



Telecom Decision CRTC 2020-91

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Wireless Code – Application by the Public Interest Advocacy Centre and the National Pensioners Federation seeking clarification and enforcement of rules regarding prepaid balances

In order to protect the interests of consumers, the Commission finds that wireless service providers (WSPs) should ensure that any prepaid wireless service account balances accrued prior to a balance limit policy coming into effect will be available for customers to use in an appropriate manner. In the present case, the Commission finds that RCCI has provided customers with sufficient options to use their excess balances.

*For customers whom RCCI cannot contact or with whom it is unable to come to an agreement regarding how to use their excess balances prior to the company's balance limit policy taking effect, the Commission expects RCCI to consider automatically subscribing them to an option that allows their balances to be reduced over time, without the customers incurring additional charges. In this regard, the Commission **directs** RCCI to report to the Commission, by **11 May 2020**, on the options that it will put into place for those customers. The Commission will also examine the implementation of RCCI's balance limit policy in the context of RCCI's next Wireless Code compliance report, which is due on 31 March 2020.*

Moreover, WSPs are expected to notify customers prior to making any changes to the terms and conditions of their prepaid services. RCCI met this expectation by notifying customers more than a year prior to the company's balance limit policy taking effect. Other WSPs that may make changes to balance limit policies or any other terms and conditions of their prepaid services are also expected to provide prior notice to customers.

The Commission finds that (i) RCCI's changes to its balance limit policy are not prohibited under rule J.1. of the Wireless Code, and (ii) rule J.1. does not require WSPs to carry over prepaid balances indefinitely.

*Accordingly, the Commission **denies** an application by the Public Interest Advocacy Centre and the National Pensioners Federation, in which they asserted that RCCI's balance limit policy for prepaid wireless services violates the Wireless Code.*

Background

1. In Telecom Regulatory Policy 2013-271 (the Original Wireless Code Policy), the Commission established the Wireless Code (or the Code) to (i) make it easier for individuals and small businesses to get information about their contracts with wireless service providers (WSPs) and about their associated rights and responsibilities, (ii) establish standards for industry behaviour, and (iii) contribute to a more dynamic marketplace. Subsequently, the Commission reviewed the Wireless Code, which led to changes set out in Telecom Regulatory Policy 2017-200 (the Wireless Code Review Policy). The revised Wireless Code applied to all contracts as of 1 December 2017.¹
2. In the Original Wireless Code Policy, the Commission set out the following framework for interpreting the Code, which was maintained in the Wireless Code Review Policy:

379. ... 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.
3. Retail wireless services are available on a prepaid and postpaid basis. The Wireless Code defines prepaid services as follows: “Wireless services that are purchased in advance of use only, such as the use of prepaid cards and pay-as-you-go services.”² Customers do not incur overage charges when using prepaid services, and are at much lower risk of experiencing bill shock than when they use postpaid services.
4. In the Original Wireless Code Policy, the Commission considered that the evidence on the record of the proceeding did not support requests for WSPs to carry over prepaid balances indefinitely. In particular, it noted that prepaid services provide access to the WSP’s network for a specific period of time and with specific usage limitations.

¹ In this decision, except where otherwise noted, when referring to the Wireless Code, the Commission is referring to the version reflecting the changes made in the Wireless Code Review Policy.

² In contrast, the Wireless Code defines postpaid services as follows: “Wireless services that may be billed all or in part after use, for example in a monthly bill, and for which overage charges can be incurred. For greater clarity, any pay-in-advance plan where the service provider may bill the customer for some or all charges after use or where the customer may incur overage charges beyond the prepaid balance is treated as a postpaid plan for the purposes of the Code.”

5. Rule J.1. of the Wireless Code sets out the rules for WSPs' prepaid service account balances (prepaid balances) and states the following:

(i) Upon the expiry of the commitment period³ of a prepaid customer, a service provider must allow at least seven calendar days for the customer to top up their account, at no charge, in order to maintain an active account and retain any existing balance.

(ii) This rule applies whether the commitment period of the prepaid customer is established via an activated prepaid card or otherwise, by contributing amounts to a prepaid account balance.

