



Telecom Order CRTC 2008-197

Ottawa, 18 July 2008

TELUS Communications Company – Directory Listings

Reference: Tariff Notice 304

In this Order, the Commission approves with changes TELUS Communications Company's application to revise the portion of its Directory Listings tariff related to Non-Published and Non-Listed Telephone Number services.

Introduction

1. The Commission received an application by TELUS Communications Company (TCC), dated 23 April 2008, proposing revisions to its General Tariff item 129 – Directory Listings.
2. Specifically, TCC proposed to revise sub-item 129.2.10 of its General Tariff, which prevents the company from calling its customers who subscribe to Non-Published Telephone Number service or Non-Listed Telephone Number service for the purposes of promoting products, services, or discount plans, without the customer's prior consent. TCC submitted that currently this places limits on the company that are far greater than those established by the Commission for telemarketing calls. TCC argued that this puts it at a competitive disadvantage to its competitors, who may contact and promote services to TCC's customers who subscribe to these two services but who may not have registered with the National Do Not Call List (National DNCL).
3. TCC indicated that the proposed revisions to sub-item 129.2.10 would remove the above-noted restriction and allow the company to place calls to customers of these two services for the purposes of promoting products, services, or discount plans unless the customer has registered its number with TCC's do not call list or with the National DNCL.
4. In addition, TCC proposed to add sub-item 129.2.11 to reflect the exceptions to random-dialed calls for the purpose of initiating a telemarketing telecommunication, including to a non-published or a non-listed telecommunications number, as set out in the Unsolicited Telecommunications Rules.¹
5. The Commission received comments from the Public Interest Advocacy Centre, as counsel for the Consumers' Association of Canada and the National Anti-Poverty Organization (the Consumer Groups). The public record of this proceeding, which closed on 20 May 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."

¹ Part III, paragraph 27, of the appendix to Telecom Decision 2008-6.

6. The Commission has identified the following two issues to be addressed in its determinations:
 - A. Should the Commission allow TCC to modify its Directory Listings tariff as requested?
 - B. How should the Commission address the privacy concerns raised in this proceeding?

A. Should the Commission allow TCC to modify its Directory Listings tariff as requested?

7. The Commission notes that the Consumer Groups objected to TCC's application for several reasons. They were concerned about the timing of TCC's proposed change in that it was to become effective prior to 30 September 2008, the date the National DNCL comes into effect. The Consumer Groups suggested that customers would have to be aware of TCC's internal do not call list and have adequate time in which to register. They also expressed concern that the proposal assumes "negative option" or "opt-out" consent and that it offers an unjust advantage to TCC since the company possesses unlisted numbers not easily obtainable by competitors.
8. The Commission notes that in its reply comments TCC indicated that it intends to contact its Non-Published Telephone Number service and Non-Listed Telephone Number service customers to determine whether they wish to be contacted by TCC when it initiates campaigns to promote new products or discount plans, or whether they wish to be placed on the company's internal do not call list. TCC noted that it had not informed these customers that they would be automatically placed on its internal do not call list when they signed up for these services.
9. The Commission also notes that TCC submitted that its intention was to align its internal do not contact processes before the introduction of the National DNCL. TCC also submitted that customers it could not reach would automatically be placed on its internal do not call list and that new customers of these services would be expressly given the option to be placed on that list.
10. The Commission notes that it set out the existing telemarketing rules in Telecom Decision 94-10. It subsequently set out new rules and amendments to existing rules in Telecom Decision 2007-48, which were further amended in Telecom Decision 2008-6. The new rules will take effect when the National DNCL is launched on 30 September 2008.
11. The Commission notes that there are no restrictions in either the existing or the new telemarketing rules that would prohibit TCC from making calls to non-published and non-listed telephone numbers. The Commission also notes that TCC has placed such restrictions on itself through the current wording of sub-item 129.2.10, which states that TCC "will not place calls to any customer subscribing to Non-Published Telephone Number service or Non-Listed Telephone Number service, for the purposes of promoting products, services or discount plans, without the customer's prior consent."

