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**SENT BY FAX AND EMAIL**

Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, ON K1A 0N2

**Attention: DNCL Operations CISC Subcommittee**

Dear Members of the Subcommittee:

**Re: Telecom Public Notice CRTC 2006-4  
Implementation and Operational Issues  
Do Not Call List Framework**

1. The following comments are submitted on behalf of the Consumers Association of Canada (Manitoba Branch) and the Manitoba Society of Seniors ("CAC/MSOS") for consideration by the DNCL Operations CISC Subcommittee. CAC/MSOS appreciates the opportunity to participate and hopes its written submission will be of assistance to the CISC Subcommittee when preparing its report to the Commission.
2. The Consumers Association of Canada (Manitoba Branch) is an independent, non-profit volunteer organization dedicating to educating and informing consumers in Manitoba, and to representing consumer interests to all levels of government and all sectors of society. It believes consumers are empowered when they are fully informed and are able to make the best choices regarding the products and services they buy, and part of that is the decision whether or not to be contacted by telemarketers.
3. The Manitoba Society of Seniors represents Manitoba seniors by promoting their needs and concerns through a united voice on issues that affect them. In the context of the national DNCL, MSOS is particularly concerned about protecting vulnerable seniors from unscrupulous and aggressive telemarketers who employ pressure tactics to make sales.
4. Together, CAC/MSOS have participated in a number of proceedings before the Commission, and this proceeding raises a number of important consumer protection issues and principles. CAC/MSOS hopes that the national DNCL will operate in a manner that recognizes and respects both the rights of those consumers who choose not to be contacted by telemarketers without their consent and those who wish to be contacted about products and services available to them.
5. Paragraphs 34 and 35 of Telecom Public Notice CRTC 2006-4

describes in general the operational and implementation issues that will be examined by the CISC Subcommittee, including such things as registration on the DNCL, the process for making complaints, protection of privacy and the rates to be charged. A letter dated March 2, 2006 from the Commission's Director of Consumer Affairs provides a more specific list of issues that will be addressed. What follows are general comments on the new legislation and then specific comments on each particular issue.

### **General Comments on the DNCL**

6. CAC/MSOS is in the process of conducting a survey of Manitoba consumers for the specific purpose of this proceeding. A small preliminary sample of survey results from Winnipeg residents reveals that consumers see the DNCL as a positive initiative to deal with the problem of unwanted calls by telemarketers. Consumers surveyed to date overwhelmingly indicated they intend to register on the DNCL when it becomes operational.

7. The preliminary survey results also showed, however, that while most respondents had heard of the proposed DNCL, they were not aware of specific details of the amendments to the *Telecommunications Act* that established its framework, in particular the exemption provisions. The vast majority of respondents were surprised to learn that even if they register their telephone number on the DNCL, they may still receive a large number of calls.

8. According to s. 2.1 of the amendments to the Act, there is to be a review of the DNCL after three years. CAC/MSOS believes that it is vitally important to a proper review of the legislation that there be accurate monitoring and recording of complaints, not only relating to telemarketers subject to the DNCL, but also to those falling under one of the exceptions. If, for instance, it turns out that consumers are still experiencing problems with unwanted and unsolicited calls even after the DNCL is implemented, changes to the legislation might be warranted so there are fewer exempted callers.

9. Based on the survey results to date and its own expertise, CAC/MSOS believes there are four key elements to establishing an effective DNCL, namely:

- public awareness campaigns so consumers know how the national DNCL will work and so they will have sufficient information to make fully informed decisions about whether or not they wish to be contacted by telemarketers;
- making the DNCL as consumer-friendly as possible;
- it is imperative that there be meaningful and consistent enforcement of the rules, including proper monitoring of complaints, thorough and timely investigations, and the imposition of penalties against violators; and
- the cost of the DNCL should not be borne by consumers.

## **SPECIFIC ISSUES**

### **I) Management of the National DNCL Database**

#### **(a) What factors and/or requirements should be taken into account when addressing the preferred technological alternative for structuring the DNCL?**

10. Public Notice 2006-4 refers to DNCL models in both the U.S. and the U.K. CAC/MSOS has reviewed information about those models and notes there are positive aspects to each one that could be adopted. As both models have been in place for some time now, the CISC Subcommittee is in the fortunate position of being able to look to these jurisdictions to see what works best so that the most efficient and effective national DNCL can be established in Canada.

