual consumer submitted that there should only be a “remaining balance” for devices and that, like moving a mortgage to a different bank, the subscriber should be able to move their device balance to a different carrier or to their bank if they so choose.
21. The CCWS, the Manitoba Coalition, Shaw, and l’Union expressed concerns that should the Commission be lenient with WSPs on device financing plans, it may create an incentive for WSPs to try to find other loopholes to the important protections afforded in the Wireless Code instead of following existing processes to request modifications.
22. Bell Mobility and RCCI argued that device financing plans fall under the consumer protection laws of the provinces. L’Union similarly argued that the sale of devices, when separate from wireless service contracts, falls under the provincial field of jurisdiction over property and civil rights. However, by binding their device financing plans to their wireless service contracts, WSPs have opened the door for the Commission to intervene by imposing conditions on their offering and provision of telecommunications services. L’Union added that it would be favourable to consumers for device financing plans to be overseen by provincial authorities. It submitted that the Commission should prohibit WSPs from linking their wireless service contracts to device financing plans in order to avoid undesirable constitutional debates.
23. TCI submitted that the jurisdiction to regulate both devices and wireless services lies exclusively with the Commission, and that there is no room for encroachment by provincial legislatures. The Commission should therefore decline to make any statement indicating that provincial legislation applies in respect to the sale of devices. TCI further submitted that the Supreme Court of Canada has stated that this jurisdiction cannot be segmented in such a way as to carve out certain areas that could be subject to provincial legislation.^{5,6} Finally, TCI referred to a recent Quebec court ruling with respect to the *Quebec Consumer Protection Act* which held that

⁵ Specifically, the Supreme Court of Canada, in *Quebec (Public Service Board) v. Canada (Attorney General)*, [1978] 2 S.C.R. 191 at 197. See also *Re Public Utilities Commission and Victoria Cablevision Ltd., et al.* (1965) 51 D.L.R. (2d) 715 at 723 (B.C.C.A.), which states the following: “[T]he exclusive legislative jurisdiction of Parliament extend[s] up to the point where the T.V. signal is received by the subscriber,” and “there can no more be a separation for constitutional purposes between the carrier system, the physical apparatus, and the signals that are received and carried over the system than there can be between railway tracks and the transportation service provided over them...”

⁶ In *Campbell-Bennett v. Comstock Midwestern Ltd.*, [1954] S.C.R. 207 at 214 to 216; *Toronto Corporation v. Bell Telephone Co. of Canada*, [1905] A.C. 52 (U.K.P.C.) at 2; *Alberta Government Telephones v. CRTC*, [1989] 2 SCR 225 at 256 to 259 [AGT]; Peter Hogg, *Constitutional Law of Canada*, 5th Ed. Supp. Vol. 1, loose-leaf, Toronto, Thomson Carswell, pp. 22-8 and 22-8.1.

“determining the marketing conditions for telecommunications services is a crucial and fundamental aspect of the exercise of federal jurisdiction.”⁷ Thus, TCI argued the regulation of the rates charged for devices is a matter of federal jurisdiction.

24. The CCWS further submitted that should the Commission find device financing to be separate from the underlying wireless service plan, and if provinces were to successfully claim jurisdiction over device financing, the Commission would be unable to effectively regulate Canada’s wireless industry because both devices and wireless services are critical features of the market. Financing protections would therefore need to be introduced.
25. SaskTel and TCI argued that in a competitive market where the Commission has forborne from the regulation of both rates and conditions of service for terminal equipment, it cannot tell carriers how to offer devices to customers nor can it dictate the amount of allowable subsidies for devices without reversing a quarter century of forbearance findings. Videotron argued that this interpretation is incorrect and glosses over why the Wireless Code was created in the first place and argued that the Commission, by including early cancellation fee protections in the Wireless Code from its inception, did address consumer concerns related to terminal equipment.

