Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2007-48

Unsolicited Telecommunications Rules framework and the National Do Not Call List

3 July 2007

Canada

Canadian Radio-television and
Telecommunications Commission (CRTC)
Les Terrasses de la Chaudière
Central Building
1, Promenade du Portage
Gatineau, Quebec

Mailing Address:
CRTC
Ottawa, Ontario
K1A 0N2

Telephone: 1-877-249-2782 (toll-free)
TDD: 1-877-909-2782 (toll-free)

This publication is available electronically on our website at
http://www.crtc.gc.ca

This publication can be made available in alternative format upon request.

Ce document est également disponible en français.

Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2007-48

Ottawa, 3 July 2007

Unsolicited Telecommunications Rules framework and the National Do Not Call List

Reference: 8665-C12-200601626, 8662-C131-200408543, 8662-F20-200409814, 8662-B48-200409228, 8662-A84-200410035

Table of contents

		Paragraph
I.	**Introduction**	1
II.	**National DNCL operator**	22
	A. Administration of databases and operational systems	23
	B. Investigation of complaints and issuance of notices of violation	24
III.	**Consumer registration on the National DNCL**	35
	A. Registration guidelines and methods of registration	36
	B. Updating the National DNCL and duration of registration	46
IV.	**The Unsolicited Telecommunications Rules**	65
	A. Application of the Unsolicited Telecommunications Rules	66
	B. The National DNCL Rules	102
	C. Exemptions to the National DNCL Rules	179
	D. The Telemarketing Rules	239
	E. Exemptions to the Telemarketing Rules	409
	F. The Automatic Dialing-Announcing Device (ADAD) Rules	432
	G. Record keeping requirements	456
V.	**Voicemail broadcast**	471
VI.	**Enforcement of the Unsolicited Telecommunications Rules**	492
	A. Complaint filing process	493
	B. Guidelines for the complaint investigation process	502
	C. Factors for determining whether to issue a notice of violation and the amount of the associated AMP	515
	D. Defences	522
	E. Procedural rights associated with a notice of violation	531
	F. Informing the public of violators	538
	G. Unsolicited Telecommunications Rules in ILEC tariffs	540
VII.	**Other matters**	551
	A. Monitoring complaints	551
	B. Implementation	563
	C. Public awareness campaign	565

Appendix 1 – Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules

Appendix 2 – CRTC semi-annual unsolicited telecommunications complaints form

Canada

In this Decision, the Commission establishes a comprehensive framework for unsolicited telemarketing calls and other unsolicited telecommunications received by consumers. This framework includes rules for a National Do Not Call List (DNCL) as well as rules regarding telemarketing and automatic dialing-answering devices (the Unsolicited Telecommunications Rules).

The Commission will be issuing shortly a request for proposals for a National DNCL operator. The framework set out in this Decision will be enforced after the National DNCL operator is selected and the National DNCL becomes operational.

The comprehensive framework set out in this Decision is designed to protect the privacy of persons and prevent undue inconvenience and nuisance of unsolicited telecommunications, while still allowing legitimate uses of telemarketing telecommunications. The following provides a summary of major determinations made in this Decision. The complete Unsolicited Telecommunications Rules are set out in an appendix to this Decision.

The National DNCL will be a nationwide registry that will allow consumers to reduce the number of unsolicited telemarketing calls they receive. Except for some exemptions noted below, telemarketers will be prohibited from placing unsolicited telemarketing calls to telephone numbers that are registered on the National DNCL. Currently, each telemarketer has its own "do-not-call list," for which consumers must register separately to avoid calls. With the National DNCL, consumers will only have to register their number on one list.

Consumers will be able to register or de-register any Canadian telephone number on the list, regardless of whether they use that number with a land line, a cellular telephone, or a fax machine. To register or de-register on the National DNCL, the consumer will be required to call a designated toll-free number (yet to be determined) from the telephone number that they wish to register or de-register.

Registration will also be available online. Consumers will be able to register a maximum of three numbers at a time over the Internet.

A consumer's registration on the National DNCL will expire three years after the effective registration date and the consumer's telephone number will automatically be de-registered from the list. It will be the consumer's responsibility to re-register their telephone number after the three-year period. If the consumer's number changes during the registration time, the consumer will have to register the new number with the National DNCL. A 31-day grace period has been provided to allow telemarketers time to update their telemarketing lists.

There will be no cost to the consumer to register on the National DNCL. The costs associated with the operation of the National DNCL will be covered by subscription fees paid to the National DNCL operator by telemarketers.

Certain types of unsolicited telecommunications are exempt by the Telecommunications Act *from the National DNCL Rules, such as those made:*

- *by or on behalf of registered charities;*

- *by or on behalf of political parties;*
- *to collect information for a survey;*
- *to solicit a subscription for a general-circulation newspaper; and*
- *to a consumer that has an existing business relationship with the telemarketer.*

This Decision provides clarification regarding these exemptions and also adds an exemption for organizations that make unsolicited telecommunications to business consumers.

If a consumer has registered on the National DNCL and still receives calls from organizations that are not exempt, the consumer will then be able to file a complaint within 14 days of receiving the telemarketing call. The National DNCL operator will provide a designated toll-free telecommunications number to call and to file a complaint. The consumer will also be able to file their complaint online.

The Commission determines that the National DNCL operator will collect complaint information regarding alleged violations of the Unsolicited Telecommunications Rules. The Commission will be responsible for imposing administrative monetary penalties on individuals and corporations that it determines are in violation of the Unsolicited Telecommunications Rules.

The Commission will investigate complaints to assess whether a violation of the Rules has occurred. If the findings show that a violation has occurred, the Commission will decide whether to issue a notice of violation and impose monetary penalties per each violation of up to $1,500 for individuals and up to $15,000 for corporations.

In this Decision, the Commission also revises the Telemarketing Rules that will apply to all unsolicited telecommunications and that will govern the behaviour of telemarketers, for example, the time of day when unsolicited telecommunications can be made. The Commission also retains the previously established Automatic Dialing-Answering Device Rules that govern the use of automatic dialing-answering devices for unsolicited telecommunications, for example, when such automated devices can be used to leave voice-recorded messages.

I. Introduction

1. For many years the Commission has received complaints from consumers regarding inconvenience or nuisance caused by receipt of unsolicited telecommunications made for the purpose of selling or promoting a product or service or for the solicitation of money or money's worth (i.e. telemarketing telecommunications).

2. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act* (the Act), which provides that

> The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

3. In response to complaints and pursuant to section 41 of the Act, the Commission has established requirements for persons that engage in telemarketing, whether on their own behalf or on behalf of other persons (i.e. telemarketers). In establishing these requirements, which are referred to as the Telemarketing Rules and the Automatic Dialing-Announcing Device (ADAD) Rules,[1] the Commission sought to balance the need to fulfil the intent of section 41 of the Act and to achieve the policy objective in paragraph 7(*i*) of the Act (i.e. the protection of the privacy of persons) with the need to allow the legitimate uses of telemarketing telecommunications. The Telemarketing Rules and the ADAD Rules are currently included in the tariffs of the incumbent local exchange carriers (ILECs), including the small ILECs (SILECs).

4. In Bill C-37, *An Act to amend the Telecommunications Act*,[2] which came into force on 30 June 2006 (the amendment to the Act), Parliament amended the Act to grant the Commission the powers required to establish a national do not call list (the National DNCL). In this regard,

   - sections 41.2 and 41.3 of the Act provide the Commission the power to delegate to any person any of its powers to administer databases or operational systems for the purposes of establishing a National DNCL;

   - section 41.4 of the Act allows the Commission's delegate to charge rates for exercising delegated powers;

   - section 41.5 of the Act allows the Commission to regulate the rates charged by its delegate and the manner in which the delegate exercises any of the delegated powers;

   - section 41.6 of the Act requires that the Commission file annual reports to the Minister on the operation of the National DNCL; and

   - section 41.7 of the Act provides for exemptions to the National DNCL Rules.

5. The amendment to the Act also granted the Commission new enforcement powers in sections 72.01 to 72.15 of the Act to allow the imposition of administrative monetary penalties (AMPs) for a contravention of any prohibition or requirement of the Commission under section 41 of the Act.

---

[1] The Commission established and/or modified the Telemarketing Rules and the ADAD Rules in the following Decisions and Orders: *Use of telephone company facilities for the provision of unsolicited telecommunications*, Telecom Decision CRTC 94-10, 13 June 1994 (Decision 94-10); Telecom Order CRTC 96-1229, 7 November 1996 (Order 96-1229); *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997; *Telemarketing restrictions extended to all telecom service providers*, Order CRTC 2001-193, 5 March 2001 (Order 2001-193); and *Review of telemarketing rules*, Telecom Decision CRTC 2004-35, 21 May 2004.

[2] S.C. 2005, c.50, amending R.S.C. 1993, c.38.

6. Prior to the amendment to the Act, the Commission issued *Review of telemarketing rules*, Telecom Decision CRTC 2004-35, 21 May 2004 (Decision 2004-35). In that Decision, the Commission noted that consumers had indicated that they were experiencing difficulties in identifying and contacting telemarketers in order to make a complaint or a request not to be called again (a do not call request). As a result, the Commission imposed additional identification requirements on telemarketers: these included the requirement that a telemarketer provide identification information before any other communication and before asking for a specific individual.

7. In the absence of a National DNCL, in Decision 2004-35, the Commission also modified the Telemarketing Rules related to do not call requests. In this regard, the Commission established new requirements that telemarketers must process a do not call request at the time of the telemarketing telecommunication and that telemarketers must provide a consumer with a unique registration number to confirm a do not call request.

8. In Decision 2004-35, the Commission directed the telecommunications service providers (TSPs) to file semi-annual reports summarizing telemarketing complaint statistics to assist the Commission to better determine where difficulties with telemarketing exist and what changes would be required to the regulatory regime.

9. The Commission received the following applications to stay, review, rescind, and/or vary Decision 2004-35 (the review and vary applications):

    - Canadian Marketing Association's (CMA) application , dated 6 August 2004 (CMA's application);

    - The Responsive Marketing Group Inc. (RMG), Univision Marketing Group Inc., and Xentel DM Incorporated's application, dated 20 August 2004 (RMG et al.'s application);

    - Beautyrock Inc.'s (Beautyrock) application, dated 26 August 2004 (Beautyrock's application); and

    - The Association of Fundraising Professionals' (AFP) application, dated 15 September 2004 (AFP's application).

    The primary focus of these applications was the new caller identification requirements as well as the requirement to provide a unique registration number to confirm a do not call request as set out in that Decision.

10. In *Application by the Canadian Marketing Association to stay Decision 2004-35*, Telecom Decision CRTC 2004-63, 28 September 2004 (Decision 2004-63), the Commission approved, with one exception, CMA's application to stay the requirements set out in Decision 2004-35, pending the disposition of CMA's application to review and vary that Decision. The requirement that TSPs report complaint statistics was not stayed.

Process

11. In *Proceeding to establish a national do not call list framework and 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 initiated a public proceeding, including an oral consultation, with respect to the following:

    a) the creation and operation of the National DNCL, including the establishment and enforcement of the National DNCL Rules;

    b) a review of the Telemarketing Rules and ADAD Rules; and

    c) the disposition of the review and vary applications.[3]

12. The Commission received submissions and/or reply arguments with respect to the review and vary applications from the following parties:

    - Action Réseau Consommateur and the Public Interest Advocacy Centre (collectively, ARC-PIAC); AFP; Aliant Telecom Inc. (Bell Aliant),[4] Bell Canada, NorthernTel, Limited Partnership, Northwestel Inc., Saskatchewan Telecommunications, and Télébec, Société en commandite (collectively, Bell Canada et al.); Call-Net Enterprises Inc. (Call-Net); Canadian Bankers Association (CBA); CMA; Bragg Communications Inc. carrying on business as EastLink (EastLink); Primus Telecommunications Canada Inc. (Primus); Rogers Communications Inc. (RCI); RMG et al., and TELUS Communications Inc.[5] (TCC).

13. The Commission received submissions, reply comments, and/or responses to issues raised in Public Notice 2006-4 from the following parties, several of which also participated in the oral consultation:

    Advocis; AFP; Bell Aliant, Bell Canada, MTS Allstream Inc., NorthernTel, Limited Partnership, Northwestel Inc., Saskatchewan Telecommunications, Télébec, Société en commandite, and TCC (collectively, Bell Canada et al.); British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, End Legislated Poverty, Federated anti-poverty groups of BC, and Tenants' Rights Action Coalition (collectively, BCOAPO et al.); Canadian Association of Direct Response Insurers (CADRI); Canadian Association of Financial Institutions in Insurance (CAFII); CBA; Canadian Jewish Congress (CJC); Canadian Life and Health Insurance Association Inc. (CLHIA); CMA; Canadian Newspaper Association (CNA); Canadian Real Estate Association (CREA); Coalition of Fundraising Service Providers (CFSP);

---

[3] Public Notice 2006-4 provided that the Decision 2004-35 review and vary applications, as well as related submissions and reply comments, form part of the record of the proceeding.

[4] On 7 July 2006, Bell Canada's regional wireline telecommunications operations in Ontario and Quebec were combined with, among other things, the wireline telecommunications operations of Aliant Telecom Inc., Société en commandite Télébec, and NorthernTel, Limited Partnership to form Bell Aliant Regional Communications, Limited Partnership.

[5] Effective 1 March 2006, TELUS Communications Inc. assigned and transferred all of its network assets and substantially all of its other assets and liabilities, including substantially all of its service contracts, to TELUS Communications Company.

ContactNB; Credit Union Central of Canada (CUCC); Direct Energy (DE); Direct Marketing Association Inc. of the US (DMA); Gahan, Darren (DG); General Motors of Canada Limited (GM); Independent Financial Brokers of Canada (IFB); Infolink Technologies Ltd. (Infolink); Investment Dealers Association of Canada (IDA); l'Union des consommateurs (UC); Marketing Research and Intelligence Association (MRIA); MBNA Canada (MBNA); Mouvement des caisses Desjardins (MCD); NuComm International (NuComm); Obermeyer, Mark (MO); Office of the Privacy Commissioner of Canada (OPC); Primerica Financial Services (Canada) Ltd. (Primerica); Primus; Public Interest Advocacy Centre on behalf of Consumers' Association of Canada (PIAC-CAC); Public Interest Institute (PII); Public Interest Law Centre on behalf of Consumers Association of Canada (Manitoba Branch) and Manitoba Society of Seniors (collectively, PILC-CAC-MSOS); RESP Dealers Association of Canada (RDAC); RCI; Shaw Communications Inc. (Shaw); TBayTel; TD Meloche Monnex Inc. (TDMM); and Xit telecom inc., Telecommunications Xittel inc., and 9141-9077 Quebec inc. (collectively, Xit telecom).

14. The Commission also received comments from over 700 individuals and organizations, including the following: Association of Canadian Financial Corporations (ACFC), Canadian Professional Police Association (CPPA), Electronic Privacy Information Center (EPIC), Toronto Police Amateur Athletic Association (TPAAA), and Ventriloquist Voice Solutions (VVS).

15. The record of this proceeding was closed 6 June 2006.

16. While the positions of parties have necessarily been summarized in this Decision, the Commission has carefully reviewed and considered the submissions of all parties.

17. In this proceeding, the Do Not Call List Operations Working Group CRTC Interconnection Steering Committee (the DOWG) was requested to examine and put forward recommendations regarding certain issues related to the operation of the National DNCL, including 1) the management of the National DNCL database and access to the National DNCL; 2) funding for 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.

18. The DOWG submitted its recommendations to the Commission in a consensus report and a non-consensus report, both dated 26 July 2006 (the DOWG reports). The Commission issued its determination on the DOWG reports in *CRTC Interconnection Steering Committee Do Not Call List Operations Working Group reports*, Telecom Decision CRTC 2007-47, 3 July 2007 (Decision 2007-47).

19. In this Decision, the Commission establishes the Unsolicited Telecommunications Rules framework which is a comprehensive framework for unsolicited telecommunications. The Unsolicited Telecommunications Rules set out by the Commission in Appendix 1 of this Decision include the National DNCL Rules as well as the Telemarketing Rules and the ADAD Rules, which the Commission has reviewed, and where appropriate, modified in this Decision.[6]

[6] To ensure consistency of terminology throughout the Unsolicited Telecommunications Rules, where appropriate, the Commission will modify the wording of the existing rules – even where the Commission determines it is appropriate to retain existing Rules.

20. In this Decision, the Commission also

- states which of its powers will be delegated to the National DNCL operator;
- establishes guidelines for consumer registration on the National DNCL;
- addresses exemptions to the National DNCL Rules and the Telemarketing Rules;
- addresses which, if any, of the Unsolicited Telecommunications Rules will apply to telemarketing telecommunications via voicemail broadcast;
- sets out a process for consumers to file complaints;
- sets out factors that will be used to determine whether to issue a notice of violation and what the amount of the associated AMP will be; and
- addresses the current requirement for TSPs to report complaint statistics, the implementation date of the Unsolicited Telecommunications Rules framework, and the public awareness campaign requirements.

21. The Unsolicited Telecommunications Rules are set out in Appendix 1 to this Decision.

II. National DNCL operator

22. In Public Notice 2006-4, the Commission stated its intention to delegate to a third party (referred to as the National DNCL operator) its authority to a) administer databases and systems for the purpose of a National DNCL and b) investigate allegations of contraventions of prohibitions or requirements established pursuant to section 41 of the Act. In this section, the Commission addresses what authority it will delegate to the National DNCL operator.

A. Administration of databases and systems

23. The Commission's authority to administer the National DNCL under section 41.2 of the Act will be delegated to the National DNCL operator, including the creation and administration of databases and systems. The requirements the National DNCL operator must meet are based in part on the Commission's determinations in Decision 2007-47 and include the following:

- consumer registration methods;
- telemarketer subscriptions and access methods;
- security of the information kept on the database;
- system capacity;
- complaint processing; and
- record keeping.

B. Investigation of complaints and issuance of notices of violation

Positions of parties

24. BCOAPO et al. submitted that the National DNCL operator should be responsible for investigating complaints regarding non-compliance.

25. Primus submitted that assigning the responsibility of enforcing Unsolicited Telecommunications Rules to the National DNCL operator would a) broaden the scope of the operator's responsibility beyond the National DNCL regime and b) require the establishment of clear operating criteria for the enforcement of the Unsolicited Telecommunications Rules.

26. CBA submitted that since the Commission has the power to impose AMPs against those who contravene its rules, the Commission should be responsible for investigating and enforcing the rules and levying penalties.

27. CMA submitted that complaints related to the enforcement of laws and regulations would be best handled directly by the responsible government department or agency. CMA submitted that having complaints handled by a public body would maintain consumer confidence in the fairness and impartiality of such quasi-judicial investigative processes and findings.

28. PIAC-CAC submitted that the nature of the National DNCL would require the active involvement of the Commission in all issues related to its enforcement due to the large number of participants and the imposition of serious penalties.

Commission's analysis and determinations

29. The Commission notes the proposals that it should retain the responsibility for investigating complaints.

30. The Commission considers that the complaint process involves the following steps: a) collecting a complaint, b) assessing whether a *prima facie* violation of the Unsolicited Telecommunications Rules has occurred, and c) determining whether a notice of violation should be issued.

31. Under subsection 41.3(1) of the Act, the Commission may delegate any of its powers to conduct investigations to determine whether there has been a contravention of any prohibition or requirement of the Commission under section 41 of the Act. Under subsection 72.04(1) of the Act, the Commission could designate the National DNCL operator to issue notices of violation.

32. In Decision 2007-47, the Commission approved the DOWG's recommendation that the Commission delegate responsibility for the collection of complaints related to the Unsolicited Telecommunications Rules to the National DNCL operator. In that Decision, the Commission also approved the DOWG's recommendation that the assessment of whether a *prima facie* violation of the National DNCL Rules has occurred should be delegated to the National DNCL operator. In that Decision, the Commission determined that it did not accept the DOWG's recommendation that the National DNCL operator should only assess complaints related to the National DNCL Rules. Instead, the Commission determined that the National DNCL operator should assess complaints related to all of the Unsolicited Telecommunications Rules.

33. The Commission determines that the National DNCL operator will be required to conduct the assessment of whether a *prima facie* violation of the Unsolicited Telecommunications Rules has occurred based on the Unsolicited Telecommunications Rules and objective criteria that the Commission may provide. All complaints which the National DNCL operator considers raise a *prima facie* violation and complaints which require a subjective assessment will be forwarded to the Commission by the National DNCL operator.

34. In Decision 2007-47, the Commission approved the DOWG recommendation that the Commission should retain the responsibility for determining whether a notice of violation should be issued. The Commission will designate a group of employees that will be responsible to issue the notices of violation when appropriate.

III. Consumer registration on the National DNCL

35. In this section, the Commission addresses a) consumer registration and de-registration guidelines and methods and b) updating the National DNCL and the duration of registration.

A. Registration guidelines and methods of registration

Positions of parties

36. CBA and CMA submitted that only the subscriber of a given number should be able to register or de-register that number from the National DNCL.

37. Bell Canada et al., CLHIA, Primerica, and UC submitted that it should be a violation of the National DNCL Rules for a person to register a telecommunications number on the National DNCL without the authority of the subscriber of the telecommunications number. RCI submitted that, while registering or de-registering a given telephone number without the subscriber's permission would constitute mischievous behaviour, it would be inappropriate for the Commission to attempt to address this concern through the National DNCL Rules. RCI submitted that the Commission would be unable to enforce any penalty associated with such a rule. RCI proposed that, instead, the Commission should prevent such mischievous behaviour through verification procedures as part of the process of registering a telecommunications number.

Commission's analysis and determinations

38. The Commission considers that, to ensure that a consumer is aware that his or her telecommunications number has been registered on the National DNCL, only subscribers to a telecommunications number should be able to register the number. However, the Commission notes that certain consumers may be incapable of registering a telecommunications number on the National DNCL or may find it more convenient to grant another person the authority to register a telecommunications number on their behalf. The Commission considers that the above also applies to de-registration of a telecommunications number from the National DNCL.

39. In light of the above, the Commission determines that a subscriber may register his or her telecommunications number on the National DNCL and de-register his or her number from the National DNCL. The Commission also finds that a person who has the authority to act on behalf of a subscriber to a telecommunications number may register that subscriber's number to, or de-register that subscriber's number from, the National DNCL.

40. In Decision 2007-47, the Commission approved the DOWG's recommendations in the consensus report regarding operational processes for the registration of telecommunications numbers on the National DNCL. The approved registration processes are a) via telephone to a toll-free telecommunications number answered with an Integrated Voice Response (IVR) system and b) via the Internet. The Commission considers that consumers may also wish to register fax telecommunications numbers via fax and determines this registration option will also be offered.

41. In that Decision, the Commission approved the DOWG's recommendation that a) registrations made via telephone will only be accepted if the registration was made from the telecommunications number being registered and b) de-registration will only be allowed via telephone from the telecommunications number to be de-registered. This will allow the registration system to confirm the telecommunications number by matching the registration, or de-registration, to the associated Automatic Number Identification field. The Commission determines that this will also apply to registrations and de-registrations of fax telecommunications numbers sent via a fax.

42. In that Decision, the Commission approved the DOWG's recommendation that when registering via the Internet, a consumer may only register up to three telecommunications numbers at a time.

43. The Commission considers that the methods of registration described above will help reduce occurrences of mistakes and mischief registrations.

44. The Commission considers that it would be difficult to confirm that all registrations have been made by either the subscriber of a telecommunications number or a person with the authority to register on behalf of the subscriber. However, the Commission considers that there is limited incentive, if any, to falsely register a telecommunications number on the National DNCL. Additionally, the Commission notes that a consumer may de-register his or her telecommunications number at any time.

45. In light of all of the above, the Commission determines that consumer guidelines for registration of telecommunications numbers on the National DNCL and de-registration of telecommunications numbers from the National DNCL will include the following:

    a) a registration via a land line, wireless, or other type of voice telephone network facility must be placed from the telecommunications number that is being registered;

    b) a registration via fax must be sent from the fax telecommunications number that is being registered;

    c) a maximum of three numbers at a time may be registered via the Internet on the National DNCL operator's website;

    d) de-registration of any telecommunications number must be made via telephone call from the telecommunications number being de-registered; and

e) only the subscriber of a telecommunications number or a person who has the authority to act on the subscriber's behalf may register a telecommunications number on, or de-register a telecommunications number from, the National DNCL.

B. Updating the National DNCL and duration of registration

Positions of parties

46. Bell Canada et al., CBA, CLHIA, CMA, and ContactNB submitted that disconnected and re-assigned numbers should be removed from the National DNCL; otherwise, new subscribers might unknowingly be denied access to telecommunications that they would prefer to receive. Bell Canada et al. submitted that all TSPs using North American Numbering Plan (NANP) resources should be required to submit, to the National DNCL operator, on a monthly basis a list of numbers that had been disconnected or had completed their designated aging cycle. Bell Canada et al. further submitted that the National DNCL operator should use this information to remove all disconnected numbers from the database on a monthly basis.

47. BCOAPO et al. and PILC-CAC-MSOS submitted that registration on the National DNCL should not expire: a telecommunications number should only be removed upon request or once it is no longer in use.

48. Bell Canada et al. submitted that an indefinite registration period would be unreasonable as it would ignore the reality that consumer preferences change over time. In this regard, Bell Canada et al. noted that Bell Canada's success rate in contacting consumers once the consumer's three-year registration period on Bell Canada's own do not call list had expired was very high, and that approximately 85 percent of such consumers consent to being called.

49. ContactNB and Primus submitted that a one-year registration period would balance the needs of consumers with those of telemarketers and address the fact that consumers frequently change telecommunications numbers.

50. CMA proposed a three-year registration period and submitted that the composition and/or preferences of a household might change considerably over a three-year period.

51. TBayTel proposed a three-year minimum and a five-year maximum registration period.

52. EPIC, PIAC-CAC, and UC proposed a five-year registration period.

53. ACFC, CAFII, ContactNB, Primus, and RCI submitted that the onus to re-register a telecommunications number on the National DNCL should be on the consumer.

Commission's analysis and determinations

54. The Commission notes the concerns that failure to remove disconnected and re-assigned telecommunications numbers from the National DNCL might result in consumers who have obtained a new telecommunications number being prevented from receiving telemarketing telecommunications that they may wish to receive.

55. The Commission notes that in order for the National DNCL operator to remove disconnected or re-assigned telecommunications numbers from the National DNCL, it would need to obtain up-to-date data on such numbers. The Commission considers that in order for the National DNCL operator to obtain such information, a process would need to be established whereby all the TSPs would electronically submit the information in a standardized format, on a monthly basis. However, the Commission considers that the implementation of such a process would impose costs on TSPs and the National DNCL operator that could be unduly burdensome.

