PETITION TO THE GOVERNOR IN COUNCIL TO VARY

TELECOM DECISION CRTC 2014-101

APPENDIX F:
INTERVENTION BY
VAXINATION INFORMATIQUE
TO THE PART I PROCEEDING
TO REVIEW AND VARY
THE WIRELESS CODE DECISION

Comments

to

Canadian Radio-television and Telecommunications Commission

by

Vaxination Informatique

regarding

**Application by
DiversityCanada Foundation to
Review and Vary Section J of
Telecom Regulatory Policy CRTC 2013-271**

CRTC 8662-D53-201312321 2013-1232-1

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Table of Contents

Introduction

1. Pursuant to the Commission's rules and procedures, Vaxination Informatique provides its comments for the Part 1 application to Review and Vary section J of the TRP 2013-271 (Prepaid Services - Wireless Code) made on September 3 2013 by DiversityCanada Foundation (Diversity).

2. For the record, Vaxination Informatique is NOT a WSP as was stated in paragraph 10 of TRP-2013-271. It should have been listed in the "Other participants" in paragraph 12.

3. Vaxination supports DiversityCanada Foundation's position that the Commission's determination for pre=paid service raises substantial doubt as to the correctness of the decision. In particular:

    - Use of wildly incorrect terminology.
    - Failure of compliance with Telecom Act sections 27 (1) and (2).
    - Failure to consider evidence offered by some parties.
    - Failure to consider evidence the Commission failed to acquire through an interrogatory which only it has the power to do.

4. As a result, a Review and Variance of TRP 2013-271 is required under the parameters defined by TRP 2011-214.

5. Because of the confusing text used in the pre-paid sections of the 2013-271 Wireless code, it is important to provide proper background on terminology used in this document.

6. It is understood that the pre-paid account is the telecom service, and that pre-paid nature of the account requires the customer to deposit sufficient funds into the account prior to consumption of services.

7. Depositing funds into a pre-paid account can be accomplished with the use of a credit card, Interac or via the use of vouchers purchased at dépanneurs[1] and other retailers. These vouchers are commonly called "prepaid cards" because they commonly involve a customer picking a physical plastic card from a display, and being issued with a receipt containing a voucher number (typically 14 digits) at time of purchase.

8. Unlike milk, pre-paid cards do not expire on the dépanneur's shelf, nor once purchased. They merely contain a stored monetary value and are freely transferable, just like Canadian Tire money.

9. From an accounting point of view, a carrier may wish to expire un-redeemed activated cards after a year or two to control liabilities. As un-redeemed pre-paid cards are not associated with a telecom service, it is not clear whether the Wireless Code should deal with that aspect.

10. A pre-paid card is activated (loaded with value) at time of purchase when the card is scanned and a voucher number is issued on the receipt. The card merely indicates how much money is to be loaded onto the voucher The transaction also tells the carrier to bill the dépanneur for the value of this purchased card.

11. Like Canadian Tire money, the vouchers do not expire. During the 2012-557 hearing, the carriers confirmed the non-expiring nature of the pre-paid vouchers. They retain their full value until used.

12. The customer decides when the full value of the voucher is transferred to a wireless account, after which the pre-paid card/voucher turns into a useless piece of plastic[2] that has no value and remains unattached to any telecommunication service.

13. Current practice has an expiration timer apply at the time money/value is transferred from credit card, Interac or a pre-paid voucher into a specific wireless account.

1 Dépanneur is a convenience store in Québec that also sells beer and wine

2 Some cards can be used to scrape ice off car windows in Canadian winters.

Important pedantry: Pre-Paid Cards vs Pre-Paid Account

Section J of the Wireless Code:

> *J. Expiration of prepaid <u>cards</u>*
>
> *1. General*
>
> *(i) A service provider must keep open the accounts of <u>customers with prepaid cards</u> for at least seven calendar days following the <u>expiration of an activated card</u>, at no charge, to give the customer more time to "top up" their account and retain their prepaid balance.* ***(emphasis added)***

14. The human brain is a fascinating device. To attempt to make sense of the above text, the brain re-interprets it as: "a pre-paid account must be retained for 7 days after scheduled account expiration before it is closed and its balance confiscated by the carrier". However, a document as important as TRP 2013-271 must not rely on individuals mentally correcting errors in the text in order to make sense of it. The text must stand on it own and be able to be read literally.

