



Telecom Decision CRTC 2013-495 and Telecom Orders CRTC 2013-496, 2013-497, and 2013-498

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Route reference: Telecom Notice of Consultation 2013-133

Ottawa, 18 September 2013

Non-compliance with the Commissioner for Complaints for Telecommunications Services participation requirement

File number: 8665-C12-201304675

The Commission finds that three telecommunications service providers (TSPs) – Adeste Global Managed Networks Inc., Imagen Communications Inc., and TollFreeForwarding.com – have failed to comply with the Commissioner for Complaints for Telecommunications Services (CCTS) participation requirement and with Commission requests for information under the Telecommunications Act. The Commission therefore issues mandatory orders against these providers, requiring them to submit certain information.

In addition, to help consumers make informed decisions about their telecommunications services, the Commission has created a web page describing the services the CCTS provides to Canadian consumers. This page will also list those TSPs that have failed to comply with the CCTS participation requirement, which is meant to ensure that Canadian consumers have access to effective complaint resolution services.

Background

1. The Commissioner for Complaints for Telecommunications Services Inc. (CCTS or the Agency) is an independent consumer agency with a mandate to facilitate the resolution of complaints relating to services that telecommunications service providers (TSPs) offer to residential and small business customers.
2. The CCTS was established following the Governor in Council's *Order requiring the CRTC to report to the Governor in Council on consumer complaints*, P.C. 2007-533, 4 April 2007 (the Order). The Order states that an industry-established consumer agency, independent from the telecommunications industry, should be an integral component of a deregulated telecommunications market.
3. In 2007, following the establishment of the CCTS, the Commission initiated a proceeding to review, among other things, the structure and mandate of the Agency.

Participation in the CCTS

4. Following its review proceeding, the Commission approved the structure and mandate of the CCTS in Telecom Decision 2007-130. The Commission also

determined that, as a condition of providing telecommunications service under section 24 of the *Telecommunications Act* (the Act), all Canadian carriers with annual Canadian telecommunications service revenues exceeding \$10 million would be required to be members¹ of the Agency (the CCTS participation requirement). In addition, the Commission directed all Canadian carriers to include in their service contracts and other arrangements with resellers a requirement for the resellers to participate in the CCTS, subject to the same revenue threshold. The Commission indicated that the CCTS participation requirement would advance the policy objectives set out in paragraphs 7(b), (f), and (h) of the Act.²

5. The CCTS participation requirement was re-examined in the proceeding leading to Telecom Decision 2010-921 and Telecom Regulatory Policy 2011-46. The Commission determined that, as a condition of providing telecommunications service under section 24 of the Act, all TSPs that provide services within the scope of the CCTS's mandate are to be participating service providers of the Agency for a period of five years.
6. The Commission noted that access to the CCTS's services would be increasingly necessary and beneficial, and that comprehensive participation in the Agency would not only be competitively neutral and symmetrical, but would also ensure that all consumers have equivalent access to complaint resolution services.
7. At the time that Telecom Decision 2010-921 and Telecom Regulatory Policy 2011-46 were issued, most large TSPs were already participating service providers of the CCTS. In order to facilitate participation, the Commission determined that, for non-member TSPs, the requirement to join the CCTS would be triggered when the CCTS informs a TSP that it has received a complaint about that TSP that falls within the scope of its mandate. Following this notification, the TSP has five days to join the CCTS.

Show cause proceeding

8. When the CCTS receives a complaint about a TSP that falls within its mandate, it makes multiple attempts to contact the TSP through various means in order to notify it of the complaint and inform it of its obligation to become a participating service provider. If the TSP does not respond to these notifications, the CCTS refers the matter to the Commission for further action.

¹ Following changes to the CCTS's governing documents in 2012, members are now referred to as participating service providers.

² The cited policy objectives are
7(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
7(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective; and
7(h) to respond to the economic and social requirements of users of telecommunications services.

