



CRTC ISSUES NEW RULES THAT SERIOUSLY IMPACT CANADIAN TELEMARKETING

ISSUE:

The Canadian Radio-television and Telecommunications Commission (CRTC) has released new rules for unsolicited telemarketing calls in Canada that will have a severe impact on all organizations that use the telephone as a means to reach current and prospective customers. The CRTC Decision 2004-35 indicates that the new rules come into effect in 30 days or on Friday, June 21, 2004.

BACKGROUND:

In April 2001, the CRTC initiated a review of the rules that govern outbound telemarketing in Canada. The review was carried out in part to address a growing number of consumer complaints with telemarketers but also to consider the emergence of new technologies and their impact on telemarketing.

CMA was a party to the review process and at the outset asked the CRTC to focus its attention on the five key areas listed below:

1. Need for better enforcement of existing rules.
2. Establishment of a national do-not-call list.
3. Establishment of universal calling hours for telemarketing calls.
4. Review of "dead air" problem and identifying standards for predictive diallers.
5. Amend existing rules to allow organizations to use automatic announcing and dialling devices (ADADs) to contact existing customers.

The Association argued that if the Commission dealt with these five areas it would effectively address consumer complaints while ensuring a balance between the rights of individuals to remove their names from marketing lists and the significant, positive impact of telemarketing through its economic and employment contribution throughout Canada.

The CRTC concluded the public process of this review in December 2001 and has spent almost three years considering its options.

SUMMARY OF CRTC DECISION:

The decision released on Friday, May 21, 2004 includes new rules for both telephone and fax marketing and guidelines for abandonment rates for those organizations using predictive diallers.

The new rules for voice telemarketing are as follows:

- When placing voice calls, telemarketers will have to tell consumers – at the beginning of the call – who they are and, if they are an agent, who is sponsoring the call - before asking for an individual.
- In addition, before any other communication or asking for an individual by name, telemarketers must volunteer a toll-free number through which comments or questions can be received and “do-not-call” requests can be processed. This number must be staffed during business hours with an after-hours interactive voice mail backup.
- If, during the call, the consumer asks to be put on a do-not-call list, the request must be processed without requiring the consumer to do anything further.
- If the call is made by an agent calling on behalf of a client and a do-not-call request is made during the call, the agent must ask the called party if it wishes to have its name on the agent’s do-not-call list, the client’s DNC list or both do-not-call lists.
- Starting October 1, 2004, telemarketers will have to provide consumers who opt-out of telemarketing calls with a unique registration number to confirm the request.

The new rules for fax telemarketing are as follows:

- Marketers using fax machines will be required to identify the person or organization on behalf of whom the fax is being sent, including a toll-free fax and telephone number at which “do-not-call” requests can be processed, and the name and address of a responsible person to whom the called party can write.
- This information must be provided at the top of the first page of the fax in a 12 pt. font size or larger.
- The originating date and time of the fax must be provided.
- The same rules that apply to voice calls regarding request registration numbers and staffing of toll-free numbers also apply to fax telemarketing.

The CRTC also introduced new rules for predictive diallers as follows:

- Callers using predictive dialling devices shall ensure that they do not abandon more than 5% of calls, measured per calendar month, and shall maintain records to show the abandonment rate.

CMA RESPONSE:

CMA is extremely disappointed with the CRTC decision. Despite receiving thoughtful submissions and advice from many different sectors, companies and consumer groups, the Commission has failed to effectively address the real problems caused by irresponsible telemarketers in Canada and has instead penalized legitimate companies.

