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March 27, 2006

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

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

Introduction

1. Rogers Communications Inc. ("RCI") is filing these comments in accordance with the procedures established by the Commission in *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, 20 February 2006 (Public Notice 2006-4).

2. RCI supports the Commission's efforts to create a Do-Not-Call registry to protect the privacy of Canadian consumers. Canadians who do not wish to be marketed to should have the ability to remove themselves from telemarketers' calling lists. However, the benefit of the registry must be balanced against the operational concerns of legitimate telemarketers as well as the telecommunications carriers who provide the underlying service. In establishing the Do-Not-Call List ("DNCL") policies and rules, the CRTC must remain conscientious of the impact of the DNCL on marketing activities of Canadian companies.

3. RCI is in a unique position to assist the Commission in establishing the DNCL. As both a telemarketer and a telecommunications carrier, RCI understands the benefit of using telemarketing to reach potential customers as well as the impact unscrupulous telemarketing has on our telephone subscribers. RCI also provides telecommunications services to other organizations who engage in telemarketing. We therefore have considerable insight into the conflicting interests raised by a DNCL.

4. RCI believes that the current telemarketing rules in conjunction with a DNCL that has balanced policies will address consumer concerns while permitting the continuation of legitimate telemarketing. The majority of Canadian organizations who telemarket comply with the current rules. Removing those names registered on the DNCL can be built into these organizations' scrubbing processes. Further impositions, including those proposed earlier in *Telecom Decision CRTC 2004-35*, will unduly complicate the marketing operations of Canadian companies while providing little or no additional protection to Canadian consumers.

5. Of significant importance to RCI in this proceeding is how costs will be recovered for the establishment of a DNCL and its ongoing operation. Specifically, RCI is concerned that increases in telecom fees will be used to recover costs. If this occurs, the telecommunications industry will unfairly bear the costs that should be shouldered by the entire telemarketing industry. RCI is willing to assume its fair portion of the costs as a telemarketer but does not believe that it, or any other telecommunications carrier, should bear any additional costs for simply providing the underlying telecommunications service.

Inclusion of DNCL and Telemarketing Rules in ILEC Tariffs

6. RCI agrees with the Commission that it may no longer be necessary to include the DNCL and any other telemarketing rule in the ILEC's tariffs. The threat of suffering a significant fine should provide the appropriate incentive to comply with the DNCL and telemarketing rules. It will also be far easier to administer financial penalties then it has been to cancel or deny service. The latter, which are the current consequences for telemarketing infractions have very rarely been imposed.

7. Should the Commission require the ILECs to continue to include the telemarketing rules in their tariffs, the other non-tariff filing carriers should continue to comply with the same obligations binding the ILECs as is the current industry requirement pursuant to *Telemarketing restrictions extended to all telecom service providers*, Order CRTC 2001-193, 5 March 2001 (Order 2001-193). In this fashion, consumers will be advised of the telemarketing rules through the ILEC tariffs while all telecommunications service providers will be bound by their obligations.

DNCL Rules

8. The DNCL rules need to balance consumer protection with the operational concerns of Canadian businesses and telecommunications carriers. In order to be effective, the DNCL regimen must be easy to adopt, providing legitimate telemarketers with clear guidelines and reasonable operational timeframes.

9. The DNCL should only apply to consumers and should not prevent telemarketers from contacting businesses. Telemarketing to businesses remains one of the most effective ways to market products to such organizations, without the consequences of telemarketing to the home. Calls to consumers can potentially disturb children, interrupt meals and disrupt home life. In contrast, calls to businesses can only be made during business hours and in most cases are directed to personnel who are responsible for vendor selection in order to purchase products and services for their organization. The impact of telemarketing on these two groups is quite distinct and should be treated as such by the DNCL rules.

10. In order to effectively administer and implement a DNCL, telemarketers require a 60 day period to stop telemarketing to newly registered names. During this 60 day grace period, calls made to persons on the DNCL would not constitute a violation. This grace period allows for the necessary time to complete the list scrubbing process. For many organizations, telemarketing operations involve a network of third parties that can include list brokers, list scrubbers and telemarketing firms. This grace period is required to co-ordinate efforts between all parties involved, especially during large scale marketing campaigns which can be planned for weeks or even months in advance.

11. Names should be maintained on the DNCL for three (3) years from the date of registration. This is in fact the current requirement for companies that maintain their own internal DNCL. The three (3) year duration has worked well to date, proven reasonable, and balanced the needs of consumers and businesses. This duration is practical given the mobility of the average Canadian consumer. Mobility can result in the disconnection of residential phone numbers, which are recycled from 1 to 3 months after a cancellation.[1] Any duration longer than three years could increase the possibility that a customer is unwittingly placed on the DNCL due to historical registration.

