

Comments

regarding

**Canada Gazette Aug 9th, Part 1,
Notice No. DGTP-001-2014
DiversityCanada Foundation
Petition to the Governor in
Council concerning
Telecom Decision CRTC 2014-101
Wireless Code**

Jean-Francois Mezei

Vaxination Informatique

jfmezei@vaxination.ca

Montréal, Québec

08-Sep-2014

Table of Contents

Introduction.....	3
Pre-paid myths	3
Background.....	4
Pre-paid Cards versus Pre-paid Account	6
Public Interest Advocacy Centre.....	7
A question of process	8
Order in Council Sough.....	9
Conclusion	11

Introduction

1. Vaxination Informatique is in receipt of a Petition to Governor in Council by DiversityCanada Foundation and the National Pensioners Federation (together "DiversityCanada") requesting that the GIC vary Telecom Decision CRTC 2014-101 which ruled on a Review and Variance request of wireless prepaid service provisions of the Wireless Code (2013-271). Pursuant to the procedure set in the August 9th edition of the Canada Gazette with respect to DGTP-001-2014, Vaxination Informatique files its comments .
2. Vaxination Informatique was a participant in both the 2012-557 process which lead to the 2013-271 Wireless Code, as well as the DiversityCanada R&V which lead to the CRTC 2014-101 decision which is the subject of this Petition.
3. As DiversityCanada included Vaxination's filing in the R&V process, Vaxination will focus its arguments in this document on issues raised by the Commission 2014-101 decision.

Pre-paid myths

4. During the R&V process and ensuing decision, reaction on social media showed there was rampant misunderstanding of how pre-paid services work. Serious errors in basic terminology by the Commission show how misconceptions are not limited to the general public and can lead to flawed policies when even the regulator misunderstands how pre-paid services function.
5. As a result, Vaxination urges the Minister to ensure his decision reflects the basic fact that pre-paid wireless services are zero credit services where money must be deposited into an account prior to purchasing/consuming a wireless service. This distinction is very important because the act of depositing money in a pre-paid wireless account does not constitute the purchase of a wireless service. It simply enables such a purchase just as depositing money in a bank account enables the purchase of goods with a debit card.

Background

6. On October 11th, 2012, the Commission launched Public Notice 2012-557 with a goal of establishing a Wireless Code of Conduct. The notice¹ contained only one reference to pre-paid services:

Should the Wireless Code apply to both pre-paid and post-paid wireless services;

7. On January 28th 2013, 14 days prior to start of the hearing, the Commission released a Wireless Code Working Document² with the following 2 clauses pertinent to pre-paid services:

<p>A3. Application of the Wireless Code to pre-paid and post-paid wireless services</p>	<p>Option 1: The Wireless Code applies equally to pay-as-you-go and other types of pay-in-advance services ("pre-paid services") and to "post-paid services" (i.e. services where the consumer pays after receiving a bill).</p> <p>Option 2: All sections of the Wireless Code apply to post-paid wireless services. The following sections of the Wireless Code apply to pre-paid wireless services: <i>To be determined.</i></p>
<p>D1.3 Additional information specific to pre-paid services</p>	<p>Option 1: Before an agreement is made for pre-paid services using pre-paid cards, the service provider will inform the consumer of the conditions applicable to the pre-paid balance, including usage period, and explain how the consumer can check their remaining pre-paid balance. The service provider will provide this information separately if it does not appear on the pre-paid card or certificate. The service provider must indicate whether they charge a fee for the purchase of a pre-paid balance.</p> <p>Option 2: Before an agreement is made for pre-paid services using pre-paid cards, the service provider will inform the consumer of the conditions applicable to the pre-paid balance, including usage period, and explain how the consumer can check their remaining pre-paid balance. The service provider will provide this information separately if it does not appear on the pre-paid card or certificate. The service provider must indicate whether they charge a fee for the purchase of a pre-paid balance. The service provider may not apply an expiry date to credits purchased for the use of pre-paid service.</p>

1 TNC 2012-557 October 11th: <http://crtc.gc.ca/eng/archive/2012/2012-557.htm>

2 Wireless Code Working Document <http://crtc.gc.ca/eng/archive/2012/2012-557-3.htm>

Background (cont)

8. As the working document included an option which would prevent incumbents from expiring balances in pre-paid accounts, there was little need for debate from the consumer's point of view during the hearing. However, the wireless carriers raised some concerns about indefinite lifetime of inactive accounts and telephone numbers. During the hearing and final reply phases, Vaxination and others provided constructive suggestions to retain the working document's policy of not expiring balances while solving the issue of indefinite lifetime of inactive accounts.
9. On June 3rd 2013, the Commission released the Wireless Code as 2013-271³. This code implemented a different policy towards pre-paid services, one whose goal appeared to give a 7 day reprieve before allowing unused funds to be seized by carriers. However, errors in terminology made this clause moot since it applied to pre-paid cards instead of pre-paid accounts, and of course, diverged significantly from expectations built from the January draft working document.
10. On September 03, 2013, DiversityCanada filed an application (on its behalf and on behalf of the NPF) to review and vary Section J of the Wireless Code (the R&V).
11. On March 5th 2014, the Commission rendered its 2014-101⁴ decision on the above R&V, a decision which triggered the Petition to Governor in Council.