Commission’s analysis and determinations

26. The Commission finds that device financing plans and wireless service plans are interrelated and together constitute a single contract between a WSP and its customers. Device financing plans are clearly an integral part of the wireless service contract, the main component of which is the provision of wireless services, while the device financing plan is optional and subsidiary. Regardless of how WSPs characterize these plans, whether it is a device financing plan, a device subsidy, or otherwise, they share the same main characteristics. Both device subsidies and device financing plans allow customers to receive a device at a reduced cost or at no upfront cost and are offered incidentally to the purchase of wireless services.
27. The Commission’s finding is borne out by the information submitted by WSPs which demonstrates how wireless services and device financing plans are linked:
 - device financing plans are available only in conjunction with the purchase of a binding wireless service plan with the same WSP;
 - the cancellation of the wireless service plan will also end the device financing plan and trigger the payment of the remainder of the cost of the device; and

⁷ Translation of *Directeur des poursuites criminelles et pénales c. Telus Communications Inc.*, 2019 QCCQ 2143 at paragraph 141: “La détermination des conditions de commercialisation des services de télécommunications est un aspect crucial et fondamental de l’exercice de la compétence fédérale.”

- a device financing plan is not portable, in that a customer cannot have a device financing plan with one WSP and enter into a wireless service plan with a different WSP.

28. Specifically, WSPs submitted the following responses to the RFIs:

- Bell Mobility: “If a [device financing plan] customer chooses to end their service arrangement with us in order to switch to a different [WSP] prior to the end of the device financing term, their device financing [plan] will terminate.”
- Iristel: “A customer may cancel a [device] financing plan if they wish to terminate their wireless service with Iristel. When a customer cancels their service, they must pay the remaining balance of their [device] financing plan immediately.”
- RCCI: “Cancellation of the service agreement will trigger repayment of the outstanding financing balance per the terms of the financing agreement and the customer will have to pay the outstanding financing balance on the phone that they purchased at \$0 down payment and 0% interest.”
- TCI: “Should a customer wish to switch wireless service providers and cancel [their] wireless services plan, the customer can do so at any time by paying the amount outstanding on the Easy Payment balance.”

29. The Commission considers that parties’ argument to the effect that device financing plans are separate contracts that can be disassociated from wireless service plan contracts and therefore not subject to the purview of the Wireless Code is based on a narrow and segmented interpretation of the contractual relationship between the customer and the WSP. This interpretation fails to take into account the totality of the contractual relationship between the customer and the WSP for the provision of wireless services. In this regard, the record shows that device financing plans are inextricably linked to the provision of wireless services – to the extent that the termination of the wireless service plan in each case triggers the requirement to pay the balance of the device financing plan – and should, therefore, be considered as forming part of the entire contractual relationship between the customer and the WSP for the provision of wireless services.

30. The Commission’s finding in this respect is in keeping with the interpretive principles set out in section 1 of the Wireless Code. These principles require that in interpreting the Wireless Code, the Wireless Code and its provisions be interpreted purposively, by reference to the objectives. If it is unclear how the terms of the Wireless Code are to be applied, the Wireless Code must be interpreted in a manner that is favourable to the customer. The Commission’s finding in this respect ensures that the Wireless Code can respond to the new realities of the market and that customers can continue to benefit from its protections, irrespective of the manner in which they choose to subsidize their device through their wireless service provider.

31. TCI argued that the Wireless Code cannot apply to device financing plans because the Commission has forbore from regulating the rates and conditions of the sale, lease, and maintenance of terminal equipment. The Commission notes that when it forbore from regulating the sale, lease, and maintenance of such equipment in Telecom Decisions 94-14 and 94-19, it was specific to the competitive terminal equipment market.⁸ By imposing limits on the manner in which WSPs can offer device financing plans to their subscribers, the Commission is exercising its regulatory powers under sections 24 and 24.1 of the Act for the purpose of placing general conditions on the provision of wireless services. Section 23 of the Act provides a definition of telecommunications service that includes any service that is incidental to the business of providing telecommunications services. The Commission considers device financing plans to be a service that is incidental to the provision of wireless services and therefore within the scope of the Wireless Code. Accordingly, it can apply certain relevant provisions of the Wireless Code to those plans without contradicting its forbearance determinations.
32. With respect to the jurisdictional arguments raised by various parties regarding the federal government’s jurisdiction over telecommunications and the provincial governments’ jurisdiction over areas of private law such as contracts and consumer protection, it is within the Commission’s powers to regulate device financing plans as they relate to telecommunications services. Any regulation that touches on the financing of such devices can coexist with provincial laws that touch on this subject-matter of regulation.⁹
33. In sum, given the inextricable link between device financing plans and wireless service plans, the Commission determines that device financing plans fall under the scope of the Wireless Code.