9. The CCTS informed the Commission that the following companies had failed to become participating service providers despite receiving multiple notifications: Adeste Global Managed Networks Inc. (Adeste); Broadline Networks Inc. (Broadline); iTalk BB; Lions Gate Internet, doing business as Imagen Communications Inc. (Imagen); TollFreeForwarding.com (TFF); and Voipgo Corporation (Voipgo) [collectively, the six TSPs].
10. After receiving this information from the CCTS, Commission staff contacted the six TSPs by letter to inform them of their obligations regarding CCTS participation. When the six TSPs failed to respond, the Commission sent each one another letter stating, among other things, that
 - as of the date of the second letter, the Commission had no evidence that the company was a participating service provider;
 - pursuant to subsection 37(2)³ of the Act, the company was directed to file, by a specified date, proof that it was or had become a participating service provider, or argument demonstrating that it does not provide services within the scope of the CCTS's mandate; and
 - if the company failed to respond by the specified date, the Commission would take further steps to enforce the participation requirement, including initiating a show cause proceeding to consider disconnection of the company's telecommunications services.
11. Each TSP was also directed, pursuant to subsection 37(2) of the Act, to identify the service provider(s) from which it obtains telecommunications services on a wholesale basis and to provide a list of the services it offers to its customers. None of the six TSPs responded to the Commission's letters. The dates of all correspondence between the Commission and the six TSPs are listed in Appendix A to this decision.
12. In light of the failure of the six TSPs to respond to its letters, the Commission, in Telecom Notice of Consultation 2013-133 (the notice), considered that each of them was in apparent non-compliance with the CCTS participation requirement, and with subsection 37(2) of the Act, for failing to submit the information requested. The Commission therefore initiated a proceeding to show cause why it should not
 - find that the six TSPs have failed to comply with the CCTS participation requirement;

³ Subsection 37(2) reads "Where the Commission believes that a person other than a Canadian carrier is in possession of information that the Commission considers necessary for the administration of this Act or any special Act, the Commission may require that person to submit the information to the Commission in periodic reports or in such other form and manner as the Commission specifies, unless the information is a confidence of the executive council of a province."

- order disconnection of the six TSPs' telecommunications services for failure to comply with the CCTS participation requirement; and
 - issue a mandatory order, pursuant to section 51 of the Act, with respect to the failure of each of the six TSPs to submit information to the Commission as required by subsection 37(2) of the Act, and register such order with the Federal Court pursuant to section 63 of the Act.
13. In the notice, the Commission directed the six TSPs to file the information requested in the Commission's letters, as well as more detailed information (as set out in Appendix A to the notice) about how the TSPs provide telecommunications services – i.e., whether the TSP owns or operates transmission facilities (as defined in section 2 of the Act) or resells the services of another TSP to its own customers. In addition, the six TSPs were required to provide copies and descriptions of all arrangements that allow them to interconnect with the networks of other TSPs and to access the public switched telephone network. The Commission also directed all TSPs providing telecommunications services to any of the six TSPs to file certain information with the Commission, including copies of all contractual arrangements.

Are the six TSPs in non-compliance with the CCTS participation requirement and subsection 37(2) of the Act?

iTalk BB

14. iTalk Global Communications Inc. (iTalk Global) filed a submission, dated 29 March 2013, indicating that iTalk BB is its Canadian subsidiary but does not provide telecommunications services. Rather, iTalk Global provides telecommunications services to Canadian customers and iTalk BB provides market analysis, advertising, and logistical services to its parent company and affiliated companies. iTalk Global submitted that prior to the issuance of the notice, it had not received the notifications that the CCTS and the Commission had sent to iTalk BB, due to the fact that its subsidiary neglected to forward this correspondence to iTalk Global.
15. iTalk Global further submitted that upon publication of the notice, it immediately contacted the Commission and the CCTS, and became a participating service provider of the CCTS on 22 March 2013. iTalk Global also filed responses to the questions set out in Appendix A to the notice.

