Petition to the Governor in Council

Section 12 of the Telecommunications Act

Telecom Decision CRTC 2004-35 dated 21 May 2004

Submitted by

The Canadian Bankers' Association

August 19, 2004
Introduction

The Petitioner

The Petitioner, The Canadian Bankers’ Association (“CBA”) requests that the Governor in Council set aside and vary provisions of Telecom Decision CRTC 2004-35. The CBA is a professional industry association that provides its members – the chartered banks of Canada - with information, research and operational support and contributes to the development of public policy on financial services. All chartered banks are eligible for membership and currently all domestic and virtually all foreign banks doing business in Canada are members of CBA.

Both nationally and internationally, the Association actively co-operates with other organizations in developing industry standards and conventions to enhance the efficiency and soundness of the financial services system.

The Decision

In Telecom Decision CRTC 2004-35 (“Decision 2004-35”), the Canadian Radio-television and Telecommunications Commission (“Commission”) imposed new limitations on all companies and individuals who conduct telemarketing in Canada. The Commission broadly defined telemarketing in Decision 2004-35 to mean: “the use of telecommunications facilities to make unsolicited calls for the purpose of solicitation where solicitation is defined as the selling or promoting a product or service or the soliciting of money or money’s worth, whether directly or indirectly and whether on behalf of another party.”

The Commission did not clearly define what it considers to be “unsolicited calls for the purpose of solicitation”, which has created concerns as to the scope of application of this decision. The CBA is particularly concerned about the possible impact of this decision on the ability of banks to provide financial services and advice to their clients.

The Request

The CBA does not believe that it is the Government’s policy or the intention of Parliament for restrictions to be imposed under telecommunications legislation that would purport to unreasonably restrict the ability of banks to provide financial services and advice to their clients. The purpose of this application is to respectfully request that the Governor in Council rescind or vary the Commission’s decision to ensure that this is not the case by clarifying that certain elements of the ruling do not apply to the normal telecommunications activities of banks or their financial institution affiliates.

1 Paragraph 12 Decision 2004-35
6. The specific requests made by the CBA in this regard are set out in further detail in paragraphs 61 to 65 of this application.

The Banking Sector

7. By virtue of their key role as financial intermediaries in the Canadian economy, banks, unlike most other companies, are subject to some form of government regulation or supervision over virtually every aspect of their activities, including their interaction with their customers.

8. The rationale for this regulatory oversight has been set out by the Government on several occasions, including in its 1999 white paper entitled Reforming Canada's Financial Services Sector:

   Strong, efficient and profitable financial institutions are vital to Canada's economic success. Over and above their important direct contribution to economic activity, financial institutions are in some way involved in virtually every transaction in the economy: processing payments, pooling savings, financing investment or managing risk.

   The men and women who work in Canada's financial institutions are the people Canadians turn to for financial services and advice, and the success of each institution depends on them.²

   Given that financial services are a necessity of everyday life and that consumers and financial institutions do not have the same information, understanding or bargaining power, it is critical that consumers be treated fairly in their dealings with financial institutions.³

9. Several key facts can be extrapolated from the above:

   financial services are a necessity of everyday life;
   consumers lack information on financial products and services; and
   consumers want to receive financial advice from their banks.

10. This unique and important role of banks and other financial institutions has caused the Government to set out extensive requirements and obligations in the Bank Act and other statutes relating to the interaction between financial institutions and their customers. For certain types of information (e.g. service charges and interest rates), banks are in fact under a regulatory obligation to disclose this information to customers (e.g. the Disclosure of Interest (Banks) Regulations).

11. In addition, certain types of communication between a bank and its customers over the phone (e.g. the types of information required to be provided by the bank to a

---


customer at the time of opening of an account over the telephone) are also subject to express regulation under the Bank Act through the Disclosure on Account Opening by Telephone Request (Banks) Regulations.

12. In addition to regulatory requirements, the Financial Consumer Agency of Canada is mandated to work with banks to ensure that adequate information is provided to customers on banking products and services (e.g. low fee accounts) and that broader educational initiatives are undertaken to help Canadians better understand the financial products and services available to them. Beyond the strict regulatory obligations, banks and their employees have a professional obligation to advise and update their clients on the full range of financial services and products that best suit their financial needs. Other financial institutions also operate under similar regulatory and professional obligations.

