

Ms. Diane Rhéaume
Secretary- General
Canadian Radio-Television and
Telecommunications Commission
Ottawa, ON
K1A 0N2

March 22, 2006

Dear Ms. Rhéaume:

Re: Telecom Public Notice CRTC 2006-4: Proceeding to establish a national do not call list framework and to review the telemarketing rules.

1. The Direct Marketing Association, Inc. of the United States (“DMA”) submits the following comments with respect especially to paragraphs 47 and 48 of the Telecom Public Notice CRTC 2006-4 (“Notice”).

2. The DMA is the leading global trade association of business and nonprofit organizations using and supporting multichannel direct marketing tools and techniques, including telemarketing. DMA advocates industry standards for responsible marketing, promotes relevance as the key to reaching consumers with desirable offers, and provides cutting-edge research, education, and networking opportunities to improve results throughout the entire direct marketing process. Founded in 1917, DMA today has more than 4,800 corporate, affiliate, and chapter members from the US and 46 other nations, including 55 companies listed on the Fortune 100. We have approximately 90 members in Canada, and many more of our members do business in Canada or with Canadian consumers and companies.

3. In 2005, companies spent an estimated \$161 billion on direct marketing in the United States. Measured against total US sales, these advertising expenditures generated an estimated \$1.85 trillion in increased sales in 2005, or 7% of the \$26 trillion in total sales in the US economy (which includes intermediate sales). All together, direct marketing accounted for 10.3% of total US GDP in 2005.

4. In the course of representing the direct marketing industry, we have developed significant experience with do-not-call lists, first through our development of the world’s first do-not-call list in 1985 and our operation of that list until today. During that time, our ethical code has obligated our members to use that list so that consumers’ wishes with respect to telemarketing calls would be respected.

5. In 2002, the Federal Trade Commission of the United States adopted rules establishing a Federal do-not-call list on which consumers could register their wishes not to receive unsolicited commercial calls. We believe our experience with this list system and our own self-regulatory system will be of use to the Commission in reaching the decisions it must reach to properly balance legitimate consumer wishes and business needs.

6. By way of introduction and as background to our responses to the Notice, we would observe that the powerful economic impact of the introduction of the U.S. Federal Trade Commission's do not call list in 2003 was demonstrable, dramatic, and dire. We would thus warn the Commission that we see no prospect of the effects being any different in Canada when C-37 becomes operative. For example, our *2005 Economic Impact Report* showed that the introduction of the DNCL is responsible for the loss to the economy in 2003 and 2004 of US\$7.5 billion in expenditures on telemarketing activity and US\$ 93 billion in the lost sales of goods and services which would have resulted from that activity. Moreover, employment in the sector was negatively impacted in terms of lost jobs and jobs not created. For example, our calculations show that almost 208,000 more jobs might have been realized from telephone marketing in 2003 and over 355,000 might have resulted from this channel in 2004 in the absence of DNCL. We attach to this submission as an annex the introduction and summary to our 2005 Economic Impact Study containing these figures. We would therefore urge caution and slow introduction of the system, perhaps phased in by area code, Province, or industry sector over a period of time to reduce the immediate nation-wide effects.

7. Turning now to the Notice, and for ease of reference, we set out below our recommendations and views against the numbering of paragraphs 47 and 48 of the Notice. *47. The Commission invites comments on the above matters. In particular, parties are invited to comment on the following:*

- (i) *whether the DNCL and other telemarketing rules to be established by the Commission in this proceeding should be included in the ILECs' tariffs;*

8. As we are not experts in the regulatory system or process here in Canada, we have no informed view on this issue. However, we would urge that the rules established ought properly to be binding on and enforceable against all participants in the regulated area throughout the nation. All competitors in the marketplace must be subject to the same costs and restrictions. We would also observe that in today's globalized communications networks, where international calls from India cost one U.S. cent per minute and labor costs are one-tenth those of Canada's or the U.S., the threat of restricting one calling party from the network in Canada is an empty one and easily circumvented. I would also note that our Ethical Code requires our members to observe the law in the countries in which they call.