Imagen

16. Imagen filed a submission, dated 21 May 2013, indicating that it had responded to the CCTS when it was notified of the complaint. Imagen considered that the complaint had been resolved, that its efforts to resolve the complaint were sufficient, and that it should therefore not be required to join the CCTS. Imagen further submitted that following its correspondence with the CCTS, it had closed its office and ceased providing telecommunications services to its customers. Based on this fact, Imagen argued that it is no longer subject to the jurisdiction of the Commission or the CCTS.

17. Imagen did not submit information in response to the questions set out in Appendix A to the notice.

Adeste, Broadline, TFF, and Voipgo

18. Adeste, Broadline, TFF, and Voipgo did not make any submissions on the record of the proceeding.

Other TSPs

19. The Commission received submissions from MTS Inc. and Allstream Inc. (collectively, MTS Allstream), Primus Telecommunications Canada Inc. (Primus), and TELUS Communications Company (TCC). MTS Allstream and Primus indicated that they provide services to iTalk BB and filed copies of the relevant contractual arrangements. TCC indicated that it provides services to one of the six TSPs, filing the name of the TSP and copies of the contractual arrangements in confidence.

Commission's analysis and determinations

20. Since its inception, the CCTS has engaged a large portion of the telecommunications industry, and it now has more than 200 participating service providers. In its 2011-2012 fiscal year, the CCTS successfully concluded more than 98 percent of the complaints it received that fell within its mandate. The CCTS participation requirement is meant to ensure that all consumers purchasing telecommunications services within the scope of the CCTS's mandate have recourse to an independent complaint resolution service.

21. The Commission considers that the CCTS is an important component of an increasingly competitive telecommunications market. It provides consumers with a neutral, independent arbiter of complaints and encourages TSPs to resolve complaints efficiently. The Commission takes non-compliance with the CCTS participation requirement very seriously. In addition, failure by a TSP to submit information requested by the Commission pursuant to subsection 37(2) of the Act seriously hinders the Commission's ability to carry out its regulatory mandate.

22. When a TSP appears to be in non-compliance with the CCTS participation requirement, the Commission strives to resolve the matter in a measured and incremental fashion. As described above, in the present case the six TSPs were contacted regarding participation in the CCTS on numerous occasions, first by the CCTS, then by Commission staff, and finally by the Commission. They were provided with numerous opportunities during the process to become participating service providers of the CCTS or to make submissions as to why the CCTS participation requirement does not apply in the circumstances. The six TSPs were also given more than one opportunity to submit to the Commission the information required pursuant to subsection 37(2) of the Act.

23. In light of these factors, the Commission considers the appropriate action for each of the six TSPs on a case-by-case basis.

iTalk BB and Voipgo

24. The Commission notes that iTalk Global became a participating service provider of the CCTS shortly after the issuance of the notice and provided the information requested by the Commission pursuant to subsection 37(2) of the Act. In the circumstances, the Commission accepts iTalk Global's explanation that it did not respond to the earlier correspondence because of an administrative error involving its Canadian subsidiary iTalk BB.
25. On 26 April 2013, the CCTS informed the Commission that Voipgo's customer base had been purchased by Axsit Corporation (Axsit). In addition, according to Industry Canada's corporate records, Voipgo was dissolved and therefore no longer exists as a legal entity. Axsit is now a participating service provider of the CCTS and is addressing complaints from Voipgo's customers through the CCTS's process.
26. In light of the above, the Commission finds that the actions taken by Axsit and iTalk Global have resolved the matter of iTalk BB's and Voipgo's apparent non-compliance with the CCTS participation requirement and subsection 37(2) of the Act. The Commission is satisfied that customers of Axsit and iTalk Global now have access to effective complaint resolution through the CCTS. Therefore, the Commission determines that no enforcement action is required in respect of these TSPs.