13. Based on the above, it is the view of the CBA that regulatory restrictions in the area of telecommunications that purport to impose unreasonable constraints on the ability of banks to contact and advise their clients would be inconsistent with the Government’s broader financial sector policy and with the professional responsibilities owed by banks to serve their clients.

Background on Decision 2004-35

14. In March 2001, the Commission published Public Notice CRTC 2001-34 (“Public Notice 2001-34”) on its website and in the Canada Gazette soliciting comments with respect to a review of existing telemarketing rules. In Public Notice 2001-34, the Commission did not set out specific regulations or restrictions which it was at the time considering with respect to telemarketing. The Commission posed only seven general questions concerning telemarketing conducted by means of live voice telephone calls, facsimile broadcasting and automatic dialer devices and invited the public to comment on those questions and “other points parties wish to raise.”

15. In Public Notice 2001-34 the Commission generally defined telemarketing as “unsolicited communications for the purposes of solicitation”. The Commission also referred generally to telemarketing activities carried on by “businesses and non-profit organizations who solicit for money or money’s worth”.

16. Based upon the wording of the public notice and the generality of the questions and description of telemarketing, one might not have reasonably discerned the range of restrictions on telemarketing that the Commission would eventually adopt. The Commission conducted the enquiry without public hearings, through a process involving only written submissions. The Commission and its staff did not hold public meetings or consult directly with Canadian businesses which utilize telecommunications in everyday commerce. The Commission did not disclose the rules to the public for comment in draft before implementing them, nor seek public comment; this is standard procedure for many regulatory agencies and assists in

---

4 It should be noted that these comments also apply in many respects to other financial institutions.
3 Paragraph 1 Public Notice Commission 2001-34.
preventing impractical, costly and unreasonable rules. The CBA and its membership were not consulted by the CRTC with respect to the possible impact of the new telemarketing rules on existing business activities.

17. The major participants in the written proceeding were telecommunications carriers, along with a few advocacy groups and a limited number of organizations representing business interests. The CBA did not participate in the proceeding, as Public Notice CRTC 2001-34 did not reveal the full scope of the regulatory action that the Commission would eventually adopt.

18. Although the proceeding closed on 17 September 2001, for nearly three years, the Commission did not issue any decisions or rulings, policy statements or draft regulations concerning telemarketing. On 21 May 2004, the Commission issued Decision 2004-35 entitled “Review of Telemarketing Rules”. The Commission, in Decision 2004-35, determined that the majority of complaints from the public concerning telemarketing practices originated from consumers who had received unsolicited facsimile broadcasts or had received calls from telemarketers who employed automated dialing machines (ADADs) where such automated devices had engaged the consumers’ telephone lines and there had been what the Commission described as “dead air”. The minority of complaints involved what is termed “live voice” telemarketing calls. The Commission also noted in Decision 2004-35 that a significant percentage of complainants to telecommunications companies were unaware of the existence of “do not call” lists, or the ability to be removed from the lists of telemarketers. Further, many complaints originated in respect of what the Commission described as “small telemarketers” who were themselves unaware of existing telemarketing restrictions. It is evident from reading Decision 2004-35 that there was very little tangible evidence put before the Commission by parties who may have advocated a curtailment of “business-to-business” telemarketing practices or to have calls to existing customers curtailed in some fashion.

19. Statistical evidence which was submitted to the Commission by the telecommunications carriers demonstrated that there was a relatively small number of complaints received by telecommunications carriers relative to the total number of telemarketing calls placed in Canada over a period of years. Based upon millions of calls undertaken annually, the number of complaints nation-wide involving live voice calls was relatively insignificant. In the case of banks, which make millions of outbound telemarketing calls each year, the number of complaints received by them is miniscule. The regulatory restrictions undertaken by the Commission in respect of live voice calls is disproportionate to the evidence of any abuse by telemarketers on the public record.

20. There are inequities in the Commission’s decision. Market and survey research calls are exempt from the new rules. The Commission determined that there wasn’t “compelling evidence to demonstrate that any undue inconvenience or nuisance” resulted from such calls. Calls made for purposes of collections were also exempted

---

* Complaints measured 1996-2000
from the rules. Although calls made for purposes of collections encompass a portion of the calls undertaken by the financial services industry, many other calls undertaken by the banking industry appear to be “caught” by the new rules.