- (ii) *what the specific DNCL rules should be;*

9. In replying to this question we refer to the specific questions posed in paragraph 48 and our answers there.

- (iii) *what, if any, other telemarketing rules are necessary and appropriate;*

10. The national DNCL provides consumers with an important choice and with considerable power to control commercial communications reaching them. We would think that this should permit the government of Canada to take a less intrusive role in telemarketing regulation than may otherwise have been the case.

- (iv) *whether it is appropriate to develop non-binding guidelines for the imposition of penalties and, if so, what should those guidelines be;*

Our comments on this heading are combined with those appearing under the next.

- (v) *whether the Commission should establish non-binding guidelines regarding the investigation of complaints and issuance of notices of violation and, if so, what those guidelines should be.*

11. We think it will be important to distinguish between complaints of single instances of calls in violations of the rules, and repeated and/or massive violations. In short, we think it appropriate to distinguish between inadvertent or minor violations which may be unintentional, as when equipment malfunctions, or personnel have not followed directions from management, or have missed a date to download the file, and a consistent and repeated intentional ignoring of the wishes of consumers. We would suggest that guidelines have tiers of response and investigative reaction depending on the number of common complaints, the period of time over which complaints are made against a calling party, the times of day or the week calls in violation are made, and other indicators as to whether a violation is an isolated instance or series of mistakes, or some activity much more serious in terms of ignoring the rules. All these things should provide calibration points for increasing levels of the severity of official reactions which could vary from a stern telephone enquiry to more serious notice of investigative action or a violation.

12. It is also worthwhile to give consideration to adopting a “safe harbor” such as that created within the Telephone Sales Rule of the FTC, found at CFR 310.4b(3) and set out on the FTC website, where it reads as follows:

“If a seller or telemarketer can show that, as part of its routine business practice, it meets all the requirements of the safe harbor, it will not be subject to civil penalties or sanctions for mistakenly calling a consumer who has asked for no more calls, or for calling a person on the registry. To meet the safe harbor requirements, the seller or telemarketer must demonstrate that:

1. it has written procedures to comply with the do not call requirements
2. it trains its personnel in those procedures
3. it monitors and enforces compliance with these procedures
4. it maintains a company-specific list of telephone numbers that it may not call

5. it accesses the national registry no more than 31 days (starting January 1, 2005) before calling any consumer, and maintains records documenting this process

6. any call made in violation of the do not call rules was the result of an error.

48. To provide further guidance to parties, the Commission notes that in determining the DNCL rules, it will be necessary to address, at a minimum, the following specific issues:

(i) What should the specific elements be of the prohibitions or requirements, contravention of which would constitute a violation? For example, should all calls to parties registered on the DNCL be prohibited regardless of whether the called parties were only recently registered on the DNCL, and persons making such calls would be permitted in defence to argue that they exercised due diligence as the called party was only recently registered on the DNCL? Alternatively, should callers be permitted a grace period (e.g. within 30 days of registration) during which calls made to persons on the DNCL list would not constitute a violation? If so, what would be an appropriate grace period?

12. Substantial numbers of telemarketing firms in Canada and the US work across our mutual border. It would be highly desirable if the DNCL systems and regulations were, as much as possible, made identical. This will avoid confusion in compliance and a greater likelihood of consumer satisfaction. The U.S. rules require compliance within 31 days of listing the number, although the number is made available within 24 hours of registration. Please note that our Canadian members are currently obligated to observe this time limit when calling into the United States. Please also note that our Ethical Code requires our members to observe Canadian rules when calling consumers in Canada.

13. With respect to when a filing with the DNCL becomes a binding prohibition, certainly the grace period will determine this. We would also mention that this should also be related to the system established to register numbers and the ease with which the telemarketers can either access the list or have their lists cleaned against it. This subject raises a number of inter-related issues which should be of concern to the Commission.

