



Telecom Decision CRTC 2008-6

Ottawa, 28 January 2008

Regulatory policy

Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints

Reference: 8665-C12-200711756

In this Decision, the Commission decides that the investigation of Unsolicited Telecommunications Rules complaints will be delegated to a third party (the Complaints Investigator delegate). The Commission will issue shortly a Request for Proposal to determine who that party will be. Further, the Commission amends the Unsolicited Telecommunications Rules established in Telecom Decision 2007-48, by adding a requirement that all telemarketers and clients of telemarketers, including those exclusively making unsolicited telecommunications that are exempt from the National Do Not Call List Rules, register with, and provide information to, the National Do Not Call List operator and pay applicable fees that may be charged by the Complaints Investigator delegate. This requirement will ensure that the costs related to investigations of violations of the Unsolicited Telecommunications Rules will be recovered from all telemarketers. The amendments to the Unsolicited Telecommunications Rules set out in this Decision will be effective the date the Complaints Investigator delegate becomes operational.

Background

1. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act* (the Act).
2. In *An Act to amend the Telecommunications Act*, S.C. 2005, c. 50¹, 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, among other things, establish a national do not call list (the National DNCL) and effectively and efficiently investigate and enforce determinations made pursuant to section 41 of the Act.
3. 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.
4. In Telecom Decision 2007-48, the Commission established a comprehensive framework for the creation of a National DNCL and set out the Unsolicited Telecommunications Rules which include the National DNCL Rules, the Telemarketing Rules, and the Automatic Dialing-Announcing Device (ADAD) Rules as well as provisions with respect to Express Consent and Record Keeping.

¹ <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=2333920&file=4>

Introduction

5. In Telecom Public Notice 2007-15, the Commission invited parties to comment on
 - a) its intent to delegate its investigative powers with regard to Unsolicited Telecommunications Rules complaints to a third party who will be able to charge rates for exercising these powers;
 - b) the third party that the Commission would delegate its investigative powers to; and
 - c) its intent to establish a rule to require all telemarketers and clients of telemarketers, including those exclusively making unsolicited telecommunications that are exempt from the National DNCL Rules, to register with, and provide information to, the National DNCL operator and to pay fees that may be charged by the third party who will be responsible for the investigation of Unsolicited Telecommunications Rules complaints.
6. The Commission received submissions from Advocis; the Association of Fundraising Professionals (AFP); Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Bragg Communications Incorporated, Cogeco Cable Inc., MTS Allstream Inc., NorthernTel, Limited Partnership, Northwestel Inc., Quebecor Media Inc., Rogers Communications Inc., Saskatchewan Telecommunications, Télébec, Limited Partnership, TELUS Communications Company, and Virgin Mobile Canada (collectively, the Companies); the Canadian Bankers Association (CBA); the Canadian Jewish Congress (CJC); the Canadian Life and Health Insurance Association Inc. (CLHIA); the Canadian Marketing Association (CMA); the Canadian Newspaper Association (CNA); the Independent Financial Brokers of Canada (IFB); MBNA Canada Bank (MBNA); Mark Obermeyer; Primerica Financial Services Canada Ltd. (Primerica); and Ventriloquist Voice Solutions International Inc. (VVSII). The record of this proceeding closed with the receipt of reply comments from several parties on 11 October 2007. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
7. The Commission has identified the following issues to be addressed in its determinations:
 - A. Should the Commission delegate its investigative powers to a third party and does it have the statutory authority to do so?
 - B. Who would be an appropriate third party?
 - C. Should the Commission require all telemarketers and clients of telemarketers to register with, and provide information to, the National DNCL operator and pay fees charged by the third-party investigator delegate (the Complaints Investigator delegate) and does it have the statutory authority to do so?
 - D. Should the telecommunications service providers (TSPs) be permitted to recover costs related to investigations?