11. Paragraph 34 of Public Notice 2006-4 refers to available technologies adopted in both the U.S. and U.K. ranging from a fully automated system to one with live operators to online registration. CAC/MSOS recommends that when structuring the DNCL, the focus should be on what is easiest and most convenient for consumers. The new legislation is intended to address the inconvenience and annoyance of unwanted calls and therefore the balance of interest should favour consumers. For example, CAC/MSOS is concerned that if the process for registering on the DNCL or making a complaint is too cumbersome, confusing or inconvenient, it will discourage consumers and defeat its intended purpose.

12. The preliminary survey results obtained by CAC/MSOS to date show that toll-free telephone and online registration are the preferred methods of registering telephone numbers and making complaints. Of particular importance to seniors, who make up a smaller percentage of Internet users, is having a live operator to speak with and CAC/MSOS therefore recommends at least the option of speaking with a live operator as opposed to a fully automated system.

13. Given that Manitoba consumers may identify other possible options once the survey is complete, CAC/MSOS recommends that there be as much choice as possible when it comes to registering on the DNCL or making a complaint. In addition to a toll-free number or online registration, consumers should, for instance, have the option of registering in writing or by fax to a toll-free number.

14. In addition to easy access, CAC/MSOS also recommends the DNCL be structured in such a way as to capture as many forms of unwanted telemarketing as possible, in particular telemarketing faxes. According to the proceedings before the Standing Senate Committee on Transport and Communications on Bill C-37, unsolicited faxes do not appear to be part of the new national DNCL.<sup>1</sup>

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<sup>1</sup> Proceedings of the Standing Senate Committee on Transport and Communications, First Session, 38<sup>th</sup>

15. Unwanted and unsolicited faxes are just as much of an inconvenience and a nuisance as unwanted and unsolicited telephone calls, and they are costly as well, particularly with respect to residential consumers with fax machines in their homes. Fax telemarketing uses up the recipient's paper and toner and needlessly ties up what is often the only phone line in the house. This is something the Commission specifically noted in Telecom Order CRTC 96-1229.<sup>2</sup>

16. In the U.K., fax telemarketers are not permitted to contact an individual without prior consent. In addition, in the U.K., both voice calls and fax telemarketing are covered under the DNCL legislation and separate lists are maintained for each.<sup>3</sup> CAC/MSOS recommends a similar approach be adopted in Canada.

17. CAC/MSOS also recommends that the national DNCL be designed to accommodate an anticipated large volume of registrations as soon as it becomes operational. If the DNCL is not equipped to handle a significant number of registrations right away, it will frustrate consumers and discourage them from registering.

**(b) What factors and/or requirements should be taken into account when determining the most effective and efficient manner for consumers to register and to verify their registration on the national DNCL?**

18. CAC/MSOS recommends that registration of telephone numbers on the DNCL be as easy as possible for consumers and that their numbers be placed on the list as quickly as the method of registration allows. For example, online registration should enable the individual's number to be placed on the DNCL immediately. In addition, at the time of registration, consumers should be informed how long it will take their number to be placed on the list and when they can expect to stop receiving calls.

19. CAC/MSOS also recommends that the DNCL registration process be structured in such a way as to allow consumers to register more than one residential or business telephone number at a time. It should also allow consumers to register cell phone numbers and fax numbers.

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Parliament, 2004-05; November, 2005, at p. 23:24.

2 See p. 2, where the Commission stated, "... unsolicited fax calls cause greater inconvenience than unsolicited live voice calls since there is no means by which persons can interact with or hang up on the faxing party while the fax is being transmitted" and "... unsolicited fax transmissions require use of the recipients' own materials and equipment to deliver the unsolicited message."

3 Sections 20, 21, 25 and 26 of U.K. *Privacy and Electronic Communications (EC Directive) Regulation 2003*. Note also that in the U.K., unlike in Canada, telemarketers are not allowed to send faxes without the prior consent of the individual. Because of this, the do not call list for fax telemarketers is primarily for businesses, although individuals may register their fax numbers for added protection. Also note that in the U.K., direct marketing by mail and email are also included. This legislation can be accessed at <http://www.opsi.gov.uk/si/si2003/20032426.htm>

20. Verification of registration is very important to CAC/MSOS because it is vital to proving violations of the rules. At the time of registration, consumers should be provided with confirmation of registration, for instance by being given a unique registration number if it is done by toll-free telephone (which is the case under the current rules), or by return email if it is done online.

