



Compliance and Enforcement and Telecom Information Bulletin CRTC 2015-111

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Guidelines regarding the general administrative monetary penalties regime under the *Telecommunications Act*

The Commission sets out guidelines regarding the new general administrative monetary penalties (AMPs) regime introduced under the Telecommunications Act (the Act). The intent of this regime, which gives the Commission powers to impose AMPs for violations of regulatory requirements, is to promote compliance with the Act. The purpose of this information bulletin is to help Canadians understand the Commission's approach to compliance and enforcement as well as how the Commission intends to use its new powers to impose AMPs. By working to ensure that individuals or entities comply with the Act, the Commission is contributing to the development of a world-class communication system for all Canadians.

Introduction

1. The Commission is responsible for administering and enforcing the provisions of the *Telecommunications Act* (the Act) in accordance with the Canadian telecommunications policy objectives set out in the Act.¹
2. The *Economic Action Plan 2014 Act, No. 2*,² which came into force on 16 December 2014, made a number of amendments to the Act. New provisions were added to provide the Commission with the authority to establish a general administrative monetary penalties (AMPs) regime to promote compliance with the Act.³
3. Persons⁴ who do not comply with the Act, a regulation, or a Commission decision have committed a violation⁵ and may incur AMPs or be subject to other enforcement tools available to the Commission.

¹ See section 7 of the Act.

² S.C. 2014, c. 39

³ The Commission also has a separate AMPs regime, set out in the Act, for violations of the Unsolicited Telecommunications Rules. The new provisions of the Act leave this regime substantially untouched, and the framework established in Telecom Decision 2007-48 is still in effect.

⁴ "Person" is defined under section 2 of the Act as any individual, partnership, body corporate, unincorporated organization, government, government agency, and any other person or entity that acts in the name of or for the benefit of another, including a trustee, executor, administrator, liquidator of the succession, guardian, curator, or tutor.

⁵ A violation, as set out in section 72.001 of the Act, is any contravention of the Act, other than of section 17 or 69.2, and any contravention of a regulation or decision made by the Commission under the Act, other than prohibitions or decisions made by the Commission under section 41.

4. This document is intended for information only. Its purpose is to help stakeholders understand (i) the Commission’s general approach to compliance and enforcement, referred to as the “compliance and enforcement toolkit,” and (ii) how the Commission intends to use its new powers to impose AMPs. The Commission may vary the general approach described in this information bulletin, depending on the circumstances of each specific case.
5. The Commission’s compliance and enforcement approach provides a degree of predictability to Canadians and entities so that they know what measures may be used in response to non-compliance. It also fosters trust in the enforcement process by providing transparency regarding how the Commission may apply such measures.

Compliance and enforcement toolkit

6. The Commission’s approach to compliance and enforcement has three principal components:
 - promoting compliance,
 - monitoring compliance, and
 - conducting enforcement activities.

Promoting compliance

7. The Commission may engage in a wide variety of activities to promote compliance and awareness of non-compliance. For example, the Commission may promote compliance with legislative and regulatory requirements through public education and outreach activities. These activities help individuals and entities learn about their obligations, thereby helping them to come into compliance voluntarily and reducing the need for responses from the Commission. These activities also increase consumers’ ability to recognize, avoid, and report non-compliant conduct.

Monitoring compliance

8. The Commission may become aware of non-compliance by (i) dealing with, and responding to, applications and complaints; and (ii) conducting compliance monitoring activities.
9. The Commission may use tools such as reporting requirements, requests for information, or questioning during an oral public hearing to assess non-compliance.
10. Commission staff may also investigate potential instances of non-compliance. To this end, Commission staff may independently gather information or evidence, as the case may be, in order determine if non-compliance has occurred. Information or evidence

can be gathered through the use of various techniques, including inspection powers found in the Act.⁶

Conducting enforcement activities

11. The Commission responds to non-compliance using the most appropriate tool or tools available.
12. There are numerous tools that can be used to ensure appropriate, timely, and effective responses. The appropriate tool to use in a particular situation will depend on the factual context of each case.
13. In some cases, the Commission may attempt to resolve a non-compliance issue by providing notice that certain activities could lead to non-compliance, thereby allowing a person to independently take measures to self-correct without requiring the Commission to take additional enforcement actions.
14. Commission staff may also attempt to work with a person to find a mutually acceptable solution whenever possible. This approach generally relies on consent and includes negotiated settlements and undertakings, which may or may not include AMPs.
15. More strict responses may be appropriate, depending on the context, to bring a person into compliance, deter future non-compliance, and prevent harm. In these circumstances, the Commission may decide on other enforcement measures, such as issuing a warning letter, an AMP, or a mandatory order, or prosecution.

