Canadian Radio-television and Telecommunications Commission | Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2015-212

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The Public Interest Advocacy Centre and the Consumers' Association of Canada – Application regarding the consistency of Rogers Communications Partnership's "Rogers Next" and TELUS Communications Company's "T-UP!" early upgrade programs with the Wireless Code

The Commission ***denies*** *an application from the Public Interest Advocacy Centre and the Consumers' Association of Canada in which they requested that the Commission find that RCP's "Rogers Next" and TCC's "T-UP!" early upgrade programs violate the Wireless Code. These programs are consistent with the Wireless Code's contract cancellation and extension rules, and are examples of innovative plans and services that respond to the needs of consumers who value the convenience of an early device trade-in and upgrade program.*

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 rules for wireless service providers (WSPs) to empower consumers to make informed decisions about wireless services, and contribute to a more dynamic marketplace. These rules include minimizing barriers to switching service providers so that consumers can keep pace with technological progress and take advantage of competitive offers more frequently, and ensuring that consumers understand their rights and responsibilities with respect to wireless services. The Wireless Code came into force on 2 December 2013.

2. Among other things, the Wireless Code limits the early cancellation fees (ECFs) that WSPs can charge. It also requires that cancellation fees, where permitted, reach $0 in 24 months or less when a device subsidy is provided as part of the contract, which will enable consumers to take advantage of competitive offers at least every two years. Furthermore, the Wireless Code requires that WSPs offering customers a device upgrade clearly explain to the customer any changes to the existing contract terms caused by accepting the new device, including any extension to the contract commitment period.

Application

3. The Commission received an application from the Public Interest Advocacy Centre (PIAC) and the Consumers' Association of Canada (CAC) [collectively, PIAC/CAC], dated 17 June 2014, in which they requested that the Commission find that Rogers Communications Partnership's (RCP) "Rogers Next" and TELUS Communications Company's (TCC) "T-UP!" early upgrade programs (the programs) violate the Wireless Code.

4. PIAC/CAC submitted that since the program fees for "Rogers Next" and "T-UP!" are non-refundable upon early cancellation, they constitute an additional fee or penalty on top of the ECF. PIAC/CAC also raised other issues with the programs, such as their structure and operation, particularly with regard to their effects on key contract terms, the purpose of the program fees, and whether program subscribers were able to own their phones after paying the ECF.

5. PIAC/CAC requested that the Commission direct RCP and TCC to alter their programs such that any fees paid by subscribers into the programs (i) carry interest equivalent to the rate for security deposits under the Wireless Code, and (ii) be refundable, in full, on termination of enrollment at any time by the subscriber.[1] PIAC/CAC requested that subscribers who have already cancelled their participation in the programs without having exercised the option to upgrade their wireless device receive full refunds from RCP or TCC for any program fees paid. Furthermore, PIAC/CAC requested that the Commission direct RCP and TCC to permit subscribers to have the option at any time to purchase their devices outright on payment of any outstanding ECF permitted by the Wireless Code.

6. The Commission received interventions from Bell Mobility Inc. (Bell Mobility), RCP, TCC, and Vaxination Informatique (Vaxination). The public record of this proceeding, which closed on 27 November 2014, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

The "Rogers Next" and "T-UP!" programs

7. "Rogers Next" and "T-UP!" are optional, month-to-month, fee-based programs offered to new or returning customers of RCP and TCC, respectively, who sign up for a two-year, post-paid wireless service contract that includes a subsidized device. After 12 consecutive monthly payments, program subscribers have the opportunity to trade in and upgrade their devices without having to pay an ECF. Customers are then required to sign a new two-year postpaid contract associated with the upgraded device.

8. Under the "Rogers Next" program, the customer is offered a discount of up to $250 off the cost of a new device, whereas under the "T-UP!" program, the customer is not

[1] PIAC/CAC did not distinguish between fees paid to participate in the program and those paid for extended warranty coverage.

offered a discount off the cost of a new device. Furthermore, “T-UP!” customers automatically receive extended warranty coverage, whereas “Rogers Next” customers can choose to add an extended warranty for an extra monthly charge.

9. For both programs, past fees paid on a monthly basis to participate in the programs are non-refundable upon early cancellation or a decision by the customer to not proceed with a device upgrade.

10. The “T-UP!” program was launched in September 2013 and is ongoing. On 17 October 2014, the Commission received a letter from RCP in which the company announced that the “Rogers Next” program, launched in February 2014, had been discontinued, and that no new subscribers would be accepted to the program. Current “Rogers Next” subscribers would be permitted to complete the program.