Application

6. The Commission received an application, dated 5 February 2018, from the Public Interest Advocacy Centre (PIAC) and the National Pensioners Federation (NPF) [collectively, PIAC-NPF], in which they sought clarification and enforcement of the Wireless Code with respect to the retention of prepaid balances for Rogers Communications Canada Inc.'s (RCCI) wireless service customers. Specifically, PIAC-NPF requested that the Commission clarify that rule J.1. of the Wireless Code requires WSPs to retain customers' balances indefinitely for as long as the customer continues to top up their account. PIAC-NPF requested that, following this clarification, the Commission enforce the application of that rule through a declaration (for WSPs in general) and an order (for RCCI). PIAC-NPF submitted that they were not seeking any changes to the wording of the Code.
7. PIAC-NPF noted that RCCI had notified its prepaid wireless service customers of a proposed change that would limit their prepaid balances that may be carried over upon topping up their accounts to a maximum of \$150 as of 31 December 2018 (the balance limit policy).
8. PIAC-NPF argued that rule J.1. of the Wireless Code requires WSPs to retain any existing balance in a customer's prepaid account, as long as the customer tops up their account within seven days of the expiry of their commitment period. To expire balances otherwise would amount to seizure of the balances.
9. PIAC-NPF argued that RCCI's balance limit policy violates the Wireless Code for the following reasons:
- The only circumstance in which the Wireless Code permits a WSP to expire a customer's balance is if the customer has not topped up their account within the seven calendar days that follow the expiry of the commitment period.

³ The Wireless Code defines commitment period as follows: "The term or duration of the contract. For fixed-term contracts, the commitment period is the entire duration of the contract. For indeterminate contracts, the commitment period is the current month or billing cycle."

- The proposed limit on prepaid balances is not authorized by RCCI's applicable terms of service; therefore, there is no disclosure to customers of the proposed seizure of balances exceeding \$150 (hereafter, excess balances) and no contractual provision authorizing the seizure of those balances.
10. Accordingly, PIAC-NFP requested that the Commission (i) clarify that WSPs must retain any existing balance in a customer's prepaid service account so long as the customer tops up their account within seven days of the expiry of the customer's commitment period, and (ii) order RCCI to retain any existing balance in a customer's prepaid service account so long as the customer tops up their account within seven days of the expiry of the customer's commitment period.
11. PIAC-NPF noted that the Commission has previously denied the NPF's challenges to TELUS Communications Inc.'s (TCI) large prepaid balance policy. PIAC-NPF noted that under that policy, the smallest prepaid monthly plan with voice and messaging is automatically purchased for a customer once their balance exceeds \$300. Unlike RCCI's policy, TCI's policy is included in its terms of service and applies customers' balances towards the purchase of something of real value. In this context, TCI is applying customers' balances to a purchase rather than letting them expire.
12. The Commission received interventions regarding PIAC-NPF's application from Bell Canada, the Canadian Network Operators Consortium Inc. (CNO), RCCI, TCI, l'Union des consommateurs (l'Union), and an individual.

Issues

13. The Commission has identified the following issues to be addressed in this decision:
- Does rule J.1. of the Wireless Code prohibit limits on prepaid balances?
 - Is RCCI prohibited from changing its prepaid terms and conditions to set a maximum carry-over limit on prepaid balances?
 - Are the interests of affected consumers being protected in RCCI's rollout of its balance limit policy?
14. This decision is not subject to the Policy Direction issued under the *Telecommunications Act* (the Act) and in effect as of 17 June 2019 (the 2019 Policy Direction),⁴ since the record of this proceeding closed prior to it coming into effect and had been closed for less than one year prior to that date.

Does rule J.1. of the Wireless Code prohibit limits on prepaid balances?

Positions of parties

⁴ See *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.