The Impact of the Decision 2004-35

21. In Decision 2004-35 the Commission imposed new requirements on all companies and individuals who conduct telemarketing in Canada. The Commission broadly defined telemarketing in Decision 2004-35 to mean: “the use of telecommunications facilities to make unsolicited calls for the purpose of solicitation where solicitation is defined as the selling or promoting a product or service or the soliciting of money or money’s worth, whether directly or indirectly and whether on behalf of another party.”

22. The Commission did not clearly define what it considers to be “unsolicited calls for the purpose of solicitation”. This has created considerable ambiguity as to the intended scope of application of the decision.

23. There are four key elements of Decision 2004-35 that the CBA is concerned could potentially impact and restrict the ongoing business operations of financial institutions in Canada:

I. Identification Requirements

24. A caller who conducts telemarketing must identify himself or herself as well as the organization on behalf of whom he or she is calling. The new CRTC rules also require that if an agency is calling on behalf of a client the name of the agency must be disclosed, that the telemarketer must provide a toll-free telephone number that the recipient of the call can access for questions or comments, and that this information must be provided before any other communication, including asking for an individual by name, can be made. These new requirements are unnecessarily cumbersome, especially the requirement that the information needs to be disclosed upfront to the person who answers the phone, not the person being called. These requirements will result in many lost calls. Furthermore, the information may never be relayed to the intended recipient of the call.

25. Pursuant to the new rules, the person answering the telephone (rather than the intended recipient of the call) will receive the foregoing information. The person answering the telephone may have the right to request the caller to have the telephone number placed on a “do not call” list and the person answering the telephone must be instantaneously issued a unique identification number for the de-listing of the telephone number from future telephone calls from the party which placed the call. Technically it is the telephone number of the household or business called that is placed on a “do not call” list, rather than the intended recipient of the telephone call.
26. The methodology of administering the “do not call” list is highly problematic. In many households (or businesses) there are multiple parties who share a single telephone number, but are individually customers of banks. Each person within that household may have a separate bank account and may separately purchase financial services (from the same institution). One interpretation of Decision 2004-35 suggests that a single member of a household could preclude the bank from contacting any customer residing within the household at the (common) telephone number by having that telephone number placed on the “do not call” list regardless of the fact that other customers of the bank (within the household) did not revoke their consent to be contacted by telephone. In order to fairly and effectively administer “do not call” lists the obligation should exclusively reside with the customer who is being contacted to request addition of his or her name to the “do not call” list at a particular telephone number. Banks should retain the right to continue to contact other parties at that number who have not “revoked” their consent to be called.

27. Ironically, the intended recipient of the call may never know that an attempt had been made to contact him or her by telephone for any proper business purpose. For example if a child answers the call and becomes confused with the “identification procedure”, or another member of the household who receives the call asks to have the telephone number placed on a “do not call” list, there is the possibility that the nature of call will not be passed along to the intended recipient. Under the current wording of the “do not call” provision, the person who initiated the call will then be precluded from calling back the intended recipient of the call at that telephone number.

28. Given the fact that the lengthy “disclosure procedure” must take place prior to the caller reciting the name of the intended recipient of the call, there is the potential that the disclosure procedure may confuse people who do not speak the language of the caller and this will result in terminated calls. In summary, there is a much greater potential that the intended recipient of the call will never receive a message from the caller, regardless of an ongoing business relationship between the consumer and the business that initiated the call.

29. There is a further aspect to the new “disclosure procedure.” Under the new Commission rules, an individual at a local bank branch placing, a call to a customer’s residence or place of business, may have to disclose that she or he is calling from the particular financial institution and may be required to disclose that information to anyone casually answering the telephone at the residence or business premises of the customer before asking for the customer by name. The CBA believes that the disclosure of this information is not only unwarranted, but may needlessly disclose personal information about the existence of a relationship with a bank.