Issues

11. The Commission has identified the following issues to be addressed in this decision:

- Do the programs violate the Wireless Code’s rules relating to ECFs, and does the non-refundable nature of the program fees act as an undue barrier to switching service providers?
- Do the programs violate the Wireless Code’s contract length and extension rules, and does the requirement for customers to sign a new two-year contract when they upgrade to a new device present an undue barrier to switching service providers?
- Is the information that RCP and TCC provide to their customers about the programs consistent with the Wireless Code’s objective of ensuring that consumers have clear information about their wireless services?
- Are customers enrolled in the programs precluded from owning their devices?

Do the programs violate the Wireless Code’s rules relating to ECFs, and does the non-refundable nature of the program fees act as an undue barrier to switching service providers?

12. PIAC/CAC argued that fees paid into the programs are designed as prepayment for a new device. They submitted that the programs require customers to prepay for a device, but since the fees paid to participate in the programs are never refundable, they act as a penalty on top of ECFs should a customer choose to switch service providers before completing an upgrade through the one of programs. PIAC/CAC therefore submitted that these fees constitute a violation of the Wireless Code’s limitation on ECFs.

13. PIAC/CAC also submitted that by not refunding program fees to those who exercise their right to early cancellation, RCP and TCC are restricting subscribers’ practical

choice. This aspect of the programs, PIAC/CAC argued, deters subscribers from switching service providers.

14. RCP and TCC argued that the program fees are not device deposits or down payments for a new device. Rather, they submitted that the fees are for participation in the programs and for services rendered, specifically, the option for subscribers to trade in and upgrade their devices before the end of their contract period without having to pay an ECF, as well as extended warranty coverage for “T-UP!” subscribers and for “Rogers Next” subscribers who opt to pay for an extended warranty.

15. RCP and TCC submitted that the programs in question comply with the Wireless Code, and that enrollment and cancellation are entirely optional. They submitted that ECFs are only due when a customer cancels their wireless service agreement early, and not when they terminate their enrollment in the programs. RCP and TCC further submitted that the manner in which ECFs are calculated and applied is the same for customers enrolled in the programs as for those who are not enrolled.

16. Vaxination supported PIAC/CAC’s position that the programs violate the Wireless Code, but argued that the program fees are an accelerated repayment of the device subsidy instead of a deposit for a new device. Vaxination accordingly submitted that the program fees should be used first to lower or eliminate the ECF upon early cancellation by the customer, and that any remaining balance should be refunded to the customer with interest. However, Vaxination was of the view that any fees paid for extended warranties should not be refundable, since such fees were properly understood as being for services rendered.

17. Bell Mobility opposed PIAC/CAC’s application, arguing that the programs at issue do not violate the Wireless Code’s early cancellation or security deposit rules.

Commission’s analysis and determinations

18. Section G.1(i) of the Wireless Code states that “[i]f 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 early cancellation fee.”[2]

19. The Commission considers that the fees paid for the programs are for services rendered on a month-to-month basis, specifically, the option to upgrade a wireless device in the middle of a two-year postpaid contract without having to pay an ECF, which is an option not offered to other wireless service customers. Accordingly, there is no basis to require that the fees be refundable if a customer ends their participation in the program or cancels their wireless service prior to upgrading their device in accordance with the terms of the programs. This is consistent with the Commission’s determination in the Wireless Code policy that amounts due for

[2] The Wireless Code defines “early cancellation fee” as “[a] fee that may be applied when a customer’s service is cancelled before the end of the commitment period.”

services already provided do not form part of an ECF; instead, the requirement to pay such amounts is an existing obligation under the service contract.

20. The Commission agrees with Bell Mobility’s, RCP’s, and TCC’s assertions that the program fees operate independently from the ECF mechanism and formula because they are independent of the device subsidy. The Commission also agrees with TCC’s and Vaxination’s submissions that the fees paid for extended warranties are for services rendered regardless of whether the customer makes a claim under the warranty or if the customer cancels their contract early without upgrading their device.

21. In light of the above and the fact that (i) participation in the programs is optional, and (ii) customers are informed of the terms and conditions when they enroll, the Commission finds that the program fees do not violate the Wireless Code’s early cancellation rules, nor do they pose an undue barrier to switching service providers.

Do the programs violate the Wireless Code’s contract length and extension rules, and does the requirement for customers to sign a new two-year contract when they upgrade to a new device present an undue barrier to switching service providers?

22. PIAC/CAC argued that through the requirement for customers to sign a new two-year contract after only 12 months, a two-year contract is effectively rolled into a three-year contract, which PIAC/CAC submitted is not permitted under the Wireless Code. They argued that the programs play on customers’ loss aversion tendencies to motivate them to renew, after one year of enrollment in the relevant program, their two-year contracts with their current service provider, thereby restricting choice in the marketplace and presenting an undue barrier to switching service providers.

23. RCP and TCC submitted that customers can cancel their enrollment at any time without having to pay an ECF, or they can switch service providers upon paying an ECF, as permitted by the Wireless Code.