8. The Commission considers that VVSII's request that the Commission re-examine its policy to continue the ban on the use of ADADs established in Telecom Decision 2007-48 for the transmission of pre-recorded messages for the purpose of solicitation to consumers who had an existing business relationship with the caller is outside the scope of this proceeding.

A. Should the Commission delegate its investigative powers to a third party and does it have the statutory authority to do so?

9. AFP, CBA, CLHIA, CMA, the Companies, and Primerica generally supported the Commission's stated intention to delegate its complaints investigation powers to a third party who would be able to charge rates for exercising these powers. CMA supported delegation to a third party provided it was funded through government appropriations.

10. MBNA opposed the delegation to a third party, arguing that investigations were best done by the government or an independent quasi-judicial tribunal, and that the Commission was best positioned to undertake this role.

Commission's analysis and determinations

11. The Commission notes that Parliament expressly granted it authority to delegate its investigative powers with respect to possible contraventions of any prohibition or requirement of the Commission under section 41 of the Act to a third party pursuant to subsection 41.3(1) of the Act, and stipulated, in section 41.4 of the Act, that the delegate may charge rates for exercising its delegated powers.

12. The Commission considers that investigations of alleged violations of the Unsolicited Telecommunications Rules are an important aspect to the success of the Unsolicited Telecommunications Rules framework set out in Telecom Decision 2007-48. For example, the Commission considers investigations critical to the exercise of its powers with regard to AMPs. In the Commission's view, delegating investigative powers to a third party, who may recover its costs by charging rates for exercising delegated powers, will ensure this aspect of the framework will be effectively carried out.

13. As to MBNA's position that investigations are best done by a government or independent quasi-judicial tribunal, and thus should be undertaken by the Commission, the Commission notes that under subsection 41.3(1) of the Act, the Commission may delegate its powers in writing and on specified terms. The Commission notes that it intends to provide the third party with specific policy parameters, and terms and conditions with regard to the exercise of its investigative powers, through a contractual agreement which the third party will be obligated to adhere to. The Commission is of the view that in this manner the third party will represent the Commission and will not be acting independent of the Commission's direction and oversight.

14. In light of the above, the Commission determines that it intends to delegate its investigative powers with regard to Unsolicited Telecommunications Rules complaints to a third party who will be able to charge rates for exercising these delegated powers.

B. Who would be an appropriate third party?

15. In Telecom Public Notice 2007-16, the Commission invited parties to comment on whether the Commissioner for Complaints for Telecommunications Services (CCTS) would be an appropriate third party to which it could delegate its investigative powers. Parties to Telecom Public Notice 2007-16, representing a range of TSPs and consumer groups, either provided no comments on this issue or opposed it for a variety of reasons, including that it would significantly complicate the procedures, governance structure, and funding of the CCTS. Further, parties commented that it would be inappropriate for the TSPs to fund the CCTS' operations related to telemarketing complaints when funding should be derived from telemarketers.
16. The majority of parties to this proceeding either provided no comment on this issue or opposed the delegation of the Commission's investigative powers to the CCTS. CMA indicated support for this proposal, provided the CCTS secured government funding, or funded the work through its existing funding mechanisms.

Commission's analysis and determinations

17. The Commission notes that most parties who commented on this issue were opposed to the Commission delegating its investigative powers related to Unsolicited Telecommunications Rules complaints to the CCTS. The Commission further notes that parties, other than CJC, did not identify a specific Complaints Investigator delegate. CJC argued that it would be more efficient for the TSPs to investigate complaints about the calling activities of their customers.
18. The Commission agrees with the position of most parties who commented on this issue as noted above and, accordingly, determines that it will not delegate its investigative powers to the CCTS; rather, it will use a request for proposal (RFP) process, as suggested by the Companies, to select a Complaints Investigator delegate. In the Commission's view, such a process would be transparent and appropriate. The Commission notes that it will include the determinations made in this Decision when issuing the RFP for procurement.