15. Similar errors are made in Section 19 of the code "Expiration of Pre-Paid Cards", at paragraphs 339, 342, 345, 347, 348, 349, 350. Paragraph 350 almost got it right, but screwed the pooch when it used the expression "expiry of activated card" with no definition of a pre-paid card activation or expiration.

16. Pre-paid cards do not expire. Customers who already have a pre-paid card do not need an extra 7 days since they can transfer its value to their wireless account right away. Customers who do not have a pre-paid card are offered no protection by the Wireless Code, despite being the ones who do need the 7 day reprieve to give them time to obtain such a card. And how are carriers supposed to know whether a wireless customer has or doesn't have a pre-paid card ? Orwelian surveillance ? Fortune tellers ? Customers who deposit funds to their wireless accounts via a credit card or Interac transaction are offered no protection by the text of this section of the Code.

17. The only customers who benefit from this clause are customers whose dog ate the pre-paid card before its value was transferred and need an extra 7 days to retrieve and wash the pre-paid card before it can be used :-)

18. **Jocularity aside, the above should make it very clear that the wording of section J cannot stand unchanged and ~~should~~ must be corrected to use proper terminology to correctly, precisely and accurately depict the protections the Commission intends to provide.**

19. Furthermore, nothing prevents carriers from giving prepaid funds a 23 day lifetime, which, when combined with the Commission mandated 7 days reprieve, end up having the same lifetime as before.

20. The carriers argued that there are costs to maintaining a wireless account and thus, they cannot keep an account indefinitely open.

21. For post-paid accounts, a remaining balance over $1.00 is generally refunded when the customer requests the account be closed. This is not the case for pre-paid accounts where the carrier confiscates the full value left in the account and decides when the account is to be closed.

22. Since the confiscation of a customer's balance moves money into the carrier's revenue account, this can only be interpreted as the carrier charging the customer a certain amount for a fee or service provided[3].

> *27. (1) **Every** rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable. (emphasis added)*

23. **In its determination, the Commission failed to consider whether its acceptance of the practice of confiscating the full balance of a pre-paid account at the carrier's own discretion was in accordance with the Telecom Act section 27(1)**.

24. Consider the case of 2 users, one with a $100.00 balance and the other with a $5.00 balance. They are inactive, and the carrier confiscates their balance after one month to pay for account maintenance and closure. In one case, the user is charged $100 while another user is charged $5 despite both users having identical costs and handling by the carrier.

25. Therefore, the Commission also failed to consider:

> *27. (2) No Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.*

26. The Code's Section J condones discriminatory pricing where some users are charged more than others for exactly the same service. It should also be noted that a user who deposits money every month but does not use the account until 10 months later when he uses up all funds will not be charged any inactive account fees during those 10 months despite maintenance costs being 10 times greater than for a customer whose account is confiscated after 1 month.

3 Only charities can take money from people without any service provided. Calling Canadian incumbents a "charity" would be stretching things just a tad too far.

27. A user who adds $40 for 2 months and $20 on 3rd month will see full value of the $100 balance confiscated at the end of the 4th month. A user who deposits $100 at once will see full value confiscated after 12 months despite having the same balance as the other user.

28. Taken to extreme, a customer who keeps a phone for emergency use only and diligently contributes to his pre-paid account every month for a few years may have accumulated a balance of $1000 which would be confiscated if the customer misses just one month of payment. Meanwhile, a customer with a $1 balance, gets no fee/confiscation he if adds $10 to his balance. This scenario shows the flaws in the practice of confiscating an indeterminate amount of money at the discretion of the carrier, a practice condoned by section J of the Wireless Code.

