



Telecom Decision CRTC 2017-115 and Telecom Order CRTC 2017-116

PDF version

Reference: Telecom Notice of Consultation 2016-431

Ottawa, 27 April 2017

File number: 1011-NOC2016-0431

VOIS Inc. – Non-compliance with the requirement to participate in the Commissioner for Complaints for Telecommunications Services Inc. and violation under section 72.001 of the *Telecommunications Act*

The Commission imposes an administrative monetary penalty of \$15,000 on VOIS Inc. (VOIS) for the violation of section 72.001 of the Telecommunications Act. Specifically, the penalty is imposed as a result of VOIS' contravention of the Commission-imposed obligation that it be a participant in the Commissioner for Complaints for Telecommunications Services Inc. (CCTS).

*In addition, the Commission issues a Mandatory Order requiring VOIS to take the necessary steps to restore its participation in the CCTS within **30 days** of the order.*

The CCTS provides a valuable service to Canadians, helping consumers resolve disputes with their telecommunications service providers. Given the important role played by the CCTS, the Commission takes violations of the CCTS participation requirement very seriously.

Show cause proceeding

1. In [Telecom Notice of Consultation 2016-431](#) (the Notice), the Commission initiated a proceeding calling for VOIS Inc. (VOIS)¹ to show cause
 - why the Commission should not find that VOIS has committed a violation, under section 72.001 of the *Telecommunications Act* (the Act), by contravening the condition, imposed under section 24.1 of the Act, that all persons who were participants in the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) as of 17 March 2016 and that continue to offer services within the scope of the CCTS's mandate be participants in the CCTS, from 5 August 2016 to the date of the Notice; and

¹ VOIS is a Calgary-based telecommunications service provider that provides telephone, Internet, and subscription television services, among other offerings, to residential and business customers.

- if VOIS is found to have committed a violation, why
 - an administrative monetary penalty (AMP) in the amount of \$15,000 should not be imposed against it; and
 - a Mandatory Order requiring it to take the necessary steps to restore its participation in the CCTS within 30 days of the order should not be issued against it.
- 2. The Notice also required, under subsection 37(2) of the Act, that VOIS and its director, Mr. Harpreet Randhawa, provide information about the number of subscribers to VOIS' services and the Directors and Officers of VOIS.
- 3. In addition, the Notice stated that the Commission would consider whether Mr. Randhawa should be found personally liable, under section 72.008 of the Act, for any violation that VOIS was found to have committed.
- 4. This proceeding was initiated in response to the CCTS terminating VOIS' participation in the CCTS on 5 August 2016 for default of its obligations under the CCTS Participation Agreement.
- 5. The CCTS provided the Commission with evidence related to the termination of VOIS' participation prior to the publication of the Notice. That evidence, among other things, (i) detailed the chronology of events leading to the termination of the CCTS Participation Agreement between the CCTS and VOIS, and (ii) indicated the efforts taken by the CCTS to enforce the CCTS Participation Agreement.² The evidence was summarized in Appendix 1 to the Notice and incorporated into the record of the proceeding.

Interventions

6. Despite steps being taken in order to ensure that VOIS and Mr. Randhawa were aware of the Notice, including the delivery of physical and electronic copies, neither VOIS nor Mr. Randhawa filed interventions to the Notice, nor did they submit the information required under subsection 37(2) of the Act.
7. The CCTS filed an intervention indicating that it wished to be a party to the proceeding, though it did not file any additional evidence.
8. The Public Interest Advocacy Centre (PIAC) filed an intervention arguing generally that VOIS had contravened the section 24.1 condition requiring telecommunications service providers (TSPs) to participate in the CCTS and as a result had committed a violation of the Act.

² As set out in Broadcasting and Telecom Regulatory Policy 2016-102 (the CCTS policy), the Commission expects that, before a participant is expelled, the CCTS will have taken steps to bring the company into compliance with its obligations to the CCTS.

Issues to be addressed

9. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:

- Did VOIS commit a violation of the Act?
- Should the Commission impose an AMP of \$15,000 against VOIS?
- Should the Commission issue a Mandatory Order against VOIS requiring it to take the necessary steps to restore its participation in the CCTS?
- Should Mr. Randhawa be found personally liable for VOIS' violation?
- How should the Commission respond to the failure of both VOIS and Mr. Randhawa to provide specific information as required?