Do the existing provisions of the Wireless Code apply to device financing plans? If so, how?

Positions of parties

34. An individual intervener submitted that in the context of tied contracts, the concept of subsidy remains applicable and relevant but that new definitions would be needed if the contracts were separate, which the Wireless Code does not account for.
35. The CCWS submitted that in interpreting the term “subsidized device,” the Commission should find that a wireless device “purchased by the customer at full

⁸ For purposes of defining the market, the Commission considered that there are two distinct market segments: (i) the multiline and data market segment, consisting of key systems, private branch exchanges, and data equipment; and (ii) the single-line or other competitive terminal equipment market segment, consisting of single-line telephones and accessories.

⁹ See the recent decision of the Quebec Superior Court in [*Directeur des poursuites criminelles et pénales c. Telus Communications inc., 2020 OCCC 1850*](#), which confirmed the predominance of the Wireless Code in the event of a conflict.

price” refers only to instances when the customer purchases the device outright at the start of the contract. In other words, any payment arrangement that extends the time required to pay for the device would not be considered “purchased by the customer at full price.” This interpretation would ensure that consumers purchasing devices at full price, but on financing arrangements, are afforded the full protections of the Wireless Code. Iristel similarly considered, for the above reasons, that device financing plans are essentially device subsidies.

36. Bell Mobility and TCI disagreed, noting that the Wireless Code’s definition of “subsidized device” does not include device financing plans, which they consider are separate contracts.
37. The CCWS argued that the definition of “subsidized device” in the Wireless Code is drafted broadly enough to be understood as including device financing plans, given that device financing is linked to the wireless service plan. On the other hand, TBayTel submitted that the term “financed device,” or a similar term that can apply to device financing plans, should be used in place of “subsidized device.” The company also submitted that “subsidized device” should be defined more clearly as “the amount the customer agreed to pay for the device when they agreed to the device financing plan.”
38. The CCWS and Shaw submitted that any interpretation of the Wireless Code should be consistent with its preamble, particularly when it comes to interpreting the Wireless Code in a manner that is favourable to the customer if the application of the Wireless Code or the contract is unclear.
39. The CCWS, Eastlink, the Manitoba Coalition, Shaw, and Videotron submitted that, to the extent that contracts are structured in such a way as to require repayment of the balance of the device financing plan upon cancellation of the wireless service plan, device financing plans share all the characteristics of traditional device subsidies as contemplated by the Wireless Code.
40. The CCWS, Eastlink, and Shaw also argued that device financing plans are very similar to tab contracts, which fall under the purview of the Wireless Code. The Manitoba Coalition and Videotron submitted that, given the extensive functional similarities between device financing plans and traditional subsidy or tab models, there are no valid arguments which justify offering consumers differing levels of protections depending on the plan they have chosen.
41. Bell Mobility, RCCI, and TCI argued that requiring consumers to repay the outstanding balance on their device financing plan is not an early cancellation fee, a fee, or a penalty because its purpose is to allow WSPs to collect on their loans for devices, and not to penalize customers for prematurely terminating their financing contracts.
42. Bell Mobility further noted that a fee is defined in Black’s Legal dictionary as “a charge of payment for labor or services, especially professional services” while RCCI

noted that a penalty is defined in that dictionary in the same way as “an agreement to pay a greater sum, to secure the payment of a less sum. It is conditional, and can be avoided by the payment of the less sum before the contingency agreed upon shall happen.”

