

June 1, 2006

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

BY E-MAIL

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

1. The Canadian Marketing Association (CMA) is pleased to provide the Canadian Radio-television and Telecommunications Commission (CRTC or “the Commission”) with the following responses to the “Undertakings” received May 2, 2006 pursuant to Telecom Public Notice CRTC 2006-4: Proceeding to establish a national do not call list framework and to review telemarketing rules (PN 2006-4).
2. 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 channels¹.
3. At the outset, we would like to reiterate that telemarketing is growing in its economic importance both in terms of employment and the economic activity it generates. Most businesses in Canada use the telephone to provide customer service, to offer Canadians goods or service or to acquire new customers. In 2000, CMA conducted

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

a major study of the economic impact of direct response advertising in Canada (CMA 2000/2001 Fact Book). The study defined telephone marketing as including all outbound communications (either out-sourced or in-house) conducted over the telephone using conventional, WATS, privacy line or other telecommunication services. The study found that the total number of jobs generated throughout the economy by telemarketing in 2000 was 270,000. Total sales generated through telemarketing were \$16 billion and was projected to grow by 51% by 2005 to \$24.3 billion.

4. In developing the DNCL rules and determining overall telemarketing regulatory framework we encourage the Commissioners to proceed cautiously and to keep in mind the significant economic contribution of telemarketing and the constitutional right of commercial free speech.

1.0 Topic: Telemarketing Industry Background

5. In addressing the undertakings there are some assumptions CMA would like to clarify.

1.1 Telemarketers vs. Sellers

6. CMA would like to preface this section by pointing out that most businesses in Canada use the telephone to acquire new customers or donors or to offer existing customers goods or services. That is to say that **hundreds of thousands of Canadian companies use the telephone for marketing**. This interaction is usually carried out in one of two ways: either in-house, or by contracting the services of independent third-party call centres. In-house telemarketing can be as sophisticated as an in-house contact centre to acquire new business, or as simple as employees making calls from their desk.
7. It is the individuals or companies (the sellers) who are offering goods or services or soliciting donations that will be required to use the DNCL regardless of whether they contract the work to a call centre or do it internally.

8. CMA believes that a clear understanding of the distinction between “sellers” and “telemarketers” and between the “call or contact centre industry” and the “telemarketing industry” is essential in effectively formulating DNCL regulations. Indeed, it is probably more accurate to refer to telemarketing not as an industry, but as an “activity” or marketing “channel”.
9. In Section 3.3 of CMA’s March 27 submission regarding PN 2006-4, CMA endeavoured to provide standardized language to help clarify the distinction between the hundreds of thousands of Canadian organizations who use the telephone to market their products and services (sellers) and the third party agencies or contact centres who may initiate calls on their behalf (telemarketers). Initially², we proposed the following be accepted by the Commission and incorporated into the draft of telemarketing regulations going forward³:
- 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.⁴
10. By these definitions, “telemarketing” would be clearly understood to be an activity or channel used by hundreds of thousands of “sellers”, those organizations that use the telephone to market their products or services. “Telemarketers” would be those engaging in telemarketing activity, including call centres working under contract **or** the sellers themselves.

² Please see paragraph 57 of this submission for a small modification to this definition that CMA proposes further to a suggestion from The Companies.

³ 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>

⁴ Related, the following definition was also suggested for incorporation going forward:
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.

11. The CMA assumes **and recommends** that it will be the responsibility of individual *sellers* to use the DNCL, that individual *sellers* will be responsible for securing a licence to access the DNCL, regardless of whether they access the database themselves or through an agent. Hence the CMA believes that it is “**sellers**” rather than “telemarketers” who are the market for the DNCL service and with whom this proceeding is primarily concerned.
12. That is to say that according to these definitions, it is not an estimate of the total number of call centres that is central to determinations on DNCL regulations, but rather an estimate of the total number of businesses that use the telephone to market their products and services (*sellers*). This is because it will be incumbent on all *sellers* to use the DNCL to scrub any non-exempt outbound⁵ telemarketing lists, irrespective of whether or not they use a third party call centre.
13. Statistics or research regarding the call or contact centre industry must be considered differently than those for the telemarketing channel. The CMA’s research cited in paragraph 3 above considers the telemarketing channel, considering *sellers* conducting *outbound* (either in-house or out-sourced) telemarketing. This is in contrast to research on the contact centre industry, such as that conducted by Contact Centre Canada. (For the benefit of the Commission, CMA has attached highlights from both Contact Centre Canada’s 2002 sector study report on the contact centre industry⁶, and their 2006 report on the impact of offshoring, technology and regulation on contact centre human resources⁷ in Appendix I to this submission.)

