



## Compliance and Enforcement Decision CRTC 2015-253

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### **Glen Vardy, operating as Dial-A-Bottle – Violations of the Unsolicited Telecommunications Rules**

*The Commission imposes total administrative monetary penalties of \$18,000 on Glen Vardy for initiating telemarketing telecommunications via an Automatic Dialing-Announcing Device to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for doing so while he was not registered with the National DNCL operator and was not a registered subscriber of the National DNCL, in violation of the Unsolicited Telecommunications Rules.*

#### **Introduction**

1. Between 23 October 2013 and 15 January 2015, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been made by Glen Vardy, operating as Dial-A-Bottle.
2. These complaints were investigated and, on 10 February 2015, a notice of violation was issued to Mr. Vardy pursuant to section 72.07 of the *Telecommunications Act* (the Act).<sup>1</sup> The notice informed Mr. Vardy that he had initiated six telemarketing telecommunications resulting in
  - six violations of Part II, section 4<sup>2</sup> of the Commission's Unsolicited Telecommunication Rules (the Rules) for initiating telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL);
  - six violations of Part II, section 6<sup>3</sup> of the Rules for initiating telemarketing telecommunications while not being a registered subscriber of the National DNCL and not paying the applicable fees to the National DNCL operator;

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<sup>1</sup> Subsection 72.07(1) of the Act states that a person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

<sup>2</sup> Part II, section 4 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to a consumer's telecommunications number that is on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer or the client of that telemarketer.

<sup>3</sup> Part II, section 6 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator.

- six violations of Part III, section 2<sup>4</sup> of the Rules for initiating telemarketing telecommunications while not being registered with, and not providing information to, the National DNCL operator, and not paying all applicable fees charged by the Complaints Investigator delegate; and
  - six violations of Part IV, section 2<sup>5</sup> of the Rules for initiating telemarketing telecommunications via an Automatic Dialing-Announcing Device (ADAD) without the express consent of the consumer receiving a telemarketing telecommunication via an ADAD.
3. The notice of violation set out administrative monetary penalties (AMPs) for 24 violations at \$750 per violation, for a total amount of \$18,000.
  4. Mr. Vardy was given until 13 March 2015 to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.

### **Did Glen Vardy commit the violations?**

5. Mr. Vardy neither paid the AMPs nor made representations in accordance with the notice of violation. Accordingly, pursuant to subsection 72.08(3)<sup>6</sup> of the Act, Mr. Vardy is deemed to have committed the violations outlined in the notice of violation dated 10 February 2015.

### **Is the amount of the AMPs reasonable?**

6. In Telecom Decision 2007-48, the Commission stated that the appropriate factors to be considered in determining the amount of an AMP include the nature of the violations, the number and frequency of complaints and violations, the relative disincentive of the measure, and the potential for future violations.<sup>7</sup>
7. The making of unsolicited telemarketing telecommunications by a telemarketer to consumers whose numbers are registered on the National DNCL is a serious violation that causes significant inconvenience and nuisance to consumers, and violates the expectation of consumers expressed through their registrations with the National DNCL that they will receive fewer telemarketing calls. In this case, Mr. Vardy made

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<sup>4</sup> Part III, section 2 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator, and has paid all applicable fees charged by the Complaints Investigator delegate.

<sup>5</sup> Part IV, section 2 of the Rules states that a telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication via an Automatic Dialing-Announcing Device (ADAD) unless express consent has been provided by the consumer to receive a telemarketing telecommunication via an ADAD from that telemarketer or the client of that telemarketer.

<sup>6</sup> Subsection 72.08(3) of the Act states that a person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Commission may impose the penalty.

<sup>7</sup> In addition, the Commission stated in Compliance and Enforcement Regulatory Policy 2015-109 that the ability to pay is a factor to be considered when determining the amount of an AMP.

telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National DNCL.

8. A telemarketer's failure to register with the National DNCL operator and subscribe to the National DNCL is also a significant breach of the Rules. Registering and subscribing are two of the core responsibilities of telemarketers under the National DNCL regime. In this case, Mr. Vardy initiated telemarketing telecommunications on his own behalf without being registered or subscribed to the National DNCL. In addition, failure to scrub a telemarketing list against the National DNCL, as required by the Rules, increases the likelihood that calls will be made to consumers whose numbers are registered on the National DNCL and serves to erode consumers' confidence in the efficacy of the National DNCL.
9. Regarding the number and frequency of complaints and violations, initiating a single telemarketing telecommunication may result in multiple violations of the Rules. Evidence of the occurrence of a telemarketing telecommunication may be used to support the finding of more than one violation of the Rules when multiple violations relate to that telecommunication. In the present case, four violations of the Rules occurred during each of the six telemarketing telecommunications at issue.
10. Regarding the relative disincentive of the measure, the Commission must ensure that the AMPs it imposes are not set so low as to be financially advantageous for a telemarketer or a client of a telemarketer to pay the amount as a cost of doing business.
11. In light of the above, total AMPs of \$18,000 are reasonable and necessary to promote compliance with the Rules by Mr. Vardy.

## **Conclusions**

12. In the circumstances of this case, a penalty of \$750 for each of the six violations of Part II, section 4 of the Rules; six violations of Part II, section 6 of the Rules; six violations of Part III, section 2 of the Rules; and six violations of Part IV, section 2 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$18,000 on Mr. Vardy.
13. The Commission hereby notifies Mr. Vardy of his right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act, and to seek leave of the Federal Court of Appeal to appeal this decision before that court under section 64 of the Act. Any review and vary application under section 62 of the Act must be made within 90 days of the date of this decision, and the Commission will place all related documentation on its website.<sup>8</sup> In accordance with section 64 of the Act, an application for leave to appeal must be made to the Federal Court of Appeal within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.

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<sup>8</sup> In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

14. The Commission reminds Mr. Vardy that, should he continue to initiate telemarketing telecommunications, he is required to comply with the Rules. Examples of measures that Mr. Vardy should adopt to ensure compliance with the Rules include the following:
- registering with the National DNCL operator;
  - subscribing to the National DNCL;
  - downloading the National DNCL at least once every 31 days prior to the date of a telemarketing telecommunication;
  - not initiating telemarketing telecommunications to a consumer's telecommunications number that is on the National DNCL unless express consent has been provided by that consumer;
  - not initiating telemarketing telecommunications to a consumer's telecommunications number via an ADAD unless express consent has been provided by that consumer; and
  - establishing and implementing adequate written policies and procedures to comply with the Rules, which include documenting a process to (a) prevent the initiation of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (b) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.
15. The Commission advises Mr. Vardy that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
16. The amount of \$18,000 is due by **13 July 2015** and is to be paid in accordance with the instructions contained in the notice of violation. For any amount owing that is not paid by **13 July 2015**, interest calculated and compounded monthly at the average bank rate plus three percent will be payable on that amount and will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.
17. If payment has not been received within **30 days** of the date of this decision, the Commission intends to take measures to collect the amount owing, which may include certifying the unpaid amount and registering the certificate with the Federal Court.

Secretary General

### Related documents

- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007; as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007