

THE WIRELESS CODE: who's the winner?

Executive summary
June 2015

The universe of wireless phone services in Canada is undergoing tremendous change. For several years, the provinces have adopted a variety of consumer protection measures to better regulate contracts that used to include myriad unfair terms. The CRTC followed this trend by adopting the Wireless Code, intended not only to protect all consumers in the country, but also to regulate business practices that had never been regulated before. With those new measures leading to a reduction of the duration of contracts, a framework for calculating cancellation fees, a requirement to unlock devices, ceilings for overage fees and a trial period, the Code was highly promising for consumers fed up with being confined in outrageously restrictive contracts. Unfortunately, although the situation seems to be changing for the better, our study of the contracts of the main wireless service providers proves that there remains a lot of room for improvement.

The object of our research was to verify how providers meet certain obligations for which they have been left a wide margin of manoeuvre by the CRTC. We wanted to determine if that flexibility prevents the Code from meeting its objectives, which were notably to limit barriers to consumer mobility and clean up market practices. So we studied the contractual documents of the majority of major Canadian service providers and confronted them with the Code's stated obligations.

Numerous Code measures leave the industry a wide margin of manoeuvre in order to offer better consumer protection while not hindering the free play of market forces. Thus, providers may call unlimited a service that has limits, so long as they clearly disclose the limits allowed by the Code; providers must offer to unlock their customers' devices, but are free to impose any fee they choose for that service; the Code requires providers to grant a trial period with a right to cancel without fee or penalty, but may impose the duration of their choice, and exceeding that limit nullifies the right to cancel without fee or penalty.

Although it wasn't the purpose of our research, we had to acknowledge many compliance problems on the part of providers, more than a year after the Code came into effect. Our study led us to read many contracts or summaries of essential information that were non-exhaustive (contrary to Code requirements), poorly translated, containing certain illegible or incomprehensible terms, or that seemed to present erroneous information about the services offered. Some providers add conditions to those provided by the Code, levy charges for meeting their obligations under the Code, include in their adhesion contracts clauses waiving Code protections, or meet information requirements while communicating obscure terms to the consumer or camouflaging required information by inserting it in external documents of which they sometimes don't even bother to provide a copy.

In addition to those problems, all of which we think are infringements of the Wireless Code, we have observed many problems that appear to result from ambiguities or permissiveness in the

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Code itself. For example, the Code prescribes disclosure of the existence or possibility of overage charges, but not disclosure of the amount of those charges. The CRTC allows disclosure merely of a way for the consumer to obtain much of the information, rather than require the information itself to be communicated within the contract; we thus find in the contract a multitude of hyperlinks or simple references to websites, which obviously doesn't encourage the consumer to obtain the information.

The Code's clarity requirements are not generally very specific, so they are often poorly met: many explanations are incomplete or nebulous, a lot of information is lost in an ocean of data of questionable relevance, other information is detailed to the point of drowning what is essential. When the Code allows the provider to impose certain conditions, the latter are often prohibitive or excessively (and uselessly) restrictive. Some providers even make abusive use of the margin of manoeuvre conceded in the Code by making the consumer's exercise of certain rights subject to additional conditions, economic or other, not found in the Code.

The Wireless Code: who's the winner? In our view, it's a draw at the moment. Many Code measures are promising, but are not applied so as to help change business practices significantly, or to facilitate consumer mobility as expected. A review of the Code should begin in 2016 – the time or never to make necessary clarifications to certain measures, so that the Code genuinely protects, above all... the interests of consumers. Our recommendations may be useful in indicating, based on a field study, how some of the problems encountered could be corrected.

French version available.

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