



March 27, 2006

VIA E-MAIL

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television
and Telecommunications Commission
1 Promenade du Portage
Gatineau, QC
K1A 0N2

Dear Ms. Rhéaume:

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

A. Introduction

1. Pursuant to the procedures established by the Commission in the above-noted Public Notice ("PN 2006-4"), as amended in Telecom Public Notice CRTC 2006-4-1, 13 March 2006, Infolink Technologies Ltd. ("Infolink") is pleased to submit its initial comments in the proceeding to establish a national do not call list ("DNCL") framework.
2. Infolink is a communications technology company based in Toronto. It provides a variety of telecommunications-based services to customers wishing to disseminate information directly to the public. In these comments, Infolink refers to its services as "information dissemination services" or "IDS". The term "telemarketing", albeit convenient, does not capture the full range of services that Infolink provides to its customers, many of whom engage Infolink's IDS for purposes other than solicitation as that term is defined by the Commission.

3. In these initial comments, Infolink wishes to comment on the following issues raised by the Commission in section II of PN 2006-4:
 - (a) whether the DNCL and other telemarketing rules to be established by the Commission in this proceeding should be included in the tariffs of incumbent local exchange carriers ("ILECs") (para. 47(i));
 - (b) what the specific DNCL rules should be (para. 47(ii)), and in particular,
 - (i) whether a grace period is appropriate and if so, what the appropriate grace period is (para. 48(i));
 - (ii) whether the DNCL rules should apply to IDS providers like Infolink or to the customers on whose behalf IDS providers are engaged (para. 48(ii));
 - (iii) whether the DNCL rules should apply to voicecasting messages (para. 48(iii)); and
 - (c) what, if any other telemarketing rules are necessary and appropriate (para. 47(iii)).
4. Infolink reserves the right to provide reply comments in accordance with the process established by the Commission in this proceeding in relation to issues that are not specifically covered in these initial comments.

B. Comments on Questions and Issues in Section II of PN 2006-4

ILEC Tariffs

5. The Commission has solicited comments on whether, once the provisions of the *Act to amend the Telecommunications Act*, S.C. 2005, c. 50 (the "amended Act") are proclaimed into force, there would be any further need to require that the ILECs' tariffs include the Commission's telemarketing rules.

6. Infolink notes the Commission's observation that currently, the ILEC tariffs provide that an IDS provider's telephone service may be summarily suspended or terminated by the ILEC. Section 72.01 of the amended *Act*, when proclaimed into force, will give the Commission the authority to impose administrative monetary penalties to enforce a prohibition or requirement of the Commission under its section 41 powers. Infolink also notes the Commission's preliminary view that the new enforcement powers referred to above "would provide for a more practical and effective means of enforcing the rules" as established by the Commission in this proceeding.
7. Infolink submits that leaving it up to the ILECs to enforce the Commission's telemarketing rules can lead to unjustified business disruption without due process, as very nearly happened in the course of a dispute concerning the applicability of Bell Canada's General Tariff Item 1800 to Infolink's voicecasting service.¹
8. Furthermore, in light of proposed section 72.01 *et seq.* of the amended *Act*, maintaining the existing enforcement provisions in the ILECs' tariffs could potentially lead to contradiction and overlap and therefore, unnecessary uncertainty or duplication with respect to the enforcement of the Commission's DNCL and other telemarketing rules.
9. Infolink, therefore, submits that the ILECs' tariffs should be amended to remove any provisions therein that deal with the ILECs' power to take direct enforcement action against customers for suspected violation of the Commission's telemarketing rules.²

Specific Issues with respect to the DNCL Rules

10. At paragraph 48 of PN 2006-4, the Commission has invited comments on specific minimal aspects of the DNCL rules. Infolink provides the following responses to the specific issues raised by the Commission.

¹ *Infolink Communications Inc. v. Bell Canada – Voicecasting service*, Telecom Decision CRTC 2004-65, 4 October 2004 ("Decision 2004-65").

² Infolink notes that its position that carriers should no longer be responsible for enforcing the Commission's telemarketing rules appears to be consistent with the views put forth by ILECs in the proceeding leading to *Review of telemarketing rules*, Telecom Decision CRTC 2004-35, 21 May 2004 ("Decision 2004-35"): see Decision 2004-35, paragraphs 31 to 38.

Grace period

11. Infolink is supportive of a grace period from enforcement of the DNCL rules following the registration or any amendment to the registration of a subscriber's telephone number on the DNCL. A grace period is reasonable, given the practical and legal imperatives attendant on maintaining a national list of the names, addresses and telephone numbers of private individuals and other entities.
12. An appropriate grace period would be 30 days from registration or any amendment to the registration of a subscriber's telephone number. A shorter grace period would increase the administrative burden and cost to both the DNCL Operator and users of the DNCL and potentially render its efficient operation impracticable.

Should the DNCL rules apply to telemarketers or to the customers on whose behalf telemarketers are engaged?

