

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Primus Telecommunications, Inc.)	
)	File No. EB-03-TC-162
)	NAL/Acct. No. 200432170006
Compliance with the Commission's)	FRN: 0004317798
Rules and Regulations Governing)	
the National Do-Not-Call Registry)	
)	
)	

ORDER

Adopted: September 3, 2004

Released: September 7, 2004

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Primus Telecommunications, Inc. ("Primus"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding potential non-compliance by Primus with the National Do-Not-Call Requirements contained in Section 227 of the Communications Act of 1934, as amended (the "Act") and Section 64.1200 of the Commission's rules.¹

2. The Enforcement Bureau and Primus have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² that the attached Consent Decree **IS ADOPTED**.

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

² 47 U.S.C. § 154(i).

5. **IT IS FURTHER ORDERED** that the above-captioned Commission investigation into the matters described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and Primus Telecommunications, Inc. ("Primus"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible noncompliance by Primus with the requirements of Section 227 of the Communications Act of 1934, as amended (the "Act") and Section 64.1200(c) of the Commission's Rules.¹

II. BACKGROUND

2. Primus, headquartered in McLean, Virginia, is the principal U.S. operating subsidiary of Primus Telecommunications Group, Inc., a global facilities-based telecommunications services provider offering international and domestic voice, Internet and data services to business and residential retail customers, as well as to other carriers. Primus holds numerous authorizations to provide telecommunications services from the FCC and state public utility commissions. Approximately 40 percent of Primus's sales come from telemarketing to consumers. Primus does not engage, however, in direct telemarketing to residential consumers. In September 2003, Primus hired a third party telemarketer, Spanco Telesystems & Solutions, Ltd. ("Telemarketer"), to conduct telemarketing on its behalf.

3. In a letter to Primus dated December 17, 2003, the Bureau commenced an investigation concerning Primus's telemarketing practices to residential consumers in connection with calls made on behalf of the company to consumers who had registered their telephone numbers on the National Do-Not-Call Registry.²

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200(c).

² See Letter from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Paul K. Singh, Primus, dated December 17, 2003 ("Dec. 17 Letter of Inquiry"); see also Letter from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Walter L. Stone, Primus, dated February 20, 2004 ("Feb. 20 Letter of Inquiry", together with the Dec. 17 Letter of Inquiry, "Letters of Inquiry").

4. During the course of the Investigation, Primus provided written responses to the Letters of Inquiry on January 23, 2004, March 11, 2004, and April 27, 2004. Primus represents that before the National Do-Not-Call rules became effective, it had developed and implemented an internal system designed to ensure that no telemarketing calls would be placed to consumers who had placed their names on the National Do-Not-Call Registry, and it submitted a description of its internal system and procedures for implementing the National Do-Not-Call requirements. Further, Primus established that it had paid for and properly accessed the National Do-Not-Call Registry database as soon as it became available. Upon receipt of the Dec. 17 Letter of Inquiry, Primus represents that it instructed its Telemarketer to halt outbound telemarketing on Primus's behalf.

III. DEFINITIONS

5. For purposes of this Consent Decree, the following definitions shall apply:
- a. "Act" means the Communications Act of 1934, as amended.
 - b. "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - c. "Commission" means the Federal Communications Commission.
 - d. "Effective date" means the date on which the Bureau releases the Adopting Order.
 - e. "Investigation" means the investigation and any related proceedings commenced by the Bureau's Letter of Inquiry, December 17, 2003, to Primus regarding possible noncompliance by Primus with the requirements contained in Section 227 of the Act and Section 64.1200(c) of the Commission's Rules during the period of October 1, 2003, through December 31, 2003, which possible noncompliance with Section 227 and Section 64.1200(c) shall include, for purposes of this Consent Decree, all complaints that were or could have been made against Primus for telemarketing calls made during the same period.
 - f. "Order" or "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
 - g. "Parties" means Primus and the Bureau.
 - h. "Primus" means Primus Telecommunications, Inc. and any telecommunications carrier subsidiary, successor, or telecommunications carrier controlled by Primus Telecommunications, Inc.

