Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Decision CRTC 2004-63

Ottawa, 28 September 2004

Application by the Canadian Marketing Association to stay Decision 2004-35

Reference: 8662-C131-200408543

The Commission ***approves****, with one exception, the Canadian Marketing Association's (CMA's) application to stay* Review of telemarketing rules, *Telecom Decision CRTC 2004-35, 21 May 2004 (Decision 2004-35), pending the disposition of the CMA's application to review and vary that Decision. The stay applies to all requirements set out in Decision 2004-35 except the requirement that telecommunications service providers track and report complaint statistics; this requirement becomes effective 1 January 2005.*

The application

1. The Commission received an application by the Canadian Marketing Association (CMA), dated 6 August 2004, filed pursuant to part VII of the *CRTC Telecommunications Rules of Procedure* and section 62 of the *Telecommunications Act* (the Act), requesting that the Commission review and vary of *Review of telemarketing rules,* Telecom Decision CRTC 2004-35, 21 May 2004 (Decision 2004-35). The CMA also requested an interim stay of Decision 2004-35, pending the Commission's final determination on its review and vary application.

2. The CMA's principal request was for a stay of Decision 2004-35 in its entirety. In the alternative, the CMA requested a stay of the following specific provisions:

   - the requirement to issue a unique registration number to customers who make do not call (DNC) requests;
   - the requirement to provide caller identification information and a toll-free number to the first person who answers the telephone, prior to ascertaining whether this person is the intended called party;
   - the requirement for a live operator, as opposed to an interactive voice mail system, during regular business hours; and
   - the application of Decision 2004-35 to business-to-business telephone solicitations and to calls from businesses to existing customers.

Process

3. The Commission provided an expedited process for filing comments and reply comments on the stay application.

Canada

4. The Commission received comments, with respect to the CMA's application, from a number of interested parties: Aliant Telecom Inc., Bell Canada, NorthernTel, Limited Partnership, Northwestel Inc., Saskatchewan Telecommunications and Société en commandite Télébec, (collectively, the Companies), Action Réseau Consommateur and the Public Interest Advocacy Centre (ARC/PIAC), the Art Gallery of Ontario, Call-Net Enterprises Inc. (Call-Net), Canada Post Corporation, the Canadian Bankers Association (CBA), EastLink, the Great-West Life Assurance Company (on behalf of itself and its subsidiaries), The Hamilton Spectator, The Lung Association, Primus Telecommunications Canada Inc. (Primus), Rogers Communications Inc. (RCI), TELUS Communications Inc. (TELUS), TigerTel/UTR, and the Toronto Star.

5. The CMA filed reply comments on 2 September 2004.

Test for a stay

6. Before granting a stay pending the disposition of a review and vary application, the Commission requires the party requesting the stay to demonstrate that the stay application meets the criteria set out by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.* [1987] 1 S.C.R. 110, and modified in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311 (the RJR-MacDonald criteria). These criteria are that:

   a) there is a serious issue to be determined;

   b) the party seeking the stay will suffer irreparable harm if the stay is not granted; and

   c) the balance of convenience, taking into account the public interest, favours granting the stay.

Background

7. In *CRTC seeks public input on telemarketing rules*, Public Notice CRTC 2001-34, 5 March 2001, the Commission announced that it would review its rules, including enforcement procedures, relating to unsolicited telecommunications that are made for the purpose of solicitation. The Commission invited comments on several telemarketing issues, including the following: whether the current rules could be made more effective; whether new restrictions were required on live voice calls from individuals, businesses and non-profit organizations who solicit for money or money's worth; what restrictions should apply to unsolicited communications which were not made for the purpose of solicitation, such as market or survey research calls; the adequacy of current rules dealing with unsolicited facsimile (fax) solicitation; and the effectiveness of DNC lists. The Commission also invited comments on other points that parties wished to raise.

