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Via email: procedure@crtc.gc.ca

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage
Ottawa, ON K1A 0C9

Dear Ms. Rhéaume:

Subject: Telecom Public Notice CRTC 2006-4 – Proceeding to establish a national do not call list framework and to review the telemarketing rules – REPLY COMMENTS

Introduction

1. Rogers Communications Inc. ("RCI") is filing these reply 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. Rogers does not intend to respond to all of the comments made by other parties. Rogers' position is set forth in its original submission. Failure by Rogers to respond to any argument raised by other parties that are in disagreement with Rogers' stated position does not signify Rogers' acceptance of any such opposing views.

Inclusion of DNCL & Telemarketing Rules in ILEC Tariffs

3. Parties that have opposed Rogers' proposal that DNCL and Telemarketing Rules should be removed from the ILEC Tariffs include: TBayTel, The British Columbia

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Public Interest Advocacy Centre (BCPIAC), Consumers' Association of Canada (CAC), and Infolink. TBayTel believes the rules should remain in the tariffs as a source of public awareness. Rogers would suggest that the average consumer does not review tariffs and that effective public awareness can be accomplished through other means. Both BCPIAC and CAC believe that the threat of disconnection should be maintained by the telecommunications service providers (TSPs) as it is another tool for enforcement against persistent violators, along with the administrative monetary penalties (AMPs) available through the amended Act. In order to maintain this threat both parties feel the rules need to be included in the tariffs. Infolink suggests that tariffs should be amended to remove the enforcement power placed upon the TSPs but that the rules should remain within the tariffs. Rogers maintains that the AMPs will be sufficient in enforcing the DNCL and telemarketing rules no longer need to be embedded within the tariffs.

4. The Companies suggest that it is no longer necessary for the tariffs to codify the telemarketing rules but that it would be desirable to retain the threat of disconnection as a possible last-resort remedy. Rogers submits that if the Companies wish to retain the threat of disconnection then the rules must be stated in the tariffs. However, Rogers maintains that the AMPs will be sufficient in enforcing the DNCL and telemarketing rules and no longer need to be embedded within the tariffs.

5. The positions of Shaw, the Canadian Bankers Association (CBA) and the Public Interest Institute (PII) align with Rogers and state the powers granted to the Commission, to charge AMPs, eliminate the need to enlist TSPs as enforcers of rules. AMPs permit the exclusion of the rules from the tariffs.

DNCL Rules

Business Exemption from DNCL

6. The Canadian Marketing Association (CMA), The Direct Marketing Association (DMA), CBA, Credit Union Central of Canada (CUCC), Contact NB and NuComm have all shown support for Rogers' position that businesses should be excluded from the DNCL. This aligns with the U.S. model and is supported by the statistics the CMA has provided indicating that only 3% to 5% of telemarketing complaints arise from businesses. The CBA has aptly pointed out that from a policy perspective the focus should be consumers and not businesses. The DMA convincingly explains that exempting businesses from the DNCL is the best option as: 1) an invasion of privacy is not a concern for businesses but rather consumers, 2) businesses depend on making and receiving calls in the course of commercial activities, 3) difficulties exist in determining who is authorized to register a company's phone number, 4) significant risk exists whereby business numbers may be listed by disgruntled employees or competitors, and 5) the administrative problem of de-registering a

business phone number if the individual that registered it in the first place no longer works for the company. Rogers maintains that excluding business phone numbers from the DNCL is the best solution. No parties have submitted positions to the contrary.

60-Day Grace Period

7. BCPIAC and CAC have recommended a 7-day grace period be put in place whereby companies have 7-days to respect a consumer's request to be placed on the DNCL. These parties have failed to provide evidence of a DNCL regime of this scope anywhere in the world that utilizes a 7-day grace period. Rogers feels that a 7-day grace period is impossible to implement from an operational standpoint.

8. DMA, Infolink, Advocis and PII have suggested a 30-day grace period. DMA states that because Canadian and U.S. firms work across a mutual border the rules should be harmonized. Rogers does not believe this is a valid argument. Rogers, like many Canadian organizations, only conducts telemarketing within Canadian borders and asserts that companies running telemarketing operations from a North American prospective are the exception and not the rule. A survey conducted by PricewaterhouseCoopers in 2001 shows that only 17% of companies operate domestically and in the U.S.[1] The DNCL rules should not be designed to accommodate the operations of only 17% of Canadian businesses. Telemarketing campaigns are more typically run locally, regionally or nationally. In instances where telemarketing is conducted outside of Canada it is more likely that call centres are located in India, or southeastern Asia, and not in the U.S. Therefore, minimal benefits would be realized in harmonizing Canadian rules to those in the U.S. from the standpoint of a seller or telemarketer operating in a North American market.

