



## Compliance and Enforcement Decision CRTC 2015-178

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Ottawa, 6 May 2015

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### **Ontario Eco Energy Inc. – Violations of the Unsolicited Telecommunications Rules**

*The Commission imposes total administrative monetary penalties of \$30,000 on Ontario Eco Energy Inc. for initiating, on behalf of two clients, telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for doing so while these clients were not registered with the National DNCL operator and were not registered subscribers of the National DNCL, in violation of the Unsolicited Telecommunications Rules.*

#### **Introduction**

1. Between 17 December 2012 and 25 November 2014, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been made by Ontario Eco Energy Inc. (Ontario Eco Energy).
2. These complaints were investigated and, on 23 January 2015, a notice of violation was issued to Ontario Eco Energy pursuant to section 72.07 of the *Telecommunications Act* (the Act).<sup>1</sup> The notice informed Ontario Eco Energy that it had initiated
  - 15 telemarketing telecommunications to consumers on behalf of a client that was not a registered subscriber of the National Do Not Call List (DNCL) and had not paid the applicable fees to the National DNCL operator, in violation of Part II, section 7<sup>2</sup> of the Commission's Unsolicited Telecommunications Rules (the Rules); and
  - 15 telemarketing telecommunications to consumers on behalf of a client that was not registered with, and had not provided information to, the National DNCL

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<sup>1</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.

<sup>2</sup> Part II, section 7 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

operator, and had not paid all applicable fees charged by the Complaints Investigator delegate, in violation of Part III, section 3<sup>3</sup> of the Rules.

3. The notice of violation set out administrative monetary penalties (AMPs) for 30 violations at \$1,000 per violation, for a total amount of \$30,000.
4. Ontario Eco Energy was given until 23 February 2015 to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.

### **Did Ontario Eco Energy commit the violations?**

5. Ontario Eco Energy neither paid the AMPs nor made representations in accordance with the notice of violation. Accordingly, pursuant to subsection 72.08(3)<sup>4</sup> of the Act, Ontario Eco Energy is deemed to have committed the violations outlined in the notice of violation dated 23 January 2015.

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

6. 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.
7. The Commission considers that unsolicited telemarketing telecommunications made on behalf of clients that are not registered with the National DNCL operator and subscribed to the National DNCL are serious violations that cause significant inconvenience and nuisance to consumers. These telecommunications, by their nature, violate the expectation of consumers expressed through registration of their numbers on the National DNCL not to receive them. In this case, Ontario Eco Energy initiated telemarketing telecommunications on behalf of clients that were neither registered nor subscribed to the National DNCL.
8. Regarding the number and frequency of complaints and violations, initiating a single telemarketing telecommunication may result in multiple violations of the Rules, as in the case of Ontario Eco Energy.
9. Regarding the relative disincentive of the measure, the Commission must ensure that the AMPs it imposes are 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.

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<sup>3</sup> Part III, section 3 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and all applicable fees charged by the Complaints Investigator delegate associated with that client have been paid.

<sup>4</sup> Subsection 72.08(3) of the Act states that a person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Commission may impose the penalty.

10. In light of the above, total AMPs of \$30,000 are reasonable and necessary to promote compliance with the Rules by Ontario Eco Energy.

## **Conclusions**

11. In the circumstances of this case, a penalty of \$1,000 for each of the 15 violations of Part II, section 7 of the Rules and for each of the 15 violations of Part III, section 3 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$30,000 on Ontario Eco Energy.

12. The Commission hereby notifies Ontario Eco Energy of its 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 must be made within 90 days of the date of this decision, and the Commission will place all related documentation on its website.<sup>5</sup> 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 Court grants in exceptional circumstances.

13. The Commission reminds Ontario Eco Energy that, should it continue to initiate telemarketing telecommunications, it is required to comply with the Rules. Examples of measures that Ontario Eco Energy should adopt to ensure compliance with the Rules include the following:

- verifying that any client on behalf of which it initiates telemarketing telecommunications is registered with the National DNCL operator;
- verifying that any client on behalf of which it initiates telemarketing telecommunications is subscribed to the National DNCL;
- downloading 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 (a) prevent the initiation of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (b) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.

14. The Commission advises Ontario Eco Energy that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.

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<sup>5</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 must be made.

15. The amount of \$30,000 is due by **5 June 2015** 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 **5 June 2015**, 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.
16. 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.

Secretary General

### **Related documents**

- *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