12. The DNCL registration process must require that the customer register themselves on the list. This is the only method that ensures that the customer expressly desired to be added to the DNCL. Businesses should not be required to act as the broker between the consumer and the DNCL operator, thereby minimizing the possibility of

[1] *Canadian Central Office Code (NXX) Assignment Guidelines, Appendix F – Aging and Administration of Disconnected Telephone Numbers*, 10 October 2002, Canadian Numbering Administrator.

human error or miscommunication. Having consumers register themselves is the only way to guarantee registration.

13. When registration expires at the end of the third year a consumer would be required to re-register. Additionally, a consumer should be permitted to remove their name from the DNCL at any time. To this end, a process to de-register will have to be created along with processes to register and re-register.

14. A consumer should have the option to register by Internet or a toll-free telephone number. If the registration is made by phone then the consumer should be required to call from the number intended to be registered. This will help avoid errors and mischief. The Internet and phone options provide the best solutions for accurate data capture while minimizing costs and accommodating consumers.

15. Registry access must be limited to sellers, telemarketers and other service providers. This will help ensure that the registry is only used for the purpose of complying with the DNCL. Any use of the registry's list of names for any other purpose should be penalized under the law.

16. To protect the confidentiality of Canadian consumers, the registry should only record the name and telephone number of registrants. This will protect consumer privacy and also help ensure the registry lists are not abused for any purpose other than the DNCL. Furthermore, collection of extraneous information would complicate the administration of the database, increase storage requirements, and require additional protective measures for personal information collected. Not only would this result in additional costs for the administration of the DNCL but it would expose the DNCL operator to an unnecessary level of risk in the protection, retention and disclosure of personal information.

17. The Commission must recognize that in spite of the best efforts made by organizations, unintentional violations will occur from time to time due to the complexity of maintaining up-to-date caller name lists. To that end, it is essential that a reasonable set of parameters, or a "safe harbour", be created that would absolve an organization from penalties for such inadvertent mistakes. This is of paramount importance given that companies accused of violating DNCL and telemarketing rules are subject to significant economic penalties. At a minimum, a safe harbour should exist if an organization can demonstrate:

    (i) Written procedures exist to comply with the Do-Not-Call requirements;
    (ii) Personnel are trained in those procedures;
    (iii) Compliance of those procedures are monitored and enforced,
    (iv) A company-specific DNCL is maintained;
    (v) The national registry is accessed on a regular basis and this process is documented; and
    (vi) Any call made in violation of the Do-Not-Call rules was the result of an error.

18. The DNCL rules should apply to the telemarketers making the call and not the firm that contracted with them. Many contract telemarketers are large, sophisticated enterprises that should bear the responsibility for compliance to the rules. The Commission is in the correct position to monitor these companies and directly apply any required fines.

19. The DNCL rules should apply to voicecasting calls. Consumers who place themselves on the DNCL list have an expectation that they will not be disturbed by telemarketers. Contrary to Telecom Decision CRTC 2004-65, *Infolink Communications Inc. vs. Bell Canada Voicecasting Service,* messages soliciting products and services left in a consumer's voicemail box are disruptive and disturbing. The Commission should abide by the wishes of consumers and apply the DNCL to voicecasting.

20. The position expressed by RCI above in no way alters its position, as expressed in its Part VII application dated December 6th, 2005 *Voicecasting to Wireless Subscribers*, that voicecasting for the purpose of solicitation made to wireless phones should be prohibited. Retrieving deposited voicecasting messages from wireless voicemail accounts results in economic consequences to wireless subscribers and damages the reputation of wireless carriers. Customers retrieving messages incur airtime charges and potentially roaming and long distance charges as well. As such, voicecasting to wireless voicemail boxes should be prohibited.

21. In the U.S., telemarketing to cell phones for purposes of solicitation is prohibited by the *Telephone Consumer Protection Act* (TCPA) enacted by Congress in 1991. To further safeguard wireless customers from illegal voicecasting, cell phone numbers can also be registered with the U.S. DNCL. RCI believes the inclusion of wireless phone numbers on the Canadian DNCL can be an added level of protection available to Canadian wireless consumers, beyond a required prohibition of wireless voicecasting.

