



## Compliance and Enforcement Decision CRTC 2016-441

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Ottawa, 7 November 2016

*File number: PDR 9174-1537*

### **Vikram Malik and Inderjeet Singh Baweja, operating as Support Avenues – Violations of the Unsolicited Telecommunications Rules**

*The Commission imposes total administrative monetary penalties of \$7,500 on Vikram Malik and Inderjeet Singh Baweja, operating as Support Avenues, for violations of the Unsolicited Telecommunications Rules. Specifically, Mr. Malik and Mr. Singh Baweja initiated telemarketing telecommunications on behalf of a client that (i) was not a registered subscriber of the National Do Not Call List (DNCL) and had not paid all applicable fees to the National DNCL operator, and (ii) was not registered with, and had not provided information to, the National DNCL operator. In certain cases, the consumers' telecommunications numbers were registered on the National DNCL.*

#### **Introduction**

1. Between 3 December 2013 and 16 September 2014, the Commission received information in relation to telemarketing telecommunications that appeared to have been made by Mr. Vikram Malik and Mr. Inderjeet Singh Baweja, operating as Support Avenues,<sup>1</sup> on behalf of their client.
2. This information was investigated and, on 22 February 2016, a notice of violation was issued to Mr. Malik and Mr. Singh Baweja pursuant to subsection 72.07(1) of the *Telecommunications Act* (the Act).<sup>2</sup> In the notice, Mr. Malik and Mr. Singh Baweja were informed that they were liable for initiating telemarketing telecommunications, between 13 June 2014 and 3 September 2014, resulting in
  - three violations of Part II, section 4 of the Commission's Unsolicited Telecommunications Rules (the Rules), which prohibits the initiation of telemarketing telecommunications to consumers whose telecommunications numbers are registered on the National Do Not Call List (DNCL) unless express consent has been provided by the consumer to be contacted via a telemarketing telecommunication;

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<sup>1</sup> Mr. Malik and Mr. Singh Baweja own and operate Support Avenues as an unincorporated entity, located in New Delhi, India.

<sup>2</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.

- seven violations of Part II, section 7 of the Rules, which prohibits the initiation of telemarketing telecommunications on behalf of a client unless that client is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator; and
  - seven violations of Part III, section 3 of the Rules, which prohibits the initiation of telemarketing telecommunications on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and has paid all applicable fees charged by the Complaints Investigator delegate.
3. The notice of violation set out administrative monetary penalties (AMPs) for 17 violations at \$1,500 per violation, for a total amount of \$25,500.
  4. Mr. Malik and Mr. Singh Baweja were given until 2 May 2016 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 Mr. Malik and Mr. Singh Baweja dated 5 May 2016. The Commission accepted these representations despite the three-day filing delay in light of evidence demonstrating border delays.

## **Issues**

6. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:
  - Did Mr. Malik and Mr. Singh Baweja commit the violations?
  - Is the amount of the AMPs reasonable?

### **Did Mr. Malik and Mr. Singh Baweja commit the violations?**

7. The notice of violation was supported by witness statements from seven individuals who stated that they received unsolicited calls from Mr. Malik and Mr. Singh Baweja on behalf of their client.
8. Specifically, Mr. Malik and Mr. Singh Baweja performed telemarketing telecommunications on behalf of their client between 3 December 2013 and 16 September 2014. Upon Commission review of the dates on which the individuals stated they received the unsolicited calls, three of the calls fall outside the above-mentioned period. The seven violations associated with the statements from three of the individuals have therefore been dismissed.
9. In their representations, Mr. Malik and Mr. Singh Baweja did not deny the fact that they had placed unsolicited calls on behalf of a client that did not hold a subscription or registration with the National DNCL operator. However, they denied having any business relationship with two of the seven individuals who gave witness statements. Mr. Malik and Mr. Singh Baweja did acknowledge that the alleged calls took place between them and the other five

witnesses, though they stated that the calls had been initiated by the consumers. Mr. Malik and Mr. Singh Baweja indicated that they had call logs, a database, and transaction records that confirmed that the alleged calls were initiated by the witnesses, but did not provide this supporting documentation as part of their representations.

