



The Wireless Code of Conduct June 3, 2015 Transition

In Telecom Regulatory Policy 2013-271, issued on June 3, 2013, the Canadian Radio-television and Telecommunications Commission (“CRTC”) ruled that “...in order to ensure that all customers are covered by the Wireless Code within a reasonable time frame, the Wireless Code should apply to all contracts, no matter when they were entered into, by no later than **3 June 2015**.”¹ A legal challenge to this provision was dismissed by the Federal Court of Appeal on May 19, 2015.

The Code contains no specific rules about the transition, and we have received many inquiries about it. The purpose of this memo is to explain how CCTS intends to apply the Code as of June 3, 2015.

This means as of June 3, 2015 the Wireless Code in its entirety applies to all contracts entered into before December 2, 2013.

What about early cancellation fees?

The main question that we are being asked is how the Code will apply to customers who are still on contracts with unexpired three-year commitments, (and who have not upgraded their device or otherwise amended their contract such that they are already covered by the Code). In other words, this impacts customers:

- who entered into a three-year contract before the Wireless Code came into effect (December 2, 2013);
- whose three-year term has not yet expired; and
- who received a device subsidy on which there is an outstanding balance, and/or whose contracts provide for an early cancellation fee (“ECF”) whether or not there is a remaining device subsidy.

In particular, stakeholders are asking whether these contracts automatically “expire” on June 3, 2015. Or if they don’t expire but they want to cancel them, can they do so without incurring an early cancellation fee? Recent media reports suggest that customers who are on three-year contracts and who wish to cancel service on June 3, 2015, will be able to cancel their contracts without having to pay an early cancellation fee.

Our Analysis

Below are the relevant provisions of the Code:

G. Contract cancellation and extension

1. Early cancellation fees – General

- i. 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 early cancellation fee. This fee must be calculated in the manner set out in sections 2. and 3. below.
- ii. When calculating the time remaining in a contract to determine the early cancellation fee, a month that has partially elapsed at the time of cancellation is considered a month completely elapsed.

¹ Paragraph 369.

- 2. Early cancellation fees – Subsidized device**
- i. When a subsidized device is provided as part of the contract,
 - a. for *fixed-term contracts*: The early cancellation fee must not exceed the value of the *device subsidy*. The early cancellation fee must be reduced by an equal amount each month, for the lesser of 24 months or the total number of months in the contract term, such that the early cancellation fee is reduced to \$0 by the end of the period.
 - b. for *indeterminate contracts*: The early cancellation fee must not exceed the value of the device subsidy. The early cancellation fee must be reduced by an equal amount each month, over a maximum of 24 months, such that the early cancellation fee is reduced to \$0 by the end of the period.
 - ii. When calculating the early cancellation fee,
 - a. the value of the device subsidy is the retail price of the device minus the amount that the customer paid for the device when the contract was agreed to; and
 - b. 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 service provider without a contract.
- 3. Early cancellation fees – No subsidized device**
- i. When a subsidized device is not provided as part of the contract,
 - a. for fixed-term contracts: The early cancellation fee must not exceed the lesser of \$50 or 10 percent of the minimum monthly charge for the remaining months of the contract, up to a maximum of 24 months. The early cancellation fee must be reduced to \$0 by the end of the period.
 - b. for indeterminate contracts: A service provider must not charge an early cancellation fee.

Our analysis is that these contracts do not “expire” on June 3, 2015. There is no such language in the Code or in TRP 2013-271. Rather, as TRP 2013-271 says², the Code applies to these contracts effective June 3, 2015. So if a customer with an unexpired three-year contract wishes to cancel that contract after June 3, 2015 the above provisions of the Code relating to ECFs apply.

Contracts Entered Into Before June 3, 2013

The Code requires that ECFs be reduced to zero within 24 months. Thus for contracts entered into before June 3, 2013, 24 months have passed so the ECF will be zero.

Contract Entered Into Between June 3 and December 2, 2013 with a Device Subsidy

For fixed-term contracts entered into between June 3 and December 2, 2013 (the day before the Code came into force), the Code also applies, and likewise requires that the ECF for these contracts be reduced to zero within 24 months of being entered into, and prohibits the ECF from exceeding the “*device subsidy*.”

If there is an outstanding device subsidy, the service provider is entitled to recover it, but it must be calculated according to the requirements of the Code.

This is our approach to determining the amount of any ECF:

1. Determine the amount of the customer’s device subsidy at the time the contract was entered into and divide it by 24 (the number of months permitted under the Code for the re-payment of the subsidy). This gives you the amount by which the subsidy is required to have been reduced each month³;
2. Assume notionally that the customer has been re-paying the device subsidy based on the 24-month schedule, effective the date the contract was entered into; and
3. Subtract the amount of the notional repayment from the amount of the device subsidy. If there is an outstanding balance, the service provider is entitled to recover that amount as an ECF.

² Paragraph 369 of TRP 2013-271 states “*The Commission finds that where an obligation relates to a specific contractual relationship between a WSP and a customer, the Wireless Code should apply if the contract is entered into, amended, renewed, or extended on or after 2 December 2013. In addition, in order to ensure that all consumers are covered by the Wireless Code within a reasonable time frame, the Wireless Code should apply to all contracts, no matter when they were entered into, by no later than 3 June 2015.*”

³ As clarified by the CRTC in CRTC Regulatory Policy 2013-586, for customers on “tab” contracts only, the ECF must decrease by either an equal amount each month or an equal percentage of the monthly bill.

Formulas like this are always easier to understand with an example:

Example of ECF calculation formula – contracts with device subsidy

- 1) Customer's contract start date = November 5, 2013
- 2) Customer's contract end date = November 4, 2016
- 3) Device subsidy at sign-up = \$240
- 4) Customer cancels service on June 10, 2015

The customer's early cancellation fee would be:

$\$240$ (device subsidy) \div 24 (max. number of months as per TWC) = $\$10$ /month decrease of device subsidy
20 months⁴ of contract have expired, thus customer has notionally repaid $\$200$
 $\$240$ subsidy MINUS subsidy deemed to have been repaid ($\$200$) = **$\40 ECF**

Should CCTS receive customer complaints about this issue, we will expect service providers to demonstrate the amount of the device subsidy (as it may not be disclosed in the contract), if they wish to charge an ECF to a customer who cancels their contract before the expiry of the term commitment.

CCTS will consider any other calculation of ECF in these circumstances to be a breach of the Wireless Code.

Contract Entered Into Between June 3 and December 2, 2013 without a Device Subsidy

For customers who entered into three year contracts and did not receive a device subsidy, the Code requires that the ECF be reduced to zero within 24 months. If the contract is cancelled before 24 months have passed, the ECF is limited to the lesser of \$50 or "10% of the minimum monthly charge for the remaining months of the contract."

The calculation in these cases is as follows:

Example of ECF calculation formula – contracts without device subsidy

- 1) Customer's contract start date = November 5, 2013
- 2) Customers contract end date = November 4, 2016
- 3) Minimum monthly charge = \$65
- 4) Customer cancels service on June 10, 2015

The customer's early cancellation fee would be:

Contract should be reduced to zero by November 4, 2015.

This means there are 4 months remaining between the customer's cancel date and the date that the ECF needs to reach zero.

So 10% of \$65 (minimum monthly charge) = \$6.50 MULTIPLIED by 4 (number of months left) = \$26.00

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⁴ Section G 1 (ii) provides: "When calculating the time remaining in a contract to determine the early cancellation fee, a month that has partially elapsed at the time of cancellation is considered a month completely elapsed."