15. Bell Canada and TCI opposed PIAC-NPF's arguments. CNOC, l'Union, and the individual intervener supported PIAC-NPF's arguments.
16. CNOC agreed with PIAC-NPF's interpretation of subsection J.1.(i) of the Wireless Code and stated that the subsection is clear. It further agreed that RCCI's plan to expire prepaid balances over \$150 would violate the Wireless Code.
17. L'Union submitted that it is aware that in the Wireless Code Policy, the Commission refused to prohibit the expiration of prepaid balances, even though many interveners, including l'Union, requested such a prohibition. Regardless, it submitted that section J of the Wireless Code provides consumers with the ability to keep their prepaid balances, even after the expiry date of the commitment period, and that the automatic loss of the balance should be considered disproportionate.
18. RCCI submitted that PIAC-NPF had incorrectly interpreted rule J.1. of the Wireless Code: The rule provides a grace period before prepaid services expire but does not mandate that balances be kept indefinitely. In adopting rule J.1., the Commission agreed with WSPs that a time limit on a customer's network access is necessary and, therefore, that expiry dates are acceptable. Furthermore, in Telecom Decision 2015-211 (the Large Prepaid Balance Decision), the Commission concluded that WSPs are not required to carry over prepaid balances indefinitely.
19. Bell Canada and TCI submitted that the Commission should deny PIAC-NPF's application because the applicants had misinterpreted the Wireless Code. Bell Canada indicated that the Commission's objective in the Wireless Code was not to require prepaid balances to be carried forward indefinitely.
20. TCI submitted that there is no basis for the Commission to make PIAC-NPF's requested orders at this time, given the lack of evidence in the application, the application's prematurity, and the fact that the Commission for Complaints for Telecom-television services Inc. (CCTS) is the appropriate body for the resolution of any consumer complaints related to wireless services. TCI added that the application concerns an outcome that may never occur, whether or not the Commission intervenes.

Commission's analysis and determinations

21. In the Original Wireless Code Policy, the Commission stated the following with respect to changes to terms and conditions regarding prepaid services, including prepaid balances:

87. The Commission notes that for prepaid service contracts, the customer is accepting the key terms and conditions of the contract each time they reactivate their service or top up their account. As such, it is not necessary to prohibit changes to key terms and conditions of such contracts. The Commission expects WSPs that provide prepaid wireless services to clearly publicize any change to their services.

22. In the Original Wireless Code Policy, the Commission also concluded the following with respect to prepaid services:

347. The Commission considers that consumers' key requests related to prepaid cards are (i) for WSPs to carry over their account balances (which may be represented in terms of minutes, text messages, or other usage) indefinitely if unused; and (ii) for consumers to be able to "top up" their accounts a bit late.

348. The Commission considers that WSPs should hold prepaid card customers' accounts open for seven days following expiry of an activated prepaid card to give customers more time to "top up" their accounts. The Commission considers that such a requirement would (i) not impose a significant burden on WSPs; (ii) improve clarity regarding prepaid service billing and policies; (iii) balance consumer interests with current market realities; and (iv) increase flexibility for frequent users of prepaid services.

349. The Commission considers that the evidence on the record of the proceeding does not support consumers' request for WSPs to carry over their prepaid unused minutes indefinitely. In this regard, the Commission notes that wireless services, including prepaid card services, provide access to the network for a specific period of time with specific usage limitations that are distinct for each aspect of the service. The Commission considers that imposing a requirement that services be provided beyond the limitations set out in the service agreement would not be appropriate.

23. In the Wireless Code Review Policy, the Commission stated the following with respect to prepaid balances:

362. In Telecom Decision 2014-101, the Commission rejected arguments that section J of the Code should be varied by, among other things, treating [prepaid] cards in a manner similar to retail gift cards or because expiration amounted to the seizure of prepaid balances. This rejection is consistent with the characterization of prepaid cards as granting access to the network.

363. The evidence on the record of this proceeding does not establish that circumstances have changed sufficiently to warrant a substantially different approach going forward.

365. Section J of the Code was originally drafted to deal only with prepaid cards. However, it would be consistent with the Code's revised definitions of prepaid and postpaid services... and with the objectives of the Code more broadly, to apply section J to all prepaid balances. Otherwise, customers with substantially similar plans could have different types of protection.

