



Telecom Notice of Consultation CRTC 2022-100

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Public record: 1011-NOC2022-0100

Show Cause proceeding and call for comments – The Wireless Code – Manufacturer’s Suggested Retail Price

Deadline for submission of interventions: 20 April 2022

[\[Submit an intervention or view related documents\]](#)

The Wireless Code is a mandatory code of conduct for providers of retail mobile wireless voice and data services. The Commission created the Wireless Code to prevent bill shock and make it easier for Canadians to understand their mobile contracts and switch service providers.

A specific objective of the Wireless Code is to eliminate barriers that prevent Canadians from taking advantage of competitive offers. One of the ways it achieves this is through the reduction of early cancellation fees. As such, the Wireless Code limits the amount of any possible early cancellation fees to the value of the device subsidy provided as part of the contract, and directs wireless service providers (WSPs) to calculate such fees by using the lesser of either the manufacturer’s suggested retail price or the price set for the device when it is purchased from the service provider without a contract. WSPs must not charge the customer any fee or penalty other than the early cancellation fee.

Recently, the Commission has been made aware of some ambiguity regarding the term “manufacturer’s suggested retail price”. The Commission is therefore initiating a proceeding to examine this issue, and has taken the preliminary view that the regular (i.e., non-sale) price for a wireless mobile device as published by the original equipment manufacturer is to be considered the *de facto* manufacturer’s suggested retail price for the purpose of Section G. of the Wireless Code.

Background

The Wireless Code

1. The Wireless Code (or, the Code) was established in Telecom Regulatory Policy 2013-271 (the Wireless Code policy).¹ As a mandatory code of conduct for providers of retail mobile wireless voice and data services, it empowers Canadians in several ways. It makes it easier for them to obtain and understand the information in their wireless service contracts; it establishes consumer-friendly business practices for the

¹ The Wireless Code is found in Appendix 1 to the Wireless Code policy.

wireless service industry where necessary; and it contributes to a more dynamic wireless market.

2. In the Wireless Code policy, the Commission noted that high early cancellation fees (ECFs) act as a barrier to customers who want to switch wireless service providers (WSPs). As a result, it imposed restrictions on ECFs in order to minimize the cost to the consumer of switching WSPs. For example, the Commission limited the maximum ECF to the remaining amount of any device subsidy that was offered at the time that the customer entered into the contract.
3. In setting out the formula for the ECF in paragraph 235 of the Wireless Code policy, 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.

4. The Commission also stated the following in the Wireless Code policy:

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

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

5. The Commission maintained the above-noted provisions in its review of the Wireless Code in Telecom Regulatory Policy 2017-200 (the Wireless Code review).
6. The Wireless Code and the Wireless Code review were established in accordance with the 2006 Policy Direction.² In 2019, a new policy direction was issued under the *Telecommunications Act*. The 2019 Policy Direction³ requires the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation.

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

Quebecor Media Inc.'s letter to the Commission

7. On 10 March 2021, Quebecor Media Inc. (Quebecor) submitted a letter to the Commission in which it stated that, through its monitoring of the wireless market, it has observed that Bell Mobility Inc. (Bell), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TELUS) appear to be inflating the retail price of their mobile devices. This assertion was based on a comparison of those prices with the retail prices listed by original equipment manufacturers (OEMs) who also sell devices directly to consumers, which Quebecor refers to as the manufacturer's suggested retail price (MSRP).
8. Quebecor submitted that this is an issue because the retail price is typically the starting point for WSPs to offer a series of discounts. With those discounts, the customer ends up paying their provider a lower retail price up front. However, the initial price, before discounts are applied, is the price that determines the applicable ECF should a customer terminate their contract before the end of the commitment period. Quebecor submitted that this price is inflated, and that the ECF is therefore also inflated. Quebecor argued that this practice is in violation of Section G. of the Wireless Code.

Response from Bell, RCCI, and TELUS

9. Bell, RCCI, and TELUS responded in separate letters to the Commission. Each company stated that it is compliant with the Wireless Code and that Quebecor's allegations do not have merit. RCCI submitted a detailed rationale for its position, which was echoed by Bell and TELUS.
10. RCCI stated that WSPs, including Quebecor, are free to establish their own pricing models to attract customers, and that an OEM's retail prices are not MSRPs; rather MSRPs are prices that OEMs, who do not traditionally retail products themselves, sometimes provide as guidance for retailers. RCCI submitted that, although some OEMs now have their own retail channels with their own retail offers, such prices should not be confused with MSRPs.
11. RCCI submitted that there are no generally reliable Canadian MSRPs for wireless devices. The company noted that, unlike an OEM, it needs to ensure that its retail prices also reflect the various additional costs it bears in selling those devices, such as high distribution costs, fraud costs, credit risk, and costs for shrinkage (inventory loss in the warehouse) and returns.
12. In a letter dated 20 April 2021, Quebecor responded by rejecting the assertion by Bell, RCCI and TELUS that no MSRP exists in the Canadian market. The company submitted that when a manufacturer sells its own devices at the retail level, this price becomes the *de facto* MSRP.
13. On 23 April 2021, the Public Interest Advocacy Centre submitted a letter to the Commission supporting Quebecor's claims.
14. These letters can be found on the public record of this proceeding.

