CANADIAN MARKETING ASSOCIATION
CANADIENNE DU MARKETING
CMA|ACM

27/03/20061 Concorde Gate, Suite 607, Don Mills, ON M3C 3N6
T. 416-391-2362 ● F. 416-441-4062 ● www.the-cma.org

March 27, 2006

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

BY E-MAIL AND FAX

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**

The Canadian Marketing Association (CMA) welcomes the opportunity to provide the Canadian Radio-television and Telecommunications Commission (CRTC or "the Commission") with this submission on Telecom Public Notice CRTC 2006-4 (2006-4). CMA is the largest marketing association in Canada with 800 corporate members and subsidiaries, including the country's major financial institutions, insurance companies, publishers, retailers, charitable organizations, agencies, relationship marketers and those involved in e-business and Internet marketing. CMA members are engaged in a range of marketing activities and reach Canadians using a variety of media, including the telephone. CMA statistics estimate that marketers support over 482,000 jobs and generate more than $51 billion in overall annual sales through various marketing channels[1].

1.0 Background

1. Use of the telephone for marketing is growing in its economic importance both in terms of employment and the economic activity it generates. A CMA economic impact study of direct response advertising in Canada, found that the total number of

[1] Canadian Marketing Association 2001 Fact Book: A report on the economic impact of Direct Response Advertising in Canada.

jobs generated throughout the economy by telemarketing was 270,000 and that the total sales generated through telemarketing were $16 billion[2].

2. Maintaining constructive relationships with consumers is paramount to the CMA and its members. Therefore, we are very supportive of initiatives that have the effect of reducing any annoyance or frustration that might be experienced by consumers as a result of marketing activities.

3. CMA has a mission to create an environment that fosters the responsible growth of marketing in Canada. The Association and its members recognize the essential role of self-regulation in meeting this objective and, therefore, have a genuine interest in engaging in business practices that contribute to building consumer confidence and trust. For this reason the CMA has a strong history of self-regulation. In the early 1990s, the Association established a mandatory *Code of Ethics and Standards of Practice* (CMA Code) with which all of our members must adhere as a condition of membership. The CMA advocates that interactions with consumers be transparent and that respect for consumers be exercised at all times. For this reason, our Code contains specific marketing rules. Some of the specific rules on telemarketing have formed the basis for past CMA submissions on telemarketing regulation, and are presented as recommendations in this submission.

4. Most businesses in Canada use the telephone to provide customer service, to offer existing customers goods or services and to acquire new customers or donors. This interaction is usually carried out in two ways; either through in-house call centres or, by contracting the services of independent third-party call centres. CMA's membership includes many of Canada's major marketers who must comply with the telemarketing rules in our Code, including, since 1993, the mandatory requirement to use our Do Not Contact Service. CMA established our Do Not Contact service both to reduce consumer annoyance and to help marketers avoid wasting resources contacting consumers who are not interested in being contacted by telephone, but who might prefer being contacted through a different medium. Of the approximately

[2] Canadian Marketing Association 2001 Fact Book: A report on the economic impact of Direct Response Advertising in Canada.

2 million businesses in Canada however, the vast majority are not members of the Association and therefore do not have to comply with the CMA Code or use our Do Not Contact Service. Many of these businesses do engage in marketing using the telephone and too often have little in the way of best practices or self-regulatory guidelines to direct their activities. Consequently, CMA has been a proponent of establishing a sensible regulatory framework for telemarketing that includes a national Do Not Call List.

5. CMA recognizes that while not all consumers enjoy being contacted by telemarketers there are some that find the telephone essential and others (single parents, seniors and the disabled) that find it very safe and convenient to use for their commercial transactions. Indeed, one recent North American survey found that over 30% of respondents had made a purchase through a telemarketer in the previous year[3]. Any regulation must protect consumer interest, telemarketing jobs and the economic contribution made by this growing medium.

6. CMA also understands that the majority of Canadians support the idea of a national DNCL. As noted above we have operated our own Do Not Contact Service since 1989. Telemarketing is regarded by consumers as a more intrusive form of marketing than other marketing channels. Indeed, research conducted by the CMA in 2005 found that only 7.7% of respondents indicated that they "don't mind if companies I am not currently dealing with call me on the phone to discuss new offers or promotions".[4]

7. In addition to encouraging consumer-oriented interactions, and to establishing ethical standards and practice for our members and the industry, CMA has actively supported and participated in the determination of a number of government and CRTC initiatives related to telemarketing. The Association has contributed both to the parliamentary process that established the national DNCL and to the regulatory processes that have resulted in the establishment of the CRTC's current

[3] DMA's Telemarketing Survey, May 2003.

[4] Making and Breaking Loyalty: A Guide to Attracting New Customers. Canadian Marketing Association, 2005.

telemarketing rules[5]. CMA's desire is to ensure that, while giving due regard to consumer concerns, the Commission guards against both unintended economic consequences for the growing telemarketing industry and barriers to smaller Canadian businesses and charitable fundraisers using the telephone as a marketing tool.

8. The CMA is very pleased with the establishment of a centrally administered national Do Not Call List (DNCL). The new law will help protect ethical telemarketers while dealing with irresponsible telemarketers who cast a shadow on legitimate practitioners. The CMA is committed to contributing to the creation of a list model that will provide a simple and effective means for consumers to avoid unwanted calls, will enable Canadian business to share the costs of administration, and will strive for a uniform approach to Do Not Call administration in the North American marketplace.

9. Also, the CMA is encouraged that Bill C-37[6] granted the Commission the power to levy monetary penalties against telemarketers who do not follow the DNCL and other telemarketing rules. We maintain our opinion that effective enforcement is imperative to successful telemarketing regulation, and are satisfied that the legal basis has been put in place to achieve that.

10. Further, the CMA believes in the necessity of a regulatory framework – broader than the creation of an effective national DNCL – to govern telemarketing in Canada. Particularly in light of the CRTC's increased enforcement powers, we are confident that both consumers and the telemarketing industry will benefit from carefully considered CRTC telemarketing regulations that are clear, consistent, universally applied and effectively implemented. CMA will take this submission as opportunity to present our recommendations for a complete set of Canadian telemarketing rules.

---

[5] CMA has also worked with governments on measures aimed at addressing telemarketing fraud, and contributed to the processes which resulted in amendments made to the Competition Act and the creation of the **Personal Information Protection and Electronic Documents Act.**

[6] *An Act to amend the Telecommunications Act*, S.C. 2005, c.50 (the amended Act)

2.0 Carefully Considered Telemarketing Rules

11. While CMA supports the necessity of telemarketing rules, in view of the significant economic contribution generated by telemarketing in Canada, and the constitutional right of commercial free speech, we urge the Commission to take the necessary time to craft a practical and balanced regulatory regime for telemarketing.