Did VOIS commit a violation of the Act?

10. Section 72.001 of the Act provides, among other things, that every contravention of the Act (other than a contravention of sections 17 or 69.2) constitutes a violation.

11. In Broadcasting and Telecom Regulatory Policy 2016-102 (the CCTS policy), the Commission imposed the CCTS participation requirement³ under section 24.1 of the Act, as a condition of offering or providing telecommunications services, on every person who was a participant in the CCTS as of 17 March 2016. The specific requirement is that such persons remain participants in the CCTS for as long as they continue to offer services within the CCTS's mandate.

12. In addition, the Commission made it clear that the CCTS can revoke a TSP's participation if it deems such a measure necessary and that termination of a TSP's participation can put that TSP in contravention of the CCTS participation requirement.

13. The Notice stated that it appeared that VOIS was in contravention of the CCTS participation requirement between 5 August and 1 November 2016, the date of the issuance of the Notice and, accordingly, that it had committed a violation of the Act.

Commission's analysis and determinations

14. As VOIS failed to respond in the show cause proceeding, there is nothing on the record of the proceeding that would call the evidence provided by the CCTS into question.

³ In order to ensure that Canadian consumers have recourse when they are unable to resolve complaints with their TSP, the Commission has required, as of 2011, that all TSPs that provide service with the scope of the CCTS's mandate be participants in the CCTS (the CCTS participation requirement). The Commission subsequently modified the CCTS participation requirement in the CCTS policy in light of amendments to the Act introduced in 2014.

15. The evidence on the record of the proceeding demonstrates that VOIS became a participant in the CCTS on 27 September 2011. There was no evidence before the Commission that VOIS ceased to be a participant prior to 17 March 2016, or at any point prior to its expulsion by the CCTS on 5 August 2016.
16. In addition, there is no indication that VOIS has ceased offering services within the scope of the CCTS's mandate since its expulsion, or that VOIS' participation in the CCTS was restored at any point since its expulsion.
17. Accordingly, the CCTS participation requirement is applicable to VOIS.
18. Given that VOIS is required to be a participant in the CCTS, that its participation in the CCTS was terminated by the CCTS on 5 August 2016, and that there is no evidence that its participation was restored at any point prior to the issuance of the Notice on 1 November 2016, the Commission determines that VOIS contravened the CCTS participation requirement from 5 August to 1 November 2016.
19. Accordingly, the Commission finds that VOIS has committed a violation of section 72.001 of the Act by virtue of being in contravention of the CCTS participation requirement imposed under section 24.1 of the Act between 5 August and 1 November 2016.
20. This determination does not affect the Commission's future ability to inquire into whether VOIS has been in contravention of the CCTS participation requirement, and thereby committed a violation, in respect of any other period of time.

Should the Commission impose an AMP of \$15,000 against VOIS?

21. In the Notice, the Commission's preliminary view was that if VOIS was found in violation of the Act, then an AMP should be imposed against it.
22. The purpose of a penalty is to promote compliance with the Act and with decisions and regulations made by the Commission and not to punish. 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 the person obtained from the commission of the violation;
 - the person's ability to pay;
 - factors established by any regulations (currently there are none); and
 - any other relevant factor.
23. PIAC submitted that the Commission's considerations of these factors must take into account the impact of any violation on consumers.

24. The Notice set out the Commission's preliminary analysis of the factors, based on the evidence put on the record when the Commission initiated the proceeding, which concluded that an AMP of \$15,000⁴ would be appropriate.

Commission's analysis and determinations

25. The full record of the proceeding has not called any of the Commission's preliminary views concerning the appropriateness or quantum of an AMP into question.

26. With respect to the nature of the violation, VOIS' expulsion from the CCTS, due to its repeated and long-standing failure to participate in the complaint resolution process and provide required remedies to complainants, is a serious matter. The requirement to be a participant in the CCTS reflects the importance of the CCTS and its value to consumers.