II. Unsolicited Calls

30. The Commission stated in Decision 2004-35 that the new rules apply to all “unsolicited calls made for the purpose of solicitation”. The Commission has also
determined that, regardless of the prior relationship between a service provider (caller) and a customer, there is no implied consent to be called. The Commission stated that it: “considers that when a consumer purchases a service or product from a company, or donates to a particular charity, there is no "implied consent" as a result of that purchase to receive future solicitations. The Commission is of the view that explicit consent should be obtained before a future solicitation is presumed to be acceptable.”

31. However the Commission did not state how explicit consent may be obtained before the intended recipient of a call is telephoned in the future.

32. In view of the fact that the Commission has concluded that there is no “implied consent” from an existing customer to receive future solicitations by telephone, the CBA believes that many long-standing relationships with customers could be affected by the telemarketing restrictions. For example, the Commission’s definition appears to capture, as “telemarketing”, calls to existing customers of financial institutions to apprise customers of forthcoming mortgage renewals, or renewals of (existing) financial instruments such as term deposits, Guaranteed Investment Certificates or notification of changes to financial services. Likewise, calls to remind an existing customer of the deadline to make an RRSP deposit, where there is an existing account in place, may be caught by the new telemarketing rules, based upon the Commission’s determination that there is no implied consent from an existing customer.

33. Many calls involving renewals of mortgages are made by employees in the local bank branch, who have an ongoing relationship with the customer. Customers expect these kinds of telephone calls as these calls are provided as an integral service of the bank. Therefore these are not nuisance calls and not within the mandate of the Commission to regulate pursuant to Section 41 of the Telecommunications Act. In establishing the new rules, the Commission appears not to differentiate between “cold calls” and calls that are made to a party who has an existing relationship with the business placing the call. When a customer of a bank initiates a relationship with the bank, the bank discloses to the customer how it proposes to enhance the relationship by drawing the customer’s attention to other products and services of the bank and its financial institution affiliates that it feels may be of benefit to the customer, and obtains the customer’s consent to market such products and services to the customer in the future. Customers have the ability at any time during their relationship with the bank to opt out of receiving future marketing. In the banks’ experience the percentage of customers opting out is in the single digits. The Commission should not by this decision be able to overrule such customer consent and should not disrupt an existing effective process.

34. It is submitted that, as currently crafted, there is a risk that the telemarketing rules could significantly limit a primary method by which financial institutions communicate with their customers, which in the view of the CBA is not consistent
with the Government's broader financial sector policies or with the intention of Parliament. It is submitted that the restriction placed on contacting existing customers by means of live voice telephone calls is unwarranted and would also constitute an infringement of the Canadian Charter of Rights and Freedoms.

III. Requirement for Live Operators

35. The CRTC has required every business which engages in telephone marketing to maintain a toll-free number answered by live operators during each business day. There must also be an interactive voice mail system after regular business hours to receive calls. Given that Canada has six time zones, the staffing requirements will necessitate a significant investment by businesses regardless of the nature of the telephone calls that are placed to customers. As noted above, many calls by financial institutions are made by local branch personnel to customers. Nevertheless, the financial institution will be required to maintain live operator during all business hours and the customer will likely interact with someone outside of their community.

IV. Requirement for Unique Registration Numbers and Agency's Do Not Call List

36. The Commission decision calls for each company that markets by telephone to create unique registration numbers in relation to the maintenance of their “do not call” lists. The Commission decided not to implement a national “do not call” list which has been adopted in the United States. Unfortunately the Commission’s telemarketing review took place in 2001, several years before the development of a national “do not call” list in the United States. The Commission’s flawed registration system “remedy” appears to be badly out of date even before implementation. As business operates in a North American and global context, it is short sighted for the Canadian regulatory agency to have adopted a dated and costly registration system. This new requirement also appears to be a solution in search of a problem as there is no evidence that there have been a large number of complaints based on unheeded “do not call” requests.

37. The creation of this new Canadian registration system will be expensive and cumbersome for businesses. In fact, tens of thousands of businesses will each have a different, unrelated registration system, which will likely add to consumer confusion. Although the Commission considers that this registration system will allow effective tracking of consumer complaints, there is no evidence to suggest that telecommunications companies, which ultimately receive telemarketing complaints from (their) subscribers, will be able to identify a business which has issued a registration number, since there is no unified national registry or cross-reference system being put in place. The Commission has required businesses to implement the registration number system by 1 October 2004. This implementation date is unrealistic given the systems changes that would need to be completed.