43. The CCWS, Shaw, TBayTel, and I’Union disagreed, arguing that requiring the repayment of the device financing plan balance amounts to an early cancellation fee. Iristel concurred with this interpretation. Shaw and Videotron argued that device financing plans are effectively acting like device subsidies and that the Wireless Code’s rules regarding early cancellation fees must apply to these plans so as not to unbalance the market. An individual intervener submitted that there should not be both an early cancellation fee and a remaining balance.
44. Xplornet argued that this required repayment is simply an acceleration of payments related to the purchase price of the device, not a fee or penalty of any sort.

Commission’s analysis and determinations

45. In assessing whether and how existing Wireless Code protections apply to device financing plans, the Commission must first consider the definitions set out in the Wireless Code. The pertinent definitions are as follows:

- Device subsidy: “The difference between (i) the lesser of the manufacturer’s suggested retail price of a device or the price set for the device when it is purchased from the service provider without a contract; and (ii) the amount a customer paid for the device when they agreed to the contract.”
- Early cancellation fee: “A fee that may be applied when a customer’s service is cancelled before the end of the commitment period.”
- Subsidized device: “A wireless device that is sold to a customer by a service provider at a reduced price as part of a contract. A wireless device that is (i) purchased by the customer at full price; or (ii) not purchased as part of the contract is not a subsidized device.”

46. As specified in the Wireless Code Preamble, in interpreting the Wireless Code,

- a. If any part of the Code or a contract for wireless services 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 customer;
- b. A service provider may not require a customer to waive a right under the Code, contractually or otherwise, in order to receive the service provider’s services; and
- c. The Wireless Code and its provisions are to be interpreted purposively, by reference to their objectives. In order to understand

the objectives of the Code and any specific provision of the Code, reference shall be made to Telecom Regulatory Policy CRTC 2013-271 and Telecom Regulatory Policy CRTC 2017-200.

47. Further, the Wireless Code's objectives, as stated in the Wireless Code itself, are to
- i. make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;
 - ii. establish consumer-friendly business practices for the wireless service industry where necessary; and
 - iii. contribute to a more dynamic wireless market.
48. The upfront amount paid by the customer when they agree to a device financing plan is significantly reduced and is replaced with a monthly fee that is allocated to the repayment of the device. In light of the interpretation principles, this is functionally similar to how device subsidies are understood to work in the Wireless Code. As such, the amount paid by the customer when they agreed to the contract is not, in fact, the full price of the device.
49. The Commission thus determines that, given that the amount the customer paid for the device when they agreed to the contract is not the full price of the device, this is in effect a subsidized device for the purposes of the Wireless Code. Specifically, the Commission finds that rule G.2, which relates to early cancellation fees for subsidized devices, applies to device financing plans.
50. Consistent with the above finding, the Commission further determines that device financing plans can be considered a "device subsidy" as that term is defined and calculated in the Wireless Code.
51. Finally, the Commission determines that the required repayment of the balance of a device financing plan constitutes an early cancellation fee for the purposes of the Wireless Code, as set out in G.2.
52. In light of the above, the Commission **directs** WSPs to update their contracts, sales and training material, and any other documentation to ensure that their device financing plans and wireless service plans comply with rules G.1. and G.2. of the Wireless Code relating to the early cancellation fees as of one month following the date of this decision. Specifically, WSPs must comply with section G.1 when establishing and requiring the payment of any outstanding balances on these devices, consistent with the view that any such outstanding balance constitutes an early cancellation fee. Further, WSPs must comply with section G.2 when establishing and requiring the payment of any outstanding balances on these devices, consistent with the view that any such outstanding balance constitutes an early cancellation fee.
53. This approach will ensure that consumers opting for device financing when purchasing a wireless service plan are protected by the Wireless Code and that WSPs

are able to recoup the entirety of the amount financed in the event that customers opt to switch service providers.

