



Telecom Public Notice CRTC 2008-14

Ottawa, 20 October 2008

Notice of consultation

Call for comments on potential modifications to some Unsolicited Telecommunications Rules

Reference: 8665-C12-200814021

Introduction

1. The Commission regulates unsolicited telecommunications pursuant to sections 41 to 41.7 and 72.01 to 72.15 of the *Telecommunications Act* (the Act). Pursuant to those provisions, the Commission, in Telecom Decision 2007-48, established a framework for the National Do Not Call List (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.¹ The National DNCL and the Unsolicited Telecommunications Rules became effective on 30 September 2008.
2. In the context of implementing the National DNCL and the Unsolicited Telecommunications Rules, the Commission has identified three issues that, in its view, need to be addressed at this time.
 - (1) Should telemarketing telecommunications made by or on behalf of candidates in a federal, provincial, or municipal election that are not candidates of a registered political party (non-party candidates) be excluded from the application of the National DNCL Rules?
 - (2) Should consumer registrations of telecommunications numbers on the National DNCL be made permanent?
 - (3) With respect to unsolicited telecommunications made using an ADAD where there is no attempt to solicit (ADAD telecommunications), should the rule be maintained to the effect that calling hour restrictions in provincial legislation apply only if they are more restrictive than the calling hours set by the Commission?

¹ The most recent version of the Unsolicited Telecommunications Rules is found in the Appendix to Telecom Decision 2008-6-1: <http://www.crtc.gc.ca/archive/ENG/Decisions/2008/dt2008-6-1.htm#m1>.

Call for comments

Exemption for non-party candidates

3. The National DNCL Rules prohibit telemarketers from making telemarketing telecommunications to a consumer's telecommunications number that is on the National DNCL, unless express consent has been given (National DNCL Rules, section 4). Telemarketers who make telemarketing telecommunications on their own behalf and clients of telemarketers must become registered subscribers of the National DNCL and pay all applicable fees to the National DNCL operator (National DNCL Rules, sections 6 and 7).
4. Pursuant to paragraphs 41.7(1)(c) and (d) of the Act, the National DNCL Rules do not apply to telemarketing telecommunications made by or on behalf of a political party that is a registered party or a candidate of such a party.² A political party is considered to be a registered party if it meets the definition of registered party in subsection 2(1) of the *Canada Elections Act*, S.C. 2000, c. 9, or if it is registered under provincial law for the purposes of a provincial or municipal election.³
5. The Commission notes, however, that in many provinces legislation governing municipal elections does not provide for the registration of political parties. Consequently, candidates in municipal elections in those provinces cannot be candidates of a registered political party, and therefore telemarketing telecommunications made by them or on their behalf are not exempt from the application of the National DNCL Rules by virtue of subsection 41.7(1) of the Act.
6. The Commission further notes that some candidates may choose not to be candidates of a registered party for the purposes of a federal, provincial, or municipal election. As a result, these candidates also do not benefit from the exemption from the National DNCL Rules found in subsection 41.7(1) of the Act.
7. In the Commission's preliminary view, there does not appear to be a compelling reason for treating non-party candidates differently from candidates of registered parties for the purposes of an exemption from the National DNCL Rules.
8. In light of the above, the Commission invites comments from interested parties on whether it should make a rule exempting telemarketing telecommunications made by or on behalf of non-party candidates from the National DNCL Rules. The Commission considers that such candidates would have to meet the definition of "candidate" in subsection 2(1) of the *Canada Elections Act* or be considered a candidate under provincial law for the purposes of a provincial or municipal election in order to benefit from the exemption.

² Section 41.7 of the Act is reproduced in the Appendix to this Public Notice.

³ By virtue of subsection 35(1) of the *Interpretation Act*, R.S.C. 1985, c. I-21, "province" means a province of Canada, and includes Yukon, the Northwest Territories and Nunavut." References to "province" and "provincial" in this Public Notice also include the three territories.

