



Telecom Notice of Consultation CRTC 2017-117

PDF version

Reference: Telecom Decision 2017-115 and Telecom Order 2017-116

Ottawa, 27 April 2017

File number: 1011-NOC2017-0117

Show cause proceeding and call for comments

Failure of VOIS Inc. and Mr. Harpreet Randhawa to provide information to the Commission as required

Deadline for submission of interventions: 29 May 2017

[\[Submit an intervention or view related documents\]](#)

The Commission initiates a proceeding for VOIS Inc. (VOIS) and Mr. Harpreet Randhawa to show cause

- *why the Commission should not find that VOIS and Mr. Randhawa have each separately committed a violation, under section 72.001 of the Telecommunications Act (the Act), by contravening the requirement to provide information to the Commission under subsection 37(2) of the Act;*
- *if VOIS is found to have committed a violation, why an administrative monetary penalty (AMP) in the amount of **\$25,000** should not be imposed against it; and*
- *if Mr. Randhawa is found to have committed a violation, why an AMP in the amount of **\$5,000** should not be imposed against him.*

The Commission may require that a company, such as a reseller of telecommunications services, provide information to the Commission. If the company fails to provide the information, it may be in violation of the Act which may result in enforcement actions by the Commission.

On 1 November 2016, in Telecom Notice of Consultation 2016-431, the Commission required specific information to be submitted by both VOIS and Mr. Randhawa, a director of VOIS, by no later than 1 December 2016.

Neither VOIS nor Mr. Randhawa responded to the Commission.

The Commission's ability to administer the Act is dependent, in part, on the provision of information by all service providers and other persons when required.

Background

1. The Commission exercises its powers and duties under the *Telecommunications Act* (the Act) with a view to implementing the Canadian telecommunications policy objectives set down by Parliament.¹ As a result, the Commission takes non-compliance with the regulatory obligations it imposes on telecommunications service providers (TSPs) seriously and it uses the measures at its disposal that are most appropriate in the circumstances to encourage compliance.
2. Under subsection 37(2) of the Act, where the Commission believes that a person other than a Canadian carrier, such as reseller of telecommunications services, is in possession of information that the Commission considers necessary for the administration of the Act, the Commission may require that person to submit the information to the Commission in such form and manner as the Commission specifies. Failure to provide information as requested would be a contravention of the Act that could constitute a violation under section 72.001 of the Act.
3. Amendments to the Act introduced in 2014, among other things, created a general administrative monetary penalty (AMP) regime² under which the Commission is empowered to impose AMPs on persons who commit such violations. The purpose of a penalty imposed under this regime is to promote compliance with the Act, regulations, and Commission decisions and not to punish.³ The Commission has published Compliance and Enforcement and Telecom Information Bulletin 2015-111 which sets out its general approach under the general AMPs regime.

The requirement for VOIS and Mr. Harpreet Randhawa to provide information

4. On 1 November 2016, the Commission published [Telecom Notice of Consultation 2016-431](#) (the Notice) to initiate a proceeding that, among other things, called for VOIS to show cause why it should not be found in violation of the Act for contravening a requirement imposed on it under section 24.1 of the Act. The Notice also called for VOIS to show cause why, if VOIS was found to have committed the violation, it should not be subject to an AMP of \$15,000.
5. As set out in the Notice, the Commission also intended to consider whether, if VOIS was found to have committed a violation, Mr. Harpreet Randhawa, a Director of VOIS, should be considered personally liable for the violation under section 72.008 of the Act as well.

¹ See section 7 of the Act for a list of the policy objectives.

² See sections 72.001 to 72.0093 of the Act.

³ A contravention of section 17 or 69.2 of the Act, or of rules made by the Commission under section 41 of the Act (which includes the Unsolicited Telecommunications Rules), are not violations for the purposes of the general AMPs regime.

6. This Notice was in response to the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) terminating VOIS' participation in the CCTS for default of its obligations under the CCTS Participation Agreement. Termination of a TSP's participation in the CCTS can put that TSP in contravention of the Commission-imposed requirement that all TSPs that provide services within the scope of the CCTS's mandate be participants in the CCTS.
7. The Commission included in the Notice a requirement under subsection 37(2) of the Act that VOIS and its Director, Mr. Harpreet Randhawa, provide the following specific information on the record of that proceeding by no later than 1 December 2016:
 - the number of subscribers to telecommunications services provided by VOIS that fall within the scope of the CCTS's mandate; and
 - a complete list of the directors and officers of VOIS and their responsibilities within the company, including responsibilities related to compliance with CCTS and Commission obligations.
8. The Commission required the above information in order to assist in its determinations with respect to the following issues set out in the Notice:
 - When assessing the appropriate quantum of an AMP, the Commission must consider a number of factors, including the nature and scope of the violation. In consideration of this factor, information about the number of VOIS' subscribers would have shown how many consumers no longer had access to the CCTS as a result of the termination of VOIS' participation.
 - The complete list of the directors and officers of VOIS and their responsibilities within the company would have provided evidence for the Commission to assess whether Mr. Randhawa should be found personally liable for VOIS' potential violation of the Act.
9. The Notice indicated that a failure on VOIS' part, or on Mr. Randhawa's part, to respond fully and accurately to these directions could result in a contravention of subsection 37(2) of the Act that may constitute a violation under section 72.001 of the Act and could warrant further process in order to address whether additional enforcement measures would be appropriate.

