



Telecom Decision CRTC 2010-135

Ottawa, 5 March 2010

Application to review and vary Telecom Decision 2009-688 regarding violations of the Unsolicited Telecommunications Rules by All Points Solutions Inc.

File number: 8662-A99-200916455

1. The Commission received an application by All Points Solutions Inc. (All Points), dated 1 December 2009, requesting that the Commission review and vary Telecom Decision 2009-688. In that decision, the Commission imposed administrative monetary penalties (AMPs) totalling \$7,000 on All Points.
2. All Points submitted that its application was based on the following grounds: (1) All Points only initiates telemarketing faxes to businesses; (2) other telemarketers initiate fax telecommunications in the same way as All Points; (3) All Points has now subscribed to the National Do Not Call List (DNCL); and (4) the Commission does not investigate providers or resellers of "business consumer phone lists."

Background

3. On 12 August 2009, the Commission issued a notice of violation to All Points pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed All Points that it had initiated fax telemarketing telecommunications to consumers whose numbers had been registered on the DNCL, in violation of Part II, section 4¹ of the Commission's Unsolicited Telecommunications Rules (the Rules).
4. All Points was given until 14 September 2009 to pay the AMPs set out in the notice or to make representations to the Commission with respect to the violations.
5. All Points filed representations, dated 8 September 2009, in which it argued that
 - i. it is only a business-to-business fax telemarketer;
 - ii. it buys "business consumer phone lists" from a supplier; and
 - iii. it does not make repeat faxes and it processes removal requests.
6. After considering the evidence and the representations before it, the Commission found that
 - i. All Points had sent telemarketing faxes to residential consumers who were registered on the National DNCL;

¹ Part II, section 4 of the Unsolicited Telecommunications Rules provides that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunications number that is on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer.

- ii. although All Points purchased its phone list from a supplier, it is the responsibility of the telemarketer to ensure that the numbers receiving faxes belong exclusively to businesses and not to consumers registered on the National DNCL; and
 - iii. sending a single fax to a consumer who is registered on the National DNCL is a violation of the Rules; the fact that repeat faxes were not sent is irrelevant. Moreover, All Points' removal request procedure does not exempt it from adherence to the Rules.
7. The Commission found that All Points had violated the Rules as stipulated in the notice of violation and imposed AMPs totalling \$7,000.

Criteria to review and rescind, or vary Commission telecom decisions

8. In Telecom Public Notice 98-6, the Commission outlined the criteria to consider review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to, for example, one or more of the following: i) an error in law or in fact, ii) a fundamental change in circumstances or facts since the decision, iii) a failure to consider a basic principle which had been raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.
9. The Commission interprets All Points' review and vary application as an assertion that there were errors in fact and law in the original decision resulting from: (1) the Commission's finding that All Points had initiated telemarketing faxes to consumers listed on the National DNCL, (2) the Commission's alleged failure to pursue other telemarketers for initiating fax telemarketing telecommunications in the same way as All Points, and (3) the Commission's alleged failure to investigate providers or resellers of "business consumer phone lists." All Points also asserted that there had been a change in facts since the issuance of the decision, namely that All Points is now subscribed to the National DNCL.

Is there substantial doubt as to the correctness of the original decision?

- a) **Did the Commission err in finding that All Points had initiated telemarketing faxes to consumers listed on the National DNCL?**
10. All Points submitted that it only initiates telemarketing faxes to business consumers. It asserted that the absence of the residential numbers that were the subject matter of Telecom Decision 2009-688 from its purchased calling list proved that these residential numbers had not been faxed.
11. The Commission notes that All Points did not deny initiating the seven telemarketing faxes in its representations made prior to the issuance of Telecom Decision 2009-688. Instead, All Points asserted that the numbers in question had been called, but that they belonged to business consumers. The Commission notes that in the present review and vary application, All Points has denied that the calls were placed at all, contrary to its original representations.

12. The Commission notes that in Telecom Decision 2009-688, it found that All Points had sent seven telemarketing faxes to residential consumers who were registered on the National DNCL. The Commission further notes that each of these seven faxes contained All Points' name and phone number as the initiator of the faxes, and the faxes had been sent to consumers who were listed on the National DNCL.
13. Accordingly, the Commission determines that it did not err in finding that All Points had initiated seven telemarketing faxes to consumers listed on the National DNCL.
 - b) **Did the Commission err by allegedly failing to pursue other telemarketers for initiating fax telemarketing telecommunications in the same way as All Points?**
14. All Points submitted that it conducts its fax telemarketing in the same way as other fax telemarketers, but that the Commission does not pursue other fax telemarketers for these practices.
15. The Commission notes that it has taken action against fax telemarketers for committing the same violations as All Points.²
16. Nonetheless, the Commission considers that this assertion is irrelevant as to whether All Points did, in fact, initiate telemarketing telecommunications in violation of the Rules.
 - c) **Did the Commission err by allegedly failing to investigate providers or resellers of "business consumer phone lists"?**
17. All Points submitted that the Commission should investigate whether providers or resellers of "business consumer phone lists" are adhering to the Rules.
18. The Commission notes that pursuant to the Rules, it is the responsibility of the telemarketer initiating telemarketing telecommunications to ensure that it is not communicating with residential consumers listed on the National DNCL.
19. Accordingly, the Commission considers that this assertion is irrelevant as to whether All Points did, in fact, initiate telemarketing telecommunications in violation of the Rules.
 - d) **Has there been a fundamental change in facts since the original decision that raises substantial doubt as to its correctness?**
20. All Points requested that the Commission review the penalty it imposed because All Points has now purchased a subscription to the National DNCL, and had previously purchased the list from other fax marketers.
21. The Commission notes that All Points only subscribed to the National DNCL, for a one-month period, after it was served with a notice of violation. This subscription does not alter the fact that at the time that the seven telemarketing faxes were initiated to consumers listed on the National DNCL, All Points had not subscribed to the National DNCL, in contravention of the Rules.

² See Telecom Decisions 2009-522, 2009-523, 2009-524, and 2009-756.

22. The Commission also notes that All Points' assertion that it had previously been "purchasing [the National DNCL] from other fax marketers" is not a valid defence, considering that the purchase of the National DNCL from any source other than the National DNCL operator is, in and of itself, a violation of the Rules.³
23. Accordingly, the Commission determines that there has not been a fundamental change in circumstances or facts that raises a substantial doubt as to the correctness of the original decision.

Conclusion

24. In light of the above, the Commission finds that All Points has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2009-688.
25. Accordingly, the Commission **denies** All Points' application.

Other matters

26. The Commission notes that AMPs of \$7,000 imposed on All Points in Telecom Decision 2009-688 continue to accumulate interest calculated and compounded monthly at the average bank rate plus three percent from **3 December 2009**. The AMPs are payable on the total amount including interest and will accrue during the period beginning on **3 December 2009** and ending on the day before the date on which payment is received.
27. As part of its collection activities, the Commission intends to certify the unpaid amount and register the certificate with the Federal Court.

Secretary General

Related documents

- *Infax – Service d'Information sur Demande par Fax Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-756, 3 December 2009
- *All Points Solutions Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-688, 3 November 2009
- *Waterproofing by Peerless Mason Ltd. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-524, 26 August 2009
- *Roofing by Peerless Mason Ltd. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-523, 26 August 2009

³ Part II, section 13 of the Rules requires that a telemarketer and a client of a telemarketer shall use a version of the National DNCL obtained from the National DNCL operator no more than thirty one (31) days prior to the date that any telemarketing telecommunication is made.

- *Rob Sugar – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-522, 26 August 2009
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

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