



Telecom Decision CRTC 2018-366

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Ottawa, 18 September 2018

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Telecommunications service providers that have failed to become participants in the Commission for Complaints for Telecom-television Services Inc.

The Commission finds that BV Communications, Connexio Inc., ICA Microsystems Inc., Mazagan Telecommunications, Toronto Telecom, and VerseTEL Communications Inc. committed violations of the Telecommunications Act through their failure to become participants in the Commission for Complaints for Telecom-television Services Inc. (CCTS). However, since these telecommunications service providers have now become participants in the CCTS, the Commission will not take further regulatory action against them in relation to these violations.

Background

1. The Commission for Complaints for Telecom-television Services Inc. (CCTS)¹ is an independent body that assists Canadians who have been unable to resolve disputes regarding forborne telecommunications services with their service providers. The CCTS is an integral component of a deregulated telecommunications market, and it provides a valuable service to Canadian consumers.
2. To ensure that Canadian consumers have recourse when they are unable to resolve complaints with their telecommunications service providers (TSPs), the Commission has required, as of 2011, that all TSPs that provide services within the scope of the CCTS's [mandate](#) be participants in the CCTS (the CCTS participation requirement).
3. In Broadcasting and Telecom Regulatory Policy 2016-102, the Commission reiterated the CCTS participation requirement, which states that, pursuant to sections 24 (regarding carriers) and 24.1 (regarding non-carriers) of the *Telecommunications Act* (the Act), as a condition of offering or providing telecommunication services, every person who is not a participant in the CCTS as of 17 March 2016 and continues to offer services within the scope of the CCTS's mandate must be a participant in the CCTS commencing 30 calendar days after the date on which the CCTS informs the person that the CCTS has received a complaint related to telecommunications services that it provides and that falls within the scope of the CCTS's mandate.

¹ Formerly the Commissioner for Complaints for Telecommunications Services Inc.

4. To become a participant in the CCTS, a TSP signs the CCTS Participation Agreement, a contract in which the participant agrees to, among other things, abide by the Participation Agreement and the CCTS's By-laws, be bound by and observe the CCTS's Procedural Code, submit to and honour remedies levied by the CCTS, and co-operate in good faith with any investigation conducted by the CCTS.
5. The Commission takes seriously any non-compliance with the regulatory obligations it imposes on TSPs and uses the measures at its disposal that are most appropriate in the circumstances to promote compliance.

Administrative monetary penalties regime

6. Since 2014, the Act has included a general administrative monetary penalties (AMPs) regime,² under which the Commission is empowered to impose AMPs on persons who contravene the Act or regulations or decisions made by the Commission under the Act. The purpose of a penalty imposed under this regime is to promote compliance with the Act, regulations, and Commission decisions.
7. The Commission has set out its general approach under the general AMPs regime in Compliance and Enforcement and Telecom Information Bulletin 2015-111.

Show cause proceeding

8. Between October 2016 and June 2017, the CCTS referred to the Commission the names of various TSPs (all of which are non-carrier resellers of telecommunications services) that had failed to become participants after being notified by the CCTS of an in-scope complaint.
9. Commission staff engaged in compliance counselling, which included informal contact such as telephone calls and letters, to inform the TSPs about the regulatory requirement and the consequences of non-compliance.
10. In Telecom Notice of Consultation 2018-5, the Commission launched a show cause proceeding because the following TSPs had still not become CCTS participants as of the date of the notice: BV Communications,³ Connexio Inc.,⁴ ICA Microsystems Inc., Mazagan Telecommunications,⁵ Toronto Telecom,⁶ and VerseTEL Communications Inc. (VerseTEL) [collectively, the six TSPs].
11. In particular, the Commission called for each of the six TSPs to show cause why the Commission should not find that the TSP committed a violation under section 72.001

² See sections 72.001 to 72.0093 of the Act.

³ Incorporated as 3095959 Canada Inc.

⁴ Incorporated as 9e Bit (2015) Inc.

⁵ Incorporated as 9257-8368 Quebec Inc.

⁶ Incorporated as 1207901 Ontario Limited

of the Act⁷ during the relevant time period by contravening the CCTS participation requirement. The Commission also directed the Director(s) of each of the six TSPs to show cause why they should not be liable for any violation found to have been committed by the company that they direct.

12. The Commission further directed each of the six TSPs to show cause why, if the TSP is found to have committed a violation of the Act related to the CCTS participation requirement, the Commission should not impose an AMP against it in the amount of \$50,000. The Commission also directed the Director(s) of each of the six TSPs to show cause why, if they are found liable for a violation of the Act related to the CCTS participation requirement in respect of the company that they direct, the Commission should not impose an AMP against them in the amount of \$15,000.
13. The Commission also addressed an additional potential enforcement measure in the form of a Mandatory Order. The Commission directed each of the six TSPs to show cause why, if the TSP is found to have committed a violation, the Commission should not impose a Mandatory Order requiring the TSP to take all steps necessary to participate in the CCTS within 60 days of the date of the Order. The Commission also directed the Director(s) of each of the six TSPs to show cause why, if they are found liable for any violations committed by any of the six TSPs, they should not be named in the Mandatory Orders, which would hold them further accountable for ensuring that the companies they direct take the necessary steps to participate in the CCTS.
14. The Commission received interventions regarding the notice from the Public Interest Advocacy Centre (PIAC), TELUS Communications Inc. (TCI), and VerseTEL.