⁵ Outbound telemarketing is where the seller or agent of the seller (such as a representative of a third party call centre) **initiates calls** to prospective or existing customers for the purposes of solicitation.

⁶ Contact Centre Canada’s October 2002 “Sector Report” *The Canadian Customer Contact Centre Landscape: An industry in transition* (Strategic Human Resources Study for the Canadian Customer Contact Centre Industry) http://www.contactcentrecanada.ca/cm/?q=node/view/17&i18n_lang=en

⁷ Contact Centre Canada *Customer Contact Centres in Canada: The Impact of Offshoring, Technology and Regulation on Human Resources*. Prism Economics and Analysis. April 2006.

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

a) an estimate of the total number of telemarketers in Canada

14. For “telemarketers” that are in the call or contact centre industry (as defined above), according to Contact Centre Canada, in 2005 there were 650,117 contact centre agent positions⁸ in over 13,400 contact centres in Canada⁹. It is important to note that these numbers include both inbound¹⁰ and outbound¹¹ contact centres (the DNCL proceedings not concerned with inbound telemarketing¹² and are only concerned with “prospect” telemarketing – telemarketing to consumers who do not fall within the definition of existing customer), and both in-house and third party call centres. However, these statistics only reflect in-house telemarketing that is done through an in-house call centre. That is to say that **Contact Centre Canada’s numbers do not capture the tens of thousands of organizations (particularly small companies) who conduct telemarketing without the aid of either an internal or external call centre.** Real estate agents, for example often engage in prospect telemarketing where individual agents place calls without the assistance of either an internal or external call centre.

b) an estimate of the total number of entities that could potentially be paying for access to the national DNCL

⁸ Contact Centre Canada *Customer Contact Centres in Canada: The Impact of Offshoring, Technology and Regulation on Human Resources*. Prism Economics and Analysis. April 2006. Page 13.

⁹ Contact Centre Canada’s October 2002 “Sector Report” *The Canadian Customer Contact Centre Landscape: An industry in transition* (Strategic Human Resources Study for the Canadian Customer Contact Centre Industry) http://www.contactcentrecanada.ca/cm/?q=node/view/17&i18n_lang=en

¹⁰ Inbound telemarketing is where the seller or agent of the seller (such as a representative of a third party call centre) **answer calls** that are placed by consumers and then processes product orders, responds to requests for information, provides help etc. Inbound telemarketing demand is generally created by advertising, publicity or the efforts of outside salespeople.

¹¹ See footnote number 5.

¹² As detailed in Contact Centre Canada research outlined in Appendix I, it is estimated that approximately 70% of contact centres were either solely focused on **inbound** calls or predominantly so focused. Only around 6 – 7% of contact centres surveyed were exclusively oriented to **outbound** calls.

15. The CMA believes that the question should be clarified as: how many companies or individuals use the telephone to market their products or services (or to solicit donations), specifically via outbound, prospect telemarketing.
16. This number is currently being estimated by a sub-committee of the Do Not Call Operations Working Group. The CMA has no estimate at this time.
17. The CMA submits that this number should represent an estimate of the number of sellers (regardless of whether or not their telemarketing is done in-house or by a third party) who will continue to do outbound, prospect telemarketing notwithstanding the costs of accessing the new DNCL. It will take into account all exemptions from the DNCL – including any allowances for small organizations to access the list free of charge – and attempt to account for those organizations who currently undertake prospect telemarketing, but will no longer do so in face of increased regulation and/or costs.
18. The US conducted detailed research prior to the implementation of their program to estimate the number of paying users of the DNCL; these estimates proved incorrect with major implications for their DNCL business model. The CMA submits that it may be that the only way to accurately determine the number of paying users of the DNCL is by taking the service to market, with government providing certain guarantees in the initial years.

c) how many entities would be telemarketers and how many would be companies

19. The CMA believes that **sellers** should be responsible for purchasing a subscription to access the DNCL.
20. Having said that, there are a number of different possible DNCL access models. For example, will it be the responsibility of sellers to directly purchase a subscription to the DNCL or will it be permitted for third parties (call centres, service bureaus) to purchase bulk subscriptions for future licence to individual sellers? List access

models are currently being considered by the DNCL Operations Working Group CISC sub-committee. While CMA believes it should ultimately always be the responsibility of sellers to purchase a subscription to access the DNCL, depending on the access model determined, it is possible that call centres or service bureaus may also potentially be paying for access to the national DNCL.