Broadline

27. The Commission notes that Broadline did not respond to any of the correspondence regarding participation in the CCTS, failed to make submissions on the record of the proceeding, and is not a participating service provider of the CCTS. However, according to Industry Canada's corporate records, Broadline Networks Inc. was dissolved for non-compliance and no longer exists as a legal entity. Therefore, the Commission determines that no further action will be taken in respect of Broadline, since there is no entity to pursue.

Imagen, Adeste, and TFF

28. In its submission, Imagen did not dispute the fact that the CCTS received an in-scope complaint from a consumer about its telecommunications services. Instead, Imagen submitted that it should not be subject to the CCTS participation requirement because it resolved the consumer complaint without CCTS involvement and, in any event, it no longer offers telecommunications services.
29. The Commission notes that Imagen did not file any evidence on the record of this proceeding to substantiate its claim that it no longer offers telecommunications services. As of 6 September 2013, Imagen remained an active legal entity according to Industry Canada records, with a website soliciting customers for its Internet service.

30. Further, the Commission considers that Imagen's submission that the complaint was resolved is irrelevant to the question of whether the company is required to participate in the CCTS. The CCTS participation requirement is triggered after the CCTS has informed a TSP that it has received an in-scope complaint about the TSP's service. The requirement to join continues in the event that a complaint has been subsequently resolved, in order to allow the TSP's other customers to make use of the CCTS.
31. In addition, the Commission notes that Imagen did not provide any of the information required by the Commission in its letter dated 7 November 2012 or in the notice.
32. With respect to Adeste and TFF, the Commission notes that these TSPs did not make any submissions on the record of the proceeding and therefore did not dispute the Commission's finding that they are in apparent non-compliance with the CCTS participation requirement and subsection 37(2) of the Act. Furthermore, they did not submit the information required by the Commission in the notice. In addition, Adeste and TFF appear to be active TSPs that continue to provide telecommunications services to customers in Canada.
33. In light of the above, the Commission finds that Imagen, Adeste, and TFF are in non-compliance with the CCTS participation requirement and subsection 37(2) of the Act.
34. Given the seriousness of the non-compliance, the Commission determines that further enforcement action is necessary. The Commission notes that section 51 of the Act authorizes it to order a person, at or within any time and subject to any conditions that it determines, to do anything the person is required to do under the Act. This order can be registered with the Federal Court of Canada or with the superior court of a province, and it may be enforced in the same manner as an order of that court under section 63 of the Act.
35. Accordingly, the Commission hereby issues mandatory orders against Imagen, Adeste, and TFF, directing them to comply immediately with its directions, pursuant to subsection 37(2) of the Act, to submit information that it considers necessary for the administration of the Act. These mandatory orders, setting out the specific information that must be submitted, are attached as Appendices B, C, and D to this decision. Pursuant to section 63 of the Act, the Commission intends to register these orders with the Federal Court and pursue their enforcement as orders of that court.

Additional measure

36. The Commission considers that consumers could benefit from a resource to alert them to TSPs that fail to meet their obligations. The Commission considers that certain information, such as whether a given TSP provides sufficient complaint resolution by participating in the CCTS, is relevant to consumers, but may not be evident in the TSP's marketing material or sales offers. This type of information can help consumers make well-informed choices regarding their telecommunications services.

37. The Commission notes that the CCTS provides such a resource on its website, but considers that further dissemination of this information could both encourage TSPs to comply with their obligations and contribute to educating consumers. In order to help Canadian consumers make informed decisions when purchasing telecommunications services, the Commission has created a web page to inform consumers about the CCTS and its role in facilitating access to effective complaint resolution. This page contains a list of TSPs that have failed to become participating service providers of the CCTS after being directed to do so. Pursuant to the determinations set out above, Imagen, Adeste, and TFF will be listed on this web page.

