



Telecom Decision CRTC 2019-169

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Ottawa, 23 May 2019

Public record: 8620-P8-201711630

Wireless Code – Request to clarify the device unlocking rules

*In 2017, the Commission determined, as part of the device unlocking rules set out in the Wireless Code, that wireless service providers (WSPs) must unlock devices from existing wireless service customers, regardless of contract type. The Public Interest Advocacy Centre (PIAC) requested that the Commission clarify the device unlocking rules such that all devices purchased prior to 1 December 2017 that are locked to a given WSP's network should be unlocked upon request and at no cost, regardless of whether the device owner currently has, previously had, or never had an active account with the WSP. The Commission is satisfied that the device unlocking rules do not require clarification and therefore **denies** PIAC's application.*

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. The Wireless Code initially came into force on 2 December 2013, and applied to all contracts, no matter when they were entered into, as of 3 June 2015.
2. Subsequently, the Commission reviewed the Wireless Code, which led to the changes to the Wireless Code set out in Telecom Regulatory Policy 2017-200 (the Wireless Code Review Policy). The revised Wireless Code included new rules that WSPs must follow for the unlocking of mobile wireless devices (hereafter, the device unlocking rules). The revised Wireless Code, including the device unlocking rules, applied to all contracts as of 1 December 2017.
3. Specifically, Rule F.1.(ii) of the Wireless Code states the following:

If a device is, or becomes, locked to a service provider's network, that service provider must unlock the device, or give the customer the means to unlock the device, upon request, at no charge.
4. The Wireless Code defines “customers” and “locked” as follows:

Customers: Individuals or small businesses subscribing to wireless services, including account holders, device users, and authorized users.

Locked: When a wireless device is programmed to work only with the network through which the service provider provides wireless services to the customer.

5. Specific directions for interpreting the Wireless Code are set out in its Preamble, as follows:

1. Interpretation

- (i) In interpreting the Code:

- 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.

6. 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:

378. ...as with any new set of rules, there may be issues of interpretation that [the Commission] has not anticipated.

379. Moreover, 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.

7. This approach is complemented by the consumer recourse available through the Commission for Complaints for Telecom-television Services Inc. (CCTS), which is the telecommunications industry's complaint resolution body and the administrator of the Wireless Code. The CCTS accepts complaints from residential and small business customers, defined as an individual or a small business that received, or has contracted to receive, telecommunications services from a participating service provider.

8. The CCTS publishes periodic reports, in the form of its *CCTS Annotated Guide to the CRTC Wireless Code*, which set out its interpretations of certain provisions of the Wireless Code. Anyone seeking a generally binding clarification of the Wireless Code, on a prospective basis, may file an application with the Commission, as the Public Interest Advocacy Centre (PIAC) has done in the present case.
9. The Wireless Code is imposed on WSPs as a condition of offering and providing retail mobile wireless voice and data services to individual and small business customers under sections 24 and 24.1 of the *Telecommunications Act* (the Act).

Application

10. The Commission received an application from PIAC, dated 6 December 2017, in which it requested that the Commission clarify elements of the Wireless Code related to mobile wireless device (hereafter, device) unlocking. PIAC's concern is that if WSPs refuse, for various reasons, to unlock devices that are locked to their network, (i) device owners might be unable to switch from a WSP's network, and (ii) there may be a reduction in market dynamism stemming from the decrease in low-cost purchasing options, such as second-hand devices.
11. PIAC asked the Commission to clarify Rule F.1.(ii) of the Wireless Code such that all devices purchased prior to 1 December 2017 that are locked to a given WSP's network should be unlocked upon request and at no cost, regardless of whether the device owner currently has, previously had, or never had an active account with the WSP (hereafter, PIAC's proposed clarification).
12. In PIAC's view, the Wireless Code may be ambiguous in terms of who the device unlocking rules are intended to benefit. The Preamble to the Wireless Code states that any ambiguity is to be resolved in favour of customers. PIAC argued that this ambiguity should be resolved to clarify that a person does not need to have an ongoing service contract to have their device unlocked free of charge.
13. PIAC argued that this interpretation would be consistent with the rules that the Wireless Code itself sets out for interpreting its provisions, with the Code's objectives, and with other Commission-imposed obligations that benefit consumers, such as 9-1-1 obligations.
14. The Commission received interventions and comments from Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOOC); the CCTS; the Consumers Council of Canada (CCC); the Forum for Research and Policy in Communications (FRPC); Rogers Communications Canada Inc. (RCCI); l'Union des consommateurs (l'Union); and four individuals. PIAC replied to the interventions. In response to a request for information the Commission sent to WSPs, it received submissions from Bell Mobility Inc. (Bell Mobility); Eastlink; Brooke Telecom Co-operative Ltd. (Brooke); Execulink Telecom Inc.; Hay Communications Co-operative Ltd. (Hay); Huron Telecommunications Co-operative Limited; Ice Wireless Inc.;

Quadro Communications Co-operative Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); RCCI; Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); Sogetel Mobilité inc.; SSi Micro Ltd.; TBayTel; TELUS Communications Inc. (TCI); Tuckersmith Communications Co-operative Ltd. (Tuckersmith); and Wightman Telecom Ltd.