21. As the protection of vulnerable seniors from aggressive and unwanted telemarketing is another one of the particular concerns to CAC/MSOS, it is also recommended that the DNCL allow for the registration of another individual's number in certain circumstances. For example, if a person's elderly parent is being pressured by telemarketers and wants them to stop calling, that person could register the parent's number on their behalf if the parent has given consent.

22. As to what information needs to be obtained at the time of registration, CAC/MSOS believes that no more information than is necessary be collected and that all information be treated as confidential by the DNCL operator and the Commission. All that is required to be given to telemarketers are the phone numbers of those registered on the DNCL.

**(c) For how long should a registered number remain on the national DNCL?**

23. The current telemarketing rules require telemarketers to maintain individual do not call lists for three years. In the U.S., a person's number remains on the national DNCL for five years, and in the U.K., a number remains on the list until the individual no longer has that number.<sup>4</sup>

24. CAC/MSOS does not believe that numbers on the DNCL should be automatically removed after a certain period of time, whether it be three years or five years or some other date. Automatic removal from the DNCL fails to respect consumers' rights not to be contacted and places the onus on consumers to repeatedly re-register on the DNCL. Consumers may not be aware the DNCL is not permanent and become frustrated and annoyed when calls start again after a certain period of time.

25. CAC/MSOS recommends that telephone numbers remain on the DNCL until the person requests that it be removed. Consumers that have chosen not to be contacted by telemarketers should have that decision respected and only if they decide in the future that they wish to be contacted should their number be removed from the DNCL.

26. CAC/MSOS is not opposed to removing numbers if they are disconnected and the individual no longer uses that number, however only if the disconnection or termination of service is permanent. Temporary suspension or disconnection should not be sufficient

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<sup>4</sup> See s. 26(2) which states: "OFCOM shall remove a number from the register maintained under paragraph (1) where they have reason to believe that it has ceased to be allocated to the subscriber by whom they were notified pursuant to paragraph (1)." This legislation can be accessed at <http://www.opsi.gov.uk/si/si2003/20032426.htm>

grounds to remove a number from the DNCL because it forces the individual to have to re-register again.

27. CAC/MSOS is also not opposed to consumers being able to temporarily accept calls from certain telemarketers even if their numbers are on the national DNCL. This is what is done in the U.K., where the legislation allows individuals to notify a telemarketer that he or she does not object, for the time being, to be contacted and they can withdraw that notification at any time.<sup>5</sup>

**(d) In order to ensure the currency and accuracy of the national DNCL, how, by whom and how often should it be updated?**

28. According to Public Notice 2006-4, the Commission anticipates the Consortium will conduct the process for selecting a prospective DNCL operator and negotiate and execute the contractual agreement.

29. It is assumed that the national DNCL operator will be responsible for maintaining the DNCL, including updating the lists. CAC/MSOS recommends that the national DNCL operator chosen by the Consortium and the Commission be required to update the list as often as possible to keep it accurate and current. If the national DNCL is not maintained properly, consumers will continue to receive unwanted calls and it will lead to frustration and dissatisfaction with the registry.

**II) Accessing the List**

**(a) What are the operational issues associated with enabling telemarketers to efficiently download lists?**

30. CAC/MSOS is not offering any specific recommendations on this point, other than to say that the DNCL should be structured in such a way as to ensure telemarketers are able to download lists in the most efficient manner possible so they can stop calling those on the list as soon as possible.

**(b) What are the issues, if any, associated with the imposition of a requirement on telemarketers to identify the companies on whose behalf they are accessing the national DNCL?**

31. CAC/MSOS supports the imposition of a requirement that telemarketers identify all

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<sup>5</sup> See for example s. 21(4) and (5) of U.K.'s *Privacy and Electronic Communications (EC Directive) Regulations 2003*. This legislation can be accessed at <http://www.opsi.gov.uk/si/si2003/20032426.htm>

companies on whose behalf they are accessing the national DNCL. It believes that records should be kept by the national DNCL of the names of telemarketers accessing the list and the companies on whose behalf they contact consumers. This information is vital to tracking and investigating complaints because consumers may only be given the name of the company and not the specific telemarketer.