Upcoming Wireless Code review

54. As set out in Telecom Notice of Consultation 2019-309, this proceeding is focused on compliance. As a result, changes to the Wireless Code were not considered as part of this proceeding. However, a review process was built into the Wireless Code expressly to account for a changing marketplace. A future review of the Wireless Code could further consider device financing plans in a way that ensures that all consumers continue to benefit equally from the Wireless Code, regardless of the wireless service plan they select.
55. In order to assist the Commission in its future determinations, the Commission requests that (i) the Commission for Complaints for Telecom-television Services Inc. begin to specifically track complaints related to device financing plans in its annual and mid-year reports going forward, and (ii) such complaints be tabulated separately from other complaints related to early cancellation fees. This information will provide for a proper measurement of the evolution of the types of device financing plans offered to customers and the potential issues raised by such plans.

Are device financing plans, including those with terms longer than 24 months, compliant with the Wireless Code?

Positions of parties

56. The CCWS, Eastlink, Iristel, the Manitoba Coalition, Shaw, and l'Union submitted that 36-month device financing plans breach the Wireless Code by charging substantial early cancellation fees in connection with the termination of wireless services beyond the permitted 24-month period.
57. L'Union submitted that device financing plans with terms longer than 24 months run counter to the objectives of the Wireless Code and further argued that, in offering these plans, WSPs were attempting to contravene the provisions imposed by the Commission aimed at protecting consumers. Further, Eastlink and Shaw argued that the apparent non-compliance noted by the Commission not only violated the Wireless Code, but also conferred a significant competitive advantage on the respective WSPs. RCCI argued that there was no merit to Shaw's argument that these device financing plans have negatively affected competition or were likely to do so.
58. RCCI submitted that it had assessed the compliance of its device financing plans based on a plain reading of the terms of the Wireless Code, and that it removed the 36-month plans from the marketplace promptly and voluntarily following the Commission's request. TCI also submitted that, upon receiving the Commission's letter, it also stopped offering 36-month device financing plans.
59. Shaw submitted that no weight should be given to the fact that RCCI and TCI voluntarily ceased offering 36-month device financing plans, given that the violations

were knowingly committed in the first place, and that both RCCI and TCI had intentionally delayed their implementation of the Commission's directions in order to lock in the maximum number of customers before further regulatory action could be taken. The CCWS further argued that extended device financing plans are attempts to avoid application of the Wireless Code.

60. The CCWS, the Manitoba Coalition, and l'Union agreed with the Commission's reasoning and preliminary conclusion that 36-month financing plans impose early cancellation fees beyond a period of 24 months and, thereby, violate the Wireless Code.
61. Finally, RCCI submitted that should the Commission determine that device financing plans are covered by the Wireless Code and that payment of the outstanding balance is a fee or penalty, then the Wireless Code must also be interpreted to allow WSPs to recoup the outstanding balance over at least a 24-month period, consistent with the Wireless Code's approach to device subsidy arrangements. To find otherwise would require device financing plans to comply with the Wireless Code but not apply the same limits to these types of arrangements.

Commission's analysis and determinations

62. The Commission finds that device financing plans with terms longer than 24 months are not compliant with sections G.1. and G.2. of the Wireless Code. However, in light of the significant debate on the record and the complexity of the analysis required to provide clarification to parties as to whether and in what manner the Wireless Code applies to device financing plans, the Commission declines to make a specific finding of violation in this instance.
63. The Commission is mindful of the positions of parties, the complexity of the issues raised, and the determinations that were required in order to clarify these issues. The Commission's remedies focus on promoting compliance and providing guidance to WSPs to ensure that device financing plans comply with the Wireless Code on a going-forward basis. As a result, the Commission does not find it necessary in this case to address past instances of non-compliance in relation to the plans that were introduced into the market prior to the Commission's letter dated 2 August 2019.

Would a prohibition on device financing plans be inconsistent with the Policy Directions?

Positions of parties

64. Bell Mobility, RCCI, and TCI argued that to effectively ban device financing plans, or to limit their term to a maximum of 24 months, would be entirely inconsistent with the 2019 Policy Direction, which requires the Commission to foster affordability, choice, and lower prices, among other things, in the exercise of its powers.
65. Iristel and TBayTel submitted that permitting WSPs to offer device financing plans that comply with the Wireless Code will enable WSPs to provide their customers with

greater transparency with regard to device subsidies, which promotes consumer interests. TBayTel further argued that this will also promote competition and innovation since removing the price of the device from the wireless service plan provides a much better comparison of value.