8. In Decision 2004-35, the Commission announced changes to its telemarketing rules. The changes included more specific identification procedures and mandatory reinforcement of DNC lists for all telemarketers. In addition, the Commission required the tracking and

reporting of telemarketing complaints and the establishment of a multi-faceted awareness program including billing inserts and white pages directory information. The Commission also stated that it believed there was considerable merit in the establishment of a national DNC list. However, it stated that implementing such a national list would be counter-productive without appropriate start-up funding and without an effective fining power for enforcement, such as the power to impose administrative monetary penalties (AMPs), which is not available to the Commission under current legislation.

9. The various measures set out in Decision 2004-35 were effective the date of that Decision, 21 May 2004, with two exceptions: the requirement to provide a unique registration number as confirmation of a DNC request becomes effective 1 October 2004, and the requirement that telecommunications service providers (TSPs) track telemarketing complaints becomes effective 1 January 2005.

Position of parties

The CMA

10. The CMA argued that the harm that would be occasioned to telemarketers, consumers and the Canadian economy by implementing the measures contained in Decision 2004-35 clearly outweighed the limited benefits that would be achieved by Canadian consumers.

11. The CMA noted that the Commission applies the RJR-MacDonald criteria in considering an application for a stay, and addressed each of these criteria in its submission.

12. The CMA submitted that there were serious issues to be tried, including possible violation of the freedom of expression guarantee in the *Canadian Charter of Rights and Freedoms* (the Charter) and factual and legal errors relating to the implementation, administration, and enforcement of a national DNC list.

13. The CMA further submitted that its members, as well as thousands of businesses across Canada, would suffer irreparable harm if marketers were compelled to implement the identification procedures outlined in Decision 2004-35. The CMA stated that the marketing community in Canada was expected to incur significant additional costs as a result of implementing the Commission's new measures. The CMA argued that a number of smaller businesses and not-for-profit organizations that rely heavily on telephone solicitation in order to sell products and services or to obtain donations and funding may have to abandon the use of telecommunications for this purpose if forced to implement these new measures.

14. The CMA submitted that the requirement to issue a unique registration number to every customer who makes a DNC request was causing Canadian businesses to incur significant start-up and re-training costs, which were expected to exceed the cost of establishing a national DNC list. The CMA argued that this measure was unlikely to ensure that the new regime would be more effective than the old, and that start-up costs would be lost if and when a national DNC list was established.

15. With respect to the requirement to provide caller identification information and a toll-free number to the first person who answers the telephone prior to ascertaining whether this person was the intended called party, the CMA argued that this requirement was totally ineffective and was confusing consumers. The CMA further argued that this requirement infringes on consumers' privacy and businesses' Charter rights to freedom of expression.

16. The CMA submitted that the requirement to maintain a live operator, as opposed to an interactive voice mail system, during regular business hours was causing Canadian businesses to incur a huge expense. The CMA stated that live operators were no longer a part of many businesses' operations and that this requirement was proving to be expensive to implement, particularly for smaller businesses that had to contemplate hiring new personnel just so they could use the telephone to market their services. The CMA further stated that a live operator system was more prone to human error than an interactive voice system in receiving registration information, and that it resulted in poorer service for consumers who would experience longer holding times.

17. The CMA also argued that the live operator requirement would not be necessary if a national DNC list were established, as the DNC list administrator would maintain centrally provisioned lines, thereby relieving all individual businesses of this obligation.

18. The CMA submitted that the application of Decision 2004-35 to business-to-business telephone solicitations and to calls from businesses to existing customers was bringing many more businesses under the regime than were captured before, and was inconsistent with the treatment of these calls under Canada's privacy legislation and with DNC legislation in the United States. The CMA further submitted that the very broad scope of the interim regime, set out in Decision 2004-35, in the absence of a national DNC list, was likely to cause consumers to block communications from many sources that they did not intend blocking, such as loan, mortgage, or subscription renewal calls. The CMA also submitted that should the Commission ultimately grant the relief requested in its application, without granting the stay, many businesses would have incurred significant start-up costs for nothing, and many consumers may end up not receiving calls that they expect.

19. The CMA indicated that the potential damage that would be inflicted upon consumers and marketers as a result of implementing the Commission's measures included forcing some businesses and not-for-profit organizations out of business. The CMA maintained that if the potential damage was compared to the limited benefits associated with reducing the level of nuisance and inconvenience experienced by Canadian consumers, it was overwhelmingly evident that the balance of convenience weighed in favour of issuing a stay.

