



## Telecom Decision CRTC 2022-294

PDF version

Reference: 2022-100

Ottawa, 28 October 2022

*Public record:* [1011-NOC2022-0100](#)

### The Wireless Code – Clarification of the term “manufacturer’s suggested retail price”

#### Summary

The Commission clarifies the definition of the term “manufacturer’s suggested retail price” (MSRP) provided in Telecom Regulatory Policy 2013-271. It clarifies that the regular (i.e., non-sale) price for a wireless mobile device, as published by the original equipment manufacturer (OEM) on the OEM’s Canadian website, at the time that a contract is entered into, is to be deemed the MSRP for the purposes of Section G of the Wireless Code, if no MSRP is provided by the OEM to the wireless service provider (WSP). This applies only to early cancellation fees, and WSPs are still free to establish their own retail rates for wireless mobile devices.

The Commission **directs** WSPs to collect and update MSRP data on a monthly basis, and to retain historical MSRP data to make it available to the Commission for Complaints for Telecom-television Services upon request. The Commission expects each WSP to collect this information in a consistent manner (i.e., on the 1<sup>st</sup> of each month).

#### Background

1. In March and April 2021, the Commission received a series of letters from Bell Mobility Inc. (Bell), Quebecor Media Inc. on behalf of its subsidiary Videotron Ltd. (Videotron), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI). In these letters, Videotron submitted that Bell, RCCI, and TCI appear to be inflating the retail price of their wireless mobile devices, notably Samsung and Google devices, when this retail price is compared to the retail price listed by these devices’ original equipment manufacturer (OEM). Videotron argued that this price inflation causes customers to pay an artificially high early cancellation fee (ECF) and is contrary to the Wireless Code. Bell, RCCI, and TCI replied that Videotron’s allegations have no merit. They added that the retail prices listed by OEMs should not be confused with manufacturer’s suggested retail prices (MSRPs), and that MSRPs do not in fact exist for wireless mobile devices in the Canadian telecommunications market. Videotron rejected Bell’s, RCCI’s and TCI’s assertion that no MSRPs exist in the Canadian market, submitting that when a manufacturer sells its own devices at the retail level, the sale price becomes the de facto MSRP.

2. In Telecom Regulatory Policy 2013-271 (the Wireless Code policy), the Commission noted that the Wireless Code (the Code) will
  - make it easier for individual and small business customers to obtain and understand the information in their wireless service contracts;
  - establish consumer-friendly business practices for the wireless service industry where necessary; and
  - contribute to a more dynamic wireless market.
3. The [Wireless Code, simplified](#) provides guidance for how the Code should be read, stating that
  - 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;
  - 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
  - the 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 Policies 2013-271 and 2017-200.
4. In the Wireless Code policy, the Commission further stated that

[...] if at any time WSPs 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.

## **Proceeding**

5. In April 2022, the Commission initiated Telecom Notice of Consultation 2022-100, which sought to clarify ambiguity regarding the term "manufacturer's suggested retail price" as set out in the Wireless Code policy, in which the Commission stated the following:

When calculating the early cancellation fee, (i) the value of the device subsidy is the retail price of the mobile device minus the amount that the consumer paid for the device when the contract was agreed to; and (ii) 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 WSP without a contract.

6. In Telecom Notice of Consultation 2022-100, the Commission stated the preliminary view that the regular (i.e., non-sale) price for a wireless mobile device as published by the OEM is to be considered the de facto MSRP for the purposes of Section G of the Wireless Code.
7. The Commission received interventions from Bell, Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), RCCI, TCI, and Videotron as well as from the Commission for Complaints for Telecom-television Services (CCTS), the Public Interest Advocacy Centre (PIAC) and Vaxination Informatique (Vaxination).

## **Issues**

8. The Commission has identified the following issues to be addressed in this decision:
  - Should the Commission delay clarification of the Wireless Code until the next Wireless Code review?
  - Was the Commission correct in its preliminary view?

## **Should the Commission delay clarification of the Wireless Code until the next Wireless Code review?**

### **Positions of parties**

9. Bell submitted that the Commission's preliminary view constitutes a change to the Wireless Code. Bell, RCCI, and TCI all submitted that any assessment and amendment of the ECF provisions in the Wireless Code should be made in the context of a comprehensive, evidence-based review of the Wireless Code.
10. Videotron argued that the Commission should not wait until the next formal review of the Wireless Code to clarify the Wireless Code.