14. Who should be entitled to register a number on the DNCL? Should there be a verification system? Our experience in the United States is that the system established there did not have an effective means of preventing unauthorized persons from registering the numbers of total strangers, or multiple numbers, and even numbers of businesses. We strongly urge that the system of registration be robust enough to prevent this, but not so burdensome as to discourage consumer use. The US system provides registration alternatives through a toll-free number and a website, but these have been effectively fooled time and again.

15. Since its establishment the DMA's DNCL required a simple postcard or letter with the individual's name, address, and phone number. On receipt, we sent back a note

indicating our receipt of the request and informing the individual that they could reverse this process at any point in time. Not infrequently, we were informed that this individual had not requested registration, or that the phone number was not theirs. Where we did not receive such notice in reply, the phone number was registered and our members became obligated to observe this request. While this system appears awkward, it should be noted that the DMA's DNCL numbered in excess of 4.8 million when it was effectively superceded by the FTC system.

16. Our legacy system and the U.S. FTC system call for a 31-day window for compliance. This permits callers to schedule cleaning of their lists on a regular schedule, which appears to balance consumer interests and business's needs effectively. More frequent cleaning is a technical and cost challenge; less frequent would not as quickly address consumers' concerns. Whether this 31-day limit can be realized will depend on the verification technique the Commission chooses to require, and the technical structure of the DNCL. It is noteworthy that numbers appear on the FTC list within one day of being verified and can be downloaded at that time.

17. We note that one commenter has strongly objected to releasing the DNCL to the telemarketing community. In both our own and the FTC systems, callers may download, or receive electronically, current lists under a strict license precisely limiting the uses to which the list may be put. Because monetary penalties for misuse are very severe and the likelihood of being discovered high, there have been very few abuses of this system. Moreover, this system reduces costs of operating the system, which would otherwise have to receive, match, and resend lists. This is a costly process, and we strongly urge that this system be made as low-cost as possible. Please note also that the National Consumers League of the U.S., a respected consumer advocacy body, does not oppose this method. (Letter of comment of National Consumers League at <http://www.ftc.gov/os/comments/tsr30dayscrub/040303natlconsumersleague.pdf>.)

18. Finally, we strongly urge that the system adopted enable and empower third party providers such as call centers, ad agencies and list brokers to clean lists on behalf of their clients. This will vastly increase compliance. In addition, we urge that pricing of the use of the list take this useful effect into account and that service providers' downloads on behalf of their clients be considered only one access to the system. The U.S. system requires payment by each list owner, substantially raising the cost of using the system and, in our view, reducing compliance.

(ii) Should the DNCL rules apply to telemarketers making the calls, to the companies on whose behalf telemarketers are engaged, or to both?

19. Both parties should be responsible for obeying the law. A client who has exercised due diligence in demanding its agent to comply should be exonerated if the agent does not do so.

(iii) Should the DNCL rules apply to voicecasting calls (i.e. unsolicited recorded messages delivered directly into consumers' voice mailboxes without interrupting

the consumer's activities in real time)? The Commission invites comments on the level of consumer concern in relation to these calls.

20. We have no view on this subject inasmuch as the practice is not legal in the United States except in a few very limited circumstances which are not relevant here. Industry observers have noted that this activity has increased since the enforcement of the U.S. DNCL.

Other observations and comments.

21. The following suggestions and recommendations are made based on our experience of both our own and the FTC's DNCL.

22. To encourage compliance and to not unnecessarily burden smaller businesses, it is imperative that the cost of the system be kept low and charges affordable. The cost of the entire list in the U.S. is prohibitively expensive for smaller companies who might be calling only a few numbers in scattered area codes, but would have to license the entire list to comply, which costs USD15,400 per year. Although the FTC has provided free access for up to 5 area codes, this does not help the many small businesses who operate nationally, as increasing numbers of them do. An interesting model in this respect is the UK system run by the UK Direct Marketing Association under contract with the authorities which provides a number of pricing alternatives that are appropriate for either large or small businesses, as well as automated call blocking systems for very small businesses.