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 the sellers represented;**
- (iii) the average length of a campaign**
- (iv) the average cost charged to a company to conduct a 30-day national campaign**

21. The CMA does not have ready access to this information: it would require more extensive research than resources, including time, permit. However, we would like to reemphasize our concern that considering contact centre activity in this level of detail is not particularly germane to the process of DNCL regulation. Sellers will be required to use the DNCL if they are marketing their products or service by telephone regardless if they contract the work to a call centre, or if they do it internally.

2.0 Topic: DNCL Rules – what constitutes a violation of the DNCL Rules

Question: Please undertake to provide the Commission (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;

22. There are many organizations that will continue to engage in telemarketing that is not captured by DNCL regulations, such as any organization that chooses to engage exclusively in telemarketing to existing customers. The CMA believes that engaging in telemarketing without a valid subscription to the DNCL should only be a violation of the DNCL rules if sellers are engaging in telemarketing to those consumers

captured by the DNCL rules. That is to say that if a seller, who is not exempt from DNCL rules, engages in telemarketing to a consumer who is validly on the DNCL and is not an existing customer, and the seller does not have a valid subscription to the DNCL, it should be considered a violation of DNCL rules. On the other hand, if a seller engages in telemarketing that is exempt from DNCL rules, for example calling existing customers, it should not be considered a violation if said seller does not have a valid subscription to the DNCL.

23. Having said that, even those sellers who engage in telemarketing that is not covered by the DNCL (exempt organizations or those calling existing customers) should be required to adhere to other telemarketing rules

(ii) representation as a DNC registration service, other than the DNCL administrator;

24. The CMA believes that it should most definitely be prohibited for organizations other than the national list operator to represent themselves as the **National** or Federal DNCL registration service.

25. However, the CMA submits that there will be other valid DNC (do not call) registration services other than the national DNCL. These would include seller specific internal DNC lists, or potentially association do not call services which may be set up to allow consumers to be removed from to the calling lists of all association members.

26. Related to this question, the CMA believes that it should be prohibited for organizations, including telcos, to volunteer to register telephone numbers on a consumer's behalf on the national DNCL. CMA believes consumers should be required to register their own number on the national DNCL. A prohibition on organizations registering numbers for consumers will mitigate the potential for a consumer either to believe that their numbers can be registered any other way than through the official national list operator, or to believe that an organization was erroneously representing itself as the official national list operator. Furthermore,

failure to prohibit this practice opens the door to unauthorized registration of a telephone number without the knowledge of the affected consumer. Disallowing organizations to register consumer numbers onto the DNCL will also preclude any need to allow the list to accommodate bulk uploading of numbers.

(iii) selling, publishing or forwarding the DNCL other than for the purpose of restricting calls;

27. The CMA believes that selling, publishing or forwarding the DNCL other than for the purpose of restricting calls should be strictly prohibited.

28. However, legitimate reasons for a seller to forward the downloaded DNCL - for example a seller transferring or permitting access to the DNCL to its third-party data houses or call centres – must be permitted subject to appropriate contractual safeguards. In developing DNCL rules, the Commission must ensure that standard business practices surrounding the telemarketing channel – such as sellers employing external suppliers to scrub telemarketing lists and sellers utilizing potentially multiple external call centres – are protected.

(iv) falsely claiming an exemption under the Act;

29. CMA believes that it should be a violation for a seller using the telephone to market their products or services to intentionally make a false claim for exemption under the Act. Consumer comprehension of what calls are exempted from the DNCL will be essential both to the success of the DNCL initiative and to the positive reputation of telemarketing as an activity and marketing channel.

30. If a seller is going to call a number that is listed on the DNCL, CMA believes that it should be incumbent on that seller to be able to defend their claim to an exemption as set out in the amended Act.

(v) facilitating or assisting another party in circumventing the telemarketing and DNCL rules;

31. CMA agrees that facilitating or assisting another party in circumventing telemarketing and DNCL rules should be a violation of telemarketing and/or DNCL rules.

