



Compliance and Enforcement Decision CRTC 2015-321

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Route reference: Compliance and Enforcement Notice of Consultation 2015-144

Ottawa, 20 July 2015

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Amendments to the *Unsolicited Telecommunications Fees Regulations*

*The Commission announces that, following a public process, it **approves** the amendments to and makes the Unsolicited Telecommunications Fees Regulations attached to this decision, which include an increase in rates for access to the National Do Not Call List and the correction of inconsistencies between the current English and French versions. These amendments come into force on **1 August 2015**.*

The Regulations will be published in the Canada Gazette, Part II shortly.

Introduction

1. In Compliance and Enforcement Decision 2013-26, the Commission approved and made the *Unsolicited Telecommunications Fees Regulations* (the Regulations) that came into force on 1 April 2013.
2. With the issuance of Compliance and Enforcement Notice of Consultation 2015-144, the Commission invited comments on a number of proposed amendments to the Regulations. The proposed amendments included an increase in rates for access to the National Do Not Call List (DNCL) and corrections of inconsistencies between the current English and French versions of the Regulations. In particular, the Commission proposed a multi-year increase to the rates in the Regulations, to be effective on 1 August 2015, 1 April 2016, and 1 April 2017.
3. The Commission received interventions from Hamel Système d'Information 2000 Inc. (Hamel), the Other Line Ltd. (Other Line), and Shaw Communications Inc. (Shaw). The public record of this proceeding, which closed on 15 May 2015, is available on the Commission's website at www.crtc.gc.ca or by using the file number provided above.

Background

4. In 2007, the *Telecommunications Act* (the Act) was amended to allow for the creation of the National DNCL.¹ Under the Act, the Commission has the authority to delegate the administration and operation of the National DNCL.
5. The Commission exercised its delegation authority under subsection 41.3(1) of the Act to award a contract to Bell Canada (the List Operator) to operate the National DNCL.
6. The existing contract permits the List Operator to charge rates, as approved by the Commission, to recover the List Operator's administration and operating costs through the sale of subscriptions to telemarketers for access to the National DNCL.
7. As a result of further amendments made to the Act in 2012,² the Commission has the authority to (1) make regulations prescribing fees to be paid by any person subscribing to the National DNCL, and (2) delegate the power to collect fees that it has prescribed in such regulations to a delegate.
8. Further to these amendments to the Act, the Commission established a National DNCL cost-recovery regime, effective 1 April 2013, for its investigation and enforcement activities. The Commission delegated to the List Operator the power to collect fees on its behalf. Under this regime, the List Operator is authorized to recover the Commission's investigation and enforcement costs from telemarketers at the same time that it charges them subscription fees to access and download the National DNCL.

Interventions by parties regarding the List Operator

9. In their interventions to this proceeding, Hamel and Other Line indicated that they believed the List Operator could be operating in a more cost-effective manner.

Commission's analysis and determinations

10. In Compliance and Enforcement Notice of Consultation 2015-144, the Commission noted that the List Operator was seeking an increase to its portion of the subscription fees, given its statement that it had experienced a material change in circumstances affecting the operation of the National DNCL. "Material change" is considered a cumulative change of greater than 10% in revenues received. The Commission indicated in that notice that it would be conducting a comprehensive examination through an internal review process of the List Operator's request for an increase in its portions of the subscription fees.

¹ Bill C-37, *An Act to amend the Telecommunications Act*, came into force on 30 June 2007.

² Bill C-38, *An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*, came into force on 28 June 2012.

11. In light of the above, the Commission finds that the interventions made by Hamel and Other Line regarding the List Operator are outside the scope of this proceeding.
12. This being said, the Commission considers that the National DNCL is operating in an efficient manner. The Commission reviewed the information provided by the List Operator and, based on this examination, as well as consideration of the fact that subscription rates have not increased in four years, the Commission is satisfied that the List Operator's proposed rate increase is reasonable in the circumstances. These considerations have led to an approval of the List Operator's rates on today's date. The approval letter can be found on the Commission's website. This letter also contains an Appendix outlining the overall fees increase.

Issues

13. The Commission has identified the following issues to be addressed in this decision:
 - Are the proposed rate increases appropriate for telemarketing businesses?
 - Should access to the National DNCL be free for the first five area codes?

