



Telecom Decision CRTC 2007-47

Ottawa, 3 July 2007

CRTC Interconnection Steering Committee Do Not Call List Operations Working Group reports

Reference: 8621-C12-01/00 and 8665-C12-200601626

In this Decision, the Commission renders its determinations on the operation and administration of the National Do Not Call List. These determinations are based on the recommendations included in the consensus and non-consensus reports filed by the CRTC Interconnection Steering Committee Do Not Call List Operations Working Group.

1. In *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, 20 February 2006, as amended by Telecom Public Notice CRTC 2006-4-1, 13 March 2006 (Public Notice 2006-4), the Commission requested that the CRTC Interconnection Steering Committee Do Not Call List (DNCL) Operations Working Group (DOWG) examine a number of operational and administrative issues related to the establishment of the National DNCL.
2. On 26 July 2006, the DOWG submitted its recommendations to the Commission in a consensus report and a non-consensus report. The reports are available on the Commission's website.
3. In this Decision, the Commission will consider the recommendations made by the DOWG related to 1) the management of the National DNCL database and accessing the National DNCL, 2) funding of the National DNCL operations, 3) procedures for the registration and investigation of complaints, and 4) measures to ensure the protection of privacy and personal information.
4. The Commission notes that it will include the determinations made in this Decision when issuing the Request for Proposals (RFP) for procurement of the National DNCL operator. The Commission also notes that the RFP will be issued in accordance with Government of Canada policies and regulations governing RFP's for procurement.
5. The Commission will address the consensus items separately from the non-consensus items.

I. Management of the National DNCL database and accessing the National DNCL

Consensus items

6. The Commission notes that the DOWG recommended that consumers be able to register to the National DNCL by telephone or by Internet. Consumers who wished to register by telephone would call a toll-free number and provide their information through an integrated voice response (IVR) system. The registration would only be accepted if the call was made from the

telecommunications number¹ that was being registered, since that number would be confirmed by matching it to the Automatic Number Identification (ANI) field associated with the telephone call. Consumers who wished to register through the Internet would be allowed to register only three numbers at a time in order to minimize mistakes and mischievous registrations.

7. The DOWG also recommended that as part of the subscriber registration guidelines, telemarketers and their clients (the subscribers) certify, under penalty of law, that they were accessing the National DNCL for the sole purpose of preventing telemarketing calls to registered telecommunications numbers.
8. The Commission agrees generally with the DOWG's recommendations regarding system requirements, consumer registration guidelines and reporting requirements.
9. Regarding the DOWG's recommended certification requirement, the Commission notes that a similar requirement was proposed as a National DNCL rule in the Public Notice 2006-4 proceeding. The Commission issued its determination on this issue in *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007 (Decision 2007-48). The Commission further notes that contraventions of the National DNCL Rules will be subject to administrative monetary penalties as set out in section 72.01 of the *Telecommunications Act* (the Act).
10. The Commission agrees with the DOWG recommendation that subscribers should be prohibited from using the National DNCL information for purposes other than those set forth in the National DNCL Rules established in Decision 2007-48.

Non-consensus items

(a) Download vs. query/response database methodology

11. The Commission notes that a DOWG majority supported a download method to retrieve information from the National DNCL. They considered this method to be simple, proven and inexpensive to implement, and that subscribers already had downloading systems and processes in place. The majority considered that a query/response system in which a telemarketer would query the National DNCL system to determine if a telecommunications number was registered would be more complex and costly to operate, especially if a telemarketer needed to verify large lists of telecommunications numbers.
12. The DOWG minority were proponents of a query/response method. The DOWG minority suggested that it would be a breach of privacy to provide subscribers with a list of all the National DNCL registered telecommunications numbers, including unlisted or wireless numbers. The DOWG minority considered that telemarketers could use such a list for marketing purposes. The DOWG minority considered that a query/response method would address their privacy concerns and would be simple for small telemarketers to use. In their view, unlike the download method, the query/response method would not require a large investment in computer equipment.

¹ Telecommunications numbers include numbers that conform to the North American Numbering Plan regardless of the termination equipment or network facilities associated with the numbers.

13. The Commission considers that all subscribers should have easy access to the National DNCL and that it should be in a format suitable to their operations, regardless of their size or the amount of information they will require. The Commission also considers that proposals for the download and query/response methods, including their associated rate structures, should be included in the RFP process.
14. The Commission notes that the National DNCL will only contain telecommunications numbers and that no names or other personal information will be associated with it. The Commission agrees that subscribers to the list should be prohibited from using the National DNCL information for purposes other than those set forth in the National DNCL Rules established in Decision 2007-48. The Commission considers that the rule governing the use of the National DNCL addresses the privacy concerns raised by the DOWG minority.

