



Telecom Information Bulletin CRTC 2009-282

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Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the insurance industry

1. The purpose of this information bulletin is to clarify for the insurance industry its obligations related to the Unsolicited Telecommunications Rules and the National Do Not Call List (National DNCL), which was established on 30 September 2008. In particular, this information bulletin sets out guidelines with respect to responsibility for complying with certain rules, including the requirement to register with, and provide information to, the National DNCL operator and the requirement to subscribe to the National DNCL.

Introduction

2. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act* (the Act), which provides 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.

3. In Telecom Decision 2007-48, the Commission established a comprehensive framework setting out rules governing the National DNCL and unsolicited telecommunications received by consumers. The Commission's Unsolicited Telecommunications Rules include the National DNCL Rules, the Telemarketing Rules, and the Automatic Dialing-Announcing Device (ADAD) Rules.¹

The insurance industry

4. The insurance industry encompasses a broad range of organizations and individuals that deal with insurance products such as life, health, home, and auto insurance.
5. A person responsible for marketing and selling insurance products or services to consumers may be referred to as an agent, direct writer, representative, or independent insurance broker. For the purpose of this information bulletin, a person who is limited by contract to only selling or promoting the products or services of a single insurance company will be referred to as an insurance agent, whereas a person who can sell or promote the products or services of several insurance companies will be referred to as an insurance broker. An insurance broker can be self-employed or can be an employee of or partner in an insurance brokerage. For the purpose of this information bulletin, an insurance brokerage is an entity that employs or authorizes insurance brokers to act on its behalf.

¹ The Unsolicited Telecommunications Rules are set out in Telecom Decisions 2007-48 and 2008-6-1, and Telecom Regulatory Policy 2009-200. The most recent version of the Unsolicited Telecommunications Rules is found online at <http://www.crtc.gc.ca/eng/trules-reglest.htm>.

6. In some cases, an insurance company promotes its products or services through one or more Managing General Agencies (MGAs). Insurance agents and brokers sometimes deal with MGAs directly rather than through an insurance company in the course of marketing and selling insurance. MGAs also provide backroom office services to insurance agents and brokers such as underwriting insurance policies and handling claims.
7. In some cases, insurance agents and brokers also offer financial products and services. This information bulletin does not deal with the application of the Unsolicited Telecommunications Rules to the marketing and selling of financial products and services by insurance agents or brokers.²

Application of the Unsolicited Telecommunications Rules to telemarketing telecommunications initiated by insurance agents and brokers

8. The Commission notes that insurance agents and brokers in some cases initiate telecommunications to consumers for the purpose of selling or promoting an insurance product or service. The Commission considers that these telecommunications constitute telemarketing and are therefore subject to the Unsolicited Telecommunications Rules, including the National DNCL Rules.

Responsibility for subscribing to the National DNCL, paying fees, registering, and providing information to the National DNCL operator

9. Section 72.02 of the Act states that a person is liable for a violation that is committed by an employee or an agent or mandatary of that person acting in the course of the employee's employment or within the scope of the agent or mandatary's authority.
10. The Commission notes that insurance agents are only permitted to promote or sell the insurance products or services of a particular insurance company. As such, the Commission considers that an insurance agent is acting on behalf of the insurance company when he or she initiates telemarketing telecommunications with respect to the products or services of that company. Therefore, in this situation it is the insurance company, and not the insurance agent, that is responsible for registering with, and providing information to, the National DNCL operator,³ becoming a registered subscriber of the National DNCL, and paying all applicable fees.⁴
11. In contrast, the Commission notes that insurance brokers do not promote or sell the insurance products or services of only one particular insurance company. Rather, a broker offers consumers a range of insurance products or services to choose from. Part of a broker's service is to assist a consumer to find the insurance product or service that best meets the consumer's needs. As such, the Commission considers that an insurance broker does not initiate telemarketing telecommunications on behalf of a particular insurance company, but rather on his or her own behalf or on behalf of a brokerage.

² The Commission issued an information bulletin regarding the application of the Unsolicited Telecommunications Rules to the financial services industry in Telecom Circular 2008-3.

³ Part III, Telemarketing Rules, section 2

⁴ Part II, National DNCL Rules, section 6

12. The Commission therefore considers that a broker or a brokerage, if the broker is acting on behalf of a brokerage, is responsible for registering with, and providing information to, the National DNCL operator,⁵ becoming a registered subscriber of the National DNCL, and paying all applicable fees.⁶
13. However, if an insurance agent or broker who is part of a brokerage initiates any telemarketing telecommunication on his or her own behalf for other services, he or she is responsible for registering with, and providing information to, the National DNCL operator, becoming a registered subscriber of the National DNCL, and paying all applicable fees.

Application of the existing business relationship exemption

14. In some circumstances, a telemarketing telecommunication initiated by an insurance agent or broker will be exempt from the National DNCL Rules by virtue of the existing business relationship exemption.⁷
15. The term “existing business relationship” is defined in subsection 41.7(2) of the Act to mean a business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from
 - (a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;
 - (b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or
 - (c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.
16. In the Commission's view, when a consumer purchases an insurance service or product from an insurance company, makes an inquiry or application with respect to the products or services of an insurance company, or enters into a written contract with an insurance company, an existing business relationship is formed between the consumer and the insurance company. The Commission therefore considers that an insurance agent can rely on the insurance company's existing business relationship exemption from the National DNCL Rules.

⁵ Part III, Telemarketing Rules, section 2

⁶ Part II, National DNCL Rules, section 6

⁷ Part II, National DNCL Rules, section 3(b)

17. When a consumer deals with a self-employed insurance broker to purchase an insurance product or service or to make an inquiry or application, the Commission considers that an existing business relationship is only formed with the broker. However, where a broker is acting on behalf of a brokerage, the existing business relationship would apply to the brokerage as a whole, which would allow any broker acting on behalf of that brokerage to rely on the exemption to make telemarketing telecommunications to the consumer.
18. An insurance company may also have an existing business relationship with a consumer who deals with an insurance broker or brokerage if the consumer has entered into a written insurance contract with the company.
19. The Commission notes that telemarketing telecommunications that are exempt from the National DNCL Rules must nevertheless comply with the other Unsolicited Telecommunications Rules, namely the Telemarketing Rules and the ADAD Rules.

Business-to-Business exemption

20. The Commission considers that telecommunications initiated by insurance companies to MGAs to promote or sell their insurance products or services, and telecommunications initiated by MGAs to insurance agents, brokers, and brokerages to promote the products or services the MGA manages, are business-to-business telemarketing telecommunications. The Commission considers that these telecommunications are therefore exempt from the National DNCL Rules. However, such telecommunications must comply with the other Unsolicited Telecommunications Rules, namely the Telemarketing Rules and the ADAD Rules.

Secretary General

Related documents

- *Modifications to some Unsolicited Telecommunications Rules*, Telecom Regulatory Policy CRTC 2009-200, 20 April 2009
- *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to investment dealers, mutual fund dealers, and investment and financial advisors*, Telecom Circular CRTC 2008-3, 16 December 2008
- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Decision CRTC 2008-6, 28 January 2008, as amended by Telecom Decision CRTC 2008-6-1, 20 October 2008

- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007

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