56. The Commission considers that the above-noted concerns could be mitigated through the establishment of a finite registration period at the end of which a registered number would automatically be de-registered if the consumer does not renew the registration. The Commission further notes that a consumer can de-register his or her telecommunications number from the National DNCL at any time.

57. The Commission finds that it is not necessary, at this time, to require the National DNCL operator to remove disconnected and re-assigned numbers from the National DNCL. Accordingly, the Commission determines that if, for any reason, a consumer's registered telecommunications number changes, the consumer must register his or her new telecommunications number on the National DNCL if the consumer wishes to prevent telemarketing telecommunications to that number.

58. In this regard, the Commission considers that it is not appropriate to require the consumer to de-register his or her previous telecommunications number when the number is changed. The Commission considers that such a consumer may not be able to de-register his or her previous telecommunications number as de-registration of a telecommunications number must be made from that telecommunications number and the consumer may no longer have access to it.

59. The Commission notes that most parties proposed finite registration periods for the National DNCL ranging between one and five years.

60. The Commission considers that a three-year registration period for the National DNCL

- would appropriately balance the concern that consumer preferences may change over time while minimizing the nuisance of re-registration; and

- would mitigate the effect of not removing disconnected and re-assigned telecommunications numbers from the National DNCL.

61. In light of the above, the Commission determines that the registration period for the National DNCL will be three years unless a consumer de-registers their telecommunications number from the National DNCL during that period.

62. The Commission determines that the registration period will be effective the date that the grace period[7] for a registration ends such that the registration period will be a full three years.

[7] The length of the grace period is addressed in the section of this Decision on National DNCL Rules.

63. The Commission determines that the National DNCL operator will not be required to contact each consumer prior to the expiration of his or her registration as to do so would significantly increase the National DNCL operator's operational costs. The Commission determines that a consumer's registration will automatically expire at the end of three years if the consumer does not renew the registration.

64. The Commission determines that the National DNCL operator will be required to inform consumers of the following at the time of registration:

- once registered, a telecommunications number will remain on the National DNCL for a period of three years unless the consumer has de-registered the number – the three-year period starts on the expiry date of the grace period that applies to the consumer's registration date;

- it will be the consumer's responsibility to re-register his or her telecommunications number at the end of the three-year period. If the number is not re-registered, it will be automatically removed from the National DNCL at the end of the three-year period; and

- if, for any reason, a consumer's telecommunications number changes, the consumer must register his or her new telecommunications number on the National DNCL if he or she wish to prevent telemarketing telecommunications to that number.

IV. The Unsolicited Telecommunications Rules

65. In this section, the Commission a) addresses the application of the Unsolicited Telecommunications Rules; b) sets out the National DNCL Rules; c) addresses the legislated exemptions to the National DNCL Rules and proposals for additional exemptions; d) reviews and modifies the Telemarketing Rules; e) addresses exemptions to the Telemarketing Rules; f) reviews the ADAD Rules; and g) addresses record keeping requirements.

A. Application of the Unsolicited Telecommunications Rules

66. In this section, the Commission sets out its determinations with regard to the application of the Unsolicited Telecommunications Rules. The Commission addresses the terminology that will be used in these Rules, who can be held liable for violations of these Rules, assisting in the violation of these Rules, and the types of telecommunications that are covered by these Rules.

Terminology

Positions of parties

67. PIAC-CAC and UC submitted that the Commission's definition of telemarketing as set out in Decision 2004-35 did not require modification.

68. In contrast, Bell Canada et al., CBA, CMA, and ContactNB proposed modifications to that definition in order to clarify the scope and category of unsolicited telecommunications that the Commission regulates. These parties agreed that the definition of telemarketing should be modified to exclude telemarketing to business consumers since they would not support the application of the National DNCL Rules to telemarketing to business consumers.

69. PIAC-CAC and UC opposed this proposal and submitted that such a modification would be inappropriate as the Commission's power to control the undue inconvenience or nuisance that was caused by unsolicited telecommunications was not limited to residential consumers.

70. Bell Canada et al. and CMA also proposed that the definition of telemarketing should be modified to exclude solicitation for volunteer time.

71. Bell Canada et al. submitted that the definition of telemarketing should be modified in order to subject telemarketing via voicemail broadcast to the National DNCL Rules.

72. Primerica proposed modifications to the definition of solicitation such that it would be defined as the selling or promoting of a product or service through a plan, program, and/or campaign.

73. CMA submitted that the Commission should establish definitions to clarify the distinction between a) organizations that use a telephone to market their own products and services, and b) third-party agencies or contact centres that initiate calls on behalf of another organization.

Commission's analysis and determinations

74. The Commission considers that establishing definitions for commonly used telemarketing terms will enhance the clarity of the Unsolicited Telecommunications Rules that the Commission sets out in this Decision.

75. In Decision 2004-35, the Commission defined telemarketing as

> the use of telecommunications facilities to make unsolicited calls for the purpose of solicitation where solicitation is defined as the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another party.

76. In that Decision, the Commission also noted that the definition included solicitation of donations by or on behalf of charitable organizations as established in *Use of telephone company facilities for the provision of unsolicited telecommunications*, Telecom Decision CRTC 94-10, 13 June 1994 (Decision 94-10).

77. The Commission notes that certain parties proposed modifications to this definition that would narrow the scope of the Unsolicited Telecommunications Rules. The Commission considers such proposed modifications to be requests for exemptions from the Unsolicited Telecommunications Rules and determines that these requests are more appropriately addressed in the sections of this Decision that address exemptions.

78. The Commission notes Bell Canada et al.'s proposal to include in the definition telemarketing via voicemail broadcast. The Commission notes that this would broaden the scope of the Unsolicited Telecommunications Rules and determines that this request is more appropriately addressed in the section of the Decision that addresses voicemail broadcast.

79. The Commission considers that the current definition of telemarketing established in Decision 2004-35 remains appropriate with a modification to change the term "calls" to "telecommunications." The Commission also considers that it would enhance the clarity of the Unsolicited Telecommunications Rules to divide the current definition of telemarketing into a definition of telemarketing and a definition of solicitation as follows:

- "Telemarketing" means the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation.

- "Solicitation" means the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another person. This includes solicitation by or on behalf of charitable organizations.

80. The Commission notes the CMA's request for clarification of certain terms related to persons involved in telemarketing activities.

81. The Commission considers that the term "telemarketer" includes all persons that conduct telemarketing, regardless of whether such persons are conducting telemarketing on their own behalf or on behalf of others. In this Decision, the Commission will make a distinction between such persons where appropriate.

82. The Commission notes that certain telemarketers conduct telemarketing on their own behalf while third-party agencies conduct telemarketing on behalf of others. The Commission considers both to be telemarketers.

83. Accordingly, for the purposes of the Unsolicited Telecommunications Rules,

- "Telemarketer" means a person that conducts telemarketing either on its own behalf or on behalf of one or more other persons.

- "Client of a telemarketer" means a person that has engaged a telemarketer to conduct telemarketing on its behalf.

Liability for violations of the Unsolicited Telecommunications Rules

Positions of parties

84. Bell Canada et al., BCOAPO et al., CLHIA, DE, DMA, MCD, MRIA, PII, PILC-CAC-MSOS, RCI, RDAC, and UC submitted that the National DNCL Rules should apply to both telemarketers and clients of telemarketers.

85. PII submitted that section 72.02 of the Act imposes liability on clients of telemarketers. PII submitted that Parliament's use of the word agent indicates its intention to avoid a situation whereby corporations could avoid obligations and liability under the Act.

86. CADRI and TDMM submitted that the National DNCL Rules should apply only to telemarketers: further, the National DNCL Rules need not apply to both telemarketers and clients of telemarketers since the outsourcing contract could specify compliance with the telemarketers' obligations under the National DNCL Rules.

87. Infolink and Primus submitted that the National DNCL Rules should only apply to clients of telemarketers. In this regard, Infolink submitted that this would be consistent with the Act as the person on whose behalf an exempt telecommunication is made is responsible for maintaining its own do not call list. Primus submitted that liability should rest with the clients of telemarketers regardless of whether the clients choose to contract telemarketing to a third-party vendor. Primus also submitted that clients of telemarketers should ensure that their contractual arrangements with external telemarketers contain the prohibitions associated with the National DNCL Rules.

Commission's analysis and determinations

88. The Commission notes that pursuant to section 41 of the Act, it may regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications.

89. The Commission also notes that pursuant to section 72.01 of the Act the person that commits the violation is liable for an AMP.

90. The Commission further notes that section 72.02 of the Act states that

> A person is liable for a violation that is committed by an employee, or an agent or mandatary, of the person acting in the course of the employee's employment or the scope of the agent's or mandatary's authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against in accordance with this Act.

91. The Commission considers that, pursuant to section 72.01 of the Act, it can find telemarketers liable for violations of the Unsolicited Telecommunications Rules made by the Commission pursuant to section 41 of the Act. The Commission further considers that, pursuant to section 72.02 of the Act, the Commission can find a client of a telemarketer liable for violations of the Unsolicited Telecommunications Rules made pursuant to section 41 of the Act provided there is an agency/mandatory relationship.

92. The Commission notes the proposals that the National DNCL Rules should only apply to telemarketers and the proposals that the Rules should only apply to clients of telemarketers. The Commission notes that these proposals are founded on the assumption that provisions in contracts established between individual telemarketers and clients of telemarketers would eliminate the need for the National DNCL Rules to apply to both. The Commission considers that, as established above, it can find a telemarketer or a client of a telemarketer liable for a given violation. The Commission also finds that it can, in certain cases, find both parties liable for a given violation. The Commission will determine liability on a case by case basis.

Assisting in the violation of the Unsolicited Telecommunications Rules

Positions of parties

93. Bell Canada et al., CBA, CLHIA, CMA, PIAC-CAC, Primerica, RCI, and UC considered that the Commission should establish a prohibition against facilitating or assisting another party in circumventing the National DNCL or other Unsolicited Telecommunications Rules.

Commission's analysis and determinations

94. The Commission notes that section 72.02 of the Act allows it to hold a person liable for a violation of a prohibition or requirement of the Commission under section 41 of the Act that is committed by an employee, agent, or mandatory of the person. The Commission considers that if an employee, agent, or mandatory were to assist or facilitate a telemarketer in circumventing the Unsolicited Telecommunications Rules, it could issue a notice of violation against the telemarketer, if appropriate.

95. The Commission also considers that if the person assisting or facilitating the telemarketer to circumvent any of the Unsolicited Telecommunications Rules is not within the scope of section 72.01 or section 72.02 of the Act, the Commission would not have the power to issue a notice of violation against such a person.

96. In light of the above, the Commission determines that it is not necessary to create a rule to prohibit one party from assisting another to violate any of the Unsolicited Telecommunications Rules.

Types of telecommunications

Positions of parties

97. Bell Canada et al. submitted that all telecommunications numbers that conform to the NANP should be eligible for registration on the National DNCL.

98. BCOAPO et al., Bell Canada et al., PILC-CAC-MSOS, and UC submitted that there should be a single National DNCL for various types of telecommunications numbers, including fax, land line, and wireless numbers.

Commission's analysis and determinations

99. The Commission notes that telemarketers may use any type of telecommunication to engage in telemarketing. The Commission further notes that the type of termination equipment associated with telecommunications numbers varies. Accordingly, except when provided otherwise, the Commission finds it appropriate that the Unsolicited Telecommunications Rules apply to all types of termination equipment and network facilities currently associated with telecommunications numbers as well as any that may be used in the future.

100. The Commission considers that regardless of what type of termination equipment or network facility a consumer receives telemarketing telecommunications on, such as a wireless device, a land line telephone, a fax machine, or a data terminal, the consumer may still consider the telecommunication to be a source of undue inconvenience and nuisance. Accordingly, the Commission finds that a consumer will be allowed to register any Canadian telecommunications number that conforms to the NANP on the National DNCL, regardless of the type of termination equipment or network facility associated with the number.

101. Consistent with its determination above, the Commission will use the terms "telecommunication," "telecommunications number," and "telemarketing telecommunication" rather than "call," "telephone number," and "telemarketing call," respectively, for the purposes of the Unsolicited Telecommunications Rules.

B. The National DNCL Rules

102. Parties proposed that the Commission make rulings with regard to the following issues related to the National DNCL: telemarketing to registered telecommunications numbers, subscription to the National DNCL, use of the National DNCL, a grace period, false representation as a National DNCL operator, false claims for an exemption, passing on costs, and false complaints. In this section, the Commission assesses the appropriateness of each proposal and sets out the National DNCL Rules accordingly.

Telemarketing to registered telecommunications numbers

Positions of parties

103. Advocis, Bell Canada et al., CADRI, CBA, CMA, CUCC, PIAC-CAC, Primerica, RCI, and TDMM submitted that a telemarketer should be permitted to initiate a telemarketing telecommunication to a telecommunications number that is registered on the National DNCL if the consumer has provided consent to be contacted. CMA submitted that this would maximize consumer choice. Advocis, CADRI, CBA, CUCC, and RCI added that the receipt of a telemarketing telecommunication by a consumer who had provided consent to be contacted would not be unanticipated by the consumer; accordingly, the Commission should not consider such a telecommunication to be unsolicited.

104. Advocis submitted that the consent provided would have to be specific rather than a broad consent that a consumer might sign in an application form.

105. In regard to the methods by which a consumers' consent to be contacted may be obtained, Bell Canada et al. proposed that the terms of the *Personal Information Protection and Electronics Act* (PIPED Act) should guide the forms of acceptable consent, as opposed to those the Commission has mandated for use by the TSPs.

106. CBA submitted that banks receive consumer's consent to use personal information as required under the PIPED Act[8] and that such consent is usually obtained with full disclosure on an application form or, in the case of telephone sales, in a script. CBA added that there is disclosure on the form or in the script that the information collected would be used for providing information on other products and services that might be of interest to the consumer. CBA also submitted that there is disclosure of the different types of products or businesses that are associated with the bank and that the consumer is indicating that, by signing, he or she would be giving consent to such marketing.

107. CADRI submitted that the Commission should consider every type of consent that is legal from a privacy perspective in the relevant province or region.

108. CADRI and TDMM submitted that their members frequently solicit expiry dates from a consumer of his or her insurance policy with another company in accordance with the existing federal and provincial privacy legislation that governs the collection and use of personal information; these parties proposed that the provision of this information be considered consent to be contacted.

109. PIAC-CAC submitted that if a consumer's consent will override his or her registration on the National DNCL, the consent required should be more than what is required pursuant to the PIPED Act, which allows implicit consent. PIAC-CAC proposed that the Commission should require that a consumer explicitly consent to receive telemarketing telecommunications to override registration on the National DNCL.

110. PIAC-CAC further submitted that when a consumer does provide explicit consent, the consent should apply to only the organization, not all its affiliates.

Commission's analysis and determinations

111. The Commission notes that the purpose of the National DNCL is to reduce the undue inconvenience and nuisance of telemarketing telecommunications and to protect the privacy of consumers by providing them with an effective and efficient means of preventing unwanted telemarketing telecommunications that they do not want to listen to. The Commission considers that this will be achieved by allowing such consumers to register their telecommunications numbers on the National DNCL in order to provide consumers with an effective and efficient means to prevent the receipt of as much unwanted telemarketing telecommunications at these numbers as possible. As such, the Commission determines that it is necessary to establish a general prohibition against placing a telemarketing telecommunication to a telecommunications number that is registered on the National DNCL.

---

[8] Schedule 1(Section 5) of the PIPED Act, outlines the principles set out in the National Standard of Canada entitled *Model Code for the Protection of Personal Information*, CAN/CSA-Q830-96 with regard to consent. Clause 4.3 of the PIPED Act – Consent describes the principle of consent as requiring "knowledge and consent" and describes the form of consent and the many ways individuals can give consent to the collection, use and disclosure of personal information.

112. The Commission considers that the prohibition against contacting consumers on the National DNCL may be an infringement on the telemarketer's right to freedom of expression; however, the Commission is of the view that the prohibition rule appropriately balances the telemarketer's right to freedom of expression with the consumer's rights to privacy and not to listen if he or she so chooses.

113. The Commission notes that the prohibition to make telemarketing telecommunications to consumers whose telecommunications numbers are registered on the National DNCL is not a complete prohibition on telemarketing but a partial one. The Commission notes that the National DNCL framework does not prohibit all telecommunications with all consumers. The prohibition is only against making telecommunications to consumers who have voluntarily registered on the National DNCL and does not result from an imposed regime that would require consumers to register their telecommunications numbers on the National DNCL. Consumers must themselves take the responsibility to register if they want to avoid future telecommunications from telemarketers. The Commission also notes that many types of unsolicited telecommunications are exempt from the National DNCL Rules as specified by the Act and by the Commission in this decision and, therefore, can be made to consumers whose telecommunications number is registered on the National DNCL.

114. The Commission also notes that organisations engaged in telemarketing still have the ability to advertise any of their services and products in the general media, on the Internet and through their retail outlets, or by means of other marketing activities.

115. The Commission considers that a consumer who has registered a telecommunications number on the National DNCL should be able to consent to receive particular telemarketing telecommunications that he or she wants to receive. Also, as determined below, consent to receive unsolicited telecommunications will override the consumer's registration on the National DNCL.

116. In light of the above, the Commission finds it appropriate to permit a telemarketing telecommunication to be placed to a telecommunications number that is registered on the National DNCL if the consumer provided consent to be contacted via telemarketing telecommunications at that number.

117. The Commission notes that some parties submitted that the type of consent required to be contacted via telemarketing telecommunications should be explicit or express consent. The Commission also notes that parties proposed various methods for obtaining the consumer's consent.

118. The Commission determines that a telemarketer or a client of a telemarketer must obtain a consumer's express consent to be contacted via a telemarketing telecommunication when that consumer's telecommunications number is registered on the National DNCL prior to the initiation of a telemarketing telecommunication to that consumer's number. The Commission also considers that such express consent shall also include the telecommunications number to which the telemarketing telecommunication may be placed.

119. The Commission considers that this requirement will ensure that consumers will be able to reduce the telemarketing telecommunications they receive and still choose from whom they will accept telemarketing telecommunications. The Commission also considers that express consent will ensure that consumers will be aware that, in providing express consent, they are providing consent not just to be contacted, but to receive telemarketing telecommunications from those parties to whom such consent was provided, regardless of the consumer's registration on the National DNCL.

120. The Commission considers that the method of obtaining a consumer's express consent to be contacted via a telemarketing telecommunication should be guided by Schedule 1, Clause 4.3 of the PIPED Act rather than by what has been approved by the Commission for the disclosure of personal information by TSPs.

121. In *Confidentiality provisions of Canadian carriers*, Telecom Decision CRTC 2003-33, 30 May 2003, as amended by Telecom Decision CRTC 2003-33-1, 11 July 2003 (Decision 2003-33), and further in *Part VII application to revise Article 11 of the Terms of Service*, Telecom Decision CRTC 2005-15, 17 March 2005 (Decision 2005-15), the Commission found it appropriate to permit Canadian carriers to use other forms of express consent as alternatives to written consent.[9] The Commission notes that these forms are more strict than what is described in Schedule 1, Clause 4.3 of the PIPED Act.[10]

122. The Commission notes that in those Decisions it was dealing with the disclosure of subscriber information that is personal and confidential. The Commission considers that a consumer's consent to be contacted via a telemarketing telecommunication does not equate to consent to a disclosure of personal and confidential information. Therefore, the Commission considers that the level of privacy protection that would be provided by the forms of express consent required to disclose a subscriber's confidential information as described in Decision 2005-15 is not required for express consent to be contacted via a telemarketing telecommunication.

---

[9] The list of acceptable methods of obtaining express consent to the disclosure of confidential information by carriers is as follows: a) written consent; b) oral confirmation verified by an independent third party; c) electronic confirmation through the use of a toll-free number; d) electronic confirmation via the Internet: e) oral consent, where an audio recording of the consent is retained by the carrier; or f) 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.

[10] The PIPED Act, Schedule 1 (Section 5), Clause 4.3 states that

(*a*) an application form may be used to seek consent, collect information, and inform the individual of the use that will be made of the information. By completing and signing the form, the individual is giving consent to the collection and the specified uses;

(*b*) a checkoff box may be used to allow individuals to request that their names and addresses not be given to other organizations. Individuals who do not check the box are assumed to consent to the transfer of this information to third parties;

(*c*) consent may be given orally when information is collected over the telephone; or

(*d*) consent may be given at the time that individuals use a product or service.

An individual may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The organization shall inform the individual of the implications of such withdrawal.

123. Additionally, the Commission considers that the methods required in Decision 2005-15 to obtain express consent would be burdensome for small telemarketers and clients of telemarketers.

124. In light of all of the above, the Commission determines that in the case of obtaining express consent to be contacted by way of a telemarketing telecommunication, the forms of consent for collection, use, and disclosure of personal information described in Schedule 1 (Section 5), Clause 4.3 of the PIPED Act are sufficient. The Commission will also accept the methods of obtaining express consent set out in Decision 2005-15.

125. The Commission considers that the provision of an expiry date of an insurance policy could, depending on the circumstances, constitute an inquiry in respect of a service for the purposes of defining an existing business relationship under subsection 41.7(2)(b) of the Act. Where it constituted such an inquiry, a telemarketing telecommunication made within six months of the consumer's inquiry would be exempt from the DNCL rules under subsection 41.7 (2) (b) of the Act.

126. However, a telemarketer, or a client of a telemarketer, would need express consent to make a telemarketing telecommunication to that consumer after the six-month period, as the Commission considers the provision of an expiry date alone does not constitute express consent to be contacted via a telemarketing telecommunication.

127. The Commission determines that the onus to demonstrate that express consent has been provided by a consumer is on the telemarketer or client of the telemarketer, not the consumer.

128. The Commission determines that consumers may withdraw their express consent at any time and by any of the methods set out by the Commission in this Decision for providing express consent.

Subscription to the National DNCL

Positions of parties

129. Bell Canada et al., BCOAPO et al., CBA, CLHIA, CMA, PIAC-CAC, Primerica, RCI, and UC considered that the Commission should require all telemarketers and clients of telemarketers that are subject to the National DNCL Rules to subscribe to the National DNCL before placing a telemarketing telecommunication.

Commission's analysis and determinations

130. The Commission considers that the financial viability of the National DNCL, as well as the effectiveness of the Commission's enforcement of the National DNCL Rules, depend on all telemarketers and clients of telemarketers being subscribers to the National DNCL and paying the requisite subscription fees. Accordingly, the Commission determines that each telemarketer must obtain a subscription to the National DNCL and pay all applicable fees prior to initiating a telemarketing telecommunication on its own behalf.

131. The Commission also determines that it is necessary to prohibit a telemarketer from initiating a telemarketing telecommunication on behalf of one or more clients unless each such client is a registered subscriber of the National DNCL and the applicable fees associated with each client's subscription have been paid.

132. The Commission notes that, pursuant to subsection 41.7(1) of the Act, the rules made by the Commission under section 41 of the Act and that relate to the National DNCL do not apply to certain exempt types of telemarketing telecommunications as set out in the Act. Accordingly, the Commission determines that those telemarketers and clients of telemarketers that are *exclusively* making telemarketing telecommunications that are exempt under section 41.7 of the Act are not required to have a subscription to the National DNCL before initiating a telemarketing telecommunication.

133. The Commission recognizes that a person or organization that is not actively telemarketing on its own behalf, or that has not engaged a telemarketing agency to conduct telemarketing on its behalf, may need to subscribe to the National DNCL in order to prepare for a future telemarketing campaign. Accordingly, the Commission determines that such persons or organizations will be allowed to subscribe to the National DNCL.

Use of the National DNCL

Positions of parties

134. Bell Canada et al., CLHIA, CMA, PIAC-CAC, Primerica, and RCI considered that it should be a violation of the National DNCL Rules for a party to sell, forward, publish, or use the National DNCL for any purpose other than preventing telemarketing to telecommunications numbers registered on the National DNCL.

135. Bell Canada et al. submitted that the Commission should not allow the forwarding or publishing of the National DNCL to parties that do not pay the applicable National DNCL-related fees as to do so would compromise the legitimacy and financial viability of the National DNCL Regime.

136. CMA submitted that a subscriber to the National DNCL may have a legitimate reason to forward the National DNCL, including standard business practices such as a telemarketer employing an external supplier to scrub[11] telemarketing lists or clients of telemarketers using multiple external call centres. CMA proposed that a National DNCL subscriber should be allowed to transfer or permit access to the National DNCL to its third-party data houses or call centres subject to contractual safeguards.

137. CLHIA and Primerica submitted that the Commission should allow a third-party provider to a) access the National DNCL and scrub numbers for small telemarketers or b) make portions of the National DNCL available to small telemarketers. CLHIA submitted that a company with a career agency system, whereby agents are exclusive agents for that company, would likely wish to scrub a telemarketing list against the National DNCL and circulate telemarketing lists for its agents.

138. UC submitted that a prohibition against selling, publishing, or forwarding the National DNCL for any purpose other than telemarketing would not be required if access to the National DNCL occurred via a query-response method that would validate whether a telecommunications number on the telemarketer's list was registered on the National DNCL.

---

[11] The term scrub is used to refer to the process of comparing a do not call list to a telemarketer's or client of a telemarketer's list of consumers it wishes to contact and then eliminating from its list the telecommunications numbers of consumers who have registered on that do not call list.

Commission's analysis and determinations

139. The Commission considers that the proposal raises two issues: a) whether the Commission should allow the National DNCL to be used for any purpose other than compliance with the National DNCL Rules; and b) whether subscribers to the National DNCL should be allowed to sell, rent, publish, share, or forward, the National DNCL or portions of it to other telemarketers or clients of a telemarketer, other persons, or other organizations.

140. The Commission considers that the purpose of the National DNCL is to provide consumers with an effective and efficient means of preventing unwanted telemarketing telecommunications from as many telemarketers or clients of telemarketers as possible. The Commission considers it important that the National DNCL not be used to create contact lists to be used for other types of direct marketing to consumers. In light of the above, the Commission determines that subscribers to the National DNCL (including telemarketers and clients of telemarketers) shall not use the National DNCL for any purpose other than compliance with the Act, the National DNCL Rules, or any other determination made pursuant to section 41 of the Act.

141. The Commission anticipates that the National DNCL operator will recover its costs through subscription fees. The Commission considers that to allow the selling, renting, leasing, publishing, or other disclosure of the National DNCL to persons outside of the subscriber's organization (e.g. with the larger corporate group, affiliates, and other organizations) would dilute the fee base for the operation of the National DNCL. The Commission considers that, absent a prohibition against such practices, certain telemarketers may attempt to share a subscription to the National DNCL. The Commission considers such activities to be inappropriate, as this would prevent the National DNCL operator from recovering its costs for administering the National DNCL, which could result in higher fees for National DNCL subscribers. In light of the above, the Commission determines that subscribers to the National DNCL may not sell, rent, lease, publish, or otherwise disclose the National DNCL or any portion thereof to any person outside of their organizations, including any affiliate.