12. In 2006-4 the Commission pointed out that the establishment of telemarketing rules (beyond DNCL operational details) will not have a significant impact on the Consortium process for selecting and negotiating and executing the contractual agreement with the prospective DNCL operator, and that these processes can move forward parallel to the regulatory consultations. On the contrary, CMA believes that this is true only to a limited extent; indeed questions around DNCL scope – for example the question of B2B telemarketing, or matters relating to the compliance continuum – are very material to DNCL operations and any related contract.

13. CMA urges the Commission to proceed cautiously, to ensure both that it has received and reviewed input from all interested parties and that it allows for clarification and debate before moving ahead with the important effort of establishing revised telemarketing regulations.

14. In this submission CMA suggests a set of telemarketing rules that we believe represent a fair, balanced and complete set of regulations for the telemarketing industry. Having said that, we recognize that other interested parties will have additional suggestions. The CMA respectfully requests the opportunity to comment on any other proposed telemarketing rules in addition to those detailed below before the CRTC issues its decision on the complete set of telemarketing rules. We recognize that this type of consultation and debate between interested parties requires additional time, but, as mentioned above, we are of the belief that both consumers and the telemarketing industry will benefit from carefully considered CRTC telemarketing regulation, regardless of the time required to achieve them.

3.0 Vocabulary and Definitions

15. As the Commission and interested parties work to establish improved, clarified and consolidated Canadian telemarketing regulation, the importance of centrally agreed upon vocabulary, definitions of terms and scope of considerations becomes clear. In order to compare submissions and conduct constructive debate about the issues, CMA recommends that the CRTC work with interested parties to come to mutually agreeable definitions and provide said definitions as a framework for continuing discussion on the establishment of telemarketing regulation.

3.1 Definition of "Telemarketing": Clarifying Scope

16. Within existing telemarketing regulations, the CRTC has defined telemarketing as *"the use of telecommunications facilities to make 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. This includes solicitation of donations by or on behalf of charitable organizations*[7]".

17. CMA recommends slight modifications be made to this definition to assist in clarifying the scope and the category of unsolicited communications it wishes to regulate.

18. First, CMA recommends that the Commission clarify that telemarketing rules are limited to the central issue of protecting the interest of consumers. This could be accomplished by adding "to make unsolicited calls *to consumers* for the purposes of solicitation" to the above definition.

19. Second, CMA encourages the Commission to be clear as to what "solicitation" does not include. Such clarity would, for example, protect critical non-fundraising telephone activities of the non-profit sector in the important area of volunteer

[7] This language has been used in various CRTC decisions starting from the early 1990s including Telecom Decision CRTC 2004-35, 21 May 2004, at paragraph 12.

recruitment. Failure to clarify the definition could lead to the unintended effect of prohibiting an activity that is central to the health of non-profit organizations.

20. The CMA recommends that the following revised definition be accepted and incorporated into the draft of telemarketing regulations going forward:

    Telemarketing: the use of telecommunications facilities to make unsolicited calls *to residential consumers* 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 *(not including volunteer time)*, whether directly or indirectly and whether on behalf of another party. This includes solicitation of donations by or on behalf of charitable organizations[8]".

3.2 Definition of "Calls": Includes Voice and Fax

21. It is important to note that extrapolating from existing CRTC telemarketing regulation, within the definition of "calls", the Commission includes marketing by telephone and marketing by facsimile (fax). Further, within the definition of marketing by telephone, the Commission has included live voice calls and calls made by an automatic dialing and announcing device (ADAD). CMA recommends that it be clarified that coverage of both telephone (including ADAD) and fax marketing is being included in its consideration of telemarketing regulation.

3.3 "Telemarketer" vs. "Seller"

22. CMA feels that it is necessary to standardize language when referring to the organization on whose behalf telemarketing calls are being made (the seller) and the fact that often the seller is not initiating calls themselves, rather using a third party agency or call centre (a telemarketer).

[8] This language has been used in various CRTC decisions starting from the early 1990s including Telecom Decision CRTC 2004-35. 21 May 2004, at paragraph 12

23. The CMA believes that a clear understanding of the differences between "telemarketer", "seller" and "service provider" are necessary, and therefore propose the following be accepted by the Commission and incorporated into the draft of telemarketing regulations going forward [9]:

Telemarketer: Any person or business who, in connection with telemarketing, initiates telephone calls or faxes to a customer for the purposes of telemarketing.

Seller: Often referred to as "the marketer", includes any person or business who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. A Seller also may be a Telemarketer, if it is calling on its own behalf.

Service Provider: Includes any person or business that provides assistance to sellers or telemarketers to engage in telemarketing, such as marketing agencies and list brokers.

3.4 Telemarketing to Consumers vs. to Business

24. The central goal of telemarketing regulation is the protection of the interests of consumers. Within the marketing industry, there is a clear distinction – in terms of definition and practices – between marketing to consumers and marketing to business.

25. In the CMA Code, consumer marketing and business-to-business marketing are defined as follows:

Consumer marketing: Marketing products or services to individuals when they are purchasing for personal or household use.

[9] Modeled from definitions provided in "National Do Not Call Registry - Entity Definitions" , United States National Do Not Call Registry website: https://telemarketing.donotcall.gov/entity.aspx

Business-to-business (B2B) marketing: Marketing products or services for business use to other companies, government bodies, institutions and other organizations.

CMA believes that clarity surrounding these terms is important going forward, particularly as it regards consideration of scope of proposed regulations and telemarketing rules, and recommends that these are accepted by the Commission and incorporated into the draft of telemarketing regulations going forward.

3.5 Existing Business Relationship

26. Section 41.4 (b) of the amended Telemarketing Act defines existing business relationship for the purposes of telemarketing as follows:

Existing business relationship: means 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.

27. CMA recommends that the Commission adopt this definition for reference in all telemarketing rules – including those beyond DNCL rules – and incorporate it into the draft of telemarketing regulations going forward.

3.6 Predictive Dialing Devices; Abandoned Call; Abandonment Rate

28. In the absence of CRTC definitions, following from our submission in response to Telecom Public Notice 2001-34[10], CMA suggests the following be accepted and incorporated into the draft of telemarketing regulations going forward:

    Predictive Dialing Devices (PDDs): Sometimes called "automatic dialing devices", any system or device that initiates outgoing call attempts from a pre-determined list of phone numbers, based on a computerized call placing algorithm.

    Abandoned Call: A call placed by a predictive dialer to a consumer, which, when answered by the consumer, has no live agent available to speak to the consumer within two seconds.

    Abandonment Rate: The percentage of calls that are answered by the consumer, for which there is no live agent available.