32. In addition, s. 72.02 of the Act allows the Commission to impose a monetary penalty against an employee or agent of a company. Keeping accurate records of companies on whose behalf telemarketers are contacting consumers is relevant to the effective enforcement of the law and locating companies who violate the rules. This also places a greater incentive on companies to abide by the rules and ensure any telemarketers they contract with to call on their behalf comply with the law.

### **III) Processing Complaints of Non-Compliance with Telemarketing Rules**

#### **(a) What information should a complainant be required to provide in order to register a complaint, taking into account privacy issues?**

33. CAC/MSOS believes that the national DNCL will only be effective if complaints are properly and thoroughly monitored and investigated, and a key component of that is obtaining sufficient information at the time a complaint is made. That information includes the name of the telemarketer or company on whose behalf the consumer was contacted, and the date and time of the call. In addition, complainants should also, if possible, provide confirmation that they either registered on the national DNCL or on a company-specific list. For those complainants registered on the national DNCL, the DNCL operator should be able to confirm registration if the complainant is not able to. For those complainants registered on company-specific do not call lists because the caller is exempt from the national DNCL, confirmation of registration could be provided by the caller as well, which is why unique registration numbers or some form of confirmation is essential.

34. Other information relevant to the investigation of complaints includes such things as the nature of the call, for instance if the telemarketer is aggressive, pushy or rude, and also the impact the call had on the complainant, for instance it resulted in missing an important call or forced the complainant to incur costs. This information is relevant because it shows aggravating factors that should be taken into account when determining the appropriate penalty.

35. CAC/MSOS recommends that information provided by a complainant be treated as confidential by the Commission and only as much information as necessary should be disclosed to the telemarketer.

#### **(b) Are there any concerns/issues with respect to telemarketers suppressing or**

**disguising their calling number origination? If so, what can be done to address this matter?**

36. Despite the current telemarketing rules imposed on voice call and fax telemarketers<sup>6</sup>, consumers have continued to report to CAC/MSOS incidents where telemarketers are disguising their originating calling number. Complaints of this kind are serious, as they show a deliberate intent on the part of the telemarketer to avoid detection.

37. In Manitoba, MTS currently provides, free of charge, call tracing to deal with unwanted and harassing calls. Although this is a beneficial service offered by MTS, CAC/MSOS does not believe it is the appropriate way of dealing with this situation. This service is intended to deal with harassing or threatening phone calls and matters that are dealt with by criminal charges and are not meant for tracing telemarketers attempting to evade the Commission's rules. Information gathered by MTS about the caller is not disclosed to the customer, but only to police if charges are laid.

38. CAC/MSOS recommends that the Commission, the DNCL operator and the telephone service providers work together to do all they can to assist complainants in tracing these calls and punish violators through the imposition of monetary penalties or disconnection of service. In the U.K., the legislation gives telephone companies the authority to trace malicious or nuisance calls by overriding anything done to disguise calling number origination and allows that information to be disclosed and used for the purposes of investigating violations of the law.<sup>7</sup> The U.K. legislation does not appear to be limited to criminal matters and CAC/MSOS recommends similar legislation to enable these telemarketers to be located and dealt with by the Commission.

39. In addition to telemarketers disguising their originating numbers, CAC/MSOS has also received complaints about alternate numbers and the difficulties experienced when calling that number and being able to request being put on the company-specific do not call list. CAC/MSOS is concerned that telemarketers may be providing alternate numbers when it is not necessary to do so and only to put up an additional barrier that makes it more difficult for consumers to get on the do not call list.

40. CAC/MSOS recommends that the Commission take all necessary steps to ensure telemarketers do not use this technique to avoid detection or make it difficult for consumers to be placed on do not call lists.

**(c) What, if any, information should be kept by telemarketers in order to facilitate the**

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<sup>6</sup> The current telemarketing rule for voice calls is that the call must display the originating calling number or an alternate number where the caller can be reached (except where number display is unavailable for technical reasons). The current telemarketing rule for fax telemarketers is that the fax must display the originating calling number or an alternate number where the sender can be reached (except where number display is unavailable for technical reasons).

<sup>7</sup>See s. 15 of U.K.'s *Privacy and Electronic Communications (EC Directive) Regulation 2003*. The legislation can be accessed at <http://www.opsi.gov.uk/si/si2003/20032426.htm>.



