

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

DIANA MEY,
individually and on behalf of a class of all
persons and entities similarly situated,

Plaintiffs,

vs.

Case No. 5:17-CV-179 (Bailey)

ELECTRONICALLY
FILED
Dec 11 2017
U.S. DISTRICT COURT
Northern District of WV

DIRECTV, LLC;
ADAM COX;
AC1 COMMUNICATIONS;
IQ MARKETING 2, CORP., d/b/a PACIFICOM;
and MICHAEL ASGHARI,

Defendants.

CLASS ACTION COMPLAINT

Preliminary Statement

1. Plaintiff Diana Mey brings this action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*, a federal statute enacted in response to widespread public outrage about the proliferation of intrusive, nuisance telemarketing practices. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

2. Ms. Mey alleges that Defendant AC1 Communications and its owner, Adam Cox, sent her and other putative class members automated telemarketing calls without prior express written consent, and even though her number has long been listed on the National Do Not Call Registry.

3. Ms. Mey also alleges that Defendants IQ Marketing 2 Corp., d/b/a Pacificom, and its principal, Michael Asghari, sent her and other putative class members pre-recorded telemarketing calls without prior express written consent, and even though her number has long been listed on the National Do Not Call Registry.

4. ACI, Cox, IQ, and Asghari (the “Authorized Dealer Defendants”) acted pursuant to an agreement with Defendant DirecTV, LLC, who hired them to generate new business as members of the DirecTV Authorized Dealer program.

5. Because the calls to the Plaintiff were transmitted using technology capable of generating thousands of similar calls per day, she sues on behalf of a proposed nationwide class of other persons who received similar illegal DirecTV telephone calls.

6. A class action is the best means of obtaining redress for the Defendants’ illegal telemarketing, and is consistent both with the private right of action afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

Parties

7. Diana Mey resides in this District.

8. DirecTV is a California limited liability company that transacts business throughout the United States, including in this District.

9. AC1 is an Ohio corporation that transacts business throughout the United States, including in this District.

10. Adam Cox is a principal of AC1 and a resident of Ohio.

11. IQ is a California corporation that transacts business throughout the United States, including in this District.

12. Michael Asghari is the owner of IQ and a resident of California.

Jurisdiction & Venue

13. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. § 227 et seq.

14. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim—namely, the automated calls to the Plaintiff—occurred in this District.

Statutory Background

15. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy[.]” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

16. Perhaps the most well-known aspect of the TCPA was the creation of the National Do Not Call Registry. By adding a telephone number to the Registry, a consumer indicates her desire not to receive telephone solicitations. *See* 47 C.F.R. § 64.1200(c)(2).

17. Accordingly, the TCPA and its implementing regulations prohibit the initiation of telephone solicitations to residential telephone subscribers to the Registry. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2).

18. The TCPA also makes it unlawful to (1) make calls to cellular telephone lines using an “automatic telephone dialing system,” or (2) make calls to any cellular or residential line using an artificial or prerecorded voice, without the call recipient’s prior express consent. *See* 47 U.S.C. § 227(b)(1)(A) & (B); *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C. Rcd. 1830, 1844 (2012).

19. The FCC has explained that such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and can be costly and inconvenient.

20. Because allowing an entity “to avoid potential liability by outsourcing its

telemarketing activities to unsupervised third parties would leave consumers in many cases without an effective remedy for telemarketing intrusions,” the FCC has consistently held that a corporation or other entity “may be held vicariously liable under federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers.” *In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules*, 28 FCC Rcd. 6574, 6574 (¶ 1) (2013) (“May 2013 FCC Ruling”).

21. Further, a corporate officer or employee who, acting on behalf of the corporation, directly participates in or authorizes a violation of the TCPA, may be held individually liable. *See Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 416 (D. Md. 2011).

Factual Allegations

Call from AC1 and Cox

22. On August 12, 2017, AC1 made an automated telemarketing call to Ms. Mey’s cellular telephone line, (304) 242-XXXX, a number that had been listed on the National Do Not Call Registry for more than 31 days prior to the calls at issue.

23. When Ms. Mey answered the call, a sales representative began reading a scripted pitch for DirecTV goods and services.

24. The caller eventually identified himself as a representative of AC1.

25. When Ms. Mey asked why the call appeared to be from a West Virginia area code, the caller claimed that was the number programmed into “the dialer.”

26. Upon further inquiry from Ms. Mey, the caller admitted the call had been made using an “autodialer.”

27. Ms. Mey never gave AC1 or DirecTV consent to call her cellular phone using an autodialer.

28. Mr. Cox directly participated in or authorized AC1's illegal calling.

29. Prior to filing this lawsuit, Ms. Mey wrote to AC1 and Mr. Cox, informing them that she had received an illegal telemarketing call from AC1 in violation of the TCPA. In response, AC1 admitted making the call but could not provide any evidence of consent.

30. Ms. Mey and the other call recipients were harmed by these calls. Among other things, they were temporarily deprived of legitimate use of their phones and their privacy was invaded.

Calls from IQ and Asghari

31. On August 3, 2017, IQ and Asghari made a pre-recorded telemarketing call to Ms. Mey's cellular telephone line, (304) 242-XXXX, a number that had been listed on the National Do Not Call Registry for more than 31 days prior to the calls at issue.

32. The call came from (800) 217-8203, and played the following pre-recorded message:

Are you paying too much for your TV service? Hi! We're the premier television provider for this area. We have the lowest per channel cost in the industry with more than 140 channels including local channels for only \$29.99 per month. You also get free installation, free DVR equipment and free HD equipment. Act now and receive 33 premium commercial free movie channels free for three months. To hear more about this special offer, press 1 now or press 2 to be taken off this special list.

33. In an effort to identify the caller, Ms. Mey dialed (800) 217-8203. She reached a recording for "Best TV Offers."

34. On August 17, 2017, IQ and Asghari made a second pre-recorded telemarketing call to Ms. Mey's cellular telephone line, (304) 242-XXXX.

35. The call also came from (800) 217-8203, and played the following pre-recorded message:

Are you paying too much for your TV service? Hi! We're the premier television provider for this area. We have the lowest per channel cost in the industry with more than 140 channels including local channels for only \$29.99 per month. You also get free installation, free DVR equipment and free HD equipment. Act now and receive 33 premium commercial free movie channels free for three months. To hear more about this special offer, press 1 now or press 2 to be taken off this special list.

