



Compliance and Enforcement Notice of Consultation CRTC 2013-140

PDF version

Ottawa, 20 March 2013

Call for comments

Review of the Unsolicited Telecommunications Rules

File numbers: 8665-C12-201304485 and 8662-C131-201115832

In this notice, the Commission initiates a proceeding to conduct a comprehensive review of the Unsolicited Telecommunications Rules (UTRs).

The Commission seeks the views of consumers, telemarketers, and other interested persons on ways to make the UTRs more effective in reducing the number of unwanted telemarketing calls while facilitating more effective communications between organizations and consumers. To develop its rules and enforcement practices in the least-intrusive manner necessary, the Commission will carefully weigh the benefit of any proposed changes against the administrative burden that may result, particularly for small businesses.

The Commission also seeks views on an application filed by the Canadian Marketing Association (CMA) which has been incorporated into this proceeding. The CMA has proposed to relax the rules which restrict the use of Automatic Dialing-Announcing Devices (ADADs) for telemarketing purposes. The current rules specify that consumers must provide express consent before calls using ADADs can be made to them. The CMA has proposed eliminating this restriction where an organization has an existing business relationship with a consumer and where the consumer has not made a request to be on the internal do not call list (DNCL) maintained by the organization. Such calls would therefore be allowed even if the consumer has registered their number(s) on 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). Section 41 of the Act specifies that

The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

2. The Commission, in Telecom Decision 2007-48, established the Unsolicited Telecommunications Rules (UTRs), which is a comprehensive framework for unsolicited telecommunications. The UTRs include the National Do Not Call List (DNCL) Rules, the Telemarketing Rules, and the Automatic Dialing-Announcing Device (ADAD) Rules. The UTRs and the National DNCL came into operation on 30 September 2008.
3. The National DNCL Rules and the Telemarketing Rules apply only to “telemarketing,” or the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation. The ADAD Rules, on the other hand, are broader in scope as they include restrictions even in circumstances where there is no attempt to solicit. Part I of the UTRs defines “solicitation” as 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 party.
4. On 6 December 2011, the Canadian Marketing Association (CMA) filed an application with the Commission seeking changes to the ADAD Rules. By letter dated 23 December 2011, the proceeding initiated by this application was suspended pending consideration of whether the matters raised by the application should be reviewed in a broader context. As noted below, the CMA’s application has been made part of this proceeding.
5. Since the UTRs came into force, there has been a steady increase in registrations on the National DNCL, which now contains more than 11 million numbers. Consumers also have the option of requesting that their numbers be placed on an organization’s own internal do not call list (the “internal DNCL”). This is another action that a consumer may take to limit telemarketing telecommunications from all persons or organizations, irrespective of whether the organization is required to subscribe to the National DNCL or is otherwise allowed to contact the consumer under one of the enumerated exceptions.
6. The Commission has also received more than 640,000 complaints about alleged violations of the UTRs since that time, which have led to enforcement action resulting in over \$3 million in administrative monetary penalties and other payments.
7. With the benefit of over four years of experience in the administration and enforcement of the UTRs, the Commission has identified a number of areas that would benefit from public consultation, in addition to the matters raised in the CMA’s application. With this notice, the Commission hereby initiates a proceeding to conduct a comprehensive review of the UTRs.
8. The Commission seeks to craft its rules and enforcement practices in a manner that is the least-intrusive necessary to achieve its objectives. Consistent with this goal, the Commission will carefully weigh the benefit of any new proposed rules or modifications arising from this proceeding against the administrative burden that may result, particularly for small businesses.

9. The Commission will also review the matters in this proceeding in light of the policy objectives set out in section 7 of the Act and the Policy Direction.¹

Call for comments

10. The Commission invites detailed comments, with supporting rationale, on the following:

- I. ADAD Rules
- II. Caller name display
- III. Record keeping
- IV. Duration and scope of a do not call request
- V. Grace period for a do not call request
- VI. Application of the Telemarketing Rules regarding internal DNCL requests to telecommunications whose purpose is not solicitation
- VII. Business-to-business exemption
- VIII. Period of validity of contact information
- IX. Other changes to the UTRs

I. ADAD Rules

11. The ADAD Rules stipulate that an ADAD may only be used to make an unsolicited telecommunication for the purpose of solicitation (i.e. a telemarketing call) if express consent has been provided in advance of the consumer receiving the telecommunication. In circumstances where an ADAD is used to make unsolicited calls with no attempt to solicit, prior express consent is not required. Nevertheless, in those circumstances, the call must comply with certain requirements, including those relating to calling hours, caller identification (ID), sequential and random dialing, and equipment disconnection.
12. In its application, the CMA is seeking changes to the ADAD Rules to allow the use of ADADs to make telemarketing calls without express consent in circumstances where a telemarketer has an existing business relationship with the called party.

