



CANADIAN BANKERS ASSOCIATION

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May 19, 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**

At the May 2 – 5, 2006 public consultations with respect to Telecom Public Notice CRTC 2006-4, the Commission provided various parties, including the Canadian Bankers Association, with Undertakings to provide information on five topics.

The CBA is pleased to provide the attached responses for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Linda Routledge".

LJR /

Attachment

cc: Interested parties

Topic 1: General – Telemarketing Industry Background

Based on your experience with the Canadian telemarketing industry, to the extent possible, please undertake to provide to the Commission, within 10 days, the following information, noting any assumptions:

- (a) An estimate of the total number of telemarketers in Canada;**
- (b) An estimate of the total number of entities that could potentially be paying for access into the national DNCL;**
- (c) How many entities would be telemarketers and how many would be companies;**
- (d) A profile of a small, medium and large telemarketer, which would include the following:**
 - i. Gross sales**
 - ii. The number of campaigns conducted annually and sellers represented;**
 - iii. The average length of a campaign; and**
 - iv. The average cost charged to a company to conduct a 30-day national campaign.**

Unlike many of the other participants in the public consultations associated with PN 2006-4, the Canadian Bankers Association has no interactions with telemarketers in Canada other than our member banks. Therefore our response will be limited to describing – to the extent possible – the telemarketing activities of the chartered banks in Canada.

There are 52 chartered banks in Canada, over 30 of which offer retail banking products.

The retail products of the bank financial groups are marketed through a variety of means, including telemarketing. The majority of this telemarketing is to each bank's own existing customers. A large percentage of the telemarketing activity occurs on insurance and credit card products, both to customers and non-customers.

For telemarketing campaigns to non-customers, it would depend on the bank and that bank's business strategy for each product line, but there might be as few as two campaigns a year or several dozen, with the length of each campaign varying widely depending on the bank, product and strategy – perhaps two weeks in duration or two months. Banks would usually scrub their lists against their internal DNCL and against CMA's Do Not Contact list before providing the list to either the bank's own internal call centre or an outside third party telemarketer.

Some banks do their own telemarketing; some of the smaller banks outsource all telemarketing to other entities; others do telemarketing for some products internally and outsource the function for other products.

If a bank outsourced their campaign, the costs would vary from bank to bank and product to product within each bank. If it were a complex product, the qualifications and experience of the telemarketer would need to be higher – and the cost would reflect that.

Topic 2: DNCL Rules – What constitutes a violation of the DNCL rules?

Please undertake to provide to the Commission, within ten days:

(a) Your views on the appropriateness of the following possible violations of the DNCL rules:

- i. Engaging in telemarketing without a valid subscription to the DNCL;**
- ii. Representation as a DNC registration service, other than the DNCL administrator;**
- iii. Selling, publishing or forwarding the DNCL other than for the purpose of restricting calls;**
- iv. Falsely claiming an exemption under the Act;**
- v. Facilitating or assisting another party in circumventing the telemarketing and DNCL rules;**
- vi. Failure to keep adequate records of call-abandonment rates;**
- vii. Passing on the cost of subscription to the list to its contacts or those with whom it has an existing business relationship;**
- viii. Registering or delisting a telephone number without the permission of its owner.**

(b) Are there other prohibitions or requirements, contravention of which would constitute a violation, that you would suggest? To the extent possible, provide precise wording.

The Canadian Bankers Association supports the listed circumstances being considered violations of the DNCL rules with the following clarifications:

- In (a)(i), the telemarketing referenced in this provision should be limited to those calls and callers that are not exempted from the telemarketing rules. In other words, a telemarketer that calls only existing customers should not be required to have a subscription to the DNCL for its calls to existing customers to be considered legal.
- The provision in (a)(iv) is essentially a duplication of (i). If the telemarketer claimed an exemption and proceeded to telemarket, it would be done without a valid subscription.
- Subsection (vi): With respect to the violation for failure to keep adequate records of call-abandonment rates, it is our view that this additional rule that was announced in Decision 2004-35 should not be brought into force. In the alternative, if it is brought into force, there should be guidance surrounding record retention in connection with call-abandonment rates, including specifying a time period for retention of records and clarifying that the records may be in any form and location as records are kept in the ordinary course of business.
- In (a)(vii), there should be some recognition of the fact that the costs incurred by telemarketers to access the DNCL are a cost of doing business for that seller and that all costs of doing business are ultimately factored into the costs charged for the product or service. Perhaps the reference could be to “passing on as a specific charge the cost of subscription to the list ...”
- Subsection (viii): The violations on persons registering and delisting telephone numbers should be broadened and strengthened as it is crucial that numbers are placed and removed from the list by the appropriate person. It is not enough to require permission of the owner. We feel that persons should only be able to register or delist their own

