



# Compliance and Enforcement Notice of Consultation CRTC 2012-588

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Ottawa, 23 October 2012

## Call for comments

## Unsolicited Telecommunications Fees Regulations

File number: 8665-C12-201213123

*The Commission calls for comments on the proposed Unsolicited Telecommunications Fees Regulations attached to this notice.*

### Background

1. In 2007, the *Telecommunications Act* (the Act) was amended in order to allow for the creation of the National Do Not Call List (National DNCL).<sup>1</sup> Under the Act, the Commission has the authority to delegate the administration and operation of the National DNCL, as well as the investigation of potential violations under section 41 of the Act. The Commission does not have the ability to delegate enforcement functions.
2. In order to prepare for the establishment of the National DNCL, the Commission exercised its delegation authority under subsection 41.3(1) of the Act and awarded a contract to Bell Canada (the List Operator) on 21 December 2007 to operate the National DNCL. The National DNCL became operational on 30 September 2008 and to date over 11 million Canadians have registered their telephone numbers on the list.
3. The existing contract with the List Operator permits it to charge rates, as approved by the Commission, in order to recover the List Operator's administration and operating costs through the selling of subscriptions to telemarketers for accessing the National DNCL.
4. In 2008, the Commission issued a request for proposals seeking an entity to undertake investigations under the Act. Due to a lack of qualified bidders, the Commission, in addition to its enforcement activities, undertook the investigation function related to violations of the unsolicited telemarketing calls and other unsolicited telecommunications received by consumers. Specifically, the Commission enforces the *Unsolicited Telecommunications Rules* (the Rules).<sup>2</sup>

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<sup>1</sup> Bill C-37, *An Act to amend the Telecommunications Act*, came into force on 30 June 2007.

<sup>2</sup> Established in Telecom Decision 2007-48. A complete form of the Rules was set out in Telecom Decision 2008-6, as amended by Telecom Decision 2008-6-1. The Rules were last modified in Telecom Regulatory Policy 2009-200.

5. Results of the operation of the National DNCL are published annually in a report to the Minister of Industry, which can be accessed at the following location: <http://www.crtc.gc.ca/eng/DNCL/rpt110930.htm>.
6. To date, the National DNCL investigation and enforcement activities have been funded by interim measures. However, the expectation at the time the 2007 amendments to the Act were made was that long-term funding would be obtained through implementation of a regime that would recover costs from telemarketers.
7. As a result of further amendments to the Act, made in 2012,<sup>3</sup> the Commission has the authority to (1) make regulations prescribing fees to be paid by any person subscribing to the National DNCL, and (2) delegate the power to collect fees that it has prescribed in such regulations to a delegate.
8. Further to these recent amendments to the Act, the Commission intends to establish a National DNCL cost-recovery regime for the Commission's investigation and enforcement activities. Under the proposed new regime, the National DNCL List Operator will be authorized to recover the Commission's investigation and enforcement costs from telemarketers at the same time that it charges them its subscription rates to access and download the National DNCL. The regime will start on 1 April 2013, to coincide with the Government of Canada's fiscal year.
9. With this notice, the Commission is proposing the *Unsolicited Telecommunications Fees Regulations* (the proposed Regulations) to be effective on 1 April 2013. The proposed Regulations are set out in the Appendix to this notice. The Commission hereby names the List Operator as its delegate for the purposes of section 41.3 of the Act to collect fees prescribed under the Regulations.
10. The current subscription fees for accessing the National DNCL as of 1 April 2013 will be divided into two components: one component identified for funding the List Operator, and a second component identified for funding the Commission's investigation and enforcement activities (the Commission's telemarketing regulatory costs).
11. The Commission intends to maintain the combined rates at current levels. In the event of a material change of circumstances affecting the operation of the National DNCL, a review of the fee schedule and subscription rates structure may be initiated.
12. The following table sets out the current subscription rates in effect and the proposed breakdown between the Commission's and the List Operator's fee components:<sup>4</sup>

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<sup>3</sup> Bill C-38, *An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*, came into force on 28 June 2012.

<sup>4</sup> The proposed Regulations do not contemplate a Commission component for the current option that permits telemarketers to query by telephone number (at a rate of \$0.75 per query). These rates are not affected.