29. Since one of the goals of the Wireless Code was to ensure consumers were given clear information to make informed decisions, allowing carriers to confiscate an indeterminate sum goes against those principles since the customer has no way of knowing how much the carrier will charge him should the customer forget to add money to his account one month.

30. With the review and vary process initiated by Diversity, the Commission has the duty to correct this significant <u>failure to consider that its policy on pre-paid balance confiscation violates sections 27-1 and 27-2 of the Act.</u>

> *2013-271 349. The Commission considers that the evidence on the record of the proceeding does not support consumers' request for WSPs to carry over their prepaid unused minutes indefinitely*

31. By narrowing the field to a single possible solution (carry over balance <u>indefinitely</u>), the Commission failed to consider other suggestions made during the process. Furthermore, the Commission failed to use its own interrogatory powers to obtain evidence on the revenues generated through the confiscation of pre-paid balances to ensure the Code's section J complied with the Telecom Act.

Failure to examine rates, need to have an interrogatory

32. In failing to issue an interrogatory to obtain the revenue generated by the carriers' practice of confiscating full account balances, the Commission failed in its duty to ensure its policy complied with the Telecom Act, notably clauses 27(1) and 27(2).

33. As a result if this R&V, the <u>**Commission must use interrogatory powers to obtain from carriers revenues derived from the confiscation of pre-paid balances**</u> as well as the true cost of maintaining an inactive account.

34. Therefore, the Commission needs to require carriers to submit revenue numbers generated by the confiscation of pre-paid account balances when they are closed, which include breakdown by week, month and year, number of customers affected, and the highest amount that is confiscated for one account during the period. (the lowest being $0).

35. These numbers are readily available to carriers as they have software designed to extract the confiscated sums from customer accounts on a daily basis and convert them into revenue which is entered into their books.

36. Furthermore, while public responses from carriers will consist solely of "#" characters, the Commission should publish consolidated industry numbers that would give participants a idea of the "just and reasonable" nature of the fees charged without jeopardizing protection offered to carriers by Section 39 of the Act.

Failure to consider solutions

37. Section 19 of the Wireless Code refers only to arguments and positions which support the Commission's decision to allow the carriers' existing practice of confiscating the full balance of an account when they choose to close it. The Commission ignored other suggestions which are on the record which would have made created a more fair approach to the problem, one which did not violate the Telecom Act.

38. For instance, the Commission failed to consider Vaxination's own suggestions to have a minimum monthly spending limit, and to offer the ability to refund unspent balances from accounts.

> *Transcript of Proceeding, Volume 4, 14 February 2013*[4]
>
> *8204 In terms of no expiration, they've complained about a balance that would stay on forever and keep the phone number tied up. Well, you can achieve that very simply by having a monthly minimum spend. Let's say it's $5 or $10. So if you don't actually spend $5 in minutes that month, they will actually deduct your balance by $5. If you spend $2 in minutes, they'll deduct another $3 to the maximum spending.*
>
> *8205 This way, your balance will go down over time and eventually they can disconnect the phone and release the phone number. So that's one way of doing it.*
>
> *8207 Now, I'm not known to be – well, I'm known to be a little bold, so I will mention the word "refund". Let's say I deposit $100 in the pre-paid account and after a couple of months, I decide I no longer want it. I should be able to get the – well, $60 back or whatever's that left.*

39. These arguments were repeated in paragraphs 51 to 55 of Vaxination's March 15th final written comments, also on the record.

4 http://www.crtc.gc.ca/eng/transcripts/2013/tt0214.html

Minimum spending limit

40. The concept of a minimum spending limit provides a solution which:

    (a) Gradually reduces a balance of an inactive account to $0.00, at which point a carrier could be free to close the account.

    (b) Removes the carriers' liability of having to maintain inactive accounts and telephone numbers forever.