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Under the CMA's proposal, a consumer could receive telemarketing calls via an ADAD from organizations with which they have an existing business relationship, notwithstanding the fact that they registered their number on the National DNCL.² Consumers could avoid receiving such calls only by requesting to be put on the internal DNCL of the respective organization.

13. The CMA submitted that its request was predicated on the ADAD having to support the use of interactive features which permit consumers to use key-press functions or voice-recognition capabilities, to interact with a live agent or connect to a voice mail system, to make comments regarding the call, request more information or otherwise respond to the ADAD message, and make or verify a do not call request. For smaller telemarketers or smaller clients of telemarketers, the CMA proposed to allow the interactive features to route the consumer to a voice mail system rather than a live agent. Also, the CMA proposed that persons initiating telemarketing calls via an ADAD must make all reasonable efforts to ensure that their equipment disconnects within ten seconds of the person receiving the call hanging up.
14. The CMA set out its proposed amended ADAD Rules in Appendix B of its application.
15. The Commission notes that, in the proceeding leading up to Telecom Decision 2007-48, the CMA submitted that the use of ADADs should be allowed for telemarketing telecommunications where there was an existing business relationship with the called party. At that time, the CMA submitted that ADAD-related technological advances provided consumers with an immediate opportunity to decline a message and not be contacted via an ADAD in the future.
16. In Telecom Decision 2007-48, the Commission noted that no party had provided evidence of specific technological advances with ADADs that would alleviate the inconvenience or nuisance experienced by consumers who receive unsolicited telemarketing calls via an ADAD, particularly due to the inability to interact with a live agent. The Commission was of the view that the ability to decline the message and to request not to be contacted via an ADAD was not sufficient to alleviate consumer inconvenience or nuisance.
17. The Commission invites interested persons to comment on proposed changes to the ADAD Rules and, in particular, the following questions:

² Telemarketing calls from organizations with whom consumers have an existing business relationship are exempt from the National DNCL Rules. Consumers are considered to have an existing business relationship with a telemarketer if they

- Purchased, leased, or rented a product or service in the last eighteen (18) months from the telemarketer;
- Have a written contract with the telemarketer for a service that is still in effect or expired within the last eighteen (18) months; and/or
- Asked a telemarketer about a product or service within the last six (6) months.

- Should the changes to the ADAD Rules proposed by the CMA be adopted? In particular, should the ADAD Rules eliminate the need to obtain express consent when making unsolicited telecommunications via an ADAD for the purpose of solicitation in situations where there is an existing business relationship?
- Are advances in ADAD technology sufficient to address the concerns that gave rise to the restrictions imposed by the Commission in its previous decisions?
- In instances where an ADAD telemarketing telecommunication is made by smaller telemarketers or on behalf of smaller clients of telemarketers, is it sufficient for consumers to be transferred to voice mail (rather than to a live agent) as the CMA suggests? If so, what criteria could be used to distinguish smaller telemarketers or clients of telemarketers from others? Are the CMA's proposed draft ADAD Rules an appropriate basis upon which to distinguish between large and small telemarketers.
- In the alternative, are the current ADAD Rules appropriate? Should more restrictive rules be adopted for ADAD telecommunications? If so, what should they be?