36. This time, Ms. Mey pressed 1 and was transferred to an individual who identified himself as "Sam Davis" with "Special Deals for DirecTV" in Las Vegas.

37. "Special Deals" is a fictitious name intended to disguise the legal name of the entity who made the call to Ms. Mey on behalf of DirecTV.

38. Ms. Mey terminated the call after Mr. Davis asked Ms. Mey for a credit card.

39. Other individuals have also complained about receiving unsolicited DirecTV pre-recorded telemarketing from this the same number. *See* <http://800notes.com/Phone.aspx/1-800-217-8203>.

40. Eventually, Ms. Mey was able to confirm that "Special Deals" was a d/b/a for IQ and Asghari, identified by DirecTV as Authorized Dealer # 1789851.

41. Neither DirecTV, IQ, nor Asghari had Ms. Mey's prior express written consent to call her cell phone via an automatic telephone dialing system or by pre-recorded message.

42. Mr. Asghari directly participated in or authorized IQ's illegal calling.

43. Prior to this suit, Ms. Mey wrote to DirecTV complaining about these calls, but DirecTV did not respond.

44. Ms. Mey and the other call recipients were harmed by these calls. Among other things, they were temporarily deprived of legitimate use of their phones and their privacy was invaded.

Vicarious Liability

45. DirecTV markets and distributes its goods and services through a network of authorized dealers.

46. Those authorized dealers—including AC1, Cox, IQ, and Asghari—are authorized to market DirecTV's products and services using DirecTV's trademarks and trade name.

47. Likewise, DirecTV allows its authorized dealers to hold themselves out to the public as DirecTV.

48. DirecTV exerts substantial control over the manner and means of its dealers' telemarketing, including, among other things, providing calling lists, directing the content of the dealers' advertising, and writing and approving the scripts used to make telemarketing calls.

49. DirecTV also allows its dealers to access proprietary internal computer systems for the purpose of selling DirecTV's products and services.

50. Further, DirecTV was or should have been aware that its authorized dealers, including AC1, Cox, IQ, and Asghari, were violating the TCPA, but acquiesced to its agents' conduct by consenting or failing to object to those illegal acts.

51. For example, the United States government has twice initiated enforcement actions against DirecTV for illegal telemarketing.

52. On December 12, 2005, the United States of America filed a Complaint seeking civil penalties and injunctive relief against DirecTV.

53. The day after the Complaint was filed, the United States and DirecTV announced a settlement (Exhibit 1) that required DirecTV to pay \$5,335,000 and agree to:

- a. Be permanently restrained and enjoined from engaging in violations of the Telemarketing Sales Rule, including, but not limited to, initiating any outbound telephone calls to a person when that person previously has stated to DirecTV that they did not wish to receive an outbound telephone call made by or on behalf of DirecTV. Exhibit 2 ¶ I(A)(1);
- b. Be permanently restrained and enjoined from failing to monitor outbound telemarketing campaigns conducted by its authorized dealers. *Id.* ¶ II(D)(1)-(2);
- c. Be permanently restrained and enjoined from providing any monetary compensation for any telemarketing related sales or activities, including but not limited to hourly rates of pay or commissions, to any authorized dealer after DIRECTV knows or reasonably should have known failed to comply with the Telemarketing Sales Rule. *Id.* ¶ II(E)(ii);
- d. Cease doing business with any authorized dealer that failed to comply with the Telemarketing Sales Rule. *Id.* ¶ II(F); and to
- e. Develop a system for receiving and promptly investigating all consumer complaints related to violations by any authorized dealers that have failed to comply with the Telemarketing Sales Rule. *Id.* ¶ IV(A)-(B).

54. The 2005 settlement did not stop DirecTV and its authorized dealers from engaging in illegal telemarketing practices.

55. As a result, on April 16, 2009, the United States filed a second complaint against DirecTV.

56. The allegations made in the 2009 Complaint are substantially the same as the complaints made in the 2005 Complaint.

57. Shortly thereafter, the United States and DirecTV again announced that they had reached an agreement. (Exhibit 2). This time, DirecTV agreed to pay \$2,310,000 and to:

- a. Be permanently restrained and enjoined from engaging in violations of the Telemarketing Sales Rule, including, but not limited to, initiating any outbound telephone calls to a person when that person previously has stated to DirecTV that they did not wish to receive an outbound telephone call made by or on behalf of

DirecTV. *Id.* at ¶ I(A)(1);

- b. Be permanently restrained and enjoined from initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance. ¶ I(C);
- c. Be permanently restrained and enjoined from failing to monitor outbound telemarketing campaigns conducted by its authorized dealers. *Id.* at ¶ II(D)(1)-(2);
- d. Be permanently restrained and enjoined from providing any monetary compensation for any telemarketing related sales or activities, including but not limited to hourly rates of pay or commissions, to any authorized dealer after DIRECTV knows or reasonably should have known failed to comply with the Telemarketing Sales Rule. *Id.* at ¶ II(E)(ii);
- e. Cease doing business with any authorized dealer that failed to comply with the Telemarketing Sales Rule. *Id.* at ¶ II(F); and to
- f. Develop a system for receiving and promptly investigating all consumer complaints related to violations by any authorized dealers that have failed to comply with the Telemarketing Sales Rule. *Id.* at ¶ IV(A)-(B).

58. Again, the enforcement action failed to curb DirecTV's illegal practices.

59. DirecTV told the government that it could and would stop its authorized dealers' illegal telemarketing. But by failing to take effective action to do so, DirecTV impliedly authorized the Defendants' violations of the TCPA.

60. Lastly, while the facts alleged herein are sufficient to sustain a claim of vicarious liability against DirecTV, the FCC has held that when vicarious liability is alleged, Plaintiffs may obtain "evidence of [agency] relationships . . . through discovery, if they are not independently privy to such information." May 2013 FCC Ruling at ¶ 46.

Class Action Allegations

61. As authorized by Rule 23 of the Federal Rules of Civil Procedure, Plaintiff sues on behalf of all other persons or entities similarly situated throughout the United States.