Interested parties

20. All interested parties supported a stay of Decision 2004-35. A number of parties submitted that the CMA's application for a stay met the RJR-MacDonald criteria, in that it demonstrated that there were serious issues to be determined, that the requirements imposed by Decision 2004-35 would cause irreparable harm, and that the balance of convenience favoured granting a stay.

21. Both the Companies and TELUS supported the CMA's request for a speedy determination on the stay application. The Companies argued that some measures ordered by Decision 2004-35 were already in the process of being implemented and that for other measures, costs were being incurred to prepare for implementation. The Companies therefore submitted that any delay in dealing with the request would greatly increase the irreparable harm caused by the measures ordered in Decision 2004-35.

22. The Companies argued that if the Commission determined that the CMA's request for a stay of the entire Decision 2004-35 was inappropriate, the following aspects of the Decision should be stayed:

- that telemarketers provide a unique registration number to any party requesting to be on the caller's DNC list;
- that telemarketers identify themselves and provide a toll-free number for complaints before any other communication and before asking for a specific individual;
- that telemarketing agencies ask individuals requesting to be put on a DNC list if they want to be put on the DNC list of the company on whose behalf the agency is calling, on the agency's DNC list, or both;
- that TSPs produce, submit to the Commission for approval, and distribute to their subscribers, billing inserts clearly describing the rules concerning unsolicited telecommunications; and
- that incumbent local exchange carriers (ILECs) explain all the telemarketing rules in a separate full page section of the introductory pages of the white pages directories.

23. ARC/PIAC opposed a blanket stay of Decision 2004-35, submitting, for example, that the system of complaints reporting should not be stayed.

24. The CBA and the Companies submitted that the assignment of unique registration numbers for DNC lists could only be implemented at significant cost to telemarketers. The CBA argued that such a registration system was unnecessary because there was no evidence of a large number of complaints based on unheeded DNC requests, and ARC/PIAC submitted that it was a poor, piecemeal solution to the need for a coordinated, enforced, national DNC list.

25. ARC/PIAC supported the CMA's argument to stay the requirement to maintain a live operator during regular business hours, and the CBA submitted that such a measure would require a significant investment by businesses.

26. The Companies, the CBA and ARC/PIAC supported the CMA's position that the requirement to provide caller identification information and a toll-free number to the first person who answers the telephone reduced the likelihood that the information would be given to relevant individuals in a useful manner.

27. The Companies argued that it was very unlikely that the toll-free number would be recorded and retained before the person answering the call knows who the call is for, what it is about, or whether they have any issue or complaint.

28. The CBA argued that the requirement to provide caller identification information and a toll-free number prior to any other communication could require callers from a local financial institution to disclose their relationship with the intended recipient to anyone who casually answers the telephone. The CBA submitted that this disclosure of information was unwarranted.

29. The CBA further submitted that the requirement to provide caller identification information and a toll-free number prior to asking for the intended recipient of the call would require script changes and training and would result in reduced productivity and loss of business.

30. The CBA submitted that Decision 2004-35 should not apply to business-to-business solicitation, noting that consumer protection provisions have generally not been applied to businesses due to policy and administrative and compliance complexities. The CBA also submitted that the Commission should not, by Decision 2004-35, be able to overrule the expectation of customers that they will receive calls from their financial institutions about their products and services. A number of parties also argued that the limitations placed on businesses that communicate with existing customers by telephone violated the freedom of expression guarantee in the Charter.

31. With regard to agency calling lists, the CBA and the Companies submitted that many agencies may be bound by confidentiality agreements and may therefore be unable to divulge the identity of their clients. Consequently, in the CBA's view, consumers could unwittingly preclude themselves from being contacted by organizations from whom they want to hear.

32. The Companies submitted that the most immediate and acute source of irreparable harm was the requirement to distribute billing inserts and publish white pages directory information detailing the telemarketing rules as amended by Decision 2004-35. The Companies and EastLink submitted that the requirement to print and mail out the billing insert required significant company time and resources that would go to waste should the review and vary application result in changes to the telemarketing rules. Call-Net and the Companies argued that this would simply cause confusion to end-customers. TELUS made a similar submission with respect to billing inserts.