Secretary General

Related documents

- *Apparent non-compliance by certain telecommunications service providers with the requirement to be a participant of the Commissioner for Complaints for Telecommunications Services*, Telecom Notice of Consultation CRTC 2013-133, 18 March 2013
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Review of the Commissioner for Complaints for Telecommunications Services – Decision on membership*, Telecom Decision CRTC 2010-921, 8 December 2010
- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007

Appendix A

Correspondence with the six TSPs

TSP	Dates of CCTS notifications	Dates of Commission staff letters	Dates of Commission letters
Adeste	27 August 2012 and 11 September 2012	26 September 2012	5 October 2012
Broadline	13 September 2011 and 11 January 2012	25 April 2012	13 July 2012
Imagen	7 and 21 August 2011, and 27 September 2012	30 October 2012	7 November 2012
iTalk BB	24 November 2011 and 14 December 2011	5 March 2012	14 May 2012
TFF	10 and 24 February 2012, and 29 March 2012	25 April 2012	13 July 2012
Voipgo	13 and 25 May 2011, and 11 January 2012	5 March 2012	14 May 2012

Telecom Order CRTC 2013-496

Adeste Global Managed Networks Inc. (Adeste) is hereby ordered, pursuant to section 51 of the *Telecommunications Act* (the Act), to comply immediately with the Commission's directions, made pursuant to subsection 37(2) of the Act, to submit the following information, which the Commission considers necessary for the administration of the Act:

1. List all the telecommunications services that Adeste provides to its residential and/or business customers in Canada.
2. For each of the telecommunications services that Adeste provides to its residential and/or business customers in Canada,
 1. provide a description of how the service is delivered to customers;
 2. indicate whether Adeste owns or operates any transmission facilities (as defined in section 2 of the Act) used to provide the service to its customers; and
 3. indicate whether Adeste resells the service of another TSP to provide the service to its customers and, if so, identify any such TSP and how the service is obtained (by tariff, contract, etc.).
3. Provide copies of all arrangements with other TSPs that allow Adeste to interconnect with the networks of other TSPs and to access the public switched telephone network (PSTN), as well as a description of these arrangements.

Secretary General

Telecom Order CRTC 2013-497

Imagen Communications Inc. (Imagen) is hereby ordered, pursuant to section 51 of the *Telecommunications Act* (the Act), to comply immediately with the Commission's directions, made pursuant to subsection 37(2) of the Act, to submit the following information, which the Commission considers necessary for the administration of the Act:

1. List all the telecommunications services that Imagen provides to its residential and/or business customers in Canada.
2. For each of the telecommunications services that Imagen provides to its residential and/or business customers in Canada,
 1. provide a description of how the service is delivered to customers;
 2. indicate whether Imagen owns or operates any transmission facilities (as defined in section 2 of the Act) used to provide the service to its customers; and
 3. indicate whether Imagen resells the service of another TSP to provide the service to its customers and, if so, identify any such TSP and how the service is obtained (by tariff, contract, etc.).
3. Provide copies of all arrangements with other TSPs that allow Imagen to interconnect with the networks of other TSPs and to access the public switched telephone network (PSTN), as well as a description of these arrangements.

Secretary General

Telecom Order CRTC 2013-498

TollFreeForwarding.com (TFF) is hereby ordered, pursuant to section 51 of the *Telecommunications Act* (the Act), to comply immediately with the Commission's directions, made pursuant to subsection 37(2) of the Act, to submit the following information, which the Commission considers necessary for the administration of the Act:

1. List all the telecommunications services that TFF provides to its residential and/or business customers in Canada.
2. For each of the telecommunications services that TFF provides to its residential and/or business customers in Canada,
 1. provide a description of how the service is delivered to customers;
 2. indicate whether TFF owns or operates any transmission facilities (as defined in section 2 of the Act) used to provide the service to its customers; and
 3. indicate whether TFF resells the service of another TSP to provide the service to its customers and, if so, identify any such TSP and how the service is obtained (by tariff, contract, etc.).
3. Provide copies of all arrangements with other TSPs that allow TFF to interconnect with the networks of other TSPs and to access the public switched telephone network (PSTN), as well as a description of these arrangements.

Secretary General