12. While the Commission acknowledges the Consumer Groups' concerns, it considers that TCC's current tariff has imposed restrictions on the company that are beyond the requirements set out by the Commission regarding telemarketing calls. Since TCC would not be breaking the telemarketing rules if sub-item 129.2.10 were revised as proposed, the Commission considers that TCC's request is acceptable. The Commission considers, however, that a more appropriate alternative, instead of revising the wording of its current sub-item 129.2.10, would be for TCC simply to remove the current sub-item 129.2.10 from its General Tariff.
13. The Commission considers that it is not only appropriate for TCC to inform its customers that they have the option to be contacted by the company or to be placed on TCC's internal do not call list, but that it must do so in writing and with sufficient advance notice, prior to the effective date of implementation, so that these customers have enough time to register with TCC's internal do not call list, whether in writing, by email, or by telephone, should they choose not to receive telemarketing calls from the company.
14. Regarding TCC's proposed new sub-item 129.2.11, the Commission notes that it is not necessary to reflect in the company's tariffs the exceptions to random-dialed calls for the purpose of initiating a telemarketing telecommunication because these are set out in the existing and new telemarketing rules.² The Commission notes that TCC is already required to abide by these rules and therefore considers that sub-item 129.2.11 should not be added to the General Tariff.

B. How should the Commission address the privacy concerns raised in this proceeding?

15. The Consumer Groups raised the issue of privacy and requested that the Commission stay this proceeding and all future tariff applications involving privacy matters until the Commission deals with these matters as part of its action plan for reviewing social and other non-economic regulatory measures, as set out in Telecom Decision 2008-34.
16. The Commission reiterates that there are no restrictions in either the existing or new telemarketing rules that prohibit TCC from making calls to non-published and non-listed telephone numbers. The Commission considers that as such, and along with its determination above that will give these customers sufficient advance notice to allow them adequate time to register with TCC's do not call list, should they choose not to receive telemarketing calls from TCC, any privacy concerns raised by this application have been appropriately addressed.

Other matters

17. The Commission notes that TCC submitted that when the National DNCL comes into effect, it would remove the proposed references to its own internal do not call list since the National DNCL would serve as the new means for customers to limit unwanted telephone solicitations.

² Section C, Part 5 of the conclusions to Telecom Decision 94-10, and Part III, paragraph 27, of the appendix to Telecom Decision 2008-6.

18. The Commission reminds TCC that pursuant to the existing telemarketing rules, telemarketers and clients of telemarketers are required to maintain their internal do not call lists and to honour consumers' requests to have their names added to the internal do not call list. The Commission notes that this requirement will continue to apply after the National DNCL comes into effect on 30 September 2008.
19. The Commission also notes that TCC submitted that the company would place calls to customers of its Non-Published and Non-Listed Telephone Number services unless those customers registered with the company's internal do not call list or with the National DNCL. The Commission notes that pursuant to section 41.7(1) of the *Telecommunications Act*, among other exceptions, the National DNCL Rules do not apply in respect of a telecommunication
 - ...
 - (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;
 - ...
20. The Commission clarifies that as a result of the exception to the National DNCL Rules noted above, if a TCC customer registers with the National DNCL but not with TCC's internal do not call list, TCC will still be able to place calls to that customer because there is an existing business relationship.

Conclusion

21. In light of the above, the Commission **approves with changes** TCC's application, effective 90 days from the date of this Order.
22. The Commission rejects the proposed revisions to General Tariff sub-item 129.2.10 and the proposed addition of sub-item 129.2.11 and directs TCC to:
 - i) remove sub-item 129.2.10 from its General Tariff;
 - ii) notify customers of its Non-Published and Non-Listed Telephone Number services in writing, at least 45 days prior to the effective date of implementation, to reflect
 - a) a statement to the effect that unless customers register with TCC's internal do not call list, they may be contacted by the company for the purposes of a telemarketing telecommunication; and

- b) how a customer can be placed on TCC's internal do not call list, specifying whether in writing, by email, or by telephone; and
- iii) issue revised tariff pages accordingly.

Secretary General

Related documents

- *Action plan for reviewing social and other non-economic regulatory measures in light of Order in Council P.C. 2006-1534*, Telecom Decision CRTC 2008-34, 17 April 2008
- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Decision CRTC 2008-6, 28 January 2008
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007
- *Use of telephone company facilities for the provision of unsolicited telecommunications*, Telecom Decision CRTC 94-10, 13 June 1994

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