II. Caller name display

18. Section 25 of the Telemarketing Rules states that 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). The Commission notes that although caller ID technology generally permits the display of a name and telecommunications number, the UTRs do not include a requirement to display the caller's name.
19. A requirement to display the caller's, or client's name could lessen consumer frustration by allowing them to better distinguish calls from telemarketers versus those from other parties. This distinction is less likely to be made on the basis of a telecommunications number alone, which consumers are less likely to recognize as a telemarketing call. The Commission considers that such a requirement could facilitate more effective enforcement of the UTRs by improving the quality of complaint information submitted by consumers.
20. The Commission invites interested persons to comment on the following questions:
 - Where technologically possible, should the Telemarketing Rules mandate display of the caller's name on consumers' call displays?
 - If so, should the name of the telemarketer, or the client if different from the telemarketer, or both, be required?

III. Record keeping

21. The UTRs impose certain requirements on telemarketers and clients of telemarketers to maintain certain records relating to their telemarketing activities. For example, telemarketers are required to keep proof of registration and subscription with the National DNCL operator for a period of three years from the date the records were created. The UTRs also require that telemarketers who use predictive dialers, and their clients, maintain records of actual abandonment rates³ for a period of three years.
22. The UTRs currently do not require a telemarketer or client of a telemarketer to maintain calling records, which would set out a history of the date, time, and telecommunications numbers called over a period of time. In addition, a telemarketer or client of a telemarketer is not required to maintain the scripts or recordings of calls made during a given period or telemarketing campaign.
23. It is the experience of the Commission that such records, when available, ensure more timely and effective resolution of consumers' complaints. Many telemarketers and clients of telemarketers retain such records in the regular course of business, in order to monitor and ensure compliance with regulatory requirements and to demonstrate that due diligence was exercised. However, there is no uniform standard among businesses with respect to the creation and retention of calling records, scripts, and recordings.
24. The Commission invites interested persons to comment on the following question:
 - Should telemarketers or clients of a telemarketer be required to maintain other records, such as calling logs and calling scripts or recordings? If new record keeping requirements are adopted,
 - i. What additional effort would be required to create and maintain each of these categories of records if not already done in the ordinary course of business? The response should clearly identify the nature and dollar amount of any anticipated costs associated with any new record keeping requirements.
 - ii. For how long and in what format should these records be maintained?
 - iii. Should they be different depending on the size of the telemarketer or client of the telemarketer, the number of calls placed, the scope and duration of a particular telemarketing campaign, the type of National DNCL subscription purchased, or some other measure?

³ The abandonment rate refers to the percentage of telecommunications placed by a device that automatically initiates outgoing telecommunications from a pre-determined list of numbers which are abandoned calls.

IV. Duration and scope of a do not call request

25. Under the current UTRs, a consumer's name and number remains valid on the internal DNCL of a telemarketer, where that telemarketer initiates telemarketing telecommunications on its own behalf, or the client of a telemarketer, for a period of three years following the initial 31-day grace period. With respect to the National DNCL, the effective registration period was initially set for three years as well, but was subsequently extended to five years.
26. The Commission seeks comment on whether the length of effective placement on organizations' internal DNCLs should match that for registrations on the National DNCL. The Commission considers that any increase in the effective duration of internal DNCL placement or National DNCL registration would need to be balanced against the need to assure that such lists remain reasonably accurate, having regard to the numbers on the list which are disconnected and reassigned to a new owner.
27. At present, consumers may request to be placed on the internal DNCL of the person on whose behalf the telemarketing telecommunication was made. This means that telemarketers or clients of telemarketers are not required to place consumers' names and telecommunications numbers on the internal DNCLs of their affiliates. The Commission considers that this approach may unreasonably limit the ability of consumers to request, in a convenient and efficient manner, to be added to the internal DNCLs of other organizations from which they do not wish to receive calls.
28. The Commission invites interested persons to comment on the following questions:
 - Is the current three-year duration to be on an organization's internal DNCL appropriate? If not, what time period would be appropriate? Should it match the length of registration on the National DNCL?
 - Should a request from a called party to be on an organization's internal DNCL automatically apply to all affiliates of that organization?
 - In the alternative, should consumers be offered, at the time of the telecommunication, the option of requesting to be placed on the internal DNCL of the affiliates of the telemarketer or the client of the telemarketer?

V. Grace period for a do not call request

29. Under the current UTRs, telemarketers and clients of telemarketers have a grace period of 31 days following a consumer's registration with the National DNCL to honour a do not call request. This grace period was intended to allow these entities to distribute the updated calling list within their organizations while meeting the reasonable expectations of consumers.