23. In addition, the FTC pricing requires each company for whom calls are made to purchase the list, even though it would be possible to license major call center operators or data processors "wholesale", which we do with our system and which is done in the UK system. Again, this would encourage compliance as it would spread the cost more widely throughout the industry and reduce that cost for any individual user, especially smaller enterprises.

Continuation of in-house suppress

24. We support continuing the requirement for companies to maintain individual company do not call lists. This appropriately empowers consumers to selectively opt-out of marketing approaches they do not wish, but not from all callers.

Business telephone numbers

25. The Commission has requested views on opening the DNCL to business numbers. For many valid reasons we would urge this not be done. This question has been considered many times in the United States and both Congress and the enforcement/regulatory authorities have chosen not to impose this burden on business.

26. First, there is no privacy concern in this situation. Businesses are not homes where the family is sitting at dinner, and this privacy concern is the one most often cited for establishing DNCL's. Businesses open their doors, and man their phone lines (during at least part of the calling hours permitted under current regulations) in order to buy and sell.

27. Second, businesses depend on both making and receiving calls, and parts of an organization may actually need the information provided in this manner. We reference here the information provided by the Canadian Marketing Association on the structure and nature of the internal exchanges of many businesses, and the difficulties inherent in imposing a DNCL system in that environment. It would seem that little would be gained at much expense and inconvenience.

28. Third, it is difficult to determine who would be authorized to register a company's numbers. It is likely that the formalities for proving corporate authority would be tedious and expensive to fulfill by companies. Moreover, confirmation of the authority of the individual will be costly and time-consuming for the DNCL operator, increasing the expense of operation.

29. Fourth, there is a very significant risk of disgruntled employees and former employees, or competitors, listing a company's numbers. This is a very real possibility and can not be minimized. To prevent this, authorization confirmation in the system would have to be very robust, and thus expensive.

30. Fifth, if employees are permitted to register their numbers, what happens when they leave the company, or retire? How can the company recover the number? Are these numbers to remain on the list even though the next employee at the number does not object, and in fact might actually have receipt of such calls as part of their job duties?

31. Sixth, the telephone is a critical conduit in business life. We recall the terribly negative economic and employment impact in the United States of the introduction of the DNCL, which was limited to consumers only. The impact of including business numbers would have multiplied that negative impact several fold and we respectfully urge the Commission not to impose those losses on the Canadian business community.

Respectfully submitted,



Charles Prescott
Vice President, International Business Development and Government Affairs
The Direct Marketing Association, Inc

Annex to DMA submission

INTRODUCTION AND KEY FINDINGS FOR 2005

Direct Marketing's continued impact on the US economy is more evident than ever before in this fully updated and expanded edition of US Direct Marketing Today: Economic Impact 2005.

OVERALL:

DM advertising expenditures are expected to total \$161.3 billion in 2005. In 2004, such expenditures accounted for 47.9% of total advertising, up slightly from 46.9% in 1999.

- Most expenditures are accrued by the Consumer market and will reach \$83.9 billion in 2005. Growth in Consumer DM expenditures will climb by 5.8% per year through 2009, more than double the 2.3% annual growth rate during 1999 to 2004.
- B-to-B expenditures will amount to \$77.4 billion in 2005. Business-to-Business expenditures are forecasted to grow at 6.1% through 2009, a considerable improvement over the 2.5% annual growth rate during the 1999 to 2004 period.

DM-attributed sales are expected to reach \$1,850.6 billion in 2005. The majority of DM-driven sales comes from the Consumer market, (\$1,067.1 billion) as compared with \$783.4 billion for the Business-to-Business market.