32. However the concept of “facilitating” or “assisting another party” to circumvent rules requires careful definition. For example, if a third party call centre is contractually assured that the seller’s calling list has been legally scrubbed to the DNCL, it would be the incumbent on the seller to defend against DNCL list complaints. Also, for example, should a seller use a call centre and have a contract that all telemarketing rules would be followed, and then the call centre places a telemarketing call on the seller’s behalf outside of regulated telemarketing hours, the violation would be on the part of the third party call centre, not of the seller. These are important distinctions that will need to be accounted for in consideration of this type of violation.

(vi) failure to keep adequate records of call-abandonment rates;

33. In paragraph 113 of CMA’s March 27, 2006 submission to the Commission on CRTC PN 2006-4 we recommended that the Commission adopt a maximum 5% abandonment rate for calls placed by a Predictive Dialling Device (PDD)¹³ for solicitation, as was adopted in Telecom Decision CRTC 2004-35.

34. Assuming an abandonment ceiling is adopted, the CMA agrees that a failure to keep the required records of call-abandonment rates should be a violation of telemarketing rules. In Telecom Decision CRTC 2004-35 paragraph 110, the Commission required that those who market by telephone using PDDs maintain records that provide clear evidence that they have complied with the PDD abandonment rate. The CMA supports this requirement with the caveat that telemarketer be required to maintain records for a limited period: in paragraph 113 of CMA’s March 27, 2006 submission to the CRTC we suggest for 6 months. This was in line with the 60 days we proposed that consumers have to register a complaint (Paragraph 70, CMA March 27, 2006 submission), and an additional 4 months for the CRTC to initiate an

¹³ In paragraph 28 of our March 27, 2006 submission regarding PN 2006-4, CMA defined PDDs as follows: Sometimes called “automatic dialling devices”, any system or device that initiates outgoing call attempts from a pre-determined list of telephone numbers, based on a computerized call placing algorithm.

investigation. This requirement would provide 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.

35. Further, CMA recommends that non-DNCL related rules, such as abandonment rates and related record keeping requirements, be established distinctly from DNCL rules, and apply to all telemarketing, even that which is exempt from DNCL rules.

(vii) Passing on the cost of the subscription to its contacts or those with whom it has an existing business relationship;

36. CMA assumes, based on our assumption that it will be the **seller** who is responsible to use the DNCL, that in this question the Commission is referring to sellers recouping the cost of their DNCL list access fees. CMA does not feel that it is the place of the CRTC to regulate how sellers generate their DNCL fees and hence do not feel that passing on the cost of DNCL subscriptions should be a violation of DNCL or other telemarketing rules.

(viii) Registering or delisting a telephone number without the permission of its owner.

37. The CMA believes that it should be a violation of the DNCL rules to register or de-list a telephone number without the permission of the consumer to whom that telephone number has been assigned.

38. In fact, the CMA believes that consumers should be required to register and de-list their own number on the national DNCL and that it should be a violation for a third party organization to register telephone numbers on behalf of consumers. This is to say, for example, that neither telecom companies nor sellers nor telemarketers who may receive complaints from consumers about receiving telemarketing calls should

be permitted to add consumer numbers to the national DNCL, either one at a time or as a bulk upload¹⁴.

39. Prohibiting third parties from adding names to the list – either one number at a time or as a bulk upload – will mitigate the potential for an unethical company to upload its existing customer telephone list with the goal of thwarting marketing efforts from competitors.

40. It will also mitigate consumer confusion as to what list – the national or an internal DNCL – they are being registered for, the official date they were added to the national DNCL and the appropriate venue to lodge any complaints.

Question: (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

41. In CMA's March 27, 2006 submission to the Commission on PN 2006-4 we suggested a number of requirements related to the DNCL and a distinct list of additional telemarketing rules (which would apply to all telemarketing activity, even that exempted from DNCL rules).

42. We recommend that another contravention of DNCL rules should be **the failure of sellers to synchronize marketing lists to the DNCL at minimum every 60 days** (Section 9.3 of CMA's March 27, 2006 submission).

43. Other prohibitions or requirements we recommend, the contravention of which should constitute a violation to *telemarketing* rules (and apply to all telemarketing activity, regardless of applicability of DNCL requirements) included the following complete list:

¹⁴ Of course CMA believes that sellers should be responsible to register consumers on seller specific internal do not contact lists at a consumer's request.