## Subscription Download Options

Number of area codes	Annual	6-month	3-month	1-month
<b>1) All Area Codes</b>				
Commission Component*	\$14,130	\$8,600	\$4,645	\$1,570
List Operator Component	\$19,512	\$11,882	\$6,418	\$2,168
<b>Current subscription rate**</b>	<b>\$33,642</b>	<b>\$20,482</b>	<b>\$11,063</b>	<b>\$3,738</b>
<b>2) Individual Area Codes</b>				
Commission Component*	\$845	\$440	\$225	\$75
List Operator Component	\$1,168	\$603	\$308	\$105
<b>Current subscription rate**</b>	<b>\$2,013</b>	<b>\$1,043</b>	<b>\$533</b>	<b>\$180</b>

\* Corresponds with the amounts set out in the proposed Regulations

\*\* As approved by the Commission

13. In the event that, in any given fiscal year, the amount collected exceeds the Commission's telemarketing regulatory costs, the proposed Regulations set out a refund mechanism. No later than ninety days after the end of each fiscal year, the List Operator will determine if the fees paid exceeded the Commission's telemarketing regulatory costs for that year and, following confirmation from the Commission, refund telemarketers the excess amount. The amount of the excess to be refunded to any telemarketer will be determined by calculating the total amount paid by the telemarketer as a percentage of the total amount paid by all telemarketers.
  
14. Telemarketers using the query by telephone number subscription option will, as noted above, not contribute to the Commission's cost-recovery, and will not be eligible for a refund should there be an excess in any given year. Further, the refund to any particular telemarketer must be at least five dollars as the cost of refunding below this threshold would be administratively inefficient and cost prohibitive. It is anticipated that the total amount that would not be refunded would be minimal. Any amounts not refunded are to be reinvested by the List Operator into the operation of the National DNCL system.

### Call for comments

15. The Commission invites comments on the proposed Regulations appended to this notice. The Commission will accept interventions that it receives on or before 22 November 2012.

## Procedure

16. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) set out, among other things, the rules for content, format, filing and service of interventions. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
17. In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.
18. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.
19. Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

**by using the**

[Intervention/comment/answer form]

or

**by mail to**

CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**

819-994-0218

20. Submissions longer than five pages should include a summary.
21. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line "\*\*\*\*End of document\*\*\*\*" should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

## Important notice

22. All information provided 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](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This includes personal information, such as full names, email addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information provided.

23. The personal information provided 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.
24. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as received, 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.
25. The information provided 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 the Commission's website with the help of either its search engine or a third-party search engine will not link directly to the information provided as part of this public process.
26. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

### **Examination of documents**

27. A list of all interventions will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.

### **Location of CRTC offices**

28. The public may examine public interventions and related documents at the following Commission offices during normal business hours.

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

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

Central Building  
Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec J8X 4B1  
Tel.: 819-997-2429  
Fax: 819-994-0218

#### ***Regional offices***

Metropolitan Place  
99 Wyse Road, Suite 1410  
Dartmouth, Nova Scotia B3A 4S5  
Tel.: 902-426-7997  
Fax: 902-426-2721

205 Viger Avenue West, Suite 504  
Montréal, Quebec H2Z 1G2  
Tel.: 514-283-6607

55 St. Clair Avenue East, Suite 624  
Toronto, Ontario M4T 1M2  
Tel.: 416-952-9096

360 Main Street, Suite 970  
Winnipeg, Manitoba R3C 3Z3  
Tel.: 204-983-6306  
Fax: 204-983-6317

2220 – 12th Avenue, Suite 620  
Regina, Saskatchewan S4P 0M8  
Tel.: 306-780-3422

100 – 4<sup>th</sup> Avenue SW, Suite 403  
Calgary, Alberta T2P 3N2  
Tel.: 403-292-6660  
Fax: 403-292-6686

858 Beatty Street, Suite 290  
Vancouver, British Columbia V6B 1C1  
Tel.: 604-666-2111  
Fax: 604-666-8322

Secretary General

### **Related documents**

- *Modifications to some Unsolicited Telecommunications Rules*, Telecom Regulatory Policy CRTC 2009-200, 20 April 2009
- *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

# UNSOLICITED TELECOMMUNICATIONS FEES REGULATIONS

## INTERPRETATION

### Definitions

1. The following definitions apply in these Regulations.

#### “fiscal year”

“fiscal year” means the period beginning on April 1 in one year and ending on March 31 in the next year.