Has a violation been committed?

10. Steps were taken in order to ensure that VOIS and Mr. Randhawa were aware of the Notice and the requirement to provide information contained within it, including the delivery of physical and electronic copies of the Notice to addresses provided as part of VOIS' registration with the Commission on its list of telecommunications providers. In addition, consistent with the [*Canadian Radio-television and*](#)

Telecommunications Commission Rules of Practice and Procedure (the Rules of Procedure), the Notice was published on the Commission's website.

11. However, as of the date of the initiation of the present proceeding, neither VOIS nor Mr. Randhawa has made any response to the Notice in general or to the requirement to submit specific information in particular.
12. Based on the above, it appears that VOIS and Mr. Randhawa are each separately in contravention of the requirement set out in the Notice pursuant to subsection 37(2) of the Act to submit specific information to the Commission.
13. Accordingly, VOIS and Mr. Randhawa are to show cause why they should not each separately be found to have committed a violation of section 72.001 of the Act.

Administrative monetary penalty

14. Given that the Commission's ability to administer the Act is dependent, in part, on the provision of information by all service providers or other legal persons when required, if VOIS and Mr. Randhawa are found to have committed violations of the Act, the imposition of AMPs would appear to be an appropriate enforcement measure.
15. Section 72.002 of the Act sets out the factors that the Commission must take into account in determining the appropriate amount of an AMP in a given case as follows:
 - the nature and scope of the violation;
 - the person's history of compliance;
 - any benefit the person obtained from the commission of the violation;
 - the person's ability to pay;
 - factors established by any regulations (currently there are none); and
 - any other relevant factor.
16. In the present case, the Commission considers that, if violations are found, an AMP in the amount of \$25,000⁴ against VOIS and \$5,000 against Mr. Randhawa would properly reflect the purpose of the penalty and the factors set out in the Act. VOIS and Mr. Randhawa now have the opportunity to demonstrate why this analysis may not be appropriate in the circumstances, and to file any evidence that supports their positions.

⁴ The maximum penalties under the general AMPs regime, as set out in section 72.001 of the Act, are (i) \$25,000 for a first violation or \$50,000 for any subsequent violation, in the case of an individual; and (ii) \$10 million for a first violation or \$15 million for any subsequent violation, in any other case, including a corporation such as VOIS.

17. Concerning the scope of the apparent violation, in each case the person in question failed to respond to two specific questions set out in the Notice. This was nonetheless sufficient to impede the Commission's administration of the Act.
18. VOIS and Mr. Randhawa's failure to provide subscriber numbers impacted the Commission's ability to assess the scope of the violation resulting from VOIS' expulsion from the CCTS. Further, the lack of information affected the Commission's analysis of whether Mr. Randhawa should be considered personally liable for that violation.
19. While the Commission was ultimately able to use other indicators to assess the nature and scope of the violation in that case, it was not able to make a fully informed determination on the matter of Mr. Randhawa's personal liability.
20. The Commission takes omissions that impede its ability to determine issues properly before it seriously, and considers that a significant penalty is required to promote compliance in order to avoid similar impediments in the future.

History of compliance

21. In Telecom Decision 2017-115 and Telecom Order 2017-116 issued today, the Commission determined that VOIS had contravened the CCTS participation requirement and, as a result, had committed a violation of the Act. An apparent pattern of non-compliance with Commission rules by VOIS is becoming evident.
22. Consideration of this past behaviour suggests that it would be appropriate to impose a more significant penalty on VOIS, and such a penalty will be necessary to promote compliance.

Benefit obtained from the violation

23. To the extent that the failure to provide the required information impeded the Commission's ability to administer the Act in a matter that could have resulted in penalties being applied to both VOIS and Mr. Randhawa, the Commission considers that both persons have benefited.
24. Accordingly, this factor suggests that a significant penalty is required to promote compliance.

