



Compliance and Enforcement Decision CRTC 2013-26

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Route reference: Compliance and Enforcement Notice of Consultation 2012-588

Ottawa, 28 January 2013

Unsolicited Telecommunications Fees Regulations

File number: 8665-C12-201213123

In this decision, the Commission approves and makes the Unsolicited Telecommunications Fees Regulations attached to this Decision that will come into effect on 1 April 2013.

Introduction

1. In Compliance and Enforcement Notice of Consultation 2012-588 (the Notice) the Commission invited comments on the proposed *Unsolicited Telecommunications Fees Regulations* (Regulations) appended to the Notice.
2. The Commission received submissions from Bragg Communications Inc., operating as EastLink (EastLink), the Canadian Bankers Association, the Public Interest Advocacy Centre (PIAC), Shaw Communications Inc. (Shaw), and Mr. Gervais.
3. The public record of this proceeding, which closed on 22 November 2012, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Background

4. 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).¹ 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.
5. 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.
6. To date, the Commission's 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.

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

7. As a result of further amendments to the Act, made in 2012,² 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 is establishing a National DNCL cost-recovery regime for the Commission's investigation and enforcement activities. Under the new regime, and as announced in the Notice, the National DNCL List Operator has been authorized to recover fees related to 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.
9. The Notice proposed that the proposed Regulations would be effective on 1 April 2013, which coincides with the Government of Canada's fiscal year.
10. The Notice also mentioned that 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" as defined in the proposed Regulations).
11. The Commission further noted that it intends to maintain the combined rates at current subscription 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. In the event that, in any given fiscal year, the amount of fees collected exceeds the Commission's telemarketing regulatory costs, the proposed Regulations set out a refund mechanism. The Notice also explained that no later than 90 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.
13. The Notice further mentioned that telemarketers using the query by telephone number subscription option will 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.

² 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.

Positions of Parties

14. None of the parties opposed the introduction, the specific wording, or the proposed effective date of the proposed Regulations. Parties were pleased that the existing subscription rates will remain unchanged under the proposed cost-recovery regime, and the proposal to publish annually the Commission's costs and fees recovered from telemarketers was strongly supported.
15. PIAC noted its support for the National DNCL and trusted that any future review of the subscription rates would be conducted in an open and public process.
16. EastLink and Shaw suggested that some or all of the Commission's investigation and enforcement costs be borne by companies that breach the *Unsolicited Telecommunications Rules*.³ Parties stated that it would be more equitable if Administrative Monetary Penalties (AMPs) were used to at least partially fund the Commission's ongoing activities to reduce the cost burden on compliant DNCL subscribers.
17. Mr. Gervais suggested that a portion of an AMP could be charged to a telemarketer for calling a number on the National DNCL, with the AMP being divided between the Commission, the List Operator, and the consumer.
18. Shaw submitted that the Commission should work with the List Operator in order to introduce at least one additional subscription payment option, i.e, either electronic fund transfer by direct deposit or payment by cheque.

Commission's analysis and determination

19. The Commission notes that any change to the rates set out in the proposed Regulations will require a future public process for comment.
20. With respect to the suggestion to use AMPs to offset all or part of the Commission's DNCL investigation and enforcement costs, the Commission notes that AMPs are public funds and, pursuant to the *Financial Administration Act*, must be deposited in their entirety to the Consolidated Revenue Fund for general government use.
21. The Commission further notes that while outside the scope of the proceeding, the feasibility of broadening the subscription payment options will be investigated with the List Operator.
22. In order to keep the Regulations brief and self-contained, the Commission has modified the Regulations to define the "National Do Not Call List" to mean the National Do Not Call List established pursuant to the Act.

³ 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.

23. In light of the above, and subject to the modification set out in the preceding paragraph, the Commission announces that it has made the Regulations appended to this Decision substantially in the form announced in the Notice, and these come into force on 1 April 2013. The Regulations will be published in the *Canada Gazette* Part II very shortly.
24. The following table sets out the current subscription rates in effect and the breakdown between the Commission's and the List Operator's fee components:⁴

Subscription Download Options

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

* Corresponds with the amounts set out in the Regulations

Secretary General

⁴ The Regulations do not contain a Commission component for the current option that permits telemarketers to query by telephone number (at a rate of \$0.75 per query).

Related documents

- *Unsolicited Telecommunication Fees Regulations, Compliance and Enforcement Notice of Consultation CRTC 2012-588, 23 October 2012*
- *Modifications to some Unsolicited Telecommunications Rules, 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”

« *exercice* »

“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”

« *Liste nationale de numéros de télécommunication exclus* »

“National Do Not Call List” means the national do not call list established for the purposes of section 41 of the *Telecommunications Act*.

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 to them 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 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

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