



Telecom Regulatory Policy CRTC 2009-200

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Ottawa, 20 April 2009

Modifications to some Unsolicited Telecommunications Rules

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In this decision, the Commission modifies its Unsolicited Telecommunications Rules pertaining to telemarketing telecommunications made by or on behalf of non-party candidates and calling hour restrictions applied to unsolicited telecommunications made using an automatic dialing-announcing device. The Commission also extends the registration period for consumers' telecommunications numbers on the National Do Not Call List (DNCL) and requests the CRTC Interconnection Steering Committee to explore options regarding the removal of disconnected and reassigned numbers from the National DNCL.

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. The National DNCL and the Unsolicited Telecommunications Rules became effective on 30 September 2008.
2. In implementing the National DNCL and the Unsolicited Telecommunications Rules, the Commission identified three issues that, in its view, needed to be addressed. In Telecom Public Notice 2008-14, the Commission invited parties to comment on the following questions:
 - (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?

3. The Commission received submissions from Bell Aliant Regional Communications, Limited Partnership, Bell Canada, MTS Allstream Inc., Saskatchewan Telecommunications, Télébec, Limited Partnership, and TELUS Communications Company (TCC) [collectively, Bell Canada et al.]; Primus Telecommunications Canada Inc. (Primus); the Canadian Marketing Association (CMA) and various organizations and associations representing marketing, financial, and insurance companies; the Coalition of Communication Consumers (the Coalition); the Federation of Canadian Municipalities (FCM); various associations representing municipalities across Canada (collectively, the Municipalities); the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (collectively, PIAC); and a number of individuals.
4. The public record of this proceeding, which closed on 19 December 2008, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

1. Should telemarketing telecommunications made by or on behalf of non-party candidates be excluded from the application of the National DNCL Rules?

5. Most parties that commented on this matter generally agreed that all candidates in an election should be treated equally, whether or not they are members of a political party, and therefore that telemarketing telecommunications made by or on behalf of non-party candidates should be exempt from the National DNCL Rules.
6. Individual consumers were generally opposed to the Commission making any additional exemptions to the National DNCL Rules.
7. PIAC submitted that, should the Commission decide to broaden the exemption to include non-party candidates, it should implement a review mechanism to ensure that this change does not result in abuse. PIAC proposed that the Commission require the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) to collect complaints under this exemption separately and provide a report that includes specific information about the frequency and nature of these complaints.
8. The Commission notes that in many provinces, legislation governing municipal elections does not provide for the registration of political parties and that consequently, candidates in municipal elections in those provinces cannot be candidates of a registered political party. The Commission also notes that some candidates choose not to be candidates of a registered party for the purposes of a federal, provincial, or municipal election.
9. The Commission considers that non-party candidates should have the same ability as candidates of registered parties to contact their constituents and potential voters. Indeed, the Commission can see no justification for treating non-party candidates and candidates of registered parties differently for the purposes of the National DNCL Rules. The Commission therefore concludes that telemarketing telecommunications made by or on behalf of non-party candidates should also be exempt from the National DNCL Rules.

10. The Commission notes TCC's submission that, given the exemptions set out in section 41.7 of the Act, extending the exemptions to the National DNCL Rules might contravene Parliament's intention. The Commission considers, however, that Parliament did not intend to limit the Commission's authority under section 41 of the Act to create further exemptions where appropriate.

11. Accordingly, the Commission adopts the following rule in the National DNCL Rules (Part II):

3.1 In addition to the exemption set out in section 3(d), the National DNCL Rules do not apply to a telemarketing telecommunication made by or on behalf of a candidate as defined in subsection 2(1) of the *Canada Elections Act* or a candidate under provincial law for the purposes of a provincial or municipal election, or by or on behalf of the official campaign of such a candidate.

12. As a consequence of adopting the above rule, the Commission replaces section 1 of the National DNCL Rules (Part II) with the following:

For purposes of section 3, 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*.

13. With regard to PIAC's proposal that the CCTS be required to collect complaints related to telemarketing telecommunications made by or on behalf of non-party candidates, the Commission notes that it monitors complaints received by the National DNCL Operator in relation to violations of the Unsolicited Telecommunications Rules. The Commission considers that it will be able to effectively monitor any concerns relating to the abuse of an exemption for telemarketing telecommunications made by or on behalf of non-party candidates.

2. Should consumer registrations of telecommunications numbers on the National DNCL be made permanent?

14. Bell Canada et al., Primus, the CMA, the Coalition, and various organizations representing marketing, financial, and insurance companies were all of the view that, given the short time the National DNCL has been in operation, it would be premature to make consumer registrations of telecommunications numbers on the National DNCL permanent. They generally stated that it is too early to assess whether such a change can be made in a cost-effective manner and proposed that the Commission take the opportunity to gather information relating to this issue during the National DNCL's initial years of operation.

