



Telecom Notice of Consultation CRTC 2009-71

Ottawa, 13 February 2009

Call for comments

Review of the regulatory measures associated with confidential customer information and privacy

File number: 8663-C12-200903387

Introduction

1. The Governor in Council's *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006 (the Policy Direction) requires the Commission, among other things, to rely on market forces to the maximum extent feasible and, when relying on regulation, to use measures in a manner that interferes with market forces to the minimum extent necessary to meet the Canadian telecommunications policy objectives (the policy objectives) set out in section 7 of the *Telecommunications Act* (the Act). The Policy Direction also requires the Commission to ensure that non-economic measures are implemented, to the greatest extent possible, in a symmetrical and competitively neutral manner.
2. One of the policy objectives, as set out in paragraph 7(i) of the Act, is to contribute to the protection of the privacy of persons. In various decisions and orders over the years, the Commission has directed telecommunications service providers (TSPs) to implement a number of regulatory measures to safeguard the confidentiality of customer information and protect the privacy of consumers.
3. In Telecom Decision 2008-34, the Commission established an action plan to review existing social and non-economic regulatory measures in light of the Policy Direction. The action plan identified the regulatory measures associated with privacy safeguards and obligations as a matter to be reviewed.

Customer confidentiality provisions

4. Customer confidentiality provisions were first set out in Telecom Decision 86-7 and amended by Telecom Order 86-593 and subsequent decisions. Today, almost all TSPs¹ in forborne and non-forborne markets are prohibited from disclosing confidential customer information, other than the customer's name, address, and listed telephone number, without the express consent of the customer, except in the circumstances outlined in Commission decisions.

¹ Only paging service providers are exempt, since they provide services that are not publicly switched.

5. The acceptable methods of obtaining express consent have also been reviewed over the years, most recently in Telecom Decision 2005-15. They are as follows:
 - written consent;
 - oral confirmation verified by an independent third party;
 - electronic confirmation through the use of a toll-free number;
 - electronic confirmation via the Internet;
 - oral consent, where an audio recording of the consent is retained by the carrier;
or
 - consent through other methods, as long as an objective documented record of customer consent is created by the customer or by an independent third party.
6. In forborne markets, in order to maintain its ability to require conditions governing confidential customer information, the Commission has continued to exercise its powers and perform its duties under section 24 of the Act. In prior decisions, the Commission considered that specific regulatory measures governing confidential customer information were necessary.

Other privacy safeguards and obligations

7. Over the years, the Commission has imposed various other privacy safeguards and obligations on the incumbent local exchange carriers, including the following:
 - provision of automated universal per-call blocking of calling line identification;
 - provision of per-line call display blocking to qualified end-customers;
 - disallowance of call return to a blocked number; and
 - provision of universal call trace.
8. In Telecom Decision 97-8, the Commission concluded that all local exchange carriers must satisfy all existing and future regulatory requirements designed to protect customer privacy. These requirements were subsequently extended to local service resellers and Voice over Internet Protocol service providers.
9. In Telecom Decision 2006-15, as amended by the Governor in Council's *Order Varying Telecom Decision CRTC 2006-15*, P.C. 2007-532, 4 April 2007, the Commission considered that market forces were unlikely to sufficiently protect the privacy interests of customers in a forborne environment and that it was therefore necessary for the Commission to retain its powers under section 24 of the Act to the extent necessary to maintain the existing privacy obligations and to address ongoing privacy issues in a forborne market.

Call for comments

10. The Commission invites parties to comment, in light of the Policy Direction, on the continued appropriateness of the regulatory measures associated with customer confidentiality provisions and with other privacy safeguards and obligations. The Commission notes that in this proceeding, it will examine only those regulatory measures identified by parties.
11. For each regulatory measure, parties should address the following issues in their initial comments, providing supporting rationale and all evidence on which they rely. Parties should structure their submissions according to the issues identified below and, to the extent possible, address each issue in terms of forborne and non-forborne markets.
 - (1) Can the purpose underlying the regulatory measure be achieved through reliance on market forces or is the regulatory measure still necessary?
 - (a) Identify the purpose of the regulatory measure and the policy objectives that are relevant to this purpose.
 - (b) Can market forces be relied on to achieve the policy objectives? Why or why not? Identify the relevant market forces.
 - (c) Identify and weigh the positive and negative consequences of (i) eliminating and (ii) retaining the regulatory measure.
 - (2) Is the regulatory measure efficient and proportionate to its purpose?
 - (a) Identify the benefits and the harmful effects of the regulatory measure. Explain whether the benefits of the regulatory measure outweigh the harmful effects.
 - (b) Identify any alternative regulatory measure that would be more efficient and proportionate. Explain why that measure would be more efficient and proportionate and how it would achieve the policy objectives.
 - (3) Does the regulatory measure interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives? If not, how and to what extent does the current regulatory measure interfere with the operation of competitive market forces, including the associated impacts on service providers and customers?
 - (4) Is the regulatory measure implemented in a symmetrical and competitively neutral manner? If not,
 - (a) identify aspects of the regulatory measure that are not symmetrical and/or competitively neutral;
 - (b) specify the disadvantages faced by service providers impacted by the

regulatory measure and quantify the disadvantages to the extent possible;

- (c) discuss the implications and feasibility of applying the regulatory measure in a symmetrical or competitively neutral manner to all TSPs as appropriate;
- (d) identify any possible alternative regulatory or non-regulatory measure and explain how that measure would achieve the policy objectives and comply with the Policy Direction.

12. The Commission notes that the outcome of this proceeding may result in changes to the customer confidentiality provisions or to the other privacy safeguards and obligations of all TSPs.

Procedure

13. Parties interested in participating in this proceeding (including receiving copies of all submissions) must notify the Commission of their intention to do so by filling out the online form; or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2; or by faxing to: 819-994-0218 by **6 March 2009** (the registration date). Parties are to provide their email address, where available. If parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard-copy filings.
14. The Commission will post on its website, as soon as possible after the registration date, a complete list of interested parties and their mailing addresses (including their email addresses, if available), identifying those parties who wish to receive disk versions.
15. Any party who wishes merely to file written comments in this proceeding, without receiving copies of the various submissions, may do so by writing to the Commission by **16 March 2009** at the address or fax number noted above, or by filling out the online form.
16. All parties may file with the Commission, serving a copy on all other parties, comments with regard to the above-noted issues by **16 March 2009**.
17. All parties may file with the Commission, serving copies on all other parties, reply comments by **30 March 2009**.
18. The Commission expects to issue a decision on the issues raised in this notice within 120 days after the record closes.
19. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.
20. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
21. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.

22. Electronic submissions should be in HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.
23. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
24. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

Important notice

25. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, email address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
26. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
27. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
28. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

Location of CRTC offices

29. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782

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Secretary General

Related documents

- *Action plan for reviewing social and other non-economic regulatory measures in light of Order in Council P.C. 2006-1534*, Telecom Decision CRTC 2008-34, 17 April 2008
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007

- *Part VII application to revise Article 11 of the Terms of Service*, Telecom Decision CRTC 2005-15, 17 March 2005
- *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997
- Telecom Order CRTC 86-593, 22 September 1986
- *Review of the general regulations of the federally regulated terrestrial telecommunications common carriers*, Telecom Decision CRTC 86-7, 26 March 1986

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>