66. Iristel argued that restricting WSPs from offering device financing plans that do not comply with the Wireless Code, such as device financing plans that exceed the 24-month term limit, will promote competition in the wireless industry.
67. Shaw disagreed with the suggestion that merely upholding existing Wireless Code provisions would contravene the Policy Directions or policy objectives. It further argued that WSPs making that argument are asking the Commission to prioritize lower monthly device payments above all other policy objectives, including supporting strong and sustainable competition. The Competition Bureau also argued that lower monthly device financing payments must not outweigh other policy goals, including the continuing development of effective competition in the wireless sector.
68. As for the remedies proposed in the proceeding, TCI argued that the use of narrowly tailored and progressively severe enforcement tools is also mandated by the principle of proportionate regulation set out in the 2006 Policy Direction.

Commission's analysis and determinations

69. The determinations made in this proceeding advance the policy objectives set out in paragraphs 7(a), (b), (f), and (h) of the Act. By interpreting the Wireless Code to include device financing plans, the Commission's determinations in this proceeding ensure that Canadians continue to have access to reliable and affordable telecommunications services of high quality in both urban and rural areas in all regions of Canada, irrespective of the types of plans they wish to purchase. These determinations also appropriately respond to the economic and social requirements of telecommunications service users by ensuring informed consumer choice.
70. The 2006 Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent feasible as the means of achieving the policy objectives. The 2006 Policy Direction also requires the Commission to regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary to meet these policy objectives. The determinations made in this proceeding comply with the 2006 Policy Direction. Specifically,
 - consistent with subparagraph 1(a)(i) of the 2006 Policy Direction and the determinations in the Wireless Code, the Commission considers that market forces alone cannot be relied upon to ensure that (i) consumers have the information they need to participate effectively in the wireless service market, and (ii) the policy objectives are achieved, in light of the unequal protections that would be afforded by the Wireless Code (without the determinations in this decision) to customers choosing device financing plans;

- consistent with subparagraph 1(a)(ii) of the 2006 Policy Direction, the regulatory requirements established by its interpretation of the Wireless Code are efficient and proportionate to their purpose, and minimally interfere with market forces, since this interpretation simply clarifies how current rules established in the Wireless Code apply in a purposive manner to device financing plans; and
- consistent with subparagraph 1(b)(iii) of the 2006 Policy Direction, the interpretation ensures a symmetrical application of the Wireless Code to new and evolving services offered by WSPs. The proposed interpretation is also applied in a competitively neutral manner.

71. The 2019 Policy Direction provides that when the Commission is exercising its powers and performing its duties under the Act, it should consider how its decisions can promote competition, affordability, consumer interests, and innovation. The determinations in this decision comply with the 2019 Policy Direction in the following manner:

- Subparagraph 1(a)(ii) requires that regulatory measures foster affordability and lower prices, particularly when telecommunications service providers exercise market power. The determinations allow for innovation in the marketplace that may render services more affordable to customers, particularly once their device is paid off and monthly payments to that effect end.
- Subparagraph 1(a)(iv) requires that regulatory measures enhance and protect the rights of consumers in their relationships with telecommunications service providers, including their rights related to accessibility. The determination to apply existing protections to a new market offering ensures that all customers of mobile wireless services are similarly protected.
- Subparagraph 1(a)(vi) requires that regulatory measures enable innovation in telecommunications services, including new technologies and differentiated service offerings. The determinations do not preclude the offering of device financing plans, an innovation in telecommunications services offerings. Through the clarification provided, WSPs will have a clearer understanding of how to apply the Wireless Code when designing their own differentiated service offerings to compete.

Secretary General

Related documents

- *Show cause proceeding and call for comments – The Wireless Code – Device financing plans*, Telecom Notice of Consultation CRTC 2019-309, 30 August 2019
- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Review of Regulatory Framework*, Telecom Decision CRTC 94-19, 16 September 1994
- *Forbearance – Sale of Terminal Equipment by Canadian Carriers*, Telecom Decision CRTC 94-14, 4 August 1994