3.7 Automatic Dialing and Announcing Devices (ADADs):

29. CMA notes that there is sometimes confusion surrounding the differentiation between PDDs and ADADs. In our view the difference is that ADADs not only use equipment to replace manual dialing of telephone numbers, but also convey a pre-recorded message to the number called. Whereas PDDs usage often provides the called party with a live operator rather than a pre-recorded or synthesized voice message[11] (live voice telemarketing), ADADs are used specifically to convey a pre-recorded message.

[10] CMA submission re Public Notice CRTC 2001-34: Review of Telemarketing Rules, dated August 17, 2001.
[11] Telecom Public Notice CRTC 1993-58.

Clarifying this distinction, CMA suggests that the following definition, slightly revised from that found in Telecom Decision CRTC 94-10, be accepted and incorporated into the draft of telemarketing regulations going forward.

Automatic Dialing and Announcing Devices (ADADs): Automatic equipment capable of storing or producing telephone numbers to be called (PDD) which is used, alone or in conjunction with other equipment, to convey a pre-recorded or synthesized voice message to the number called.

3.8 Voicecasting

30. Adding to the confusion is the addition of the term voicecasting[12] to telemarketing vocabulary. While used in conjunction with PDDs, voicecasting is a mechanism that delivers messages directly to the voice mailboxes of consumers without causing their handsets to ring. Voicecasting is differentiated from traditional ADAD calling in that while ADADs sometimes do leave messages in consumer voice mailboxes, the consumer's phone will ring and consumers will have the option to answer the telephone to hear the message in real time.

31. CMA suggests that the following definition, slightly revised from that found in Rogers Wireless December 6, 2005 Application to the CRTC: *Voicecasting to Wireless Subscribers*, be accepted and incorporated into the draft of telemarketing regulations going forward:

Voicecasting: Is a type of ADAD calling whereby telemarketers deliver synthesized voice messages directly into the voice mailboxes of consumers without causing their telephone handsets to ring. No action is required on behalf of customers to have a message placed in their voice mailbox.

[12] Voicecasting is a term that has been trademarked by Infolink Technologies Inc: http://www.infolinkca.com/?pg=corporate

3.9 Seller Specific Internal Do Not Call List

32. Section 47 (3) of the revised *Telecommunications Act* mentions the requirement for those exempt from the national DNCL to maintain their own, distinct, do not call lists. For clarity, CMA recommends that such lists be called "seller specific internal do not call lists" and that the CRTC accept and incorporate the following definition – based on the CMA Code – into the draft of telemarketing regulations going forward:

    Seller specific internal do not call list: A list of current customer, prospect consumer or business telephone and/or fax numbers of those persons or businesses who have requested that they not be contacted by the seller's organization. It is used to cross-reference and purge that information from any list to be used for any telemarketing campaign by that organization.

4.0 Responsibility for Telemarketing Regulation

33. The CRTC regulates telecommunications and telemarketing, the latter authorized by section 41 of the *Telecommunications Act*, 1993, c.38.[13]

34. The CMA is of the opinion that all efforts should be made to ensure that the regulation of telemarketing be at a single jurisdictional level, federal, and regulated and enforced by one regulatory agency, the CRTC. Lack of singular, uniform telemarketing rules nationally leads to consumer confusion, difficulties for the Commission in their efforts to resolve consumer complaints and increased barriers to Canadian business. CMA works to encourage provincial law makers and regulators to leave telemarketing legislation and regulation to the CRTC, and we believe that this will be more likely if the CRTC establishes clear rules and effectively enforces them.

[13] This section states:

> 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.

5.0 Enforcement of Telemarketing Regulation

35. Historically, many parties interested in telemarketing regulation have submitted that the need is not for telemarketing restrictions to be strengthened, but rather that existing regulations are effectively enforced. Further there has been agreement that effective implementation requires the direct regulation of telemarketers by the CRTC[14].

36. To this end, the CMA believes that telemarketing rules should be removed from the tariffs of incumbent local exchange carriers (ILECs). In light of the amended Act, and specifically the new power the Commission will have to impose administrative monetary penalties (AMPs), the inclusion of telemarketing rules within ILEC tariffs is no longer necessary.

37. CMA agrees with the CRTC's assertion in 2006-4, paragraph 42 that the amended Act extends the ability for the Commission to apply telemarketing rules and related AMPs on both sellers and/or telemarketers who contravene any telemarketing rules set out in Commission determinations. At the same time, enforcement guidelines must make it clear that due diligence on the part of one of these parties should be a valid defence in the case of a violation. In this regard, the CMA recommends that the CRTC consider the establishment of "safe harbour" guidelines similar to those developed for the U.S. Do Not Call Service.

38. Current enforcement mechanisms only provide that contravention of ILEC tariffs can result in suspension or termination of service by the ILEC. This creates a conflict of interest for telecommunications service providers: not only are they forced to judge and penalize their own customers, but they are often telemarketers themselves. Also, certain nefarious telemarketers view disconnection as an acceptable cost of doing business and not as a deterrent. Even if disconnected from one service provider, these telemarketers can switch to another. As each service provider's enforcement activities are limited to its own customer base, they are not able to track previous non-compliance or to refuse service to telemarketers based on past

[14] Telecom Decision CRTC 2004-35, at paragraph 53.

violations. Further CMA receives numerous complaints from consumers who, under the current regime, find it extremely difficult to lodge a complaint when there is a contravention of telemarketing regulations. Most consumers can identify the name or telephone number of the business that has contacted them, however consumers face a huge amount of frustration when they try to identify the name of the telephone carrier being used for telemarketing calls. As stated in previous submissions to the Commission, CMA believes that it is unreasonable to force consumers to contact several telephone carriers to lodge a complaint.

39. CMA believes that the authority to impose AMPs provides for a much more practical means of enforcing the rules than the current regime.

40. We believe that moving enforcement from ILECs to the CRTC will not only address consumer dissatisfaction with enforcement, but will also greatly improve the effectiveness of telemarketing rules generally, in turn reducing consumer dissatisfaction with telemarketing as a whole and negating the need for onerous regulation. CMA maintains its position that the majority of complaints regarding telemarketing are caused by a fairly small number of non-compliant operators. We feel that attempting to solve the problems they cause by imposing unreasonable regulation unfairly penalizes the large number of telemarketers who follow the rules. On the other hand, better enforcement of agreed upon restrictions through AMPs will ensure that those who are non-complaint bear the burden of their non-compliance.

41. The CMA respectfully reminds the Commission that in Telecom Decision CRTC 2004-35, at paragraph 96, it stated that the imposition of some additional requirements on telemarketers was undertaken because the CRTC did not have the legislative power to impose fines. In light of the extension of this power, CMA is confident that a more practical and less onerous set of telemarketing rules will be imposed on the industry, while still addressing consumer concerns.