9. To properly establish a grace period, stakeholders first need to understand the U.S. implementation of this rule, the potential for an increase in errors due to monthly scrubs becoming bi-monthly scrubs, and the resultant increase in investigation and enforcement costs because of those errors. Despite the U.S. Do-Not-Call Registry being accessible to sellers, telemarketers, and their service providers since September 2003, U.S. companies have only had to comply with a 30-day grace period since January 1, 2005.

10. The Companies, the CMA, and Canadian Life and Health Insurance Association Inc. (CLHIA), support Rogers position that a 60-day grace period is the most reasonable to implement. RESP Dealers Association of Canada (RESPDAC) suggests a grace period of 60-days or 90-days will be required, depending on operational details. CBA, CUCC, Canadian Association of Direct Response Insurers (CADRII),

[1] PricewaterhouseCoopers 2001 Survey of Establishments.

Canadian Association of Financial Institutions in Insurance (CAFII), and TD Meloche Monnex suggest a 90-day grace period.

11. Interested parties in the proceeding have recommended grace periods that range from 7-days to 90-days. Rogers maintains that a 60-day grace period is the best alternative as it strikes an appropriate compromise between all stakeholders representing both consumer and business interests while still considering the economic viability of a self-sustaining DNCL system.

Expiration of Registration

12. PIAC recommends a phone number should remain on a DNC list for perpetuity. Rogers does not believe this effectively considers the disconnection and recycling of phone numbers. CAC suggests a 5-year expiration which aligns with the U.S. model, while TBayTel recommends a minimum of 3-years and a maximum of 5-years.

13. The Companies, CBA, CLHIA, CAFII, CUCC agree that for reasons of simplicity and consistency a 3-year expiration makes sense. This is consistent with the CRTC's existing telemarketing rules that require registrations on company-specific DNCLs to be retained for 3-years. This is also consistent with the CMA's DNCL registration period. The majority of stakeholders agree that consistent application of the 3-year expiration rule is the best solution. Rogers agrees with this position as achieving consistency with this rule will avoid consumer confusion.

14. Some parties, such as The Companies, CMA, and the CLHIA have suggested that the TSPs submit disconnected numbers to the DNCL Operator on a monthly basis. This would assist in administering expiration of registrations prior to Rogers' proposed 3-year expiration period. Rogers recognizes that this is done in the U.S., however, Rogers does not currently maintain a list of disconnected numbers. If required to do so, and dedicate resources to build and maintain such a list, Rogers would expect compensatory costs from the DNCL Operator which would in turn come from fees generated by telemarketers. Furthermore, the issue of liability will need to be reconciled, if incorrect information is provided by the TSPs and violations occur, and will have to be taken into consideration in the creation of Safe Harbour Rules.

DNCL Registration

15. CAFII supported Rogers' position that individuals should register themselves and third parties should not bear the responsibility of registering consumers. No parties expressed an opposing view on this matter.

16. The Companies and PIAC agree with Rogers' position that the preferred methods of registration include a toll-free phone number and Internet. The Companies stipulate that an IVR should be used in conjunction with a toll-free phone number while PIAC suggests the use of a live operator for individuals such as seniors. Rogers believes that using a live operator will prove cost prohibitive. In an effort to manage the overall costs a toll-free phone number that uses an IVR is the better solution. A senior could potentially have a family member, friend, or neighbour assist them with their registration. As well it can not be ignored that an increasing number of seniors are becoming computer literate. Therefore, Rogers does not believe a live operator is required.

Safe Harbour Guidelines

17. The CMA, CBA, DMA all offered support for Rogers' position that Safe Harbour Guidelines need to be established as part of the DNCL regime. Despite best efforts, human errors do occur and it is important that a company which has exercised due diligence should not be faced with a large penalty for an isolated error. No parties expressed opposition to this recommendation.

Application of DNCL Rules

18. The Companies suggest that the enforcement of Canadian telemarketing rules upon telemarketers outside of Canada could be accomplished by means of a Notice of Violation to the business operating in Canada for which the telemarketing is being conducted – in other words the seller. Both Primus and Infolink propose that the responsibility of complying with the rules and the inherent liability should rest with sellers whether or not they contract telemarketing to a third party vendor. They suggest that call centres that make calls on the behalf of others should not be caught directly by the DNCL rules. Furthermore, they have assumed in their comments that scrubbing activities are the responsibility of the seller and not the telemarketer. Rogers strongly opposes this overly simplified view.