38. The Commission decision also requires that when an agency calling on behalf of clients receives a “do not call” request during a call, it must ask the requesting party if
the name and number should be removed from only the client's list, only the agency's list, or both. An agency may represent numerous clients and may be bound by confidentiality requirements not to reveal the names of their other clients. If a consumer is not provided with the list of companies that the agency represents, it would be very difficult for the consumer to make an informed decision regarding being placed on the agency's list. The consumer may unwittingly preclude himself from receiving calls from organizations he wants to hear from.

The Penalty for Non-Compliance

39. On the basis of a consumer's complaint to a telecommunications carrier, a company or individual which undertakes telemarketing calls in contravention of the Commission's rules may have its telecommunications services suspended or terminated with minimal prior notice. The process for suspension of telecommunications services is badly flawed and does not adequately provide for review or remedial action. A telephone subscriber's unsubstantiated allegations could lead to termination of telephone services of businesses. Termination of telecommunications services provided to banks pursuant to Decision 2004-35 would cause serious economic harm to Canadian businesses, the Canadian economy and consumers.

The Rationale for an Appeal to the Governor in Council Rather Than Making a Review and Vary Application to the CRTC

40. A party may request the Commission to Review and Vary a telecommunications decision pursuant to Section 62 of the Telecommunications Act (the "Act") and Part VII of the CRTC Telecommunications Rules of Procedure (the "Rules"). There is no obligation for the Commission to "stay" the implementation of any element of a telecommunications decision pending the determination of the merits of a Review and Vary application. Pursuant to the Act and the Rules, there is no obligation placed on the Commission to render a decision in a timely manner. In the past few years, there has been a number of situations where the Commission has delayed issuing a decision with respect to an application made pursuant to Part VII of the Rules for as long as four years from the receipt of an application.

41. The harm which could accrue to Canadian business from a delayed decision by the Commission or a failure of the Commission to amend the faulty telemarketing rules would be immeasurable.

42. Given the fact that there is a 1 October 2004 implementation date for the "do not call" list registry system and other restrictive provisions of Decision 2004-35 listed above, any delay in over-turning portions of Decision 2004-35 would be harmful to Canadian businesses and consumers. A failure to intervene in a timely manner to clarify the intended application of the Decision 2004-35 could result in curtailment of the use of telephone services for business-to-business calls and to contact existing customers. CBA members could be forced to utilize other forms of communications
to customers, which may not be an effective means of alerting customers to pending
business and financial transactions or deadlines and may additionally be a more
expensive form of communication. Consumers would thereby suffer the
consequences of failing to receive important notifications in a timely and efficient
manner and may be subject to higher costs for their financial services.

The Commission Infringed the Canadian Charter of Rights and Freedoms

43. Pursuant to Section 41 of the Telecommunications Act, Parliament authorized the
Commission to impose limited restrictions on unsolicited telecommunications to
prevent “undue inconvenience or nuisance”, provided that the Commission does so in
a manner that has “due regard to freedom of expression”:

41. The Commission may, by order, prohibit or regulate the use
by any person of the telecommunications facilities of a Canadian
carrier for the provision of unsolicited telecommunications to the
extent that the Commission considers it necessary to prevent
undue inconvenience or nuisance, giving due regard to freedom of
expression.

44. The CBA submits that the Commission failed in its obligation to have due regard to
the right of freedom of expression when it implemented the telemarketing rules in
Decision 2004-35.

45. The right to freedom of expression is outlined in section 2(b) of the Charter as
follows:

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including
freedom of the press and other media of communication.

46. The effect of the new Commission rules, on those who utilize the telephone for
purposes of communicating with customers or the public at large, may be to impose
the following requirements:

- To identify themselves, their organization, their toll-free numbers prior to
determining whether they have reached their intended party.
- To maintain “do not call” lists of households or businesses where addition to
such lists may be determined by a party other than the customer or the party
whom the marketer actually intended to call.
- To prohibit them from calling the “listed” household or business, regardless of
whether the actual customer has consented to be called, once any individual
has answered the telephone and asked to be placed on the “do not call” list. (A
“do not call” request could be made by a casual visitor to a residence rather
than the telephone subscriber).
47. The foregoing requirements arbitrarily dictate to marketers what they must say, how they must communicate and to whom they must not speak or otherwise communicate by means of telephone. It is submitted that the Commission has over-stepped Parliament’s intent, as set forth in the *Telecommunications Act* and the Charter of Rights and Freedoms.