42. CMA agrees with the CRTC's suggestion in 2006-4 that contravention of both DNCL and other telemarketing rules should constitute a violation in respect of which an administrative monetary penalty may be imposed.

43. CMA respectfully reminds the CRTC of our previous suggestions that their enforcement approach should be a graduated one that may range from a formal "warning" to more serious sanctions in cases where lack of compliance with telemarketing rules continues. We renew our recommendation for proportionality of fines to frequency and severity of infractions. To that end we urge the CRTC to sponsor further detailed discussions to define a violation of telemarketing rules and regarding enforcement guidelines for the investigation of complaints and imposition of AMPs. CMA is of the position that this process must occur prior to the new DNCL going into effect.

5.1 CRTC Maintaining Enforcement Powers

44. In both Telecom Decision CRTC 2004-35, paragraph 90, and Public Notice 2006-4, paragraph 45, the Commission has considered that it would be advantageous to delegate various powers to an administrator to handle telemarketing complaints and designate persons to issue notices of violations and propose AMPs. The CMA does not support this proposal. CMA believes that complaints handling relating to the enforcement of laws and regulations are best maintained directly by the responsible government department or agency. The confidence of consumers and businesses in the fairness and impartiality of such quasi-judicial investigative processes and findings can best be maintained where these are handled by a public body.

6.0 Scope of Telemarketing Regulation

45. In Decision 2004-35 the Commission stated that telemarketing rules apply to "all unsolicited calls made for the purposes of solicitation". CMA is concerned with the extraordinary breadth of calls captured with this definition of the scope of the term "unsolicited".

46. The CMA notes that although the CRTC refers throughout its telemarketing decisions to protecting the interests of consumers, historically Commission orders regarding telemarketing regulation are not similarly limited. By this definition of unsolicited, for

example, the CRTC goes beyond the consumer interests' that telemarketing regulation is designed to protect, and appears also to capture business-to-business (B2B) calls.

47. Also, previous determinations seem to interpret unsolicited calls as capturing calls to existing customers (such as for renewal of an insurance contract, mortgage renewal or notice of a warranty expiring). CMA is concerned that there is a need to differentiate between "cold calls" made to individuals who do not have a pre-existing relationship with the marketer and those calls where the organization has an existing business or supplier relationship with the consumer. In those situations where the telemarketer is representing an organization that has an existing relationship with the individual that is being called, the call is unlikely to be perceived as a nuisance or inconvenience. If it is, the consumer has recourse by requesting that they be added to the organization's internal DNCL. In addition to the existing customer exemption in the DNCL, CMA is of the position that consideration of existing business relationships should be given in all telemarketing regulations.

48. In these two respects, the scope of the Commission's requirements extends much further than similar telephone solicitation rules in the United States, disadvantaging the Canadian industry.

49. In light of these concerns, the CMA requests that in every telemarketing rule, the Commission be very clear in its intent concerning the category of unsolicited communications it wishes to regulate. In determining said scope, the Commission must give due regard to freedom of expression and guard against unintended economic consequences for the telemarketing industry. Unintentionally capturing B2B calls and/or calls to existing customers in the scope of a telemarketing rule could lead to the unintended effect of prohibiting activities that are central to the multibillion dollar contribution telemarketing makes to the Canadian economy. On the other hand, rules such as hours of calling, identification requirements and seller specific internal DNCL inclusion should apply to all telemarketing, including calls to existing customers and to business.

7.0 Harmonization: Live Voice, Fax, ADADs and Voicecasting

50. To the greatest extent possible it is desirable to achieve harmonization of rule application to every type or channel of telemarketing. This is to say that we suggest that rules, such as hour limitations should be consistent as possible for all forms of telemarketing: fax, live voice, ADAD completed and calls using voicecasting technology.

8.0 Application of Telemarketing Rules to Those Exempt from DNCL

51. Under the amended Act, there are certain persons to whom the DNCL rules will not apply[15]. The CMA believes that it is important to clarify that the exemption from requirement to use the national DNCL does not extend to an exemption from other telemarketing rules. This is to say, for example, that while the DNCL need not be used for telemarketing communications made by or on behalf of registered charities, said charities are still limited by other telemarketing regulations, such as the requirement for marketers to identify themselves and to obey restrictions on calling hours.

9.0 Regulations Surrounding the National Do Not Contact List (DNCL)

9.1 Exemption for Business-to-Business (B2B) Communications

52. All discussion of the legislation that created the DNCL was framed by the general assumption that it will protect Canadian consumers from the annoyance of telemarketing calls. That being the case, CMA believes that it is reasonable to

[15] Those persons identified in the amended Act as being exempt from DNCL rules include telecommunications made: (i) by or on behalf of a registered charity; (ii) by or on behalf of a registered political party or nomination or leadership contestant or candidate thereof or of an association of members of such a political party; (iii) for the sole purpose of collecting information for a survey; (iv) for the sole purpose of soliciting a subscription for a newspaper of general circulation; and (v) to a person with whom the person making the telecommunication, or the person on whose behalf the telecommunication is made, has an existing business relationship and who has not made a do not call request in respect of the person on whose behalf the telecommunication is made.

expect that business-to-business telecommunication will be exempted from the new DNCL, as is the case in the U.S. model.

53. Indeed, in its observations to the report to the Senate on its deliberations on Bill C-37, the Standing Senate Committee on Transport and Communications commented that as part of the CRTC's exercise to engage in consultations in preparation for the implementation of the DNCL, the Commission "should gather information and prepare recommendations for ways in which the [DNCL] could accommodate… business-to-business calls"[16].

54. The CMA agrees with the Senate Committee that B2B calls should be accommodated clearly in DNCL regulations. In order to avoid unintended economic costs and interference in day-to-day commerce, the CMA urges the CRTC to clearly limit the application of the DNCL to the central issue of protecting the interests of consumers, and therefore clearly exempt B2B telemarketing from the DNCL component of the telemarketing regulations.

55. The CMA's anecdotal experience of running our own Do Not Call service indicates that only 3 - 5% of complaints regarding unsolicited telemarketing are from business. This is most likely as there is no privacy issue in this situation. Businesses are not homes where a family is sitting down to dinner. The marginal business interest indicates that it is not necessary to protect businesses from telemarketing through the national DNCL.