IV. AGREEMENT

6. Primus agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Primus and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, Primus agrees to the terms, conditions and procedures contained herein.

8. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Primus with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Primus does not admit or deny any noncompliance, violation or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

9. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, Primus agrees to voluntarily implement a Telemarketing Compliance Program consisting of the components delineated below.

- (a) Not later than 30 days after the Effective Date, Primus will adopt written policies and procedures regarding outbound telemarketing campaign management and the creation, approval and distribution to telemarketing companies engaged by Primus ("Telemarketing Companies" and each a "Telemarketing Company") of lists of potential customers and telephone numbers ("Call Lists"). Primus will also adopt written policies, which shall be available upon request, for maintaining its internal Do-Not-Call list. Primus's written policies and procedures, which will be memorialized in a Telemarketing Compliance Manual, will include the following requirements:
 - (i) All Call Lists shall be scrubbed against a version of the National Do-Not-Call Registry that has been obtained from the administrator of the Registry not more than 31 days prior to the date of any call made on Primus's behalf and a version of Primus's in-house do-not-call list ("Primus Do-Not-Call List") that has been updated by Primus not more than 30 days prior to the date of any call made on Primus's behalf;
 - (ii) No outbound telemarketing campaign may be initiated on Primus's behalf without prior written authorization from Primus confirming that the Call Lists have been scrubbed against the National Do-Not-Call Registry and the Primus Do-Not-Call List;
 - (iii) The Telemarketing Company shall generate and transmit to Primus on a daily basis compliance reports containing data on all do-not-call complaints and requests received by the vendor; and
 - (iv) Each outbound telemarketing campaign shall be monitored for compliance by Primus through the audit procedures described in Para. 9(g), below.
- (b) Not later than 30 days after the Effective Date, Primus will provide the Telemarketing Compliance Manual to its employees involved in telemarketing and in the customer service department. Primus will require these employees to acknowledge in writing that they have read, understand, and will abide by the policies and procedures in the Telemarketing Compliance Manual.

- (c) Not later than 30 days after the Effective Date, Primus will provide the Telemarketing Compliance Manual to Telemarketing Companies. Primus will require each Telemarketing Company to sign an acknowledgement that it has read, understands, and will abide by the policies and procedures in the Telemarketing Compliance Manual.
- (d) Not later than 30 days after the Effective Date, Primus will commence training of its employees involved in telemarketing campaign management and its customer service representatives. The training will include the following components:
 - (i) Distribution to employees of written training materials, including: Primus's Telemarketing Compliance Manual, a "FAQs" document providing answers to frequently asked questions about the National Do-Not-Call rules and the Primus Do-Not-Call List; flow charts depicting the process customer service representatives are required to follow when receiving a do-not-call request or complaint; and a copy of Primus's written policy for complying with National Do-Not-Call rules and maintaining the Primus Do-Not-Call List.
 - (ii) A training session given by the Primus Do-Not-Call Team (which consists of Primus's Vice President for Customer Care, Systems Administrator, Marketing Manager, and Regulatory Attorney), which will explain Primus's policies and procedures for telemarketing compliance and permit its employees to ask questions about the policies and procedures. Primus will require these employees to acknowledge in writing that they have attended the training session and understand and will abide by Primus's policies and procedures.
 - (iii) Primus will require new employees involved in telemarketing campaign management and hired as customer service representatives to complete such training within the first week of employment. Primus will require all employees involved in telemarketing campaign management and all customer service representatives to attend refresher training at least once a year.
- (e) Not later than 30 days after the Effective Date, Primus will prepare and distribute an Escalation Alert document that will identify the data criteria by which Primus will evaluate Telemarketing Company Reports or Customer Care Reports (see Para. 9(g) (audit procedures) below) and, if such criteria are met, will trigger escalation of the report to the next level of telemarketing compliance management. The Escalation Alert document will identify for each level of escalation the Primus manager (and an alternate) to whom such report shall be forwarded and the minimum timeframe within which notification shall be made. The Escalation Alert document will identify a clear path of successive levels of escalation, which will ensure that Primus can promptly identify and respond to data indicating a failure or potential failure of telemarketing compliance. The "Escalation Alert" process will be administered by Primus.
- (f) Primus's contracts with Telemarketing Companies will provide that:
 - (i) The Telemarketing Company shall comply with all applicable federal and state telemarketing laws and requirements, including the requirement that the Telemarketing Company use a process to prevent unauthorized use of the