Ability to pay

25. The Commission intends to incorporate VOIS' 2015 telecommunications revenues, as filed by VOIS in March 2016 on a confidential basis, in its assessment of this factor, should it find that a violation has been committed and that an AMP is appropriate. VOIS now has the opportunity to indicate why the Commission should not do so.
26. In the show cause proceeding initiated by the Notice issued on 1 November 2016, VOIS did not provide any evidence indicating that it would be unable to pay an AMP in the range of \$15,000.

27. There is currently no information before the Commission concerning Mr. Randhawa's ability to pay.
28. VOIS and Mr. Randhawa have the opportunity to file additional information that may assist the Commission in its consideration of this factor. VOIS and Mr. Randhawa may designate financial information as confidential, presuming they do so in accordance with the Act and the Rules of Procedure.⁵

Factors established by any regulations

29. At this time no such factors have been established.

Other relevant factors in the consideration of the amount

30. In the case of VOIS, this is a subsequent violation, which would allow for a higher penalty under the Act.
31. Moreover, general deterrence may be an appropriate regulatory consideration in the circumstances. It may be appropriate for the penalty to reflect the general importance that companies provide required information to the Commission. It may also be appropriate for the penalty to promote the general compliance of individuals within companies who may use their positions to frustrate the Commission's administration of the Act.

Show cause proceeding

32. In light of the above, the Commission **directs** VOIS and Mr. Randhawa separately to show cause
- why the Commission should not find that VOIS and Mr. Randhawa have separately committed violations, under section 72.001 of the Act, by contravening the requirement to provide information to the Commission under subsection 37(2) of the Act;
 - if VOIS is found to have committed a violation, why an AMP in the amount of **\$25,000** should not be imposed against it; and
 - if Mr. Randhawa is found to have committed a violation, why an AMP in the amount of **\$5,000** should not be imposed against him,
33. VOIS and Mr. Randhawa are to file any evidence that supports their positions.
34. Interested persons may also file interventions on these matters.

⁵ VOIS and Mr. Randhawa may also consult Broadcasting and Telecom Information Bulletin 2010-961 for more information regarding the procedure for designating information as confidential.

Procedure

35. The Rules of Procedure, which apply to this proceeding, set out, among other things, the rules for the content, format, filing, and service of interventions, answers, replies, and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website at www.crtc.gc.ca, under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin [2010-959](#) provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
36. VOIS and Mr. Harpreet Randhawa are made parties to this proceeding. They are to file submissions with the Commission by **29 May 2017**.
37. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **29 May 2017**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
38. Parties are permitted to coordinate, organize, and file, in a single submission, interventions by other interested persons who share their position. Information on how to file this type of submission, known as a joint supporting intervention, as well as a template for the accompanying cover letter to be filed by parties, can be found in Telecom Information Bulletin 2011-693.
39. All parties may file replies to interventions with the Commission by **8 June 2017**. Parties are to consult the Commission's website to determine who has filed interventions for the purpose of exercising their right of reply.
40. The Commission encourages interested persons and parties to monitor the record of this proceeding, available on the Commission's website at www.crtc.gc.ca, for additional information that they may find useful when preparing their submissions.
41. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line *****End of document***** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
42. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that enable text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website guidelines for preparing documents in accessible formats.

43. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[\[Intervention form\]](#)

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

44. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
45. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
46. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.
47. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.

Important notice

48. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This includes all personal information, such as full names, email addresses, postal/street addresses, and telephone and facsimile numbers.

49. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
50. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
51. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

Availability of documents

52. Electronic versions of the interventions and other documents referred to in this notice are available on the Commission's website at www.crtc.gc.ca by using the file number provided at the beginning of this notice or by visiting the "Participate" section of the Commission's website, selecting "Submit Ideas and Comments," then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
53. Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Secretary General

Related documents

- *VOIS Inc. – Non-compliance with the requirement to participate in the Commissioner for Complaints for Telecommunications Services Inc. and violation under section 72.001 of the Telecommunications Act, Telecom Decision CRTC 2017-115 and Telecom Order CRTC 2017-116, 27 April 2017*

- *Termination of participation in the Commissioner for Complaints for Telecommunications Services Inc. of VOIS Inc.*, Telecom Notice of Consultation CRTC 2016-431, 1 November 2016
- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Guidelines regarding the general administrative monetary penalties regime under the Telecommunications Act*, Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111, 27 March 2015
- *Filing of joint supporting interventions*, Telecom Information Bulletin CRTC 2011-693, 8 November 2011
- *Procedures for filing confidential information and requesting its disclosure in Commission decisions*, Broadcasting and Telecom Information Bulletin CRTC 2010-961, 23 December 2010, as amended by Broadcasting and Telecom Information Bulletin CRTC 2010-961-1, 26 October 2012
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010