366. The Commission therefore determines that it is appropriate to **change** the Code to require WSPs to keep open the accounts of all prepaid customers for at least seven calendar days following the end of the customer's current commitment period, whether that commitment period is established via an activated prepaid card or otherwise by contributing to a prepaid account balance, at no charge.

24. The Commission notes that the Wireless Code, including rule J.1., is silent on the issue of whether WSPs may establish a policy that sets a maximum limit on prepaid balances that may be carried over.
25. Instead, the Commission's purpose in adopting rule J.1. was clearly to establish a grace period for consumers to top up their prepaid accounts and keep the accounts active, consistent with its determinations in paragraphs 347 to 349 of the Original Wireless Code Policy cited above.
26. With respect to PIAC-NPF's request that the Commission clarify that rule J.1. requires WSPs to carry over prepaid balances indefinitely so long as the customer tops up their account within the seven days that follow the expiry of the customer's commitment period, the Commission notes that the preamble to the Wireless Code states the following: "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 Policy CRTC 2013-271 and Telecom Regulatory Policy CRTC 2017-200."
27. In this regard, the Original Wireless Code Policy states that "the evidence on the record of the proceeding does not support consumers' request for WSPs to carry over their prepaid unused minutes indefinitely... the Commission notes that wireless services, including prepaid card services, provide access to the network for a specific period of time with specific usage limitations that are distinct for each aspect of the service."
28. The Commission reiterated this position in the Large Prepaid Balance Decision and in the Wireless Code Review Policy. Specifically, in the Large Prepaid Balance Decision, the Commission stated that TELUS Communications Company's (TCC)

“policy is consistent with the determination set out in the Code that WSPs are not required to carry over wireless prepaid account balances indefinitely.”

29. In the Wireless Code Review Policy, the Commission reiterated its findings from the Large Prepaid Balance Decision, noting that while a “number of individuals who intervened in the proceeding likened the expiry of prepaid balances to the expiry of gift cards/certificates, which are protected under certain provincial consumer protection laws,... [i]n Telecom Decision 2014-101, the Commission rejected arguments that section J of the Code should be varied by, among other things, treating such cards in a manner similar to retail gift cards or because expiration amounted to the seizure of prepaid balances. This rejection is consistent with the characterization of prepaid cards as granting access to the network. The evidence on the record of this proceeding does not establish that circumstances have changed sufficiently to warrant a substantially different approach going forward.”
30. No party brought new or additional evidence that would justify reconsideration of the Commission’s determinations in the Wireless Code Review Policy or the Large Prepaid Balance Decision. The Commission considers that the Wireless Code, the Original Wireless Code Policy, and the Wireless Code Review Policy are all clear that the purpose of rule J.1. is not to require WSPs to carry over prepaid balances indefinitely, but rather to enable consumers to top up their accounts within seven days of the expiration of a prepaid balance.
31. Accordingly, the Commission finds that RCCI’s balance limit policy is not prohibited under the Wireless Code, since neither rule J.1. nor any other section of the Code prohibits WSPs from limiting the size of balances that may be carried over, nor does the Wireless Code require WSPs to carry over prepaid balances indefinitely.
32. The Commission further notes that PIAC-NPF have not brought any evidence regarding any practices of WSPs, other than RCCI, that are alleged to be non-compliant with rule J.1. of the Wireless Code. Therefore, the Commission finds that there is no basis on which to impose a declaration or order against all WSPs as requested by PIAC-NPF.
33. In light of the above, the Commission **denies** PIAC-NPF’s application for the Commission to (i) clarify that rule J.1. of the Wireless Code requires WSPs to retain prepaid balances indefinitely, as long as customers continue to top up their accounts; and (ii) enforce the application of that rule through a declaration (for WSPs in general) and an order (for RCCI).

Is RCCI prohibited from changing its prepaid service terms and conditions to set a maximum carry-over limit on prepaid balances?

Positions of parties

34. With respect to PIAC-NPF’s arguments that RCCI’s balance limit policy is not authorized under the company’s applicable terms of service, RCCI noted that the policy is not yet in effect and that by the time it is in effect, RCCI will have updated its service contracts to reflect the policy.