19. RESPDAC believes that the rules should apply to both seller and telemarketer. Rogers agrees with this position. To clarify the comments submitted by Rogers, the entity responsible for the violation should be held liable whether it be the seller or the telemarketer. Telemarketing companies are contracted by Canadian companies because of their expertise in telemarketing. Rogers maintains that it remains reasonable to hold telemarketers placing the calls responsible for complying with the rules, as this is their area of expertise. Doing so prevents companies from unwittingly contracting unscrupulous telemarketing firms. This recommendation also applies to Rogers when it acts within its capacity of telemarketer and should not be construed as an attempt by Rogers to evade the DNCL rules.

Including Voicecasting in DNCL Rules

20. Primus expresses the view that voicecasting calls should be excluded from the DNCL rules. They claim these types of calls do not require consumers to answer a telephone call and are easily skipped over and/or deleted by consumers when they access their voicemail systems. First, Rogers objects to Primus' argument as it simply does not address the economic consequences faced by wireless consumers who incur airtime charges and potentially roaming and long distance charges as well. Second, it seems unreasonable to assume that a consumer will skip over and delete a message without listening to it, especially those consumers that receive a voicecasting message for the first time. Listening to the content of the message is necessary to distinguish between valid messages from family, friends, colleagues or clients, and unsolicited voicecasting messages.

21. Rogers maintains that including 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. It naturally falls that wireline voicecasting also be included in the rules. The Companies, MRIA, PII, CAC, and Infolink offered support for this position and all recommend that DNCL rules apply to voicecasting calls. Despite Infolink being a provider of voicecasting services they recognize, in the interest of minimizing consumer confusion and reducing administrative complexity, it makes sense to include voicecasting in the DNCL rules. PII agreed that voicecasting has economic consequences for consumers and also raised further concerns including the limited storage space of the voicemail system as well as the fact that consumers' do not distinguish between types of telemarketing calls based upon whether the phone rings or not. This is further highlighted by CAC's comments whereby they propose that taking a technology-neutral approach to DNCL rules supports including voicecasting in the rules. They also feel that voicecasting to wireless handsets should be expressly prohibited since the called party incurs costs.

Telemarketing Rules in Decision 94-10 and Order 96-1229 Remain

22. CBA agrees with Rogers' position that the rules in Decision 94-10 and Order 96-1229 should for the most part be maintained. However, the CBA suggests the 30-day requirement to have requests placed on an internal DNCL be removed. Rogers concurs with the CBA to the extent that the grace period for an internal DNCL should be explicitly stated in the rules and harmonized with a 60-day grace period for a national DNCL. The majority of stakeholders state that the telemarketing rules in Decision 94-10 and Order 96-1229 should, for the most part, remain.

Telemarketing Rules in Decision 2004-35 Unnecessary

23. The CMA agrees that many of the telemarketing rules proposed in Telecom Decision 2004-35 are no longer required with the onset of legislative power to impose fines. Decision 2004-35 stated that the imposition of some additional requirements on telemarketers was undertaken because the CRTC did not have the legislative power to impose fines. The CMA's position aligns with that of Rogers. Rogers believes that the telemarketing rules proposed in 2004-35 have been made unnecessary due to the Commission's new power to assess fines. Additionally, Rogers states that the Rules in Decision 94-10 and Order 96-1229 should be maintained which further supports the CMA's position. Other parties that recommend the exclusion of rules in Decision 2004-35 include the CBA and CLHIA. No parties have expressed objection to this position.

24. Notwithstanding the aforementioned, if the Commission deems it appropriate to set an abandonment rate in the revised telemarketing rules Rogers feels the rate should be set at 5% as originally outlined in Decision 2004-35. Rogers notes that The Companies have the same position with respect to the 5% abandonment rate.

Establish a Minimum Threshold to Launch an Investigation

25. CAC has recommended that all complaints must be dealt with on a case-by-case basis and that the use of a minimum threshold is not appropriate. Rogers believes this to be a cost prohibitive proposition. To investigate every single complaint will take considerable resources and result in exorbitant costs, keeping in mind that some of these complaints may fall within the Safe Harbour rules and not necessarily result in AMPs that would otherwise fund the DNCL system. A better solution would be to launch an investigation after a pattern of violation has been established either by multiple complaints filed by multiple parties against one organization or multiple complaints filed by a single party against one organization. Advocis and CLHIA agree with Rogers' point that a minimum threshold should be set before an investigation is launched.

14-days to Respond to a Notice of Violation

26. The Companies have requested that an organization that has received a Notice of Violation be permitted 30-days to respond. Rogers' position is that a minimum of 14-days be provided and would not be adverse to 30-days being stipulated instead. No other parties provided recommendations in this regard.