30. With regard to an organization's internal DNCL, the Commission aligned the grace period to be consistent with that established for the National DNCL. Accordingly, telemarketers initiating telemarketing telecommunications on their own behalf and clients of telemarketers currently have 31 days to comply with a request from consumers not to be contacted again by a voice or fax telemarketing telecommunication.
31. The Commission seeks comment on whether these grace periods are still reasonable, particularly in the context of short-term calling campaigns, and in particular whether they continue to strike the appropriate balance between the expectations of consumers and the lead time needed to update telemarketing lists.
32. The Commission invites interested persons to comment on the following questions:
 - Should the 31-day grace periods remain as they are for both internal DNCL and National DNCL compliance?
 - If not, what are the appropriate grace periods? Would it be reasonable to implement a grace period, for instance, of between 24 and 48 hours for an organization to honour a consumer's internal DNCL request?

VI. Application of the Telemarketing Rules regarding internal DNCL requests to telecommunications whose purpose is not solicitation

33. The Commission notes that, in their current form, the rules relating to do not call requests only apply in respect of telemarketing telecommunications. As a result, a do not call request need not be honoured under the UTRs if the unsolicited telecommunication giving rise to the request is not made for the purpose of solicitation. This results in situations where consumers continue to receive calls despite informing the person of their desire to no longer be called, leading to consumer nuisance and inconvenience. The Commission notes that it has received complaints of this nature in respect of calls made on behalf of political entities (e.g. political parties, candidates, nomination contestants), which frequently make unsolicited telecommunications for purposes other than to solicit money or donations.
34. The Commission notes that subsection 41.7(4) of the Act states that exempt persons or organizations, such as political entities and charities, must maintain their own internal DNCL and ensure that no telecommunication is made on their behalf to any person who has requested not to receive a telecommunication.⁴ Importantly, unlike the UTRs, which restrict the internal DNCL requirements to telecommunications that are made for the purpose of solicitation, this provision applies to all unsolicited telecommunications regardless of their purpose.

⁴ This provision does not apply, however, to calls made for the sole purpose of collecting information for a survey of members of the public pursuant to subsection 41.7(5) of the Act.

35. In light of the above, the Commission invites interested persons to comment on the following questions:

- Should the UTRs related to obligations to maintain internal DNCLs be broadened to capture all unsolicited telecommunications made by exempt entities, with the exception of those related solely to a survey of members of the public, irrespective of the purpose of the telecommunication, consistent with subsections 41.7(4) and (5) of the Act?
- If so, how should the UTRs be amended?

VII. Business-to-business exemption

36. In Telecom Decision 2007-48, the Commission noted that it had received little evidence of undue inconvenience or nuisance to business consumers as a result of receiving telemarketing telecommunications. Accordingly, as set out in section 2 of the National DNCL Rules, the Commission determined that telemarketing telecommunications made to business consumers would be exempt from the application of those rules.

37. The Commission indicated that it would monitor complaints from business consumers to determine whether it was necessary to revisit this issue. The results of the monitoring show that several thousand complaints have been received from businesses since 30 September 2008, the majority of which relate to the unwanted receipt of faxes by small business owners. In addition to the inconvenience and nuisance which faxes may cause, such telecommunications may delay the receipt of documents more valuable to the business and raise operating costs through higher expenditures on paper, ink, and wear and tear on telecommunications equipment.

38. Another significant volume of complaints comes from small business owners that operate out of their home and combine one telecommunications number for both business and residential purposes. Telemarketing telecommunications to a number that is publicly listed for a business, even if the number is also used for residential purposes and the product or service is not related to the operations of the business, is generally subject to the business consumer exemption. For instance, the Commission has received numerous complaints from small business owners who claim to have received fax telemarketing telecommunications related to vacation packages.

39. The Commission invites interested persons to comment on the following questions:

- Should the existing exemption for business-to-business telecommunications remain in its current form? Should the existing exemption be removed in its entirety? Should it be amended in some fashion?
- Should the exemption apply only if the telemarketing telecommunication involves a product or service that would be used by the business?

