

PETITION TO THE GOVERNOR IN COUNCIL TO VARY

TELECOM DECISION CRTC 2014-101

**APPENDIX A:
DETAILED DESCRIPTION OF
PREPAID WIRELESS SERVICES**

Prepaid wireless services

1. Wireless services are provided by wireless services providers (“WSPs”) and enable users to communicate with others via mobile devices such as cellphones, smartphones and tablets. Services include voice calls; text messaging; video messaging; web browsing; downloading or using games and apps; downloading music, ringtones, wallpapers, illustrations, etc..
2. The majority of wireless consumers (upwards of 80%) sign multi-year contracts with their WSPs. Under these contracts, these so-called post-paid customers use services and, every month, receive bills that list charges for the volume of services used during the previous month.
3. Prepaid wireless services offer an alternative to this arrangement. Instead of signing a long-term contract and paying after-the-fact, customers pay certain sums in advance in order to use wireless services. These customers can end their usage of the services at will.
4. The advertised cost for prepaid wireless services is as little as \$10 per month. Prepaid wireless services can be purchased with cash. This makes prepaid wireless services the only option available for persons who do not qualify for a credit card or have no bank account.
5. For this reason, consumers of prepaid wireless services skew heavily towards the vulnerable and disadvantaged, including pensioners, minimum-wage workers, youth, the unemployed, individuals on income support, and newcomers to Canada.
6. In general, WSPs offer prepaid wireless services under two distinct business models: a time-plus-usage model (often referred to as a monthly plan) and a pay-per-use model. When consumers first establish an agreement with a wireless service provider, they choose one of these two business models as the overarching agreement for their prepaid wireless services.

Time-plus-usage business model (or monthly plan)

7. Under this business model, access to the system is presented as a commodity in and of itself. In this business model, the WSP offers to allow consumers a specified period of time to make unlimited or limited use of specified services. The consumer understands and agrees to hand over consideration for this specific commodity, ie “access to the system for a specified time to use a package of defined services”.
8. For example, the offer for Virgin Mobile Canada's premium Talk and Text plan is that consumers pay \$35 in exchange for 150 “anytime” minutes, unlimited calls on evenings and weekends, unlimited incoming calls, and unlimited Canada and USA texts.
9. There is a straightforward agreement here that the entire amount paid is consideration for this access. The consumer agrees that for every month that she purchases this plan, the \$35 is handed over to and becomes the property of the service provider in exchange for the services available to her during the access period.
10. Furthermore, with a time-plus-usage business model, calls and texts and any other service provided within the usage limit are not treated as if paid for individually.
11. With a time-plus-usage business model, customers who have reached their usage limits have to purchase extra usage on a pay-per-use basis. Some providers offer extra services as packages on a time-plus-usage model. In both cases, the prepaid time-plus-usage customer would be able to purchase the extra usage only if she were to put extra funds into her prepaid wireless account (above and beyond the consideration for the monthly plan).

Pay-per-use business model

12. Alternatively, the provision of access can be treated as a cost of doing business. In this business model, apart from the charge to cover 911 services, there is no express monthly fee to access the system; instead, the cost of providing access is factored into the price of the goods and services offered. This is clearly what is done with pay-per-use services, whether offered to pay-per-use customers or to time-plus-usage customers who exceed the usage on their monthly plans.
13. In Virgin Mobile Canada's "pay-by-the-minute" offering, for example, the charge is 35 cents per minute. The cost of accessing the system is obviously priced into the cost of each minute. To understand that this is so, contrast the 35-cent pay-by-the-minute cost with the per minute cost of Virgin's Talk and Text time-plus-usage plan, referenced above. The cost per minute on this plan would be about a hundredth of a cent, once the unlimited evening and weekend usage and the unlimited incoming calls are factored in.
14. With an overarching pay-per-use agreement, while consumers are required to buy a so-called "top-up" that may cost \$15, for example, every month to keep their account active, they do not view this as "spending" this sum (that final point when the goods or services have been acquired and the consideration passes completely to the service provider). In a pay-per-use business model, the \$15 top-up is added to the consumer's account balance and the funds are hers until she uses it to acquire goods and services from her provider.¹
15. Why does the consumer have this impression? It's because this is how the industry presents this business model to consumers. For example, Virgin Mobile Canada states in its promotional materials: "Topping up is how you add cash to your Virgin Mobile prepaid account. When you have a prepaid phone, use your cash to make phone calls, buy ringtones, send text messages, download games... it's up to you."