56. While we are of the opinion that B2B coverage by the national DNCL is unnecessary, we do believe that certain telemarketing rules must apply to telemarketing solicitation of businesses. For example, CMA believes that a requirement for telemarketers to maintain seller specific internal DNCLs is important to accommodate any interest businesses may have to limit their telemarketing calls. In view of the limited demand for the restriction on B2B telemarketing and the additional expense to include business telephone number on the national DNCL, it is the CMA's contention that a

[16] Observations to the Ninth Report of the Standing Senate Committee on Transport and Communications, Tuesday, November 22, 2005

continued seller specific internal DNCL requirement for B2B marketing is more than adequate to cover any concerns about this category.

57. The CMA believes that the lack of a clear B2B exemption for the national DNCL will result in undue interference in day-to-day commerce. B2B calls are ubiquitous in the daily conduct of business affairs and including these calls in the DNCL program could have significant economic consequences for the business sector. Telemarketing sales campaigns in the B2B environment are very often based on rather small and targeted contact lists as distinct from those for large consumer campaigns. For example, would DNCL regulation of B2B calls require that an industrial supplies salesman check his small personal call list against the national list? These challenges of enforcement and adjudication on the grey areas would only be overshadowed by the significant economic cost that would be imposed by such restrictions on such daily business interactions.

58. Including business number on a national DNCL is a complicated and expensive proposition. The complex PBX switching systems that are almost exclusively used by business would make it difficult to cover business numbers in an efficient and economically viable DNCL system. Providing individually identified telephone numbers is not an economically viable option national DNCL. There is also the question as to who would be authorized to list individual or multiple company numbers. The CRTC, for example, may have one central telephone number for many employees (and even employees with direct lines would be behind a switching system). The protection of B2B telemarketing is best left to businesses through their required seller specific internal DNCLs, which can be designed to accommodate a telephone number and name approach.

59. There is also the issue of who within a business would be authorized to list individual or multiple company numbers and how transfer and reassignment of business numbers would be tracked on a national DNCL. Further, there is always a significant risk of disgruntled individuals (employees, customers, competitors, etc.) listing business telephone numbers, resulting in serious harm to the business.

60. As mentioned earlier, the CMA believes in striving for a uniform approach to DNCL administration in the North American marketplace, to avoid a competitive disadvantage to Canadian industry. The U.S. exempts B2B calls from its National Do Not Call Service.

9.2 Length of Time Information Maintained on DNCL

61. The CMA proposes that registered telephone numbers should remain on the national DNCL for a period of three years, unless the registration is cancelled or the telephone number is reassigned before that time.
62. This has been the practice for the CMA's Do Not Contact program as it applies to marketing by telephone, fax and mail, and it is a requirement that generates very few complaints.

63. Three years is also the period of time that the CRTC currently prescribes that businesses must maintain telephone numbers on seller specific internal DNCLs. Certainly the CMA is in favour of consistence between these two time requirements.

64. The fact is that the composition and/or consumer preferences of a household may change considerably over a 3 year period. For example, according to the Statistics Canada Census of Population, nearly 40% of Canadians move every year[17].
65. Given that the DNCL will impose a significant restriction on marketers' freedom to communicate, it would seem very reasonable to ask that consumers reconsider their DNCL registration after this period of time.

9.3 Window of Compliance in Relation to New DNCL Registrations

66. In crafting DNCL rules, the CRTC will have to decide how often telemarketers and sellers are required to search the registry and drop from their call lists the phone numbers of consumers who have registered. The CMA recommends adopting a 60 day window of compliance within which telemarketers must synchronize their lists to new DNCL registrations. A 60-day window for compliance would permit sellers an

appropriate amount of time to access the list, sync it to their central data warehouses, update specific telemarketing lists and re-distribute updated lists to their telemarketers. More frequent cleaning is a technical and cost challenge, particularly for large sellers who centrally warehouse their data and manage significant security protocols. We believe that a 60-day compliance period strikes a balance between consumer interest, burden to telemarketers and the economic viability of a self-sustaining DNCL system.

67. It follows from this suggestion that consumers who register themselves on the DNCL be guaranteed not to receive any unsolicited telemarketing calls from non-exempt telemarketers after 60 days. It would further follow that consumers, after first registering on the DNCL, would have to wait 60 days before launching a complaint against a telemarketer required to use the DNCL.

9.4 Telemarketer Accessibility to DNCL Updates

68. Relevant to the question of required access frequency, while we recommend a requirement of updating at least every 60 days, CMA notes that some sellers or telemarketers may wish to access the DNCL more frequently. We recommend that the DNCL system be structured to allow unlimited updating downloads of changes to the DNCL at no additional cost to the seller and/or telemarketer. Different sellers, depending on their size and internal data warehousing constraints will need to allow for different amounts of time to scrub their telemarketing lists. In the United States, for example, numbers appear on the FTC list within one day of being verified and can be downloaded at that time, as part of the original fee.

9.5 Consumer Complaints Regarding DNCL

69. It will be necessary for the CRTC to establish guidelines regarding consumer complaints about the DNCL. The CMA recommends, in line with our suggestion that the window of compliance for telemarketers be 60 days, that only those consumers whose telephone numbers have been registered on the DNCL for over 60 days,

[17] Source: Statistics Canada, Census of Population 2001. Statistics Canada defines “movers” as persons who, on Census Day, were living at a different address than the one at which they resided one year earlier.

should be permitted to launch a complaint regarding receiving a DNCL protected call. Further, we believe that it should be necessary for the complaining consumer to provide the telephone number and/or name of the seller who has placed the offending call, and the date and time the call was placed.

9.5.1 Statute of limitations on Consumer Complaints

70. To facilitate enforcement of the DNCL telemarketers will be required to keep detailed records of their calling activities. The CMA believes that a careful balance must be struck between the burden of a record keeping and retention for businesses and consumer interest. As such, we recommend that the CRTC limit the amount of time a consumer has to submit a complaint regarding receiving a call when they are registered on the DNCL to 60 days from the day the call was received. We do not believe that it is an onerous requirement for consumers to complain within 60 days. We believe that by nature of the fact that consumers have registered themselves for the DNCL, they will be knowledgeable about the service and its processes. Also, particularly if the complaints process is available via telephone and internet, there is no necessary delay for consumers to register a complaint.
71. While per our recommendation consumers will have 60 days to register a complaint, the requirement of telemarketers to keep their records will not end at 60 days: time will have to be allowed for the CRTC to consider the complaint and perform investigations. As the CRTC considers the record keeping requirements for telemarketers, CMA requests that the Commission keep in mind the burden to business – particularly small business not set up to maintain such records - that record retention represents and carefully consider minimizing said requirements.

9.6 Ability to Access Portions of the List

72. The CMA recommends that the CRTC structure the DNCL in such a way as to allow sellers and/or telemarketers to reasonably conduct small, localized telemarketing campaigns. We encourage the CRTC to protect the ability of telemarketers to access small portions of the list appropriate to small trading areas rather than necessitating the download of the full, national DNCL.