142. The Commission notes that the proposal that a prohibition against selling, renting, leasing, publishing, or otherwise disclosing the National DNCL would not be necessary if the National DNCL operator were to adopt a query-response access method. The Commission is of the view that it is not appropriate to restrict the National DNCL operator to a specific method of data retrieval. In this regard, the Commission considers that the National DNCL operator may, over time, use more than one method of data retrieval. Additionally, the Commission considers that a query-response data retrieval method might make it difficult for a telemarketer to obtain lists of information from the National DNCL but would not prevent a telemarketer from using the information for any other purpose, or selling the information, once such information is obtained.

143. The Commission considers that a subscriber may have a legitimate reason to provide the National DNCL to another party, for example, for the purposes of ensuring that the subscriber complies with the National DNCL Rules (e.g. scrubbing the subscriber's telemarketing list against the National DNCL). The Commission finds that it would be acceptable for a subscriber to provide the National DNCL or any portion thereof to a person who is providing a service to enable it to comply with the Act, the National DNCL Rules, or any other determination made pursuant to section 41 of the Act, provided this is necessary for that purpose. The Commission

also determines that the provision by a subscriber of the National DNCL or any portion thereof must be made on a confidential basis with the National DNCL or any portion thereof to be used only for the provision of services described above.

144. The Commission determines that a subscriber who provides the National DNCL or portions thereof to a person under the permitted circumstances described above must make all reasonable efforts to ensure that the National DNCL or portions thereof are not used by that person for any other purpose and are not disclosed by that person.

Grace period

Positions of parties

145. Certain parties proposed that the Commission should establish a grace period during which a telemarketing telecommunication may be made to a telecommunications number that has recently been registered on the National DNCL.

146. UC proposed that the Commission should establish a grace period of 24 hours.

147. BCOAPO et al. and PIAC-CAC proposed a grace period of seven days. BCOAPO et al. submitted that this grace period would ensure the currency and accuracy of the National DNCL and allow companies sufficient time to download the updated numbers from the National DNCL. PIAC-CAC noted that in Telecom Order CRTC 96-1229, 7 November 1996 (Order 96-1229), the Commission ordered a seven-day interval for the removal of a fax number and noted that a seven-day interval is not an overly restrictive amount of time for removal of a number listing upon receiving a request to do so.

148. ACFC, Advocis, Bell Canada et al., DMA, Infolink, MCD, PII, and PILC-CAC-MSOS proposed a grace period of 30 to 31 days. Advocis and PII submitted that a 30-day grace period would provide businesses with time to review and adjust internal telemarketing lists against the National DNCL registry and to distribute this information within their organizations, as required. Advocis further submitted a grace period exceeding 30 days would decrease the validity of the National DNCL and frustrate new registrants. Infolink submitted that a shorter grace period would increase the administrative burden and cost to both the National DNCL operator and users of the National DNCL and potentially render the efficient operation of the National DNCL impracticable.

149. Bell Canada et al. proposed a plan to implement a grace period in two phases to allow parties to become more comfortable with the National DNCL processes and requirements. Bell Canada et al. proposed using a 60-day grace period for the first 6 to 12 months that the National DNCL is operational, then using a 30-day grace period.

150. CLHIA, CMA, DE, GM, RCI, and RDAC proposed a grace period of 60 days. CMA, CLHIA, and RCI submitted that this grace period would strike an appropriate balance between a) consumers' interests in not receiving telemarketing telecommunications, b) the burden to telemarketers to update their internal lists, c) various business models, and d) the economic viability of the National DNCL Regime.

151. CMA, RCI, and RDAC submitted that a 60-day grace period would provide organizations with sufficient time to access the National DNCL, scrub it against their telemarketing lists, and distribute the information within their organizations and/or to telemarketing agencies.

152. CADRI, CAFII, CBA, CUCC, and TDMM submitted that a 90-day grace period would grant organizations, particularly large organizations, sufficient time to pull and scrub telemarketing lists against the National DNCL and an organization's own do not call list and then provide the list to various organizations or call centres.

153. PIAC-CAC submitted that any grace period allowed should be based solely on the technical requirements of updating, publishing and downloading the National DNCL. PIAC-CAC submitted that since registration of a telecommunications number will be achieved via the telephone or the Internet, consumers would expect the National DNCL registration to be effective within a relatively short period of time.

154. MO submitted that there should be no grace period: a consumer's registration should take effect immediately.

Commission's analysis and determinations

155. The Commission notes that all parties, with the exception of MO, submitted that the Commission should establish a grace period. The Commission notes that a grace period would allow telemarketers to download the National DNCL, use the National DNCL to update their telemarketing lists, and disseminate the updated telemarketing lists throughout their organizations in order to ensure compliance with National DNCL Rules. Accordingly, the Commission determines that it is appropriate to establish a grace period during which a telemarketer may place a telemarketing telecommunication to a telecommunications number that has recently been registered on the National DNCL without violating the National DNCL Rules.

156. The Commission notes that all telecommunications numbers, whether used for fax or voice telecommunications, will be registered on the same National DNCL. Accordingly, the Commission considers that it is appropriate to apply the same grace period for the registration of any telecommunications number on the National DNCL.

157. The Commission notes that the grace periods proposed by parties varied considerably. The Commission considers that in determining the appropriate grace period, it should balance the needs of telemarketers and clients of telemarketers with the reasonable expectations of consumers.

158. In this regard, the Commission considers that consumers who have registered a telecommunications number on the National DNCL should experience a reduction in the receipt of telemarketing telecommunications at that number soon after registration.

159. The Commission notes the operational tasks described by the parties to update their telemarketing lists include a) obtaining an updated version of the National DNCL, b) updating their telemarketing lists, and c) disseminating the information throughout their organizations. The Commission considers that time and effort required to perform the above-noted operational tasks exceeds the time and effort required to add a consumer's name and telecommunications

number to a telemarketer's or a client of a telemarketer's own do not call list. As such, the Commission considers that it is unreasonable to require National DNCL subscribers to complete the operational tasks related to updating their telemarketing lists in real time or 24 hours following each registration.

160. The Commission notes that no party provided evidence to demonstrate that the current 30-day grace period that applies to voice telemarketing telecommunications or the current seven-day grace period that applies to fax telemarketing telecommunications does not provide sufficient time to update telemarketing lists.

161. Given that the National DNCL will contain voice and fax telecommunications numbers and in light of the activities described above for organizations to update their lists with the National DNCL, the Commission considers that a seven-day grace period would be insufficient, particularly for a large organization that may need to disseminate the information to many parts of its organization or to telemarketing agencies.

162. The Commission considers that a grace period of 30 days would provide telemarketers and clients of telemarketers sufficient time to update their telemarketing lists and disseminate the updated information throughout their organization. The Commission considers that a grace period of 31 days would provide the same benefit yet would also allow those telemarketers that set up a process to update their telemarketing lists on a monthly basis to do so on the same day each month. The Commission also considers that a 31-day grace period would fall within the reasonable expectations of a consumer for a National DNCL registration effective date.

163. The Commission considers that a grace period exceeding 31 days would be overly long and would not appropriately balance the needs of consumers with those of telemarketers.

164. The Commission notes the proposal to establish a longer grace period during the first 6 to 12 months that the National DNCL is operational in order to provide telemarketers and clients of telemarketers time to become more comfortable with using the National DNCL. The Commission recognizes that telemarketers and clients of telemarketers will have to develop and implement new processes to access and use the National DNCL; however, the Commission considers that it is not overly onerous to require that telemarketers or clients of telemarketers have such processes in place within 31 days of the National DNCL becoming operational.

165. In light of all of the above the Commission determines a grace period of 31 days will apply to consumer registrations on the National DNCL. Accordingly, the Commission determines that a telemarketer and a client of a telemarketer shall use a version of the National DNCL obtained from the National DNCL operator no more than 31 days prior to the date any telemarketing telecommunication is made.

False representation as a DNCL operator

Positions of parties

166. PIAC-CAC, CLHIA, Primerica, RCI, and UC considered that it should be a violation of the National DNCL Rules for any party (other than the National DNCL operator) to represent itself as providing a national do not call registration service either for a fee or for the purpose of collecting the called parties' personal information.

167. CMA also supported this proposal but only as it would apply to a party representing itself as the National DNCL operator. CMA submitted that there were other valid do not call registration services, such as an association's do not call list.

168. Bell Canada et al. opposed this proposal and submitted that a party making a false representation could be dealt with pursuant to either the *Competition Act* or the *Criminal Code of Canada*.

Commission's analysis and determinations

169. The Commission notes that, pursuant to subsection 41.3(1) of the Act, it may delegate any of its powers under section 41.2 of the Act. As such, only the Commission or those delegated by the Commission to administer the National DNCL may operate the National DNCL service.

170. The Commission considers that false representation as the National DNCL operator is an offence that would be more appropriately addressed under other legislation, such as the *Criminal Code of Canada*. Accordingly, the Commission determines that it is not necessary or appropriate to establish a prohibition against such false representation.

False claims for exemption

Positions of parties

171. PIAC-CAC proposed that it should be a violation of the National DNCL Rules for a telemarketer or a client of a telemarketer to falsely claim an exemption under subsection 41.7(1) of the Act. CLHIA, CMA, Primerica, and UC supported this proposal. RCI supported this proposal, except where refuge had been sought and granted under due diligence provisions. CBA opposed this proposal on the basis that it would be a duplication of the prohibition against engaging in telemarketing without a valid subscription to the National DNCL.

172. Bell Canada et al. submitted that where a claim of exemption is used as a defence against a complaint, the claim must be substantiated. Bell Canada et al. submitted that to verify that the person making the telecommunication is exempt from the National DNCL Rules, it will need to be determined whether the purpose of the telecommunication correctly falls within the meaning of the exemptions set out in the Act.

Commission's analysis and determinations

173. The Commission notes that the exemptions to the National DNCL Rules are clearly set out in section 41.7 of the Act and in this Decision. The Commission notes that a person making a false claim for exemption will be unable to support such a claim. As such, the Commission would find the person to be in violation of the National DNCL Rules. The Commission determines that it is not necessary to establish a prohibition against making a false claim of exemption.

Passing on costs

Positions of parties

174. PIAC-CAC proposed that it should be a violation of the National DNCL Rules for a party to pass on the cost of subscription to the National DNCL to its contacts or those consumers with whom it has an existing business relationship.

175. CLHIA and Primerica submitted that this proposal appeared to prohibit companies from passing the costs associated with subscription to the National DNCL to consumers. CBA, CLHIA, Primerica, and RCI agreed that the Commission should recognize that the costs incurred by telemarketers to access the National DNCL are a cost of doing business for the client of a telemarketer and that all costs of doing business are ultimately factored into the costs charged for the product or service. Bell Canada et al. and CMA submitted that the Commission should not attempt to regulate the means by which telemarketers recover their costs of doing business. UC added that it would be difficult for the Commission to enforce such a prohibition as it would be impossible to track whether costs had been passed on to consumers.

Commission's analysis and determinations

176. The Commission considers that for telemarketers and clients of telemarketers subscription to the National DNCL constitutes a cost of doing business. The Commission considers that passing on the costs of doing business to consumers is a standard business practice. Accordingly, the Commission determines that it is not appropriate to establish a prohibition in the National DNCL Rules against such activities.

False complaints

Positions of parties

177. CBA, CLHIA, and Primerica proposed that the Commission should determine that it would be a violation of the National DNCL Rules for a consumer to file a false complaint. Bell Canada et al. submitted that frivolous and vexatious complaints should be discouraged; however, the Act may not provide the Commission with jurisdiction to enforce such a rule. Bell Canada et al. added that it was unlikely that the incidence of frivolous complaints will pose a material problem.

Commission's analysis and determinations

178. The Commission notes that, as determined previously in this Decision, telemarketers and clients of telemarketers may be found liable for violations of the Unsolicited Telecommunications Rules pursuant to sections 41, 72.01 and 72.02 of the Act. Furthermore, the Commission is of the view that it would be inappropriate to make consumers subject to AMPs and considers that this is not the intent of sections 41 and 72.01 of the Act. In light of the above, the Commission determines that it is not appropriate to establish a rule prohibiting the filing of false complaints.

C. Exemptions to the National DNCL Rules

179. Parties requested clarification or interpretation of the exemptions set out in the Act for charities, existing business relationships, and newspapers of general circulation. Parties also requested additional exemptions for telemarketing to business consumers, telemarketing made pursuant to personal relationships and referrals, and telemarketing made by financial services participants and realtors. In this section, the Commission determines the appropriateness of each of these requests.

Background

180. Subsection 41.7(1) of the Act states that

> An order made by the Commission that imposes a prohibition or requirement under section 41 that relates to information contained in any database or any information, administrative or operational system administered under section 41.2 for the purpose of a National DNCL does not apply in respect of a telecommunication
>
> (a) made by or on behalf of a registered charity within the meaning of subsection 248(1) of the *Income Tax Act*;
>
> (b) made to a person
>
> (i) with whom the person making the telecommunication, or the person or organization on whose behalf the telecommunication is made, has an existing business relationship, and
>
> (ii) who has not made a do not call request in respect of the person or organization on whose behalf the telecommunication is made;
>
> (c) made by or on behalf of a political party that is a registered party as defined in subsection 2(1) of the *Canada Elections Act* or that is registered under provincial law for the purposes of a provincial or municipal election;
>
> (d) made by or on behalf of a nomination contestant, leadership contestant or candidate of a political party described in paragraph (c) or by or on behalf of the official campaign of such a contestant or candidate;
>
> (e) made by or on behalf of an association of members of a political party described in paragraph (c) for an electoral district;
>
> (f) made for the sole purpose of collecting information for a survey of members of the public; or
>
> (g) made for the sole purpose of soliciting a subscription for a newspaper of general circulation.

181. Subsection 41.7(2) of the Act provides definitions for the following terms: "candidate," "existing business relationship," "leadership contestant," and "nomination contestant."

Charities

Positions of parties

182. CJC, CFSP, and TPAAA expressed concern that the Act explicitly provides exemptions to the National DNCL Rules for telemarketing telecommunications made by or on behalf of a registered charity within the meaning of subsection 248(1) of the *Income Tax Act* but does not provide an exemption for non-registered charitable organizations.

183. CJC proposed that the Commission should interpret the Act such that the exemption would include organizations affiliated with a registered charity.

184. PIAC-CAC submitted that the Commission should clarify that telemarketing telecommunications made by or on behalf of a for-profit organization where part of the proceeds of the sale would benefit a registered charity should not be exempt under subsection 41.7(1)(a) of the Act.

Commission's analysis and determinations

185. The Commission considers that the Act is clear that it is a telecommunication made by, or on behalf of, registered charities within the meaning of subsection 248b(1) of the *Income Tax Act* that is exempt from the National DNCL Rules. Therefore, the Commission concludes that telecommunications made on behalf of charitable organizations that are not registered charities, or on behalf of non-registered affiliates of registered charities, are not exempt from the National DNCL Rules.

186. The Commission notes that qualification for the exemption is not based on what amount of the proceeds of a sale would benefit the registered charity but whether the telecommunication is made by, or on behalf of, a registered charity, which is a question of fact.

Existing business relationships

Positions of parties

187. PIAC-CAC proposed that a consumer must provide his or her name, telecommunications number, and consent in order for a purchase, inquiry, or application to give rise to an existing business relationship. PIAC-CAC further submitted that a telemarketing telecommunication made pursuant to an inquiry should not fall under the existing business relationship exemption if the telemarketer had obtained the consumer's telecommunications number from a source other than the consumer (e.g. if the consumer had provided only his or her name and email address).

188. CBA, CLHIA, and CUCC submitted that the existing business relationship exemption should flow through to the outsourcer of an organization that has an existing business relationship with a consumer.

189. Bell Canada et al., CBA, CLHIA, and CUCC agreed that if a consumer has provided his or her consent with respect to marketing across a corporate group, a telemarketing telecommunication to that consumer from any member of that corporate group should not be considered an unsolicited telecommunication, and the existing business relationship exemption should apply.

190. CUCC proposed that the existing business relationship exemption should apply to cooperative groups.

191. GM submitted that the term "organization" in the definition of existing business relationship in the Act should be defined to include the parent company or companies affiliated with the person by whom or on whose behalf the telecommunication is made in addition to other related companies that, based on the type of product or service provided, the consumer would reasonably expect to be contacted by.

192. PIAC-CAC and UC submitted that a consumer would not reasonably expect to be contacted by an affiliate of a business that the consumer had contacted or purchased a product or service from. In this regard, PIAC-CAC argued that a purchase should not lead to the creation of an existing business relationship between a consumer and each affiliate, partner, or venture associated with the company from which a product or service was purchased.

193. Advocis, PIAC-CAC, and UC considered that for the purposes of the existing business relationship exemption, the term "organization" should be limited to the single legal entity that the consumer has contacted.

194. CLHIA opposed this proposal and noted that many life insurers are structured as several separate legal entities. CLHIA argued that if the Commission were to find that the existing business relationship exemption applied to only one of these entities, a consumer might be excluded from receiving telemarketing telecommunications for services he or she believed were provided through the entity with which he or she had an existing business relationship.

195. CBA and CUCC submitted that where two or more organizations enter into a joint marketing arrangement to jointly market products or services, each organization should be able to rely on its partners' existing business relationships to qualify for the existing business relationship exemption.

196. Advocis submitted that the existing business relationship exemption should apply to introductory calls made by a financial advisor who has purchased another financial advisor's book of business to the consumers in that book of business.

197. MBNA proposed that there be an exemption for telemarketing made pursuant to an affinity relationship program.

198. PIAC-CAC submitted that an organization should inform a consumer that he or she may receive telemarketing telecommunications from the organization, even if the consumer's telecommunications number is registered on the National DNCL, during the transaction that establishes an existing business relationship between them. PIAC-CAC further submitted that

Schedule 1, Clause 4.2 of the PIPED Act[12] warrants such disclosure. PIAC-CAC further submitted that the Commission should require that an organization provide a consumer with the opportunity at the time of such a transaction to cancel the transaction or be immediately registered on the organization's do not call list. Bell Canada et al. supported these proposals.

199. CREA, GM, and MO proposed modifications to the definition of existing business relationship set out in the Act; the proposed modifications included a) the addition of a reference to warranty agreements and b) changes to the time periods set out in the definition of existing business relationship in subsection 41.7(2) of the Act.

Commission's analysis and determinations

200. The Commission notes that the definition of "existing business relationship"[13] as set out in the Act does not contain a requirement to obtain the consumer's name, telecommunications number and consent. Accordingly, the Commission denies PIAC-CAC's request that, for the purposes of the exemption, an existing business relationship should only exist if a consumer has provided his or her name, telecommunications number, and consent.

201. The Commission notes that parties' views differed on the appropriateness of extending the existing business relationship exemption to affiliates or joint-marketing partners.

202. The Commission considers that an existing business relationship is established between a consumer and one distinct legal entity.

203. Further, the Commission determines that the existing business relationship exemption will only be extended to the broader corporate group, affiliates, or cooperative groups if the consumer has provided express consent to be contacted by way of telecommunications by such related organizations. In this regard, the Commission agrees with certain parties that a consumer would not reasonably expect to be contacted by an entity related to an organization because the consumer established a business relationship with that organization. The Commission further considers that a consumer who does provide consent to be contacted by the corporate group or affiliates or other entities related to an organization should be able to withdraw such consent at any time.

---

[12] Schedule 1 (Section 5), Clause 4.2 PIPED Act states: The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

[13] Subsection 41.7 (2) of the Act states that "existing business relationship" means a business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from
(a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;
(b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or
(c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.

204. The Commission considers that, for the purposes of the Unsolicited Telecommunications Rules, an entity is affiliated with another entity if one of them is controlled by the other or both are controlled by the same person. The Commission notes that the Act defines control as

> control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement, or arrangement, the ownership of any body corporate or otherwise.

205. The Commission notes the proposal that joint marketing partners should be able to use each other's existing business relationships to qualify for the existing business relationship exemption. The Commission considers that the existing business relationship exemption only applies to the organization with which the consumer has the relationship. Therefore, as with its determination on extending the existing business relationship to affiliates of an organization, the Commission finds that the existing business relationship of a joint marketing partner extends to the partners only if the consumer has provided consent to the organization to be contacted by its joint-marketing partners.

206. The Commission notes the proposal to establish an exemption from the National DNCL Rules for telemarketing made pursuant to an affinity relationship program. The Commission considers that the existing business relationship exemption applies to the organization that the consumer supports (e.g. a not-for-profit organization), not the affinity program organization (e.g. a credit card issuer). In light of the above, the Commission considers that it is not appropriate to either interpret the existing business relationship exemption to include telemarketing made pursuant to an affinity relationship program or to create an exemption for such telemarketing.

207. The Commission notes the proposal that the existing business relationship exemption should flow through to an outsourcer of an organization that has an existing business relationship with the consumer. The Commission considers that if an outsourcer initiates a telemarketing telecommunication on behalf of a client, the existing business relationship would apply to only that client of the telemarketer, not to other clients.

208. The Commission notes the proposal that it should require an organization, during a transaction that establishes an existing business relationship, to a) inform the consumer that he or she may receive a telemarketing telecommunication from that organization regardless of the consumer's registration on the National DNCL and b) allow the consumer, once he or she has been so informed, to cancel the transaction or immediately be registered on the organization's do not call list. The Commission considers that the establishment of such a requirement would be too burdensome on organizations. Further, the Commission determines that it is not necessary to establish the proposed requirement. The Commission notes that a consumer's telecommunications number is personal information and as such, the collection of the number falls under the PIPED Act provisions which require organizations to identify the purposes for which personal information is collected (e.g. to contact the consumer for marketing purposes).

209. The Commission notes the proposal that an introductory telecommunication made to a consumer to provide information about a transfer of business should fall under the existing business relationship exemption. However, the Commission considers that such a telecommunication does not fall under the definition of telemarketing as no solicitation is involved.

210. The Commission notes that certain parties proposed changes to the definition of existing business relationship as set out in subsection 41.7(2) of the Act; however, the Commission notes that any changes to the Act would be addressed and enacted by Parliament. Therefore the Commission will not address such proposals.

Newspapers of general circulation

Positions of parties

211. PIAC-CAC submitted that the Commission should clarify the term "newspaper of general circulation." PIAC-CAC proposed that a newspaper of general circulation should be defined as having an independent editorial board and a reasonably large circulation, except where a newspaper is the only one in a small town, and as containing general or local news, not specialist information.

Commission's analysis and determinations

212. The Commission agrees that the term "newspaper of general circulation" should be clearly defined for the purposes of applying the National DNCL exemptions set out in the Act.

213. The Commission considers that, for the purposes of the National DNCL Rules, in order to qualify as a newspaper of general circulation, a newspaper should a) consist in great part of general news or articles of local interest, b) be published at least once weekly, c) be published in sheet form (rather than bound), and d) be available for sale to the general public as well as via subscription. The Commission considers that the size of the circulation is irrelevant to the definition of "newspaper of general circulation."

214. In light of the above, for the purposes of the National DNCL Rules, the Commission determines that

> "Newspaper of General Circulation" means a printed publication in sheet form that is intended for general circulation, published regularly at intervals of not longer than seven days, consisting in great part of news of current events of general and local interest, and is sold to the public and to subscribers.

Business consumers

Positions of parties

215. Bell Canada et al., CBA, CFSP, CMA, CUCC, ContactNB, DMA, Infolink, MCD, and RCI submitted that the Commission should establish an exemption from the National DNCL Rules for telemarketing to business consumers. In this regard, Bell Canada et al., CBA, CFSP, CMA, CUCC, Infolink, and MCD argued that the intent of the legislation was to prevent undue inconvenience or nuisance to residential consumers, not to prevent telemarketing to businesses.

216. DMA and RCI argued that business consumers did not share the same privacy- and nuisance-related concerns as residential consumers. In this regard, DMA and RCI submitted that telemarketing telecommunications to businesses are placed during business hours and directed to the person responsible for vendor selection and purchasing.

217. CBA submitted that telemarketing telecommunications to targeted business consumers have resulted in few objections.

218. CBA, CMA, CFSP, DMA, and RCI submitted that the telemarketing of business products to business consumers is an effective and accepted business practice; further, certain businesses rely on this business practice to obtain information about business products or services.

219. CMA submitted that there may be significant economic consequences for the business sector if the Commission does not exempt telemarketing telecommunications to business consumers from the National DNCL Rules. ContactNB submitted that if the Commission were to fail to establish such an exemption, certain businesses could be closed to routine business-to-business sales. CFSP argued that certain charities depend on telemarketing to business consumers in order to solicit participation and financial support for fundraising events and that those charities would incur a significant loss of revenue if such telemarketing were curtailed due to registration of business consumers on the National DNCL.

220. CFSP, CMA, and Infolink submitted that if the Commission were to establish an exemption for telemarketing to business consumers, this would not prevent business consumers from being able register on the do not call lists of telemarketers or clients of telemarketers. Further, the ability to register on such lists would provide sufficient protection from unwanted telemarketing telecommunications for businesses that do not wish to be contacted by particular organizations.

221. Bell Canada et al. proposed that telemarketing to business consumers should not be subject to the National DNCL Rules. Bell Canada et al. proposed that, at the three-year Parliamentary review[14] of the amendment to the Act, the Commission could re-assess whether telemarketing to business consumers should be included in the National DNCL Rules.

222. BCOAPO et al., MO, and OPC opposed the creation of an exemption for business-to-business telemarketing from the National DNCL Rules.

Commission's analysis and determinations

223. The Commission notes that it has received little evidence of undue inconvenience or nuisance to business consumers as a result of receiving telemarketing telecommunications. Accordingly, the Commission considers that while certain business consumers may view all telemarketing telecommunications as a source of undue inconvenience or nuisance, in general, business consumers do not experience the same inconvenience and nuisance as residential consumers.

[14] Section 2.1 of *An Act to amend the Telecommunications Act*, S.C. 2005, c.50, amending R.S.C. 1993, c.38 states that three years after this Act comes into force, a committee of the House of Commons, of the Senate, or both Houses of Parliament is to be designated or established for the purpose of reviewing the administration and operation of the provisions enacted by this Act.

224. The Commission further notes that, at present, any consumer, business or residential, may register on the do not call list of a telemarketer or client of a telemarketer. The Commission notes that businesses that experience undue inconvenience and nuisance as a result of telemarketing telecommunications could continue to register on the do not call list of a telemarketer or client of a telemarketer.

225. In light of the above, the Commission determines that telemarketing telecommunications made to business consumers will be exempt from the application of the National DNCL Rules.

226. The Commission notes that it will monitor complaints from business consumers to determine whether it is necessary to revisit this issue.