Are the proposed rate increases appropriate for telemarketing businesses?

14. Hamel argued that the Commission should not increase the current subscription rates for purchasing a copy of the National DNCL since the price is already cost-prohibitive for most small businesses.
15. Other Line argued that the proposed rate increases would cause it, as a small business owner, to have to drop area codes to which it is currently subscribed.
16. Shaw suggested that given the increase, utilizing the credit card payment option may no longer be feasible and suggested that the Commission introduce an additional payment option.

Commission's analysis and determinations

17. The current subscription rates have been in effect since 1 September 2010, with the exception of the annual subscription for all area codes, which has been in effect since 1 September 2011. Telemarketers have not incurred a rate increase for a minimum of four years.
18. In fiscal year 2013-2014, the Unsolicited Telecommunications Fees revenues collected amounted to \$3,050,595, or 92% of the revenue target. The Unsolicited Telecommunications Fees revenues collected for fiscal year 2014-2015 amount to \$3,090,450, or 94% of the revenue target. While measures have been put in place to contain the costs related to the Commission's enforcement activities related to the National DNCL, costs for fiscal years after 2014-2015 are expected to be in excess of fees collected under the current approved fee structure.

19. Small businesses continue to have the option to subscribe only to the individual area codes containing the telephone numbers they plan to solicit and for periods as short as one month.
20. Additionally, in the event that the amount collected exceeds the Commission's telemarketing regulatory costs in any given fiscal year, the Regulations include a refund mechanism.
21. With respect to the suggestion by Shaw that subscription payment options be broadened, telemarketers currently have the option to pay for a subscription to the National DNCL using a credit card or by way of an electronic funds transfer, and no other telemarketers have expressed a need for additional payment options.
22. Based on the evidence presented, the Commission considers that the proposed increases in subscription rates are appropriate for telemarketing businesses.

Should access to the National DNCL be free for the first five area codes?

23. Hamel suggested that, as larger organizations are capable of paying for more area codes, access to the National DNCL should be free for the first five area codes, thus making it easier for smaller businesses to operate.

Commission's analysis and determinations

24. As a result of the cost-recovery regime referenced above, effective 1 April 2013, all investigation and enforcement activities are funded through the purchase of subscriptions to the National DNCL. Historically, there has been a fee associated with all forms of subscription packages for the National DNCL.
25. Additionally, providing the first five area codes at no cost to telemarketers would require an increase to the subscription fees for those purchasing more than five area codes in order to subsidize the provision of free area codes and for the Commission to fully fund its investigation and enforcement activities at the level approved by Treasury Board.
26. Accordingly, the Commission **denies** Hamel's request.

Conclusions

27. The Commission considers it appropriate to approve the proposed increases set out in Compliance and Enforcement Notice of Consultation 2015-144 to ensure its investigation and enforcement activities are fully funded at the level approved by Treasury Board.
28. In light of the above, the Commission announces that it has made the Regulations appended to this decision substantially in the form announced in Compliance and Enforcement Notice of Consultation 2015-144, and that they come into force on

1 August 2015. The Regulations will be published in the *Canada Gazette*, Part II shortly.

Secretary General

Related documents

- *Amendments to the Unsolicited Telecommunications Fees Regulations*, Compliance and Enforcement Notice of Consultation CRTC 2015-144, 14 April 2015
- *Unsolicited Telecommunications Fees Regulations*, Compliance and Enforcement Decision CRTC 2013-26, 28 January 2013

**REGULATIONS AMENDING THE UNSOLICITED TELECOMMUNICATIONS
FEES REGULATIONS
AMENDMENTS**

1. Subsection 2(1) of the French version of the *Unsolicited Telecommunications Fees Regulations* is replaced by the following:

Droits

2. (1) Toute personne qui s'abonne à la Liste nationale de numéros de télécommunication exclus verse au Conseil les droits à payer en application des articles 3 et 4.

2. (1) Subsection 3(1) of the Regulations is replaced by the following:

Amount to be paid on subscription

3. (1) On subscribing to the National Do Not Call List, a person must pay to the Commission, or to a person to whom the Commission has delegated the power to collect fees under subsection 41.3(1) of the *Telecommunications Act*, if applicable, the amount set out in column 2 that corresponds to each of the person's subscription types set out in column 1 of

(a) Schedule 1, if the person subscribes during the period beginning on August 1, 2015 and ending on March 31, 2016;

(b) Schedule 2, if the person subscribes during the period beginning on April 1, 2016 and ending on March 31, 2017; and

(c) Schedule 3, if the person subscribes on or after April 1, 2017.