### **Commission's analysis**

11. In the Wireless Code policy, the Commission reserved the right to issue guidelines of general application when necessary and has done so on several occasions in the past.<sup>1</sup> The Commission does not consider that this process differs from any clarification of the Wireless Code it has previously issued.
12. In light of the above, the Commission is moving forward with its clarification of the Wireless Code, rather than delaying its determination until the next Wireless Code review.

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<sup>1</sup> See [CRTC Decisions Related to the Wireless Code](#).

## **Was the Commission correct in its preliminary view?**

### **Parties in favour of the Commission's preliminary view**

13. In its intervention, Videotron reiterated the arguments it made in its initial letter and agreed with the Commission's preliminary view. It further explained that its experience shows that the MSRP for WSPs already includes a margin to cover the WSP's operational costs and the MSRP proposed by the manufacturer is generally the same as Videotron's own direct retail price.
14. Eastlink submitted that it agrees with the Commission that the Wireless Code clearly intends for there to be a limitation on ECFs based on the MSRP. It also submitted that it agrees that considering the OEM's price to be the MSRP minimizes consumers' barriers to switching WSPs and helps create a more competitive marketplace. It added that while there is no formal definition of MSRP in the Canadian wireless mobile device market, the price used by the OEM is a reasonable stand-in.
15. PIAC generally supported the Commission's preliminary view but submitted that for clarity, the term "de jure", meaning deemed, be used instead of "de facto" and that the de jure MSRP for the purposes of Section G of the Wireless Code should be defined as the non-sale prices of wireless mobile devices as sold directly to consumers by the OEM through its retail arm, usually found on the OEM's retail websites. It further acknowledged that in the absence of retail rate regulation, WSPs are free to price their wireless mobile devices and services based on the market's competitive dynamics. It added that, however, this proceeding specifically concerns the pricing used for ECF calculations, not the pricing of the devices.
16. In its submission, Vaxination argued that in cases where a wireless mobile device is available directly from the manufacturer there is an explicit MSRP specified. It raised the issue that some lower-end mobile wireless devices are not sold directly by their manufacturer, so a policy must cater to cases where the MSRP is well-known and cases where it is not. Vaxination also submitted that carriers should be required to display the MSRP for each wireless mobile device on their respective websites, and that in cases where the mobile wireless device is exclusive to a WSP with no MSRP, it should be listed as "exclusive to". Vaxination added that WSPs are still free to sell wireless mobile devices at a price higher than the MSRP, but that the rules on ECFs would force the mark-up to be included in the initial device down payment instead of through monthly payments.

### **Parties neutral towards the Commission's preliminary view**

17. The CCTS submitted that it agrees with the Commission that the term "manufacturer's suggested retail price" is ambiguous. It submitted that it had received two complaints involving the term "manufacturer's suggested retail price", in which customers alleged that the WSP's retail price for a device differed from the price published by the OEM. In both complaints, the WSPs took the position that the OEM's published price was not the MSRP. One complaint was resolved before

the CCTS investigated the issue. In the other complaint, the CCTS requested a copy of the contract between the OEM and the WSP, but the contract did not specify the MSRP. In the end, the CCTS considered the MSRP to be the WSP's published price for the device when purchased from the WSP without a contract.

18. The CCTS requested that if the Commission confirmed its own preliminary view, it should indicate how historical data should be made available to the CCTS, and by whom, given that the prices published by the OEMs may change over time. The CCTS argued that Wireless Code administration with respect to the MSRP will continue to be challenging otherwise.

#### **Parties opposed to the Commission's preliminary view**

19. Bell, RCCI, and TCI all submitted interventions in which they opposed the Commission's preliminary view. They argued that the preliminary view is unworkable in practice and that the Wireless Code does not require clarification. Each of these arguments is summarized below.