C. Should the Commission require all telemarketers and clients of telemarketers to register with, and provide information to, the National DNCL operator and pay fees charged by the Complaints Investigator delegate and does it have the statutory authority to do so?

19. Advocis, AFP, CJC, CMA, CNA, IFB, MBNA, VVSII, and Mark Obermeyer generally objected to the Commission's stated intention to compel telemarketers and clients of telemarketers to register, provide information, and/or pay a fee charged by the Complaints Investigator delegate on the grounds that to do so would be contrary to the exemptions in subsection 41.7(1) of the Act. Several parties objected on the grounds that the new requirements would be onerous, costly, and redundant, as virtually every organization was already registered with government in some form that would satisfy the needs of bodies who enforce consumer protection regulations.
20. CMA submitted that the amendment to the Act clearly contemplated that the Commission would contract-out the operation of the National DNCL database; however, from the tabling of the legislation through to its passage, there was no indication that the financial burden of enforcement would fall to telemarketers and clients of telemarketers.

21. The Companies disagreed with CMA's assessment that Parliament did not intend telemarketers and clients of telemarketers to assume the cost of a revised telemarketing framework, or that a legislative change was necessary to give the Commission the necessary authority to make the proposed requirements.
22. CLHIA, the Companies, and Primerica generally supported the Commission's intention to require all telemarketers and clients of telemarketers to pay a fee to the Complaints Investigator delegate.
23. Several parties, including CBA, CLHIA, CMA, MBNA, and Mark Obermeyer, held the position that the costs of investigation of complaints and enforcement of the Unsolicited Telecommunications Rules should be borne by the federal government. Mark Obermeyer submitted that AMPs should be imposed on all offenders to offset these costs, taking into consideration the costs of investigation and enforcement in each case. CJC argued that the costs of complaints investigations should be recovered through the general rates charged by the TSPs.
24. CBA, the Companies, and MBNA generally submitted that, in the absence of government funding, the costs of investigating complaints should be recovered through complaints-based fees charged to telemarketers who the complaints were against, since investigation costs would be attributable entirely to those telemarketers. CMA questioned how such a system could work fairly without creating a conflict of interest when it came to validating complaints since the Complaints Investigator delegate would have a financial incentive to pursue an investigation regardless of the merits of a complaint.

Commission's analysis and determinations

25. As noted above, some parties took the position that to compel telemarketers and clients of telemarketers to register, provide information, and/or pay a fee charged by the Complaints Investigator delegate would be contrary to the exemptions in subsection 41.7(1) of the Act.
26. The Commission notes, however, that section 41 of the Act gives it broad jurisdiction to prohibit or regulate unsolicited telecommunications in order to prevent undue inconvenience or nuisance and is not limited to orders with respect to the National DNCL.
27. The Commission notes that section 41.2 of the Act gives it the authority, for the purposes of section 41 of the Act, to administer databases or information, administrative or operational systems, and to determine any matter and make any order with respect to such databases or systems. As such, the Commission considers that the powers in section 41.2 of the Act are not limited to the establishment or operation of a National DNCL.
28. The Commission also notes that in section 41.3 of the Act, Parliament gave it the authority to delegate its powers set out in section 41.2 of the Act and to delegate its powers to investigate alleged contraventions of any prohibition or requirement of the Commission under section 41 of the Act. In the Commission's view, sections 41, 41.2 and 41.3 of the Act are sufficiently broad to empower the Commission to make a rule requiring telemarketers and clients of telemarketers to register with the National DNCL operator for the purpose of enforcing the Unsolicited Telecommunications Rules.