The most serious problem with these new rules is that there is a complete disregard for existing customer relationships. CMA believes the new rule requiring contact centres to ask if someone wants to be removed from the lists of ALL of its other customers interferes with

the fundamental right of business to engage in an ongoing relationship with its existing customers. Customers could be deleted from an organization's contact list without the organization's knowledge as a result of a call made to the customer on behalf of another company. In some cases, individuals may have to re-contact businesses to get back on their telemarketing lists. CMA believes that the federal privacy legislation allows organizations to engage their existing customers in an ongoing dialogue under the principle of implied or deemed consent. This is balanced with the long-time requirement of the CMA Code of Ethics and now the federal privacy legislation that organizations must remove individuals from their marketing lists on request as means for them to reduce unwanted offers or solicitations. The CRTC decision runs counter to this principle.

The new rules impose a whole new set of disclosure requirements at the beginning of any telemarketing call -- even before a telemarketer asks for a person by name. CMA believes that instead of eliminating unwanted telemarketing calls, the new rules could make the calls longer. And if a child or anyone else answers the phone, a telemarketer will have to go through all the disclosures with the child or other person before even asking for the individual being contacted. As well, all these disclosures will have to be made in every call, no matter how good a customer is (e.g. a bank manager calling to get a long-standing customer to make a RRSP contribution). This will impose huge requirements on business and will further annoy consumers.

CMA is very disappointed that the CRTC failed to establish a mandatory national do-not-call service and that they didn't even seek the authority to do so. If the Commission felt it didn't have sufficient powers to establish a do-not-call registry, it was incumbent on them early on in this process to seek legislative changes from the federal government. It chose instead to wait for almost three years and has imposed stop-gap measures on legitimate telemarketers with the same, inadequate enforcement measures behind them. CMA will now work with the federal government to establish a do-not-call registry in Canada and by doing so seek to have many of these new rules deemed ineffective and redundant.

There are a number of others areas of concern.

- First, the CRTC made no effort to create a proper enforcement scheme for the existing or new rules. This has been one of the biggest frustrations for consumers. In order to file a complaint, a consumer has to figure out which telco the telemarketer is using and contact that specific telco. The CRTC has addressed this by imposing the new, unrealistic disclosure rules without effective enforcement measures.
- Second, the new rules require companies to staff toll-free numbers during normal business hours to take do-not-call registrations. For many organizations this is unrealistic due to costs and staffing commitments. In fact, CMA's own Do Not Contact service could not handle such a requirement due to the volume of calls we receive. As a result many registrations are collected via voice mail or over the Internet. The Association feels that it is sufficient that an interactive voice mail system handle these requests.
- The third issue relates to the new requirement that by October 1, 2004, organizations will need to give customers who have asked to be removed from marketing lists a unique registration number. For many smaller organizations this is completely unrealistic.
- Finally, CMA is disappointed that the Commission did not choose to impose any universal calling hours. Telemarketers can continue to legally call any time of the day or night.

NEXT STEPS:

The Association has contacted the CRTC to discuss this decision and will be traveling to Ottawa to meet with senior officials in the Commission and in Industry Canada. The federal election will delay our contact with Ministers and their staff but we will be working with the new government once it takes office after June 28.

Given that the CRTC has called on the federal government for further review and legislation covering a national do-not-call registry, CMA will lobby the responsible department, Industry Canada, to pursue the establishment of such a service as a more effective means of addressing consumer annoyance and illegitimate telemarketing in Canada. In fact, the Association began discussions with Industry Canada last year on such a service.

MEMBER ACTION:

- The Association will be establishing a member group of contact centre and telemarketing experts to assist in the development of a policy response. If you are interested in participating please contact Amanda Maltby, CMA Senior Vice-President, Public Affairs and Communications at 416-644-3757 or amaltby@the-cma.org.
- To view CRTC Decision 2004-35 please visit:
<http://www.crtc.gc.ca/archive/ENG/Decisions/2004/dt2004-35.htm>
- If you wish to express your concerns and help the CRTC understand the impracticality and unreasonableness of many of these requirements, please contact: Charles Dalfen, Chairman, Canadian Radio-television and Telecommunications Commission, Ottawa, Ontario K1A 0N2. Fax: 819-994-0218.

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