#### **The preliminary view is unworkable in practice**

20. RCCI submitted that the preliminary view would be unworkable since it presumes that (i) there is a single, readily accessible source for each OEM's published price for all wireless mobile devices sold by WSPs, (ii) published OEM prices are stable, and (iii) there is a clear distinction between "sale" and "non-sale" prices. According to RCCI, without addressing these practical aspects the Commission would be introducing significant new ambiguity and costs that would cause material harm.
21. RCCI argued that OEMs' websites do not list the prices for all devices sold by WSPs (e.g., there is no published price for "certified pre-owned" devices), that some OEMs do not publish prices on their websites at all, and that OEMs regularly change their devices' prices in response to their product lifecycle and other factors. RCCI questioned how frequently and quickly WSPs would be required to update their device pricing and consumer contracts due to changes determined by OEMs.
22. If the Commission were to confirm its own preliminary view, Bell requested that the Commission provide additional guidance to WSPs and the CCTS on how WSPs would be expected to comply with this definition given the considerations surrounding its implementation.

#### **The Wireless Code does not require clarification**

23. Bell, RCCI, and TCI submitted that the Wireless Code does not require clarification since there is no evidence of consumer harm as a result of how they are currently interpreting the Wireless Code. They added that the Commission's preliminary view would impact affordability and competition, and that it constitutes rate regulation.

### ***No evidence of consumer harm***

24. Bell and RCCI submitted that there is no evidence before the Commission that device subsidies should correspond with the retail price offered by OEMs for their devices. Bell submitted that the fact that different WSPs charge different prices for the same device is the essence of a competitive market. RCCI added that the market power rests with the large OEMs, not WSPs, and submitted that OEMs do not incur the same distribution, stocking, fraud, device return, exchange rate, and regulatory costs incurred by WSPs.
25. Bell and TCI submitted that switching costs are already being addressed by the wireless number portability regime and the Wireless Code. Bell submitted that in the Wireless Code policy, to comply with the 2006 Policy Direction,<sup>2</sup> the Commission considered that “if an obligation has been imposed, it has been carefully tailored to ensure that it targets the real problem for consumers, and that WSPs retain the maximum amount of flexibility possible to determine how best to implement the obligation in order to meet the needs of their customers.” In their replies, Bell, RCCI, and TCI further submitted that the small amount of CCTS complaint data demonstrates that this is not a problem for consumers.
26. TCI further argued that the retail channels of OEMs compete on different value propositions than WSPs, and that WSPs seek to differentiate themselves not only on device pricing but also on unique value propositions in combination with other valuable and innovative inducements to add consumer value. As a result, WSPs will often have a higher cost base, requiring higher device prices compared to the OEM. Bell further submitted that most WSPs do, in fact, offer wireless mobile devices for sale at the WSP’s full retail price for the device for subscribers that choose to purchase wireless services on a month-to-month basis, and that one half of the Commission’s metric is therefore applicable.

### ***Impact of the Commission’s preliminary view on affordability and competition***

27. Bell submitted that the Commission, by implementing its preliminary view, is opening a legal loophole through which customers who cancel their agreements early can retain devices they have not fully paid for. Bell added that the costs of such a practice would ultimately be borne by other consumers, effectively making wireless services less affordable for all Canadians. It argued that this would be inconsistent with the objectives of Canadian telecommunications policy, the Federal

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

Government's affordability objectives, the 2006 Policy Direction, and the 2019 Policy Direction.<sup>3</sup>

***The Commission's preliminary view constitutes rate regulation***

28. Bell and RCCI submitted that the Commission forbore from the regulation of retail wireless services. They specifically noted its decision to refrain from exercising any of its substantive powers with respect to retail wireless services, other than pursuant to sections 24 and 27(2) of the *Telecommunications Act* (the Act). Accordingly, Bell and RCCI submitted that to impose any form of retail price regulation, including ECFs, the Commission must reverse its forbearance determinations. RCCI argued that a price cap on retail prices does not cease to be retail rate regulation because the price cap is embedded in a Wireless Code provision concerning ECFs.
29. RCCI also submitted that the Commission, as an administrative tribunal, cannot delegate its rate-setting authority to OEMs, and therefore cannot lawfully implement its preliminary view. It further stated that the Commission cannot mandate a price cap that is not demonstrably just and reasonable, and it cannot assume that the device price published by an unregulated OEM is a just and reasonable cap on the WSPs' price. It added that although the Wireless Code applies to reseller WSPs, the Commission does not have the authority to regulate reseller WSPs' rates.
30. TCI submitted that the Commission's proposed definition of the MSRP is tantamount to the regulation of terminal equipment, which the Commission forbore from regulating in 1994.

