



Telecom Decision CRTC 2021-2

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Reference: 2020-89

Ottawa, 11 January 2020

Public record: 1011-NOC2020-0089

Telecommunications service providers that have failed to become participants in the Commission for Complaints for Telecom-television Services Inc.

The Commission finds that Rafiki Technologies Inc. committed a violation of the Telecommunications Act by failing to become a participant in the Commission for Complaints for Telecom-television Services Inc. (CCTS). However, since the company has now become a participant in the CCTS, the Commission will not take further compliance and enforcement action against it in relation to the violation.

The Commission also finds that since SkyNet Data Networks Inc. / SkyNet Wireless Networks Inc. / SkyNet Canada Inc. were officially dissolved before the date of the complaint filed with the CCTS, no further compliance and enforcement action against them is required.

Background

1. The Commission for Complaints for Telecom-television Services Inc. (CCTS)¹ is an independent body that assists Canadians who have been unable to resolve disputes regarding forborne telecommunications services with their telecommunications service providers (TSPs). The CCTS is an integral component of a deregulated telecommunications market, and it provides a valuable service to Canadian consumers.
2. To ensure that Canadian consumers have recourse when they are unable to resolve complaints with their TSPs, the Commission has required since 2011 that all TSPs that provide services within the scope of the CCTS's [mandate](#) be participants in the CCTS (the CCTS participation requirement).
3. The CCTS participation requirement was established pursuant to sections 24 (regarding carriers) and 24.1 (regarding non-carriers) of the *Telecommunications Act* (the Act) as a condition of offering or providing telecommunication services. The CCTS participation requirement is triggered 30 calendar days after the date on which the CCTS informs the person that the CCTS has received a complaint related to

¹ Formerly the Commissioner for Complaints for Telecommunications Services Inc.

telecommunications services that the person provides and that falls within the scope of the CCTS's mandate (in-scope complaint).

4. To become a participant in the CCTS, a TSP signs the CCTS Participation Agreement, a contract in which the participant agrees to, among other things, abide by the Participation Agreement and the CCTS's By-laws, be bound by and observe the CCTS's Procedural Code, submit to and honour remedies levied by the CCTS, and co-operate in good faith with any investigation conducted by the CCTS.
5. The Commission takes seriously any non-compliance with the regulatory obligations it imposes on TSPs and uses the measures at its disposal that are most appropriate in the circumstances to promote compliance.

Administrative monetary penalties regime

6. Since 2014, the Act has included a general administrative monetary penalties (AMPs) regime,² under which the Commission is empowered to impose AMPs on persons who contravene the Act or regulations or decisions made by the Commission under the Act. The purpose of a penalty imposed under this regime is to promote compliance with the Act, regulations, and Commission decisions.
7. The Commission has set out its general approach under the general AMPs regime in Compliance and Enforcement and Telecom Information Bulletin 2015-111.

Show cause proceeding

8. Between March 2017 and August 2018, the CCTS referred to the Commission the names of various TSPs (all of which are non-carrier resellers of telecommunications services) that had failed to become participants in the CCTS after being notified of an in-scope complaint.
9. In Telecom Notice of Consultation 2020-89, the Commission launched a show cause proceeding because the following TSPs had still not become CCTS participants as of the date of the notice: Rafiki Technologies Inc. (Rafiki) and SkyNet Data Networks Inc. (SkyNet Data) / SkyNet Wireless Networks Inc. / SkyNet Canada Inc. (collectively, SkyNet Data et al.).
10. In particular, the Commission called for Rafiki and SkyNet Data et al. to each show cause why the Commission should not find that they committed a violation under section 72.001 of the Act³ during the relevant time period by contravening the CCTS participation requirement. The Commission also required the TSPs' respective Directors to each show cause why they should not be liable for any violation found to have been committed by the company/companies that they direct.

² See sections 72.001 to 72.0093 of the Act.

³ This provision states that any contravention of the Act, or a Commission regulation or decision made thereunder (with some exceptions) constitutes a violation and may result in liability to pay an AMP.