    (c) Complies with 27(2) because all customers are treated equally and charged the same account maintenance fee, irrespective of how much money or when they transferred the money into the account.

    (d) In a forborne environment, forcing carriers to at least publish a fixed amount charged each month provides a much better approach to 27(1) as consumers can judge for themselves whether the minimum monthly spending is fair and reasonable. The current structure doesn't allow this since the amount the carriers confiscate from customer's balances cannot be known in advance.

    (e) When there is sufficient funds in an account, a customer can skip a month and have the balance reduced by the minimum monthly spending limit without fear of losing the account.

Refunds

41. Just as carriers do for post-paid accounts, they could refund unused portions of a pre-paid account when it is closed. By using pre-paid vouchers, the carriers could provide refunds at much lower processing cost compared to post-paid services where a cheque is issued and mailed. The voucher can be emailed or even conceptually be sent as SMS to the customer as the account is being closed. (with account remaining active for reception of SMS for 7 days to ensure reception of the voucher via SMS).

42. This voucher acts exactly like a pre-paid card. It contains a similar long sequence of digits (in Rogers' case, 14 digits) which can be entered to transfer the value to any pre-paid account.

43. Pre-paid services tend to attract customers whose name is "Elvis", "Pierre Poutine" or "Mickey Mouse". Carriers can stipulate that a valid email address is required if those customers want to receive a refund voucher when their account is terminated and lack of such allows the carrier to confiscate the full value of the remaining balance when the account is terminated.

44. The Commission must update section J of the Wireless Code not only to correct the glaring errors, but also to find a formula which complies with the Telecom Act. To this end, Vaxination suggests:

    (a) A pre-paid wireless account cannot be closed until at least 7 days after its value has dropped below $1.

    (b) Carriers may not confiscate a value exceeding $1.00 stored in a pre-paid account unless the customer has provided no valid email address.

    (c) Carriers can impose minimum monthly spending which will ensure that inactive accounts will eventually reach a point where they can be closed.

    (d) Carrier can impose an account termination/expiration for an inactive account with balance greater than $1 as long as they issue a pre-paid voucher to the customer for the full value of the balance. Such voucher can be transmitted by email or via SMS to customers who have provided valid email contact information. Failure to provide valid email address forfeits a customer's right to obtain the voucher when the account is terminated.

    (e) Customers must be able to initiate termination of service, at which point a voucher for the full value of the balance in their account must be issued.

45. These steps provide an environment for fair and reasonable rates pertaining to the treatment of inactive pre-paid accounts and ensure that customers only pay for services they consume and that nondiscriminatory rates are charged to every customer irrespective to when or how much money was deposited into an account.

46. These suggestions also ensure consumers know exactly how much account inactivity will cost them and how long their account can remain inactive before dipping below $1 at which point the carriers can close the account.

Other issues

Process

47. Vaxination notes the process suggestion by Diversity in its submission. Vaxination has no specific opinion on Diversity's specific request, but notes that because of the Part 1 process structure, wireless carriers will not have the opportunity to comment on comments from other parties and vice-versa. Furthermore, once the Commission obtains responses from the interrogatory requested by Vaxination, parties should have an opportunity to comment.

Conclusion

48. The sections pertaining to the pre-paid services in the Wireless Code are flawed at a number of levels, including non-compliance with the Telecom Act. DiversityCanada Foundation was more than justified in calling for a Review and Variance of this section of the Code.

49. Vaxination re-iterates its suggestions made during the 2012-557 consultation which the Commission failed to consider, and feels they are the most realistic proposals to avoid never expiring accounts while providing consumers with a fair and reasonable approach to handling of inactive pre-paid accounts.

50. Should the carriers grumble at the thought of having to disclose just how much money they make by confiscating balance of pre=paid accounts, it is probably because they know there rates are not fair and reasonable and do not want to lose this source of revenue which is also gross profit as no service is provided when they confiscate account balances.

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