Personal relationships and referrals

Positions of parties

227. Advocis proposed that individuals licensed by an insurance regulatory body or securities commission who initiate telemarketing telecommunications to consumers based on word-of-mouth or personal referrals should be exempt from the National DNCL Rules. Advocis submitted that such telecommunications are a common business practice and that a consumer is only contacted as a result of a personal referral when the client who provides the referral considers that the referred consumer could benefit by being contacted by the financial advisor.

228. Advocis, IDA, and Primerica considered that telecommunications placed to a related person, as defined in section 251(2)(a) of the *Income Tax Act* (i.e. individuals connected by blood relationship, marriage or common law partnership or adoption), should be exempt from the National DNCL Rules. IDA and Primerica submitted that it was not the intent of the amendment to the Act to prevent telemarketing telecommunications based on personal relationships or referrals from friends and family.

229. Primerica submitted that telemarketing telecommunications made by life insurance agents pursuant to contact information obtained from friends and family members should be exempt from the National DNCL Rules. In this regard, Primerica submitted that it would be consistent with the amendment to the Act for the Commission to permit telemarketing telecommunications to consumers with whom a telemarketer has a personal relationship as consumers do not consider such calls to be unsolicited. Primerica further submitted that consumers who register their telecommunications number on the National DNCL would not consider that, in doing so, they had precluded themselves from receiving such telecommunications.

230. Bell Canada et al. considered it reasonable for the Commission to permit telemarketing telecommunications based on specific consumer consent or on close personal relationships; however, it was less clear how consumers would react to telemarketing telecommunications based on personal referrals.

231. PIAC-CAC noted that the legislation did not establish an exemption for family, friends, and acquaintances. PIAC-CAC submitted that, accordingly, the Commission should not establish such an exemption; however, it could be part of a defence against a complaint to note that a telemarketing telecommunication was made pursuant to a family-, friend-, or acquaintance-based relationship.

Commission's analysis and determinations

232. The Commission notes that certain parties requested that it establish exemptions from the National DNCL Rules for telemarketing telecommunications based on personal relationships and personal referrals.

233. The Commission considers that few consumers would view telemarketing telecommunications made pursuant to personal relationships to be a source of undue inconvenience or nuisance. However, the Commission considers that an exemption to the National DNCL Rules for telemarketing telecommunications made pursuant to personal relationships has the potential to be used by telemarketers to avoid compliance. In particular, the Commission considers that telemarketers may stretch the boundaries of an exemption based on a friend- or acquaintance-based relationship. The Commission finds that in response to a complaint, it would be a defence for a person to demonstrate that at the time a telemarketing telecommunication was made the person had a personal relationship with the recipient consumer of the telecommunication. The Commission considers that telemarketers would be less likely to abuse such a defence than to abuse an explicit exemption. The Commission also determines that the onus would be on the telemarketer to prove that a personal relationship existed.

234. The Commission notes that in certain industries the use of personal referrals to generate new client relationships is a standard business practice. The Commission notes Advocis' position that a consumer is only contacted as a result of a personal referral when the referring party considers that the referred consumer could benefit by being contacted by a financial advisor. The Commission considers that even if the party that provides the referral anticipates that the consumer contacted would not view the resulting telemarketing telecommunication as a source of undue inconvenience or nuisance, this is not reason to assume that the consumer contacted would have that view. Accordingly, the Commission considers that it is not appropriate to establish an exemption to the National DNCL Rules for telemarketing telecommunications made pursuant to referrals.

Financial services participants and realtors

Positions of parties

235. Advocis and IFB submitted that financial services participants and other individuals who are licensed by their respective securities commission or insurance regulatory body should be exempt from the National DNCL Rules since the activities of such persons are overseen by a stringent regulatory regime that protects consumers' rights.

236. CREA submitted that unsolicited telecommunications made for the express purpose of setting up an appointment or following up on a referral are distinctly different from unsolicited telemarketing telecommunications. CREA submitted that such telecommunications made by realtors are exploratory in nature and do not involve the sale of real estate services, as such a business transaction would take place during a subsequent face-to-face meeting. CREA submitted that the Commission should establish an exemption from the National DNCL Rules for unsolicited telecommunications in which the transaction resulting from the telecommunication must take place during a subsequent face-to-face meeting.

Commission's analysis and determinations

237. The Commission notes the proposals that it should establish exemptions from the National DNCL Rules for telemarketing telecommunications made by persons that are regulated under other federal or provincial legislation, such as persons in the financial services industry or insurance/securities industry. The Commission notes that the National DNCL Rules apply to all persons making telemarketing telecommunications, excluding those who are making the types of telecommunications that are exempt pursuant to the Act and those that make telemarketing telecommunications to business consumers. The Commission regulates telemarketing for the purpose of preventing undue inconvenience and nuisance as provided in section 41 of the Act, and the Commission considers that the fact that the activities of a telemarketer or a client of a telemarketer are regulated under other federal or provincial legislation is not a sufficient reason for the Commission to establish an exemption for such parties from the National DNCL Rules.

238. The Commission notes the proposal that it should exempt from the National DNCL Rules unsolicited telecommunications in which the transaction must take place during a subsequent face-to-face meeting. The Commission considers that such calls are telemarketing telecommunications within the meaning of the Commission's definition of telemarketing. The Commission considers that it is not the result of a telecommunication, for example, a completed transaction, that determines if a telecommunication is a telemarketing telecommunication, but whether the telecommunication is made for the purposes of solicitation. Accordingly, the Commission determines that it is not appropriate to establish an exemption for telemarketing telecommunications where the transaction is made or completed at a subsequent face-to-face meeting, regardless of whether the telecommunications is made by a realtor or other person or organization.

D. The Telemarketing Rules

239. In previous Decisions and Orders, the Commission has set out the current Telemarketing Rules – some of which are currently in force and some of which are stayed. The Telemarketing Rules include rules related to a) the do not call lists of telemarketers and clients of telemarketers, b) caller identification, c) call number display, and d) calling hours. In this section, the Commission assesses the ongoing appropriateness of each of the Telemarketing Rules in light of the upcoming establishment of the National DNCL and the Commission's new enforcement powers. For each Telemarketing Rule, the Commission addresses the submissions made pursuant to the Decision 2004-35 review and vary applications where appropriate as well as those made pursuant to Public Notice 2006-4.

Do not call lists of telemarketers and clients of telemarketers

240. The Telemarketing Rules related to the do not call lists of telemarketers and clients of telemarketers include a) the requirement to keep a do not call list, b) requirements related to the length and effective date of consumer registration, c) the requirement to process a do not call request at the time of the call, d) the requirement to offer the choice of registration on a telemarketing agency's do not call list, the client of the telemarketer's do not call list, or both, and e) the requirement to provide a unique registration number. Some of these Rules are

currently in force while some are stayed and subject to the Decision 2004-35 review and vary applications. In this section, the Commission assesses whether it is appropriate to retain the above-noted requirements.

The requirement to keep a do not call list

Positions of parties

241. BCOAPO et al., Bell Canada et al., CADRI, CMA, DMA, MCD, PIAC-CAC, PILC-CAC-MSOS, Primerica, RDAC, TDMM, and UC submitted that the Commission should continue to require all organizations involved in telemarketing to maintain their own do not call lists.

242. CMA noted that it requires its members to keep their own do not call lists on the basis that this a) improves consumer choice, b) allows consumers to limit calls from those telemarketers that are exempt from the National DNCL Rules, and c) allows consumers to withdraw their consent to be contacted by a given telemarketer at any time, at the consumer's request, consistent with the PIPED Act.

243. Advocis and CAFII submitted that the Commission should not continue to require telemarketers and clients of telemarketers to maintain their own do not call lists as to do so would be duplicative and may be confusing to consumers and costly to the industry.

244. PIAC-CAC submitted that once a consumer has asked to be placed on a telemarketer's or a client of a telemarketer's do not call list, this request should continue to be honoured for the requisite time period, despite the consumer continuing to contact or do business with the organization.

Commission's analysis and determinations

245. Subsection 41.7(4) of the Act states

> Every person or organization that, by virtue of subsection [41.7](1) of the Act is exempt from the application of an order made by the Commission that imposes a prohibition or requirement under section 41 shall maintain their own do not call list and shall ensure that no telecommunication is made on their behalf to any person who has requested that they receive no telecommunication made on behalf of that person or organization.[15]

246. In Decision 94-10, the Commission found it consistent with section 41 and paragraph 7(i) of the Act that parties placing voice or fax telemarketing telecommunications be obliged to comply with a consumer's request not to be called again as repeated calls made for the purpose of solicitation by a given party after such a request would cause considerable inconvenience and nuisance to consumers.

---

[15] The Commission notes however, that this requirement does not apply to a telecommunication made for the sole purpose of collecting information for a survey of members of the public, pursuant to subsection 41.7 (5) of the Act.

247. The Commission notes that many parties submitted that even though a National DNCL will be established, they supported continuing the requirement to maintain their own do not call lists.

248. The Commission also notes that some parties opposed continuing this requirement as they considered that to do so would be confusing to consumers and costly to telemarketers and clients of telemarketers.

249. The Commission considers that most consumers who do not wish to receive any telemarketing telecommunications will register their telecommunications numbers on the National DNCL. However, the Commission is of the view that consumers should be provided with the choice to limit telemarketing telecommunications from specific telemarketers or clients of telemarketers or to limit telemarketing telecommunications from all persons or organizations required to subscribe to the National DNCL.

250. In light of all of the above, the Commission determines that telemarketers and clients of telemarketers are required to maintain their own do not call lists and to honour a consumer's request not to be called.

251. The Commission notes, as mentioned previously, that subsection 41.7(4) of the Act requires persons or organizations that are exempt from the National DNCL Rules to maintain their own do not call lists and honour a consumer's request not to be called.

252. The Commission considers that since the existing business relationship exemption does not extend to an organization's affiliates, a consumer's registration on an organization's do not call list will not automatically apply to the organization's affiliates.

Processing a do not call request at the time of the call

Positions of parties

253. No party objected to the maintenance of this requirement as set out in Decision 2004-35.

Commission's analysis and determinations

254. In Decision 2004-35, in light of evidence that consumers were experiencing difficulties in registering on the do not call lists of telemarketers and clients of telemarketers, the Commission required that if, during a voice telemarketing telecommunication, a consumer asks to be put on a do not call list, the request was to be processed without requiring further action from the consumer. The Commission determines that this requirement is still necessary with respect to the do not call lists of telemarketers and clients of telemarketers to ensure that consumers do not incur undue inconvenience or nuisance by being required to make another telephone call to be registered on a telemarketer's or a client of a telemarketer's do not call list.

Length and effective date of consumer registration

Positions of parties

255. Bell Canada, CFSP, and CMA proposed that a consumer's registration on a telemarketer's or a client of a telemarketer's do not call list should remain active for three years. Bell Canada submitted that a three-year period would be sufficient to take into account the churn in telecommunications numbers due to consumers changing numbers or discontinuing service.

256. UC proposed that a consumer's registration on a telemarketer's or a client of a telemarketer's do not call list should remain active for five years.

Commission's analysis and determinations

257. The Commission notes the rule in force, whereby a consumer's request to not receive voice telemarketing telecommunications is to be effective within 30 days of the request and a consumer's request not to be sent a fax telemarketing telecommunications is to be effective within seven days of the request.

258. In light of the 31-day grace period determined for the National DNCL for voice and fax telemarketing telecommunications, the Commission determines it appropriate to change this rule to allow a 31-day grace period for both voice and fax telemarketing telecommunications in the interest of regulatory symmetry. The Commission determines that this requirement should apply to a consumer's request regardless of the time, place or method by which the telemarketer or client of a telemarketer receives the request (e.g. at the time of the telemarketing telecommunication, at the time the consumer completes a transaction with an organization, or via an email or letter).

259. The Commission considers that a telemarketer initiating a telemarketing telecommunication on behalf of a client will need to forward a consumer's request not to be called to the client of the telemarketer. The Commission considers that 31 days is a reasonable period of time for a telemarketer to forward the request to the client and to have the client register the consumer on its do not call list.

260. The Commission notes that the current registration period is three years. The Commission considers that the current registration period remains appropriate. The Commission notes that the three-year time period will commence from the date of the end of the 31-day grace period, not from the date of the initial request.

261. The Commission considers that a consumer's preferences to be contacted may change over a three-year period. The Commission determines that the onus is on consumers to de-register during that period or to re-register on a telemarketer's or client of a telemarketer's do not call list when the three-year registration period expires.

The requirement to offer the choice of registration on a telemarketing agency's do not call list, the client of the telemarketer's do not call list, or both

Positions of parties

262. In its application to review and vary Decision 2004-35, CMA opposed this requirement. CMA submitted that if a telemarketing agency were required to spend a significant amount of time explaining the nature of the lists and the impact of the consumer's request, the telemarketer's ability to sell or promote products and services would be hindered.

263. AFP, Beautyrock, CMA and RMG et al., in their respective review and vary applications, submitted that by asking to be placed on a telemarketing agency's do not call list a consumer would not be aware of which organizations are represented by that telemarketing agency and could unknowingly request to not be called by companies that the consumer may wish to be contacted by (including not-for-profit organizations).

264. CBA submitted that, upon a receipt of a do not call request, a telemarketing agency should add the person's name and telecommunications number to only the client's do not call list so that the telemarketing agency could continue to contact that consumer on behalf of its other clients.

Commission's analysis and determinations

265. In Decision 94-10, the Commission required that where a professional organization has initiated telemarketing telecommunications on behalf of a client and a consumer has requested not to be called again by that organization, the organization was to remove the consumer's name and telecommunications number from its telemarketing lists. The Commission considered this requirement to be appropriate since repeated telemarketing telecommunications cause considerable inconvenience and nuisance to consumers and considered that this requirement would reduce the number of telemarketing telecommunications to a given consumer from the same organization.

266. In Decision 2004-35, the Commission required that when a telemarketing agency initiating a telemarketing telecommunication on behalf of a client received a do not call request during the telecommunication, the agency had to ask the consumer if the consumer wanted to be removed from the client's do not call list, the agency's do not call list, or both. The Commission considered this requirement to be an interim measure until a National DNCL could be established, which would ensure that the consumer's telecommunications number was removed from the maximum number of do not call lists possible while preserving the consumer's right to receive telecommunications from organizations they wish to hear from.

267. The Commission considers that, pursuant to the establishment of the National DNCL, consumers who generally do not wish to receive unsolicited telemarketing telecommunications will register their telecommunications numbers on the National DNCL, thereby preventing the maximum number of telemarketing telecommunications with one registration.

268. The Commission also notes that, pursuant to subsection 41.7(4) of the Act, telemarketers and clients of telemarketers that are exempt from the National DNCL Rules must maintain their own do not call lists. The Commission further notes that, as it has determined in this Decision, all

telemarketers that make telemarketing telecommunications on their own behalf and all clients of telemarketers must maintain their own do not call lists and honour a consumer's request not to be contacted.

269. In light of the above, the Commission determines that, upon receipt of a consumer's request, telemarketing organizations or agencies making telemarketing telecommunications on behalf of their clients, are to make all reasonable efforts to ensure that the consumer's name and telecommunications number is registered on the appropriate client's do not call list within 31 days of the request. Accordingly, the Commission finds that it is not necessary for the telemarketing agency to ask the consumer which list he or she wishes to register on or to register the consumer on a do not call list that belongs to the telemarketing agency.

Requirement to provide a unique registration number

Positions of parties

270. In their respective review and vary applications, CMA and RMG et al. argued that the requirement to provide consumers with a unique registration number to confirm the consumer's request to be put on a do not call list was onerous, costly, and would increase the administrative burden for telemarketers. CMA further submitted that this requirement was unlikely to provide consumers with an effective means of following up on complaints or initiating enforcement procedures. CMA also submitted that the unique registration requirement could be easily subverted with inevitable loss of consumer confidence in the system due to the ease with which less reputable marketing companies could operate under numerous corporate entities or could wind up and reconstitute themselves.

271. Bell Canada et al., CBA, CLHIA, Primerica, and RCI also opposed this requirement.

272. Bell Canada et al. submitted that unique registration numbers would not protect consumers because legitimate telemarketers would ensure that their do not call lists accurately reflect consumer requests, whereas less scrupulous telemarketers will not maintain proper lists. Bell Canada et al. considered it unlikely that consumers would maintain a list of telemarketing companies and corresponding registration numbers and cross-reference this list against future telemarketing calls.

273. CBA and Primerica submitted that the requirement to provide unique registration numbers would require a fairly complex and expensive technology and as a result, would be very onerous for the industry to implement.

274. CBA submitted that consumers should note the client of a telemarketer's name and the date and time of the call. CBA submitted that this information should provide sufficient reference for follow-up action.

275. CLHIA and RCI considered that with the establishment of the National DNCL, the requirement for a unique confirmation number would not be necessary.

Commission's analysis and determinations

276. In Decision 2004-35, as an interim measure until a National DNCL could be established, the Commission required telemarketers to provide consumers with a unique registration number, at the time of the do not call request, to both confirm receipt of the consumer's request and, if further calls were received, to serve as proof that the request had been made. In light of the establishment of the National DNCL, the Commission determines that this interim measure is not necessary.

277. The Commission considers that a consumer may still need to verify that his or her name and telecommunications number is registered on an organization's do not call list as well as the registration expiry date. Accordingly, the Commission determines that telemarketers are required to provide a consumer with a local or toll-free telecommunications number, upon request, at which a consumer may verify his or her registration on the telemarketer's or the client of the telemarketer's do not call list.

Caller identification requirements for voice telemarketing

278. In Decision 2004-35, the Commission set out several new caller identification requirements for voice telemarketing. In this section, the Commission determines whether it is appropriate to vary those caller identification requirements and whether it is appropriate to retain or modify the caller identification requirements set out in Decision 94-10.

Positions of parties

279. In their respective review and vary applications, AFP, Beautyrock, CMA, and RMG et al. opposed the requirement for telemarketers to identify themselves and the client on whose behalf they are initiating a telemarketing telecommunication and to provide a toll-free telecommunications number for complaints, prior to asking for a specific individual as set out in Decision 2004-35. AFP, CMA, and RMG et al. also opposed the requirement that a live operator be provided to answer the toll-free telecommunications number during business hours.

280. These parties argued that the requirement should be varied for the following reasons: it would be a) ineffective in attaining the Commission's policy objectives; b) confusing to consumers; c) expensive to implement; d) an infringement on businesses' right to freedom of expression; e) an infringement on consumers' privacy; and f) a threat to the ongoing ability of many Canadian businesses to make use of telecommunications to market their products and services.

281. With respect to the requirement to provide information prior to asking for a specific individual,

    a) CMA submitted that it would be ineffective if the person answering the telemarketing telecommunications was a child, a person who did not understand the language of the telemarketer, or another member of the household. CMA requested that the Commission vary Decision 2004-35 to allow the telemarketer to establish contact with the intended recipient of the telemarketing telecommunication before providing any identification information.

b) AFP stressed the importance for charities to be able to identify the purpose of their call in the first seconds of the telecommunication before recipients hang up.

c) Beautyrock submitted that it had implemented the Decision 2004-35 caller identification requirements for a two-month period, during which it experienced increased complaints from consumers due to confusion and annoyance with the requirements. Beautyrock submitted consumers had clearly indicated that they want to know immediately with whom the telemarketer wants to speak so that they can confirm that they are the intended party or get the intended party or, if the intended party is not available, respond accordingly. Beautyrock did not argue that caller identification was not necessary; however, it submitted that caller identification information should only be communicated once rapport and identification has been established with the intended party or if the consumer requests this information.

282. CMA and RMG et al. also argued that the caller identification requirement set out in Decision 2004-35 constituted an infringement on businesses' right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms* (the Charter). In this regard, RMG et al. submitted that the requirement infringed freedom of expression by altering the content of communications of telecanvassing communications and by imposing mandatory statements that must be read prior to soliciting donations or support.

283. With respect to the cost to implement the new caller identification requirements,

a) Beautyrock submitted that when it implemented the caller identification requirements it experienced reduced productivity, increased costs to clients, and increased do not call requests.

b) CMA submitted an example of a Canadian retailer, engaged primarily in sales activities to business consumers, that had discovered that this requirement was leading to an estimated loss of revenue in the order of $1.3 million per annum due to the negative effect of the requirement on the telemarketing telecommunications.

c) RMG et al. argued that the costs associated with implementing the new requirements would have a negative impact on some not-for-profit organizations and telecanvassing service providers from which these parties would not be able to recover.

284. With respect to the requirement to provide a live operator during business hours to answer the toll-free telecommunications number,

a) CMA argued that this requirement would be onerous and costly for many businesses, particularly smaller businesses. CMA requested that the Commission vary Decision 2004-35 to allow a telemarketer the liberty to provide a toll-free telecommunications number at the end of the call, and to replace the requirement for a live operator with the option to maintain a 24 hour a day interactive voicemail system.

b) RMG et al. submitted that this requirement would be very costly for not-for-profit organizations and would reduce the funds available for their mandated causes. RMG et al. submitted that it would support a requirement for not-for-profit organizations to make available a toll-free telecommunications number that had voicemail informing consumers that their telecommunication would be returned within three business days.

285. Bell Canada et al., CJC, and PILC-CAC-MSOS supported the maintenance of the requirement for the telemarketer to identify the person or organization on behalf of whom the telemarketing telecommunication is made. Bell Canada et al. submitted that the identification requirements related to providing the name of the person, telemarketer, and client of the telemarketer should be continued for all telemarketers given the similar requirement for exempt entities set out in subsection 41.7(3) of the Act. CMA supported this proposal.

286. ARC-PIAC, Bell Canada et al., CBA, CFSP, CPPA, CUCC, and TPAAA opposed the maintenance of the requirement for the telemarketer to provide identification before any other communications and before asking for an individual. CBA further submitted that the disclosure procedure was not only unwarranted but, in the case of a banking institution, might also result in the needless disclosure of information about a consumer's existing relationship with a bank.

287. RCI submitted that increased costs to implement the Decision 2004-35 requirements would include the costs of additional staff that would be needed to convey the new identification information and to accommodate toll-free telecommunications numbers answered by live operators. RCI also noted that, in many cases, it would not be the intended recipient who answers the telemarketing telecommunications.

288. ARC-PIAC, Bell Canada et al., PIAC-CAC, and RCI submitted that telemarketers should be required to provide a toll-free telecommunications number at any point during the telemarketing telecommunication, but only upon request. CMA, in reply, changed its proposal regarding when to provide the toll-free telecommunications number to adopt the position advocated by ARC-PIAC.

289. In the proceeding, AFP, Bell Canada et al. and CBA submitted that the costs of providing a live operator during business hours would be prohibitive for some telemarketers. AFP submitted that the requirement to provide a live operator would be extremely burdensome and prohibitively expensive for most medium- and small-sized organizations. Bell Canada et al. submitted that the Commission should establish standards for answering calls during normal business hours, whether by IVR system or by live operator, to ensure that customers are able to contact telemarketers and register their concerns and do not call requests in a timely manner. CBA also

submitted that, in view of the six time zones across Canada, the staff required to provide a live operator would necessitate a significant investment by businesses, regardless of the nature of the telephone calls that are placed to consumers.

Commission's analysis and determinations

290. The Commission notes that parties objected to the following caller identification requirements set out in Decision 2004-35:

a) the requirement to provide caller identification information before any other communication and before asking for a specific individual; and

b) the requirement to always provide a toll-free telecommunications number that is manned during business hours.

291. The Commission notes that the identification requirements set out in Decision 94-10 were modified in Decision 2004-35 in light of a) difficulties consumers reported in identifying and reaching a telemarketer that had contacted them in order that the consumer could express a complaint or concern about the telemarketing telecommunication and b) the absence of the legislative power to impose monetary penalties for violations of the Unsolicited Telecommunications Rules.

Before any other communication and before asking for a specific individual

292. The Commission notes that parties that opposed the requirement to provide identification before any other communication and before asking for a specific individual argued that the requirement negatively affected the effectiveness of the telemarketing telecommunications, was costly to implement, was confusing to and breached the privacy of the intended recipients of the telemarketing telecommunication, and infringed freedom of expression.

293. The Commission recognizes the possibility that if the identification information is provided to the first person that answered the telephone, the message might not be conveyed to the intended recipient or it might be conveyed incorrectly, depending upon the ability of the person who answers (e.g. a child) to understand the information. The Commission considers that it would be more effective for the telemarketer to provide the caller identification information directly to the intended recipient to ensure that the information has been correctly relayed. The Commission considers that this will permit the recipient of the telemarketing telecommunication to determine whether he or she wishes to continue the telecommunication. The Commission also considers that this will facilitate the investigation of complaints against telemarketers as it will increase the likelihood that the consumer will be able to correctly identify the caller.

294. The Commission notes that at the time that it set out this requirement in Decision 2004-35, it had received minimal evidence to demonstrate that the requirement to provide identification before any other communication and prior to reaching the intended party would result in significant costs to telemarketers. The Commission considers that the evidence presented by Beautyrock, CMA, and RCI with regard to reduced productivity, increased costs, consumer annoyance, and loss of revenue, as well as the establishment of the National DNCL, provide a change in facts since that Decision.

295. The Commission notes that PIAC-CAC, CBA, and CUCC requested a clarification of the requirement under subsection 41.7(3) of the Act, which requires any telemarketer making a telemarketing telecommunication that is exempt from the National DNCL Rules to, at the beginning of the telecommunication, identify the purpose of the telecommunication and the person or organization on whose behalf the telecommunication is made.

296. The Commission notes that the identification requirements in subsection 41.7(3) of the Act for entities which are exempt, or entities that exclusively make telemarketing telecommunications which are exempt, from the National DNCL Rules require that the information be given "at the beginning of the telecommunication." The Commission considers that adopting a rule that requires the identification of the telemarketer once the intended party is reached would not be inconsistent with the expression "beginning of the telecommunication."

297. The Commission considers that the term "telecommunication" referred to in section 41.7 of the Act is being used in a technology-neutral manner to refer to a communication between the telemarketer and the person with whom the telemarketer, or the client of the telemarketer, had, for example, an existing business relationship, thus suggesting a different use of the term "telecommunication" than is used in the rest of the Act.

298. In light of all of the above, the Commission varies Decision 2004-35 by replacing the requirement that a telemarketer provide caller identification before any other communication and before asking for a specific individual with the requirement that a telemarketer is to provide caller identification requirements upon reaching the intended party. In light of its determination in this matter, the Commission will not address the parties' arguments with regard to privacy and freedom of expression.

Telecommunications number

299. In Decision 94-10, the Commission determined that a telecommunications number should be provided to a consumer upon request for the purpose of contacting a responsible person (i.e. an employee or other representative of the telemarketer) to ask questions or make comments, including complaints, about a telemarketing telecommunication. In that Decision, the Commission determined that the number should be provided for both the telemarketer, and where applicable, the client of the telemarketer. In Decision 2004-35, the Commission determined that a toll-free telecommunications number used for the purposes described above should be provided before any other communication and before asking for a specific individual.