13. At paragraph 48(ii) of PN 2006-4, the Commission has invited comments on whether the DNCL rules should apply to telemarketing companies or to the customers on whose behalf the restricted calls are being placed, or to both.
14. As an established provider of IDS, Infolink has, since 1994, maintained its own do not call lists. Based on this experience, Infolink is supportive of the proposition that ultimately, it should be the customer on whose behalf companies such as Infolink provided IDS who should be responsible for compliance with the DNCL rules.
15. Infolink's reasons in support of end-customer accountability are as follows:
 - (a) the proposed model of end-user customer accountability would allow the DNCL Operator and, therefore, the Commission, to identify the companies or other persons who are ultimately responsible for designing and authorising telemarketing activities. This would, in appropriate instances, facilitate enforcement of the DNCL rules;
 - (b) given the statutory exemptions provided for at subsection 41.7(1) of the amended Act, a framework that imposes responsibility for compliance with the DNCL rules on

the telemarketing company is likely to lead to unnecessarily complex legal and enforcement issues. Infolink's concerns in this regard stem from the fact that the majority of the exemptions provided for in the amended *Act* rest on legal statuses or relationships that are solely within the purview of the customer on whose behalf the telemarketing calls are being made. For example, a customer may represent to Infolink that it is a registered charity, or that it has the consent of the individuals on its list of telephone numbers to be contacted, that the requisite consent was obtained within the relevant timeframes, or that he or she is a contestant or candidate in an official political campaign described in paragraph 41.7(1)(c) of the amended *Act*. It would be a practical impossibility and therefore unfair to impose on companies like Infolink the legal responsibility for compliance with the DNCL rules, where a telemarketing or IDS initiative is engaged on the basis of the representations of the customer in question. To render companies like Infolink ultimately responsible for ensuring compliance with the rules in these types of situations would make them responsible for the unscrupulousness or negligence of customers on whose representations Infolink would have had no practical alternative but to rely in placing calls to the individuals on the customer-provided or approved lists; and

(c) the proposed model of end-user customer accountability would increase the potential for the DNCL to be better funded, given that the number of parties accessing the DNCL and therefore paying fees to the DNCL Operator would be much greater than if it were only telemarketing companies accessing the DNCL.

16. In addition to the foregoing, Infolink notes that its position in this regard appears consistent with the legislative intent behind subsection 41.7(4) of the amended *Act*. Subsection 41.7(4) of the amended *Act* makes the person or organization on whose behalf exempted telecommunications as defined in subsection 41.7(1) are made responsible for "ensur[ing] that no telecommunication is made on their behalf to any person who has requested that they receive no telecommunication made on behalf of that person or organization." In Infolink's view, subsection 41.7(4) makes it clear that at least with respect to exempted telecommunications, it is the person or organization on whose behalf an exempted telecommunication is made, who is responsible for maintaining their own do not call list. Parliament's direction in this regard makes sense and given that the issue of exempt telecommunications is inextricably linked to the issue

of compliance with the DNCL rules, should be applied to compliance with the DNCL rules in general.

Whether the DNCL Rules should apply to Voicecasting

17. At paragraph 48(iii) of PN 2006-4, the Commission has invited comments with respect to whether the DNCL should apply to voicecasting.
18. Infolink's Voicecasting service allows a customer to leave a message in the voice mailbox of an individual message recipient. The distinguishing characteristic of Infolink's Voicecasting service is that the recipient of the voicemail message does not receive a "live" call. Instead, the voicemail message is delivered directly into the recipient's voice mailbox. The telephone handset of the message recipient never rings, nor is there any other form of interruption of the message recipient's daily routine.
19. In technical terms, Infolink's Voicecasting service involves non-real-time, computer-to-computer communication, which engages the voice mailbox of the message recipient, not the message recipient himself or herself.
20. On October 4, 2004, the Commission rendered its decision in Decision 2004-65. The Commission found that its determination in *Use of telephone company facilities for the provision of unsolicited telecommunications*, Telecom Decision CRTC 94-10, 13 June 1994 "of the undue inconvenience and nuisance caused by ADADs [did] not apply to Voicecasting" and that "Voicecasting is not subject to GT Item 1800." Thus, currently,³ there are no restrictions in place on voicecasting.
21. Nonetheless, Infolink submits that it is appropriate, in the interests of minimizing consumer confusion and reducing administrative complexity, for the DNCL rules to apply to voicecasting messages.


³ Infolink notes, however, that there is a proceeding outstanding in which Rogers Wireless Inc. has sought restrictions on voicecasting to telephone numbers subscribed to wireless customers (See *Voicecasting to Wireless Subscribers*, CRTC 8622-R112005-14936). Infolink submitted in that proceeding that voicecasting to wireless telephone numbers should be prohibited to the extent that wireless subscribers incur usage-based charges when accessing their voicemail boxes.

Review of the telemarketing rules

22. At paragraph 47(iii), the Commission has invited comments on what, if any other telemarketing rules are necessary or appropriate.
23. Infolink submits that currently, the Commission's existing telemarketing rules remain appropriate and that other than the ILECs' ability to take direct enforcement action against their customers, there are no other telemarketing rules that require amendment. In particular, Infolink is not currently aware of any situation or evidence that a particular IDS or telemarketing activity is actually causing undue inconvenience or nuisance to the public within the meaning of section 41 of the Act.
24. Infolink's submissions in this regard apply to the Commission's telemarketing rules as amended in Decision 2004-35 (with the exception of the additional requirements imposed by the Commission on private do not call lists (paragraphs 91 to 95 of December 2004-35)).

D. Conclusion

25. Infolink thanks the Commission for providing this opportunity to comment on the foregoing issues as outlined by the Commission. It looks forward to participating in the remaining phases this proceeding.



Cesar Correia
Manager, Operations

cc: Interested Parties, PN 2006-4

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