27. With respect to the scope of the violation, in the Notice the Commission required VOIS and Mr. Randhawa to provide information respecting the number of VOIS' subscribers who no longer have access to the CCTS as a result of the expulsion, so that this could be taken into account in determining the amount of the AMP. However, neither party provided the required information. The issue of how the Commission should respond to the failure of both VOIS and Mr. Randhawa to provide information as required is addressed later in this decision.

28. While it remains unclear precisely how many subscribers VOIS has, the violation in question covers a continuous period of approximately three months for which these customers would not have had access to the CCTS. The AMP proposed in the Notice, based on the information available to the Commission, would appropriately reflect the effect on customers over such a period.

29. With respect to the history of compliance, there remains no evidence of previous non-compliance on VOIS' part.

30. With respect to the benefit obtained from the violation in question, the Notice indicated that VOIS did not appear to have received any direct benefit as a result of the apparent violation, and nothing has since affected this consideration.⁵

31. With respect to VOIS' ability to pay, the Commission has taken into account VOIS' 2015 telecommunications revenues, as filed by VOIS in March 2016 on a confidential basis, in its assessment of this factor. Accordingly, the Commission considers that VOIS has the ability to pay the proposed AMP.

⁴ The maximum penalties under the general AMPs regime, as set out in section 72.001 of the Act, are (i) \$25,000 for a first violation or \$50,000 for any subsequent violation, in the case of an individual; and (ii) \$10 million for a first violation or \$15 million for any subsequent violation, in any other case, including a corporation such as VOIS.

⁵ As indicated in the Notice, under the terms of the CCTS Participation Agreement, VOIS is still liable to respect the binding recommendations and decisions of the CCTS that were made while VOIS was a participant of the CCTS.

32. As discussed in the Notice, no factors have been established by regulation at this time.
33. VOIS' failure to co-operate (i) with the CCTS's binding complaint resolution process over more than two years, and (ii) with Commission staff in providing information relevant to this case, requested in a letter dated 31 August 2016, are also relevant in the circumstances, and further indicate the appropriateness of the proposed AMP.
34. Finally, general deterrence is also a relevant regulatory consideration in the circumstances. Imposing the proposed AMP on VOIS would help to ensure that VOIS' contravention of the CCTS participation requirement does not negatively impact the CCTS's perceived effectiveness in helping consumers resolve complaints and to promote compliance with the CCTS participation requirement more generally.
35. Accordingly, in the circumstances of this case, a penalty in the proposed amount of \$15,000 for the violation of section 72.001 of the Act, as a result of VOIS' contravention of the CCTS participation requirement imposed under section 24.1 of the Act, is appropriate and consistent with the purpose of a penalty under the Act. The Commission therefore imposes an AMP of \$15,000 on VOIS.
36. If VOIS were to commit any subsequent violations in the future, the present violation would be relevant in the Commission's consideration of whether AMPs were appropriate in those subsequent cases, and in what amounts.

Should the Commission issue a Mandatory Order against VOIS requiring it to take the necessary steps to restore its participation in the CCTS?

37. In the Notice, the Commission expressed the preliminary view that, if VOIS were to be found in violation, then a Mandatory Order should be issued against it requiring that VOIS restore its participation in the CCTS within 30 days of the order.
38. PIAC argued that any Mandatory Order should explicitly require that VOIS comply with past binding determinations of the CCTS.

Commission's analysis and determinations

39. Because VOIS did not respond in the show cause proceeding, there is nothing on the record that would suggest that the Commission's preliminary views should not be confirmed.
40. VOIS has demonstrated a cavalier attitude towards its compliance with the CCTS participation requirement and with the Act such that a Mandatory Order would be an appropriate means of ensuring that this crucial condition of service is respected.
41. The CCTS is in the best position to determine the specific steps required by VOIS to rescind the termination of its participation. The Commission also notes that, under the current terms of the CCTS Participation Agreement, even TSPs who are no longer participants in the CCTS remain contractually liable to respect the binding determinations of the CCTS that were made while those TSPs were participants.