- Should the size of the business and whether a live voice or a fax telecommunication is involved be relevant factors for the application of the exemption?
- Should restrictions be placed on the sending of fax telemarketing telecommunications, and, if so, what should they be?

VIII. Period of validity of contact information

40. The UTRs require that telemarketers provide contact information to consumers at the beginning of the call and upon request. For instance, sections 17 and 18 of the Telemarketing Rules require the telemarketer to provide, on request, a number which consumers may call the telemarketer to ask questions, provide comments, or make or verify a do not call request. Section 19(e) of the Telemarketing Rules and section 4(d) of the ADAD Rules place similar obligations on telemarketers who send faxes or make unsolicited telecommunications using an ADAD where there is no attempt to solicit. As noted above, there are also certain rules setting out call display requirements. The Commission notes that the UTRs do not explicitly set out a time period under which any of this information must remain in effect.
41. The Commission notes that subsection 6(3) of Canada's anti-spam legislation⁵ states that contact information must remain valid for a minimum of 60 days after the commercial electronic message has been sent to assure that consumers have a reasonable opportunity to unsubscribe to receiving particular messages. A period of 60 days addresses the need to ensure that recipients of commercial email are provided with sufficient time to unsubscribe, while not being overly burdensome on business. A similar requirement contained in the UTRs may also facilitate consumer requests for inclusion on the internal DNCLs of telemarketers and clients of telemarketers.
42. The Commission invites interested persons to comment on the following questions:
- Should the UTRs explicitly set out a time period for which any or all of the required contact information must be valid?
 - If so, what contact information should be subject to this requirement and for how long should this information be valid?

IX. Other changes to the UTRs

43. In addition to the specific issues identified above, the Commission invites interested persons to comment on which, if any, changes to the UTRs should be made. Where a change or addition to a rule is suggested, the proposal should be substantiated with

⁵ *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23*

supporting rationale and evidence. Where a proposed rule change would result in increased costs, these costs should be quantified to the extent possible and should be accompanied by supporting assumptions under which the costs were calculated.

Procedure

44. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to this proceeding.⁶
45. The CMA is made a party to this proceeding, and its 6 December 2011 application referenced above (file number 8662-C131-201115832) is made part of the record of this proceeding.
46. Interested persons who wish to intervene in and become parties to this proceeding must file an intervention with the Commission regarding the above-noted issues, by **6 May 2013**. Parties are requested to propose precise language for any new rules or modifications to existing rules proposed.
47. Parties and other interested persons who have not already filed an intervention may file an intervention addressing the submissions and proposals of parties contained in their interventions filed in accordance with paragraph 46 by **3 June 2013**.
48. In accordance with section 26 of the Rules of Procedure, interventions filed in accordance with paragraphs 46 and 47 (as necessary) must explicitly state that the person wishes to be considered an intervener. The Commission will post the interventions on its website shortly after they are filed. All documents required to be served on a party or parties to the proceeding must be served using the contact information contained in the interventions.
49. Parties may file reply comments with the Commission, serving copies on all other parties, by **18 June 2013**.
50. The Commission will not formally acknowledge interventions or comments. It will, however, fully consider all submissions, which will form part of the public record of the proceeding.
51. The Commission expects to publish a decision on the issues raised in this notice within five months of the close of record.

⁶ The Rules of Procedure set out, among other things, the rules for the filing, content, format, and service of interventions and interrogatories; the procedure for filing confidential information and requesting its disclosure; and the conduct of the public hearing, where applicable. Accordingly, the procedure set out in this notice must be read in conjunction with the Rules of Procedure and their accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

52. Parties are reminded that, in accordance with the Rules of Procedure, if a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. A document must be filed with 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 parties if their submissions are received after the deadline. Late submissions will not be considered by the Commission and will not be made part of the public record.
53. Electronic submissions should be in HTML format. Alternatively, Microsoft Word may be used for text and Microsoft Excel for spreadsheets. Submissions longer than five pages should include a summary.
54. Each paragraph of all submissions should be numbered. In addition, the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
55. The Commission encourages interested persons and 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.
56. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

by completing the
[Intervention/comment/answer form]

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax to
819-994-0218

Important notice

57. 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, 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.
58. 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.

59. 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.
60. 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.

Location of CRTC offices

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

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

Related document

- *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