44. The necessity to maintain seller specific internal do not call lists (Section 10.1 of CMA's March 27, 2006 submission)

- For both B2C and B2B marketing
- Information to remain on seller specific internal DNCLs for three years
- Sellers are permitted 31 days to ensure that consumers who request to be added to seller specific DNCLs are not contacted again

45. Universal telemarketing calling hours (for both telephone and fax)

- Limits on the hours of outbound telemarketing (including faxing) to the hours of 9:00 am to 9:30 p.m. weekdays and 10:00 a.m. to 6:00 p.m. Saturdays and Sundays, and no calling on statutory holidays

46. Telemarketer Identification and Contact Information

- Those placing fax calls to solicit must identify the person on whose behalf the fax is being sent and provide the callers' (faxers') telephone number, fax number and name and address of a responsible person to whom the called (faxed) party can write.
- Those placing live voice calls to solicit must identify the person on behalf of whom the call is being 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.

47. Display of Originating Number

- Those marketing by telephone should not be permitted to block "Caller ID" information unless there is significant technological impediment to providing this information to the called party.

48. Automatic Dialing and Announcing Devices (ADADs) (Sections 10.5 and 10.7 of CMA's March 27, 2006 submission)

- Those marketing by telephone are allowed to use ADADs for B2B telemarketing purposes, for telemarketing to consumers with whom they have an existing relationship and for telemarketing to consumers who have provided their consent to receive such calls. All other telemarketing by ADAD (including to

those who have asked to be added to a seller specific internal DNCL) should constitute a violation.

- ADADs must be disconnected within ten (10) seconds after the called party hangs up.
- ADAD users are prohibited from disseminating recorded messages that feature a 1-900 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.

49. Voicercasting (Sections 10.6 and 10.7 of CMA's March 27, 2006 submission)

- Those marketing by telephone are allowed the use of voicercasting technology for B2B telemarketing purposes, for telemarketing to consumers with whom they have an existing relationship and for telemarketing to consumers who have provided their consent to receive such calls. All other telemarketing by voicercasting (including to those who have been asked to be added to a seller specific internal DNCL) should constitute a violation.
- ADAD users are prohibited from disseminating recorded messages that feature a 1-900 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.

50. Sequential and Random Dialing (Section 10.8 of CMA's March 27, 2006 submission)

- Those who use the telephone for marketing should not be permitted to engage in sequential dialing.
- Those who use the telephone for marketing 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 on the DNCL and/or seller specific internal do not contact lists.

3.0 Topic: DNCL Rules – Definitions

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

3.1 DNCL Key Rule

51. Based on the Public Hearings, reading the submissions of other interested parties and participating in CISC subcommittee processes, the CMA has put some additional thought into the most effective way to define certain terms.

52. Particularly based on Commissioners' comments during the Public Hearings¹⁵ we are interested to find a way that the DNCL regulations can make it clear that the DNCL is intended to protect consumers from unwanted telemarketing and that business-to-business (B2B) marketing (as defined in paragraph 25 of CMA's March 27, 2006 submission) is not intended to be covered by DNCL regulation. CMA believes that the intended application of the DNCL can be clarified through the definitions of key terms. This approach would negate any requirement for an additional DNCL exemption.

53. At the Public Hearings in Gatineau May 2 – 4, 2006 a number of presenters were asked for their opinion of **“The Companies” suggested wording, for the key DNCL rule**. From paragraph 22 of The Companies March 27, 2006 submission on PN 2006-4, their suggestion reads:

“No person or organization shall initiate a telemarketing call to a person or organization whom is validly listed in the national do not call database unless the

¹⁵ See comment from Chairman French, May 2, 2006 transcript paragraph 2137: “what we really need from you is a form of words, preferably not in the form of an exemption, that would ensure that the goods and services being offered had to be consumer-oriented, and, therefore, that if the goods and services being offered were transparently intended for a business -- and I don't think this is a trivial problem -- transparently intended for a business, they would not be defined as “telemarketing”, or something along those lines, or would not be defined as “telemarketing”, as the act applies enforcement measures to it.”

person or organization from whom the telemarketing call originates is exempt pursuant to section 41.7 (1) of the amended *Telemarketing Act*.”