300. The Commission considers that, in light of the establishment of the National DNCL, there will be a reduction in the number of complaints and do not call requests made directly to the telemarketer. Therefore, the Commission determines that it is not necessary to require telemarketers to always provide a telecommunications number to a consumer; instead, the number is to be provided upon request.

301. The Commission is of the view that a consumer should not have to incur any expense to contact an employee or other representative of the telemarketer to ask questions or make comments about a telemarketing telecommunication or to verify the consumer's registration on an organization's do not call list. The Commission also considers that the related costs of the consumer's telecommunication to the telemarketer should be borne by the telemarketer or the client of the telemarketer.

302. The Commission notes that the cost of toll-free service has decreased significantly over the years and considers that the cost is not prohibitive. The Commission also notes that, as it considers that the telecommunications number need only be provided upon request, the number of telecommunications a telemarketer may receive on the toll-free telecommunications number would be less than if the number was always to be provided, thereby minimizing the costs of providing a toll-free telecommunications number. However, the Commission recognizes that telemarketers operating in an area local to the consumer will not need to provide a toll-free telecommunications number in order to ensure the consumer incurs no cost to contact them.

303. In light of all the above, the Commission varies Decision 2004-35. The Commission determines that telemarketers are required to provide, upon request, a telecommunications number for the purpose of contacting an employee or other representative of the telemarketer to ask questions or make comments about a telemarketing telecommunication. The Commission determines that the number supplied must be local or toll-free to ensure the consumer does not incur toll costs to use the number. The Commission also determines that where a telemarketer is initiating a telemarketing telecommunication on behalf of a client, the telemarketer is to provide the toll-free telecommunications number for both the telemarketer and the client of the telemarketer, whether or not the consumer has requested that both be provided.

304. The Commission considers that the requirement to have the telecommunications number provided by a telemarketer answered by a live operator during business hours would be cost prohibitive, particularly for smaller businesses and not-for-profit organizations.

305. In light of the establishment of the National DNCL, the Commission considers that a live operator is not required as most consumer inquiries to telemarketers will be redirected to the National DNCL operator. Additionally, as determined above, consumers will have their requests to be placed on the telemarketer's or the client of the telemarketer's do not call list processed at the time that they receive a telemarketing telecommunication. The Commission is of the view that this will reduce consumers' difficulties with regard to making complaints and with regard to contacting a telemarketer or client of a telemarketer.

306. The Commission considers that the alternative to a live operator proposed by RMG et al. has merit. The Commission considers that requiring the telecommunications number to be answered by a voicemail system informing consumers that their call will be returned within three business days is a reasonable compromise to the requirement to provide a live operator. The Commission considers that this would help ensure that consumers' concerns are addressed within a reasonable period of time.

307. In light of all the above, the Commission varies Decision 2004-35 to remove the requirement that the telecommunications number provided to consumers be answered by a live operator during business hours. The Commission replaces the requirement with the requirement that if the telecommunications number is not answered by a live operator it must be answered with a voicemail system informing the consumer that his or her telephone call will be returned within three business days. The Commission determines that the call must be returned within three business days. The Commission also finds that telemarketers and clients of telemarketers have an obligation to ensure that a consumer will not encounter a full mailbox as this would prevent consumers from leaving messages and result in undue annoyance and inconvenience.

Name of person, telemarketer, client of telemarketer

308. The Commission notes that subsection 41.7(3) of the Act requires telemarketers that make telemarketing telecommunications that are exempt from the National DNCL Rules under subsection 41.7(1) of the Act to identify the purpose of the telecommunication and the name of the person on whose behalf the telecommunication is made.

309. The Commission notes that no party opposed the Decision 2004-35 requirements with regard to providing the name of the telemarketing representative making the telemarketing telecommunication, the name of the telemarketer for which the telemarketing representative is making the telecommunication, and, if applicable, the name of the client of the telemarketer on behalf of which the telecommunication is made.

310. The Commission is of the view that consumers require all the identification elements described above to help determine, at the outset of the telemarketing telecommunication, whether they wish to continue the telecommunication and to be able to make a complaint or inquiry about the telecommunication. The Commission considers that all telemarketers, including those making telemarketing telecommunications that are exempt from the National DNCL Rules pursuant to subsection 41.7(1) of the Act or the other exemption set out by the Commission, should be required to provide this information.

311. The Commission recognizes that certain telemarketers provide telemarketing representatives who place telemarketing calls on their behalf with fictitious names. The Commission considers that either the name or fictitious name of the telemarketing representative making the telemarketing telecommunication should be provided to fulfil this requirement.

312. In light of all of the above, the Commission determines that it will retain the requirement established in Decision 2004-35 for telemarketers to identify the name of the telemarketing representative, the telemarketer, and where applicable, the client of the telemarketer. The Commission also determines that where applicable, the fictitious name can be provided.

Other information provided upon request

313. The Commission notes that no party opposed the rule in force that requires telemarketers to provide, upon request, the name and address of an employee or other representative of the telemarketer to whom the consumer can write with concerns or complaints about the telemarketing telecommunication. The Commission considers that the current requirement helps ensure that consumers have the option of contacting the telemarketer or client of the telemarketer in a manner other than by a voice telecommunication. Accordingly, the Commission maintains this requirement. The Commission also determines that where a telemarketer is initiating a telemarketing telecommunication on behalf of a client, the telemarketer is to provide, upon request, the name and address of an employee or other representative of both the telemarketer and the client of the telemarketer, whether or not the consumer has requested that both be provided.

Caller identification requirements for fax telemarketing

314. The Commission established caller identification requirements for fax telemarketing in Decision 94-10 and modified these requirements in Decision 2004-35. The modifications set out

in Decision 2004-35 are stayed; however, the review and vary applicants did not request that the modifications be varied. In this section, the Commission determines whether it is appropriate to maintain the caller identification requirements for fax telemarketing – both those currently in force and those stayed.

Positions of parties

315. CMA, Infolink, MCD, OPC, PIAC-CAC, and Primus submitted that the Commission should maintain the caller identification requirements for fax telemarketing.

316. Bell Canada et al. supported maintaining the requirement that a telemarketer provide identification information for both the agent and the client in cases where a fax is sent by an agent on behalf of a client. However, Bell Canada et al. submitted that in light of the identification requirements in subsection 41.7(3) of the Act for telemarketers making telemarketing telecommunications exempt from the National DNCL Rules pursuant to subsection 41.7(1) of the Act, this requirement should apply only in respect of the organization on whose behalf fax telemarketing telecommunications are being placed.

Commission's analysis and determinations

317. The Commission notes that parties generally supported the maintenance of the current caller identification requirements for fax telemarketing and that no party opposed the modifications to those requirements set out in Decision 2004-35.

318. The Commission notes Bell Canada et al.'s submission that it is not necessary, in light of subsection 41.7(3) of the Act, to require both a telemarketer's and a client of the telemarketer's identification information on a fax. The Commission considers that, as with a voice telemarketing telecommunications, consumers require the identification information for both the telemarketer and a client of a telemarketer to be able to make a complaint or inquiry about the telecommunication. The Commission also considers that, for regulatory symmetry, the identification requirements for fax telemarketing telecommunications should be the same as those for voice telemarketing telecommunications.

319. In light of the above, the Commission retains the Telemarketing Rules for fax identification set out in Decision 94-10 that require the fax to a) identify the telemarketer and client of the telemarketer, and b) include both a voice and fax telecommunications number and a name and address of a responsible person (i.e. an employee or other representative of the telemarketer) to whom the consumer can write for the purposes of asking questions or making comments about the fax telemarketing telecommunications. The Commission determines that the latter requirement is also necessary for the purposes of making or verifying a do not call request.

320. The Commission also retains the Telemarketing Rules set out in Decision 2004-35 that require a) the identification information to be provided on the top of the first page in font size 12; b) the voice and fax telephone numbers to be identified as numbers where a do not call request can be processed; and c) the provision of the originating date and time of the fax.

321. The Commission finds that its determination to vary Decision 2004-35 with regard to voice telemarketing identification requirements which establishes that the telecommunications numbers provided to consumers are required to be local or toll-free and that the voice telecommunications number be answered by a live operator or a voicemail system should also apply to fax telemarketing telecommunications.

Call number display

Positions of parties

322. CMA submitted that, consistent with the CMA Code, telemarketers should not be permitted to block call number display unless there was a significant technological impediment to providing this information to the customer.

323. Bell Canada et al. submitted that the current technical limitation exception should be eliminated since there is no longer any technical impediment to this requirement. Bell Canada et al. submitted that there is a wide availability of technologies that support common language independent data information and referenced the legitimate desire of consumers to be able to identify the source of incoming calls. Bell Canada et al. also submitted that there were no technical limitations that would preclude the display of the originating number in a fax header as this could be achieved by programming a fax machine to display the number.

324. CJC submitted that, for privacy reasons, certain callers, such as volunteers placing telemarketing telecommunications from home, should be permitted to block their originating/contact number.

325. With regard to the use of predictive dialing devices (PDDs) and dead air telecommunications, Bell Canada et al. submitted that there is typically no way of determining who made the telecommunication because, in many cases, there is no call number display associated with the call. Bell Canada et al. submitted that the Commission should require that telemarketers provide call number display for telemarketing telecommunications initiated by PDDs.

Commission's analysis and determinations

326. The Commission notes that the requirement established in Decision 94-10 for telemarketers to provide call number display of the originating telemarketing telecommunications number or an alternate telecommunications number where the telemarketer can be reached allows consumers to exercise greater control over the communications they receive and enables consumers to provide better identification information for registering complaints.

327. The Commission notes CJC's request that certain telemarketers be exempt from the requirement to provide call number display on telemarketing telecommunications, citing privacy concerns, especially for telemarketing representatives placing telecommunications from their residential number. The Commission notes that subsection 41.7(3) of the Act imposes identification requirements on telemarketers that are exempt from the National DNCL Rules pursuant to subsection 41.7(1) of the Act. The Commission considers that the provision of call number display information further facilitates the fulfilment of these requirements and the identification requirements established by the Commission pursuant to section 41 of the Act. The Commission considers that the needs of consumers to be able to identify who is contacting them, in order to

prevent undue inconvenience or nuisance and to register complaints, outweigh the privacy needs of telemarketing representatives who may be placing telemarketing telecommunications from their residential telecommunications numbers.

328. In light of all the above, the Commission concludes that all telemarketers will continue to be required to provide call number display of the originating telemarketing telecommunication or an alternate telecommunications number where the telemarketer can be reached for all telemarketing telecommunications, including those initiated by PDDs.

329. With respect to the technical limitation exception to the call number display requirement, the Commission considers that no party has provided evidence to substantiate the claim that there is no longer any technical impediment to provide call number display. The Commission also notes that in the case of fax telecommunications, no evidence was submitted to substantiate the claim that all fax machines can be programmed to display the originating telecommunications number. The Commission is of the view that the exception is an added protection for telemarketers so that they will not be held liable for technical limitations that may be beyond their control. The Commission notes that, in all cases, intentional blocking of call display information is a violation of this Telemarketing Rule. The Commission concludes that the technical limitation exception to the call number display requirement should be maintained.

Centrex call transfer feature and call number display

330. In Decision 94-10, in the context of establishing the call display rule, the Commission established a rule that required resellers of Centrex service to make all reasonable efforts to ensure that Centrex service subscribers do not employ the Centrex call transfer feature to make telemarketing telecommunications.

331. The Commission notes that when a telecommunication is received at one Centrex telecommunications number and subsequently transferred to another, the call number display on the telephone set receiving the transfer will display the number of the transferring Centrex telecommunications number, not the originating telecommunications number. The Commission notes that the wording of the rule with regard to the Centrex call transfer feature has not been consistent in past decisions or in the ILEC tariffs. The Commission notes that, in some cases, the rule is stated without referring to the Centrex call transfer feature, implying that a telemarketer may not use Centrex service for any telemarketing. The Commission considers that this is incorrect and that the rule was established to address the issue that the call number display of the originating telemarketer's telecommunications number is not available when the Centrex call transfer feature is used.

332. The Commission retains the requirement that resellers of Centrex service are to make all reasonable efforts to ensure that subscribers and end-users of the Centrex service do not employ the Centrex call transfer feature to transmit telemarketing telecommunications.

Calling hours

333. In this section, the Commission determines whether it is appropriate to modify the existing calling hour restrictions for fax telemarketing telecommunications and whether it is appropriate to establish calling hour restrictions for voice telemarketing telecommunications.

Positions of parties

334. Most parties proposed that the Commission should establish restrictions on calling hours for voice telemarketing telecommunications.

335. ACFC, Bell Canada et al., CFSP, CMA, CPPA, EPIC, PIAC-CAC, TBayTel, and TPAAA considered that the Commission should adopt a single set of restrictions on calling hours for voice and fax telemarketing telecommunications. Some of these parties further submitted that the Commission should establish a single set of calling hour restrictions for all telemarketing telecommunications, including telemarketing telecommunications via ADADs and voicemail broadcast.

336. ACFC, Bell Canada et al., CFSP, CMA, CPPA, EPIC, TBayTel, and TPAAA submitted that the Commission should apply the existing restrictions on calling hours for fax telemarketing telecommunications to voice telemarketing telecommunications. CMA noted that the Commission's existing restrictions on calling hours for fax telemarketing telecommunications were similar to CMA's self-imposed restrictions on calling hours for both voice and fax telemarketing telecommunications. CMA submitted that by applying the Commission's existing restrictions on calling hours for fax telemarketing telecommunications to voice telemarketing telecommunications, the Commission would improve the telemarketing experience of consumers; prevent telemarketers from calling beyond set hours with the possibility of damaging the reputation of responsible practitioners; dissuade further provincial regulation in the area of telemarketing; and ensure a twelve and a half hour weekday calling window for telemarketers.

337. Proposed restrictions on calling hours varied. The proposals for the starting hour varied between 9:00 a.m. to 10:00 a.m. on weekdays and between 10:00 a.m. and 12:00 p.m. on weekends. The proposals for the end hour varied between 6:00 p.m. to 9:30 p.m. on weekdays and between 3:00 p.m. to 6:00 p.m. on weekends.

338. CMA, PIAC-CAC, and UC submitted that both voice and fax telemarketing telecommunications should be prohibited on statutory holidays.

Commission's analysis and determinations

339. The Commission notes that the current restrictions on calling hours limit the transmission of fax telemarketing telecommunications to between the hours of 9:00 a.m. and 9:30 p.m. on weekdays and 10:00 a.m. and 6:00 p.m. on weekends. The Commission notes that the hours refer to those of the consumer receiving the telemarketing telecommunication. The Commission notes that no party proposed that these restrictions should be modified. In light of the above, the Commission determines that it is appropriate to maintain the restrictions on calling hours for fax telemarketing telecommunications.

340. The Commission notes that the restrictions on calling hours for fax telemarketing telecommunications were established in Order 96-1229 to prevent the receipt of such telecommunications at inappropriate hours. The Commission considers that receiving voice telemarketing telecommunications at inappropriate hours would cause consumers undue inconvenience and nuisance. The Commission notes that CMA has voluntarily adopted restrictions on calling hours for a variety of reasons, including improving the telemarketing experience of consumers.

341. The Commission notes that no party opposed the establishment of restrictions on calling hours for voice telemarketing telecommunications, and further, that parties generally supported the application of the current restrictions on calling hours for fax telemarketing telecommunications, or proposed restrictions similar to these, for voice telemarketing telecommunications. In light of all of the above, the Commission determines that the current calling hour restrictions for fax telemarketing telecommunications apply to voice telemarketing telecommunications.

342. The Commission notes the proposals that the Commission should prohibit telemarketers from placing voice and fax telemarketing telecommunications on statutory holidays. The Commission notes that most telemarketers do not operate on statutory holidays; as such, the Commission considers that a prohibition against telemarketing during statutory holidays is not required.

Predictive dialing devices

343. In this section, the Commission addresses the stayed Telemarketing Rules set out in Decision 2004-35 related to the use of PDDs, including the maximum allowable abandonment rate. The Commission notes that no review and vary applicant requested a variance of the Telemarketing Rules related to PDDs. Additionally, the Commission sets out definitions as required for rules related to the use of PDDs.

Terminology

Positions of parties

344. CMA proposed that the Commission should define PDD, abandoned call, and abandonment rate.

345. CMA, supported by Bell Canada et al. and RCI, submitted the following definition for a PDD (while noting the devices may also be referred to as automatic dialing devices):

> any system or device that initiates outgoing call attempts from a pre-determined list of phone numbers, based on a computerized call placing algorithm.

346. PIAC-CAC submitted that a) PDDs should not be restricted to only those devices that initiate outgoing call attempts from a pre-determined list of phone numbers; b) the call does not need to be the product of a generated algorithm; and c) it is unnecessary to include reference to automatic dialing devices. In this regard, PIAC-CAC, supported by UC, proposed the following definition for a PDD:

> any computerized system or device that initiates multiple simultaneous or sequential outgoing call attempts to phone numbers from a list of phone numbers.

347. CMA submitted the following definition for abandoned call:

> a call placed by a predictive dialer to a consumer, which, when answered by the consumer, has no live agent available to speak to the consumer within two seconds.

348. RCI agreed with CMA's proposed definition of abandoned call. CBA also agreed with CMA's proposal with the exception of one modification, to replace the term predictive dialer with the term predictive dialing device.

349. Bell Canada et al. proposed to add the following phrase to CMA's proposed definition: "and where the consumer terminates the call." Bell Canada et al. submitted that the modification was required to draw a distinction between telemarketing telecommunications that result in "dead air" in which a consumer answers but a telemarketing agent is not available within two seconds and telemarketing telecommunications which are "abandoned" and result in "dead air" when the called party hangs up before being connected to an agent.

350. PIAC-CAC and UC, submitted modifications to CMA's proposed definition as follows (modifications in italics):

> a call placed by a predictive dialer to a *person*, which, when answered by the *person*, has no live agent available to speak to the *person, or is terminated by the telemarketer without communicating with the person,* within two seconds *of the person's completed greeting.*

351. PIAC-CAC submitted that CMA's proposed definition of abandoned call does not clearly include outbound call attempts where the telemarketer hangs up on the consumer.

352. ContactNB submitted that calls should be allowed five seconds to connect before being considered abandoned.

353. Bell Canada et al. submitted the following four observations in response to PIAC-CAC's proposed definition of an abandoned call:

- although a PDD can detect when a call goes "off hook," current technology does not allow the mechanism to detect if or when a called party has completed its greeting;
- it would be easier to verify the reported rates of abandonment under PIAC-CAC's proposed definition than it would be under the stayed rule for an abandoned call;
- if telemarketers were required to incorporate, if feasible, a pre-recorded call notification message in the event the call is not answered immediately by a live agent, it would then not be necessary to add the PIAC-CAC's recommended changes, and much of the concerns regarding dead air calls would be mitigated; and
- adding the words "for any reason" would be overly broad, e.g., if the consumer was abusive and the telemarketer terminated the call, the consumer could initiate a complaint even though the telemarketer would be justified in its actions.

354. CMA submitted the following definition for abandonment rate:

> the percentage of calls that are answered by the consumer for which there is no live agent available.

355. RCI proposed adding a time period to CMA's proposed definition to measure the rate per campaign month. CBA proposed modifying CMA's definition by replacing the phrase "for which there is no live agent available" with the phrase "that are abandoned calls."

356. PIAC-CAC and UC submitted the following modified definition of abandonment rate:

> the percentage of calls that are abandoned calls, measured per day per calling campaign.

357. PIAC-CAC submitted that the definition of abandoned call is key to the calculation of abandonment rate and if the abandonment rate is to be reflective of the true occurrence of dead air calls, then the phrases "hang up calls" and "unavailability of live agent calls" must be included in the calculation. PIAC-CAC further noted that both types of calls are a source of nuisance and disruption.

358. UC submitted CMA's proposal was not appropriate as it only referred to telecommunications for which there are no available agents and it unnecessarily refers to the consumer.

359. Bell Canada et al. submitted the following modification to CMA's proposed definition of abandonment rate (modifications in italics):

> the percentage of calls that are answered by the consumer, for which there is no live agent available *to speak to the consumer and for which no pre-recorded message is played, within two seconds and where the consumer terminates the call.*

360. Bell Canada et al. submitted that its proposed modification would align the definition with the concept of abandoned call and would reflect its recommendation that telemarketers be permitted to play a pre-recorded message in the event that an agent is not available to handle a telecommunication within two seconds of the telecommunication being answered.

Commission's analysis and determinations

361. The Commission considers that it is appropriate to establish clear definitions for "PDD," "abandoned call," and "abandonment rate."

362. The Commission is of the view that the definition of PDD should include any device, system, or computerized software that automatically dials telecommunications numbers.

363. The Commission notes that CMA's proposed definition of PDD includes a reference to a predetermined list of telecommunications numbers and to the use of a computerized call algorithm. The Commission also notes that PIAC-CAC's proposed definition includes a reference to multiple simultaneous dialing. The Commission considers that it is unnecessary to include a reference to whether a computerized call algorithm is used as there may be different

methods by which a PDD selects the next number to be called (e.g. the PDD may select the next number from a predetermined list that was created by a marketing requirement such as a particular customer type or geographic area).

364. The Commission is of the view that the most critical element in the definition of PDD is, as the Commission set out in Decision 2004-35, that the PDD dials the next telecommunications number in advance so that the telemarketing representative may speak to the next consumer as soon as the representative's current telecommunication is terminated. The Commission considers that this is the direct cause of dead air or abandoned calls that consumers consider to be a source of undue nuisance or inconvenience. The Commission, therefore, is of the view that reference to the nature of the function of the device or software is required so that the definition can be appropriately used in making rules to address abandoned calls.

365. The Commission considers that CMA's proposed definition of abandoned call is appropriate and that CBA's proposal to replace the term "predictive dialer" in the CMA's proposed definition with the term "predictive dialing device" is appropriate.

366. The Commission considers that it is not appropriate to add a clause to the definition that would require that the consumer terminate the call, as proposed by Bell Canada et al., on the basis that the measures governing call abandonment are specifically intended to ensure proper telemarketing practices and are not aimed at consumer behaviour.

367. The Commission does not agree with the modifications submitted by PIAC-CAC to CMA's proposed definition of abandoned call. The Commission considers that reference to a live agent, as set out in CMA's proposal, is appropriate as this adequately describes the fact that there is effectively no agent on the line to respond to the consumer who answers the telemarketing telecommunication initiated by PDD.

368. The Commission notes Bell Canada et al.'s submission that the definitions should include the concept that an abandoned call is not only one for which the call is not answered by a live agent but also one for which no pre-recorded message is played. The Commission notes that Bell Canada et al.'s proposal is in support of their submission that a potential solution to the inability to identify who placed a "dead air" telemarketing telecommunications would be to require the telemarketer using a PDD to provide a pre-recorded notification or identification announcement in the event the telecommunication is not immediately connected to a live agent. The Commission notes that, in addition to a prohibition on using ADADs for telemarketing telecommunications, it currently prohibits the use of ADADs to request consumers to hold until an agent is available. The Commission is of the view that this type of announcement would cause equal inconvenience and nuisance as "dead air" to consumers. Accordingly, the Commission denies Bell Canada et al.'s proposal.

369. While the Commission considers that a hang-up call, whereby a telemarketing representative hangs up on a consumer, is a source of nuisance, the Commission notes that its intent in establishing rules governing the use of PDDs is to minimize the nuisance of dead air calls specifically caused by PDDs. Accordingly, the Commission determines it is not necessary to reference, or to require telemarketers to measure, calls terminated by the telemarketer.

370. In Decision 2004-35, the Commission determined that call abandonment rates were to be measured per calendar-month. The Commission notes that no party presented evidence that this determination was not appropriate.

371. In light of all of the above, the Commission determines that the following definitions shall be used for the Telemarketing Rules governing the use of PDDs to initiate telemarketing telecommunications:

> "Predictive Dialing Device or PDD" means any software, system or device that automatically initiates outgoing telecommunications from a pre-determined list of telecommunications numbers.
>
> "Abandoned Call" means a telecommunication placed by a predictive dialing device to a consumer which, when answered by the consumer, has no live telemarketer available to speak to the consumer within two seconds.
>
> "Abandonment Rate" means the percentage of telecommunications placed by a predictive dialing device which are abandoned calls.

Maximum allowable abandonment rate

Positions of parties

372. CMA submitted that the abandonment rate should be kept as close to zero percent as possible and should not exceed five percent of dialled calls as measured for any calendar month.

373. CMA submitted that when PDD technology is used effectively, consumers have no idea that a predictive dialer is being used because they will speak to a live person as soon as the phone is answered. CMA submitted, however, that there were some serious consequences when the technology was used improperly and when consumers experience silence or dead air.

374. Bell Canada et al. supported the establishment of measures to discourage call abandonment, including the five percent benchmark, as dead air continues to be a significant source of concern to consumers.

375. Bell Canada et al. further submitted that the enforcement of call abandonment measures would be challenging in the following situations: 1) there is typically no way of determining by whom a dead air call was placed because, in many cases, there is no caller line identification information associated with the call; 2) regulators and list administrators would have no ready way of knowing whether the five percent benchmark was being respected since they would be entirely dependent on the telemarketer for a report on dead air rates, total dead air calls, and total calls made. Bell Canada et al. submitted that a potential solution would be to provide a pre-recorded identification message while ensuring that the common language independent information is delivered on all calls.

376. Bell Canada et al. further noted that the ability of individual telemarketers to comply with such a requirement would depend on the specific dialing equipment used as not all equipment may readily support this process. For this reason, Bell Canada et al. proposed that a standard measure for the acceptable level of dead air calls such as five percent should be applicable to calls where an agent is not available and a pre-recorded message is not played.

377. CFSP supported a five percent rate and submitted that abandonment rates should be clearly established to discourage abuse and to protect the viability of this telemarketing tool.

378. PIAC-CAC submitted that dead air calls continued to be an annoyance and a disturbance to customers. In this regard, PIAC-CAC provided its analysis of the complaint statistics reported by service providers, in accordance with Decision 2004-35 requirements, that dead air or lack of an immediate response comprised over 35-50 percent of complaints for voice calls.

379. PIAC-CAC submitted that all parties making unsolicited calls should ensure that they do not abandon more than three percent of calls, measured per day, per marketing campaign over a 30-day period.

380. Bell Canada et al. submitted that although dead air remained a significant source of irritation to consumers, this did not necessarily mean that a low threshold, such as three percent, should be established. Bell Canada et al. submitted that at a future review, the Commission could determine whether a lower threshold is needed based on the complaints received and whether further enforcement activity to support the proposed threshold would be required.

Commission's analysis and determinations

381. The Commission notes that, as submitted by PIAC-CAC, the Semi-Annual Telemarketing Reports, filed by TSPs pursuant to Decisions 2004-35 and 2004-63, contain complaint statistics that indicate abandoned calls continue to be a significant source of annoyance and disturbance for customers. The Commission notes that, although the National DNCL will significantly reduce telemarketing telecommunications for consumers whose telecommunications numbers are registered on the National DNCL, abandoned calls may continue to be the source of undue inconvenience and nuisance for consumers receiving them.

