



CREDIT UNION CENTRAL OF CANADA
LA CENTRALE DES CAISSES DE CRÉDIT DU CANADA

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BY EMAIL AND FAX

March 27, 2006

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

Dear Ms. Rhéaume:

RE: Telecom Public Notice CRTC 2006-4

1. On behalf of Credit Union Central of Canada (Canadian Central), I am pleased to submit comments for consideration in the above-referenced proceeding, which will determine rules for the national Do Not Call list as outlined in Bill C-37.
2. Canadian Central is the national trade association for credit unions in Canada outside of Quebec. Canadian Central is primarily owned by nine provincial credit union central organizations. Canadian Central assists these provincial central organizations in providing their credit union members with national services that include the last tier of system liquidity, participation in the clearing and settlement of payment items through the Canadian Payments Association, participation in the INTERAC debit network and government relations. The Canadian Central family of credit unions numbers 528, with more than 1,800 locations and assets of approximately \$87 billion. Together, these credit unions serve 4.9 million members and employ more than 23,000 people.
3. This submission is in response to Telecom Public Notice CRTC 2006-4, proceeding to establish a national do not call list framework and to review the telemarketing rules (the "Notice"). Canadian Central's submission reflects many of the views expressed by the Canadian Bankers' Association on this subject.
4. Canada's credit union system has been actively involved in providing input on Bill C-37, *An Act to amend the Telecommunications Act*, S.C. 2005, c. 50. Canadian Central looks forward to participating in the public consultations regarding a national do-not-call list (DNCL) and other telemarketing rules.

5. We agree that it will be necessary to examine a number of operational issues regarding how a national DNCL will function including matters related to consumer registration, security of personal information, the cost of operating the system and the manner of recovering those costs.

Establishment and Enforcement of DNCL and Other Telemarketing Rules

a) Clarification of Exemptions

6. As stated in the Notice, the Commission will have the authority to establish a national DNCL. However, the *Telecommunications Act* as amended by Bill C-37 (the “amended Act”) exempts certain persons from the application of the national DNCL rules. In this regard we believe that there are certain aspects of the exemptions which would benefit from clarification and guidance from the Commission.
7. *Business to Business Calls*: The national do not call registry established in the U.S. by the FTC and the Federal Communications Commission (FCC) does not cover business-to-business calls. We note that consumer protection types of provisions have generally focused on individuals and have not been extended to businesses due to both policy reasons and administrative/compliance complexities. Therefore, we recommend that the rules establish that telephone calls between a telemarketer and any business are exempt from the application of a national DNCL and the application of a national DNCL is limited to calls to a residential line. From a policy perspective, the main concern should be consumers rather than businesses.
8. *Consent*: The U.S. national do not call registry provides that an organization may call a consumer who has given express permission to call, even if the consumer’s number is on the registry. This would permit calls to non-customers and previous customers who are on the national DNCL, but who wish to receive calls from certain telemarketers that they specify. We recommend that such an exemption be provided or alternatively, that such a telecommunication should not be seen as an “unsolicited call” as consent has been provided for the communication.
9. There are a number of provisions in the “existing business relationship” exemption which we believe could benefit from clarification by the Commission. These are set out below.
10. *Written Contract*: As stated in the legislation, an existing business relationship can arise from 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...”. Companies often use electronic channels to create contractual relationships. This reality has been recognized in electronic commerce legislation. We believe that the basis of this exemption should be technologically neutral since the form of agreement with a customer should not be relevant. The

rules should clarify that a “written” contract includes contracts entered into through electronic channels.

11. *Corporate Group*: The existing business relationship exempts a communication made to a person with whom the person making the telecommunication, or the person or organization on whose behalf the telecommunication is made, has an existing business relationship. We believe that there should be clarification that “organization” includes a co-operative group and that affiliates of an entity which has an existing relationship with a customer will fall under the exemption provided that the necessary privacy consents for marketing across the corporate group have been obtained. We note that the FCC rules allow for an affiliate to fit under the exemption if the consumer would reasonably expect to be called given the nature and type of goods or services offered and the identity of the affiliate. Alternatively, such a telecommunication should not be seen as an “unsolicited call” as consent has been provided for the communication.
12. *Outsourcers*: We submit that confirmation that the existing business relationship exemption flows through to an outsourcer of the organization who has an existing relationship with a client would be beneficial.
13. *Joint Marketing*: Often a business will enter into a joint marketing agreement with another business to jointly market products or services. The question that such a situation raises is whether both businesses must have an existing business relationship with a person to fall under the exemption or whether the joint marketing partner may rely upon its partner’s existing business relationship to call the person. We note that the FTC has indicated that the joint marketing partner may rely upon its partner’s relationship with an individual and we recommend that the Commission provide guidance along those lines.
14. *Identification of purpose*: Subsection 41.7(3) of the amended Act provides that a person making a telecommunication pursuant to an exemption to the national DNCL “must, at the beginning of the telecommunication, identify the purpose of the telecommunication and the person or organization on whose behalf the telecommunication is made”. This is, in part, a new requirement that is not contained in the existing telemarketing rules. Owing to confidentiality and privacy concerns, we believe that clarification is required to confirm that this disclosure does not have to be made to whoever answers the phone, but only requires the disclosure to be made to the intended recipient of the call.