54. CMA submits that this proposal for the key DNCL rule can be slightly amended to clarify that it is not the intention of DNCL regulations to capture B2B marketing. **We suggest that the following re-wording of the key DNCL rule :**

“No person or organization shall initiate a telemarketing call **for the purposes of consumer marketing** to a person or organization who is validly listed in the national do not call database unless the person or organization from whom the telemarketing call originates is exempt pursuant to section 41.7 (1) of the amended *Telemarketing Act*.”

55. CMA believes that the key rule wording proposed in paragraph 54 would clarify that B2B communications are unaffected by DNCL regulation. If this key rule wording was accepted, CMA submits that further clarification that B2B marketing was not captured by the DNCL regulation would not be necessary. This key rule wording for the DNCL regulations would mean that B2B marketing could still be captured by any other telemarketing regulations, such as calling hours and the requirement to keep seller specific internal DNCL lists.

a) telemarketing

56. In line with our position that voicecasting should be subject to DNCL and other telemarketing rules¹⁶, CMA supports The Companies recommendation that the definition of “telemarketing” be revised as follows:

Telemarketing: the use of telecommunications facilities to make unsolicited calls **or to leave unsolicited voice messages** 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),

¹⁶ CMA submission, PN 2006-4, March 27, 2006, sections 7.0 and 10.6

whether directly or indirectly and whether on behalf of another party. This includes solicitation of donations by or on behalf of charitable organizations¹⁷”.

(b) Telemarketer, Seller and Service Provider

57. The CMA supports The Companies suggestion that the definition of “telemarketer” be revised as follows:

Telemarketer: any person or business who, in connection with telemarketing, **places** telephone calls, **voice messages** or faxes to a **residential consumer** for the purposes of telemarketing.

58. The CMA supports The Companies suggestion that the definition of “seller” be revised as follows:

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 a **residential consumer** in exchange for consideration. **This includes charitable organizations who solicit donations or arrange for others to solicit donations on their behalf, via telemarketing.** A Seller also may be a Telemarketer, if calling on its own behalf.

4.0 Topic: 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.

Question: Please undertake to provide the Commission, your suggestions and supporting rationale as to what the non-binding guidelines for the DNCL operator

¹⁷ 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

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.

59. At this time the CMA has nothing to add to our suggestions in section 5.0

“Enforcement of Telemarketing Regulation” in our March 27, 2006 submission regarding PN 2006-4.

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

Several parties proposed 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 its discretion. The Companies proposed that the DNCL operator should have security clearance, training by a policing agency and sign a non-disclosure agreement.

Question: Please undertake to provide the Commission 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.

60. As outlined in paragraph 44 of our March 17, 2006 submission regarding PN 2006-4, CMA is of the view that the DNCL operator should focus on the operation of the list,

and **should not** have responsibility for enforcement of telemarketing regulations beyond receipt of complaints and validation of their basic facts.

61. CMA takes the position that the CRTC should undertake the responsibility, and assume the costs of investigation, enforcement and adjudication of telemarketing rule violations, whether or not they choose to subcontract said responsibilities to a third party.
62. Regarding guidelines for the issuance of violations, beyond our comments in our March 27, 2006 submission on PN 2006-4, we support The Companies suggestion that any enforcement scheme should embody the key principles of confidentiality, fairness and transparency.
63. We encourage the CRTC to structure a regime such that organizations that use the telephone to market their product or service can be made aware of alleged non-compliant activities, and given an opportunity to amend such behaviour, without the need for the issuance of a Notice of Violation. The goal is to allow those who market by telephone to promptly be made aware of possible non-compliant behaviour (potentially through non punitive "Notices of Complaint"), in order that they may quickly implement internal systems and process changes to effect compliance. In assessing penalties, the Commission should take into consideration the organization's response to being made aware of complaints.
64. The CMA believes that administrative monetary penalties should not be intended to be punitive, but rather to encourage compliance. The CMA believes that Notices of Violation should be issued only as a last resort. The CMA supports The Companies' position, stated in paragraph 106 of their March 27, 2006 PN 2006-4 submission, that "a graduated type of process that leads ultimately to the issuance of a Notice of Violation only where co-operative techniques have failed to motivate compliance will further the underlying goal of enhancing compliance with the telemarketing rules at the outset". Indeed the enforcement of telemarketing rules should operate from the assumption that most organizations that use the telephone to market their products

or services will prefer to comply with the rules rather than to become involved in enforcement proceedings available under the *Telecommunications Act*.