35. With respect to PIAC-NPF's concern regarding disclosure to customers, RCCI submitted that it gave affected customers more than 12 months' notice regarding its balance limit policy. Starting in December 2017, it used a variety of methods to contact affected customers, such as running monthly text message and email campaigns. Furthermore, RCCI submitted that it would initiate a revised communication campaign to customers indicating that it would help them reduce their balances in a way that works for them. RCCI added that, after the balance limit policy is implemented, it will continue to promote available options for affected customers to use their excess balances and offer these options to affected customers.
36. Bell Canada argued that WSPs may change their service agreements with sufficient notice to consumers.

Commission's analysis and determinations

37. While the Wireless Code includes protections related to changes to contracts and related documents (section D), that section does not apply to prepaid services. As set out in the Original Wireless Code Policy, "for prepaid service contracts, the customer is accepting the key terms and conditions of the contract each time they reactivate their service or top up their account. As such, it is not necessary to prohibit changes to key terms and conditions of such contracts. The Commission expects WSPs that provide prepaid wireless services to clearly publicize any change to their services."
38. In the Revised Wireless Code Policy, the Commission maintained this determination. However, due to the introduction of prepaid services that resemble postpaid services, the Commission determined that, in addition to applying to postpaid services, Section D would also apply to that subset of prepaid services. This is reflected in the revised definition of postpaid services, which states that "[f]or greater clarity, any pay-in-advance plan where the service provider may bill the customer for some or all charges after use or where the customer may incur overage charges beyond the prepaid balance is treated as a postpaid plan for the purposes of the Code."
39. In the case of PIAC-NPF's application, there is no evidence on the record of the proceeding to indicate that the prepaid wireless services in question resemble postpaid services. Therefore, section D does not apply in this instance. As such, upon topping up, any accumulated balances may be subject to new terms and conditions.
40. In addition, the Commission finds that the Wireless Code does not prohibit WSPs from changing the terms and conditions for the types of prepaid services at issue in PIAC-NPF's application, although the Commission still expects WSPs to clearly publicize any change to their services. To determine whether a WSP has fulfilled this expectation, the Commission notes that this issue was addressed in the Large Prepaid Balance Decision, wherein the Commission stated that "TCC provided affected customers with 60-days' advance notice of its policy's introduction, which publicized the upcoming changes to its service terms and was consistent with the expectations set out in the Code."

41. The Commission notes that RCCI has provided more than 12 months' notice of the implementation of its balance limit policy. Moreover, RCCI stated that it would amend its service websites and associated terms of service prior to the policy taking effect. The Commission considers that in doing so, RCCI has met the Commission's expectation in the Wireless Code for WSPs to clearly publicize any change to their prepaid services.
42. In light of the above, the Commission finds that, under the Wireless Code, RCCI is not prohibited from changing its prepaid service terms and conditions to set a maximum carry-over limit on prepaid balances and, further, that RCCI met the expectation that customers be notified of any such changes.

Are the interests of affected consumers being protected in RCCI's rollout of its balance limit policy?

Positions of parties

43. PIAC-NPF argued that RCCI's balance limit policy would negatively impact affected customers by letting their excess balances expire.
44. L'Union characterized RCCI's balance limit policy as an excessive and unreasonable disadvantage for its customers. L'Union described the practice, in essence, as letting its clients accumulate significant sums in their prepaid accounts and then modifying its policies to appropriate the exceeding amount, without offering its customers compensation.
45. RCCI disagreed with PIAC-NPF and L'Union, submitting that carrying large prepaid balances, with no clear mechanism to use the funds, is not in the best interest of consumers.
46. RCCI submitted that it has committed to working with any new or existing customers with excess balances to present them with options that are right for their needs. RCCI made the following observations:
 - Prior to the balance limit policy coming into effect, RCCI's customer service agents have been reviewing options with customers to determine how to best use the amounts that would not be carried over and to reduce the unused balances in their accounts.
 - RCCI indicated that several options are available to customers with excess balances, including using the amounts to purchase prepaid services (i.e. voice, data, or text message services, or long distance add-ons); purchase balance extensions (i.e. use the balance to top up for a six- to twelve-month period at a discounted rate); subscribe to available prepaid plans starting at \$10 per month for 50 voice minutes and 50 text messages; transition to a postpaid service plan at a special rate; or transition to a new yearly plan for \$180, which includes unlimited evening and weekend minutes and unlimited text messages.