Reply comments by the CMA

33. The CMA noted that all interveners who filed comments expressed a considerable degree of support for the CMA's application to stay Decision 2004-35, noting that even ARC/PIAC, which expressed some concerns about the scope of the stay proposed by the CMA, supported a stay.

34. The CMA noted that the Companies expressed strong support for the application to stay Decision 2004-35 in its entirety, but that the Companies disagreed with the CMA's proposed alternative submission that if the Commission did not approve a stay of the Decision in its entirety, a stay should be granted with respect to the four specific measures set out in the CMA's application. The CMA noted that the Companies requested a stay of additional measures, including the requirements with respect to a party requesting to be put on a DNC list and the requirements with regards to the billing inserts and the white pages directories.

35. The CMA submitted that it recognized that the imposition of these measures would result in the Companies and other TSPs bearing significant costs and inconvenience, and therefore fully supported the Companies' proposals, in the event that the Commission did not grant a stay of the entire Decision.

Commission's analysis and determination

36. Section 62 of the Act provides that the Commission may, on application or on its own motion, review and rescind or vary any decision made by it. In order for the Commission to render a meaningful and effective determination on an application to review and vary, it may, in certain circumstances, be necessary for it to suspend the legal effect of the original decision and the legal duty to comply with it, in whole or in part, pending its determination on the review and vary application. However, staying a decision is a serious matter precisely because, during the period of the stay, the provisions of the original decision will not go into effect as originally contemplated.

37. An applicant will only be granted a stay of a Commission decision pending a determination on an application to review and vary that decision if the Commission finds that the applicant has satisfied all three criteria of the RJR-MacDonald stay test, set out in paragraph 6 above.

38. The Commission will now proceed to consider the CMA's stay application in light of these three criteria.

(a) Serious issue to be determined

39. The first of the RJR-MacDonald criteria is that there is a serious issue to be determined. The Commission notes that the threshold for this criterion to be met, is a low one. The issue is whether or not the application to review and vary is frivolous or vexatious. The Commission is satisfied that the CMA's application is neither frivolous nor vexatious. Accordingly, the CMA has satisfied the first criterion.

(b) Irreparable harm

40. The second criterion of the stay test requires that the party seeking the stay will suffer irreparable harm not compensable in damages if the stay is not granted and the Commission's determination on the review and vary application does review or vary, in whole or part, the decision sought to be stayed. Irreparable refers to the nature of the harm, not its magnitude.

41. The Commission notes the CMA's arguments that its members would incur costs not compensable in damages to implement the unique registration number and to maintain a live operator during regular business hours, both new requirements of Decision 2004-35.

42. The Commission notes that a number of interested parties, including the CBA and the Companies, some of whom are CMA members, provided further argument with respect to the irreparable harm that would be suffered if these Decision 2004-35 measures were not stayed.

43. The requirement to provide a unique registration number at the time of a DNC request is effective 1 October 2004. While the requirement to provide a live operator during business hours was effective 21 May 2004, the costs of compliance with this measure are of an ongoing nature**.**

44. The Commission notes the CMA's submissions that the costs of other new measures required by Decision 2004-35 may result in smaller businesses and not-for-profit organizations having to abandon telemarketing to sell their products and services or to obtain donations, and that some could be forced out of business. A number of other parties, including the Companies, the CBA, Call-Net, TELUS, EastLink, and RCI, some of whom are CMA members, argued that they would suffer irreparable harm if a stay of other measures introduced by Decision 2004-35 were not granted. The Commission notes, for example, arguments with respect to the harm that TSPs would suffer by distributing billing inserts and publishing white page directory information describing the telemarketing rules if a stay was denied and the Commission's determination on the CMA's review and vary application ultimately changed the rules. The CMA supported this in its reply comments.

45. The Commission finds that the CMA has established that it will suffer irreparable harm if Decision 2004-35 is not stayed and the Commission were to change the telemarketing rules in the review and vary proceeding. Accordingly, the Commission considers that the CMA has satisfied the second RJR-MacDonald criterion.

