

CHANGE IS IN THE AIRWAVES: CRTC EXPANDS THE WIRELESS CODE OF CONDUCT

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In June 2013, the Canadian Radio-Television and Telecommunications Commission (“**CRTC**”) first issued the Wireless Code of Conduct (the “**Wireless Code**”). This mandatory code of conduct is aimed at providing consumer protection and regulating the business practices of Wireless Service Providers (“**WSPs**”), namely the mobile phone service providers. At the time, the CRTC planned to formally review the effectiveness of this new Wireless Code within three years and proceed with any additions or amendments as it found necessary, given changes in the dynamic marketplace^[1].

Upon completing its formal review and proceeding to public consultations, the CRTC released *Telecom Regulatory Policy CRTC 2017-200* (“**Policy**”) on June 15, 2017. This new Policy amends the Wireless Code, found in Appendix 1 of the Policy, modernizing it to match the realities of the market. This bulletin will cover the primary changes to WSP practices brought about by the amendments to the Wireless Code, some of which are effective immediately and others which must be complied with as of December 1, 2017^[2].

Unlocked Devices

One of the most controversial changes the Policy brings to the Wireless Code is the requirement for WSPs to provide devices to the customer unlocked, meaning that the phone is not locked to that specific WSP’s network. For existing customers with locked devices, the WSP must unlock the device at no charge. This new change becomes effective December 1, 2017 and will increase consumers’ ability to more freely switch WSPs, as consumers can now bring their phones with them to another provider, at no additional cost, and take advantage of reduced-price Bring-Your-Own-Phone plans.

New Definitions Affecting Multi-user Plans and Data Overage Charge Caps

Another crucial change comes in the form of regulating multi-user plans, such as family plans. New defined terms, such as “account holder”, “authorized user” and “device user” are used in place of “customer” in the Bill Management section of the Wireless Code. The account holder represents the person responsible for payment under their contract, whereas a device user is merely a person who uses a device associated with the contract. Account holders may also designate certain device users as authorized users, who consequently gain the same

right as the account holder to consent to additional charges on the account or changes to key terms and conditions. Device users have no such rights. Such distinctions in the Wireless Code increase the transparency of the rights of the various users in multi-user plans, something which is particularly important to families who subscribe to such plans.

These new definitions also give rise to new obligations for WSPs to provide notifications when a device is roaming to both the account holder and the device user which, in the case of a multi-user plan, may not be the same person. The previous language only required notifying the “customer”, which was defined as merely the individual or small business subscribing to wireless services. The definition of customer has also since been changed to include account holders, authorized users and device users. Furthermore, data roaming charges, maintaining their cap of \$100 per month, now apply on a per-account basis. Any additional charges require the express consent of the account holder or authorized user. A similar consent is required for data overage charges, which are still capped at \$50 per month, now applicable on a per-account basis. New language has also been added for flex plans, which were less common when the Wireless Code was issued in 2013. Data overage charges for such plans are similarly capped at \$50 per month, unless the account holder or authorized user expressly consents to additional charges. The price of a roaming add-on or data add-on, meaning a package providing additional roaming or data capacity for a single month with no commitment or modifications to the customer’s rate plan, are now included in the caps on charges.

Expanded Definition of Postpaid Services

New offerings in service plans offered by WSPs have prompted changes to the CRTC’s approach to postpaid services versus prepaid services. Since the Wireless Code was issued, WSP now offer pay-in-advance plans in which customers, after exceeding a prepaid balance, may be charged overage fees. Some of these pay-in-advance plans also include early cancellation fees in the contracts and are seen as less “transactional” than the traditional prepaid model of drawing down from a prepaid card on a per-usage basis. The CRTC has determined that these pay-in-advance plans are functionally similar to postpaid plans and has therefore expanded the definition of “postpaid services” in the Wireless Code to include such plans. “Prepaid services” are now defined as those which are **only** purchased in advance of use.

Minimum Limits on Trial Period Usage

The CRTC has also set minimums for trial periods provided by WSP. For unlimited services, whether voice, text or data, the WSP may no longer set any limit on their usage during the minimum 15 day trial period. For services which are not unlimited, the WSP must set usage limits to at least half of the permitted monthly voice, text or data usage in the customer’s contract. For multi-user plans, these limits must be at least half of the permitted monthly usage for the entire account. For customers with disabilities, the trial period must be

extended to 30 days and the usage limits must be at least double those offered by the WSP for the standard trial period, with the minimum limit thus being a full month's usage. The new policies affecting trial period usage are effective as of December 1, 2017.

Initiatives for Canadians with Disabilities

The CRTC has further directed many WSPs to collaborate on the creation of a promotional campaign for Canadians with disabilities. This campaign will include sign-language videos for an awareness campaign regarding the Wireless Code, benefitting the Deaf and hard of hearing community. The videos must be complete and made available, free of charge, on each WSP's website, by December 15, 2017. The WSP must also create common terminology sign-language videos which must be made similarly available by June 15, 2018. WSPs also have an obligation to provide, upon request and at no charge, a permanent copy of the customer's contract and related documents to persons with disabilities in an alternative format. Persons with disabilities may also request an alternative format of the Critical Information Summary of their contract at any time during the term of the contract.

Harmonization with the Television Service Provider Code

The CRTC has also effected a few changes to harmonize some of the language of the Wireless Code with that of the 2016 Television Service Provider Code ("**TVSP Code**"). For example, the Wireless Code now explicitly states that the Critical Information Summary is not a substitute for the same or similar information found elsewhere in the customer's contract, as the TVSP Code says. Similarly to the TVSP Code, the definition of the "permanent copy" of a contract or related documents now requires them to be free of hyperlinks which can be changed by the WSP.

Greater Disclosure Obligations to the Customer

Finally, the CRTC has also included numerous smaller changes which place greater disclosure obligations on WSPs. For example, WSPs previously had an obligation to notify customers of the end of their contract 90 days prior to that date. The amendments to the Wireless Code now require the disclosure of specific information such as the impacts on terms and conditions the end of the contract will bring and a proposed minimum monthly charge for service beyond this date. WSPs must also advise customers that they are not subject to any penalty should they decide to switch plans or providers after the end of their contract. Another disclosure requirement is that customers who elect to have an electronic permanent copy of their contract with related documents must receive it from the WSP within one business day, failing which the customer may cancel the contract within 30 days from the date of reception without any early cancellation fee or penalty. New disclosure obligations now exist for tab contracts regarding how the WSP must present information regarding the monthly early cancellation fee reduction. Finally, the CRTC has required that many of the aforementioned

changes appear in the Critical Information Summary, including information about trial periods, limitations imposed on unlimited services and tab contract early cancellation fees.

The CRTC's intention in initially introducing the Wireless Code was to make the wireless market more dynamic and to increase consumer protection for customers of WSPs. The changes and clarifications in the Policy attempt to modernize the Wireless Code to match the realities of the constantly evolving market and to provide customers the ability to make more informed choices about the services provided by WSPs.

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[1] *Telecom Regulatory Policy CRTC 2013-271*, File no 8665-C12-201212448, at para 393.[ps2id id='1' target='']

[2] Appendix 2 to the *Telecom Regulatory Policy CRTC 2017-200*. [ps2id id='2' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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