11. The Commission further directed Rafiki and SkyNet Data et al. to each show cause why, if they are found to have committed a violation of the Act related to the CCTS participation requirement, the Commission should not impose an AMP against them in the amount of \$50,000. The Commission also required the Director of each of the TSPs to show cause why, if they are found liable for a violation of the Act related to the CCTS participation requirement in respect of the company/companies that they direct, the Commission should not impose an AMP against them in the amount of \$15,000.
12. The Commission also addressed an additional potential enforcement measure in the form of a Mandatory Order. The Commission directed Rafiki and SkyNet Data et al. to each show cause why, if they are found to have committed a violation, the Commission should not impose a Mandatory Order requiring them to take all steps necessary to participate in the CCTS within 60 days of the date of the Order. The Commission also required the Director of each of the TSPs to show cause why, if they are found liable for any violations committed by the company/companies that they direct, they should not be named in the Mandatory Orders, which would hold them further accountable for ensuring that the company takes the necessary steps to participate in the CCTS.
13. The Commission did not receive any interventions regarding the notice.

Issues

14. The Commission has identified the following issues to be addressed in this decision:
 - Did Rafiki commit a violation of the Act?
 - If so, should the Commission (i) impose AMPs of \$50,000 and issue a Mandatory Order against Rafiki, and (ii) find Rafiki's Director personally liable for the violations, impose AMPs of \$15,000 against them, and name them in the Mandatory Order?
 - Did SkyNet Data et al. commit a violation of the Act?
 - If so, should the Commission (i) impose AMPs of \$50,000 and issue a Mandatory Order against SkyNet Data et al., and (ii) find SkyNet Data et al.'s Director personally liable for the violations, impose AMPs of \$15,000 against them, and name them in the Mandatory Order?

Did Rafiki commit a violation of the Act?

Commission's analysis and determinations

15. The CCTS informed the Commission on 3 October 2018 that Rafiki was in non-compliance with the participation requirement. The CCTS later informed the Commission that Rafiki had become a participant as of 14 August 2020, bringing itself into compliance.

16. Commission staff contacted Rafiki to provide the company with information on its obligation to participate in the CCTS if it planned to continue providing telecommunications services, as well as explanations of the process for becoming a participant in the CCTS, and of the show cause proceeding.
17. The Commission finds that, between 3 October 2018 and 13 August 2020, Rafiki (i) appeared to continue providing telecommunications services that were within the scope of the CCTS's mandate, and received one or more complaints that triggered the CCTS participation requirement; and (ii) appeared to be in contravention of the CCTS participation requirement by failing to become a participant after being notified that the CCTS had received an in-scope complaint.
18. Rafiki did not provide any evidence to show cause that it should not be found in contravention of the CCTS participation requirement for the time period of 3 October 2018 to 13 August 2020.
19. In light of the above, the Commission finds that Rafiki committed a violation of section 72.001 of the Act by failing to comply with the CCTS participation requirement between 3 October 2018 and 13 August 2020.

Should the Commission (i) impose AMPs of \$50,000 and issue a Mandatory Order against Rafiki, and (ii) find Rafiki's Director personally liable for the violations, impose an AMP of \$15,000 against them, and name them in the Mandatory Order?

Commission's analysis and determinations

20. Although Rafiki was in contravention of the CCTS participation requirement, it is now a participant in the CCTS. Accordingly, it is unnecessary for the Commission to issue a Mandatory Order requiring Rafiki or its Director to take the necessary steps for the company to become a participant in the CCTS.
21. Pursuant to subsection 72.002(2) of the Act, the purpose of an AMP is to promote compliance and not to punish. The Commission is of the view that the compliance objective has been achieved in this case, and that the imposition of AMPs would involve additional administrative effort with minimal incremental benefit to promoting compliance.
22. Since the Commission commenced show cause proceedings to enforce the CCTS participation requirement, there has been improved compliance with the CCTS participation requirement and the number of referrals from the CCTS has decreased. The Commission considers that general compliance in the industry has also been achieved.
23. In light of the above, the Commission determines that it will not take any further enforcement action against Rafiki or its Director, including the imposition of AMPs.