(c) Balance of convenience

46. The third of the RJR-MacDonald criteria requires the applicant to satisfy the Commission that the balance of convenience, taking into account the public interest, favours the stay.

47. To determine this, the Commission must consider the harm to the public interest in terms of any unrecoverable costs that would be incurred to comply with Decision 2004-35, and which would be unnecessary depending on the Commission's ultimate determination on the CMA's review and vary application. The Commission must also consider the harm that might result from the expenditure of any unrecoverable costs that would be unnecessary if a national DNC list were to be established in a timely fashion. As well, the Commission must take into account the harm that would flow if any organization were to go out of business**.**

48. The Commission must weigh these harms to the public interest that could result from not granting a stay against the harms to the public interest that could result if Decision 2004-35 were to be stayed. In so doing, the Commission must take into consideration the fact that in Decision 2004-35 it found that the changes to the telemarketing rules were in the public interest, as they would afford additional protection from the undue inconvenience and nuisance of unsolicited telecommunications, giving due regard to freedom of expression.

49. The Commission notes that the CMA, ARC/PIAC, and other interested parties indicated that the new rules in Decision 2004-35 would not benefit customers and might cause them poorer service, lesser privacy rights or to inadvertently miss solicitation calls that they would prefer to receive. A determination on the merits of these arguments will not be made until the Commission renders a determination on the CMA's review and vary application.

50. In weighing the balance of convenience, the Commission also notes that before the release of Decision 2004-35, extensive telemarketing rules already existed to protect customers. In fact, most of the telemarketing rules that were in place before Decision 2004-35 were established in *Use of telephone company facilities for the provision of unsolicited telecommunications,* Telecom Decision CRTC 94-10, 13 June 1994 (Decision 94-10).[1] The Commission finds that the existence of these longstanding protections significantly minimizes the harm that customers could suffer if the new measures introduced in Decision 2004-35 were stayed pending the Commission's determination on the application to review and vary that Decision.

51. The Commission notes that the new measures introduced in Decision 2004-35 are interim measures. In that Decision, the Commission stated that it believed there was considerable merit in the establishment of a national DNC list, but that it would be counter-productive to establish such a list without appropriate start-up funding and without an effective fining power for enforcement , such as the power to impose AMPs, which is not available to the Commission under current legislation.

52. Finally, with respect to the balance of convenience, the Commission notes that if the new rules are not stayed, customers will likely rely on those new rules, causing them harm in terms of confusion and dissatisfaction should the Commission change any of the new rules in the review and vary proceeding.

53. In light of the above, the Commission considers that refusing to stay Decision 2004-35 would result in greater harm to the public interest than granting the stay, especially in light of the fact that the longstanding telemarketing rules that existed prior to Decision 2004-35 will remain in effect during the period of a stay. Accordingly, the Commission finds that the balance of convenience favours granting a stay.

(d) Scope of the stay

54. The Commission notes that the CMA's principal request was for a stay of Decision 2004-35 in its entirety, but that its alternate submission was that the stay be focused on a limited number of measures that the CMA submitted were causing the greatest harm and proving the most expensive to implement. The Commission is of the view that it would not be in the public interest to require ongoing implementation of the changes to the telemarketing rules introduced in Decision 2004-35 in a piecemeal fashion. The Commission considers that the potential for customer and telemarketer confusion as well as increased training and implementation costs for telemarketers would be much higher if ongoing implementation was required in a piecemeal fashion.

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[1] In Telecom Order CRTC 96-1229, 7 November 1996, the Commission added restrictions relating to unsolicited fax transmissions for the purpose of solicitation. In *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997, and *Telemarketing restrictions extended to all telecom service providers*, Order CRTC 2001-193, 5 March 2001, the Commission extended the application of these rules such that, since 2001, telemarketing rules have applied to all ILECs, including independent telephone companies and all competitive local exchange carriers, interexchange carriers, wireless service providers and resellers of telecommunications services provided by any of these companies.