residential consumer number and any other registration or delisting should be a violation. We suggest the following revised language: "Registration or delisting by a person of any telephone number other than that person's own telephone number."

- Similar to the violation for falsely claiming an exemption, we recommend that there be a violation for falsely bringing a complaint.

We have the following general comments regarding violations:

- A call to a number on the national DNCL should be considered a violation unless the exemptions, grace periods or other defenses apply. All violations need applicable provisions regarding grace periods and safe harbours.
- It may be necessary to make distinctions as to different types of contraventions of the law in determining what is considered to be a violation -- a one-time instance of a telemarketer inadvertently contacting a customer on the list due to human error should not be seen as the same situation as a repeat offender who is knowingly flouting the provisions of the law.
- Taking into consideration the above, it may be necessary for the CRTC to establish a lesser sanction that can be imposed in instances where issuing a violation may not be warranted (e.g. for inadvertent calls made to persons on the list or for mistakes made in keeping records). Other regulators will use a "letter of concern" where a technical contravention of the law has taken place that is not considered to be a serious violation.
- Care should be taken to avoid treating certain actions as violations (e.g. storage of information) if the consequences of failure to comply are minimal and if the obligation to comply is difficult and not clearly set out in the legislation or guidelines. For something to be considered a violation, it is critically important that the obligations/responsibilities /expectations of those attempting to comply with the rules be very clearly set out so that there is no ambiguity as to when a violation has occurred. This may be impossible in the case of a vague obligation to store information.
- Violations should only be used as a last resort in instances of clear and demonstrable actions that are contrary to the intent of the law. (There are those who would use the provisions of the law to launch frivolous lawsuits against those making legitimate attempts to comply with its provisions.)

Topic 3: DNCL Rules – Definitions

Please undertake to provide comments to the Commission within 10 days on the definitions recommended by the CMA in their submission, and, as appropriate, provide any suggested word changes:

- (a) Para 20: Telemarketing
- (b) Para 23: Telemarketer, Seller, and Service Provider
- (c) Para 25: Consumer Marketing and Business Marketing
- (d) Para 28: Predictive Dialling Devices, Abandoned Call, and Abandonment Rate
- (e) Para 29: ADADs
- (f) Para 31: Voicecasting
- (g) Para 32: Seller specific internal do not call list.

(a) “telemarketing”: The banking industry is strongly of the view that telemarketing should be defined to limit it to the solicitation by a business to a consumer and not to include calls by businesses to other businesses for the sale of business-related products and services. During the public consultations, there appeared to be a concern about small businesses/home businesses wanting to be able to avoid unwanted marketing calls. There were many presenters, however, who strongly believe that the marketing of business products to businesses via telecommunications facilities is an accepted business practice with few objections from targeted businesses. Perhaps the approach to defining telemarketing could include the concept of the nature of the product being promoted.

A suggested revision to the telemarketing definition, reflecting the above concerns and suggestion, follows:

The use of telecommunications facilities to make unsolicited calls for the purpose of promoting or selling a consumer-use product or service, or the soliciting of money or money's work (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 but does not include promotion or sale of business-use-products and services.

As noted in our remarks to the public consultations, we would also strongly suggest that the term “unsolicited calls” be defined as:

Calls made to an individual without the consent of the individual.

(b) **Telemarketer, Seller, and Service Provider:** Defined terms referenced within the definition should be capitalized.

(c) **Consumer Marketing and Business Marketing:** We would suggest using the “consumer-use product or service” and “business-use product or service” references in the suggested definition of Telemarketing above, instead of describing who is being addressed by marketing. In that way, the desire of small and at-home businesses to reduce the incidence of telemarketing calls selling consumer-use products could be accommodated in the DNCL without disadvantaging the sales of business-use products to businesses.