62. The classes of persons Plaintiff proposes to represent include:

CLASS 1:

All persons within the United States to whom, within the four years prior to the filing of this action, Defendants AC1 or IQ (a) placed a call on a cellular telephone line, (b) using equipment that has the capacity to dial numbers automatically without human intervention, (c) on behalf of DirecTV, and (d) where Defendants' records do not indicate prior express consent from the recipient.

CLASS 2:

All persons within the United States to whom, within the four years prior to the filing of this action, Defendants AC1 or IQ (a) placed a call on a residential telephone line, (b) using an artificial or prerecorded voice, (c) on behalf of DirecTV, and (d) where Defendants' records do not indicate prior express consent from the recipient.

CLASS 3:

All persons within the United States (a) whose telephone numbers were listed on the Do Not Call Registry, and (b) to whom, at any time within the four years prior to the filing of this action, more than one call within any twelve-month period was placed by Defendants AC1 or IQ, (c) to promote the sale of DirecTV products or services.

63. Excluded from the class are the Defendants, any entities in which the Defendants have a controlling interest, the Defendants' agents and employees, any Judge to whom this action is assigned, and any member of the Judge's staff and immediate family.

64. The proposed class members are identifiable through phone records and phone number databases that will be obtained through discovery.

65. The potential class members number in the thousands, at least. Individual joinder of these persons is impracticable.

66. Plaintiff is a member of the classes.

67. There are questions of law and fact common to Plaintiff and the proposed class, including but not limited to:

- a. Whether the Defendants used an automatic telephone dialing system to send telemarketing calls;

- b. Whether the Defendants used an artificial or prerecorded voice to deliver a message;
- c. Whether the Defendants placed telemarketing calls without obtaining the recipients' valid prior express written consent;
- d. Whether the Defendants placed more than one call within a 12-month period to numbers on the Do Not Call Registry;
- e. Whether the Defendants' violations of the TCPA were negligent, willful, or knowing; and
- f. Whether the Plaintiff and the class members are entitled to statutory damages because of the Defendants' actions.

68. Plaintiff's claims are based on the same facts and legal theories, and therefore are typical of, the claims of class members.

69. Plaintiff is an adequate representative of the classes because her interests do not conflict with the interests of the classes, she will fairly and adequately protect the interests of the classes, and she is represented by counsel skilled and experienced in class actions, including TCPA class actions.

70. The actions of the Defendants are applicable to the classes and to Plaintiff.

71. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendants and through reliable databases.

72. The likelihood that individual class members will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case, and given the small recoveries available through individual actions.

73. Plaintiff is not aware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above.

Legal Claims

Count One: Violation of the TCPA's provisions prohibiting autodialed calls to cell phones

74. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

75. The Defendants violated the TCPA, either directly or through the actions of others, by initiating a telephone call to Plaintiff's cellular telephone line using an automatic telephone dialing system. *See* 47 U.S.C. § 227(b)(1)(A).

76. The Defendants' violations were willful and/or knowing.

Count Two: Violation of the TCPA's provisions prohibiting prerecorded calls to residential phones

77. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

78. The Defendants violated the TCPA, either directly or through the actions of others, by initiating a telephone call to Plaintiff's residential telephone line using an artificial or prerecorded voice. *See* 47 U.S.C. § 227(b)(1)(B).

79. The Defendants' violations were willful and/or knowing.

**Count Three:
Violation of the TCPA's Do Not Call provision**

80. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

81. The Defendants violated the TCPA, either directly or through the actions of others, by initiating more than one telephone call to the Plaintiff in a twelve-month period while her number was on the National Do Not Call Registry. *See* 47 U.S.C. § 227(c).

82. The Defendants' violations were willful and/or knowing.

Relief Sought

Plaintiff requests the following relief:

- A. That the Court certify the proposed classes;
- B. That the Court appoint Plaintiff as class representative;
- E. That the Court appoint the undersigned counsel as counsel for the class;
- F. That the Court enter a judgment permanently enjoining the Defendants from engaging in or relying upon telemarketing, or, alternatively, from engaging in or relying upon telemarketing that violates the TCPA;
- G. That, should the Court permit Defendants to engage in or rely on telemarketing, it enter a judgment requiring them to adopt measures to ensure TCPA compliance, and that the Court retain jurisdiction for a period of six months to ensure that the Defendants comply with those measures;
- H. That the Court enter a judgment awarding any other injunctive relief necessary to ensure the Defendants' compliance with the TCPA;
- I. That the Court enter a judgment finding that Defendants are jointly and severally liable to Plaintiffs and all class members for all violations arising from the calls;

J. That Defendants and their agents, or anyone acting on their behalves, be immediately restrained from altering, deleting or destroying any documents or records that could be used to identify class members;

K. That the Court enter a judgment awarding Plaintiff and all class members statutory damages of \$500 for each negligent violation of the TCPA and \$1,500 for each knowing or willful violation;

L. That the Court enter an order awarding the Plaintiff reasonable attorneys' fees and costs; and

M. That the Plaintiff and all class members be granted other relief as is just and equitable under the circumstances.

Plaintiffs requests a jury trial as to all claims of the complaint so triable.

Plaintiff,
By Counsel,

/s/John W. Barrett
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16
17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20	_____)	
21	UNITED STATES OF AMERICA,)	Civ. No.
22	Plaintiff,)	STIPULATED JUDGMENT
23	v.)	AND ORDER FOR PERMANENT
24	DIRECTV, Inc., et al.)	INJUNCTION AGAINST
	_____)	DIRECTV, INC.

25
26 Plaintiff, the United States of America, acting upon
27 notification and authorization to the Attorney General by the
28 Federal Trade Commission ("FTC" or the "Commission"), has

1 commenced this action by filing the complaint herein, and
2 Defendant DIRECTV, Inc., has waived service of the summons and
3 the complaint. The parties, represented by the attorneys whose
4 names appear hereafter, have agreed to settlement of this action
5 without adjudication of any issue of fact or law, and without
6 Defendant admitting liability for any of the violations alleged
7 in the complaint.

8 **THEREFORE**, on the joint motion of the parties, it is hereby
9 **ORDERED, ADJUDGED AND DECREED** as follows:

10 **FINDINGS**

11 1. This Court has jurisdiction over the subject matter
12 pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15
13 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

14 2. Plaintiff and Defendant consent to jurisdiction and
15 venue in this District.