55. The only exception to this approach is the requirement that TSPs file semi-annual reports summarizing telemarketing complaint statistics set in paragraphs 118 to 123 of Decision 2004-35. The Commission notes that ARC/PIAC and the Companies supported the ongoing tracking and reporting of complaint statistics by TSPs, notwithstanding the CMA's request for a stay. The tracking and reporting of these complaints by TSPs are not matters that directly impact telemarketers. Accurate and detailed statistics will help the Commission and other interested parties better determine where difficulties continue to exist and what further changes might be required to the regulatory regime. Accordingly, the Commission is of the view that it would be in the public interest to maintain the requirements detailed in paragraphs 118 to 123 of Decision 2004-35.

56. In light of the above, the Commission hereby stays the new rules introduced in Decision 2004-35, with the exception of the requirement to track and report telemarketing complaints discussed above, starting 1 January 2005, pending the Commission's determination on the CMA's application to review and vary Decision 2004-35.

57. The result of this stay is that, pending the Commission's determination on the review and vary proceeding, the rules that will be in effect, with respect to the use of telecommunications facilities to make unsolicited calls for the purpose of solicitation,[2] are those that were in effect prior to Decision 2004-35. For the convenience of customers, telemarketers and TSPs, these rules are summarized in the Appendix to this Decision. In addition to the adherence to these rules by telemarketers, TSPs are required, as noted above, to track and report complaint statistics, in accordance with Decision 2004-35.

58. As a result of this Decision, it is no longer necessary for the Commission to consider tariff page revisions that have been filed for approval by ILECs pursuant to paragraph 113 of Decision 2004-35. These files are now closed.

(e) Telemarketing rules prior to Decision 2004-35

59. In its stay application, the CMA requested that the Commission stay the application of Decision 2004-35 to business-to-business telephone solicitation and to calls from businesses to existing customers, pending the Commission's disposition of its application to review and vary the Decision. In this regard, the Commission notes that the stay announced herein stays all of the new rules announced in Decision 2004-35,[3] including their application to business-to-business telephone solicitation and calls from businesses to existing customers.

60. A stay of a decision cannot stay provisions of prior decisions. Accordingly, the telemarketing rules that were in place prior to Decision 2004-35 are not stayed. The rules in place prior to Decision 2004-35 apply to all unsolicited calls for the purpose of solicitation. The Commission notes that they do not exempt business-to-business telephone solicitation or calls from businesses to existing customers. Under the rules prior to Decision 2004-35, the existence of a business relationship does not mean that calls to existing customers are not unsolicited.

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[2] Solicitation is defined 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.

[3] With the exception of the measures regarding the tracking and reporting of complaint statistics by TSPs.

61. The extensive telemarketing rules summarized in the Appendix have been in place for over ten years. However, the Commission notes that the extent of their application might have been misunderstood by some members of the telemarketing industry. Telemarketers must adhere to all the telemarketing rules in place prior to Decision 2004-35.

Secretary General

This document is available in alternative format upon request and may also be examined at the following Internet site: http://www.crtc.gc.ca

Appendix

Current telemarketing rules

Please note that this Appendix has been prepared as a convenience only. The telemarketing rules and their application were set out in *Use of telephone company facilities for the provision of unsolicited telecommunications*, Telecom Decision CRTC 94-10, 13 June 1994; Telecom Order CRTC 96-1229, 7 November 1996; *Local competition*, Telecom Decision CRTC 97-8, 1 May 1997; and *Telemarketing restrictions extended to all telecom service providers*, Order CRTC 2001-193, 5 March 2001. To the extent of any inconsistency between this Appendix and the Commission's determinations listed above, those determinations take precedence.

1. Rules for unsolicited live voice and facsimile (fax) calls for the purpose of solicitation

This section provides a summary of the rules governing unsolicited calls for the purpose of solicitation, where solicitation is defined 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. These rules do not apply to live voice and fax calls that do not solicit, including calls for account collection or market and survey research. The rules do apply to calls made on behalf of charitable institutions for the purpose of solicitation.