**Privacy Compliance**

48. The banks have a long-standing reputation for and have consistently been leaders in protecting the privacy of their customers’ information. Protection of the privacy and confidentiality of customers’ personal information is the key to the relationship of trust between a bank and its customers.

49. The banking industry’s 1991 model privacy code was the first industry privacy code which went beyond a statement of principles, setting out detailed requirements for protecting customer personal information. Individual banks subsequently issued their own codes based on the CBA model.

50. The banking industry participated fully with representatives of consumer groups, government (including Department of Finance officials) and other business groups on the Canadian Standards Association Technical Committee on Privacy over a five-year period to develop the national privacy standard for the Canadian private sector, the Canadian Standards Association Model Code for the Protection of Personal Information (CAN/CSA-Q830-96) (CSA Code). This forms the basis, and an excerpt is included as Schedule 1, of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) which came into effect in January 2001 (pre-dating the Commission’s telemarketing review) overseen by the federal Privacy Commissioner and governs the banks’ handling of personal information.

51. Examples of the banking industry’s good privacy practices include:
   - Disclosure to the customer of any proposed uses of personal information, including marketing other products and services of the bank and its financial institution affiliates, at the time of account opening and obtaining customer consent for these proposed uses at that time; and
   - Policies not to sell customer lists to third parties – banks collect personal information to serve their customers better.

52. Taking into consideration the extensive work that has been completed by the sector in addressing privacy issues in a specific financial sector policy context, the CBA believes that neither the government nor Parliament intended to impose telecommunication rules in this area (e.g. requiring the disclosure of the bank’s identity to whomever answers the phone) that would be inconsistent with this broader framework.
**Redress Processes**

53. It is important to emphasize that banks currently maintain their own “do not call” lists, which are carefully maintained and updated to ensure that the wishes of persons who do not wish to be contacted are respected.

54. Beyond the “do not call” list, banks also have systems in place designed to resolve complaints quickly and to prevent problems from recurring. The vast majority of complaints are resolved at the branch level, on the spot or within a few days if an investigation is needed. Banks also have a complaint resolution group that further investigates complaints not resolved at the business-unit level.

55. In 1996 the industry established a two-tiered, formalized ombudsman system to investigate complaints that were not resolved by the banks’ branches or complaint-handling units. Under the ombudsman system there is an internal ombudsman at each institution that provides impartial and independent resolution of complaints based on fairness and industry best practices.

56. If customers are unable to resolve complaints to their satisfaction through the bank’s internal ombudsman they can contact the Ombudsman for Banking Services and Investments (OBSI). OBSI is an independent body that investigates complaints from individuals and small businesses about products and services provided by bank financial groups. Its objective is to provide impartial and prompt resolution of complaints, free of charge.

**Failure of the Commission to Consider Existing Banking Industry Standards**

57. The net effect of the Decision 2004-35 could be to impose a new highly restrictive tier of regulation over an industry which has taken a key leadership role in the protection of privacy rights and the voluntary resolution of consumer complaints. Unfortunately, the Commission’s new telemarketing rules are out of step with the proactive policies implemented by the banks to protect the rights of consumers.

58. Beyond privacy issues, as noted earlier, banks are under legal and broader professional obligations to provide ongoing advice and services to their clients. In the case of the marketing activities conducted by banks, it is submitted that the Commission did not consider whether the rules which it has imposed at large on all marketers have taken into account these considerations and are truly “necessary to prevent undue inconvenience or nuisance”. To the contrary, it appears that the Commission has imposed a “one size fits all” solution on all marketers without due regard as to whether their existing marketing activities actually constitute “undue inconvenience or nuisance”.