- For 2005, DM-incremental sales accounts for 7.0% of total U.S. sales.
- Consumer DM-driven sales represents an even larger share of total U.S. consumer sales (12.2%). Consumer DM-driven sales are also growing somewhat faster than total U.S. Consumer Sales (6.0% vs. 5.4%).
- DM B-to-B sales are 4.4% of the total U.S. B-to-B sales. DM Business-to-Business sales are forecasted to grow by 6.8% per year through 2009, outpacing the overall U.S. B-to-B sales projection of 4.5%.
- In 2005, an investment of \$1 in DM ad expenditures can generate, on average, \$11.49 in DM-driven sales of \$11.49. This is an increase from the average of \$10.00 in revenue generated in 1999 and the \$10.99 generated in 2003.

In 2005, 10.6 million people are forecasted to be employed in a direct marketing capacity.

- For 2005, DM-driven employment represents 7.9% of total U.S. employment.

- 8.9 million will work in a DM seller capacity; representing 6.7% of total U.S. employment.
- 1.7 million will be employed in a DM advertising role, or 1.3% of the total U.S. employment.
- 50% as many more people work in a Business-to-Consumer area than a Business-to-Business one (6.4 million vs. 4.2 million, respectively).

Growth:

Growth in DM spending is expected through 2009, at a 6.0% rate, up sharply from the annual growth rate of 2.4% from 1999 through 2004.

- The share of telephone marketing DM ad expenditures relative to total ad expenditures on this channel has declined (25.4% in 2004 vs. 31.3% in 1999).
- The proportion of “new” DM ad expenditures has grown as a percentage of total ad expenditures (75.7% in 2004 vs. 64.6% in 1999). No doubt this is due to the increasing use of the newer channels such as commercial e-mail and Internet marketing (non-e-mail).

DM-incremental sales are forecasted to grow by 6.4% through 2009, up from 5.3% in the period from 1999 to 2004. By comparison, U.S. sales growth is at a slower rate (4.8% for 2004-2009, as compared to 4.5% between 1999-2004). With this larger rate of growth, DM-driven sales can be expected to claim an even larger proportion of total U.S. sales in the future.

- The B-to-B market will grow at a slightly higher rate than the Consumer market, with a 6.8% annual growth rate for Business-to-Business and a rate of 6.0% for Consumer sales. Both annual growth rates represent an increase from the 1999-2004 rates (5.2% and 5.3%, respectively).

Growth in DM-driven employment is expected through 2009, at a 2.0% rate, up from an annual growth rate of 0.8% from 1999 through 2004.

- Growth in advertising employment will climb by 1.8% per year through 2009, in direct contrast to a decrease of –2.0% experienced during 1999 to 2004.
- Seller employment is forecasted to grow at 2.0% annually through 2009, a slight improvement over the 1.4% annual growth rate from 1999 to 2004.

Telephone Marketing:

- Telephone marketing expenditures are forecasted to total \$47 billion in 2007. While expenditures declined in 2003 due to the DNC regulation, direct marketers seem to have found a way to make telephone marketing work for them. Spending is now recovering and an annual growth of 4.2% is anticipated through 2009, compared with an annual decrease of -1.9% from 1999 to 2004.

Actual Telephone Marketing Expenditures Compared with Estimated Expenditures Without DNC Ruling (Millions of Dollars)

	2002	2003	2004
Actual expenditures based on 2002-2004 telephone CAGR (-0.6%)	\$45,263.4	\$44,211.2	\$44,715.7
Expenditures rebased using total DM 2002-2004 CAGR (4.3%)		\$47,204.2	\$49,228.3
Difference between actual and rebased expenditures	\$0	-\$2,993.0	-\$4,512.7
Percent difference between actual and rebased expenditures	0%	-6.8%	-10.1%

CAGR = Compound annual growth rate

- Assuming that without this legislation teleservices would have grown at the same rate as all DM media (4.3%), the loss in potential expenditures becomes more dramatic when actual expenditures are adjusted to reflect the monies that might have spent had the DNC ruling not been passed.
 - Nearly \$3 billion more might have been spent on telephone marketing in 2003 and an additional \$4.5 billion might have been spent on this channel in 2004. Expenditures would have been 7% higher in 2003 and about 10% higher in 2004.
- Sales derived from telephone marketing will grow to over \$402 billion in 2005, with DM-driven sales from this channel increasing by 4.9% through 2009. This is a turnaround from a decrease in sales growth from 1999 through 2004 (-1.3%) brought on by the DNC laws.