**Commission's analysis**

31. When considering whether it was correct in its preliminary view, the Commission notes the preamble of the Wireless Code, simplified, which states that "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."
32. With that principle in mind, the Commission acknowledges Bell's position that the price published by an OEM is not likely to permit recovery of all costs for these devices, which, as noted by RCCI, can include stocking, fraud, device return, exchange rates, and regulatory costs incurred by WSPs. The Commission, however, considers that in the Wireless Code policy it denied the inclusion of acquisition costs in the ECF calculations, stating that it would not be in the best interest of consumers to include them and that acquisition costs are a cost of doing business for WSPs. As noted in Telecom Regulatory Policy 2017-200, when the Commission reviewed

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<sup>3</sup> *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

WSPs' implementation of the original Wireless Code, the Commission required WSPs that were charging or imposing a restocking fee on customers who returned their devices during the trial period<sup>4</sup> to change their practices. The Commission considers that, similarly, costs for stocking, fraud, and returns are also a cost of doing business for WSPs, and their inclusion in the ECF calculation would not be in the best interest of consumers.

33. The Commission also acknowledges Videotron's submission that the company's experience shows that OEM's retail prices already include a margin to cover the WSPs' operational costs and that in cases where the MSRP is proposed by the manufacturer, it is generally the same as the OEM's own direct retail price. Eastlink also acknowledged that while there is no formal definition of MSRP in the Canadian wireless device market, the price used by the OEM is a reasonable stand-in. The Commission therefore considers that its preliminary view would allow WSPs to recover, at a minimum, the purchasing cost of the device from the OEM through its ECF calculation.
34. The Commission acknowledges RCCI's concerns about how to implement the Commission's preliminary view, along with Bell's request that the Commission provide additional guidance to WSPs and the CCTS on how WSPs are to comply with this definition given the implementation considerations. The Commission understands these concerns and will accordingly provide further guidance. In this regard, the Commission considers that using the regular price as listed on the OEM's Canadian website would offer a single point of reference for WSPs when determining the MSRP.
35. With respect to PIAC's argument that the Commission's preliminary view should be considered the de jure, and not de facto, MSRP, the Commission notes that the Wireless Code is a consumer-facing policy with the objective of making it easier for individuals to understand the information in their wireless service contracts. Given PIAC's concern with the use of the appropriate phrase, the Commission considers that the Latin phrasing may be difficult for the average consumer to understand and that it would be more appropriate for the Commission to use plain language in articulating its decision on this matter. The Commission therefore removes the Latin reference from its preliminary view and replaces it with plain language, as detailed later in this Decision.
36. With respect to RCCI's and CCTS' question as to how historical MSRP data should be made available to the CCTS and by whom, the Commission directs WSPs to collect and update MSRP data on a monthly basis and to retain historical MSRP data to make available to the CCTS upon request. The Commission considers that the MSRP for the purposes of ECF calculations would be the price at which the device was sold at the time that the contract was entered into (rather than the time at which

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<sup>4</sup> As per the Wireless Code, WSPs must provide a 15-calendar day (minimum) trial period for contracts in which the consumer is subject to an ECF.



the customer exited the contract). In cases where an OEM does not have a consumer-facing channel or does not indicate the price of the device on its website, WSPs would be free to calculate the ECF using the second option presented in the ECF calculation (i.e., the price at which the WSP sells the device without a contract). This option could also be used for devices sold as certified pre-owned.