9.7 Consideration for Small Users of DNCL

73. Perhaps similar to the U.S. model where by up to 5 area codes can be accessed free of charge, the CMA suggests that the CRTC look at a free or low cost access model to protect those marketers who are undertaking small, localized telemarketing campaigns from undo expense.

9.8 Option to Access a "Change List"

74. The CMA recommends that beyond the option for telemarketers to download the full DNCL for the subscription area, that the Commission ensure that it is also possible for telemarketers to access "change lists" or lists showing additions and deletions to the list since the last download. This will save time, expense and effort for telemarketers scrubbing the telemarketing lists of campaigns that last longer than 60 days.

9.9 Removal of Disconnected and Reassigned Telephone Numbers from DNCL

75. To ensure that the DNCL truly represents consumer preference, the CMA encourages the Commission to ensure that disconnected and reassigned numbers are removed from the DNCL on a regular basis. This will necessitate a mandate by the CRTC that carriers provide this information to the DNCL Operator.

9.10 Ability of Consumers to Remove Their Number from the DNCL

76. The CMA encourages the CRTC to ensure that there are mechanisms for consumers to remove their number from the DNCL if they change their mind, giving telemarketers the option to add the number back to their call lists, if they choose to, the next time they access the DNCL list. Particularly when consumers realize the extent of the offers they will no longer be receiving by telephone, the CMA occasionally receives requests to have contact information removed from the DNCL that we operate.

9.11 Consumer Consent Override of DNCL

77. Sometimes consumers wish to limit their telemarketing contacts, but are interested in receiving calls from certain companies. In order to maximize consumer choice, CMA encourages the Commission to adopt a regulation that would clarify that marketers may contact a consumer by telephone even if he or she is on the DNCL, if the marketer has received the consumer's consent to do so.

9.12 DNCL Operator Investigating Complaints

78. In paragraph 45 of 2006-4, the Commission states that it envisages that the DNCL operator will investigate complaints. In addition, it mentions the possibility that the Commission pursuant to the authority granted in section 72.04 of the amended Act, may designated persons to issue notices of violations and propose AMPs.

79. In view of the law enforcement dimension of these responsibilities, the CMA asks that the Commission clearly set out the investigative responsibilities of the operator, and further, that all responsibly for assessing violation and issuing notices of violations should remain the sole responsibility of the CRTC. These enforcement responsibilities require the stewardship of a public entity.

9.13 Universal Application of DNCL Rules

80. CMA encourages the CRTC to clarify that DNCL rules will apply to all forms and channels of telemarketing, including fax and all types of telephone (live voice, ADAD and voicecasting) calls.

10.0 Other Telemarketing Rules

Introduction

81. While the DNCL will form the cornerstone of telemarketing regulation in Canada, CMA takes the position that additional rules that are carefully considered and

effectively enforced are necessary to strike the important balance between consumer and business interests.

82. CMA believes that the addition of the national DNCL and effective telemarketing rule enforcement mechanisms require change to the existing telemarketing rules. As the Commission and interested parties contemplate which rules are necessary going forward, the nature and scope of each rule must be considered within the regulatory context anchored by a national DNCL and an AMPs based enforcement regime. CMA believes that the existence of a national DNCL negates the necessity for some of the existing telemarketing rules (both those that are in force and not) and dictates both the amendment and adoption of others.

83. Within the new regulatory framework, the CMA is pleased to suggest that all existing CRTC telemarketing rules be replaced with the following rules. These, in combination with the new DNCL will provide balanced and comprehensive telemarketing regulation for Canada.

84. As stated above, CMA believes that telemarketing rules should be applied consistently to live voice telephone, ADAD, voicecasting and fax calls except where there are specific – such as ADAD or fax specific – rules.

10.1 Seller Specific Internal Do Not Call / Do Not Fax Lists

85. Section 41.7(4) of the amended *Telecommunications Act* requires that other than research (survey calls), those callers exempted from DNCL requirements maintain their own seller specific internal do not call list and to ensure that no call is made to a person who has asked to be placed on that list. In paragraph 43 of 2006-4 the Commission questions whether it is necessary for all marketers to continue to be required to maintain their own internal DNCL lists. The CMA believes that the maintenance of seller specific internal DNCL lists must be required for all sellers who market by telephone, including those required to use the national DNCL.

86. The CMA's requirement of its members to maintain seller specific internal do not contact lists[18] is in addition to the fact that we also require our members to use our Do Not Call and/or our Do Not Fax lists when conducting a telemarketing campaign. Our Code requires that internal do not contact lists contain the contact information of all current customers, consumers and businesses who have requested that they not be contacted by the marketer's organization, and that said information be kept for three years.

87. We require seller specific internal DNCLs for a number of reasons. First, requiring internal DNCLs improves consumer choice. While some consumers are interested in limiting all telemarketing calls there are many who are only interested in limiting calls from certain callers. Requiring marketers to maintain seller specific internal DNCLs allows for this consumer choice. Second, seller specific internal DNCLs are a second line of protection beyond the DNCL where by consumers can limit calls from those telemarketers who are exempted from the DNCL. Requiring marketers to maintain seller specific internal DNCLs allows for exemptions to the national DNCL – such as our proposed exemption for B2B calls – while permitting for consumer choice.

88. Seller specific internal DNCLs permit a consumer to withdraw their consent to be contacted by a specific telemarketer at any time at the consumer's request. Any consumer, including and existing customer, upon being contacted by a marketer or by contacting a marketer, may express his or her desire not to be notified of such offers in the future by requesting his or her name be added to the marketer's internal DNCL.

89. It should be noted that our proposed requirement for marketers to maintain seller specific internal DNCLs is consistent with The Personal Information Protection and Electronic Documents Act (PIPEDA) in which consumers may withdraw their consent for the use of their personal information at any time.

[18] The CMA Code requires that our members keep internal DNCLs for every channel by which they market.

90. As is the current CRTC requirement regarding internal DNCLs and as is our suggestion for the national DNCL, we recommend that telemarketers should be required to maintain information on internal DNCLs for three years.

91. Balancing consumer interest and business burden, we recommend that telemarketers be permitted 31 days to ensure that consumers who request to be added to seller specific internal DNCLs are not contacted again.

92. While previous deliberations on telemarketing rules have resulted in the suggestion that unique registration numbers for confirmation purposes be provided to consumers who request to be added to seller specific internal DNCLs, we are of the opinion that, particularly in light of the improved regulatory environment, such a requirement is unnecessary to achieve the Commission's consumer protection goals. Indeed the cost to implement such a system would be very onerous for Canadian industry.