3 Wireless Code 2013-271: <http://www.crtc.gc.ca/eng/archive/2013/2013-271.htm>

4 2014-101 decision: <http://www.crtc.gc.ca/eng/archive/2014/2014-101.htm>

Pre-paid Cards versus Pre-paid Account

12. The 2013-271 Wireless Code used incorrect terminology and applied their desired 7 day reprieve to pre-paid cards instead of the pre-paid account. As pre-paid cards do not expire until used, Section J of the Wireless Code is technically useless.
13. A pre-paid account is one where no credit is granted to the customer. The customer must deposit funds in his account prior to purchasing/using a service. The transfer of funds into a pre-paid wireless account does not represent the purchase of a service, it merely makes it possible for the customer to purchase/consume wireless services with payment drawn from the account balance. The balance is agnostic to the type of service being consumed, whether it is a fixed monthly package, a per minute package, long distance fees, data roaming fees etc.
14. Pre-paid cards, credit cards, Interact as well as pre-authorized debits are some of the many means used to transfer money into the wireless account, after which wireless services can be purchased. The Commission's refusal to correct an error in terminology means that the clauses meant for pre-paid accounts become irrelevant because they apply solely to pre-paid cards whose value does not expire.
15. The record of the R&V proceeding made it abundantly clear that the Commission needed to at least correct this terminology error even if the policy of allowing expiration remained unchanged. The text of the 2014-101, while acknowledging in passing that the terminology argument was raised, did not make a determination on this issue and continued to erroneously use the term "pre-paid card".
16. As an administrative tribunal, the Commission ensure it uses accurate terminology, especially for such important policies as the Wireless Code. And its neutrality becomes in question when the tribunal chooses to ignore evidence because of who did or did not participate in a process.
17. The Commission's dismissal of the terminology error, one that could easily be fixed, shows that it was unwilling to take this process seriously.
18. The Minister should also consider the possibility that regulating financial instruments such as pre-paid cards could be outside the Commission's purview, just as Rogers' banking operations are not regulated by the Commission. However, the fees associated with a telecommunication carrier's services are definitely within the Commission's regulatory scope, whether this fee is drawn directly from an account or billed to the customer with expectation of a payment within 30 days.

Public Interest Advocacy Centre

19. In the 2014-101 decision, the Public Interest Advocacy Centre (PIAC) is mentioned prominently in support of the Commission's decision to refuse the Review and Variance.

(2014-101 para 24)... The Commission considers that the evidence on the record of the proceeding, including the prepaid contracts submitted by PIAC, clearly contradicted the arguments and evidence that DiversityCanada presented. (emphasis added)

20. The transcript of the hearing⁵ says otherwise:

392 THE CHAIRPERSON: Okay.

393 Now, I'll get to the point you just raised about prepaid and the expiry date of that. I take it your position is Option 2 on D1.3, which is that there should be no expiry date on –

394 MR. LAWFORD: That's absolutely correct. We think that the expiry of minutes is abusive.

21. In the submissions prior to and after the hearing, PIAC dealt with pre-paid services mostly at the level of contract clarity and applicability of the Wireless Code to pre-paid and post-paid services.
22. The 2012-557 discussions focused a lot on what information should be included on contracts to ensure clarity. Therefore, parties who provided sample contract formats did so to propose standard layouts and basic minimum content and not actual consumer protection policies.
23. As an analogy, proposing that a contract include in large font
"Contract length: (months)"
does not imply that the party making that proposal endorse any length of contract, only that the length of the contract be clearly stated to the consumer. It is thus wrong for the Commission to have decided that DiversityCanada's arguments contradicted PIAC's arguments.
24. It should be noted that the 2014-101 decision relies significantly on PIAC arguments despite PIAC not having participated in the Review and Variance.