37. The Federal Court of Appeal has recognized that the Commission can affect contracts for telecommunications services prospectively and even retrospectively in certain circumstances.<sup>5</sup> However, in this matter, WSPs have not previously tracked the OEM pricing for the purposes of ECF calculation so, in practice, it would not be possible for them to retrospectively apply the Commission's view. Indeed, WSPs would not know the OEM's price for the device at the time the customer entered into the contract. The Commission therefore considers that this preliminary view would apply only to new contracts and would not apply retroactively.
38. With respect to Bell's claim that there was no evidence before the Commission that the amount of a device subsidy should correspond with the OEMs' retail price for their devices, the Commission considers that Videotron and Eastlink each provided evidence in their submissions that OEM prices are suitable substitutes for MSRPs, while other parties also expressed support for the Commission's preliminary view. As noted in Telecom Notice of Consultation 2022-100, the preliminary view is also in line with the objectives of the Wireless Code, specifically to eliminate barriers that prevent Canadians from taking advantage of competitive offers. The Commission further notes that this policy was formed on the record of the Wireless Code proceeding, and while the current proceeding seeks to clarify the Code, the Commission is not required to provide further justification for its established policies. The Commission considers that the same would apply to Bell's, RCCI's, and TCI's argument that the CCTS complaint data does not provide evidence that the increased prices are an issue for consumers, since this was already demonstrated on the record of the Wireless Code policy.
39. Bell argued that the price set for the device when it is purchased from the service provider without a contract is a reliable metric for the ECF calculations and therefore the Commission does not have to clarify the term "manufacturer's suggested retail price". The Commission considers, however, that by directing WSPs in the Wireless Code to use the lesser of the MSRP or the price as set by WSPs, the Commission clearly sought to minimize any potential ECF. The Commission considers that the purpose of this provision in the Wireless Code is to offer two pricing points for the ECF calculation, with the customer accessing the resulting lower fee.
40. The Commission does not agree with Bell's argument that the preliminary view opens a legal loophole through which customers who cancel their contracts early can retain devices they have not fully paid for. In this respect, the Commission refers to

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<sup>5</sup> See *Bell Canada v. Amtelecom Limited Partnership*, 2015 FCA 126.

Videotron's submission that, in its experience, MSRPs already include a margin to cover the WSP's operational costs and, therefore, cover at a minimum the cost of the device itself. The Commission notes that while the cost charged by WSPs for their devices includes overhead costs, the Wireless Code, as noted earlier in this Decision, prevents WSPs from collecting any fee as part of the ECF outside of the amount owing on the device subsidy. While WSPs are free to recoup the costs of shrinkage, inventory loss, and so forth through the sale price of devices, these costs cannot be recouped through the ECF. The Commission therefore considers that a customer exiting their contract early would be considered to have paid off a device in full if they had repaid any remaining ECF that was calculated based on the device's MSRP, if it is the lesser of the 2 options for calculating the ECF. The Commission considers that this interpretation would be in line with the Wireless Code's objectives to establish consumer-friendly business practices for the wireless service industry where necessary and would contribute to a more dynamic wireless market.

41. With respect to the interveners' arguments that the Commission's preliminary view constitutes rate regulation, the Commission considers that these arguments are based on a misinterpretation of its preliminary view. In their interventions, Bell, RCCI, and TCI appeared to have understood that the Commission's preliminary view would apply to the retail rates of their wireless mobile devices. The Commission is not seeking to regulate the retail rates WSPs are able to charge for wireless mobile devices, but rather to clarify the calculation of the ECF that WSPs may collect if a customer cancels their contract early. WSPs are still free to charge the retail prices they see fit, but the cost difference between the MSRP price and the WSPs' price must not be included in the ECF calculation.
42. The Commission notes that there appears to be some confusion with respect to the effect or scope of its preliminary view. This is evidenced by TCI's submission that the Commission's preliminary view would require all WSPs to set uniform rates for wireless devices, and by Vaxination's reply in which it indicated that while it had initially thought that the Commission's preliminary view applied only to ECFs, it understood it to apply to WSPs' retail rates after reading the other submissions on the record and reconsidering the preliminary view. The Commission considers that these parties have misunderstood the scope with respect to its preliminary view as it relates to the calculation of the ECF, which clearly states the following:

When calculating the early cancellation fee,

- a) 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
- b) 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.

43. While the portion of the Wireless Code referenced above does provide direction for how to determine the retail price of the device, it is clearly within the context of calculating the ECF. The preliminary view applies only to the calculation of ECFs, and not to WSPs' retail rates for mobile wireless devices.
44. While Bell, RCCI, and TCI argued that the Commission's preliminary view would entail changing the Wireless Code, the Commission considers that its preliminary view does not change the Wireless Code, but rather provides clarity regarding an ambiguous term used within the Wireless Code, a term which Bell, RCCI, and TCI agreed is not used in the telecommunications marketplace.
45. The Commission highlights its directive in the Wireless Code policy that if any part of the Wireless Code or a contract for wireless services is ambiguous, or if it is unclear how the terms of the Wireless Code or the contract are to be applied, then the Wireless Code and the contract must be interpreted in a manner that is favourable to the customer.
46. The Commission notes that Bell, RCCI, and TCI offered an alternate definition of the MSRP, proposing that the ECF calculation should consider only the price at which WSPs offer the device for sale without a contract, effectively removing the term "manufacturer's suggested retail price" from the calculation altogether. The Commission considers that Bell's, RCCI's, and TCI's position would not be favourable to the customer.
47. Finally, the Commission acknowledges that OEMs could choose to provide an MSRP to WSPs at any point in time, and as a result the Commission's preliminary view should only apply in cases where no official MSRP has been provided by the device's OEM.
48. In light of the above, the Commission adopts its preliminary view, including the clarifications made through its analysis of submissions to the proceeding initiated by Telecom Notice of Consultation 2022-100.
49. The determinations in this decision apply to all new contracts that contain an ECF as of **28 November 2022** and do not apply retroactively.