59. The fact that the Commission did not disclose, in a comprehensive fashion to the Canadian population the actual rules which it intended to enact pursuant to Section 41 of the *Telecommunications Act* and thereby permit informed and reasonable comment...
thereupon, gives further credence to the fact that the Commission did not fully evaluate the (potential) impact of its actions, giving “due regard to freedom of expression.” Consequently, the Commission’s telemarketing rules infringe the Charter of Rights and Freedoms and exceed the ambit of Section 41 of the Telecommunications Act.

60. In view of the foregoing, it is respectfully submitted that the Governor in Council should rescind portions of Decision 2004-35 and further vary the decision as requested by the Petitioner as set forth below.

Order Sought:

61. The CBA respectfully requests the following:

I. Exemption of Banks from the Decision

62. The CBA respectfully submits that banks and other financial institutions are subject to a comprehensive regulatory framework under the Bank Act and other statutes that encompasses a wide range of issues, including consumer protection and communications with customers. Banks have an exemplary record on key issues such as privacy commitments, maintenance of “do not call” lists and complaint resolution mechanisms.

63. Taking into account these considerations, the CBA respectfully requests that the Governor in Council direct the Commission to exclude banks and their financial institution affiliates from the application of Telecom Decision CRTC 2004-35. Recognizing the potential concerns of the Government in this area, banks are committed to work closely with the appropriate regulatory officials to assess whether changes to the legislative and regulatory framework or voluntary practices applicable to banks and their financial institutions affiliates are required to address the concerns that form the basis of the Commission’s decision.

II. Clarification of the Application of the Decision

64. In the alternative to the request in Section I above, the CBA respectfully submits that the ambiguity of certain elements of Telecom Decision CRTC 2004-35 could lead to the imposition of unreasonable limitations on the telecommunications activities of banks. For the reasons noted earlier in this submission, the CBA believes that such a result would not be consistent with broader Government policies in this area.

65. This petition respectfully requests that the Governor in Council rescind or vary elements of Telecom Decision CRTC 2004-35 “Review of Telemarketing Rules”. The petition requests, in the alternative, that the Governor in Council refer back certain aspects of Telecom Decision CRTC 2004-35 to the Canadian Radio-television and Telecommunications Commission for reconsideration and/or clarification:
a. paragraphs 101 and 102* of the decision do not apply to any calls between a bank and persons with whom it has an existing relationship;

b. paragraphs 101 and 102 of the decision do not apply to any calls between a bank and a business enterprise;

c. paragraphs 101 and 102 of the decision do not require a bank to self-identify and provide a customer support number before any other communications are made to the person receiving the call;

d. paragraphs 101 and 102 of the decision do not apply where the person has agreed to be contacted;

e. paragraph 102 does not require that the toll-free telephone number be manned during business hours;

f. paragraphs 93 and 94* of the decision (creation of unique registration numbers) do not apply to a bank;

g. under no circumstances would the decision permit an individual who answers the telephone at a residence or a business (who is not the intended recipient of the call) to unilaterally revoke the right to contact the bank’s customer by telephone by making a “do not call” request;

h. under no circumstances would the decision apply to any telephone contact between a bank and its customers in the event of a mail disruption;

the decision is stayed until such time as the above-noted requests have been resolved; and

j. the decision is stayed until such time as the Commission has had an opportunity to fully consult with companies potentially impacted by its decision, including on the issue of the scope of its application (taking into account the resolution to the issues noted above), the compliance challenges relating to its implementation and whether any options can be considered to mitigate its impact.

---

* Paragraphs 101 and 102 of the decision stipulate the manner in which a caller must self-identify and provide a toll-free telephone number for complaints.

* Note that for the purposes of this section, a reference to “bank” includes a reference to a “bank and its financial institution affiliates and agents”.

* Note that in compliance with the Personal Information Protection and Electronic Documents Act, banks enter into consent agreements with their customers allowing them to communicate with their customers regarding their products and services and to promote other products and services.

* Note that consumer protection types of provisions have generally been not been extended to businesses due to both policy reasons and to administrative/compliance complexities.

* Note that there is no objection to providing the information in the decision after the identity of the person who is being contacted has been appropriately verified.

* Note that there are instances where a company may provide a bank with a list of customers who have consented to the promotion of third party products and services. In this respect, these customers are similar to existing customers of the bank.

* Paragraph 93 imposes an obligation on companies to create unique registration numbers in relation to the maintenance of their do-not-call lists.