Telemarketing Rules

22. The current telemarketing rules, as established in *Use of telephone company facilities for the provision of unsolicited telecommunications*, Telecom Decision CRTC 94-10, 13 June 1994 (Decision 94-10) and Telecom Order 96-1229, 7 November 1996 (Order 96-1229), and as listed in the left hand column of the Appendix to Telecom PN 2006-4, should be maintained. Legitimate telemarketers have obeyed these regulations for over a decade and have established the necessary operational processes to comply. In conjunction with a newly established DNCL, the rules will provide the protection Canadian consumers are seeking.

23. The telemarketing rules should not be expanded to include the proposals announced in Decision 2004-35. With the adoption of the DNCL, these additional impositions would provide little to no additional protection for consumers who can simply remove

themselves from the telemarketing calling lists if they choose. On the other hand, as demonstrated by the vociferous objection to Decision 2004-35, the proposed rules impose an unreasonable burden on Canadian businesses that would be difficult to implement and administer. As such, aside from the addition of the DNCL, the current telemarketing regime should remain unchanged.

24. The telemarketing rules proposed in 2004-35 have also been made unnecessary due to the Commission's new power to assess fines. As admitted by the Commission in Decision 2004-35 at paragraph 96, the Commission only felt the need to create new telemarketing rules "absent the legislative power to impose fines".

25. Of the proposals in 2004-35, RCI has particular concerns regarding the requirement to provide a toll-free number before asking for the individual or providing any other communication. RCI initiated this rule voluntarily for a short period of time and received feedback that it caused great confusion and concern to the recipient of the telemarketing call. Additionally, it led to calls being generated to our third party telemarketing providers from children and other parties that were not the intended recipient of the call. We have found that providing a toll-free callback number upon request is a better alternative that protects both the consumer and the telemarketer.

Investigation and Notice Guidelines

26. The Commission should set a minimum threshold before launching an investigation. Specifically, the Commission should set a minimum number of complaints that would be required before committing the time and resources to investigate. These complaints should also be filed by a minimum number of complainants. This will avoid the cost of investigating the odd inadvertent violation and the possibility of assisting certain consumers who may have other motivations in filing a complaint. This will help concentrate the Commission's resources on the true violators of the DNCL rules.

27. A notice of violation must provide an alleged violator with sufficient time to address the allegation and provide a proper response. A telemarketer must have enough time to determine a) whether a violation did indeed occur, and b) whether the violation was inadvertent and falls under the safe harbour rules. A notice of violation should therefore provide for a 14-day response period.

Penalty Guidelines

28. The Commission should establish guidelines creating a progressive penalty scheme. Initial violations should result in light penalties, providing the telemarketer with the opportunity to address any operational issues in order to comply in the future. Penalties against repeat offenders should result in a gradual increase in penalties.

Other Issues of Concern

29. Costs associated with the establishment of a DNCL and the on-going funding of a DNCL administrator should be recovered from parties that access the DNCL. The model should accommodate the needs of both companies that place telemarketing calls locally and companies that place telemarketing calls nationally. It should also be affordable for smaller companies that wish to participate in telemarketing activities. Small volume callers should be able to comply with the DNCL requirements without having to download a potentially large list of all registered telephone numbers within a particular area. The cost of the DNCL should be apportioned based upon usage.

30. The entire cost of the DNCL should be borne by the parties accessing the DNCL. That should include both the costs incurred by the DNCL operator as well as the Commission's additional cost to oversee the DNCL program in its entirety. It is inappropriate that Canadian telecommunications carriers bear this latter portion when the DNCL is the responsibility of all telemarketers. The administration of the DNCL should therefore not result in an increase in telecom fees. The Commission's costs, similar to the DNCL operator's costs, should be recovered from fees charged to access the DNCL.

Conclusion

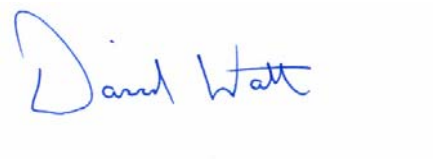
31. Rogers supports the Commission's efforts to establish a DNCL registry.

32. The rules and policies governing the DNCL however must balance the needs of consumers against the impact they will have on Canadian businesses. The DNCL rules must be clear, easy to operationalize and provide reasonable timeframes.

33. The DNCL should not apply to Canadian businesses. The impact of telemarketing on commercial organizations is far different than its impact on consumers and the two groups should be treated differently.

34. The Commission should maintain the current regime of telemarketing rules. The majority of telemarketers have already instituted the necessary measures to comply with these rules. The rules proposed in 2004-35 would place an unnecessary burden on Canadian businesses without proving any substantial benefit to Canadian consumers. The current regimen in conjunction with the DNCL should be sufficient to protect Canadians.

Yours truly,



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