Administrative monetary penalties

16. AMPs are monetary penalties imposed for violations of regulatory requirements.
17. AMPs are an additional tool that the Commission can use to promote compliance with the Act, regulations, or Commission decisions. AMPs are not used to punish. They will be used where they are the most appropriate tool to obtain compliance and deter future non-compliance.⁷
18. Although most violations can be subject to an AMP, not all violations will result in the imposition of an AMP, nor does the Commission generally intend to use AMPs as its first enforcement option. The Commission will continue to use its full range of compliance and enforcement tools.
19. The Commission may impose an AMP through the issuance of a Notice of Violation, as part of an undertaking, or in the course of a Commission proceeding.

⁶ See section 71 of the Act.

⁷ See subsection 72.002(2) of the Act.

Notices of Violation

20. A person or class of persons designated by the Commission may issue Notices of Violation.⁸ A Notice of Violation may be served on a person if there are reasonable grounds to believe that the person has committed a violation, and where an AMP is considered to be the appropriate tool in the circumstances. A person who receives a Notice of Violation will also receive copies of the evidence used to support the allegation that a violation was committed.
21. A Notice of Violation includes the following information:
- the name of the person believed to have committed the violation;
 - the alleged violation;
 - the amount of the AMP;
 - a statement as to the right of the person to either pay the penalty or to make representations;
 - the deadline to pay or to make representations;⁹ and
 - a statement indicating that if the person does not pay the penalty or make representations, the person will be deemed to have committed the violation and the penalty may be imposed.¹⁰
22. The person served with the Notice of Violation has 30 days to either (i) pay the AMP, or (ii) make written representations to the Commission regarding whether the violation has occurred, the amount of the AMP, or both.¹¹ However, the Commission may specify a longer period if it so chooses.¹²
23. If the person decides to pay the AMP, they are deemed to have committed the violation, and the proceedings in respect of the violation are ended. The person is also deemed to have committed the violation if they do not pay the AMP and do not make representations within 30 days of the date of the Notice of Violation or any longer period specified.¹³
24. If the person does not agree with the Notice of Violation and decides to make representations, the representations will be reviewed by a Commission panel, which will decide, on a balance of probabilities, whether the person committed the violation

⁸ See section 72.004 of the Act.

⁹ Representations are written comments that a person may submit regarding the content of a Notice of Violation.

¹⁰ See section 72.005 of the Act.

¹¹ Information regarding how to make representations will be included in the Notice of Violation.

¹² See section 72.005 of the Act.

¹³ See section 72.007 of the Act.

and, if so, whether the AMP amount is appropriate. In doing so, the Commission may impose the penalty set out in the Notice of Violation, a lesser amount, or no penalty.

Undertakings

25. An undertaking is a negotiated agreement that identifies every act or omission that constitutes the contravention and that is covered by the undertaking, as well as the regulatory obligations that have been contravened. Undertakings may also include conditions that the person entering into the undertaking must respect, and may stipulate payment of a specified amount. Contravention of an undertaking constitutes a violation.
26. A person may enter into an undertaking at any time, whether or not a Notice of Violation has been issued. For an undertaking to be entered into, it must be accepted by a person designated by the Commission to do so.
27. If an undertaking is entered into, a Notice of Violation may not be issued for the acts or omissions covered by the undertaking. If a Notice of Violation has already been issued, the process initiated by the Notice of Violation with respect to those acts or omissions is ended.¹⁴

Commission proceedings

28. In addition to the Notice of Violation process described above, the Commission may also issue an AMP in the course of a public proceeding.¹⁵ A matter may be brought before the Commission for consideration in a public proceeding either on the Commission's own motion or by way of an application. The procedural rules for both kinds of proceedings are set out in the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure).
29. The Rules of Procedure establish the general course of action for public proceedings, including procedural rules related to the form and content as well as the filing and service of documents. It is important to note that the Commission retains the power to dispense with or vary the Rules of Procedure if, in its opinion, considerations of fairness or the public interest permit.¹⁶
30. In cases where the Commission initiates a proceeding on its own motion, for instance, to inquire into apparent non-compliance uncovered as a result of monitoring activities, the Commission may issue a Notice of Consultation in accordance with the Rules of Procedure. The Notice of Consultation would include the relevant details of any alleged violations and would call for comments on the circumstances of the alleged violation, the appropriateness of an AMP as a compliance tool in the

¹⁴ See section 72.006 of the Act.