- As a result, more than half of affected customers found ways to use their prepaid balances. In addition, all complaints concerning the balance limit policy that were escalated to the CCTS were resolved to the satisfaction of the consumers who filed them.
- Once the balance limit policy comes into effect, RCCI will continue to promote these options.
- If a customer who has already reached the \$150 limit attempts to top up their account, they will receive an error message in response. The message will request the customer's consent to use their unused balance as payment for the top-up.
 - If the customer accepts this option, their balance will be reduced by the value of their top-up and the expiry date will be updated accordingly.
 - If the customer does not consent, they will not be able to proceed with a top-up of their account until their balance drops below the limit. In this case, the customer's balance expiry will remain unchanged.

47. With respect to PIAC-NPF's argument that RCCI should offer prepaid plans so that customers could remain on such plans without the threat of losing their account balances, RCCI submitted that it does offer prepaid service plans with no fixed-term contract, as well as pay-per-use plans without any monthly recurring fees.

Commission's analysis and determinations

48. The Commission notes that prior to the balance limit policy coming into effect, RCCI has been taking action to mitigate or reduce potential negative impacts on consumers by notifying customers, providing a range of options for customers to use excess balances, working with customers to determine how best to use excess balances, and working with customers via the CCTS to resolve related complaints to the customers' satisfaction.

49. The Commission considers that, while WSPs may implement balance limit policies under the Wireless Code, prepaid balances accrued prior to any balance limit policy taking effect should be available to customers to use in an appropriate manner. In this case, the Commission finds that RCCI provided sufficient options to customers to apply their excess balances.

50. The Commission notes that, to be compliant with rule J.1. of the Wireless Code, RCCI's balance limit policy cannot prevent customers from topping up their accounts. In the Large Prepaid Balance Decision, top-ups were not prevented as customers were able to use their existing balances to pay for top-ups to their accounts.

51. The Commission notes RCCI's submission that more than half of affected customers have found ways to use their excess balances. Accordingly, there remain some customers who have not yet found ways to use their excess balances and/or whom RCCI has been unable to contact in this regard. The Commission expects RCCI to consider automatically subscribing those customers to an option that enables their balances to be reduced over time, without the customers incurring any additional charges.
52. Given the fact that not all customers have found ways to use their excess balances, the Commission **directs** RCCI to file, by **11 May 2020**, information on the options that the company will put into place for customers whom it has been unable to contact or with whom it has been unable to come to an agreement on the use of excess balances.
53. The Commission notes that, as set out in the Wireless Code Review Policy, WSPs, including RCCI, must submit compliance reports on an annual basis, by 31 March of each year, to support the Commission's role in monitoring WSPs for systemic non-compliance and in enforcing the Code. This ongoing compliance monitoring enables the Commission to assess whether there are any systemic issues with WSPs' interpretation and implementation of the Code, and to ensure that WSPs are consistently applying the Code. It also offers WSPs an opportunity to flag and promptly address any issues; for more problematic cases of non-compliance, the Commission may conduct a show cause proceeding.
54. The Commission will examine the implementation of RCCI's balance limit policy in the context of RCCI's next Wireless Code compliance report, which is due on 31 March 2020.

Secretary General

Related documents

- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *The DiversityCanada Foundation and the National Pensioners Federation – Application seeking relief for customers affected by TELUS Communications Company's Large Prepaid Balance Policy*, Telecom Decision CRTC 2015-211, 21 May 2015
- *Wireless Code – Request by DiversityCanada Foundation to review and vary Telecom Regulatory Policy 2013-271 regarding expiry of prepaid wireless service cards*, Telecom Decision CRTC 2014-101, 5 March 2014
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013