



Compliance and Enforcement Notice of Consultation CRTC 2017-281

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Show cause proceeding and call for comments

Failure of Topline Air Duct Cleaning Inc. and Mr. Naveed Raza to respond to a request for information letter and to provide information to the Commission as required

Deadline for submission of interventions: 8 September 2017

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

The Commission initiates a proceeding for Topline Air Duct Cleaning Inc. (Topline) and Mr. Naveed Raza to show cause

- *why the Commission should not find that Topline and Mr. Raza have each committed a violation under paragraph 71(10)(a) of the Telecommunications Act; and*
- *why, if Topline and Mr. Raza are found to have committed this violation, (i) an administrative monetary penalty (AMP) of \$15,000 should not be imposed against Topline, and (ii) an AMP of \$10,000 should not be imposed against Mr. Raza.*

Background

1. The *Telecommunications Act* (the Act) sets out a number of provisions that collectively empower the Commission and designated staff to conduct investigations into potential violations of the Act. These investigations rely, in part, on information provided by the persons who are the subject of an investigation.
 - Subsection 71(1) of the Act states that the Commission may designate any qualified person as an inspector for the purpose of verifying compliance or preventing non-compliance with the provisions of the Act or any special Act for which the Commission is responsible.
 - Subsection 71(9) of the Act requires a person in possession of information necessary for the administration of the Unsolicited Telecommunications Rules (the Rules) to submit the information upon request to the person designated as an inspector by the Commission, for

the purpose of verifying compliance or preventing non-compliance with the provisions of the Act.

- Subsection 71(10) of the Act states that no person shall (a) resist or willfully obstruct the inspector in carrying out his or her duties; or (b) knowingly make a false or misleading statement, either orally or in writing, to the inspector.
2. In early July 2015, Commission enforcement officers initiated an investigation with respect to alleged violations of the Rules by Topline Air Duct Cleaning Inc. (Topline) and Mr. Naveed Raza, the owner and president of Topline.
 3. On 31 July 2015, Commission enforcement officers sent a request for information (RFI) letter to Topline and Mr. Raza, with a due date of 13 August 2015 for responses. The RFI letter requested confirmation from Topline that it was registered with the National Do Not Call List (DNCL) operator and that it had a subscription to the National DNCL. The letter also requested that Topline provide a list of telecommunications numbers that were used, displayed, or provided as callback numbers since 2015, as well as a list of all its clients since 25 March 2015. Topline did not respond to the letter.
 4. As a result of Topline's failure to respond to the RFI letter, two Commission enforcement officers visited Mr. Raza's residence in Scarborough, Ontario, on 26 November 2015 to determine why there had been no response. Mr. Raza confirmed that he had received the RFI letter, but offered no explanation for not responding to it. He claimed that he was no longer relying upon telemarketing to generate business.
 5. During this visit, Mr. Raza was reminded of the importance of responding to the RFI letter. The deadline to respond was extended to 15 January 2016 to allow Mr. Raza additional time to provide the information requested. On 8 March 2016, still having received no response to the RFI letter, Commission enforcement officers conducted a follow-up inquiry with Mr. Raza via email. No response was received to that inquiry.
 6. On 15 March 2017, the Commission issued a letter directing Topline and Mr. Raza to respond to the outstanding RFI letter by 3 April 2017 and to provide the requested information. In that letter, Topline and Mr. Raza were formally put on notice that their failure to respond to the RFI letter could lead the Commission to conclude that they have resisted or willfully obstructed an inspector in carrying out his or her duties, in contravention of paragraph 71(10)(a) of the Act. Topline and Mr. Raza failed to respond the Commission's letter.

Has a violation been committed?

7. As part of an ongoing investigation into Topline regarding alleged violations of the Rules, Commission enforcement officers, as well as the Commission, have directed

Topline and Mr. Raza, Director and President of Topline, to provide certain information through the issuance of an RFI letter. Topline and Mr. Raza have consistently ignored requests to provide the information required. Based on the above, it appears that Topline and Mr. Raza are each separately in contravention of paragraph 71(10)(a) of the Act, which prohibits persons from resisting or willfully obstructing an inspector in carrying out his or her duties.