¹⁵ See section 72.003 of the Act.

¹⁶ See section 7 of the Rules of Procedure.

circumstances, and the appropriate amount of the AMP, were one to be imposed. The Notice of Consultation would make any person alleged to have committed a violation a party to the proceeding.

31. As noted above, an application filed pursuant to Part 1 of the Rules of Procedure may also allege a violation and request an AMP as a remedy. Any such application, including any supporting evidence or documentation filed by the applicant, will be published on the Commission's website, and all interested parties, including the person alleged in the application to have committed a violation, will be given a chance to comment in accordance with the Rules of Procedure.
32. If an applicant alleges that a person has committed a violation and requests an AMP as a remedy, the Commission expects the applicant to clearly indicate all the facts that would demonstrate that the person has committed the violation and that an AMP is appropriate in the circumstances. However, the Commission will ensure that all parties have an opportunity to comment on issues relevant to the proceeding, for instance, through the request for information process set out in the Rules of Procedure.
33. The Commission will make a finding, on a balance of probabilities and based on the full record of the proceeding, of whether the person has committed the violation, and will issue a decision.
34. The Commission may, at the same time, determine which compliance tool constitutes the appropriate remedy in the circumstances – including, potentially, an AMP. The Commission may instead choose to initiate a follow-up proceeding to consider the appropriate remedy at a later time, for instance, to give the person found to have committed the violation time to return to compliance.

Calculating the amount of an AMP

35. The Commission imposes AMPs on a case-by-case basis, informed by the particular circumstances of each case.
36. The Commission may impose an AMP of up to \$25,000 on an individual for a first violation, and up to \$50,000 for any subsequent violation. The Commission may impose an AMP of up to \$10 million for a first violation in any other case, and an AMP of up to \$15,000,000 for any subsequent violation.¹⁷
37. When determining an AMP amount, the Commission takes into account the following factors:¹⁸
 - the nature and scope of the violation;

¹⁷ See section 72.001 of the Act.

¹⁸ See subsection 72.002(1) of the Act.

- 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; and
- any other relevant factor.

38. The Commission will determine the weight and applicability to be given to each factor based on the circumstances of each case.

Publication of information regarding violations and AMPs

39. The Commission may make public the name of the person, the nature of the violation, and the amount of the AMP imposed in respect of a violation.¹⁹

40. The Commission may also make public the name of any person that enters into an undertaking, the nature of the undertaking, the conditions of the undertaking, and any amount paid as a result of the undertaking.²⁰

41. If a party to a public proceeding wishes to designate any of the information it files with the Commission as confidential, it must do so in accordance with sections 38 and 39 of the Act and Broadcasting and Telecom Information Bulletin 2010-961.

The review process

42. Any person subject to an AMP has the right to apply to the Commission to review and rescind or vary the decision under section 62 of the Act.²¹ Any review and vary application under section 62 of the Act must be made within 90 days of the date of the decision.²²

43. Further, any person subject to an AMP may apply for leave to appeal the decision on any question of law or jurisdiction to the Federal Court of Appeal under section 64 of the Act. Leave to appeal must be applied for within 30 days of the date of the decision or within such further time as a judge of the Court grants in exceptional circumstances.²³

¹⁹ See section 72.0092 of the Act.

²⁰ See section 72.0092 of the Act.

²¹ The Commission's revised guidelines for review and vary applications are set out in Telecom Information Bulletin 2011-214.

²² See section 71 of the Rules of Procedure.

²³ See section 64 of the Act.

How to pay an AMP

44. AMPs are to be paid in accordance with the instructions contained in the Notice of Violation or in the decision. The amounts are debts due to Her Majesty in right of Canada that may be recovered in the Federal Court. All payments are to be made to the Receiver General for Canada.²⁴
45. For any amount owing that is not paid by the due date set out in the document, interest calculated and compounded monthly at the average bank rate plus three percent 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.²⁵

Secretary General

Related documents

- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, Broadcasting and Telecom Information Bulletin CRTC 2010-961, 23 December 2010
- *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

²⁴ See section 72.009 of the Act.

²⁵ In accordance with section 155.1 of the *Financial Administration Act* and applicable regulations