



Telecom Decision CRTC 2015-198

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Wireless Code – Application to review and vary Telecom Decision 2014-528 (clarification of how the Wireless Code applies to corporate wireless service plans)

*The Commission finds that Rogers Communications Partnership (RCP) has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2014-528. In that decision, the Commission (a) reiterated that the Wireless Code applies to retail mobile wireless voice and data services provided to individuals and small businesses, and (b) clarified 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. Therefore, the Commission **denies** RCP's application to review and vary the decision, and further **denies** RCP's request that wireless service contracts for corporate individual plans and employee purchase plans entered into between 2 December 2013 and 8 October 2014 not be subject to the Wireless Code until their contract term expires, contributing to a more dynamic marketplace for Canadian consumers.*

Background

1. The Wireless Code, set out in Telecom Regulatory Policy 2013-271 (the Wireless Code policy), is a mandatory code of conduct for all providers of retail mobile wireless voice and data services (wireless services). The Wireless Code established requirements for wireless service providers (WSPs) that (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.
2. As set out in the Wireless Code policy, the Wireless Code applies to all new contracts signed as of 2 December 2013 between WSPs and individuals or small businesses.
3. In Telecom Decision 2014-528 (the Corporate Plans decision), the Commission reiterated that the Wireless Code applies to wireless services provided to individuals and small businesses for which the contract is between (a) an individual and a service provider, or (b) a small business and a service provider. The Commission clarified that the Wireless Code applies to wireless service contracts under which individuals are responsible for some or all of the charges associated with the account (including roaming charges, overage charges, and cancellation fees), irrespective of the size of

their employer. The Commission found that the Wireless Code applies to both “corporate individual plans” (CIPs) and “employee purchase plans” (EPPs).¹

4. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it uses to assess review and vary applications that are filed pursuant to section 62 of the *Telecommunications Act* (the Act). Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to
 - an error in law or in fact;
 - a fundamental change in circumstances or facts since the decision;
 - a failure to consider a basic principle which had been raised in the original proceeding; or
 - a new principle which has arisen as a result of the decision.

Application

5. The Commission received an application from Rogers Communications Partnership (RCP), dated 14 November 2014, in which the company requested that the Commission review and vary the Corporate Plans decision, arguing that there is substantial doubt as to its correctness. Specifically, RCP submitted that a new principle had arisen as a result of the Commission’s clarification that the Wireless Code applies to CIPs and EPPs, which RCP argued was not in the Wireless Code policy.
6. RCP submitted that its enterprise sales team had entered into new contracts for CIPs and EPPs with employees of enterprises after the Wireless Code came into force (on 2 December 2013) under the belief that the Wireless Code did not apply to such contracts. RCP indicated that as a result of the Corporate Plans decision, it is now aware that these contracts do not meet the requirements of the Wireless Code.
7. RCP therefore requested that the Commission determine that wireless service contracts for all CIPs and EPPs entered into with employees of enterprises pursuant to umbrella agreements with the enterprise between 2 December 2013 (the date on which the Wireless Code took effect) and 8 October 2014 (the date of the Corporate Plans decision) not be subject to the Wireless Code until their contract term expires.
8. The Commission received interventions regarding RCP’s application from the Public Interest Advocacy Centre (PIAC) and Quebecor Media Inc., on behalf of its affiliate, Videotron G.P. (Videotron). The public record of this proceeding, which closed on

¹ For the definitions of EPPs and CIPs, see paragraphs 11 and 15, respectively, of the Corporate Plans decision.

18 December 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Is there substantial doubt as to the correctness of the Corporate Plans decision due to a new principle that has arisen as a result of that decision?

9. RCP submitted that no information was provided in the Wireless Code policy, or in the Wireless Code itself, to suggest that the Wireless Code could apply to wireless service contracts entered into under the umbrella of an enterprise agreement. RCP added that during the public hearing leading to the Wireless Code policy, the Commission deliberately excluded corporate and commercial accounts from the Wireless Code because large companies are better able to negotiate agreements, including pricing, due to their size and purchasing power. RCP submitted that it considered the applicable test for whether the Wireless Code applies to an agreement is the scale and bargaining power of the party negotiating the contract.
10. PIAC stated that RCP has not asked the Commission to vary the Corporate Plans decision, but for an exception in its favour on the basis that it treated contracts it entered into with a group of individuals as contracts with their employer, and ignored the requirements of the Wireless Code. PIAC added that Commission approval of RCP's application would not benefit customers or competition, nor promote the Canadian telecommunications policy objectives set out in section 7 of the Act.
11. Videotron submitted that RCP's request is unfounded, and that the Corporate Plans decision was simply a restatement of facts from the Wireless Code policy.

Commission's analysis and determinations

12. In paragraphs 26 and 30 of the Wireless Code policy, the Commission outlined to which entities the Wireless Code applies, as follows:
 26. In light of this regulatory context and based on the record of this proceeding, the Commission considers that the Wireless Code should apply to all individual Canadian consumers of wireless services equally wherever they reside...
 30. The Commission decides that 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 WSP...
13. In the Corporate Plans decision, the Commission clarified its determinations set out in the Wireless Code policy. The Commission did not create any new principles or obligations; rather, it reiterated that the Wireless Code applies to all wireless service plans where the contract is between (a) an individual and a service provider, or (b) a small business and a service provider.
14. Given that contracts for both CIPs and EPPs constitute contracts between an individual and a WSP, the Commission considers that there is no merit to RCP's

contention that none of the information provided in the Wireless Code policy suggested that the Wireless Code applies to such contracts.

15. RCP has not argued that the Commission's clarifications set out in the Corporate Plans decision are incorrect. RCP has only requested that the determinations set out in that decision not be given effect with respect to CIPs and EPPs entered into between 2 December 2013 and 8 October 2014. The Commission considers that this demonstrates that the issue is not one of substantial doubt as to the correctness of the Corporate Plans decision.
16. In light of the above, the Commission considers that RCP has failed to demonstrate that there is substantial doubt as to the correctness of the Corporate Plans decision due to a new principle that has arisen as a result of that decision.
17. Accordingly, the Commission **denies** RCP's application to review and vary the Corporate Plans decision. The Commission further **denies** RCP's request that wireless service contracts for CIPs and EPPs entered into between 2 December 2013 and 8 October 2014 not be subject to the Wireless Code until their contract term expires.

Secretary General

Related documents

- *Wireless Code – Clarification of how the Wireless Code applies to corporate wireless service plans*, Telecom Decision CRTC 2014-528, 8 October 2014
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011