24. The compliance and enforcement process, which included education and the show cause proceeding, should serve to prevent any future non-compliance by Rafiki.
25. However, in the event of future non-compliance, the Commission may take past violations into account and may impose larger AMPs than the ones proposed in this show cause proceeding. The Commission's AMP guidelines set out in Compliance and Enforcement and Telecom Information Bulletin 2015-111 specifically indicate that "[m]ore strict responses may be appropriate, depending on the context, to bring a person into compliance, deter future non-compliance, and prevent harm."

Did SkyNet Data et al. commit a violation of the Act?

Commission's analysis and determinations

26. The referral from the CCTS to the Commission referred specifically to SkyNet Data. Corporate record searches revealed two other companies, SkyNet Wireless Networks Inc. and SkyNet Canada Inc., both with an owner whose last name matched the name of a senior contact at SkyNet Data Networks Inc. Further corporate record searches revealed that all three companies had been dissolved.
27. At the time that the complaint against SkyNet Data was filed with the CCTS in May 2018, none of the three SkyNet Data et al. companies were in operation. Since none of them had been providing services within the scope of the CCTS's mandate at the time the complaint was filed, the CCTS participation requirement with respect to SkyNet Data et al. was not triggered. Accordingly, the Commission finds that SkyNet Data et al. did not commit a violation of the Act by contravening the participation requirement.

Should the Commission (i) impose AMPs of \$50,000 and issue a Mandatory Order against SkyNet Data et al., and (ii) find SkyNet Data et al.'s Director personally liable for the violations, impose AMPs of \$15,000 against them, and name them in the Mandatory Order?

Commission's analysis and determinations

28. In light of the Commission's finding that SkyNet Data et al. did not commit a violation of the Act, no further compliance and enforcement action is required against SkyNet Data et al.

Policy Directions

29. The 2006 Policy Direction⁴ and the 2019 Policy Direction⁵ (collectively, the Policy Directions) state that the Commission, in exercising its powers and performing its

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, SOR/2006-355, 14 December 2006

duties under the Act, shall implement the telecommunications policy objectives set out in section 7 of the Act, in accordance with the considerations set out in the Policy Directions, and should specify how its decisions can, as applicable, promote competition, affordability, consumer interests, and innovation.

30. The Commission reviewed the record of this proceeding in light of the Policy Directions and considered their aspects to the extent necessary, using measures that are efficient and proportionate to their purpose. The Commission considers that its determinations in this decision are compliant with the 2019 Policy Direction, since they promote consumer interests by ensuring that TSPs participate in the CCTS to resolve complaints from individual and small business retail customers. This dispute resolution process, which is an integral component of a deregulated telecommunications market, enhances and protects the rights of consumers in their relationships with TSPs.
31. Further, the Commission considers that the requirement that all TSPs participate in the CCTS, and enforcement of that requirement, are consistent with the 2006 Policy Direction. The participation requirement is competitively neutral and symmetrical because it applies to all TSPs that offer in-scope services. Moreover, the Commission reiterates its determination from paragraph 36 of Broadcasting and Telecom Regulatory Policy 2016-102 that market forces are not sufficient to sustain a critical mass of participation in the CCTS for it to operate effectively.
32. Accordingly, in compliance with paragraph 1(b)(i) of the 2006 Policy Direction, this decision advances the telecommunications policy objectives set out in paragraphs 7(a), (b), and (h) of the Act.⁶

Secretary General

Related documents

- *Telecommunications service providers that have failed to become participants in the Commission for Complaints for Telecom-television Services Inc.*, Telecom Notice of Consultation CRTC 2020-89, 6 March 2020; as amended by Telecom Notice of Consultation CRTC 2020-89-1, 17 April 2020

⁵ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁶ The cited objectives of the Act are 7(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions; (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; and (h) to respond to the economic and social requirements of users of telecommunications services.

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Service Inc.*, Broadcasting and Telecom Regulatory Policy CRTC 2016-102, 17 March 2016
- *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