16 3. The activities of Defendant are in or affecting
17 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

18 4. The complaint states a claim upon which relief may be
19 granted against Defendant, under Sections 5(a), 5(m)(1)(A), 13(b)
20 and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
21 §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

22 5. Defendant hereby waives all rights to appeal or
23 otherwise challenge or contest the validity of this Order.

24 6. Defendant has agreed that this Order does not entitle
25 Defendant to seek or to obtain attorneys' fees as a prevailing
26 party under the Equal Access to Justice Act, 28 U.S.C. § 2412,
27 and Defendant further waives any rights to attorneys' fees that
28 may arise under said provision of law.

1 a catalog which: contains a written description or illustration
2 of the goods or services offered for sale; includes the business
3 address of the seller; includes multiple pages of written
4 material or illustrations; and has been issued not less
5 frequently than once a year, when the person making the
6 solicitation does not solicit customers by telephone but only
7 receives calls initiated by customers in response to the catalog
8 and during those calls takes orders only without further
9 solicitation. For purposes of the previous sentence, the term
10 "further solicitation" does not include providing the customer
11 with information about, or attempting to sell, any other item
12 included in the same catalog which prompted the customer's call
13 or in a substantially similar catalog.

14 7. "Seller" means any person who, in connection with a
15 telemarketing transaction, provides, offers to provide, or
16 arranges for others to provide goods or services to the customer
17 in exchange for consideration, whether or not such person is
18 under the jurisdiction of the Federal Trade Commission.

19 8. "Telemarketer" means any person who, in connection with
20 telemarketing, initiates or receives telephone calls to or from a
21 customer or donor.

22 9. "Authorized Telemarketer" means a person that has
23 received express, written authorization from DIRECTV to use
24 telemarketing to market DIRECTV goods or services.

25 10. "National Do Not Call Registry" means the National Do
26 Not Call Registry maintained by the Federal Trade Commission
27 pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

28

1 11. "Established business relationship" means a
2 relationship between the seller and a person based on: (a) the
3 person's purchase, rental, or lease of the seller's goods or
4 services or a financial transaction between the person and
5 seller, within the eighteen (18) months immediately preceding the
6 date of the telemarketing call; or (b) the person's inquiry or
7 application regarding a product or service offered by the seller,
8 within the three months immediately preceding date of a
9 telemarketing call.

10 12. "DIRECTV goods or services" means satellite programming
11 and all other goods or services.

12 13. "Authorized Marketer" means a business or other entity
13 with whom DIRECTV has entered into an agreement authorizing the
14 solicitation of DIRECTV goods or services.

15 **ORDER**

16 **I. PROHIBITION AGAINST AN ABUSIVE PATTERN OF TELEMARKETING CALLS**

17 **IT IS HEREBY ORDERED** that, in connection with telemarketing
18 DIRECTV goods or services, DIRECTV, whether acting directly or
19 indirectly through Authorized Telemarketers, is hereby
20 permanently restrained and enjoined from engaging in violations
21 of the Telemarketing Sales Rule, including but not limited to:

22 A. Initiating any outbound telephone call to a person
23 when:

24 1. that person previously has stated to DIRECTV or an
25 Authorized Telemarketer that he or she does not
26 wish to receive an outbound telephone call made by
27 or on behalf of DIRECTV, unless the provisions of
28

1 16 C.F.R. § 310.4(b)(3) (the Telemarketing Sales
2 Rule Do Not Call safe harbor) are met;

3 2. that person's telephone number is on the National
4 Do Not Call Registry, unless:

5 a. DIRECTV has obtained the express agreement,
6 in writing, of such person to place calls to
7 that person, clearly evidencing such person's
8 authorization that calls made by or on behalf
9 of DIRECTV may be placed to that person, and
10 including the telephone number to which the
11 calls may be placed and the signature of that
12 person; or

13 b. DIRECTV has an established business
14 relationship with such person, and that
15 person has not stated to DIRECTV or an
16 Authorized Telemarketer that he or she does
17 not wish to receive outbound telephone calls
18 pursuant to § 310.4(b)(1)(iii)(A) of the
19 Telemarketing Sales Rule; or

20 c. The provisions of 16 C.F.R. § 310.4(b)(3)
21 (the Telemarketing Sales Rule Do Not Call
22 safe harbor) are met.

23 B. Abandoning any outbound telephone call to a person by
24 failing to connect the call to a representative within
25 two (2) seconds of the person's completed greeting,
26 unless the following four (4) conditions are met:

27 1. DIRECTV or an Authorized Telemarketer employ
28 technology that ensures abandonment of no more

1 than three (3) percent of all calls answered by a
2 person, measured per day per calling campaign;

3 2. Defendant or an Authorized Telemarketer, for each
4 telemarketing call placed, allows the telephone to
5 ring for at least fifteen (15) seconds or four (4)
6 rings before disconnecting;

7 3. Whenever a representative is not available to
8 speak with the person answering the call within
9 two (2) seconds after the person's completed
10 greeting, DIRECTV or an Authorized Telemarketer
11 promptly plays a recorded message that states the
12 name and telephone number of the seller on whose
13 behalf the call was placed;

14 4. DIRECTV or an Authorized Telemarketer retains
15 records, in accordance with 16 C.F.R. 310.5(b)-
16 (d), establishing compliance with the preceding
17 three conditions.

18 C. Pending resolution of the proceeding to amend the TSR,
19 69 Fed. Reg. 67287 (Nov. 17, 2004), DIRECTV or an
20 Authorized Telemarketer will not be deemed to be in
21 violation of the TSR's call abandonment prohibition, 16
22 CFR 310.4(b)(1)(iv), or Paragraph B of this Order,
23 immediately above, for placing a telephone call that
24 delivers a prerecorded telemarketing message to a
25 consumer with whom DIRECTV has an established business
26 relationship, as defined in the TSR, if DIRECTV or an
27 Authorized Telemarketer conducts such call in
28 conformity with the terms of the proposed amended call

1 abandonment safe harbor published in the Nov. 17, 2004
2 Federal Register Notice at 69 Fed. Reg. 67287 (copy
3 appended as Appendix B). Upon resolution of that rule
4 amendment proceeding, subparagraph B of this Paragraph
5 will be deemed to incorporate any amendments to
6 § 310.4(b)(4), and subparagraph C of this Paragraph
7 will have no further effect.