42. Accordingly, the Commission hereby issues a Mandatory Order against VOIS, directing it to restore its participation in the CCTS within **30 days** of the order. The Mandatory Order is attached as an Appendix to this decision. Pursuant to section 63 of the Act, the Commission intends to register this order with the Federal Court.

Should Mr. Randhawa be found personally liable for VOIS' violation?

43. Section 72.008 of the Act provides that an officer, director, agent, or mandatary of a corporation that commits a violation is liable for the violation if they directed, authorized, assented to, acquiesced in, or participated in the commission of the violation.

44. In the Notice, the Commission indicated that if VOIS was found to have committed a violation, the Commission would consider whether there was sufficient evidence to find Mr. Randhawa, a Director of VOIS, jointly liable for such a violation. To this end, the Commission required both VOIS and Mr. Randhawa to provide information regarding the Directors and Officers of VOIS as set out in the Notice.

45. Neither VOIS nor Mr. Randhawa provided the required information.

Commission's analysis and determinations

46. The Commission is of the view that the evidence on the record of the proceeding is insufficient to come to a reasonable conclusion as to whether Mr. Randhawa should be held personally liable for VOIS' violation.

47. In order to ensure that the failure of VOIS and Mr. Randhawa to provide the required information does not unduly impede the Commission's administration of the Act, the Commission is today initiating further process on this matter, as described below.

How should the Commission respond to the failure of both VOIS and Mr. Randhawa to provide specific information as required?

48. Under subsection 37(2) of the Act, 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 the Act, the Commission may require that person to submit the information to the Commission in such form and manner as the Commission specifies.

49. As set out in the Notice, in order to assess the scope of the apparent violation resulting from VOIS' termination, the Commission required that VOIS and Mr. Randhawa submit information concerning the number of subscribers to VOIS' services within the scope of the CCTS's mandate, who as a result of the expulsion no longer had access to the CCTS. In addition, the Commission required information related to the directors and officers of VOIS and their responsibilities within the company in order to consider whether Mr. Randhawa should be considered personally liable for a violation of the Act.

50. As noted above, VOIS and Mr. Randhawa failed to provide the information as required.

Commission's analysis and determinations

51. The Commission's ability to administer the Act as required by Parliament is dependent, in part, on the provision of information by all service providers or other legal persons when required. Thus, the failure of both VOIS and Mr. Randhawa to provide the required information is a serious matter, warranting further Commission process, particularly given that the Notice warned that failure to provide this information may result in violations of the Act.
52. Accordingly, the Commission has today, with the issuance of Telecom Notice of Consultation 2017-117, initiated a follow-up proceeding calling on VOIS and Mr. Randhawa to show cause why, in failing to provide information to the Commission as required under subsection 37(2) of the Act and as set out in the Notice, they should not each be found to have committed a violation under section 72.001 of the Act, and, if so, why the Commission should not impose an AMP on each of VOIS and Mr. Randhawa.

Conclusion

53. The Commission hereby notifies VOIS 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. 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.
54. The amount of \$15,000 is due by **29 May 2017** and must be paid by VOIS to "The Receiver General for Canada" in accordance with subsection 72.09(3) of the Act. For any amount owing that is not paid by **29 May 2017**, interest calculated and compounded monthly at the average bank rate plus 3% 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.
55. 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

- *Failure of VOIS Inc. and Mr. Harpreet Randhawa to provide information to the Commission as required*, Telecom Notice of Consultation CRTC 2017-117, 27 April 2017

- *Termination of participation in the Commissioner for Complaints for Telecommunications Services Inc. of VOIS Inc.*, Telecom Notice of Consultation CRTC 2016-431, 1 November 2016
- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016

Appendix to Telecom Decision CRTC 2017-115

Telecom Order CRTC 2017-116

VOIS Inc. (VOIS) is hereby ordered, pursuant to section 51 of the *Telecommunications Act* (the Act), within **30 days** of this order

- to comply with the requirement set out at paragraph 45 of *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016, and made pursuant to section 24.1 of the Act, that as a condition of offering or providing telecommunications services, VOIS be a participant in the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) for as long as it continues to offer services within the scope of the CCTS's mandate; and
- to file proof with the Commission that it has done so.

Secretary General