#### “National Do Not Call List”

“National Do Not Call List” has the same meaning as in Part I of the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*, in the Appendix to *Telecom Decision CRTC 2008-6-1, Delegation of the Commission’s investigative powers with regard to Unsolicited Telecommunications Rules complaints*, issued on October 20, 2008.

## FEES

### Fees

2. (1) A person that subscribes to the National Do Not Call List must pay to the Commission the fees payable by them in accordance with sections 3 and 4.

#### For greater certainty – rates

(2) For greater certainty, the fees referred to in subsection (1) are in addition to any rates that may be charged by a delegate under subsection 41.4(1) of the *Telecommunications Act*, including those that may be charged to subscribe to the National Do Not Call List.

#### Amount to be paid on subscription

3. (1) On subscribing to the National Do Not Call List, a person must pay to the Commission, or to a person to whom the Commission has delegated the power to collect fees under subsection 41.3(1) of the *Telecommunications Act*, if applicable, the amount set out in column 2 of the schedule that corresponds to each of the person’s subscription types set out in column 1.

#### Determination of fee payable

(2) No later than 90 days after the end of each fiscal year in which amounts are paid under subsection (1), the Commission or person to whom the Commission has delegated the power to collect fees under subsection 41.3(1) of the *Telecommunications Act* must

(a) determine in accordance with subsection 4(1) or (2), as the case may be, the fees payable to the Commission by each person for that fiscal year; and

(b) if those fees payable are less than the amounts paid by the person under subsection (1) in that fiscal year, refund them with the excess amount in accordance with subsection 4(3).

#### **Fees payable – amounts paid do not exceed costs**

4. (1) If the total of all amounts paid under subsection 3(1) in a given fiscal year is less than or equal to the Commission's telemarketing regulatory costs for that year, the fees payable by a person for that year are equal to the amounts paid by them under that subsection.

#### **Fees payable – amounts paid exceed costs**

(2) If the total of all amounts paid under subsection 3(1) in a given fiscal year exceeds the Commission's telemarketing regulatory costs for that year, the fees payable by a person for that year are equal to the amount determined by the formula

$$(A / B) \times C$$

where

A is the total amounts paid by the person under subsection 3(1) in the fiscal year;

B is the total of all amounts paid under subsection 3(1) in the fiscal year; and

C is the Commission's telemarketing regulatory costs for the fiscal year.

#### **Refund**

(3) The difference between the amounts paid by a person under subsection 3(1) in a fiscal year and the fees payable by them under subsection 4(2) for that year is, if it is at least five dollars, to be refunded to the person.

#### **Telemarketing regulatory costs**

(4) The telemarketing regulatory costs of the Commission for a given fiscal year are the portion of the costs of the Commission's activities for that year, as set out in the Commission's Expenditure Plan published in Part III of the *Estimates* of the Government of Canada and, if applicable, the *Supplementary Estimates* of the Government of Canada, that are attributable to the Commission's responsibilities under section 41.2 of the *Telecommunications Act* and that are not recovered under any regulation made under section 68 of that Act.

### **PUBLIC NOTICE**

#### **Telemarketing regulatory costs**

5. (1) The Commission is to publish, each year in a public notice in the *Canada Gazette*, Part I, its telemarketing regulatory costs.

**Total amounts paid**

(2) The Commission is to publish, each year in a public notice, the total of all amounts paid under subsection 3(1) in the last completed fiscal year.

**COMING INTO FORCE****April 1, 2013**

6. These Regulations come into force on April 1, 2013.

SCHEDULE

*(Subsection 3(1))*

AMOUNTS TO BE PAID

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>Subscription Type</b>	<b>Amount (\$)</b>
1.	Annual (a) all area codes (b) single area code	14,130 845
2.	6-month (a) all area codes (b) single area code	8,600 440
3.	3-month (a) all area codes (b) single area code	4,645 225
4.	Monthly (a) all area codes (b) single area code	1,570 75