65. The CMA thanks the commission for the opportunity to clarify our position on these issues, and would be happy to provide the Commission with any additional information or clarification with respect to these undertakings, or other issues relevant to the PN 2006-4 proceedings.

Sincerely,



Wally Hill
Vice President
Public Affairs and Communications

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

Appendix I: Characteristics of the Canadian Contact Centre Environment (Contact Centre Industry)

Employment: The customer contact centre sector employs 4 out of 100 working Canadians¹⁸. At year end 2000 there were approximately 13,400 contact centres in Canada with nearly 513,000 agent positions, with many more Canadians engaged in providing services to the industry¹⁹. This implies that at that time contact centre agents made up 3.4% of the total Canadian employed population of just fewer than 15 million in 2000²⁰. Between 2001 and 2003 customer service representative positions grew by 9.5%.²¹ Between 1995 and 2005, the number of agent positions increased from 146,593 to 650,117 – an increase of 443%²²

Economic Contribution: In 2000, the customer contact centre sector contributed \$36 to \$38 billion (4%) to Canada's Gross Domestic Product (GDP).²³

Distribution by Region: The greatest proportion of Canadian customer contact centres is in Ontario, with over 50%, followed by Western Canada with nearly 25%, Quebec with 18% and Atlantic Canada with 7%.

Distribution by Industry Sector: In 2000, the financial services industry became the largest user of contact centres in Canada with 17% of all Canadian contact centres providing financial services. The services (12%), Retail/Wholesale (14%), and

¹⁸ Contact Centre Canada *Customer Contact Centres in Canada: The Impact of Offshoring, Technology and Regulation on Human Resources*. Prism Economics and Analysis. April 2006. Page 13

¹⁹ Contact Centre Canada's October 2002 "Sector Report" *The Canadian Customer Contact Centre Landscape: An industry in transition* (Strategic Human Resources Study for the Canadian Customer Contact Centre Industry) http://www.contactcentrecanada.ca/cm/?q=node/view/17&i18n_lang=en

²⁰ In comparison, industry sectors such as agriculture employed 2.5% of the total working population and public administration 5.1%.

²¹ Link to Contact Centre Canada's "Industry Statistics": http://www.contactcentrecanada.ca/cm/?q=node/view/45&i18n_lang=en

²² Contact Centre Canada *Customer Contact Centres in Canada: The Impact of Offshoring, Technology and Regulation on Human Resources*. Prism Economics and Analysis. April 2006. Page 13

²³ In comparison, Canada's construction sector contributed \$48 billion (5.1%), while Canada's largest industry sector, Manufacturing contributed \$169 billion.

Manufacturing (14%) sectors still represent a significant portion of contact centre users, but their percentage of the overall Canadian contact centre population has been shrinking. The proportion of Government, Transportation and Telcos/Utilities organizations using contact centres have all been growing rapidly.

Other statistics on call centres:

- Contrary to the prevailing notion that contact centres are comprised of large operations with a large number of agents, at year-end 2000 77% of all Canadian contact centres had less than 25 agent positions. This compares to only 4% of contact centres with over 100 agents.²⁴
- In-house call centres represent 70% of the sector²⁵.
- The 2002 Sector Study estimated that approximately 70% of contact centres were either solely focused on **inbound** calls or predominantly so focused. Only around 6 – 7% of contact centres surveyed were exclusively oriented to **outbound** calls.²⁶

²⁴ The trend toward smaller contact centre has existed in Canada for some years now, in fact becoming more prevalent. In 1996 70% of Canadian contact centres had fewer than 25 agents. This trend is expected to continue given the increasing availability and cost effectiveness of technology.

²⁵ Contact Centre Canada *Customer Contact Centres in Canada: The Impact of Offshoring, Technology and Regulation on Human Resources*. Prism Economics and Analysis. April 2006. Page 18.

²⁶ Contact Centre Canada *Customer Contact Centres in Canada: The Impact of Offshoring, Technology and Regulation on Human Resources*. Prism Economics and Analysis. April 2006. Page 22 with the following citation: Customer Contact Canada, *The Canadian Customer Contact Centre Landscape, op. cit.* based on Table 4.7 and industry weights in Figure 4.5