b) DNCL Rules

15. *Guidelines on U.S. Safe Harbour Provisions*: Section 72.1 of the amended Act provides that “it is a defence for a person in a proceeding in relation to a violation to establish that the person exercised due diligence to prevent the violation”. We submit

that it would be advantageous to provide guidance around what would be considered the exercising of due diligence. For example, in the U.S. the following Safe Harbour Provisions provide that a business is not in violation of the do not call rules if the business:

- has established and implemented written procedures to comply with the requirements;
- has trained its personnel, and any entity assisting it in compliance, in the procedures;
- maintains a list of telephone numbers that cannot be called; and
- updates the list every 31 days and monitors compliance with the procedures and maintains records documenting this process so that any improper call is the result of error.

16. Obviously, errors will happen despite hard work and the best of intentions and we believe that it is important that a company which has exercised due diligence should not be faced with a large penalty for an isolated error.

17. *Grace Period:* We submit that callers should be permitted a grace period during which calls made to persons on the national DNCL would not constitute a violation. The person could have registered a number of days after the caller had updated their scrub list. In addition, the administrative difficulties of having to scrub against both an internal and national DNCL and, especially in large organizations where the telemarketing list may be provided to various call centres before the list is actually used, would add to the time needed to implement the changes. We submit that an appropriate grace period from the registration of a person should be 90 days.

18. *Complaints which are made in bad faith:* Experience with the U.S. system has shown that there are some people who take advantage of the rules and penalties with the result that companies settle claims in order to avoid paying costs to defend legal claims. It will be important when determining the rules to ensure that to the extent possible there are no loopholes that could lead to trivial, frivolous or vexatious complaints. Moreover, there would need to be a clearly defined and documented complaint resolution process to follow which would provide a record of such complaints.

19. *Other issues:* In establishing national DNCL rules it will be necessary to decide whether a registration will be in perpetuity or whether it will have to be renewed after a certain period of time. We recommend that there be an automatic expiry of a registration on the national DNCL after 3 years. This is consistent with the 3 year period in the existing telemarketing rules for an organization's internal DNCL and appears to work well with the Canadian Marketing Association's member DNCL.

c) Further Telemarketing Rules

20. *Disclosure Requirements:* CRTC Decision 2004-35 sets out a number of identification requirements. A caller who conducts telemarketing must – before asking for the intended recipient of the call – identify himself or herself, the organization on behalf of whom he or she is calling and, if an agency is calling on behalf of a client, the name of the agency. The telemarketer must provide a toll-free telephone number that the recipient of the call can access for questions or comments, and this information must be provided before any other communication, including asking for an individual by name, can be made. Since the person answering the telephone may not be the intended recipient of the call and may ask to be put on the caller's DNCL, these requirements could result in many lost calls and the intended recipient never knowing that an attempt had been made to contact him or her for a proper and desired business purpose.

d) Enforcement

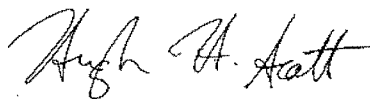
21. In designing the enforcement regime, it will be important to specify time lines for the process to ensure that complaints are investigated and resolved in a timely way while the incident is still fresh in the minds of all those involved. This timeliness will nevertheless have to be balanced with the need to give all parties sufficient time to undertake the requisite due diligence.

Conclusion

23. We thank you for the opportunity to provide input into the process of establishing a DNCL framework and we look forward to expanding on our comments as part of your public consultation in early May.

24. If you have any questions about our proposals or need additional information, please call me at (613) 238-6747, extension 218.

Sincerely

A handwritten signature in black ink that reads "Hugh A. Scott". The signature is written in a cursive, flowing style.

Hugh Scott
Director, Government Relations