Do not call lists

a) Persons placing unsolicited live voice or fax calls for the purpose of solicitation are to ensure that a customer's do not call request is respected and that the customer's name and telephone number are removed from calling lists within seven days of the request for unsolicited fax calls and thirty days of the request for unsolicited live voice calls. A customer's do not call request is to remain active for three years.

b) Where a professional organization is calling to solicit on behalf of a client and the called party requests not to be called again by that organization, the organization is to remove the called party's name and telephone number from its calling lists.

Identification requirements

c) Persons placing unsolicited live voice calls for the purpose of solicitation are to identify the person on behalf of whom the call is made and provide, upon request, the caller's telephone number (not required to be free of charge) and the name and address of a responsible person to whom the called party can write.

d) Persons placing unsolicited fax calls for the purpose of solicitation are to identify the person on behalf of whom the call is made as well as the caller's telephone number, fax number and the name and address of a responsible person to whom the called party can write.

e) When the unsolicited live voice or fax call is placed by a professional calling organization on behalf of another organization, the professional calling organization must also provide the information set out in (c) and (d) above, with respect to the organization.

f) Unsolicited live voice or fax calls for the purpose of solicitation must display the originating calling number or an alternate number at which the call originator can be reached, except where number display is unavailable for technical reasons.

Time restrictions

g) Unless otherwise provided by law, unsolicited fax calls may only be placed between 9:00 a.m. and 9:30 p.m. Monday to Friday and between 10:00 a.m. and 6:00 p.m. on Saturday and Sunday. The permitted calling hours are those of the called party. There are no calling hour restrictions on live voice calls.

Other rules

h) Unsolicited live voice and fax calls for the purpose of solicitation must not be placed to emergency lines or healthcare facilities.

i) Sequential dialing for unsolicited live voice and fax calls for the purpose of solicitation is prohibited.

j) Random dialing and calls to non-published numbers for the purpose of solicitation are allowed.

k) Persons who resell Centrex service must make all reasonable efforts to ensure that the end-user does not employ the Centrex call transfer feature to transmit unsolicited live voice or fax calls for the purpose of solicitation.

2. Rules for the use of ADADs

This section provides a summary of the rules governing the use of automatic dialing and announcing devices (ADADs), defined as any automatic equipment that stores or produces telephone numbers to be called, used alone or with other equipment to convey a pre-recorded or synthesized voice message to the telephone number called.

a) The use of an ADAD to make unsolicited calls for the purpose of solicitation is prohibited. Prohibited ADAD calls include calls made to solicit on behalf of a charity, the use of ADAD messages to request that a called party hold until an operator is available (when the purpose of the call is to solicit), activities such as radio station promotions, or ADAD calls referring the called party to a 900 or 976 service number.

b) Persons who resell Centrex service must make all reasonable efforts to ensure that the end-user does not employ the service to transmit unsolicited ADAD calls other than those made for public service reasons.

c) The use of an ADAD to make unsolicited calls for purposes other than solicitation is permitted, subject to the following rules:

i) Permitted unsolicited ADAD calls must not be placed to emergency lines or healthcare facilities.

ii) Unless otherwise provided by law, permitted unsolicited ADAD calls may only be placed between 9:30 a.m. and 8:00 p.m. Monday to Friday, between 10:30 a.m. and 5:00 p.m. on Saturday and between noon and 5:00 p.m. on Sunday.

iii) Permitted unsolicited ADAD calls shall begin with a clear message identifying the person on behalf of whom the call is being made. This identification message should include a mailing address and a telephone number at which the called party can reach, at no charge, a responsible individual representing the originator of the message. If the actual message exceeds 60 seconds, the identification message must be repeated at the end of the call. Where the person making the call is conducting a survey on behalf of a client, either the survey research organization or the client on whose behalf the call is made must be identified in accordance with the requirements of this section.

iv) Permitted unsolicited ADAD calls must display the originating calling number or an alternate number at which the call originator may be reached, except where number display is unavailable for technical reasons.

v) Sequential dialing is prohibited for permitted unsolicited ADAD calls.

vi) Random dialing and calls to non-published numbers are allowed for permitted unsolicited ADAD calls.

vii) ADAD users must make all reasonable efforts to ensure that their equipment disconnects within 10 seconds of the called party hanging up.