National DNCL registration period

9. In Telecom Decision 2007-48, the Commission noted concerns that a 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.
10. The Commission considered, however, that the implementation of a process whereby the National DNCL operator removed disconnected and re-assigned telecommunications numbers from the National DNCL would impose costs on telecommunications service providers and the National DNCL operator that could be unduly burdensome.
11. The Commission therefore established a three-year registration period for the National DNCL to mitigate the effect of not removing disconnected and re-assigned telecommunications numbers. At the end of the three-year period, it is the consumer's responsibility to re-register his or her telecommunications number on the National DNCL.
12. Given the time that has passed since the issuance of Telecom Decision 2007-48 and the fact that the National DNCL is now in operation, the Commission invites comments from interested parties on whether there is an effective and cost-efficient method of ensuring that disconnected and re-assigned telecommunications numbers are removed from the National DNCL. The Commission also invites comments on whether such a method should be implemented in order to make consumer registrations of telecommunications numbers on the National DNCL permanent.⁴

Calling hour restrictions for ADAD telecommunications

13. In Telecom Order 94-1073, the Commission established calling hour restrictions on the use of ADADs to make unsolicited telecommunications for purposes other than solicitation. The Commission notes that these restrictions did not apply, however, to calls that were subject to provincial legislation that set out calling hour restrictions.
14. In Telecom Decision 2007-48, the Commission determined that calling hour restrictions should continue to apply for ADAD telecommunications. In addition, the Commission made a rule that ADAD telecommunications were restricted to the hours set out in provincial legislation only where those hours are more restrictive than those set out by the Commission in section 4(b) of the ADAD Rules (ADAD Rules, section 4(c)).
15. The Commission notes that, in many cases, provincial legislation governing unsolicited telecommunications made for purposes other than solicitation, such as legislation regulating calls made to collect on overdue accounts, provides for less restrictive calling hour restrictions than those set by the Commission.⁵ The Commission notes that until the modifications to the Unsolicited Telecommunications Rules, including the ADAD Rules, established in Telecom Decision 2007-48 came into effect on 30 September 2008, those making ADAD telecommunications were able to follow these less restrictive calling hour restrictions.

⁴ Consumers would still retain the option of de-registering their telecommunications number.

⁵ As mentioned in footnote 3, any reference to "province" and "provincial" in this Public Notice includes the three territories.

16. The Commission invites comments on whether it should maintain the rule for ADAD telecommunications that calling hour restrictions in provincial legislation apply only if they are more restrictive than the calling hours set by the Commission.

Procedure

17. Parties interested in participating in this proceeding (including receiving copies of all submissions) must notify the Commission of their intention to do so by filling out the online form; or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2; or by faxing to: 819-994-0218 by **30 October 2008** (the registration date). Parties are to provide their email address, where available. If parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard-copy filings.
18. The Commission will post on its website, as soon as possible after the registration date, a complete list of interested parties and their mailing addresses (including their email addresses, if available), identifying those parties who wish to receive disk versions.
19. All parties may file with the Commission, serving copies on all other parties, comments with regard to the above-noted issues by **4 December 2008**.
20. All parties may file with the Commission, serving copies on all other parties, reply comments by **19 December 2008**.
21. The Commission expects to issue a decision on the issues raised in this Public Notice within 120 days after the record closes.
22. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.
23. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
24. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
25. Electronic submissions should be in HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.
26. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
27. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

Important notice

28. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, email address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
29. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
30. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
31. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.

Location of CRTC offices

32. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours.

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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Secretary General

Related documents

- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Decision CRTC 2008-6, 28 January 2008, as amended by Telecom Decision CRTC 2008-6-1, 20 October 2008
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007
- Telecom Order CRTC 94-1073, 12 September 1994

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>

Appendix

41.7 (1) 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 do not call list 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.

(2) The following definitions apply in subsection (1).

"candidate" means a candidate as defined in subsection 2(1) of the *Canada Elections Act* or a candidate whose nomination has been confirmed, for the purposes of a provincial or municipal election, by a political party that is registered under provincial law.

"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.

"leadership contestant" means a leadership contestant as defined in subsection 2(1) of the *Canada Elections Act* or a contestant for the leadership of a political party that is registered under provincial law.

"nomination contestant" means a nomination contestant as defined in subsection 2(1) of the *Canada Elections Act* or a contestant for nomination by a political party that is registered under provincial law as its candidate in a provincial or municipal election.

(3) Any person making a telecommunication referred to in subsection (1) must, at the beginning of the telecommunication, identify the purpose of the telecommunication and the person or organization on whose behalf the telecommunication is made.

(4) Every person or organization that, by virtue of subsection (1), 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.

(5) Subsections (3) and (4) do not apply in respect of a person making a telecommunication referred to in paragraph (1)(f).