(d) **Predictive Dialling Devices, Abandoned Call, and Abandonment Rate:**

- "Abandoned Call": We think that the reference in CMA's definition to "predictive dialer" should be replaced with "Predictive Dialing Device".
- "Abandonment Rate": The reference in the rule to "For which there is no live agent available" should be replaced with "that are Abandoned Calls".

(e) ADADs: The definition of PDD in this definition should be consistent with the definition of PDD, i.e., "any system or device that initiates outgoing call attempts from a pre-determined list of phone numbers, based on a computerized call placing algorithm."

(f) Voicecasting: The last sentence of the definition should be changed to refer to "consumers" instead of "customers".

(g) Seller specific internal do not call list: We recommend that it be specified that this list is in connection with do not call requests for telemarketing, by adding the following language: "... who have requested that they not be contacted by the Seller's organization for Telemarketing". (See revised definition below.)

In addition, the definition should not require that "numbers" specifically be placed on the internal list as internal DNCL's may reference names rather than numbers. For instance, customer accounts – which are flagged "do not market" – are most often referenced by customer name or account number, not their telephone number. (See proposed wording below.)

Finally, the definition should allow for more than one internal list based on different products or services and customer/non-customer lists.

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

Topic 4: Enforcement Mechanisms – Non-binding guidelines for the imposition of penalties

In paragraph 47 of PN 2006-4, the Commission considered whether it would be appropriate to develop non-binding guidelines regarding the imposition of penalties and, if so, what should those guidelines be.

Please undertake to provide to the Commission, within 10 days, your suggestions and supporting rationale as to what the non-binding guidelines for the DNCL operator should contain with respect to the AMPs regime. By way of example, many parties have suggested that the guidelines include a graduated penalty scale. The Commission is interested, therefore, in specific suggestions as to the criteria that should be considered in the graduated scale that would lead to the imposition of a penalty.

Graduated penalty scale: The banking industry supports the concept of a graduated penalty scale, ranging from no penalty for first offences and inadvertent mistakes, through moderate penalties for repeat offenders to the maximum penalty for deliberate contraventions or blatant disregard of the rules. Proportionality of penalty to violation is critical to the credibility of an enforcement regime. It is also important to strive for the objective – that being compliance with the rules. To what extent are penalties needed in certain circumstances to bring about compliance?

Potential Criteria:

- (degree of harm) Was it only one or a few names that were missed? How many complaints were received about this particular campaign?
- (degree of intent or negligence) Was the failure to scrub the list a condoned practice or policy of the telemarketer, or simply initial lack of knowledge?
- (history of compliance) How many complaints have been received about this particular telemarketer/seller?
- (intent to correct) Did the telemarketer respond positively with action to correct the problem, and meet any timing commitments for doing those corrections, or did it allow further infractions to happen?

Initial implementation timing: It will be important to allow time initially for telemarketers to become aware of the requirements and to implement the processes to scrub their telemarketing lists against the national DNCL. Issuance of penalties, particularly severe penalties, in the first months to year of implementation would not be fair to those unaware of the rules, particularly if they appeared willing to take action when informed.

Topic 5: Enforcement Mechanisms – Non-binding guidelines for investigation of complaints and issuance of notices of violation

Several parties propose the development of non-binding guidelines for the DNCL operator to follow in the investigation of complaints and issuance of notices of violation, which includes determination of the penalty amount.

Several parties expressed concern that the DNCL operator will be enforcing the rules instead of the Commission. Therefore, they proposed that the DNCL operator should be provided with clear, stringent rules that limit his discretion. The Companies proposed that the DNCL operator should have security clearance, training by a policing agency and sign a non-disclosure agreement.

Please undertake to provide the Commission, within 10 days, specific suggestions, to the extent possible, with supporting rationale as to the contents of the non-binding guidelines that the DNCL operator should follow in the investigation of complaints and issuance of notices of violation. In your response, include what criteria should be applied by the DNCL operator in the exercise of its discretion and the nature of any safeguards, if any, that are required to ensure that the DNCL operator is exercising its investigative powers appropriately. Include in your response all assumptions.

As noted in previous submissions, the banking industry believes that it is not appropriate for the DNCL List Operator to be responsible for investigating complaints, issuing notices of violation and/or assessing AMPs.

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