Positions of parties

15. CNOC and l'Union agreed with PIAC's proposed clarification. CNOC argued that should the Commission not accept PIAC's proposed clarification, some customers could become unable to switch WSPs, which would negatively impact competition in the retail mobile wireless services market. CNOC submitted that PIAC's proposed clarification would further the objectives of the Act.
16. The CCC and the FRPC generally supported PIAC's application. The CCC added that since the objective of the device unlocking rules is to facilitate competition in the marketplace, it makes sense for those rules to be broad.
17. RCCI conditionally supported PIAC's proposed clarification, such that current or former customers with a subsidized device qualify under the Wireless Code for free unlocking, even if their contract has expired, as long as their account is in good standing. According to RCCI, should a current or former customer cease payment under a wireless service contract, that customer should be eligible for device unlocking only if and when they resume payment. RCCI indicated that it unlocks the devices of former customers, except in the situations described above.
18. RCCI further submitted that the device unlocking rules of the Wireless Code were not created to benefit individuals simply seeking to resell devices, which would offer no benefit to a dynamic marketplace nor to consumer empowerment. The device unlocking rules were created to (i) facilitate the switching of WSPs by existing customers upon termination of their contract, and (ii) provide options to consumers when travelling abroad. However, RCCI indicated that it unlocks up to five devices from individuals and small businesses that have never been its customers, provided that such devices were originally sold by RCCI and are not tied to accounts that were cancelled due to fraud or non-payment.
19. L'Union and three individuals supported PIAC's view that the Wireless Code requires WSPs to unlock devices for individuals who were never their customers (e.g. who bought a device second-hand). The individuals also argued that the lack of broader device unlocking rules would hinder the marketplace and place second-hand device buyers at a disadvantage, potentially forcing them to deal with the WSP of the device's previous owner.
20. Eastlink submitted that a direction for WSPs to unlock devices purchased from other WSPs or from third parties (such as retailers or individuals selling second-hand devices) could cause problems, because WSPs do not have the unlock codes for

devices that were not purchased directly from them. Eastlink submitted that second-hand devices should be unlocked by the account holder prior to being re-sold.

21. Numerous WSPs, including Bell Mobility, Eastlink, SaskTel, Shaw, TCI, and Videotron indicated that they unlock devices for former customers, upon request. Bell Mobility, SaskTel, TCI, and Videotron also indicated that they unlock devices for individuals or small businesses that were never their customers, upon request, despite generally not agreeing to the application of the device unlocking rules to such situations. They all submitted that they were able to grant such requests only for devices that were originally sold by them.
22. In reply, PIAC underlined the Commission's general acknowledgment that device locking constitutes a barrier to market dynamism, and argued that where the Wireless Code Review Policy indicates that the Code applies to devices sold incidental to the purchase of wireless services, this should be understood as continuing to apply to devices even after the owner switches WSPs or sells the device to someone else. PIAC also disagreed with RCCI's argument regarding customers needing an account in good standing to benefit from device unlocking, noting that the Wireless Code addresses customer non-payment related to a wireless service contract in its disconnection provisions.
23. Finally, PIAC disagreed with Eastlink's position on devices purchased from third parties, arguing that a third-party retailer selling a device that is locked to a given WSP network acts on that WSP's behalf, and that any rules that apply to WSPs should apply to those third parties. PIAC added that the Wireless Code applies to all WSPs, regardless of their business models, and that the Code requires WSPs to ensure that any retailers reselling devices and services on their behalf comply with the Code.
24. The CCTS noted that the Wireless Code indicates that the Code should be interpreted in a manner that is favourable to the "customer;" however, the Wireless Code Review Policy uses the word "customer" in some places and other terms, such as "consumer" and "existing customer," in various other places. The CCTS suggested that the Commission clarify the intent of the device unlocking rules, but in keeping with the need to maintain its impartiality and neutrality as an industry ombudsperson, it did not take a position on PIAC's application.
25. The CCTS submitted that its own Procedural Code, which governs its complaint resolution processes, contains a definition of "customer" that generally allows the CCTS to treat complaints from individuals or small businesses that currently receive wireless telecommunications services from a given service provider, or that received such service at the time of the events that were the subject of the complaint.
26. Further, larger WSPs such as Bell Mobility, Eastlink, Shaw, and Videotron, noted trends showing that the number of device unlocking requests has declined steadily from month to month since the device unlocking rules came into force. However,

some smaller WSPs, such as Brooke, Hay, and Tuckersmith, noted a modest increase in the number of device unlocking requests.

27. Some parties, such as Eastlink, RCCI, SaskTel, and TCI, indicated that since new devices must now be sold unlocked, the volume of device unlocking requests will continue to decline over time.