**investigation of a violation of the telemarketing rules and for how long should this information be kept by telemarketers?**

41. CAC/MSOS believes it is critical to the effective enforcement of the national DNCL rules and telemarketing rules that telemarketers keep proper records of such things as calls made, on whose behalf those calls were made, and requests by individuals to be placed on do not call lists. Failure to keep proper records should be regarded as a violation of the rules and there should be ongoing monitoring by the DNCL operator or the Commission to ensure telemarketers are respecting the wishes of consumers who do not want to be called.

42. Section 72.12(1) of the amendments to the *Telecommunications Act* states that proceedings against a telemarketers must be taken within two years of the date the Commission becomes aware of the violation. CAC/MSOS hopes that complaints will be dealt with by the Commission as expeditiously as possible and certainly well before the two-year limitation period expires, however given the legislation, it recommends that telemarketers be required to keep records of the things noted above for at least two years, if not longer to ensure no relevant information is lost to the Commission when investigating complaints.

**IV) Rate Structure**

**(a) What factors and/or requirements should be taken into account when addressing the structure of rates charged by the national DNCL operator?**

43. From a review of DNCL models in the U.S. and the U.K., telemarketers may pay different rates to access the lists depending on whether it is a small company accessing a particular geographical area or a large company accessing lists across the country.

44. CAC/MSOS is not offering any specific recommendations as to the rate structure but wishes to reiterate that regardless of the ultimate rate structure chosen, there should be no cost to consumers for the operation and maintenance of the DNCL and enforcement of the rules. Consumers should not have to pay for the right not to be contacted by telemarketers.

**V) Privacy and Security**

**(a) In addition to telephone numbers, what information should the national DNCL operator retain and for how long should such information be retained?**

45. Identifying information provided by individuals wishing to register on the DNCL or information about complaints should be kept confidential by the DNCL operator. CAC/MSOS recommends that this information be retained for at least two years to ensure it is not lost before the expiry period for proceedings to be commenced against a telemarketer. CAC/MSOS suggests a longer period of time than two years because it will also assist the Commission in determining whether there is a history of complaints against a particular telemarketer or company.

## **VI) Awareness Program**

### **(a) What is the most effective way to educate the public and telemarketers about the telemarketing rules?**

46. Based on the surveys results obtained to date by CAC/MSOS, although over half of consumers knew about the proposed DNCL, none of them knew about the exceptions. CAC/MSOS is very concerned that without sufficient public awareness campaigns, consumers will be surprised, angered and disillusioned when they realize that even though they have registered on the DNCL, they will still receive calls from a number of telemarketers and organizations. In the proceedings before the Senate Committee on Transport and Communications, it was expressly noted that over 60% of telephone calls in Canada are from people exempted from the national DNCL.<sup>8</sup>

47. Given the significant exceptions to the national DNCL, CAC/MSOS believes that the telemarketing rules governing the exempt telemarketers should play an equally important role and compliance should be vigilantly monitored. It recommends public awareness and education campaigns that focus not only on the national DNCL, but on the telemarketing rules in general.

48. Some suggestions for effective means of getting the word out include regular billing inserts, regular notices to consumers separate from their bills, information on telephone company websites and the Commission's website, and information displayed prominently in telephone directories. CAC/MSOS recommends that any such information be in plain language and easy to access by consumers.

49. In addition to general information about the national DNCL and the telemarketing rules, CAC/MSOS believes it is very important to also warn consumers about scams they may encounter when the DNCL becomes operational. In both the U.S. and the U.K. there were incidents of companies or individuals telling consumers they would register them on the national DNCL for a fee. It is crucial that consumers be made aware of such fraudulent practices and that they know registration on the national DNCL or on company-specific lists is free of charge.<sup>9</sup>

50. CAC/MSOS also recommends that information packages be provided to companies and the telemarketers on whose behalf they contact consumers so they are fully informed on the new rules and what is expected of them.

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8 Proceedings of the Standing Senate Committee on Transport and Communications, First Session, 38<sup>th</sup> Parliament, 2004-05; November, 2005, at p. 23:15.

9 See for example the warning on U.K.'s Telephone Preference Service website about "Bogus TPS Calls", where callers pretend to be calling from the national DNCL and ask for payment to complete the registration. This can be accessed at <http://mpsonline.org.uk/tps>

**Conclusion**

51. CAC/MSOS hopes its comments and recommendations will be of benefit to the CISC Subcommittee and would be pleased to provide any further information that may be of assistance.

Yours truly,

***Original signed by***

Beverly Froese  
Attorney

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