¹ Conversely, accounting practices require the wireless service provider to record funds prepaid by consumers into prepaid wireless accounts as a liability; it is only when services have been used or goods have been acquired using these funds that the wireless service provider can then record the relevant amount as income.

16. With the pay-per-use plans, each use of the service is billed individually. Each call is treated as a distinct purchase of voice services; each text sent or received is a unique transaction; each ringtone downloaded is a separate purchase. The balance in the customer's account is reduced by the value of each transaction.
17. With the pay-per-use business model, the consumer's understanding of offer, acceptance and consideration is clear. The consumer pays the full amount upfront in order to later select and acquire goods and services from among a variety of goods and services provided by the WSP.

Top-up agreements and prepaid wireless account balances

18. The following quote bears repeating: “Topping up is how you add cash to your Virgin Mobile prepaid account. When you have a prepaid phone, use your cash to make phone calls, buy ringtones, send text messages, download games... it's up to you.”
19. As seen in the quote from Virgin Mobile Canada (which reflects the industry-wide standard), top-ups are not in themselves offerings for any specific service. They are a means by which consumers add funds to their account so that they can acquire goods and services from the WSP.
20. Each top-up creates a new agreement that the amount purchased will constitute a credit (also referred to as a cash balance or cash equivalent) that is registered on the account of the prepaid wireless customer. This balance can be used immediately or at some later time to purchase goods and services, such as ringtones, wallpapers, games, apps, voice calls, text messaging, video messaging, etc.
21. In the case of customers on a monthly plan, the top-up pays for the plan. Again, however, if extra funds are added, above and beyond the payment for the monthly plan, this balance can be used by the consumer on a pay-per-use basis to select from a variety of goods and services, additional to those included in the monthly package.
22. In the case of pay-per-use customers, except perhaps for deductions for a 911 fee, all of the balance is for use to select goods and services from among the variety of goods and services offered by the wireless service provider.

Activation of top-ups

23. Activation is the process whereby the purchase of a top-up is associated with a particular account. A consumer may purchase a \$15 top-up at a gas station or convenience store, for example, but the WSP would not know of this transaction. The top-up sum is registered and available for the customer to use for wireless services only when the customer activates it with the WSP (by phoning in the top-up pin number or entering it via her phone or online).
24. During the CRTC's Wireless Code Proceeding, some industry representatives referred to activating a top-up as “buying minutes”. They also spoke of account balances as having a certain number of “minutes left”. This is misleading.
25. With today's phones and devices that are capable of doing more than transmitting voice calls, activating a top-up is not equivalent to “buying minutes”. If this were so, then the entire top-up would have to be use solely for making voice calls as voice calls are the only services that are enumerated in minutes.²
26. However, as the Virgin Mobile Canada quote notes, top-up can be also used send texts, buy wallpapers, buy ringtones, buy music, etc., non of which are charged by the minutes.
27. The Virgin Mobile Canada quote could not be clearer: “Topping up is how you **add cash** to your Virgin Mobile prepaid account. When you have a prepaid phone, use your cash to make phone calls, buy ringtones, send text messages, download games... it's up to you.” [Emphasis added]
28. Activation is the act of registering a top-up to a particular account; it is the process whereby the consumer places funds into her prepaid wireless account for immediate or future use to purchase goods or services from the WSP.
29. This description of prepaid wireless services is borne out by evidence presented by the Public Interest Advocacy Center and by the DiversityCanada Foundation during the Wireless Code Proceeding, and which is included in this Petition as Appendix D and Appendix E, respectively.

² Texts, for example, are charged per message, not per minute. Similarly, online games are charged per kilobyte, not per minute. It is therefore illogical to state that acquiring a top-up, which allows the customer to send text messages and play games online, equates “buying minutes”.