Commission's analysis and determinations

28. At the outset, the record of the proceeding demonstrates that the majority of WSPs, representing a significant majority of the market, are currently unlocking the devices of former customers. The Commission encourages WSPs to continue this best practice going forward, since it further fosters consumer choice and a dynamic marketplace.
29. With respect to Rule F.1.(ii) of the Wireless Code, both a plain and a contextual reading lead the Commission to conclude that WSPs are required to unlock, upon request and at no charge, the locked device of a current customer.
30. In this regard, Rule F.1.(ii) refers to a "customer," which is itself a defined term in the Code. The use of the present continuous tense (i.e. "subscribing") in the definition of "customer" in the Wireless Code indicates that the device unlocking rules apply in the case of devices that are tied to an existing, ongoing contract. The definition of "locked," which also refers to a "customer," reinforces this notion.
31. The Preamble to the Wireless Code states that any ambiguity in the Code is to be resolved in favour of customers. The Commission considers that the device unlocking rules are not ambiguous. However, even if there were ambiguity that needed to be resolved, the Commission would not interpret Rule F.1.(ii) so expansively as to contradict a plain reading of the term "customer" to include individuals who are not currently or never were customers.
32. Further, in cases where the Wireless Code imposes a requirement binding WSPs beyond a customer's contract, it has generally made this explicit. Examples include the obligations for WSPs to (i) return security deposits upon contract termination, set out in section H of the Code; and (ii) allow prepaid customers a grace period to top up their accounts after contract expiry, set out in section J.
33. As PIAC noted in its application, the Preamble to the Wireless Code also states that the Code's provisions are to be interpreted by reference to the Code's objectives and to the Wireless Code Review Policy.
34. Paragraph 315 of the Wireless Code Review Policy indicates that as of the effective date of the changes to the Wireless Code (1 December 2017), customers with pre-existing contracts can request that their devices be unlocked at no charge.
35. Although the Wireless Code Review Policy indeed refers to both "customers" and "consumers" in various places, this alone does not justify an interpretation of the

Wireless Code that is inconsistent with a plain reading of Rule F.1.(ii) and with the general thrust of the Policy on the device unlocking issue, which should be read as a whole.

36. The Wireless Code Review Policy expresses the Commission's view that the device unlocking rules are a necessary safeguard to give customers receiving wireless services greater flexibility in taking advantage of competitive offers in the marketplace.
37. Accordingly, the Commission determines that the device unlocking rules, read in their proper context, which includes the Act, the entire Wireless Code, and the Wireless Code Review Policy, require WSPs to unlock, upon request and free of charge, only those devices that are tied to an ongoing contract with that WSP (regardless of contract type, including fixed term, indeterminate, or prepaid service contracts).
38. The Commission considers that if it were to extend the device unlocking rules to former customers or individuals who were never customers, it would be introducing a new requirement to the Wireless Code, rather than clarifying an existing one. Although the Code is to be interpreted purposively, by reference to its objectives, PIAC has not established that an additional requirement is necessary to further those objectives.
39. In regard to PIAC's concerns related to second-hand devices, the Commission notes that, in many cases, WSPs are already unlocking such devices for consumers in circumstances where those devices are locked to that WSP's network. In the Wireless Code Review Policy, the Commission referred to certain third-party device unlocking services that exist in the market and that address these concerns to a certain extent.
40. The Commission notes that some WSPs require that a customer's account be in good standing prior to unlocking a device. The Commission considers that it has already addressed similar issues in the Wireless Code Review Policy when it noted that some attempt had been made by WSPs to draw a correlation between unlocking and the non-payment of bills. The Commission considered that the empirical evidence provided on the record of that proceeding to support such a connection was minimal. Moreover, the record of that proceeding did not substantiate the speculation by some parties that an expansion of unlocking would lead to an increase in bill default. As a result, the Commission reiterates that the device unlocking rules are not intended to serve as a payment collection mechanism for WSPs.
41. Finally, the Commission notes the significant decrease in the number of requests made to unlock devices in the time since the coming into force of the changes to the Wireless Code. The Commission considers that the issue of unlocking for existing devices will continue to diminish, since devices must now be sold unlocked.

Conclusion

42. In light of all the above, the Commission **denies** PIAC's application. The device unlocking rules, consistent with the definitions set out in the Wireless Code and with the relevant Commission regulatory policies, require that a WSP unlock a device from an existing wireless service customer (regardless of contract type, including fixed term, indeterminate, or prepaid service contracts), or give the customer the means to unlock the device, upon request, at no charge.
43. As indicated in the Wireless Code Review Policy, for customers who purchase second-hand devices that are locked to a given WSP's network, alternate options, such as third-party unlocking services, are available.
44. The Commission acknowledges that market forces have led to many WSPs unlocking devices for former customers in the absence of a formal obligation, and encourages this as a best practice that could foster additional consumer choice.

Secretary General

Related documents

- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013