15. Bell Canada et al. stated that if consumer registrations are to be made permanent, a process to generate and collect reports from every telecommunications service provider (TSP) in Canada at regular intervals would be required for numbers that are transferred, disconnected, or reassigned in order to remove such numbers from the National DNCL. Bell Canada et al.

submitted that the creation and maintenance of such a process would cost TSPs millions of dollars and that these costs should be passed on to telemarketers. Primus stated that it is unaware of whether there is an effective and cost-efficient method of ensuring that disconnected and reassigned numbers are removed from the National DNCL.

16. PIAC and individual consumers supported a permanent registration period. Their arguments included the following:
 - the requirement to renew the registration of phone numbers places a particular burden on the elderly, the group most often victimized by telemarketing fraud;
 - telecom subscribers who take the trouble to register their numbers should not have their efforts periodically undone; and
 - if a subscriber ceases to subscribe to a registered number, the TSP is free to remove that number from the National DNCL.
17. In the alternative, PIAC submitted that the registration period could be extended to five years. PIAC added that it would be chaotic for the National DNCL Operator, interested parties, and the Commission to be reviewing the configuration of the National DNCL at the same time as consumer registrations come up for renewal.
18. The Commission considers that if registrations on the National DNCL were made permanent, a process would need to be established to remove disconnected and reassigned numbers from the National DNCL. The Commission considers further that there is insufficient information on the record of this proceeding for it to determine whether an efficient and cost-effective process for such removals can be established. The Commission concludes that further process is necessary to obtain and review the details of any processes and procedures that may be required to ensure the accuracy of the National DNCL and to address the recovery of any associated costs.
19. The Commission therefore requests the CRTC Interconnection Steering Committee (CISC) to identify and evaluate options with regard to the processes and procedures that would be required to ensure that disconnected and reassigned numbers are removed from the National DNCL. The Commission requests CISC to submit a report, prior to 30 April 2010, outlining its findings and recommendations regarding this matter.
20. With respect to PIAC's suggestion that the duration of consumer registrations of telecommunications numbers on the National DNCL be extended to five years, the Commission considers that such an extension would allow additional time for a review of the issue of permanent registration before existing consumer registrations expire.
21. Therefore, the Commission determines that the duration of existing and future consumer registrations of telecommunications numbers on the National DNCL is to be five years. This does not in any way preclude consumers from deregistering their telecommunications numbers from the National DNCL during that period.

3. With respect to 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?

22. TSPs and organizations that use ADADs generally agreed that the Commission should repeal the rule for ADAD telecommunications whereby calling hour restrictions in provincial legislation apply only if they are more restrictive than the calling hours set by the Commission. In general, they argued that they should be afforded whatever additional flexibility is available under provincial legislation.
23. PIAC and the Coalition submitted that the rule on calling hour restrictions for ADAD telecommunications should be maintained. They argued that, although ADAD telecommunications do not involve selling or promoting a product or service, nor the soliciting of money or money's worth, they are still unsolicited telecommunications to consumers. The Coalition considered that it is preferable to ensure that the consumer benefits from the most protective features of the law.
24. The Commission notes that the calling hour restrictions set out in Telecom Decision 2008-6 apply for the use of ADADs to initiate unsolicited telecommunications for purposes other than solicitation.¹ The Commission notes that, in many cases, provincial legislation governing these types of communications, such as legislation regulating calls made to collect on overdue accounts, provides for less restrictive calling hours than those allowed in the ADAD Rules. The Commission considers that there is little evidence to suggest that the application of provincial calling hour restrictions would result in undue inconvenience or nuisance for consumers.
25. In light of the above, the Commission determines that for ADAD telecommunications, the calling hour restrictions set out in provincial legislation will apply. For cases where no provincial legislation is in place, the Commission's calling hour restrictions will apply. Accordingly, the Commission replaces section 4(c) of the ADAD Rules with the following:

(c) such telecommunications are restricted to the hours set out in or pursuant to provincial legislation that governs an activity, provided that the telecommunication is made for the purpose of that activity. The hours refer to those of the person receiving the telecommunication.

Secretary General

¹ Calling hours 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); or to the hours set out in or pursuant to provincial legislation that governs such activities where the hours set out in the provincial legislation are more restrictive. The hours refer to those of the consumer receiving the telecommunication.

Related documents

- *Call for comments on potential modifications to some Unsolicited Telecommunications Rules*, Telecom Public Notice CRTC 2008-14, 20 October 2008, as amended by Telecom Public Notice CRTC 2008-14-1, 25 November 2008
- *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

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>