Issues

15. The Commission has identified the following issues to be addressed in this decision:
 - Did any of the six TSPs commit violations of the Act?
 - If so, should the Commission (i) impose AMPs of \$50,000 and issue a Mandatory Order against each TSP in question, and (ii) find the TSP's Director(s) personally liable for the violations, impose AMPs of \$15,000 against them, and name them in the Mandatory Order?

Did any of the six TSPs commit violations of the Act?

16. None of the six TSPs provided evidence to show cause that it should not be found in contravention of its obligation to participate in the CCTS. VerseTEL indicated that it would become a participant in the CCTS.

⁷ This provision states that any contravention of the Act, or a Commission regulation or decision made thereunder (with some exceptions that are not relevant in this case) constitutes a violation and may result in liability to pay an AMP.

Commission's analysis and determinations

17. The Commission notes that (i) each of the six TSPs appeared to provide telecommunications services that are within the scope of the CCTS's mandate, and received one or more complaints that triggered the CCTS participation requirement; and (ii) each of the six TSPs appeared to be in contravention of the CCTS participation requirement by failing to become a participant after being notified that the CCTS had received an in-scope complaint.
18. However, the CCTS has informed the Commission that each of the six TSPs has since become a participant in the CCTS.
19. In light of the above, the Commission finds that each of the six TSPs committed a violation of section 72.001 of the Act by virtue of a contravention of the CCTS participation requirement during the following time periods:
 - ICA Microsystems Inc.: between 7 October 2016 and 8 February 2018
 - Toronto Telecom: between 11 November 2016 and 18 January 2018
 - BV Communications: between 16 December 2016 and 3 March 2018
 - VerseTEL: between 23 February 2017 and 30 April 2018
 - Connexio Inc.: between 9 March 2017 and 2 May 2018
 - Mazagan Telecommunications: between 18 April 2017 and 21 February 2018

Should the Commission (i) impose AMPs of \$50,000 and issue a Mandatory Order against each TSP in question, and (ii) find the TSP's Director(s) personally liable for the violations, impose AMPs of \$15,000 against them, and name them in the Mandatory Order?

Positions of parties

20. TCI argued that although the Commission has discretion in carrying out enforcement, the Commission's approach should be governed by the "pyramid of enforcement mechanisms." The Commission should always use the least intrusive mechanism likely to achieve compliance first, and avoid using multiple enforcement mechanisms simultaneously. Using an enforcement mechanism that is more than minimally intrusive, or using multiple mechanisms, would be punitive in nature and would go beyond the stated purpose of AMPs, which is to promote compliance. TCI also submitted that the Commission should only impose AMPs on Directors when the corporate entity is a sham being used to carry out fraud or other misconduct.
21. PIAC supported applying the proposed AMPs and Mandatory Orders on each of the six TSPs and their respective Director(s). PIAC argued that the CCTS offers critical consumer protection, and that strong enforcement measures are necessary to ensure

full participation by TSPs. PIAC also argued that AMPs could be imposed against the Directors, and that requiring evidence of fraud or other misconduct before AMPs could be imposed against them – as suggested by TCI – was not applicable to regulatory enforcement measures.

22. In reply, PIAC submitted that for TSPs that had subsequently come into compliance with the Commission's direction to participate in the CCTS, the AMPs should be reduced by 50%, and no AMPs should be levied on the Directors.
23. TCI submitted in reply that no enforcement measures should be taken against TSPs that had come into compliance by becoming participants in the CCTS. It argued that once a TSP comes into compliance, any further enforcement activity would be punitive rather than a compliance-promoting measure.

Commission's analysis and determinations

24. As discussed above, all six TSPs have now fully complied with the CCTS participation requirement. Accordingly, it is unnecessary for the Commission to order any of the six TSPs or their respective Director(s) to take the necessary steps to become a participant in the CCTS. The Commission is of the view that the general compliance objectives have been achieved in this case. Accordingly, the Commission considers that the imposition of AMPs would provide minimal incremental benefit to the promotion of compliance.
25. In addition, the Commission considers that the compliance and enforcement process, which included education and the show cause process, should serve to prevent any future non-compliance by the six TSPs.
26. The Commission's AMP guidelines set out in Compliance and Enforcement and Telecom Information Bulletin 2015-111 specifically indicate that "[m]ore strict responses may be appropriate, depending on the context, to bring a person into compliance, deter future non-compliance, and prevent harm." In the event of future non-compliance, the Commission may take past violations into account and may impose larger AMPs than the ones proposed in this show cause proceeding.
27. In light of the above, the Commission determines that it will not take any further enforcement action against any of the six TSPs and their respective Director(s) personally, including the imposition of AMPs. As a result of the determination to not impose AMPs, the Commission will not address the legal arguments of PIAC and TCI relating to the imposition of AMPs.

Secretary General

Related documents

- *Telecommunications service providers that have failed to become participants in the Commission for Complaints for Telecom-television Services Inc.*, Telecom Notice of Consultation CRTC 2018-5, 8 January 2018

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Service Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016
- *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