5 CRTC Transcript 11 February 2013 Volume 1: <http://www.crtc.gc.ca/eng/transcripts/2013/t0211.html>

A question of process

25. Just prior to the hearing, the Commission issued the draft Wireless Code which called for pre-paid accounts to not expire. As a result, presentations during the hearing focused on other issues since it appeared that the Wireless Code would provide the desired protections for pre-paid services.
26. And as the agenda of the hearing placed major consumer groups ahead of incumbents⁶, the former could not challenge the incumbent's arguments on the need to eventually close and release the telephone number of inactive accounts. However, other parties, such as Vaxination who presented after most incumbents did tackle the issue and provided fair solutions. These were ignored in the 2013-271 and 2014-101 decisions.
27. The DiversityCanada R&V in September was thus the first opportunity to discuss the pre-paid provisions of the published Wireless Code 2013-271.
28. However, just because some heavyweight consumer groups did not participate in the R&V does not and must not invalidate the arguments made by those who participated in the R&V. Consumer groups have limited resources/time and cannot participate in every process, especially ones that was not in the planned/budgeted activities..
29. The end result is that a valid R&V was made and it appears the Commission was unwilling to seriously consider the issues raised and refused to modify the Wireless Code to greatly improve protections afforded to Canadians from the poorer sectors of the economy who depend on pre-paid services and can least afford abusive business practices.
30. It bears repeating that it is possible and fairly easy to implement a solution which prevents the seizure of customer balances by carriers while ensuring that inactive accounts and telephone numbers are closed/freed within reasonable time.

Order in Council Sough

31. There were many "consumer" goals of the Wireless Code including:
 - End abusive pricing tactics such as excessive contract termination fees
 - Provide clarity in pricing and predictable costs

32. Preventing carriers from confiscating account balances fits perfectly within the philosophy and scope of a Wireless Code of Conduct, just as preventing excessive contract termination charges,

33. While the sums of money confiscated by carriers may not rival those charged for paper bills, they are net profits for carriers who need not provide any service in exchange for collecting the full value of unused funds in an account. In essence, this amounts to poor citizens collectively contributing over \$100 million dollars directly into wireless carrier profits.

34. Re-enforcing the Wireless Code by asking the Commission to include the D1.3 option 2 policy from the draft working code into Wireless Code (no expiry of prepaid account balances) would therefore provide much needed protections for Canadian citizens who rely on prepaid services, without regulating rates and while giving carriers the flexibility to devise ways to "consume" prepaid account balances in accordance with Wireless Code principles (fair, clear, predictable and reasonable charges), allowing inactive accounts to eventually be closed and telephone numbers released once the balance has been fully consumed.

Order in Council Sough (cont)

35. Furthermore, the Minister should ensure the Order in Council instructs the Commission to update the Wireless Code clauses which affect pre-paid services to ensure accurate use of terminology to ensure protections are applied to the prepaid service/account and not to an ephemeral money transfer instrument that is a pre-paid card.
36. Vaxination believes that the record for both the 2012-557 consultation as well as the R&V leading to the 2014-101 decision is sufficiently full that a new hearing is not necessary. A strongly worded Order in Council should provide the Commission with sufficient guidance on the correct interpretation of the record and updating the Wireless Code to ensure carriers cannot seize/expire unspent pre-paid account balances.
37. The government has the power to "guide" the Commission to improve consumer protections of the Wireless Code.
38. Once the Wireless Code has been Reviewed by the Commission, Carriers could be asked to submit implementation plans and schedules to show their compliance with the updated pre-paid protections. (This was done with certain carriers who were granted extensions to implementing the Wireless Code on December 3rd 2013).
39. Some carriers could implement the policy by introducing minimum spending limits⁷, while other could have a fixed minimum account maintenance fee. Therefore, the introduction of a rule prohibiting pre-paid account expiry would still leave carriers with many opportunities to compete and differentiate their services and not represent any onerous regulatory burden since the clauses would be no different than clauses dictating contract termination fees.
40. Such a process would be more efficient at the regulatory level compared to holding of a full hearing as requested by DiversityCanada. Furthermore, rapid implementation shortly after the Order in Council is issued generates greater benefits for the government who is seen as taking decisive action to protect consumers from egregious business practices in a much maligned industry.

7 For instance, with a \$8.00/month minimum limit, if a customer has only consumed \$5.00 with of prepaid services in a month, an extra \$3.00 would be deducted from account at end of month. Another way to implement it would be to provide x minutes for \$8.00 with minutes that could be expired or rolled over. Either way, the costs are predictable, and will result in inactive accounts eventually be closed and telephone numbers released.

Conclusion

41. The record of the 2012-557 consultation as well as the process for DiversityCanada's Review and Variance of the Wireless Code provides sufficient evidence to warrant the Governor in Council instructing the Commission to implement in the Wireless Code the originally proposed measures in section D 1.3 of the January 28 2013 Draft Working Document , namely the prohibition to expire/seize pre-paid account balances.
42. Furthermore, the Governor in Council must instruct the Commission to uses the correct terminology to ensure the Wireless Code's text is precise and does not refer to terms which are not relevant to the protections the Code is meant to provide.
43. Such changes will strengthen the Wireless Code by filling a large void for pre-paid services and will show the government is ready to step in decisively to protect low income Canadians who can least afford abusive business practices.

*** END OF DOCUMENT ***