29. As noted above, the Commission considers that section 41.4 of the Act allows the Complaints Investigator delegate to charge rates for exercising delegated powers related to the investigation of Unsolicited Telecommunications Rules complaints. These rates may be regulated by the Commission pursuant to section 41.5 of the Act. The Commission considers that section 41 of the Act is broad enough to enable the Commission to make a rule requiring that telemarketers and clients of telemarketers pay fees that may be charged by the Complaints Investigator delegate pursuant to section 41.4 of the Act.
30. In the Commission's view, the submissions of some parties indicate a misunderstanding as to the scope and application of subsection 41.7(1) of the Act. The Commission considers that it is important to note that subsection 41.7(1) of the Act limits the scope of the exemptions set out therein to any order that imposes a prohibition or requirement in relation to information contained in databases or systems administered *for the purpose of a National DNCL*. The Commission considers that, if, as some parties have argued, it was indeed the will of Parliament to limit the scope of the Commission's powers in sections 41.2 to 41.5 of the Act to the National DNCL, it would have done so explicitly, as it did in relation to the exemptions in subsection 41.7(1) of the Act. The Commission also notes that subsection 41.7(1) of the Act specifically exempts certain "telecommunications" from the National DNCL Rules rather than telemarketers and clients of telemarketers as indicated by some parties. In light of the above, the Commission concludes that all telemarketers and clients of telemarketers, whether or not they are making telecommunications exempt from the National DNCL Rules, are not exempt from the Telemarketing or ADAD Rules, or any other associated rules, such as Express Consent or Record Keeping.
31. The Commission has already noted that the delegation of its investigative powers to a Complaints Investigator delegate who may recover its costs by charging rates will ensure that the Unsolicited Telecommunications Rules framework will be carried out efficiently and effectively. In the Commission's view, telemarketers and clients of telemarketers should fund this aspect of the framework since it will ensure that the costs of investigating complaints are borne by those who benefit from telemarketing. Furthermore, this funding should be derived from all telemarketers and clients of telemarketers including those that are exclusively making unsolicited telecommunications that are exempt from the National DNCL Rules, in order to ensure that the costs of investigating complaints respecting the Unsolicited Telecommunications Rules are recovered from all telemarketers and clients of telemarketers.
32. The Commission considers that a critical component of an enforcement regime is to ensure the ready availability of contact information for all telemarketers and clients of telemarketers, including those solely making exempt unsolicited telecommunications. In the Commission's view, such contact information, and any additional information such as whether the telemarketer or client of the telemarketer is solely making exempt unsolicited telecommunications, will assist the Complaints Investigator delegate in conducting investigations. The Commission considers that this will be to the benefit of all parties concerned as it will ensure that investigations are conducted in an efficient and effective manner.
33. The Commission also considers that the National DNCL Rules adopted in Telecom Decision 2007-48 that require telemarketers and clients of telemarketers making non-exempt unsolicited telecommunications to subscribe to the National DNCL are insufficient since they do not

ensure that *all* telemarketers and clients of telemarketers provide the contact and additional information that will be required to assist the Complaints Investigator delegate in carrying out investigations of Unsolicited Telecommunications Rules complaints.

34. The Commission further considers that while the registration requirement may have an operational and cost impact on the National DNCL operator and those telemarketers and clients of telemarketers exclusively making unsolicited telecommunications that are exempt from the National DNCL, the benefits would outweigh the impact on the basis that all relevant registration information will be maintained in a single database, which will facilitate determinations by the National DNCL operator of *prima facie* violations of the Unsolicited Telecommunications Rules. Additionally, maintaining one point of registration will be more efficient for telemarketers and clients of telemarketers who are required to subscribe to and pay subscription fees for the National DNCL, and who will also be required to pay applicable fees to the Complaints Investigator delegate.
35. Based on the above, the Commission determines that it is necessary to make rules requiring all telemarketers and clients of telemarketers, including those making unsolicited telecommunications that are exempt from the National DNCL Rules, to register with, and provide information to, the National DNCL operator for the purposes of facilitating investigations, and to pay a fee that may be charged by the Complaints Investigator delegate. The Commission also determines that it has the statutory authority to make such rules.
36. Accordingly, the Commission adopts the following rules:

A telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator and has paid all applicable fees charged by the Complaints Investigator delegate.

A telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator and the applicable fees charged by the Complaints Investigator delegate associated with that client have been paid.

37. The Commission notes that in Telecom Decision 2007-48 it determined that telemarketers and clients of telemarketers would be required to maintain records to demonstrate proof of subscription to the National DNCL and payment of fees to the National DNCL operator. The Commission considered that such a requirement was necessary to ensure the financial viability of the National DNCL and to proactively ensure compliance with the registration and fee payment rules set out by the Commission in Telecom Decision 2007-48. The Commission considers that a similar need exists with regard to the rules established above requiring registration and payment of fees to the Complaints Investigator delegate.
38. Accordingly, the Commission adopts the following rules:

A telemarketer shall keep the following records related to registration and provision of information to the National DNCL operator 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 registration with the National DNCL operator and proof of payment of fees to the Complaints Investigator delegate; and,
 - (b) when initiating a telemarketing telecommunication on behalf of clients, proof of registration with the National DNCL operator and proof of payment of fees to the Complaints Investigator delegate for each client.
39. The Commission determines that these new Telemarketing Rules will become effective the date the Complaints Investigator delegate becomes operational.
40. The Commission also determines that, for greater clarity in relation to the above, new rules are required to expressly state that the Telemarketing and ADAD Rules apply to all telemarketers, including those exclusively making telecommunications that are exempt from the National DNCL Rules. The Commission therefore adopts the following rules:

The Telemarketing Rules apply whether or not the telemarketing telecommunication is exempt from the National DNCL Rules.

The ADAD Rules apply whether or not the telemarketing telecommunication is exempt from the National DNCL Rules.

41. The Commission considers that the above rules will be in addition to, and form part of, the Unsolicited Telecommunications Rules as originally set out in Appendix 1 of Telecom Decision 2007-48. For ease of reference, the Commission notes that all of the Unsolicited Telecommunications Rules resulting from Telecom Decision 2007-48, as well as the Rules adopted in this Decision, are set out together in the Appendix to this Decision. The Commission notes that for clarity it has added definitions for "Complaints Investigator delegate" and "National Do Not Call List operator" to the Unsolicited Telecommunications Rules and notes that the definitions and rules adopted in this Decision are indicated in the Appendix with an asterisk (*).

Determination of fees

42. The Commission notes that the Complaints Investigator delegate will be required to propose on an annual basis a rate structure that will cover its costs, similar to what will be required of the National DNCL operator. The Commission intends to review and approve the rate structure proposed by the Complaints Investigator delegate to ensure the rates are reasonable and reflect any downward or upward changes in costs.

Public awareness

43. The Commission considers that its determinations in Telecom Decision 2007-48 with respect to a public awareness campaign to educate consumers, telemarketers, and clients of telemarketers about the National DNCL, the Unsolicited Telecommunications Rules, and the Commission's enforcement powers remain valid with the exception that revisions should be made to reflect the rules as adopted above by the Commission in this Decision.

D. Should the telecommunications service providers (TSPs) be permitted to recover costs related to investigations?

44. The Companies submitted that, in paragraph 500 of Telecom Decision 2007-48, the Commission stated that when it could not identify the telecommunications number or the telemarketer in question, it would continue to rely on the TSPs to identify the underlying carrier and the telemarketer involved. However, the Companies noted that the Commission did not address the issue of rates to be charged by TSPs for this function in Telecom Decision 2007-48. The Companies argued that this function had associated costs that TSPs should be allowed to recover similar to their ability to recover such costs from public law enforcement or similar agencies.

Commission's analysis and determinations

45. The Commission notes that, pursuant to subsection 37(1) of the Act, Canadian carriers and other persons are required to provide any information the Commission considers necessary for the administration of the Act or any special Act. The Commission considers that the Complaints Investigator delegate will be conducting investigations of alleged breaches of the Unsolicited Telecommunications Rules on behalf of the Commission and it would therefore be inappropriate for TSPs to charge a fee to the Complaints Investigator delegate. Accordingly, the Companies' request is **denied**.