- National Do-Not-Call database and refrain from participating in cost-sharing arrangements;
- (ii) The Telemarketing Company shall comply with Primus's policies and procedures set forth in Primus's Telemarketing Compliance Manual, including the requirement that the Telemarketing Company maintain and preserve all reports and records required by law, and all supplemental instructions from Primus;
 - (iii) The Telemarketing Company shall transmit to Primus on a daily basis reports that identify and provide data for each complaint or request relating to do-not-call and other telemarketing issues ("Telemarketing Company Reports"); and
 - (iv) Primus will take appropriate action in the event that any Telemarketing Company Report or any other source establishes that a Telemarketing Company has failed to follow its legal obligations or Primus's policies with respect to the Commission's Do-Not-Call rules. Violation of such legal obligations and Primus's policies shall be grounds for termination of the Telemarketing Company's contract with Primus.
- (g) Not later than 60 days after the Effective Date, Primus will implement procedures to audit compliance with the Commission's Do-Not-Call rules, through the following procedures and additional measures to be determined by Primus:
- (i) Telemarketing Company Reports. Primus will require its Telemarketing Companies to provide the Primus Do-Not-Call Team a daily written report containing data for each and every complaint or request relating to do-not-call and other telemarketing issues received by the Telemarketing Company.
 - (ii) Customer Care Reports. Primus will require its Vice President of Customer Care to provide the Primus Do-Not-Call Team a weekly report containing data for each and every do-not-call complaint and request to be placed on the Primus Do-Not-Call List received by Primus's customer service representatives.
 - (iii) Telemarketing Campaign Management Reports. Primus will require the Primus Do-Not-Call Team to issue to the Legal Department and Vice President for Customer Service, a weekly report summarizing the status of compliance for each active telemarketing campaign, which report shall be based upon the daily Telemarketing Company Reports and weekly Customer Care Reports.
 - (iv) "Failsafe" mechanisms designed to prevent noncompliance due to human error. These mechanisms may include "seeding" Call Lists with names of Primus representatives who are registered on the National Do-Not-Call Registry and/or the Primus Do-Not-Call List; the testing/auditing of the Telemarketing Company's response to verbal requests by Primus employees not to be called again and to be placed on Primus's Do-Not-Call list; monitoring of the Telemarketing Company's responses to questions about the Do-Not-Call requirements.

- (h) Not later than 30 days after the Effective Date, Primus will create a register that centralizes all compliance reports and telemarketing agreements associated with each Primus telemarketing campaign. Primus will designate a register manager, who will be responsible for maintaining and updating the register.
- (i) Not later than 60 days after the Effective Date, and every 180 days thereafter, Primus will submit a written report to the Bureau of its compliance with this Consent Decree, including in the first report, its progress in implementing its Compliance Program.
- (j) Primus will not commence telemarketing until the Compliance Program has been implemented and will give the Bureau not less than 14 days prior written notice of its intent to commence telemarketing.
- (k) Primus will maintain and make available to the Bureau, within 14 days of receipt of any specific request from the Bureau, business records documenting its compliance with the terms and provisions of this Consent Decree.
- (l) Primus will give the Bureau 30 days prior written notice of any change in its legal status, including a name change, a change of control, merger, reorganization, or dissolution.

10. Primus agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$400,000 within ten (10) business days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

11. The Bureau agrees that it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Primus, including any other enforcement action, nor will the Bureau seek any administrative or other penalties from Primus concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Primus with respect to Primus's basic qualifications to be a Commission licensee. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

12. Primus's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

13. Provided the Bureau issues an Order adopting the Consent Decree without change, addition or modification, Primus waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree.