Commission's analysis

15. Given that the Wireless Code specifies that service providers, when calculating ECFs, are to use the lesser of the MSRP or the price set by the WSP, the Commission considers that without a formal definition of MSRP in the Canadian market, WSPs are left to calculate ECFs using the price set for the device when it is purchased from the WSP without a contract. However, it would appear that most WSPs do not offer wireless devices for sale without a contract.
16. Because neither the MSRP nor the price set by the WSP for the device without a contract appears to provide a reliable metric upon which WSPs could calculate ECFs, the Commission considers that Section G.2.ii.b) of the Wireless Code is ambiguous and requires clarification. Accordingly, the Commission does not consider it appropriate at this time to assess whether Bell, RCCI, or TELUS are in non-compliance with that provision of Wireless Code.

Appropriate Interpretation of the Wireless Code

17. The preamble to the Wireless Code provides guidance in interpreting the Code. It states:
 - 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 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.
18. The Commission notes that the stated purpose of the Wireless Code is to enable consumers of retail mobile wireless voice and data services (wireless services) to be better informed of their rights and obligations with regard to their contracts with WSPs. The Wireless Code states that it will
 - 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.

19. While the Commission did not explicitly explain its rationale for using the term “manufacturer’s suggested retail price” in Section G.2.ii.b) of the Wireless Code, its intention, as with other limits it imposed on ECFs in the Code, was to minimize instances of ECFs being artificially inflated. For example, the Commission determined that if a customer cancels a contract before the end of the commitment period, the service provider must not charge the customer any fee or penalty other than the ECF, which may not exceed the value of the device subsidy, and that no ECF could be charged if no subsidized device was provided as part of the contract. By limiting the amount that WSPs could charge as part of the ECF to strictly the remaining amount due on a device subsidy, the Commission’s determination serves to prevent the ECF from becoming artificially inflated with additional service charges. Further, by directing WSPs to use the lesser of the MSRP or the price as set by WSPs, the Commission clearly sought to minimize any potential ECF. This would be consistent with objectives set out in the Code, namely to minimize consumers’ barriers to switching WSPs and to create a more dynamic marketplace.
20. On a preliminary basis, the Commission considers Quebecor’s interpretation of the term “manufacturer’s suggested retail price”, namely that the price at which an OEM sells its own devices at the retail level becomes the *de facto* MSRP, is consistent with the objectives of the Wireless Code. Moreover, the current practices of WSPs in this regard, whether or not they are technically in non-compliance with the Wireless Code, appear to be frustrating the Code’s objectives.
21. The Commission therefore considers that Section G. of the Wireless Code requires clarification.
22. The Commission is of 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 purpose of Section G. of the Wireless Code.

Call for comments

23. In light of the above the Commission hereby initiates a public proceeding to consider the Commission’s preliminary view that the regular (i.e., non-sale) price of a wireless mobile device as published by the OEM is to be considered the *de facto* MSRP for the purpose of Section G. of the Wireless Code.
24. Further, the Commission expects WSPs to consider the non-sale price for a wireless mobile device as published by the OEM to be the *de facto* MSRP for the purpose of Section G. of the Wireless Code until such time as the Commission has issued its decision on this matter.
25. The Commission reminds WSPs that if they or other interested parties are unclear about the application or interpretation of the Wireless Code or this notice, they may seek guidance or interpretation from the Commission at any time.

Procedure

26. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "[Statutes and regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
27. Quebecor, Bell, RCCI, TELUS, and PIAC are made parties to this proceeding and may file interventions with the Commission by **20 April 2022**.
28. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **20 April 2022**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
29. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a [template](#) for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
30. All documents required to be served on parties to the proceeding must be served using the contact information contained in the interventions.
31. All parties may file replies to interventions with the Commission by **25 April 2022**.
32. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at www.crtc.gc.ca, for additional information that they may find useful when preparing their submissions.
33. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
34. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.

35. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

36. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
37. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
38. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

Important notice

39. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and fax numbers.
40. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

41. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
42. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

43. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the public record number provided at the beginning of this notice or by visiting the "Consultations and hearings – Have your say!" section, then selecting "Public proceedings (consultations)." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
44. Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782
Toll-free TTY: 1-877-909-2782

Secretary General

Related documents

- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013

- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010