Create a Progressive Penalty Scheme

27. The Companies recommend that the Competition Bureau's "conformity continuum" model can be used as an example for developing a progressive penalty scheme. CADRI, TD Meloche Monnex and RESPDAC have offered direct support for a compliance continuum while the CMA has offered indirect support by suggesting that proportionality of fines be determined by frequency and severity of infractions. BCPIAC has suggested that AMPs should consider the size of the company and the number of complaints against it. Rogers agrees with the latter suggestion by BCPIAC but not the former as the size of the company, which lacks definition, has no bearing on degree of compliance. All companies must comply with the DNCL and telemarketing rules, irrespective of size.

Apportion Costs Based on Usage

28. CAFII has recommended that costs be recovered through the use of an annual membership fee. Alternatively, CLHIA has suggested that rates should be scaled to usage which also achieves Primerica's objective that costs should be apportioned based on fairness. Rogers maintains that apportioning costs based on usage is the best alternative.

No Increase in Telecom Fees

29. The Companies state that Commission costs associated with the DNCL are material and should be recovered through the funding mechanism of the DNCL. Carriers should contribute only in their role as a telemarketer and not as a provider of telecommunications services. Furthermore, they state that to increase telecom fees to recover the Commission's costs would be poor public policy, would be inconsistent with the principle that the Commission's costs should be recovered from parties most responsible, and would be inconsistent with the Treasury Boards' policy with respect to cost recovery. Rogers could not agree more with this position. Shaw also aligns with this position and states that Canadian carriers are peripheral to the DNCL. All costs should be borne by telemarketers which of course includes telecommunication carriers when acting in that capacity.

Other Issues of Concern

30. The Companies have suggested that all registrant information should be destroyed upon the expiration of the DNCL registration. Rogers appreciates the need to destroy the information however, an immediate destruction of this information does not permit for a lag time needed to complete investigations. Rogers suggests that registration information can be destroyed but only after a time period (i.e. 6 months) that adequately accounts for an investigation to be completed. This time period can be determined in the CISC working group.

31. A number of parties have suggested that if a consumer consents to receive telemarketing calls from a specific company, that consent should override a DNCL registration that has taken place prior to the consent being provided, as is the case in the U.S. These parties include: the CMA, CBA, CADRI, and CUCC. Rogers agrees with this proposal.

32. The Companies have suggested that providing a registration number to the DNCL registrant, which acts as a confirmation of registration, adds little value to the operations of the DNCL at significant costs. The CBA concurs that a unique registration number is not necessary and would be expensive. PIAC was the only party to support a registration number while all other interested parties remained silent on this issue. Rogers agrees with both The Companies and CBA that a registration number is not required. Alternatively, a consumer can visit the registration website or call a toll-free number to verify their registration as is currently in place in the U.S.

33. The DMA has made the suggestion to implement the national DNCL in a phased in approach by province or area code(s). Rogers believes this to be a compelling suggestion that allows for operational issues to be corrected on a smaller scale prior to being launched nation-wide. A staggered launch will facilitate correcting operational issues as they arise and ensure an even flow of registrations instead of one great rush.

34. The BCPIAC has suggested that complaint information should be retained for a two year period. Rogers agrees that retention of complaint information is required but that detailed information, with respect to the complainant, need only be retained for one year. However, the aggregate complaint statistics of violations must be retained for a longer period in order to establish trends in violation types and specific violators. A retention period of five years seems reasonable at this time especially if a progressive penalty scheme is deployed.

35. The CMA has proposed a statute of limitations of 60-days be put in place whereby a consumer must lodge their complaint within 60-days of the alleged telemarketing violation occurring. Rogers agrees with a statute of limitations as complaints will be investigated and resolved more easily if done so within a reasonable period of time. However, 14 days should provide a consumer with a more than adequate time to lodge a complaint in response to an alleged violation. Placing the onus on a consumer to lodge their complaint within a 14-day timeframe seems reasonable as most consumers would lodge their complaint immediately after the alleged violation occurs. The 14-day leeway affords a consumer lodging their first complaint sufficient time to educate themselves in the process of how to do so while ensuring the incident occurred recently enough that it can be properly researched.

36. The CBA has suggested that authentication methods be used in any system of registration to safeguard that the rightful assignee of a phone number is in fact registering. Rogers warns against using methods of authenticating a consumer whereby personal information (i.e. DOB, address, etc) would have to be requested and retained by the DNCL Operator. This would unnecessarily increase the risk for the DNCL Operator of retaining such information. Rogers believes that limiting a single registration to three numbers, as in the U.S., is sufficient to avoid malicious activities whereby individuals would register phone numbers that were not their own. Additionally, the requirement of having to call from the phone number being registered is another safeguard to ensure the registrant is the individual assigned the phone number.

37. All of which is respectfully submitted.

Yours very truly,

David Watt
Vice President
Regulatory Economics

Copy: All Interested Parties to
Telecom Public Notice CRTC 2006-4

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