10.2 Universal Telemarketing Calling Hours

93. Currently the CRTC has no parameters around the hours during which telemarketers can contact consumers by telephone. In Telecom Order CRTC 96-1229, the sending hours for telemarketing faxes were restricted to weekdays between the hours of 9:00 a.m. and 9:30 p.m. and weekends between 10:00 a.m. and 6:00 p.m., with restrictions referring to the time zone of the faxed party. These limits are based on and mirror faxing hour restrictions in the CMA Code.

94. In British Columbia, the provincial Business Practices and Consumer Protection Authority has restricted outbound calling hours to 9:00 a.m. to 9:30 pm Monday to Friday, 10:00 a.m. to 6:00 p.m. Saturday and Sunday, and completely on statutory holidays. These limits are based on and mirror calling hour restrictions in the CMA Code.

95. In the United States calling hour restrictions can vary from state to state, which is difficult and expensive for telemarketers and confusing for consumers. Federally, the

FTC sets hours, for those not covered by State regulation, from 8:00 a.m. – 9:00 p.m., seven days a week.

96. Through our Code, CMA has been successful in placing parameters around the hours during which telemarketers may contact consumers both by telephone and by fax. As per our Code, our members must limit the hours of outbound telemarketing (including faxing) to the hours of 9:00 a.m. to 9:30 p.m. weekdays and 10:00 a.m. to 6:00 p.m. Saturdays and Sundays. Restrictions refer to the time zone of the called party. Note the consistency with current CRTC faxing hour restrictions. Further in our Code, we prohibit telemarketing on statutory holidays.

97. Feed back from telemarketers indicates that calls some sellers, particularly charities and political parties frequently ask for calls to be made right up until 9:30 p.m. Their experience indicates that these later calls generate similar response rates with no higher level of complaints.

98. CMA recommends that the Commission consider adopting the CMA's universal calling hours to govern all types of telemarketing in Canada. Bringing all telemarketers in line with the rules that CMA members are already bound to follow will not only improve the telemarketing experience for consumers, but will also prevent telemarketers who call beyond these hours from damaging the reputation of responsible practitioners. Further, the creation of a national rule for calling hours will dissuade further provincial regulation in the area of telemarketing.

99. CMA does not see a case for recommending calling hour hours more restrictive than those in our Code. We are interested in protecting a twelve and a half hour weekday calling window for Canadian telemarketers, particularly as most American competitors are offered a thirteen hour window, seven days a week.

100. As with most of the telemarketing rules we support, CMA believes in striving for uniformity jurisdiction to jurisdiction and consistency between telephone (including ADAD) and fax telemarketing rules. We recommend that one set of hours apply to

all forms of telemarketing and believe that CRTC action on calling hours will dissuade provincial regulators from regulating separately in this area.

10.3 Telemarketer Identification and Contact Information

101. Under existing CRTC telemarketing rules currently in effect, telemarketers placing unsolicited live voice and/or facsimile calls to solicit must provide sufficient information to permit the called party to take any further action he or she considers necessary with respect to the call[19].

102. Currently in force, those placing fax calls to solicit must identify the person on whose behalf the fax is being sent is made and provide the callers telephone, fax number and name and address of a responsible person to whom the called party can write.

103. Currently in force, those placing live voice calls to solicit must identify the person on behalf of whom the call is made and, upon request, the caller's telephone number and the name and address of a responsible person to whom the called party can write.

104. Consistent with requirements of our members in our Code, the CMA believes that these telemarketer identification and contact information requirements as stated are balanced and an acceptable telemarketing rules.

105. That this is an important regulation to be included in telemarketing rules is emphasized by the fact that in section 41.7(3) of the amended *Telecommunications Act* requires those callers exempted from DNCL requirements to identity the purpose of their call and to state the person or organization on whose behalf the call is being made.

106. Previous deliberations on telemarketing rules have resulted in suggestions for stricter identification requirements. However, many of these are impractical and

[19] Telecom Decision CRTC 1994-10.

costly and CMA feels that in light of the new DNCL and enforcement regime, more stringent requirements are not necessary for consumer protection.

10.3.1 Display of Originating Number

107. Consistent with the CMA Code and existing telemarketing rules, the CMA believes that telemarketers should not be permitted to block Caller ID information, unless there is a significant technological impediment to providing this information to the customer.

10.4 Predictive Dialing Devices (PDDs)

108. Predictive dialer technology is an integral part of today's telemarketing industry. The technology allows companies to run more cost-efficient campaigns by replacing the manual dialing of one telephone number after another. The technology assesses the quantity of phone numbers in the computer's database and with consideration of the number of live operators, predicts when the next operator will be available before proceeding with the next call. If the technology is used effectively consumers have no idea that a predictive dialer is being used because they speak to a live person as soon as the phone is answered.

109. CMA believes that there are some serious consequences when the technology is used improperly and when consumers experience silence or "dead air". Dead air occurs when a predictive dialer connects but an operator is not yet on the line, thus the consumer encounters silence at the other end of the telephone upon answering. For many consumers this can be a disconcerting and even frightening experience.

110. CMA research into the issue of PDDs indicate that some of the problems that have arisen as a result of improper use, such as dead air, are attributable to the increase in the number of small telemarketing outfits and overzealous telemarketers who are using predictive dialers but are not governed by any oversight body, including the CMA. We feel that this has been an important contributor to the rise in consumer complaints. The number of smaller telemarketing campaigns using PDDs

is an important point to bear in mind because to be truly effective, national abandonment rate standards must be followed by the industry and enforced by the CRTC.

111. We feel that the problem of dead air can be overcome with the establishment of a national industry standard whereby all telemarketers would have to respect a prescribed call abandonment rate ceiling.

112. When preparing for our submission to the CRTC regarding Public Order 2001-193[20], CMA initiated a consultative process with our members and based on consensus in the industry, offered the following recommendations that we still advocate.

113. CMA recommends that the Commission adopt a maximum 5% abandonment rate for calls placed by a PDD for solicitation. This is the ceiling CMA recommended in our submissions regarding Telecom Public Order CRTC 2001-193, and that was adopted in Telecom Decision CRTC 2004-35. We support the goal that abandoned or "hang up" calls should be kept as close to 0% as possible, and in no cases should exceed 5% of dialed calls as measured for any calendar month.

114. In Telecom Decision CRTC 2004-35, paragraph 110, the Commission required that telemarketers using PDDs maintain records that provide clear evidence that they have complied with the PDD abandonment rule. The CMA supports this requirement with the caveat that telemarketers be required to maintain records for a limited period: we suggest for 6 months. This allows for the 60 days we propose that consumers have to register a complaint, and an additional 4 months for the CRTC to investigate. This requirement provides the Commission with access to 6 months of a telemarketer's PDD abandonment habits, but does not place overly onerous record keeping requirements on these businesses.