8 D. If the Commission amends the Telemarketing Sales Rule,
9 ~~in whole or part, DIRECTV and its Authorized~~
10 Telemarketers shall, in connection with telemarketing
11 DIRECTV goods or services, comply fully and completely
12 with all applicable requirements of the amended Rule,
13 on and after the effective date of any such amended
14 Rule.

15 **II. MONITORING OF AUTHORIZED TELEMARKETERS**

16 **IT IS FURTHER ORDERED** that DIRECTV is hereby permanently
17 restrained and enjoined from:

18 A. Failing to conduct a reasonable due diligence
19 investigation of a person before making the person an
20 Authorized Telemarketer, to ensure that the person has
21 established and actively enforces effective policies
22 and procedures for compliance with the Telemarketing
23 Sales Rule, including procedures to prevent the
24 initiation of outbound telemarketing calls to numbers
25 on the National Do Not Call Registry, in violation of
26 16 C.F.R. § 310.4(b)(1)(iii), and to prevent call
27 abandonment, in violation of § 310.4(b)(1)(iv);
28

1 B. Failing to have a written contract with each Authorized
2 Telemarketer;

3 C. Failing to include in the written contract with each
4 Authorized Telemarketer requirements that the
5 Authorized Telemarketer comply with all provisions of
6 the Telemarketing Sales Rule, including, but not
7 limited to, § 310.4(b)(1)(iii) and (iv);

8 D. Failing to monitor outbound telemarketing campaigns
9 conducted by an Authorized Telemarketer to determine
10 whether:

11 1. Any telemarketing call is placed only to a
12 telephone number that is -

13 a. not on the National Do Not Call Registry
14 and not on an individual do not call
15 list maintained by DIRECTV or any of its
16 Authorized Telemarketers; or

17 b. on the National Do Not Call Registry,
18 *provided* that the customer either has
19 given his or her express agreement in
20 writing to receive telemarketing calls
21 at that number, or has an established
22 business relationship with DIRECTV;

23 2. Not more than three percent (3%) of telemarketing
24 calls answered by a person, measured per day per
25 calling campaign, are being connected to a pre-
26 recorded message in lieu of a live sales
27 representative, pursuant to 16 C.F.R.
28 §§ 310.4(b)(1)(iv) and 310.4(b)(4);

1 E. Providing any monetary compensation for any
2 telemarketing related sales or activities, including
3 but not limited to hourly rates of pay or commissions,
4 to any Authorized Telemarketer after DIRECTV knows or
5 reasonably should have known that such Authorized
6 Telemarketer has, in connection with telemarketing
7 DIRECTV goods and services;

8 (i) failed to fulfill contract requirements with
9 respect to compliance with the Telemarketing
10 Sales Rule, or

11 (ii) violated the Telemarketing Sales Rule.

12 F. Continuing to do business with any Authorized
13 Telemarketer that fails to fulfill contract
14 requirements with respect to compliance with the
15 Telemarketing Sales Rule, or violates any provision of
16 the Telemarketing Sales Rule.

17 *Provided*, however, that this Paragraph does not prohibit
18 DIRECTV from entering into a subscription agreement with a
19 consumer who was called by an Authorized Telemarketer that fails
20 to fulfill contract requirements with respect to compliance with
21 the Telemarketing Sales Rule, violates any provision of the
22 Telemarketing Sales Rule, or fails to comply with Paragraph I of
23 this Order.

24 **III. MONITORING OF AUTHORIZED MARKETERS**

25 **IT IS FURTHER ORDERED** that DIRECTV is hereby permanently
26 restrained and enjoined from:
27
28

- 1 A. Failing to monitor Authorized Marketers to determine
2 whether they are initiating contact with consumers
3 through outbound telephone calls to telemarket DIRECTV
4 goods or services; and
- 5 B. Doing business with any Authorized Marketer and shall
6 not provide any monetary compensation, including but
7 not limited to hourly rates of pay or commissions, to
8 any Authorized Marketer who DIRECTV knows or should
9 know engages in the following conduct:

- 10 1. initiating contact with consumers through outbound
11 telephone calls to telemarket DIRECTV goods or
12 services without express, written authorization
13 from DIRECTV; or
- 14 2. entering into any type of agreement with any other
15 person to initiate contact with consumers through
16 outbound telephone calls to telemarket DIRECTV
17 goods or services.

18 *Provided, however, this Paragraph does not prohibit DIRECTV*
19 *from entering into a subscription agreement with a consumer who*
20 *was called in violation of the Telemarketing Sales Rule, or by a*
21 *person who has engaged in any of the conduct described in*
22 *subparagraph B of this Paragraph of this Order.*

23 **IV. ADDITIONAL MONITORING**

24 **IT IS FURTHER ORDERED** that DIRECTV is hereby permanently
25 restrained and enjoined from failing to take the following
26 actions with regard to Authorized Telemarketers and Authorized
27 Marketers:

1 A. DIRECTV shall develop, implement, adequately staff, and
2 continuously operate and maintain, a system to receive
3 and retain complaints related to telemarketing DIRECTV
4 goods and services that are received by telephone,
5 mail, and e-mail. DIRECTV shall take all reasonable
6 steps to obtain, record, retain, and make easily
7 accessible to DIRECTV and, upon reasonable request, the
8 FTC, all relevant information regarding all complaints
9 relating to telemarketing of DIRECTV goods or services,
10 including but not limited to: (1) the consumer's name,
11 address, and telephone number; (2) the substance of the
12 complaint, including the name of any person referenced;
13 (3) the nature and result of any investigation
14 conducted concerning the complaint; (4) each response
15 to the complaint and the date of such response to the
16 complaint; (5) any final resolution of the complaint,
17 and the date of such resolution; (6) in the event of a
18 denial of any resolution, the reason for the denial;
19 (7) the name, telephone number, and address of the
20 Authorized Telemarketer or Authorized Marketer which
21 made the call that was the basis for the complaint; (8)
22 the date of the call; and (9) any relevant information
23 for determining whether a violation of the
24 Telemarketing Sales Rule has occurred. The system for
25 complaints related to telemarketing shall be capable of
26 producing and shall produce monthly reports that show
27 (1) the aggregate number of complaints relating to
28 telemarketing, (2) the total number and type of