382. In Decision 2004-35, the Commission established a call abandonment rate of five percent and that the rate was to be measured per calendar-month. The Commission notes that no review and vary applicant argued that this rate was inappropriate. The Commission also notes that no party presented evidence that measuring the rate per calendar-month was inappropriate.

383. The Commission notes that Bell Canada et al., CFSP, CMA, and RCI supported a maximum allowable five percent abandonment rate for calls placed by a PDD while PIAC-CAC proposed a three percent abandonment rate.

384. The Commission considers that clearly established abandonment rates will discourage abuse of PDDs.

385. The Commission considers that a maximum allowable five percent abandonment rate measured per month is a reasonable and viable standard to achieve and to maintain.

386. The Commission further notes the challenges of enforcing a maximum allowable abandonment rate as identified by Bell Canada et al. The Commission notes that with regard to the concern regarding call number display, it has determined earlier in this Decision that the rule requiring the provision of call number display applies to telemarketing telecommunications initiated by PDDs.

387. The Commission notes that with regard to the concern that a dependency on telemarketers' reporting of abandoned call rates could be problematic in enforcing the rule, the Commission notes that absent reporting by telemarketers, there is no other method for the Commission to monitor adherence to the maximum allowable abandonment rate. The requirement to keep records of abandonment rates is discussed below. With regard to enforcement, the Commission notes that, under the Act, it can impose AMPs for violations of any of the Unsolicited Telecommunications Rules including those related to record keeping and to PDD's.

388. In light of the above, the Commission determines that telemarketers using a PDD to conduct telemarketing telecommunications shall not exceed, in any calendar month, a five percent abandonment rate.

PDD abandonment rate record keeping

389. In this section, the Commission determines whether it is appropriate to maintain the requirement established in Decision 2004-35 for telemarketers to keep records that provide evidence of compliance with abandonment rates.

Positions of parties

390. Bell Canada et al., CMA, PIAC-CAC, RCI, and UC supported the requirement set out in Decision 2004-35 for telemarketers to maintain records that provide clear evidence of compliance with the maximum PDD abandonment rates.

391. CMA submitted that records should only be maintained for a period of six months, thereby allowing time for a consumer to register a complaint and for the Commission to investigate the complaint. CMA further noted that this would allow the Commission to access six months of records detailing a telemarketer's PDD abandonment habits without placing overly onerous record keeping requirements on businesses.

392. Bell Canada et al. submitted that it should be a violation of the Telemarketing Rules for a telemarketer to fail to provide records of abandonment rates upon request.

393. CLHIA and Primerica submitted that a more appropriate approach to imposing record keeping requirements would be to describe the importance of good record-keeping as a defence against complaints. In this regard, these parties submitted the following: a) the failure to keep adequate records of call-abandonment rates does not, by itself, give rise to nuisance telephone calls as it is the calling activity that creates harm and that should be treated as a potential violation; b) the presence or absence of records in itself does not create harm and should not be treated as a

separate violation; and c) the failure to keep records will make it difficult for a telemarketer to provide a credible defence against a complaint based on facts and may be viewed as evidence of a failure to exercise due diligence.

394. CBA submitted that the additional rule with respect to adequate records of abandonment rates set out in Decision 2004-35 should not be brought into force. CBA further submitted that if it were brought into force, there should be guidance surrounding record retention in connection with call-abandonment rates, including a specified time period for the retention of records and clarification that the records may be in any form and location as records are kept in the ordinary course of business.

Commission's analysis and determinations

395. The Commission is of the view that it would not be possible for it to find a violation to the maximum allowable abandonment rate of five-percent based only on consumer complaints. The Commission considers that the examination of records is the best method by which to assess a telemarketer's compliance with the call abandonment rate rule. The Commission notes that, pursuant to subsection 37(2) and section 72.05 of the Act, it may compel the production of records of telemarketers that would allow it to verify compliance with the maximum allowable abandonment rate.

396. The Commission considers that records of abandonment rates should be kept for a period of three years, and the records may be kept in any form and in the same manner and format as the telemarketer keeps records in the ordinary course of business. The Commission notes that this period would allow for the two years during which it may proceed in respect of a violation after the subject-matter of the proceeding becomes known to the Commission as provided for in subsection 72.12(1) of the Act.

397. The Commission also considers that telemarketers should be required to produce their records within a time period that is reasonable but does not impede the Commission's investigations of complaints or monitoring of adherence with the abandonment rate rule. The Commission considers that 30 days is a reasonable time period.

398. The Commission acknowledges the importance of good record keeping for purposes of defending against complaints. The Commission notes the concerns expressed by Primerica and CLHIA about establishing a record-keeping rule. However, because of the severity of the nuisance experienced by consumers as a result of telemarketers initiating abandoned calls, the Commission is of the view that record keeping requirements supported by enforcement powers will have the effect of reducing the frequency of abandoned calls, thereby reducing undue inconvenience or nuisance to consumers.

399. In light of the above, the Commission concludes that, as determined in Decision 2004-35, telemarketers and clients of telemarketers will be required to keep records of abandonment rates related to the use of PDDs for telemarketing telecommunications. The Commission also determines that the records must be kept for a period of three years and that telemarketers and clients of telemarketers are to provide the records to the Commission within 30 days of a request to do so.

Sequential and random dialing and telemarketing to emergency lines or healthcare facilities

Positions of parties

400. Bell Canada et al., CBA, CMA, and PILC-CAC-MSOS submitted that the current prohibition against sequential dialing for fax and voice telemarketing should be maintained.

401. Bell Canada et al. submitted that, in practice, sequential dialing is very difficult to detect and therefore it is difficult to enforce the prohibition against it. Bell Canada et al. submitted, however, that with the establishment of a National DNCL, sequential dialing will become much more difficult to use as any such dialing algorithms will be required to omit numbers that are registered on the National DNCL.

402. CMA submitted that prohibiting sequential dialing is consistent with the CMA Code. CMA also submitted that, for added consistency with the CMA Code, telemarketers should not be permitted to engage in random dialing other than to a list or public directory where it is possible to remove voice and fax telecommunications numbers that are not on the National DNCL and the do not call list of a telemarketer or a client of a telemarketer. CMA submitted that such restrictions would help to ensure that telemarketing telecommunications are not made to unlisted or emergency numbers and that telemarketers respect consumers who have expressed their preference regarding the receipt of telemarketing telecommunications.

403. Bell Canada et al. and PILC-CAC-MSOS submitted that the rule prohibiting sequential dialing or random dialing to emergency lines or healthcare facilities by telemarketers should be maintained. Bell Canada et al. further requested a more specific definition of healthcare facilities. In this respect, Bell Canada et al. argued that it was unclear whether non-hospital medical-related facilities such as doctors' offices and physiotherapy, chiropractic, or acupuncture clinics were included.

Commission's analysis and determinations

404. The Commission established a prohibition against sequential dialing for voice and fax telemarketing telecommunications in Decision 94-10 and determined that random dialing and dialing to unpublished numbers would be allowed. The Commission also explicitly directed telemarketers to not initiate voice and fax telemarketing telecommunications to any emergency line or healthcare facility.

405. The Commission notes that the prohibition against sequential dialing was established to prevent telemarketing telecommunications from being inadvertently made to emergency lines and healthcare facilities and to alleviate the difficulties experienced by subscribers of multi-line telecommunications service who receive immediate sequential telemarketing telecommunications as a result of sequential dialing.

406. The Commission notes that no party proposed eliminating the sequential and random dialing rule that is in force.

407. The Commission notes that no party opposed the maintenance of the rule that prohibits telemarketing to emergency lines and to healthcare facilities. The Commission also notes Bell Canada et al.'s request that it define healthcare facilities. However, the Commission notes that no party presented evidence to show that the interpretation of the "healthcare facilities" has caused confusion among telemarketers. Therefore, the Commission finds that there is no need to define the term.

408. In light of all of the above, the Commission determines that it is appropriate to maintain the sequential and random dialing rules and the rules that prohibit telemarketing to emergency and healthcare facilities. The Commission also determines that it is appropriate to add to the random dialing rule a clarification that random dialing is not allowed to telecommunications numbers that

- are registered on the National DNCL;
- in the case where a telemarketer initiates a telemarketing telecommunication on its own behalf, are on the telemarketers do not call list; and
- in the case where a telemarketer initiates a telemarketing telecommunication on behalf of a client of the telemarketer, are on the client's list.

E. Exemptions to the Telemarketing Rules

Positions of parties

409. In their respective review and vary applications, AFP and RMG et al., submitted that the Telemarketing Rules established in Decision 2004-35 should not apply to charitable organizations. RMG et al. also submitted that the Telemarketing Rules established in Decision 2004-35 should not apply to not-for-profit organizations. AFP and RMG et al. submitted that jurisdiction over charities in Canada is exclusively provincial and the Commission does not have jurisdiction over the fundraising activities of charities.

410. PIAC-CAC opposed this proposal. PIAC-CAC submitted that the Telemarketing Rules established in Decision 94-10 and extended in Decision 2004-35 have clearly determined that the key issue with telemarketing is the nuisance, intrusiveness, and invasion of privacy of telemarketing telecommunications to consumers – not the nature of the organization on behalf of which a telecommunication is made. PIAC-CAC noted that the Commission had determined that any call that seeks to obtain monetary gain, whether for business or charity, is a call made for the purpose of solicitation under section 41 of the Act.

411. PIAC-CAC, CMA, and BCOAPO et al. submitted that the Telemarketing Rules should apply to all parties engaged in telemarketing, including all organizations exempt from the National DNCL Rules.

412. PIAC-CAC submitted that the Telemarketing Rules should apply to parties conducting survey telecommunications, regardless of whether the party is exempt from the National DNCL Rules. Bell Canada et al. and MRIA submitted that telecommunications made for the purpose of market and survey research should continue to be exempt from the Telemarketing Rules as such telecommunications are not telemarketing.

413. CMA submitted that the Telemarketing Rules should apply to businesses that are exempt from the National DNCL Rules and also to parties placing telemarketing telecommunications to existing customers.

414. Bell Canada et al. submitted that telemarketing to business consumers should not be considered telemarketing for the purpose of regulation and therefore should not be subject to the Telemarketing Rules. Bell Canada et al. proposed that the Commission could re-assess whether telemarketing to business consumers should be included in the Telemarketing Rules at the three-year Parliamentary review of the amendment to the Act.

415. Bell Canada et al. submitted that the rules relating to call abandonment rates and record keeping requirements should apply to all telemarketers including those that are exempt from the National DNCL Rules.

Commission's analysis and determinations

416. The Commission notes that section 41 of the Act gives it the jurisdiction to regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to prevent undue inconvenience or nuisance.

417. The Commission notes that the exemptions provided in subsection 41.7(1) of the Act apply solely to the National DNCL regime (including the National DNCL Rules). The Commission further notes that subsection 41.7(1) of the Act does not supersede its jurisdiction to establish rules and regulations pursuant to section 41 of the Act that would apply to entities exempt from the National DNCL Rules pursuant to subsection 41.7(1) of the Act.

418. The Commission notes that it established the Telemarketing Rules pursuant to section 41 of the Act and that it expressly limited these Rules to unsolicited telecommunications made for the purpose of solicitation.

419. The Commission considers that the Telemarketing Rules govern the behaviour of persons making unsolicited telecommunications for the purposes of solicitation in order to reduce inconvenience or nuisance to consumers. The Commission notes that the Telemarketing Rules have always applied to unsolicited telecommunications made to both business and residential consumers.

420. In light of its determination that telemarketing to business consumers is exempt from the National DNCL Rules, the Commission considers it appropriate that business consumers continue to have the protections against the inconvenience or nuisance of telemarketing telecommunications provided by the Telemarketing Rules. In particular, the Commission notes that business consumers retain the option of registering on the do not call list of a given telemarketer or client of a telemarketer.

421. In light of the above, the Commission concludes that the Telemarketing Rules will continue to apply to all telemarketers and all types of telemarketing telecommunications made to residential and business consumers, including those exempt from the National DNCL Rules.

422. The Commission notes that its definition of solicitation has always specifically included charities that solicit via telemarketing telecommunications for cash donations (i.e. money), donations of goods (i.e. money's worth) and volunteer time (i.e. money's worth) as this form of unsolicited telecommunications falls within section 41 of the Act. The Commission notes that the Provinces may regulate the fundraising activities undertaken by charities; however, the Commission notes that Parliament has expressly given the Commission jurisdiction over unsolicited telecommunications.

423. The Commission considers that consumers do not consider telemarketing made by or on behalf of charities to cause any less undue inconvenience and nuisance, or to be less of an invasion of privacy, than telemarketing made by or on behalf of for-profit organizations.

424. Subsections 41.7(3) and 41.7(4) of the Act impose requirements on persons and telemarketing telecommunications described in section 41.7 of the Act: these requirements relate to caller identification and the maintenance of individual do not call lists. The Commission considers that if the requirements of the Telemarketing Rules established by the Commission pursuant to section 41 of the Act created an operational conflict with the requirements set out in subsections 41.7(3) and 41.7(4) of the Act, the latter would take precedence for such persons or types of telecommunications.

425. In light of the above, the Commission denies the request made by AFP and RMG et al. in their respective review and vary applications to exempt charities or not-for-profit organizations from the Telemarketing Rules.

426. The Commission notes that it has jurisdiction under section 41 of the Act to regulate unsolicited telecommunications made by market and survey research firms. However, the Commission also notes that such telecommunications are not subject to the Telemarketing Rules as these Rules only apply to a telecommunication made for the purposes of solicitation.

427. The Commission also notes that, pursuant to subsection 41.7(5) of the Act, persons and organizations conducting market and survey research are explicitly exempt from applying the requirements set out in subsections 41.7(3) and 41.7(4) of the Act related to caller identification and the maintenance of individual do not call lists that are imposed on other persons exempt under the Act from the National DNCL Rules.

428. The Commission notes that the Telemarketing Rules in force that were established prior to Decision 2004-35 did not apply to unsolicited voice and fax telecommunications that are made for purposes other than solicitation, including telecommunications made for market and survey research.

429. In Decision 2004-35, due to the absence of evidence demonstrating undue inconvenience or nuisance from market and survey research telecommunications, the Commission found it inappropriate to amend the Telemarketing Rules to include such telecommunications.

430. In light of all of the above, the Commission determines that the types of telecommunications exempt under section 41.7(1) of the Act continue to be subject to the Telemarketing Rules provided such telecommunications are made for the purposes of solicitation.

431. The Commission also notes that in past decisions, it has stated that the Telemarketing Rules do not apply to unsolicited telecommunications made for emergency purposes or account collection. The Commission notes that no party proposed that these types of unsolicited telecommunications be regulated. Accordingly, the Commission determines that it is not appropriate to regulate such telecommunications.

F. The Automatic Dialing-Announcing Device (ADAD) Rules

432. An ADAD is any automatic equipment incorporating the capability of storing or producing telecommunications numbers used alone or in conjunction with other equipment to convey a pre-recorded or synthesized voice message to a telecommunications number.

Positions of parties

433. CMA submitted that the use of ADADs should be allowed for telemarketing telecommunications in the following instances: a) business-to-business telemarketing; b) telemarketing based on an existing business relationship; and c) when a consumer has consented to receive such calls. CMA argued that ADADs have several legitimate applications in areas where a business relationship already exists, and this limited approach had proven to have high consumer acceptance in the US where it is allowed. CMA submitted that the consent to be contacted by ADADs may be withdrawn at any time at the consumer's request.

434. CMA further submitted that the establishment of the National DNCL and the new enforcement mechanisms supported the elimination of restrictions on the use of ADADs for telemarketing telecommunications. CMA argued that ADAD-related technological advances provided clients with an immediate opportunity to decline a message and not be contacted via this media in the future.

435. GM submitted that the use of ADADs for telemarketing telecommunications should be allowed when there is an established business relationship with the consumer and when consumers have given their express consent to receive such calls.

436. VVS submitted that allowing the use of ADADs for telemarketing telecommunications would facilitate the legitimate use of telemarketing to consumers who are in an existing business relationship. VVS also submitted that to do otherwise would penalize organizations by making them use inefficient and costly alternative systems for telemarketing.

437. CFSP suggested that the Commission should allow the wider use of ADADs for purposes that would be of use to charities, such as reminding supporters of events, inviting them to meetings, renewing their support, and scheduling volunteers.

438. Bell Canada et al., EPIC, PIAC-CAC, PILC-CAC-MSOS, and TPAAA submitted that the current ADAD Rules should be maintained.

439. PIAC-CAC submitted that ADADs should not be used for telemarketing telecommunications whether or not an existing business relationship exists.

440. Bell Canada et al. submitted that a common consumer concern with the use of ADADs is that the consumer is unable to interact with the calling party. Bell Canada et al. submitted that they were unaware of any developments that had occurred that would eliminate the consumer concerns related to the use of ADADs for telemarketing purposes. As such, Bell Canada et al. supported the maintenance of the existing restrictions on ADADs when used for solicitation.

441. CPPA, PIAC-CAC, TBayTel, and TPAAA submitted that a single set of restrictions on calling hours for voice and fax telemarketing telecommunications should be expanded to all unsolicited telecommunications, including permitted ADAD telecommunications.

Commission's analysis and determinations

442. The Commission notes that under the ADAD Rules in force, the use of an ADAD is prohibited for the purpose of initiating telemarketing telecommunications unless express consent has been provided by the consumer to receive such a telecommunication. The Commission also notes that the use of an ADAD is prohibited for the purpose of requesting that a consumer hold the line until a telemarketer becomes available, or for activities such as radio station promotions or for referring consumers to 900 or 976 service numbers.

443. The Commission notes that the use of an ADAD is allowed for telecommunications where there is no attempt to solicit (under certain conditions with restrictions on calling hours and identification requirements); for public service reasons; to accomplish market or survey research; to collect overdue accounts; and for emergency and administrative purposes by police and fire departments, schools, hospitals, or similar organizations.

444. The Commission notes the proposals that it should lift prohibitions against the use of ADADs for telemarketing telecommunications in specific circumstances including where there is an existing business relationship and for all use by charities.

445. The Commission notes submissions that the establishment of the National DNCL, coupled with ADAD-related technological advances, sufficiently mitigates consumer concerns related to ADAD use. The Commission notes the submission that technological advances provide consumers with an immediate opportunity to decline a message and to not be contacted via ADAD in the future and the submission that ADADs are cost-effective and consumer-friendly tools for charities.

446. In Decision 94-10, the Commission determined that unsolicited ADAD calls caused greater inconvenience or nuisance than unsolicited voice calls and were more likely to be perceived as an intrusion because ADAD calls did not permit the consumer to interact with a live agent. The Commission is of the view that the creation of a National DNCL does not sufficiently mitigate this concern. The Commission considers that consumers who do not register on the National DNCL because they are receptive to live telemarketing telecommunications will not necessarily be receptive to telecommunications made by an ADAD. As such, the nuisance factors specific to the use of ADADs would still exist for these consumers.

447. The Commission notes that no party provided evidence of specific technological advances with ADADs and the effect such technology would have on alleviating the inconvenience or nuisance experienced by consumers, particularly the lack of ability to interact with a live agent. The Commission is of the view that the ability to decline the message and request not to be contacted via an ADAD is not sufficient to alleviate consumer inconvenience or nuisance.

448. With respect to the proposal to allow the use of ADADs for purposes that would be of use to charities, including renewal of support for a charitable organization, the Commission notes that under the current ADAD Rules in force, charities are prohibited from using ADADs for the purpose of solicitation, which would include renewal of support, but may use ADADs for other purposes such as scheduling volunteer assignments.

449. The Commission notes CMA's proposal to allow an exemption to the prohibition against the use of ADADs for telemarketing telecommunication for business-to-business telemarketing, to consumers who have an existing business relationship with a telemarketer or client of a telemarketer and to consumers who have provided consent to be contacted for telemarketing purposes via an ADAD.

450. The Commission considers that the use of ADADs for telemarketing telecommunications would be no less annoying or a nuisance to business consumers than residential consumers. The Commission also considers that the same would likely be true for consumers who have an existing business relationship with the telemarketer or client of a telemarketer.

451. The Commission considers that a telemarketing telecommunication via an ADAD to a consumer who has provided express consent to receive such a telecommunication at his or her telecommunications number is not an unsolicited telecommunication. The Commission considers that this applies whether or not there is an existing business relationship with the consumer.

452. The Commission determines that the acceptable forms for proof of express consent to receive a telemarketing telecommunication via an ADAD will be the same as what it has determined is acceptable for proof of express consent for a consumer to be contacted by way of a telemarketing telecommunication when the consumer's telecommunication number is registered on the National DNCL.

453. The Commission notes that the current ADAD Rules in force include restrictions on calling hours for permitted ADAD telecommunications. The Commission considers that a single set of restrictions on calling hours for voice and fax telemarketing telecommunications should be expanded to all telemarketing telecommunications, including ADADs. The Commission notes that applying the restrictions on calling hours it established previously in this Decision for voice and fax telemarketing telecommunications would extend the permitted calling hours for ADADs; however, the Commission is of the view that the hours it has set are reasonable and that the extension will not cause undue inconvenience or nuisance. Additionally, the Commission considers that this change will contribute to regulatory symmetry and administrative simplicity in the application of the Unsolicited Telecommunications Rules.

454. In light of the above, the Commission determines that the restrictions on calling hours established earlier in this Decision for voice and fax telemarketing telecommunications will apply to ADAD telecommunications.

455. In light of all of the above, the Commission determines that the current restrictions on the use of ADADs be maintained with the modifications to the calling hour restrictions as described above.

G. Record keeping requirements

Positions of parties

456. BCOAPO et al. and CMA submitted that, to facilitate enforcement, the Commission should require telemarketers to keep detailed records of their telemarketing activities. BCOAPO et al. submitted that telemarketers should be required to keep an electronic record of the numbers they have called, the date and time of all telemarketing telecommunications and, if applicable, the organizations on whose behalf they were making the calls. BCOAPO et al. submitted that telemarketers should be required to keep this information for a minimum of two years as this is the time limit for filing complaints under the Act.

457. Bell Canada et al., CLHIA, and Primerica submitted that the Commission should not establish record keeping requirements. In this regard, CLHIA and Primerica submitted that the failure to keep adequate records by itself does not give rise to nuisance telephone calls: the calling activity itself creates harm. Instead, the Commission should note that failure to keep records would make it difficult for a telemarketer to provide a credible defence against a complaint and may be viewed as evidence of failure to exercise due diligence.

458. CLHIA submitted that telemarketers should keep records as evidence that they have accessed the National DNCL to scrub their list of telecommunications numbers and keep a log of all telemarketing telecommunications placed indicating time, date, and, if relevant, the intended recipient of the telemarketing telecommunication.

Commission's analysis and determinations

459. The Commission considers that the failure to keep records does not itself give rise to nuisance telemarketing telecommunications.

460. The Commission considers that the establishment of certain record keeping requirements may be needed to ensure the financial viability of the National DNCL with respect to the appropriate payment of subscription fees. The Commission considers that such requirements are necessary to proactively ensure compliance with the registration and fee payment requirements set out in the National DNCL Rules. In light of the above, the Commission determines that a telemarketer that conducts telemarketing on behalf of clients must maintain records to demonstrate the following for each client: a) proof of subscription to the National DNCL and b) proof of payment of fees to the National DNCL operator. The Commission determines that a telemarketer that conducts telemarketing on its own behalf must also keep such records.

461. The Commission notes that pursuant to subsection 71.12(1) of the Act, it has up to two years to commence proceedings in respect of a violation of the Unsolicited Telecommunications Rules after the day the subject-matter of the proceeding becomes known to the Commission. In light of the above, the Commission determines that telemarketers shall keep the records of proof of subscription to the National DNCL and proof of payment of fees to the National DNCL operator for a period of three years.

462. The Commission notes the proposals that it should require telemarketers and clients of telemarketers to keep records of their unsolicited telecommunications activities in order to facilitate enforcement of the Unsolicited Telecommunications Rules.

463. The Commission considers that many of the records that it may require for an audit or investigation purposes (e.g. records of telecommunications numbers that have received telemarketing telecommunications, records of employees) or that may be used in a defence are the same or similar to the records that telemarketers and clients of telemarketers keep in the normal course of doing business (e.g. records to show compliance with privacy legislation).

464. The Commission notes that failure to keep such records could make it difficult for a telemarketer or a client of a telemarketer to provide a defence against a complaint or notice of violation. The Commission considers that the need to support a defence is an appropriate incentive for telemarketers and clients of telemarketers to keep records of their unsolicited telecommunications activities. The Commission considers that telemarketers and clients of telemarketers should determine for themselves what records of their unsolicited telecommunications activities to keep, while being mindful of the Unsolicited Telecommunications Rules.

465. In light of all of the above, the Commission determines that telemarketers and clients of telemarketers are not required under the Unsolicited Telecommunications Rules to keep records related to their unsolicited telecommunications activities with the exception of records that demonstrate subscription to the National DNCL and payment of fees to the National DNCL operator and, as determined in this Decision, records of telemarketing telecommunication abandonment rates.

466. The Commission notes that under subsection 37(2) and section 72.05 of the Act, it may require telemarketers and clients of telemarketers to submit information that the Commission considers necessary for administration of the Act, including section 41 of the Act.

467. The Commission considers that should it require a telemarketer or a client of a telemarketer to submit information that is necessary for the administration of the Act, such persons should provide such records within a time period that is reasonable and does not impede the Commission's investigations of complaints or monitoring of compliance with the Unsolicited Telecommunications Rules. The Commission considers that 30 days is a reasonable time period.

468. In light of the above as well as the requirement set out in this Decision for telemarketers and clients of telemarketers to keep certain records and the possibility that such persons may use records of unsolicited telecommunications activities in a due diligence defence, the Commission considers it necessary to establish requirements with regard to the format, storage, production, and transfer of such records.

469. The Commission determines that any information a telemarketer or client of a telemarketer is required to keep pursuant to the Unsolicited Telecommunications Rules, and any information kept with regard to unsolicited telecommunications activities that are regulated by the Rules

- may be kept in any form and shall be kept in the same manner and format as it keeps records in the ordinary course of business;
- shall be maintained in the regular place of business in a manner such that they are readily accessible in order to facilitate the activities authorized under section 72.06 of the Act; and
- shall be provided to the Commission within 30 days of a request from the Commission.

470. The Commission also determines that in the event of any termination of the business of a telemarketer or a client of a telemarketer, a principal of that person shall maintain the records. In the event of any sale, assignment, or other change in ownership of the business of a telemarketer or a client of a telemarketer, the successor business shall maintain the records.

