



Compliance and Enforcement Decision CRTC 2015-360

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N.Bro Transport Inc. – Violations of the Unsolicited Telecommunications Rules

The Commission imposes total administrative monetary penalties of \$14,000 on N.Bro Transport Inc. (N.Bro) for arranging with a telemarketer to initiate telemarketing telecommunications on its behalf while N.Bro was not a registered subscriber of the National Do Not Call List (DNCL) and had not paid the applicable fees to the National DNCL operator, and while N.Bro was not registered with, and had not provided information to, the National DNCL operator.

Introduction

1. Between 1 January 2012 and 22 January 2013, telemarketing telecommunications were made on behalf of N.Bro Transport Inc. (N.Bro).
2. On 11 February 2015, a notice of violation was issued to N.Bro pursuant to section 72.07 of the *Telecommunications Act* (the Act).¹ The notice informed N.Bro that it was being held vicariously liable for the conduct of the telemarketer, which had initiated the following on N.Bro's behalf:
 - seven violations of Part II, section 7² of the Commission's Unsolicited Telecommunications Rules (the Rules) for initiating telemarketing telecommunications on behalf of a client that was not a registered subscriber of the National Do Not Call List (DNCL) and had not paid the applicable fees to the National DNCL operator; and
 - seven violations of Part III, section 3³ of the Rules for initiating telemarketing telecommunications on behalf of a client that was not registered with, and had not provided information to, the National DNCL operator.

¹ 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.

² Part II, section 7 of the Unsolicited Telecommunications Rules (the Rules) states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National Do Not Call List (DNCL) and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

³ Part III, section 3 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and all applicable fees charged by the Complaints Investigator delegate associated with that client have been paid.

3. The notice of violation set out administrative monetary penalties (AMPs) for 14 violations at \$1,000 per violation, for a total amount of \$14,000.
4. N.Bro was given until 11 March 2015 to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from N.Bro dated 9 March 2015.⁴
6. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:
 - Did N.Bro commit the violations?
 - Is the amount of the AMPs reasonable?

Did N.Bro commit the violations?

7. Part II, section 7 and Part III, section 3 of the Rules prohibit a telemarketer from initiating telemarketing telecommunications on behalf of a client unless that client is registered with the National DNCL operator and subscribed to the National DNCL, and has provided information to and paid all applicable fees to the National DNCL operator.
8. In its representations, N.Bro stated that it did not commit the violations and requested that the violations be attributed to a telemarketer hired by N.Bro to conduct telemarketing telecommunications on its behalf.
9. As per section 72.16 of the Act,⁵ a person is liable for a violation that is committed by an employee of the person acting in the course of the employee's employment, or by an agent or mandatary of the person acting within the scope of the agent's or mandatary's authority, whether or not the employee or agent or mandatary who actually committed the violation is identified or proceeded against. In this case, N.Bro admitted that it made arrangements with a telemarketer to make telemarketing calls on behalf of N.Bro for duct-cleaning services. As a result of this arrangement, N.Bro received a list of duct-cleaning appointments that were booked by the telemarketer and paid the telemarketer per duct-cleaning appointment booked. Given this arrangement, N.Bro is vicariously liable for the violations committed by the telemarketer, which was acting in its employ and on its behalf.
10. Accordingly, N.Bro is found liable on a balance of probabilities to have committed the violations outlined in the notice of violation dated 11 February 2015.

⁴ Representations on behalf of N.Bro were submitted by its former director, Mr. Nadeem Younas. Mr. Younas also submitted representations on behalf of Goodlife Home Services Inc. (Goodlife). See Compliance and Enforcement Decision 2015-361 for a concurrent decision regarding Goodlife.

⁵ Formerly section 72.02 of the Act

Is the amount of the AMPs reasonable?

11. 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.⁶
12. The Commission considers that unsolicited telemarketing telecommunications made on behalf of clients that are not registered with the National DNCL operator and not subscribed to the National DNCL are serious violations that cause significant inconvenience and nuisance to consumers. These telecommunications, by their nature, violate the expectation of consumers expressed through registration of their numbers on the National DNCL not to receive them. In this case, N.Bro was neither registered with the National DNCL operator nor subscribed to the National DNCL.
13. Regarding the number and frequency of complaints and violations, initiating a single telemarketing telecommunication may result in multiple violations of the Rules. In this case, a telemarketer was hired by N.Bro to conduct telemarketing telecommunications on its behalf from 1 January 2012 to 22 January 2013. During this period, N.Bro was not registered with the National DNCL operator or subscribed to the National DNCL.
14. Pursuant to Compliance and Enforcement Regulatory Policy 2015-109, where a person or group applies for review of a notice of violation and argues that an inability to pay should lower or mitigate the amount of the AMP set out therein, it is reasonable to place the burden on that person to provide documentation or detailed information supporting that position or rebutting any analysis of this factor set out in a notice of violation. It will generally not be sufficient for an applicant raising ability to pay as a mitigating factor to merely state that they cannot afford to pay a penalty. In N.Bro's representations, the former director of N.Bro stated that he could not afford to pay the penalty but did not provide documentation or detailed information concerning the company's ability to pay the amount of the AMP.
15. 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.
16. In light of the above, total AMPs of \$14,000 are reasonable and necessary to promote compliance with the Rules by N.Bro.

Conclusions

17. In the circumstances of this case, a penalty of \$1,000 for each of the seven violations of Part II, section 7 of the Rules and each of the seven violations of Part III, section 3 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$14,000 on N.Bro.

⁶ 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 the AMP.

18. The Commission hereby notifies N.Bro of its 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.⁷ 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.
19. The Commission reminds N.Bro that, should it initiate telemarketing telecommunications in the future, it is required to comply with the Rules. Examples of measures that N.Bro 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; 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.
20. The Commission advises N.Bro that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
21. The amount of \$14,000 is due by **8 September 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 **8 September 2015**, interest calculated and compounded monthly at the average bank rate plus 3% 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.
22. 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

⁷ 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.

Related documents

- *Goodlife Home Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2015-361, 7 August 2015
- *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