1 telemarketing complaints for each Authorized
2 Telemarketer, and (3) the total number and type of
3 telemarketing complaints for each Authorized Marketer;

4 B. DIRECTV shall promptly investigate each consumer
5 complaint relating to telemarketing or the
6 Telemarketing Sales Rule and shall take all reasonable
7 steps to identify the person whose activities prompted
8 the complaint; and

9 C. ~~At the time DIRECTV activates a new subscriber, DIRECTV~~
10 shall ask how the person was solicited and shall note
11 and keep records of any response indicating that the
12 person was initially solicited by an outbound telephone
13 call. For each subscriber who indicates that he or she
14 was contacted initially through an outbound telephone
15 call, DIRECTV shall, as soon as practicable, identify
16 the Authorized Marketer who will receive the payment
17 from DIRECTV in respect to such subscriber activation
18 and use this information to monitor compliance with
19 this Order. DIRECTV shall keep this procedure in place
20 for a period of three (3) years after November 15,
21 2005, or three (3) years after the date of entry of
22 this Order, whichever date is later.

23 **V. PROHIBITION ON ASSISTING AND FACILITATING**

24 **IT IS FURTHER ORDERED** that DIRECTV is hereby permanently
25 restrained and enjoined from providing substantial assistance and
26 support to any telemarketer when DIRECTV knows or consciously
27 avoids knowing that the telemarketer is engaged in one or more
28 violations of the Telemarketing Sales Rule.

1 **VI. CIVIL PENALTY**

2 **IT IS FURTHER ORDERED** that judgment in the amount of Five
3 Million Three Hundred Thirty Five Thousand Dollars
4 (\$5,335,000.00) is hereby entered against DIRECTV as a civil
5 penalty pursuant to Section 5(m)(1)(A) of the Federal Trade
6 Commission Act, 15 U.S.C. § 45(m)(1)(A).

7 A. Prior to or concurrently with its execution of this
8 Order, DIRECTV shall transfer the civil penalty payment
9 in the form of a wire transfer or certified or
10 cashier's check made payable to the Treasurer of the
11 United States. The check or written confirmation of
12 the wire transfer shall be delivered to: Director,
13 Office of Consumer Litigation, U.S. Department of
14 Justice Civil Division, P.O. Box 386, Washington, DC
15 20044. The cover letter accompanying the check shall
16 include the title of this litigation and a reference to
17 DJ# 102-3316.

18 B. In the event of default on the payment required to be
19 made by this Paragraph, the entire unpaid civil
20 penalty, together with interest computed under 28
21 U.S.C. § 1961 -- accrued from the date of default until
22 the date of payment -- shall be immediately due and
23 payable.

24 C. DIRECTV shall cooperate fully with Plaintiff and the
25 Commission and their agents in all attempts to collect
26 the amount due pursuant to this Paragraph if DIRECTV
27 fails to pay fully the amount due at the time specified
28 herein. In such an event, DIRECTV agrees to provide

1 Plaintiff and the Commission with its federal and state
2 tax returns for the preceding two years, and to
3 complete new standard financial disclosure forms fully
4 and accurately within ten (10) business days of
5 receiving a request from Plaintiff or the Commission to
6 do so. DIRECTV further authorizes Plaintiff and the
7 Commission to verify all information provided on the
8 financial disclosure form from DIRECTV with all
9 appropriate third parties, including but not limited to
10 financial institutions.

11 D. In accordance with 31 U.S.C. § 7701, DIRECTV is hereby
12 required, unless DIRECTV has done so already, to
13 furnish to Plaintiff and the FTC, DIRECTV's taxpayer
14 identifying number(s) (employer identification numbers)
15 which shall be used for purposes of collecting and
16 reporting on any delinquent amount arising out of such
17 Defendant's relationship with the government.

18 E. DIRECTV agrees that the facts as alleged in the
19 complaint filed in this action shall be taken as true
20 for the purpose of a nondischargeability complaint in
21 any bankruptcy proceeding.

22 F. Proceedings instituted under this Paragraph are in
23 addition to, and not in lieu of, any other civil or
24 criminal remedies that may be provided by law,
25 including any other proceedings the Commission may
26 initiate to enforce this Order.

27 G. This Order resolves all allegations in the Complaint
28 against DIRECTV and that nothing in this Paragraph

1 permits the Commission to seek any additional remedies
2 for the conduct alleged in the complaint against
3 DIRECTV.

4 **VII. COMPLIANCE MONITORING**

5 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
6 and investigating compliance with any provision of this Order,

- 7 A. Within thirty (30) days of receipt of written notice
8 from a representative of the Commission or Plaintiff,
9 ~~DIRECTV shall submit additional written reports, sworn~~
10 to under penalty of perjury; produce documents for
11 inspection and copying; appear for deposition; and/or
12 provide entry during normal business hours to any
13 business location in DIRECTV's possession, or direct or
14 indirect control, to inspect the business operation;
- 15 B. In addition, the Commission and Plaintiff are
16 authorized to monitor compliance with this Order by all
17 other lawful means, including but not limited to the
18 following:

- 19 1. Obtaining discovery from any person, without
20 further leave of court, using the procedures
21 prescribed by Fed. R. Civ. P. 30, 31, 33, 34,
22 36, and 45; and
- 23 2. Posing as consumers and suppliers to DIRECTV,
24 any of DIRECTV's employees, or any other
25 entity managed or controlled in whole or in
26 part by DIRECTV, without the necessity of
27 identification or prior notice; and
28

1 C. DIRECTV shall permit representatives of the Commission
2 or Plaintiff to interview any employer, consultant,
3 independent contractor, representative, agent, or
4 employee who has agreed to such an interview, relating
5 in any way to any conduct subject to this Order. The
6 person interviewed may have counsel present;

7 *Provided, however,* that nothing in this Order shall limit
8 the Commission's lawful use of compulsory process, pursuant to
9 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
10 obtain any documentary material, tangible things, testimony, or
11 information relevant to unfair or deceptive acts or practices in
12 or affecting commerce (within the meaning of 15 U.S.C.
13 § 45(a)(1)).