(b) Registration infractions

15. The Commission notes that the DOWG majority considered that the registration of a telecommunications number should require the authorization of the number holder and any misuse should be punishable. However, they also considered that a consumer mistakenly registering a wrong number should not be subjected to any penalty. The DOWG minority also opposed any penalty for a consumer wrongfully registering a number.
16. The Commission considers that the registration of a telecommunications number on the National DNCL should require the authorization of the number holder. The Commission notes, however, that the DOWG's recommended registration methods do not readily accommodate a verification process to determine if the person who registers the telecommunications number is the authorized holder of the number. The Commission also notes that consumers would be unaware if their telecommunications number had been registered by someone else.
17. The Commission is of the view that it would be inappropriate to make consumers subject to administrative monetary penalties and considers that this is not the intent of sections 41 and 72.01 of the Act.

(c) The use of live operators to handle National DNCL registrations

18. The Commission notes that while the DOWG majority considered that providing live operators to handle National DNCL registrations would be expensive and would offer little assistance to registrants, the DOWG minority felt that live operators were necessary to assist consumers who would have difficulty navigating through an IVR system.
19. The Commission considers that live operators would incur significant costs as resources would be needed to provide 12-hour service during normal business hours in all of Canada's time zones. The Commission also considers however that some consumers might have difficulty registering with an IVR system if they did not have access to the Internet.
20. In light of the above, the Commission determines that the RFP that will be issued to choose a National DNCL operator should also include proposals for live operators to assist consumers who might have difficulties with telephone registration using an IVR system or if they do not have access to the Internet.

(d) Do not call list versus do call list

21. The Commission notes that the DOWG majority considered that a do not call list balanced the rights of consumers with the rights of telemarketers to freely communicate with the public.
22. The Commission further notes that a first minority suggested that telemarketing should be prohibited altogether unless a consumer was registered on a do call list. A second minority considered that legislative authority did not exist to create a do call list, and a third minority suggested that, except for unlisted and wireless numbers, all listed telecommunications numbers would be put in a do call state until the holders of those numbers registered not to be called. They also suggested that unlisted and wireless numbers be put in a do not call state until the number holders registered to be called.
23. The Commission notes that section 41.1 of the Act authorizes the Commission to create a National DNCL. The Commission determines that consumers must actively register on the National DNCL and that the National DNCL will not be pre-populated with listed telecommunications numbers.

II. Funding of the National DNCL operations

Consensus items

24. The Commission agrees with the DOWG's recommendations regarding the amortization of infrastructure start-up costs, sharing access, and an option for bidders to propose rate plans.
25. Regarding operating costs, the Commission notes that the DOWG agreed that at least part of the ongoing operating costs that will be incurred by the National DNCL operator should be recovered through fees paid by the National DNCL subscribers.
26. The Commission concludes that the National DNCL should be self-funding and the operating costs that will be incurred by the National DNCL operator should be borne by the subscribers.

Non-consensus items

(a) Infrastructure, Commission administration and start-up costs

27. The Commission notes that the DOWG majority considered that the infrastructure, Commission administration, and start-up costs should be funded by the government in order to maintain the affordability of the National DNCL. The majority considered that without financial certainty, the National DNCL could fail and cause some organizations to abandon the practice of telemarketing altogether.
28. The first and second minorities considered that there should not be any government financial involvement. The first minority suggested that the National DNCL start-up costs should be borne by the telemarketing industry and that consumers should not be responsible for the costs associated with it, either directly or indirectly, through taxation.

29. In Public Notice 2006-4, the Commission stated that it will use its normal budgetary and cost recovery process to fund its statutory responsibilities associated with the National DNCL, including Commission administration and start-up costs.
30. The Commission concludes that the infrastructure costs that will be incurred by the National DNCL operator should be recovered through rates charged to the subscribers.

(b) Ongoing costs

31. The majority considered that the government must participate financially in the ongoing operations of the National DNCL since the amount of revenue that will be generated by subscriber rates and the number of subscribers that will access it were unknown. The majority also considered that the government should subsidize the National DNCL if its access rates became unreasonable.
32. The minority considered that it was up to the telemarketing industry to ensure the success of the National DNCL if it wished to continue its telemarketing operations.
33. As mentioned above, subsection 41.4(1) of the Act states that a delegate, such as the party who is responsible for operating the National DNCL, may charge rates for exercising its delegated powers. The Commission considers that telemarketers and clients of telemarketers who subscribe to the National DNCL should bear the related ongoing costs to operate it.