(2) Paragraph 3(2)(b) of the French version of the Regulations is replaced by the following:

b) si les droits à payer sont inférieurs aux sommes que la personne a versées au cours de cet exercice, lui rembourse, conformément au paragraphe 4(3), les sommes versées en trop.

3. (1) Subsection 4(1) of the English version of the Regulations is replaced by the following:

Fees payable — amounts paid do not exceed costs

4. (1) If the total of all amounts paid under subsection 3(1) in a given fiscal year is less than or equal to the Commission's telemarketing regulatory costs for that fiscal year, the fees payable by a person for that fiscal year are equal to the amounts paid by them under that subsection.

(2) The portion of subsection 4(2) of the English version of the Regulations before the formula is replaced by the following:

Fees payable — amounts paid exceed costs

(2) If the total of all amounts paid under subsection 3(1) in a given fiscal year exceeds the Commission's telemarketing regulatory costs for that fiscal year, the fees payable by a person for that fiscal year are equal to the amount determined by the formula

(3) The marginal note to subsection 4(2) of the French version of the Regulations is replaced by “Droits à payer — sommes supérieures aux coûts”.

(4) Subsections 4(3) and (4) of the Regulations are replaced by the following:

Refund

(3) The difference between the amounts paid by a person under subsection 3(1) in a fiscal year and the fees payable by them under subsection 4(2) for that fiscal year is, if it is at least five dollars, to be refunded to the person.

Telemarketing regulatory costs

(4) The telemarketing regulatory costs of the Commission for a given fiscal year are the portion of the costs of the Commission's activities for that fiscal year, as set out in the Commission's Expenditure Plan published in Part III of the *Estimates* of the Government of Canada and, if applicable, the *Supplementary Estimates* of the Government of Canada, that are attributable to the Commission's responsibilities under section 41.2 of the *Telecommunications Act* and that are not recovered under any regulation made under section 68 of that Act.

4. The schedule to the Regulations is replaced by the Schedules 1 to 3 set out in the schedule to these Regulations.

COMING INTO FORCE

5. These Regulations come into force on August 1, 2015.

SOR/2013-7

SCHEDULE

(Section 4)

SCHEDULE 1

(Paragraph 3(1)(a))

AMOUNTS TO BE PAID (AUGUST 1, 2015 TO MARCH 31, 2016)

	Column 1	Column 2
Item	Subscription type	Amount (\$)
1.	Annual	
	(a) all area codes	18,793
	(b) single area code	1,124
2.	6-month	
	(a) all area codes	11,438
	(b) single area code	585
3.	3-month	
	(a) all area codes	6,178
	(b) single area code	299
4.	Monthly	
	(a) all area codes	2,088
	(b) single area code	100

SCHEDULE 2

(Paragraph 3(1)(b))

AMOUNTS TO BE PAID (APRIL 1, 2016 TO MARCH 31, 2017)

	Column 1	Column 2
Item	Subscription type	Amount (\$)
1.	Annual	
	(a) all area codes	20,672
	(b) single area code	1,236
2.	6-month	

	Column 1	Column 2
Item	Subscription type	Amount (\$)
	(a) all area codes	12,582
	(b) single area code	644
3.	3-month	
	(a) all area codes	6,796
	(b) single area code	329
4.	Monthly	
	(a) all area codes	2,297
	(b) single area code	110

SCHEDULE 3

(Paragraph 3(1)(c))

AMOUNTS TO BE PAID (ON OR AFTER APRIL 1, 2017)

	Column 1	Column 2
Item	Subscription type	Amount (\$)
1.	Annual	
	(a) all area codes	21,706
	(b) single area code	1,298
2.	6-month	
	(a) all area codes	13,211
	(b) single area code	676
3.	3-month	

	Column 1	Column 2
Item	Subscription type	Amount (\$)
	(a) all area codes	7,135
	(b) single area code	344
4.	Monthly	
	(a) all area codes	2,412
	(b) single area code	115