Administrative monetary penalty

8. Given that the Commission's ability to administer the Act depends, in part, on the provision of information by those persons who are the subject of an investigation, if Topline and Mr. Raza are found to have committed violations of the Act, the imposition of administrative monetary penalties (AMPs) would be an appropriate enforcement measure. As explained in Compliance and Enforcement and Telecom Information Bulletin 2015-111, such a measure is aimed at promoting compliance with the Act and instilling a degree of predictability so that Canadians and entities know what measures may be used in response to non-compliance.
9. 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 that the person obtained from the commission of the violation;
 - the person's ability to pay;
 - factors established by any regulations; and
 - any other relevant factor.
10. The Commission determines the weight and applicability to be given to each factor based on the circumstances of each case. In the present case, the Commission considers that, if a violation is found, AMPs in the amount of \$10,000 against Mr. Raza personally and of \$15,000 against Topline would properly reflect the purpose of the penalty and the factors set out in the Act.

Nature and scope of the violation

11. The Commission considers the nature of the violation to be very serious since Topline and Mr. Raza appear to have deliberately ignored two separate RFI letters as well as a formal Commission letter requiring them to respond to the RFI letter. Only Topline and Mr. Raza can provide the requested information, which is integral to the conclusion of this investigation. The contraventions appear to be both willful and repeated, which goes to the egregiousness of the actions.
12. Mr. Raza is well aware of the seriousness of the investigatory process since he was visited by two Commission enforcement officers who explained to him the

importance of complying with the investigation. He nevertheless chose to ignore the Commission's requests.

13. The Commission considers that the willful refusal to respond to its RFIs impedes its ability to properly determine issues before it. Such acts are taken seriously by the Commission and require a significant penalty to promote compliance and deter similar impediments in the future.

History of compliance

14. Topline and Mr. Raza are known to the Commission since they were previously investigated and found to be in violation of the Rules. As a result of that investigation, Topline was issued a notice of violation with a \$23,000 AMP in 2015. Topline is currently paying this AMP in monthly installments.

Benefit obtained from the violation

15. Mr. Raza's refusal to cooperate has delayed the resolution of this investigation. A person who is the subject of an investigation should not benefit from their failure to comply with information requirements, thereby impeding the Commission's ability to properly investigate alleged violations of the Rules in a timely and effective manner.

Ability to pay

16. Revenues for Topline were \$201,162 in 2014 and \$193,846 in 2015. Mr. Raza reported earnings of \$36,000 for 2014 and \$3,800 for 2015. Topline is currently paying monthly installments of \$638.88 on the \$23,000 AMP established by the Commission in 2015.

Factors established by any regulations

17. No such factors have been established at this time.

Other relevant factors

18. There are no other relevant factors at this time.

Show cause proceeding

19. In light of the above, the Commission **directs** Topline and Mr. Raza separately to show cause
- why the Commission should not find that Topline and Mr. Raza have each committed a violation under paragraph 71(10)(a) of the Act; and
 - why, if Topline and Mr. Raza are found to have committed this violation, (i) an AMP of \$15,000 should not be imposed against Topline, and (ii) an AMP of \$10,000 should not be imposed against Mr. Raza.

20. Topline and Mr. Raza are to file any evidence that supports their respective positions.
21. Interested persons may also file interventions on these matters.

Procedure

22. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding. The Rules of Procedure 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.
23. Topline and Mr. Raza are made parties to this proceeding and may file interventions with the Commission by **8 September 2017**.
24. Interested persons who wish to become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues by **8 September 2017**. The intervention must be filed in accordance with section 26 of the Rules of Procedure.
25. 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.
26. All parties may file replies to interventions with the Commission by **18 September 2017**. Parties are to consult the Commission's website to determine who has filed interventions for the purpose of exercising their right of reply.
27. 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.
28. 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.
29. 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.

30. 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

31. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service or 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 and serve 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.
32. 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.
33. 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.
34. The Commission expects to publish a decision on the issues raised in this notice within four months of the close of record.

Important notice

35. 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.

36. 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.
37. 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.
38. 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

39. 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.
40. 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
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

- *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 submissions for Commission proceedings in accessible formats, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015*
- *Filing of joint supporting interventions, Telecom Information Bulletin CRTC 2011-693, 8 November 2011*
- *Guidelines on the CRTC Rules of Practice and Procedure, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010*