[20] CMA submission re Public Notice CRTC 2001-34: Review of Telemarketing Rules, dated August 17, 2001.

10.5 Automatic Dialing and Announcing Devices (ADADs)

115. With the establishment both of a national DNCL (that will cover all telemarketing methods) and of effective enforcement mechanisms for all telemarketing rules, CMA suggests that a complete prohibition on ADAD use for the purposes of solicitation is no longer necessary to achieving the goal of consumer protection.

116. CMA advocates that the Commission allow for companies to make digitally pre-recorded voice calls through ADADs for B2B telemarketing purposes, for telemarketing to consumers with whom they have an existing business relationship (as defined in the amended Telecommunications Act section 41.7 (2)) and for telemarketing to consumers who have provided their consent to receive such calls.

117. While we welcome efforts to eliminate abuses, the CMA maintains that ADADs have several legitimate applications in areas where a business relationship already exists between the caller and the client. This limited uses of ADADs has been permitted in the United States with commercial success and high consumer acceptance.

118. As the CRTC pointed out in Telecom Public Notice CRTC 93-58, restriction on ADAD use for telemarketing precludes persons who wish to receive notice of goods and services through telephone solicitation from obtaining access to those goods and services.

119. As with all telemarketing rules, the CMA believes that regulation of existing relationships between businesses and consumers should be limited to the significant opportunity for a consumer to ask that a business add them to their seller specific internal DNCL.

120. It is important to note consent for an existing customer to be contacted by ADAD may be withdrawn at any time at the consumer's request. Any consumer, including and existing customer, upon being contacted by a marketer, may express his or her desire not to be notified of such offers in the future by requesting his or her name be

added to the marketer's internal DNCL. Since the existing rules were enacted, advances have been made in ADAD technology that can now provide the client with an opportunity to immediately request addition to the marketer's internal DNCL. As with live voice telemarketing, if this particular means of contact is deemed to be offensive or intrusive, the consumer can be provided with an immediate opportunity to decline the message and not to be contacted via this media in the future.

121. Particularly with both internal and national DNCL requirements, we believe that the ADAD use we propose is not inconsistent with the spirit and intent of the CRTC's telemarketing policy objectives. This revision to existing telemarketing regulatory regime will allow Canadian telemarketers to join their American counterparts in using this effective relationship-building tool going forward.

122. Naturally, all telemarketing regulations would apply to any offers being made to a consumer via ADAD. Hence, the CMA reasons that the implied consent that permits a marketer to contact en existing customer with additional offers through live voice or fax telemarketing would also allow the marketer to communicate such information to an existing customer via ADAD.

10.6 Voicecasting

123. CMA believes that regulations surrounding voicecasting should closely mirror those for ADADS. That is to say that CMA advocates that the Commission allow for the use of voicecasting technology only for B2B telemarketing purposes, for telemarketing to consumers with whom they have an existing business relationship (as defined in the amended Telecommunications Act section 41.7 (2)) and for telemarketing to consumers who have provided their consent to receive such calls.

124. CMA is in favour of limiting the use of voicecasting this way in order to ensure that irresponsible telemarketers do not undertake massive, indiscriminate voicecasting cold-calling campaigns clogging voicemail boxes and damaging the image and reputation of the telemarketing channel as a whole.

125. Further, the CMA believes that the CRTC should require that every solicitation message left by voicecasting technology include a number that consumers can call to be added to seller specific internal DNCLs.

126. Regarding Rogers Wireless' December 6, 2005 application pursuant to Part VII of the CRTC Telecommunications Rules of Procedure titled "Voicecasting to Wireless Subscribers", the CMA submits that should CRTC consider limiting telemarketing of any kind to wireless telephones, it will be incumbent on the Commission to ensure that telemarketers are provided with a list of all wireless telephone numbers in order to effect compliance. It is the CMA's understanding that such a resource is made available to telemarketers in the United States, hence enabling American regulators to put actionable rules in place regarding telemarketing to mobile phones. Without such a resource in place for Canadian telemarketers, compliance with any restrictions regarding telemarketing to mobile phones would be extremely difficult if not impossible for telemarketers to action. Should the CRTC prohibit voicecasting to wireless subscribers, for example, and not provide telemarketers with a way to identify which of the telephone numbers on their list are mobile telephones rather than land lines, how could telemarketers comply with the restriction without completely abandoning the use of voicecasting technology? Without a resource identifying which telephone numbers are mobile telephone numbers, it is impossible for telemarketers to know whether a number on their list is to a land line or mobile telephone.

10.7 ADAD and Voicecasting Specific Telemarketing Rules

127. As stated above, the CMA feels that all telemarketing rules should apply to ADAD and voicecasting use in the same way they apply to live voice and fax telemarketing.

128. This said, CMA supports a number of rules specific to ADAD and Voice Message telemarketing. CMA suggests the following ADAD and Voice Message specific telemarketing rules:

129. As originally established in Telecom Decision CRTC 85-2, CMA believes the CRTC should require that ADADs must be disconnected within ten (10) seconds after the called party hangs up.

130. CMA believes the CRTC should require that ADAD and voicecasting users should be prohibited from disseminating recorded messages that feature a 900 service or other number that incurs charges more prominently than a toll free number where the calling party can be reached to voice questions or concerns about the call or to request addition to seller specific internal DNCLs.

10.8 Sequential and Random Dialing

131. Consistent with the CMA Code, CMA believes that telemarketers should not be permitted to engage in sequential dialing.

132. Further consistent with the CMA Code, we believe that telemarketers should not be permitted to engage in random dialing other than to a list or public directory where it is possible to remove telephone and/or fax numbers that are not on the DNCL and/or on a seller specific internal do not contact list. These restrictions helps to ensure that telemarketing does not take place to unlisted or emergency numbers and that telemarketers respect consumers who have expressed their preference regarding receipt of telemarketing calls.

11.0 Conclusion

133. The CMA believes that a national, standardized regulatory regime will benefit both consumers and the various organizations who engage in live voice, fax or ADAD telemarketing activities.

134. The CMA feels that a national DNCL combined with the proposed ancillary telemarketing regulations will provide a level playing field and a reasonable framework for the regulation of telemarketing in Canada.

135. The CMA feels that the requirements proposed in this submission provide consumers with the opportunity sufficient choice in relation to how they may be impacted by telemarketers; at the same time these are reasonable provisions that offer marketers the flexibility to grow and expand their businesses, and to contribute to employment and growth of the Canadian economy.

Sincerely,

Wally Hill
Vice President
Public Affairs and Communications

c.c. Interested Parties to Telecom Public Notice CRTC 2006-4