Commission’s analysis and determinations

24. The Wireless Code does not prohibit three-year contracts; rather, section G requires that the ECF reach $0 within a 24-month period when a device subsidy is provided as part of the contract. This helps to ensure that consumers have the opportunity to take advantage of competitive offers or upgrade their device at least every two years.

25. Even though “Rogers Next” and “T-UP!” subscribers are provided an incentive to stay with their service provider for three years when they sign up for the program, they will benefit from the opportunity to upgrade their device during that time, and the rules regarding early cancellation will remain the same (i.e. the ECF is calculated in the same way as it would be for other RCP or TCC customers). In no case would the cancellation fee associated with a specific contract exceed $0 after 24 months, which is consistent with the requirements of the Wireless Code.

26. Under both programs, customers are informed that a condition of the program is that they sign a new two-year contract when exercising the early device upgrade option. They are therefore informed prior to their enrollment in the program that a decision to exercise this option will require that they enter into a new two-year commitment. Customers are not, however, required to continue their enrollment to avoid paying an ECF.

27. Therefore, the programs do not violate the contract length and extension rules of the Wireless Code, since the cancellation fee always reaches $0 within 24 months or is waived by the service provider. Further, the requirement to sign a new two-year contract at the time of upgrade is consistent with the Wireless Code's contract extension rules outlined in section G.6(iii),[3] since customers are informed of this requirement prior to enrolling in the programs. Finally, given the optional nature of the programs, the Commission finds that the requirement to sign a new two-year contract in relation to an early device upgrade does not introduce an undue barrier to switching service providers.

Is the information that RCP and TCC provide to their customers about the programs consistent with the Wireless Code's objective of ensuring that consumers have clear information about their wireless services?

28. PIAC/CAC submitted that the programs are ambiguous with regard to, for example, key contract terms. Vaxination agreed with PIAC/CAC that the programs lacked clarity, based on the information available on the programs' websites. RCP submitted that customers are always made aware of the applicable terms and conditions of the "Rogers Next" program before they agree to participate or re-enroll in the program. TCC submitted that information about the "T-UP!" program is always communicated in a fashion that clearly states the program's underlying service attributes.

29. With regard to PIAC/CAC's claim that program subscribers were exposed to uncertainty about key contract terms, such as the minimum monthly service charge and the total ECF, RCP and TCC submitted that key contract terms are unaffected by a customer's participation in the programs.

Commission's analysis and determinations

30. The terms and conditions of the programs are clearly set out through the contract and related documents provided to the customer at the time of enrollment. Customers have access to the information they need to make an informed choice as to whether the programs suit their needs. With clear information available through the terms and conditions of the programs, consumers are able to weigh the convenience of a service that allows early trade-ins and upgrades against the

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[3] Section G.6(iii) of the Wireless Code states that "[a]t the time that a service provider offers a customer a device upgrade, the service provider must clearly explain to the customer any changes to the existing contract terms caused by accepting the new device, including any extension to the commitment period."

likelihood that they will leave the service provider before they are able to complete the upgrade. In weighing those factors, it is up to the consumer to determine if the non-refundable nature of the fees poses too great a risk and whether the program is worthwhile for their particular situation.

Are customers enrolled in the programs precluded from owning their devices?

31. PIAC/CAC submitted that there remains considerable ambiguity about how the programs actually operate, including questions about customers' ability to purchase their phones outright.

32. PIAC/CAC submitted that under the programs, a customer cannot own their phone unless they terminate their participation in the program and pay any outstanding device subsidy, thereby giving up any fees paid into the program. PIAC/CAC requested that the Commission direct RCP and TCC to permit program subscribers to have the option at any time to purchase their devices outright on payment of any outstanding ECF permitted by the Wireless Code.

Commission's analysis and determinations

33. As a condition of exercising their early upgrade option, subscribers of the programs are required to trade in their devices. This requirement is outlined in the terms and conditions of both programs. In the event that a customer decides to keep their current phone instead of upgrading before the end of their contract term, they can cancel their enrollment in the program and pay the outstanding device subsidy (i.e. the ECF), obtaining full ownership of the device. Alternatively, to avoid paying the ECF, a customer could cancel their enrollment in the program and wait until the conclusion of the two-year commitment period, at which time the device subsidy on their current phone is fully paid. The Commission considers that its intervention is therefore unnecessary since subscribers to the programs are not precluded from obtaining ownership of their devices.

Conclusion

34. In light of all the above, the Commission **denies** PIAC/CAC's application.

Other issues

35. Bell Mobility outlined a list of characteristics it considers to be essential to early upgrade programs, and requested that the Commission issue a declaration confirming that these characteristics are consistent with the Wireless Code.

36. PIAC/CAC's application pertains specifically to RCP's "Rogers Next" and TCC's "T-UP!" programs. As such, Bell Mobility's request is outside the scope of this proceeding.

Secretary General

Related document

- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013