V. Voicemail broadcast

471. Voicemail broadcast[16] is a type of telecommunication whereby a recorded message is delivered directly into a voice mailbox without interrupting the voice mailbox subscriber's activities in real time. The use of voicemail broadcast for making telemarketing telecommunications is not currently regulated by the Commission.

Positions of parties

472. Several parties proposed that the Commission should ban telemarketing via voicemail broadcast, either partially or entirely: VVS proposed that the Commission should establish a complete ban on telemarketing via voicemail broadcast while PIAC-CAC and RCI proposed that the Commission should ban it to wireless telecommunications numbers only.

473. CMA submitted that the Commission must limit telemarketing via voicemail broadcasting to ensure that no telemarketers undertake massive campaigns that would clog consumer's mailboxes as this could damage the image and reputation of the telemarketing industry.

474. Most parties submitted that the Commission should apply the National DNCL Rules to telemarketing telecommunications via voicemail broadcast on the basis that telemarketing via voicemail broadcast caused as much or more undue inconvenience or nuisance for consumers as telemarketing via other types of telecommunications.

[16] Voicemail broadcast is also known as Voicecasting, which is a commercial name for a voicemail broadcast marketing service provided by Infolink.

475. Bell Canada et al., CMA, PIAC-CAC, and TBayTel submitted that the Commission should apply the Unsolicited Telecommunications Rules to telemarketing via voicemail broadcast. In this regard, CMA submitted that the Commission should establish rules for telemarketing via voicemail broadcast that mirror the ADAD Rules. CMA further submitted that the Commission should determine that every telemarketing telecommunications placed via voicemail broadcast must provide the consumer with a telecommunications number that he or she may call to be placed on the telemarketer's or, if appropriate, the client of the telemarketer's do not call list.

476. ACFC, OPC, PII, RCI, and UC submitted that the receipt of several telemarketing telecommunications via voicemail broadcast could prevent a consumer from receiving other messages important to him or her by filling the consumer's voice mailbox.

477. PIAC-CAC and UC submitted that the receipt of voicemail broadcast messages increased the time and effort required by consumers to manage voicemail messages. Primus disagreed and submitted that messages left via voicemail broadcast were easily skipped or deleted. RCI disagreed with Primus and submitted that a consumer could not reasonably assess the content of a message without first listening to the message.

478. PIAC-CAC, PII, and RCI submitted that the receipt of voicemail broadcast messages posed a particular nuisance for consumers who accrue additional costs for air time or access to voicemail, such as wireless subscribers or consumers who access their residential voicemail while traveling.

479. PILC-CAC-MSOS noted that telemarketing telecommunications via a voicemail broadcast did not allow the consumer to interact with a live agent during the telecommunication.

480. PIAC-CAC submitted that the exemptions provided in subsection 41.7(1) of the Act were not based on the type of technology used to make a telemarketing telecommunication and to allow exemptions based on technology would undermine the policy requirements of the Act.

481. BCOAPO et al. and PILC-CAC-MSOS also argued that if the Commission did not extend the application of these rules to telemarketing telecommunications via voicemail broadcast, telemarketers may attempt to circumvent the National DNCL Rules by telemarketing via voicemail broadcast.

482. Infolink supported the application of the National DNCL Rules to telemarketing telecommunications via voicemail broadcast but submitted that the proceeding that led to this Decision was not an appropriate forum to address this issue. Infolink submitted that the Commission's determination in *Infolink Communications Inc. v. Bell Canada – Voicecasting service*, Telecom Decision CRTC 2004-65, 4 October 2004 (Decision 2004-65) clearly stated the Commission's position that telemarketing telecommunications via voicemail broadcast was not a source of undue inconvenience or nuisance.

483. DE submitted that the Commission should determine whether the National DNCL Rules should apply to telemarketing telecommunications via voicemail broadcast based on consumer feedback a year after the National DNCL regime had been fully implemented.

484. Bell Canada et al. noted that the complaint statistics that they had collected indicated that telemarketing telecommunications via voicemail broadcast had not generated a significant number of complaints from either wireline or wireless subscribers. However, Bell Canada et al. submitted that this may have been due to the nature of the complaint statistics that they compiled, which were only for complaints that had reached executive levels. Bell Canada et al. assumed that complaints about telemarketing telecommunications via voicemail broadcast never reached executive levels once complainants were informed of the Commission's determinations in Decision 2004-65.

Commission's analysis and determinations

485. The Commission considers that it can be a source of undue inconvenience and nuisance for consumers to spend time listening to and managing telemarketing telecommunication messages delivered to their voice mailbox via voicemail broadcast. The Commission also notes that there can be a cost to consumers to retrieve telemarketing telecommunications messages and considers that consumers should not have to bear the cost of receiving a telemarketing telecommunication. The Commission considers that consumers who register on the National DNCL would reasonably expect that their desire not to receive telemarketing telecommunications would apply to telemarketing telecommunications made via voicemail broadcast, as well as via other methods.

486. The Commission notes the submissions that telemarketers might make telemarketing telecommunications via voicemail broadcast to avoid compliance with the National DNCL Rules. The Commission considers that this concern has merit.

487. In light of all of the above, the Commission concludes that the National DNCL Rules will apply to telemarketing telecommunications via voicemail broadcast. The Commission considers that this will alleviate the undue inconvenience or nuisance of telemarketing telecommunications via voicemail broadcast, including the inconvenience experienced by consumers as a result of having to spend time managing their voice mail to handle such telecommunications as well as incurring undue expenses to retrieve voicemail broadcast telemarketing telecommunications messages.

488. The Commission notes the proposals that telemarketing telecommunications via voicemail broadcast be prohibited to wireless subscribers. The Commission agrees that telemarketing telecommunications via voicemail broadcast can cause particular nuisance to wireless subscribers due to the costs these subscribers may incur to retrieve their voicemail messages. The Commission considers, however, that since wireless telecommunications numbers may be registered on the National DNCL, as previously determined in this Decision, the application of the National DNCL Rules to telemarketing telecommunications via voicemail broadcast will ensure that consumers who use wireless telecommunications services will be able to effectively prevent such telecommunications.

489. The Commission notes the proposal to ban all telemarketing telecommunications via voicemail broadcast. The Commission is of the view that it is not appropriate to prohibit telemarketing telecommunications via voicemail broadcast either in general or exclusively to wireless subscribers at this time as little evidence was presented in this proceeding to support such a prohibition.

490. The Commission notes the proposals to apply the ADAD Rules or the Telemarketing Rules to telemarketing telecommunications via voicemail broadcasting.

491. The Commission notes that sections 41 and 41.1 of the Act give it the jurisdiction to regulate telemarketing and establish a National DNCL framework. In establishing the Unsolicited Telecommunications Rules, the Commission strives to appropriately balance the rights of telemarketers with the rights of consumers. Although the Commission considers that telemarketing telecommunications via voicemail broadcast is a form of telemarketing, it does not consider it appropriate to apply the Telemarketing Rules to telemarketing telecommunications via voicemail broadcast at this time as there is minimal evidence to support such an imposition. The Commission notes that evidence of complaints was an important factor for the Commission to establish that ADADs caused undue inconvenience or nuisance. The Commission will monitor complaints with regard to telemarketing telecommunications via voicemail broadcast, and should it receive significant evidence of undue inconvenience or nuisance, the Commission will revisit this issue.

VI. Enforcement of the Unsolicited Telecommunications Rules

492. In this section, the Commission

a) establishes the complaint filing process;

b) addresses whether it is appropriate to establish guidelines for the complaint investigation process;

c) determines which factors may be used to determine whether to issue a notice of violation and what the amount of the associated AMP will be;

d) addresses defences to notices of violation;

e) addresses the procedural rights associated with a notice of violation;

f) determines if the public should be informed of the names of telemarketers that are issued a notice of violation; and

g) determines which Rules, if any, should remain in the ILEC tariffs.

A. Complaint filing process

Positions of parties

493. BCOAPO et al., CAFII, CLHIA, and CMA submitted that consumers should be required to provide, at a minimum, the following information when filing a complaint: a) the consumer's name; b) the telecommunications number at which the telemarketing telecommunication was received; c) the date and time of the telemarketing telecommunication; d) the name of the organization on whose behalf the telemarketing telecommunication was made; e) the telecommunications number of the telemarketer; and f) the purpose of the telemarketing telecommunication.

494. CLHIA submitted that the complainant should provide sufficient information to establish that there is *prima facie* evidence of a violation.

495. Primerica submitted that the complainant should be required to identify himself or herself in order to reduce the number of nuisance or vindictive complaints.

496. CBA, CLHIA, CMA, and Primerica submitted that the Commission should specify a timeline for filing a complaint to ensure that complaints are investigated and resolved in a timely manner. CLHIA and Primerica submitted that a complaint should be registered within 14 days of receiving the offending telemarketing telecommunication. CMA proposed allowing the registration of a complaint within 60 days.

Commission's analysis and determinations

497. In Decision 2007-47, the Commission approved the DOWG's recommendation regarding the types of information that will be mandatory in order to process a complaint. The required information will include the following:

- telecommunications number of complainant;
- name or telecommunications number of telemarketer or client of the telemarketer;
- date of the telemarketing telecommunication;
- the nature of the complaint (e.g. ADAD, outside of calling hour restrictions); and
- copy of fax if the complaint is related to a fax telemarketing telecommunication.

498. The Commission considers that it would be useful to know whether the complaint is related to telemarketing telecommunications made to a residential or business telecommunications number in order to allow the Commission to assess in the future whether or not such telecommunications should be regulated differently. The Commission determines that the required information will include identification of whether the telecommunications number of a complainant is a residential or business number.

499. In Decision 2007-47, the Commission approved the DOWG's recommendation that providing certain information, such as the name of the complainant and his or her postal or email address, will be optional.

500. The Commission notes that when it cannot identify the telecommunications number or the telemarketer in question, it will continue to rely on the TSPs to identify the underlying carrier and the telemarketer involved.

501. In Decision 2007-47, the Commission approved the DOWG's recommendations that consumers should file their complaints within 14 days. The Commission considers that this time period is appropriate and any period exceeding 14 days would be too long. The Commission considers that reporting complaints as soon as possible after a violation occurs will facilitate timely investigations.

B. Guidelines for the complaint investigation process

Positions of parties

502. Advocis, Bell Canada et al., CAFII, CBA, CLHIA, DE, IDA, Infolink, MCD, PIAC-CAC, PILC-CAC-MSOS, and Primerica generally supported the establishment of guidelines for the investigation of complaints and the issuance of notices of violations on the basis that

    a) such guidelines would ensure consistency and proportionality, be a tool to educate telemarketers, and instil consumer confidence in the ability of the Commission to enforce the legislation; and

    b) the absence of guidelines would make the complaint investigation process unduly intimidating to consumers and might, as a result, inhibit effective enforcement of the Unsolicited Telecommunications Rules.

503. Advocis, CLHIA, IDA, Infolink, MCD, PIAC-CAC, and Primerica emphasized that any guidelines established should be non-binding. In this regard, PIAC-CAC submitted that guidelines should not inhibit the flexibility of the Commission in enforcing the legislation and should not create investigative processes that are ineffective at deterrence.

504. BCOAPO et al., CLHIA, DMA, PILC-CAC-MSOS, Primerica, and RCI supported the creation of a complaint threshold on the basis that doing so would assist in assessing the amount of an AMP; avoid isolated complaints being interpreted as violations; and avoid the cost of investigating inadvertent violations.

505. PIAC-CAC and PILC-CAC-MSOS opposed this proposal and considered that the establishment of a rigid complaint threshold could undermine the primary policy objective of preventing undue nuisance to consumers by allowing telemarketers to violate the National DNCL Rules to a certain extent without receiving an AMP.

506. Advocis, BCOAPO et al., Bell Canada et al., CADRI, CBA, CMA, Infolink, PILC-CAC-MSOS, Primerica, RCI, RDAC, and TDMM supported the establishment of a compliance continuum, similar to the Competition Bureau's conformity continuum that would a) provide guidance to users of the National DNCL; b) encourage telemarketers to implement systems and process changes to effect compliance; c) ensure that a notice of violation is issued only where co-operative techniques have failed to motivate compliance; d) ensure that telemarketers are only investigated if they display a pattern of contravening the Unsolicited Telecommunications Rules; and e) ensure that penalties would be commensurate with infractions.

507. MO, PIAC-CAC, and UC did not support the establishment of a compliance continuum.

Commission's analysis and determinations

508. Sections 72.01 to 72.15 of the Act provide a legislative framework within which the Commission may designate persons to investigate complaints and issue notices of violation and impose AMPs for contraventions of the Unsolicited Telecommunications Rules. The Commission notes that the framework does not provide specific guidelines or complaint thresholds by which to determine when a notice of violation should be issued.

509. The Commission notes that parties generally supported the creation of guidelines for the investigation of complaints and the issuance of notices of violation. The Commission also notes that certain parties proposed the establishment of a complaint threshold or a compliance continuum. However the Commission considers that the potential for abuse of a complaint threshold or compliance continuum outweigh the benefits.

510. The Commission considers that a clearly-defined complaint threshold would state the minimum number of complaints to be received before an investigation would occur or a notice of violation would be issued. The Commission considers that telemarketers may abuse such a system by noting the complaint threshold and violating the Unsolicited Telecommunications Rules to the maximum extent permitted without concern of repercussion.

511. The Commission considers that the creation of a compliance continuum could result in similar abuses as described above. The Commission notes that a compliance continuum is a series of steps (e.g. education, monitoring, and targeted inspections) and a stepped set of responses to ongoing non-compliance, ultimately resulting in the imposition of an AMP. The Commission considers that if it were to implement a compliance continuum, telemarketers may continue non-compliance until all the steps in the continuum have been exhausted.

512. The Commission considers that the possibility of telemarketers circumventing the Unsolicited Telecommunications Rules could be an even greater problem if a complaint threshold were set too high or a compliance continuum were structured to be too lenient. Furthermore, it might appear that the Commission would not investigate certain complaints, regardless of type or severity, until a sufficient number has been made against a given telemarketer which could then adversely affect consumer confidence in the Commission's ability and willingness to enforce the regime.

513. The Commission also considers that establishing any guidelines for investigations or issuance of notices of violations, regardless of whether the guidelines include a complaint threshold or a rigid compliance continuum, might unduly inhibit its flexibility and its ability to obtain general compliance with the Unsolicited Telecommunications Rules. The Commission also considers that once the new regime is in effect for a period of time, it can then reconsider this issue.

514. The Commission finds that it is appropriate at this time to retain maximum flexibility within the framework provided by the Act for investigations, issuances of notices of violation, and the imposition of AMPs.

C. Factors for determining whether to issue a notice of violation and the amount of the associated AMP

Positions of parties

515. Advocis, BCOAPO et al., Bell Canada et al., CBA, CLHIA, CMA, Infolink, PIAC-CAC, PILC-CAC-MSOS, Primerica, and RCI submitted that the Commission should consider the following factors in determining the appropriate amount of an AMP: a) degree of harm; b) negligence or intentional abuse; c) history of compliance; d) frequency of violations; e) duration of violation(s); f) potential for future violation; g) offending party's reaction to complaint (i.e. remedial action); h) ability to pay (i.e. company size); and i) evidence of due diligence.

516. MO and UC submitted that each violation should be subject to the maximum AMP.

Commission's analysis and determinations

517. Section 72.01 of the Act provides that a person who commits a violation of a prohibition or requirement of the Commission under section 41 of the Act is liable in the case of an individual, to an AMP of up to $1,500, or in the case of a corporation, to an AMP of up to $15,000.

518. The Commission considers that AMPs should not be so low as to be financially advantageous for telemarketers to pay the amount and continue to violate the Unsolicited Telecommunications Rules. However, the Commission also considers that the maximum AMP should only be imposed for each violation in more serious cases (e.g. where there is intentional abuse or the telemarketer or the client of a telemarketer is a repeat violator).

519. The Commission considers that it is appropriate to establish factors to be taken into account in determining whether a notice of violation should be issued and what the amount of the associated AMP should be. However, the Commission considers that some of the factors proposed by parties are not appropriate. The Commission considers that it would be difficult to assign a monetary value to the degree of harm to a consumer or to determine the ability of a telemarketer to pay the AMP. Additionally, the Commission notes that Parliament clearly specified in the amendment to the Act that due diligence is part of the defence to a notice of violation.

520. The Commission notes that section 72.01 of the Act provides flexibility in determining not only the amount of an AMP but also whether one should be imposed. The Commission considers it is appropriate to use this flexibility.

521. The Commission finds that examples of appropriate factors to be taken into consideration in determining whether to issue a notice of violation, and what the amount of the associated AMP should be, include the following:

- the nature of the violation (minor, serious, very serious, negligent or intentional);
- the number and frequency of complaints and violations;

- the relative disincentive of the measure; and
- the potential for future violation.

D. Defences

Positions of parties

522. CBA, ContactNB, and PILC-CAC-MSOS submitted that guidelines with regard to due diligence should be developed. Bell Canada et al. noted that the application of due diligence to telemarketing is new, and the law in this area has not been developed.

523. PIAC-CAC submitted that any defence allowed should be strictly interpreted and applied.

524. Bell Canada et al. considered that it may be difficult for the Commission to develop comprehensive guidelines to defences. Bell Canada et al. submitted the following list of defences, in addition to due diligence, that could apply to a breach of the Unsolicited Telecommunications Rules, depending on the facts of each case: mistake of fact, *res judicata*, officially induced error, abuse of process, entrapment, and *de minimis.*

Commission's analysis and determinations

525. The Commission considers that a due diligence defence would allow an alleged violator, when in receipt of a notice of violation, to avoid liability by proving that it took all reasonable care to comply with the Unsolicited Telecommunications Rules. This involves consideration of what a reasonable person would have done in the circumstances.

526. The Commission considers it appropriate to establish criteria in order to provide guidance on the elements that it will generally consider in assessing a defence of due diligence. The Commission determines that the following criteria are appropriate:

> The person demonstrates, as part of its due diligence defence, that the telecommunication resulted from an error and that as part of its routine business practices
>
> i) the person has established and implemented adequate written policies and procedures to comply with the Unsolicited Telecommunications Rules and to honour consumers' requests that they not be contacted by way of telemarketing telecommunications;
>
> ii) the person provides adequate on-going training to employees and makes all reasonable efforts to ensure adequate on-going training is provided to any person assisting in its compliance with the Unsolicited Telecommunications Rules and any written policies and procedures established under paragraph (i);

iii) the person uses the National DNCL obtained from the National DNCL operator no more than thirty-one (31) days prior to the date any telemarketing telecommunication is made;

iv) the person uses the telemarketer's or, where applicable, the client of the telemarketer's do not call list that was updated no more than thirty-one (31) days prior to the date any telemarketing telecommunication is made;

v) the person uses and maintains records documenting a process to prevent the initiation of a telemarketing telecommunication to any telecommunications number that has been registered for more than thirty-one (31) days on the National DNCL, the telemarketer's do not call list or, where applicable, the client of the telemarketer's do not call list;

vi) the person monitors and enforces compliance with the Unsolicited Telecommunications Rules and its written policies and procedures referred to in paragraph (i); and

vii) in the case of a person who has retained a telemarketer to engage in telemarketing on its behalf, the person has entered into an agreement between itself and the telemarketer requiring that the latter comply with the Unsolicited Telecommunications Rules.

527. The Commission notes that the circumstances described above are not intended to be exhaustive as there may be other reasonable steps that a person may take to ensure compliance with the Unsolicited Telecommunications Rules. Further, the Commission considers that the common law will continue to develop and additional criteria may be added by the courts. The Commission notes that the above non-exhaustive criteria should be used as guidance in determining whether the alleged violator has established that it has acted with due diligence.

528. The defence of due diligence is the most common defence for regulatory offences such as those that would occur under the Unsolicited Telecommunications Rules framework. The Commission notes that pursuant to subsection 72.1(2) of the Act an alleged violator may also argue rules and principles of common law in making a defence to the extent that the rule or principle is not inconsistent with the Act. The Commission notes the example of defences provided by Bell Canada et al. The Commission considers that the availability of such defences will vary on a case-by-case basis, depending on the specific circumstances of each case.

529. In addition to the defences in section 72.1 of the Act, when a telemarketing telecommunication is made to a consumer's telecommunication number registered on the National DNCL, liability will be avoided where

the person demonstrates that at the time of the telecommunication:

i) there was valid prior express consent from the consumer to be contacted via a telemarketing telecommunication by the telemarketer or, as applicable, the client of the telemarketer;

ii) the consumer had an existing business relationship, within the meaning of the *Telecommunications Act*, with the telemarketer or, as applicable, the client of the telemarketer;

iii) the telemarketing telecommunication qualified under one of the other exemptions specified in subsection 41.7(1) of the *Telecommunications Act*;

iv) the consumer was a business; or

v) the person had a personal relationship with the recipient consumer of the telemarketing telecommunication.

530. The Commission notes that the circumstances described above are not exhaustive.

E. Procedural rights associated with a notice of violation

Positions of parties

531. Bell Canada et al. submitted that the Commission should provide guidelines with respect to procedural rights. Bell Canada et al. noted that the Act does not contain any guidance other than a person has 30 days, or longer as specified by the Commission, to either pay the penalty as set out in the notice of violation or make representations to the Commission.

Commission's analysis and determinations

532. The Commission notes that, pursuant to subsection 72.07(1) of the Act, a notice of violation may be issued if there are reasonable grounds to believe that a violation of the Unsolicited Telecommunications Rules has occurred.

533. The Commission notes that, pursuant to subsection 72.07(2) of the Act, the notice of violation will a) name the person who is believed to have committed the violation, b) identify the violation, c) set out the amount of the AMP, and d) set out the right of the person to pay the AMP or make representation to the Commission and the manner for doing so.

534. The Commission notes that subsection 72.07 (2) (b) allows the Commission to set a timeline of longer than 30 days for a response to the notice of violation if necessary.

535. The Commission considers that the manner in which the alleged violator who receives the notice of violation may make representation should be efficient and at the same time allow for flexibility appropriate to the situation.

536. The Commission considers that the alleged violator will have a full opportunity to make its due diligence defence in its representations. If the Commission requires clarifications, interrogatories may be sent to the alleged violator to provide opportunity to respond in order to complete the record as required. The Commission considers that each case may be different and as such, it is appropriate to determine the process for interrogatories on a case-by-case basis.

537. If the Commission determines that it would be appropriate to impose the AMP after the alleged violator has made representation, pursuant to subsection 72.08(2) of the Act, notice will be provided in the decision to the alleged violator of its right to apply for a review under section 62 of the Act and of its right to appeal under section 64 of the Act.

F. Informing the public of violators

Positions of parties

538. PILC-CAC-MSOS submitted that consumer awareness is an important enforcement tool and, pursuant to section 72.13 of the Act, consumers should be made aware of the violators of the Unsolicited Telecommunications Rules.

Commission's analysis and determinations

539. Section 72.13 of the Act allows the Commission to make public the nature of a violation, the name of the person who committed it, and the amount of the AMP. The Commission considers that publishing such information will deter others from violating the Unsolicited Telecommunications Rules, and will inform the public and TSPs of violators. The Commission determines that such information will be made public.

G. Unsolicited Telecommunications Rules in ILEC tariffs

Positions of parties

540. Bell Canada et al., CLHIA, CMA, Infolink, PIAC-CAC, PII, RCI, Shaw, and TDMM submitted that the Unsolicited Telecommunications Rules should be removed from the ILECs' tariffs as

a) the imposition of AMPS would be a better deterrent than the threat of disconnection;

b) the Commission's powers to issue sanctions or impose AMPs against a non-compliant telemarketer eliminate the need for TSPs to enforce the Unsolicited Telecommunications Rules; and

c) to leave the Unsolicited Telecommunications Rules in the ILECs' tariffs would cause duplication and/or contradiction and uncertainty with respect to the Rules without an increase in consumer protection.

541. In contrast, BCOAPO et al., PILC-CAC-MSOS, and TBayTel submitted that the Unsolicited Telecommunications Rules should remain in the ILECs' tariffs because the suspension or disconnection of service is an effective, additional enforcement tool, and doing so would inform the public that such an enforcement tool is available.

542. Bell Canada et al. proposed that the ILECs include a clause in their tariffs that would permit the disconnection of services, on instruction by the Commission, for chronic offenders of the Unsolicited Telecommunications Rules.

543. RCI submitted that if Bell Canada et al. were to retain the threat of disconnection, the Unsolicited Telecommunications Rules should be stated in their tariffs.

Commission's analysis and determinations

544. The Commission notes that disconnection of service has not been an effective deterrent for violations of the Unsolicited Telecommunications Rules in the past as, in a competitive environment, telemarketers can easily obtain service from another service provider. The Commission further considers that some telemarketers regard disconnection as a cost of doing business.

545. In light of the Commission's authority under the Act to impose AMPs for violations of the Unsolicited Telecommunications Rules, the Commission considers that it could lead to confusion and inconsistent enforcement sanctions if the ILECs continued to be responsible for enforcing these Rules. The Commission considers that removing the Unsolicited Telecommunications Rules and disconnection provisions from the ILECs' tariffs would not inhibit it from using other enforcement tools,[17] in addition to AMPs, to address breaches of these Rules.

546. In light of the above, the Commission directs the ILECs to remove the Unsolicited Telecommunications Rules, with the exception of the rule related to the Centrex call transfer feature, from their tariffs, effective the date that the Commission starts using its enforcement powers pursuant to sections 72.01 to 72.15 of the Act. In the interim, the Commission directs the ILECs to continue to enforce the Unsolicited Telecommunications Rules established prior to Decision 2004-35 under their tariffs.

547. The Commission notes the proposal that the ILEC's tariffs contain a notice that upon direction from the Commission, the ILEC will disconnect the telecommunications service of a telemarketer that has violated the Unsolicited Telecommunications Rules made pursuant to section 41 of the Act. However, the Commission notes that a notice in an ILEC tariff is not necessary for the Commission to issue such a direction.

548. In light of the above, the Commission also determines that it will no longer be necessary for interexchange carriers (IXCs) and wireless service providers (WSPs) to include a contractual stipulation obliging resellers to adhere to the Unsolicited Telecommunications Rules. Instead, the Commission directs IXCs and WSPs to include, effective the date the Commission starts using its enforcement powers pursuant to sections 72.01 to 72.15 of the Act, a contractual stipulation requiring resellers to disconnect the telecommunications service of a telemarketer that has violated the Unsolicited Telecommunications Rules upon direction from the Commission.

---

[17] In paragraph 87 of Decision 2004-35, the Commission stated "that there are a number of enforcement tools available to it to deal with breaches of the telemarketing rules. The Commission could issue an order that service to a telemarketer be suspended or disconnected. The Commission could also issue an order prohibiting all service providers from reconnecting that telemarketer for a set period. The Commission considers that such tools, which deprive a customer of service, would be most appropriate when there is an indication that the customer does not intend to comply with the rules, but are less appropriate consequences for, for example, a first breach of the rules. The Act provides for the possibility of a criminal prosecution pursuant to section 73. It also provides for a mandatory order requiring compliance pursuant to section 51, and for contempt of court proceedings in the event of a subsequent violation. The Commission notes that both prosecutions and contempt of court proceedings require the Commission to proceed through court proceedings, which may be lengthy or costly. The Commission considers that these tools are generally better suited to situations where non-compliance is ongoing rather than for a first breach of the rules."