10. The record of this proceeding indicates that Support Avenues' client, on whose behalf the alleged unsolicited calls were made, was neither registered with the National DNCL operator nor subscribed to the National DNCL at the time of the calls. Furthermore, the remaining four individuals to whom the alleged calls were made during the period in question were either (i) registered on the National DNCL when they received the calls by or on behalf of Support Avenues, or (ii) had no prior existing business relationship with Support Avenues, and the individuals' phone numbers were not associated with a business. The Commission therefore places more weight on the individuals' witness statements, which all describe similar circumstances surrounding the calls, than on Mr. Malik and Mr. Singh Baweja's unsubstantiated attestations that the individuals initiated the calls.
11. Accordingly, on a balance of probabilities, Mr. Malik and Mr. Singh Baweja committed
  - two violations of Part II, section 4 of the Rules, for initiating telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National DNCL without obtaining express consent from the consumers;
  - four violations of Part II, section 7 of the Rules, for initiating a telemarketing telecommunication on behalf of a client that was not a registered subscriber of the National DNCL; and
  - four violations of Part III, section 3 of the Rules, for initiating a telemarketing telecommunication on behalf of a client that was not registered with the National DNCL operator.

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

12. The purpose of an AMP is to promote compliance with the Rules. Pursuant to section 72.01 of the Act, every contravention of a Commission prohibition or requirement under section 41 of the Act constitutes a violation, and an individual who commits such a violation is liable for an AMP of up to \$1,500 per violation. In this case, the notice of violation set out \$1,500 per violation for each of the 17 violations.
13. 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>3</sup>

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<sup>3</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, because it relates to the relative disincentive of the measure.

14. The making of unsolicited telemarketing telecommunications by a telemarketer to consumers whose telecommunications 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 that they will receive fewer telemarketing calls. In the present case, Support Avenues' own registration and subscription status with the National DNCL is not relevant to the nature of the violations. However, Mr. Malik and Mr. Singh Baweja failed to comply with core requirements of the Rules and benefitted financially from doing so, since they (i) did not ensure that their client was registered with the National DNCL operator or subscribed to the National DNCL, and (ii) contacted consumers whose telecommunications numbers were registered on the National DNCL during the period set out in the notice of violation. This factor argues in favour of a per-violation AMP amount at the higher end of the spectrum.
15. Regarding the number and frequency of complaints and violations, the initiation of a single telemarketing telecommunication may, in some cases, result in multiple violations of the Rules. In the present case, multiple violations occurred during each of the telemarketing telecommunications. However, fewer violations have been retained in this decision relative to those set out in the notice of violation, which argues in favour of an intermediate per-violation AMP.
16. Regarding the relative disincentive of the measure, the Commission must ensure that the AMP it imposes is 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. The Commission must also consider the violator's ability to pay and the likelihood for future violations.
17. This is the first time that a notice of violation has been issued to Mr. Malik and Mr. Singh Baweja, and no previous enforcement action under the Rules has been proceeded against them or their company, Support Avenues. Additionally, the Commission has no evidence indicating that Mr. Malik and Mr. Singh Baweja are currently engaged in telemarketing to Canadians on their own behalf or on behalf of any other clients. As such, the Commission does not have evidence to support a conclusion that the risk for future violations is high. These two factors argue in favour of a per-violation AMP amount at the lower end of the spectrum.
18. While Mr. Malik and Mr. Singh Baweja provided no evidence regarding their ability to pay, the record indicates that Support Avenues obtained significant revenues as a result of their relationship with their client. These revenues demonstrate the ability to pay, which requires a higher per-violation AMP amount to act as an appropriate disincentive.

## **Conclusions**

19. In light of the above, a reduced AMP of \$750 for each of the two violations of Part II, section 4 of the Rules; four violations of Part II, section 7 of the Rules; and four violations of Part III, section 3 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$7,500 on Mr. Malik and Mr. Singh Baweja, carrying on business as Support Avenues.

20. The Commission hereby notifies Mr. Malik and Mr. Singh Baweja of their 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 is to be made within 90 days of the date of this decision,<sup>4</sup> and the Commission will place all related documentation on its website. 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 Federal Court of Appeal grants in exceptional circumstances.
21. The Commission reminds Mr. Malik and Mr. Singh Baweja that, should they initiate telemarketing telecommunications or engage telemarketers to initiate telemarketing telecommunications in the future, they are required to comply with the Rules. Examples of measures that Mr. Malik and Mr. Singh Baweja should adopt to ensure compliance with the Rules include the following:
- ensuring that any clients on behalf of whom Mr. Malik and Mr. Singh Baweja initiate telemarketing telecommunications are registered with the National DNCL operator and subscribed to the National DNCL;
  - ensuring that they download their clients' subscription to 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 (i) prevent the initiation of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (ii) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.
22. The Commission advises Mr. Malik and Mr. Singh Baweja that to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
23. The amount of \$7,500 is due by **7 December 2016** 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 **7 December 2016**, 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.
24. 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.

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<sup>4</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 are to be made.

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