14 **VIII. COMPLIANCE REPORTING**

15 **IT IS FURTHER ORDERED** that, in order that compliance with
16 the provisions of this Order may be monitored:

17 A. For a period of three (3) years from the date of entry
18 of this Order DIRECTV shall notify the Commission of
19 any changes in corporate structure that may affect
20 compliance obligations arising under this Order,
21 including but not limited to a dissolution, assignment,
22 sale, merger, or other action that would result in the
23 emergence of a successor entity; the creation or
24 dissolution of a subsidiary, parent, or affiliate that
25 engages in any acts or practices subject to this Order;
26 the filing of a bankruptcy petition; or a change in the
27 corporate name or address, at least thirty (30) days
28 prior to such change, *provided that,* with respect to

1 any proposed change in the corporation about which
2 DIRECTV learns less than thirty (30) days prior to the
3 date such action is to take place, DIRECTV shall notify
4 the Commission as soon as is practicable after
5 obtaining such knowledge.

6 B. One hundred eighty (180) days after the date of entry
7 of this Order, DIRECTV shall provide a written report
8 to the FTC, sworn to under penalty of perjury, setting
9 forth in detail the manner and form in which it has
10 complied and is complying with this Order. This report
11 shall include:

- 12 1. A copy of each acknowledgment of receipt of this
13 Order, obtained pursuant to Paragraph X of this
14 Order;
- 15 2. Any changes required to be reported pursuant to
16 subparagraph (A) of this Paragraph;
- 17 3. A list of the telephone numbers that DIRECTV or
18 any Authorized Telemarketers used or uses in
19 telemarketing since entry of this Order; and the
20 name and address of the phone company providing
21 service, including any telephone number programmed
22 to be transmitted for caller identification
23 purposes.
- 24 4. A list of all subscription account numbers DIRECTV
25 or any Authorized Telemarketers have used, uses,
26 or have obtained in connection with the National
27 Do Not Call Registry since entry of this Order;
- 28

1 5. A list of all Authorized Telemarketers and
2 Authorized Marketers, including the trade names
3 and any other names under which, to DIRECTV's
4 knowledge, these entities do business.

5 C. Once every twelve months, starting after the 180-day
6 report required in Paragraph VIII.B above is provided,
7 for a period of three years, DIRECTV shall provide a
8 written report to the FTC that includes a reasonably
9 detailed description of all monitoring activity taken
10 by DIRECTV pursuant to Paragraphs II, III, and IV of
11 this Order. The report shall also be served upon the
12 Board of Directors of DIRECTV. The report shall
13 include as applicable, but is not be limited to, the
14 following:

- 15 1. A reasonably detailed description of the due
16 diligence review DIRECTV performed on prospective
17 Authorized Telemarketers and the results of the
18 due diligence review;
- 19 2. The names, addresses and telephone numbers of all
20 Authorized Telemarketers and the dates they became
21 Authorized Telemarketers;
- 22 3. The names, addresses, and telephone numbers of all
23 Authorized Marketers;
- 24 4. The names, addresses, and telephone numbers of all
25 Authorized Telemarketers and all Authorized
26 Marketers who have been terminated by DIRECTV for
27 reasons related to telemarketing, the dates of the
28

1 terminations, and the specific reasons for
2 termination;

3 5. At the end of each quarter, starting after the
4 180-day report required in Paragraph VIII.B above
5 is provided, for a period of three years, DIRECTV
6 will provide a description of all outbound
7 telemarketing campaigns conducted by DIRECTV or
8 its Authorized Telemarketers during the previous
9 quarter, including, for each campaign, the dates
10 during which each campaign was in place and the
11 average number of calls made each day. At the
12 Commission's discretion, in each quarter, it may
13 request detailed data for up to three days for one
14 telemarketing campaign or one day each for each
15 campaign. For each selected day, DIRECTV will
16 supply the names of the entities making the calls,
17 the telephone numbers each entity called, the
18 basis for any established business relationship
19 between DIRECTV and a person at the number called,
20 or if such person does not have an established
21 business relationship with DIRECTV, the reason why
22 that person was called;

23 6. A detailed description of the methodology and
24 results of DIRECTV's investigation of any call by
25 an Authorized Telemarketer to a telephone number
26 on the National Do Not Call Registry which shall
27 include, but not be limited to, (a) the date of
28 the call, (b) whether there is an existing

1 business relationship with the consumer, and (c) if
2 there is an existing business relationship, the
3 date it began;

4 7. Evidence showing that DIRECTV developed,
5 implemented, staffed, and operated a system for
6 complaints related to telemarketing pursuant to
7 Paragraph IV of this Order;

8 8. Evidence showing that DIRECTV took all reasonable
9 steps to capture, record and retain every
10 complaint relating to telemarketing that it
11 received;

12 9. Evidence showing that DIRECTV took all reasonable
13 steps to obtain, record, and retain all relevant
14 information regarding all complaints relating to
15 telemarketing DIRECTV goods or services,
16 including, to the extent provided by the
17 complainant or discovered through investigation:
18 (1) the consumer's name, address, and telephone
19 number; (2) the substance of the complaint,
20 including the name of any person referenced; (3)
21 the nature and result of any investigation
22 conducted concerning the complaint; (4) each
23 response to the complaint, and the date of such
24 response to the complaint; (5) any final
25 resolution of the complaint, and the date of such
26 resolution; (6) in the event of a denial of any
27 resolution, the reason for the denial; (7) the
28 name, telephone number, and address of the

1 Authorized Telemarketer or Authorized Marketer;
2 (8) the date of the call; and (9) any relevant
3 information for determining whether a violation of
4 the Telemarketing Sales Rule has occurred;

5 10. Evidence showing that DIRECTV's system for
6 complaints related to telemarketing produced
7 monthly reports pursuant to Paragraph IV of this
8 Order;

9 11. Copies of all monthly reports showing the
10 aggregate number of complaints relating to
11 telemarketing, the total number and type of
12 telemarketing complaints for each Authorized
13 Telemarketer, and the total number and type of
14 telemarketing complaints for each Authorized
15 Marketer;

16 12. Evidence showing that DIRECTV promptly
17 investigated each consumer complaint relating to
18 telemarketing and took all reasonable steps to
19 identify the person whose activities prompted the
20 consumer complaint; and

21 13. Evidence showing that DIRECTV has complied with
22 Paragraph IV.C.