549. As noted in the Commission's determinations on call number display, the Commission has determined that the following rule will be retained:

> A reseller of Centrex service shall make all reasonable efforts to ensure that subscribers and end-users of the Centrex service do not employ the Centrex call transfer feature to transmit telemarketing telecommunications.

550. Accordingly, the Commission directs the local exchange carriers (LECs) that file tariffs for Centrex service to retain this rule in their tariffs and to change the wording to match the above. The Commission directs the LECs that do not file tariffs for Centrex service to include a contractual stipulation stating the above, effective the date the Commission starts using its enforcement powers pursuant to sections 72.01 to 72.15 of the Act.

VII. Other matters

A. Monitoring complaints

Commission's analysis and determinations

551. The Commission notes that, at present, TSPs are required to file reports related to telemarketing complaint statistics pursuant to Decision 2004-35. The Commission notes that no party addressed the filing requirements.

552. The Commission considers the complaint statistics reported by the TSPs are valuable information that supplements the Commission's monitoring of telemarketing complaints made directly to the Commission. The Commission considers that there will be an interim period after the National DNCL is operational during which consumers will continue to register complaints to their TSP, or to the Commission, until such a time that they are sufficiently aware, via a public awareness campaign, that they may register their complaints with the National DNCL operator. In light of the above, the Commission considers that it is appropriate to require the TSPs to continue to file complaint statistics for an interim period after the National DNCL is operational in order to allow the Commission to continue to monitor all complaints. The Commission considers that six months is an appropriate interim period.

553. The Commission notes that, pursuant to subsection 41.6(1) of the Act, it is required to file an annual report to the Minister on the operations of the National DNCL Regime within six months of the end of each fiscal year.

554. The Commission notes that complaint statistics will also assist it to better determine where difficulties continue to exist and what further changes may be required to the National DNCL and telemarketing framework.

555. As stated earlier, the Commission intends to monitor complaints to determine the ongoing appropriateness of some of its determinations set out in this Decision. In particular, the Commission intends to monitor complaints regarding the following: a) the exemption from the National DNCL Rules of telemarketing telecommunications made to business consumers; b) the exemption from the Telemarketing Rules for telemarketing telecommunications via voicemail broadcast; and c) the determination not to exempt telemarketing telecommunications based on

personal referrals from the National DNCL Rules. The Commission notes that the reporting requirements set out in Decision 2004-35 do not set out collection of statistics related to the above.

556. The Commission directs each TSP to modify its reporting systems such that complaints a) are separated by type of consumer, residential or business; b) are tracked for telemarketing telecommunications via voicemail broadcast; and c) are tracked for telemarketing based on personal referrals. The Commission determines that the modifications are to take place effective for the reporting period of 1 January 2008 to 30 June 2008.

557. The Commission directs the TSPs to continue to file with the Commission semi-annual reports summarizing telemarketing complaint statistics, modified as directed above. The Commission determines that the TSPs may discontinue filing reports effective with the first full reporting period that would start six months after the date that the National DNCL becomes operational.

558. The Commission directs each TSP to provide the following information separately for a) complaints from business consumers and b) complaints from residential consumers:

- the total number of telecommunications complaints;
- the total number of unsolicited telecommunications complaints;
- the number of complaints where no Unsolicited Telecommunications Rule was breached;
- the number of out-of-territory complaints when service is provided to the telemarketer by another TSP; and
- the number of complaints related to telemarketing based on personal referrals.

559. The Commission directs each TSP to report the following statistics separately for voice- and fax-related complaints. The Commission also directs each TSP to report these statistics separately for complaints from residential consumers and complaints from business consumers:

- telecommunications placed outside of prescribed calling hours;
- calling party not properly identified;
- unable to place the do not call request at time of call;
- do not call requests not in effect within the appropriate time period;
- the local or toll-free telecommunications number provided by the telemarketer is busy or not answered;
- the number of dead air complaints;
- the number of ADAD-related complaints; and
- the number of voicemail broadcast-related complaints.

560. In addition, the Commission directs each TSP to continue to provide the following:

- the name and any other identifying information, where available, of any telemarketer allegedly breaking the Rules;
- the Unsolicited Telecommunications Rule breached, reported separately for voice and fax;
- the Unsolicited Telecommunications Rule breached, reported separately for residential and business;
- the concern of the complainant if no Unsolicited Telecommunications Rule is breached but complainant is still unhappy; and
- the names of any parties who have been disconnected for non-compliance along with the associated reason.

561. The Commission directs the TSPs to submit the reports in the format set out in Appendix 2 to this Decision.

562. The Commission will continue to monitor complaints received at the Commission and will compile its statistics in a similar format.

B. Implementation

563. The Commission considers that it will be less confusing to consumers, to telemarketers, and to clients of telemarketers if the complete Unsolicited Telecommunications Rules framework and the Commission's determinations regarding the Decision 2004-35 review and vary applications become effective at the same time. The Commission also considers that having one effective date for all of its determinations in this Decision will contribute to a more effective and cost efficient public awareness campaign.

564. Therefore, the Commission determines that the effective date for the implementation of the Unsolicited Telecommunications Rules framework, its determinations on the review and vary applications, and the exercise of its new enforcement powers will be the date that the National DNCL operator begins operations. The Telemarketing Rules and the ADAD Rules established prior to Decision 2004-35 will remain in force until that time and enforcement will continue to be through the application of the ILEC's tariffs.

C. Public awareness campaign

Positions of parties

565. AFP, Bell Canada et al., CBA, ContactNB, MRIA, PIAC-CAC-MSOS, and UC submitted that the Commission should implement a public awareness campaign to educate consumers and telemarketers about the National DNCL operations and rules as well as the Unsolicited Telecommunications Rules. AFP argued that Canadians must understand that charities are not subject to the National DNCL Rules.

566. UC submitted that the Commission should require TSPs to distribute a billing insert four times annually with information on the National DNCL, including the exemptions and the Unsolicited Telecommunications Rules. UC also submitted that the Commission should also order ILECs to place an entire section on the National DNCL and telemarketing in the white pages directories.

Commission's analysis and determinations

567. The Commission considers that a public awareness campaign is required to educate consumers, telemarketers, and clients of telemarketers about the National DNCL, the Unsolicited Telecommunications Rules, and the Commission's new enforcement powers.

568. In addition to implementing a public awareness campaign, the Commission intends to include information about the Unsolicited Telecommunications Rules and the consumer and business registration guidelines on its website with a link to the National DNCL website.

569. The Commission directs ILECs to prominently display, in plain language, a) the Unsolicited Telecommunications Rules, b) how to register on the National DNCL, and c) how to file a complaint about a telemarketing telecommunication in a separate section of their residential telephone directories beginning with the next publication after the National DNCL becomes operational. The Commission directs all carriers, and encourages all TSPs, to prominently display the same information described above in plain language on their websites with a direct link to the National DNCL website effective the date the National DNCL becomes operational.

570. The Commission encourages TSPs to inform their business customers at the time of installation of service, if the TSP has reasonable grounds to believe that the customer intends to use the service for telemarketing, of the Unsolicited Telecommunications Rules and the consequences for breaching the Rules.

571. The Commission notes that the *Statement of Consumer Rights* includes reference to the Telemarketing Rules. The Commission directs the ILECs to submit a modified *Statement of Consumer Rights* for Commission approval that will reflect the determinations in this Decision and the establishment of the National DNCL within 30 days of the effective date of the Unsolicited Telecommunications Rules framework.

Secretary General

Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules

Part I: Definitions

1. In these Rules,

"Abandoned Call" means a telecommunication placed by a predictive dialing device to a consumer which, when answered by the consumer, has no live telemarketer available to speak to the consumer within two seconds;

"Abandonment Rate" means the percentage of telecommunications placed by a predictive dialing device which are abandoned calls;

"Affiliate" One entity is affiliated with another entity if one of them is controlled by the other or if both are controlled by the same person;

"Automatic Dialing-Announcing Device" or "ADAD" means any automatic equipment incorporating the capability of storing or producing telecommunications numbers used alone or in conjunction with other equipment to convey a pre-recorded or synthesized voice message to a telecommunications number;

"Automatic Dialing-Announcing Device Rules" means the Rules set out in Part IV;

"Client of a telemarketer" means a person that has engaged a telemarketer to conduct telemarketing on its behalf;

"Control" shall have the same meaning as set out in subsection 2(1) of the *Telecommunications Act*;

"National Do Not Call List" or "National DNCL" means the National Do Not Call List established pursuant to the *Telecommunications Act*;

"National Do Not Call List Rules" means the Rules set out in Part II;

"Newspaper of General Circulation" means a printed publication in sheet form that is intended for general circulation, published regularly at intervals of not longer than seven days, consisting in great part of news of current events of general and local interest, and sold to the public and to subscribers;

"Person" shall have the same meaning as set out in subsection 2(1) of the *Telecommunications Act*;

"Predictive Dialing Device" or "PDD" means any software, system, or device that automatically initiates outgoing telecommunications from a pre-determined list of telecommunications numbers;

"Solicitation" means the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another person. This includes solicitation of donations by or on behalf of charitable organizations;

"Telemarketing Rules" means the Rules set out in Part III;

"*Telecommunications Act*" means the *Telecommunications Act*, S.C. 1993, c.38, as amended;

"Telemarketer" means a person that conducts telemarketing either on its own behalf or on behalf of one or more other persons;

"Telemarketing" means the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation;

"Unsolicited Telecommunications Rules" means all the Rules set out in this document;

"Voicemail broadcast" means a telecommunication whereby a recorded message is delivered directly into a person's voice mailbox without interrupting that person's activities in real time.

Part II: National DNCL Rules

2. For purposes of the National DNCL Rules, the terms "candidate," "existing business relationship," "leadership contestant," and "nomination contestant" shall have the same meaning as set out in subsection 41.7(2) of the *Telecommunications Act*.

3. The National DNCL Rules do not apply to a telemarketing telecommunication made to a business consumer.

4. As provided for in section 41.7 of the *Telecommunications Act*, the National DNCL Rules do not apply in respect of a telecommunication

   (a) made by or on behalf of a registered charity within the meaning of subsection 248(1) of the *Income Tax Act*;

   (b) made to a person

      (i) with whom the person making the telecommunication, or the person or organization on whose behalf the telecommunication is made, has an existing business relationship, and

      (ii) who has not made a do not call request in respect of the person or organization on whose behalf the telecommunication is made;

   (c) made by or on behalf of a political party that is a registered party as defined in subsection 2(1) of the *Canada Elections Act* or that is registered under provincial law for the purposes of a provincial or municipal election;

(d) made by or on behalf of a nomination contestant, leadership contestant or candidate of a political party described in paragraph (c) or by or on behalf of the official campaign of such contestant or candidate;

(e) made by or on behalf of an association of members of a political party described in paragraph (c) for an electoral district;

(f) made for the sole purpose of collecting information for a survey of members of the public; or

(g) made for the sole purpose of soliciting a subscription for a newspaper of general circulation.

5. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to a consumer's telecommunications number that is on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer or the client of that telemarketer.

6. For the purposes of section 5, express consent shall clearly evidence the consumer's authorization that a telemarketing telecommunication made by or on behalf of a specific person may be placed to that consumer and shall include the telecommunications number to which the telemarketing telecommunication may be placed.

7. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator.

8. A telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

9. A telemarketer shall keep the following records related to its use of the National DNCL for a period of three (3) years from the date the records are created:

(a) when initiating a telemarketing telecommunication on its own behalf, proof of its subscription to the National DNCL and proof of payment of fees to the National DNCL operator; and

(b) when initiating a telemarketing telecommunication on behalf of clients, proof of subscription to the National DNCL and proof of payment of fees to the National DNCL operator for each client.

10. A telemarketer, a client of a telemarketer, and any other subscriber of the National DNCL shall not use the National DNCL for any purpose except compliance with the provisions of the *Telecommunications Act*, the National DNCL Rules, or any other determinations made pursuant to section 41 of the *Telecommunications Act.*

11. Subject to section 12, a telemarketer, a client of a telemarketer, and any other subscriber of the National DNCL shall not sell, rent, lease, publish or otherwise disclose, whether, for consideration or not, the National DNCL or any portion thereof to any person outside of its organization, including any affiliate.

12. A person referred to in section 11 may provide the National DNCL or any portion thereof to another person involved in supplying that person with services to enable them to comply with the *Telecommunications Act*, the National DNCL Rules, or any other determination made pursuant to section 41 of the *Telecommunications Act*, provided that

    (a) the National DNCL or any portion thereof is required for that purpose;

    (b) the National DNCL or any portion thereof is to be used only for that purpose; and

    (c) disclosure is made on a confidential basis.

13. A telemarketer, a client of a telemarketer, and any other subscriber of the National DNCL shall make all reasonable efforts to ensure that the National DNCL or any portion thereof is not disclosed by any person to which it was provided pursuant to section 12 and is not used by that person for any purpose other than that referred to in section 12.

14. A telemarketer and a client of a telemarketer shall use a version of the National DNCL obtained from the National DNCL operator no more than thirty-one (31) days prior to the date that any telemarketing telecommunication is made.

Part III: Telemarketing Rules

15. The Telemarketing Rules do not apply to a telemarketing telecommunication made via voicemail broadcast.

16. The Telemarketing Rules do not apply in respect of an unsolicited telecommunication made for purposes other than solicitation, including telecommunications made solely for the purpose of emergencies, account collection, collecting information for a survey of members of the public, and market research.

17. A reseller of Centrex service shall make all reasonable efforts to ensure that subscribers and end-users of Centrex service do not employ the Centrex call transfer feature to transmit telemarketing telecommunications.

18. A telemarketer initiating a telemarketing telecommunication on its own behalf shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of three (3) years and thirty-one (31) days from the date of the consumer's do not call request.

19. A client of a telemarketer shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of three (3) years and thirty-one (31) days from the date of the consumer's do not call request.

20. A telemarketer initiating a voice telemarketing telecommunication shall process a do not call request from a consumer at the time of the telemarketing telecommunication.

21. A telemarketer initiating a telemarketing telecommunication on its own behalf shall add a consumer's name and telecommunications number to its do not call list within thirty-one (31) days of the consumer's do not call request.

22. A telemarketer initiating a telemarketing telecommunication on behalf of a client shall make all reasonable efforts to ensure that the client adds a consumer's name and telecommunications number to the client's do not call list within thirty-one (31) days of the consumer's do not call request.

23. A client of a telemarketer shall add a consumer's name and telecommunications number to the client's do not call list within thirty-one (31) days of the consumer's do not call request.

24. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf to a consumer who is or should be on its do not call list.

25. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication on behalf of the client to a consumer who is or should be on the client's do not call list.

26. A telemarketer initiating a voice telemarketing telecommunication shall provide the following information in a clear manner upon reaching the intended party:

    (a) the name or fictitious name of the individual making the telecommunication;

    (b) the name of the telemarketer, whether the telemarketing telecommunication is made on its own behalf or on behalf of a client of the telemarketer; and

    (c) the name of the client, when the telemarketing telecommunication is being made on behalf of a client of the telemarketer.

27. A telemarketer initiating a voice telemarketing telecommunication shall provide the following information in a clear manner upon request:

    (a) a voice telecommunications number that allows access to an employee or other representative of the telemarketer for the purpose of asking questions, making comments about the telemarketing telecommunication, or making or verifying a do not call request; and

    (b) the name and address of an employee or other representative of the telemarketer to whom the consumer can write for the purpose of asking questions, making comments about the telemarketing telecommunication, or making or verifying a do not call request.

28. The information referred to in section 27 shall be provided for both the telemarketer and, where applicable, the client of the telemarketer, whether or not the consumer has requested that both be provided.

29. A telemarketer sending a fax telemarketing telecommunication shall clearly provide the following information at the top of the first page in font size 12 or larger:

    (a) the name of the telemarketer sending the fax, whether the telemarketing telecommunication is made on its own behalf or on behalf of a client of the telemarketer;

    (b) the name of the client when the telemarketing telecommunication is being made on behalf of a client of the telemarketer;

    (c) the originating date and time of the fax;

    (d) a voice and a fax telecommunications number that allows access to an employee or other representative of the telemarketer and, where applicable, the client of the telemarketer, for the purpose of asking questions, making comments about the telemarketing telecommunication, or making or verifying a do not call request; and

    (e) the name and address of an employee or other representative of the telemarketer and, where applicable, the client of the telemarketer, to whom the consumer can write for the purpose of asking questions, making comments about the fax, or making or verifying a do not call request.

30. The telecommunications numbers to be provided pursuant to sections 27, 28, and 29

    (a) shall be local or toll-free; and

    (b) in the case of a voice telecommunications number, shall be answered either by a live operator or with a voicemail system that is always capable of taking messages from the consumer.

31. The voicemail system referred to in section 30 shall provide a message informing the consumer that his or her call will be returned within three (3) business days.

32. The telemarketer or, where applicable, the client of the telemarketer shall return the consumer's call referred to in section 31 within three (3) business days.

33. Subject to section 34, a telemarketing telecommunication is restricted to the following hours: 9:00 a.m. to 9:30 p.m. on weekdays (Monday to Friday); and 10:00 a.m. to 6:00 p.m. on weekends (Saturday and Sunday). The hours refer to those of the consumer receiving the telemarketing telecommunication.

34. A telemarketing telecommunication is restricted to the hours set out in or pursuant to provincial legislation that governs an activity where the hours set out in the provincial legislation are more restrictive that those set out in section 33, provided that the telecommunication is made for the purpose of that activity. The hours refer to those of the consumer receiving the telecommunication.

35. A telemarketer initiating a telemarketing telecommunication shall display the originating telecommunications number or an alternate telecommunications number where the telemarketer can be reached (except where the number display is unavailable for technical reasons).

36. Sequential dialing for the purpose of initiating a telemarketing telecommunication is prohibited.

37. Random dialing for the purpose of initiating a telemarketing telecommunication, including to a non-published or a non-listed telecommunications number, is permitted except to telecommunications numbers that

    (a) are registered on the National DNCL;

    (b) are emergency lines;

    (c) are associated with healthcare facilities;

    (d) in the case where a telemarketer initiates a telemarketing telecommunication on its own behalf, are on the telemarketer's do not call list; and

    (e) in the case where the telemarketer initiates a telemarketing telecommunication on behalf of a client of the telemarketer, are on the client's list.

38. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to any emergency line or healthcare facility.

39. A telemarketer using a predictive dialing device to initiate telemarketing telecommunications shall not exceed, in any calendar month, a five (5) percent abandonment rate.

40. A telemarketer and a client of a telemarketer shall maintain records, on a calendar month basis, with respect to the actual telemarketing telecommunication abandonment rates for a period of three (3) years from the date each monthly record is created.

Part IV: Automatic Dialing-Announcing Device (ADAD)

41. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication via an ADAD unless express consent has been provided by the consumer to receive a telemarketing telecommunication via an ADAD from that telemarketer or the client of that

telemarketer. For greater certainty and without limiting the generality of the foregoing, this prohibition includes telemarketing telecommunications via an ADAD that are initiated by or on behalf of a charity, for the purpose of requesting a consumer to hold until a telemarketer is available, for activities such as radio station promotions, or for referring consumers to 900 or 976 service numbers.

42. For the purposes of section 41, express consent shall clearly evidence the consumer's authorization that a telemarketing telecommunication via an ADAD made by or on behalf of a specific person may be placed to that consumer and shall include the specific telecommunications number to which the telemarketing telecommunication may be made.

43. A person using an ADAD to make unsolicited telecommunications where there is no attempt to solicit, shall comply with the following conditions:

    (a) such telecommunications shall not be made to emergency lines and healthcare facilities, whether such telecommunications are made by random dialing or otherwise;

    (b) subject to paragraph (c), such telecommunications are restricted to 9:00 a.m. to 9:30 p.m. on weekdays (Monday to Friday) and 10:00 a.m. to 6:00 p.m. on weekends (Saturday and Sunday); the hours refer to those of the person receiving the telecommunication;

    (c) such telecommunications are restricted to the hours set out in or pursuant to provincial legislation that governs an activity where the hours set out in the provincial legislation are more restrictive than those set out in paragraph (b), provided that the telecommunication is made for the purpose of that activity. The hours refer to those of the person receiving the telecommunication;

    (d) such telecommunications shall begin with a clear message identifying the person on whose behalf the telecommunication is made. This identification message shall include a mailing address and a local or toll-free telecommunications number at which a representative of the originator of the message can be reached. In the event that the actual message relayed exceeds sixty (60) seconds, the identification message shall be repeated at the end of the telecommunication;

    (e) such telecommunications shall display the originating telecommunications number or an alternate telecommunications number where the telecommunication originator can be reached (except where the number display is unavailable for technical reasons);

    (f) sequential dialing is prohibited;

    (g) random dialing can be used to make such telecommunications, including telecommunications to non-published telecommunications numbers, except to emergency lines and healthcare facilities;

(h) persons initiating such telecommunications shall make all reasonable efforts to ensure that their equipment disconnects within ten (10) seconds of the person receiving the telecommunication hanging up;

(i) the conditions in paragraphs (a) through (h) do not apply to unsolicited telecommunications made via an ADAD for public service reasons, including telecommunications made for emergency and administration purposes by police and fire departments, schools, hospitals, or similar organizations.

Part V: Express Consent

44. For the purposes of the requirements set out in sections 5, 6, 41, and 42, accepted forms of express consent are

(a) written consent, including a completed application form signed by the consumer giving consent to be contacted by way of telecommunications;

(b) oral consent, including

(i) oral consent verified by an independent third party;

(ii) oral consent, where an audio recording of the consent is retained by the telemarketer or client of the telemarketer;

(c) electronic consent through the use of a toll-free number;

(d) electronic consent via the Internet; or

(e) consent through other methods as long as a documented record of consumer consent is created by the consumer or by an independent third party.

45. The onus is on the telemarketer and, where applicable, the client of the telemarketer to demonstrate that valid express consent was given by the consumer.

46. A consumer may withdraw his or her express consent at any time.

Part VI: Record Keeping

47. With regard to any records that are required to be kept pursuant to the Unsolicited Telecommunications Rules and any other records kept with regard to unsolicited telecommunications activities that are subject to the Unsolicited Telecommunications Rules:

(a) a telemarketer and a client of a telemarketer may keep the records in any form, and shall do so in the same manner and format as they keep records in the ordinary course of business;

(b) such records shall be maintained in the regular place of business in a manner such that they are readily accessible in order to facilitate the activities authorized under section 72.06 of the *Telecommunications Act*;

(c) such records shall be provided to the Commission within thirty (30) days of a request from the Commission; and

(d) in the event of any termination of the business of a telemarketer or a client of a telemarketer, a principal of that person shall maintain the records and shall comply with paragraphs (a), (b), and (c). In the event of any sale, assignment, or other change in ownership of the business of a telemarketer or a client of a telemarketer, the successor business shall maintain the records and shall comply with paragraphs (a), (b), and (c).

Part VII: Liability

48. A person will not be held liable for violating the Unsolicited Telecommunications Rules if

(a) the person demonstrates, as part of its due diligence defence, that the telecommunication resulted from an error and that as part of its routine business practices:

(i) the person has established and implemented adequate written policies and procedures to comply with the Unsolicited Telecommunications Rules and to honour consumers' requests that they not be contacted by way of a telemarketing telecommunication;

(ii) the person provides adequate ongoing training to employees and makes all reasonable efforts to ensure that adequate ongoing training is provided to any person assisting in its compliance with the Unsolicited Telecommunications Rules and any written policies and procedures established under paragraph (i);

(iii) the person uses the National DNCL obtained from the National DNCL operator no more than thirty-one (31) days prior to the date any telemarketing telecommunication is made;

(iv) the person uses the telemarketer's or, where applicable, the client of the telemarketer's do not call list that was updated no more than thirty-one (31) days prior to the date any telemarketing telecommunication is made;

(v) the person uses and maintains records documenting a process to prevent the initiation of a telemarketing telecommunication to any telecommunications number that has been registered for more than thirty-one (31) days on the National DNCL, the telemarketer's do not call list or, where applicable, the client of the telemarketer's do not call list;

(vi) the person monitors and enforces compliance with the Unsolicited Telecommunications Rules and its written policies and procedures, referred to in paragraph (i); and

(vii) in the case of a person that has retained a telemarketer to engage in telemarketing on its behalf, the person has entered into an agreement between itself and the telemarketer requiring that the latter comply with the Unsolicited Telecommunications Rules.

(b) In the case when a telemarketing telecommunication is made to a consumer's telecommunications number registered on the National DNCL, the person demonstrates that at the time of the telecommunication:

(i) the consumer had an existing business relationship, within the meaning of subsection 41.7(2) of the *Telecommunications Act*, with the telemarketer or, as applicable, the client of the telemarketer;

(ii) the telemarketing telecommunication qualified under one of the other exemptions specified in subsection 41.7(1) of the *Telecommunications Act*;

(iii) the consumer was a business;

(iv) the person had a personal relationship with the recipient consumer of the telemarketing telecommunication; or

(v) there was valid prior express consent from the consumer to be contacted via a telemarketing telecommunication by the telemarketer or, as applicable, the client of the telemarketer.

(c) The circumstances described in paragraphs (a) and (b) are not exhaustive.

Appendix 2

CRTC semi-annual unsolicited telecommunications complaints form

Name of reporting company:

Reporting officer/contact:

Date of report:

Period covered: 1 January – 30 June 2007

Business/Residential:

Complaints addressed (in written or verbal form) to Officers and Department Heads of the telephone company including complaints referred to the company by the Commission for resolution.

Quantity of complaints	**Total received this period:**
Total number of telecommunications complaints	
Total number of unsolicited telecommunications complaints	
Number of complaints where no rule was breached	
Out-of-territory complaints – service provided by another TSP	

Topics of unsolicited telecommunications complaints	**Total received this period:**			
	Voice	**Fax**	**ADAD**	**Voicemail broadcast**
Telecommunications placed outside of prescribed hours	N/A			N/A
Calling party not properly identified				
Dead air – no immediate response		N/A	N/A	N/A
Use of automatic dialing-announcing device (ADAD) for solicitation	N/A	N/A		N/A
Unable to place a do not call request at time of call		N/A	N/A	N/A
Do not call/fax requests not effective within 30/7 days			N/A	N/A
Local or toll-free telecommunications number provided for do not call requests always busy or not answered			N/A	N/A
Telemarketing telecommunications based on a personal referral			N/A	N/A
Other				
Total				