III. Procedures for the registration and investigation of complaints

Consensus items

34. The DOWG recommended that in order to preserve confidence in the information provided and facilitate any investigation, complaints be filed no more than 14 days from the day an alleged improper live telemarketing telecommunication was received, and in the case of an alleged improper telemarketing telecommunication via voicemail broadcast, no more than 30 days from the day the call was received.
35. While recommending a single point of contact where consumers could register complaints, the DOWG also recommended that the National DNCL operator only collect, record and assess whether there has been a *prima facie* violation of the National DNCL rules and forward complaints related to Telemarketing Rules directly to the Commission for investigation.
36. The Commission agrees with the DOWG's recommendations regarding the processing of National DNCL complaints by the National DNCL operator and that there be time periods within which to file complaints. The Commission does not agree, however, with the 30-day time period for alleged improper telemarketing telecommunications via voicemail broadcast.
37. The Commission considers that a single point of contact would be more cost-effective and efficient to collect and record National DNCL and telemarketing complaints. The Commission agrees with the recommendation that the National DNCL operator should assess whether there

has been a *prima facie* violation of the National DNCL rules. However, the Commission does not agree that complaints related to Telemarketing Rules should be forwarded directly to the Commission. The Commission determines that the National DNCL operator should also assess whether there has been a *prima facie* violation of the Telemarketing Rules.

38. Regarding the proposed time periods within which to file a complaint, the Commission determines that consumers should be given 14 days from the date of the alleged improper conduct to file a complaint, regardless of whether the complaint is related to a fax, live voice, voicemail broadcast or any other telemarketing telecommunication.
39. Regarding the registration and investigation of complaints, the Commission considers that the National DNCL operator should collect complaints related to both the National DNCL Rules and the Telemarketing Rules and to assess whether there has been a *prima facie* violation. The Commission also considers that consumers may register complaints that are related to both sets of rules and, therefore, that it would be appropriate for the National DNCL operator to initially assess complaints related to those rules at the same time. The Commission further considers that, as complaints might be registered against a telemarketer for both sets of rules, it would be more efficient for those complaints to be stored in one database.
40. The Commission concludes that complaints assessed to be a *prima facie* violation of the rules, as well as complaints that the National DNCL operator is unable to assess because of their complexity, will be forwarded to the Commission for investigation.

Non-consensus items

(a) The methods to be used by the National DNCL operator to receive complaints

41. The Commission notes that, while the DOWG majority recommended that the National DNCL operator should receive complaints through a toll-free IVR system and the Internet, the minority considered that live operators were required to assist consumers having difficulties navigating an IVR system and to provide consumers with the option to speak to someone.
42. The Commission considers that enabling consumers to discuss their complaints with a live operator would reduce the inconvenience and annoyance experienced by consumers. The Commission also considers that the number of investigations would likely be minimized if live operators were able to assess whether there has been a *prima facie* violation when the complaint is filed. The Commission therefore determines that live operators are required for complaint registration and processing, in addition to a toll-free number with an IVR system and the Internet.

(b) Confirmation numbers for complaints

43. The Commission notes that the DOWG majority considered that confirmation numbers providing proof that a complaint had been filed would be costly and of little value. The majority proposed instead that complainants' telecommunications numbers could be used to track complaints.

44. The Commission further notes that a first DOWG minority recommended that assigning confirmation numbers to each complaint would not be expensive and would be useful to follow-up complaints.
45. A second minority recommended that a resolution be sought within the RFP.
46. The Commission considers that the creation and provision of registration numbers could increase the costs of processing complaints. The Commission also considers that a complainant's telecommunications number could be used as a reference point instead since it is directly tied to the complaint and the consumer making the complaint. The Commission determines that the RFP should include requirements for associating telecommunications numbers with complaints.

IV. Measures to ensure the protection of privacy and personal information

Consensus items

47. The Commission agrees with the DOWG's consensus report recommendations regarding retention of registration information, retention of complaint information, retention of complaint timeline, destruction of National DNCL records, information security and Commission access to the National DNCL.

Non-consensus item

48. The DOWG majority suggested that there was no security or privacy risk if a subscriber downloaded all or part of the National DNCL. However, the DOWG minority stated that downloading the National DNCL list would give subscribers access to confidential telecommunications numbers.
49. The Commission determines that the RFP should include proposals that will ensure that security and privacy risks are reduced as much as possible and, at a minimum, respect the Government of Canada's standards for similar information.

Secretary General

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