Actual Telephone Driven Sales Compared with Estimated Sales Without DNC Ruling (Millions of Dollars)

	2002	2003	2004
Actual sales based on 2002-2004 telephone CAGR (-0.1%)	\$380,292.9	\$372,765.6	\$379,469.8
Sales rebased using total DM 2002-2004 CAGR (7.3%)		\$408,046.1	\$437,824.7
Difference between actual and rebased sales	\$0	-\$35,280.5	-\$58,354.9
Percent difference between actual and rebased sales	0%	-9.5%	-15.4%

CAGR = Compound annual growth rate

- Another consideration is the additional revenue that was lost as a result of the DNC law. Assuming that teleservices would grow at the same rate as all DM media (7.3%), the loss sustained in potential sales becomes more evident when the actual DM-driven sales numbers are rebased to reflect the amount that might have been earned.
 - Over \$35 billion more in sales might have been realized from telephone marketing in 2003 and \$58 billion in additional incremental revenue might have been spent on this channel in 2004. DM-driven sales would have been about 10% higher in 2003 and 15% higher in 2004.
- DM-driven employment is greatest in telephone marketing and will reach 2,816,400 this year. Employment is slowly growing and an annual growth of 0.6% is anticipated through 2009. Even this modest expectation for growth is good news, compared with an annual decrease of -4.3% in effect from 1999 to 2004.

Actual Telephone Marketing Employment Compared with Estimated Employment Without DNC Ruling (Number of Employees)

Total Telephone Employment	2002	2003	2004
Actual employment based on 2002-2004 telephone CAGR (-4.9%)	3,097,799	2,918,669	2,800,123
Employment rebased using total DM 2002-2004 CAGR (0.9%)		3,126,383	3,155,231
Difference between actual and rebased employment	0	-207,714	-355,108
Percent difference between actual and rebased employment	0%	-7.1%	-12.7%
Total Ad Employment	2002	2003	2004
Actual employment based on 2002-2004 ad telephone CAGR (-4.6%)	696,116	649,378	615,582
Employment rebased using total DM 2002-2004 CAGR (0.9%)		702,539	709,022
Difference between actual and rebased employment	0	-53,161	-93,439
Percent difference between actual and rebased employment	0%	-8.2%	-15.2%
Total Seller Employment	2002	2003	2004
Actual employment based on 2002-2004 seller telephone CAGR (-6.0%)	2,401,683	2,269,291	2,184,541
Employment rebased using total DM 2002-2004 CAGR (0.9%)		2,423,844	2,446,209
Difference between actual and rebased employment	0	-154,553	-261,668
Percent difference between actual and rebased employment	0%	-6.8%	-12.0%

CAGR = Compound annual growth rate

- o Assuming that teleservices employment would grow at the same growth rate as all DM media (0.9%), the loss sustained in potential telephone marketing employment is more evident when the actual employment numbers are adjusted to reflect the number of jobs that might have existed without the DNC ruling.

- A total of almost 208,000 more jobs might have been realized from telephone marketing in 2003 and over 355,000 might have resulted from this channel in 2004. Total telephone employment would have been about 7% higher in 2003 and almost 13% higher in 2004.
- Over 53,000 more jobs might have been realized from advertising telephone marketing in 2003 and over 93,000 might have resulted from this channel in 2004. Advertising teleservices employment would have been 8% higher in 2003 and 15% higher in 2004.
- More than 154,000 more jobs could have been realized from seller telephone marketing in 2003 and about 262,000 might have resulted from this channel in 2004. Seller telephone marketing employment would have been about 7% higher in 2003 and 12% higher in 2004.