Secretary General

Related documents

- *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, Telecom Public Notice CRTC 2007-16, 22 August 2007
- *Proceeding to consider the delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Public Notice CRTC 2007-15, 22 August 2007
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007

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

Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules¹

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;

* "Complaints Investigator delegate" means the person to whom the Commission has delegated its powers to conduct investigations to determine whether there has been a contravention of the Unsolicited Telecommunications Rules;

"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 operator" or "National DNCL operator" means the person to whom the Commission has delegated its powers under subsection 41.2(a) of the *Telecommunications Act* to administer databases or information, administrative or operational systems;

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

¹ The Commission notes that for clarity, it has added definitions for "Complaints Investigator delegate" and "National Do Not Call List operator" to Part I of the Appendix and notes that the rules adopted in this Decision are indicated with an asterisk (*) in the left margin.

"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;

"Voice mail 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

1. 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*.
2. The National DNCL Rules do not apply to a telemarketing telecommunication made to a business consumer.
3. 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.
4. 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.
 5. For the purposes of section 4, 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.
 6. 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.
 7. 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.
 8. 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.
9. 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*.
10. Subject to section 11, 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.
11. A person referred to in section 10 may provide the National DNCL or any portion thereof to another person involved in supplying that person with services to enable it 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.
12. 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 11 and is not used by that person for any purpose other than that referred to in section 11.
13. 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

- * 1. The Telemarketing Rules apply whether or not the telemarketing telecommunication is exempt from the National DNCL Rules.
- * 2. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator, and has paid all applicable fees charged by the Complaints Investigator delegate.

- * 3. A telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and the applicable fees charged by the Complaints Investigator delegate associated with that client have been paid.
4. The Telemarketing Rules do not apply to a telemarketing telecommunication made via voice mail broadcast.
- * 5. A telemarketer shall keep the following records related to registration and provision of information to the National DNCL operator 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 registration with the National DNCL operator and proof of payment of fees to the Complaints Investigator delegate; and,
 - (b) when initiating a telemarketing telecommunication on behalf of clients, proof of registration with the National DNCL operator and proof of payment of fees to the Complaints Investigator delegate for each client.
6. 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.
7. 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.
8. 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.
9. 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.
10. A telemarketer initiating a voice telemarketing telecommunication shall process a do not call request from a consumer at the time of the telemarketing telecommunication.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. The information referred to in section 17 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.
19. 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.
20. The telecommunications numbers to be provided pursuant to sections 17, 18, and 19
- (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 voice mail system that is always capable of taking messages from the consumer.
21. The voice mail system referred to in section 20 shall provide a message informing the consumer that his or her call will be returned within three (3) business days.
22. The telemarketer or, where applicable, the client of the telemarketer shall return the consumer's call referred to in section 21 within three (3) business days.
23. Subject to section 24, 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.
24. 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 than those set out in section 23, provided that the telecommunication is made for the purpose of that activity. The hours refer to those of the consumer receiving the telecommunication.
25. 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).
26. Sequential dialing for the purpose of initiating a telemarketing telecommunication is prohibited.

27. 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;
 - (b) 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.
28. 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.
29. A telemarketer using a predictive dialing device to initiate telemarketing telecommunications shall not exceed, in any calendar month, a five (5) percent abandonment rate.
30. 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) Rules

- * 1. The ADAD Rules apply whether or not the telemarketing telecommunication is exempt from the National DNCL Rules.
2. 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.
3. For the purposes of section 2, 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.

4. 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

1. For the purposes of the requirements set out in Part II, sections 4 and 5, and Part IV, sections 2 and 3, 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.
2. 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.
3. A consumer may withdraw his or her express consent at any time.

Part VI: Record Keeping

1. 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

1. 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.