### **Other matters**

50. Vaxination argued that WSPs should be required to display the MSRP for each wireless mobile device on their website and that when it is an exclusive wireless mobile device with no MSRP it should be listed as such. The Commission considers, however, that the scope of the proceeding was limited to the term "manufacturer's suggested retail price" as it applies to the early cancellation provisions in the Code and did not extend to WSPs' advertising or sales practices. The Commission considers that these matters are outside of the scope of this proceeding and will therefore not be implementing Vaxination's suggestion.

51. Similarly, the Commission considers that certain issues related to the Wireless Code, such as questions concerning how ECF calculations would apply to device rental plans, are outside of the scope of the current proceeding. The Commission considers that these issues would be better addressed in the next Wireless Code review, or in another proceeding preceding a review, if evidence comes to light that significant issues need to be addressed more immediately.

## Conclusion

52. The Commission
- clarifies that the regular (i.e., non-sale) price for a wireless mobile device as published by the OEM on its Canadian website at the time that a contract is entered into is to be deemed the MSRP for the purposes of Section G of the Wireless Code, if no MSRP is provided by the OEM to the WSPs;
  - clarifies that this applies only to ECFs, and that WSPs are still free to establish their own retail wireless rates for mobile wireless devices;
  - **directs** WSPs to collect and update MSRP data on a monthly basis, and to retain historical MSRP data to make available to the CCTS upon request; and
  - expects WSPs to collect this information in a consistent manner (i.e., on the 1<sup>st</sup> of each month).
53. The determinations in this decision apply to all new contracts that contain an ECF as of **28 November 2022** and do not apply retroactively.

## Policy Directions

54. The 2006 Policy Direction requires, among other things, that the Commission rely on market forces to the maximum extent possible to achieve the telecommunications policy objectives set out in Section 7 of the Act. Further, the 2006 Policy Direction 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 Commission considers that the determinations made in this proceeding comply with the 2006 Policy Direction in the following manner:
- In light of the unequal protections that the Wireless Code would grant customers choosing certain wireless devices, the Commission considers that market forces alone cannot be relied upon to ensure the policy objectives are achieved, consistent with subparagraph 1(a)(i), and with the determinations in the Wireless Code (specifically to eliminate barriers that prevent Canadians from taking advantage of competitive offers).
  - Since this interpretation simply clarifies how current rules established in the Wireless Code apply to the calculation of ECFs, the Commission

considers that the regulatory requirements established by this clarification are efficient and proportionate to their purpose, and minimally interfere with market forces, consistent with subparagraph 1(a)(ii).

- Consistent with subparagraph 1(b)(iii), the Commission considers that this decision ensures a symmetrical application of the Wireless Code to all ECFs calculated by WSPs and that it is applied in a competitively neutral manner.

55. The determinations in this decision also comply with the 2019 Policy Direction in the following manner:

- The Commission considers that its determinations would remove a barrier for Canadians to take advantage of competitive offers, consistent with subparagraph 1(a)(ii) requiring regulatory measures to foster affordability and lower prices, particularly when telecommunications service providers exercise market power.
- Since the Commission's determinations would apply to all ECFs, they ensure that all customers subject to an ECF are similarly protected, consistent with subparagraph 1(a)(iv), which requires that regulatory measures enhance and protect the rights of consumers in their relationships with telecommunications service providers, including their rights related to accessibility.

Secretary General

### **Related documents**

- *Show Cause proceeding and call for comments – The Wireless Code – Manufacturer's Suggested Retail Price*, Telecom Notice of Consultation CRTC 2022-100, 5 April 2022
- *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