23 D. For the purposes of this Order, DIRECTV shall, unless
24 otherwise directed by the Commission's authorized
25 representatives, mail all written notifications to the
26 Commission to:

1 Associate Director for Enforcement
2 Federal Trade Commission
3 601 New Jersey Ave., NW
4 Washington, DC 20580
5 Re: United States v. DIRECTV, Civ. No. ____.

6 The Commission shall, unless otherwise directed by
7 DIRECTV's officers or attorneys, mail all written
8 notifications to DIRECTV to:

9 Executive Vice President, General Counsel
10 DIRECTV, Inc.
11 2230 East Imperial Hwy., 11th Floor
12 El Segundo, CA 90245

13 E. For the purposes of this Order, DIRECTV shall, unless
14 otherwise directed by a representative of Plaintiff,
15 identify all written notifications to Plaintiff as
16 provided in reference to DJ# 102-3316, and mail them
17 to:

18 Director, Office of Consumer Litigation
19 U.S. Department of Justice - Civil Division
20 P.O. Box 386
21 Washington, DC 20044.

22 F. For purposes of the compliance reporting and monitoring
23 required by this Order, representatives of Plaintiff
24 and the Commission are authorized to communicate
25 directly with officers of DIRECTV.

26 **IX. RECORD KEEPING PROVISIONS**

27 **IT IS FURTHER ORDERED** that, for a period of six (6) years
28 from the date of entry of this Order, DIRECTV and its successors
and assigns, shall maintain and make available to the Plaintiff
or Commission, within thirty (30) days of the receipt of a
written request, business records demonstrating compliance with
the terms and provisions of this Order.

1 **X. DISTRIBUTION OF ORDER BY DEFENDANT**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years
3 from the date of entry of this Order, DIRECTV shall deliver
4 copies of this Order as directed below:

5 A. DIRECTV must deliver a copy of this Order to all
6 officers and directors. DIRECTV shall also deliver a
7 copy of this Order to all of its employees who are
8 responsible for telemarketing DIRECTV goods or
9 services, handling telemarketing complaints, or
10 maintaining records relating to telemarketing
11 complaints or other telemarketing activities. For the
12 current officers, directors and employees described
13 above, delivery of this Order shall be within five (5)
14 days of service of this Order on DIRECTV. For new
15 personnel, delivery shall occur prior to them assuming
16 their responsibilities with DIRECTV.

17 B. DIRECTV must secure a signed and dated statement
18 acknowledging receipt of this Order, within thirty (30)
19 days of delivery, from all persons receiving a copy of
20 this Order pursuant to this Paragraph.

21 **XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

22 **IT IS FURTHER ORDERED** that DIRECTV, within five (5) business
23 days of receipt of this Order as entered by the Court, must
24 submit to the Plaintiff and the Commission a truthful sworn
25 statement acknowledging receipt of this Order.

1 **XII. FEES AND COSTS**

2 **IT IS FURTHER ORDERED** that each party to this Order hereby
3 agrees to bear its own costs and attorneys' fees incurred in
4 connection with this action.

5 **XIII. SEVERABILITY**

6 **IT IS FURTHER ORDERED** that the provisions of this Order are
7 separate and severable from one another. If any provision is
8 stayed or determined to be invalid, the remaining provisions
9 shall remain in full force and effect.

10 **XIV. RETENTION OF JURISDICTION**


11 **IT IS FURTHER ORDERED** that this Court shall retain
12 jurisdiction of this matter for purposes of construction,
13 modification and enforcement of this Order.

14 **XV. COMPLETE SETTLEMENT**

15 The parties, by their respective counsel, hereby consent to
16 entry of the foregoing Order which shall constitute a final
17 judgment and order in this matter. The parties further stipulate
18
19
20
21
22
23
24
25
26
27
28

1 and agree that the entry of the foregoing Order shall constitute
2 a full, complete and final settlement of this action.

3
4 **FOR THE DEFENDANTS:**

5 
6 DIRECTV
7 By: Larry D. Hunter
8 Executive Vice President and
9 General Counsel of DIRECTV

10 
11 LARRY D. HUNTER
12 Counsel for DIRECTV

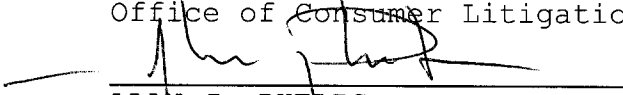
4 **FOR THE PLAINTIFF:**

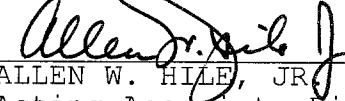
PETER D. KEISLER, JR.
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE


DEBRA W. YANG
United States Attorney
Central District of California

LINDA KONTOS
Assistant U.S. Attorney

EUGENE M. THIROLF
Director
Office of Consumer Litigation

13 
14 ALAN J. PHELPS
15 Trial Attorney
16 Office of Consumer Litigation
17 Civil Division
18 U.S. Department of Justice
19 Washington, DC 20530

20 
21 ALLEN W. HILE, JR.
22 Acting Associate Director for
23 Marketing Practices

24 
25 RUSSELL DEITCH
26 GARY IVENS
27 Attorneys, Federal Trade
28 Commission
600 Pennsylvania Ave, N.W.,
Washington, DC 20580

24 **IT IS SO ORDERED.**

25 DATED: _____

26 _____
27 UNITED STATES DISTRICT JUDGE

1 DANIEL K. CRANE-HIRSCH
2 Daniel.Crane-Hirsch@usdoj.gov
3 Trial Attorney
4 Office of Consumer Litigation, U.S. Department of Justice
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12 Chief, Civil Division
13 GARY PLESSMAN
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15 Chief, Civil Fraud Section
16 California State Bar No. 101233
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19 Los Angeles, CA 90012
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21 Facsimile: (213) 894-2380
22 E-mail: gary.plessman@usdoj.gov

Attorneys for Plaintiff UNITED STATES OF AMERICA

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION
16

17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 DIRECTV, Inc., a California Corporation;
21 VOICECAST SYSTEMS, INC., also d/b/a
22 INTOUCH SOLUTIONS, an Illinois
23 Corporation
24 MICHAEL KURTZ, individually and as an
25 officer of Voicecast Systems, Inc.
26 KEYVAN SAEDI, individually and as an
27 officer of Voicecast Systems, Inc.,
28 Defendants.

Civ. No. 09-02605 PA (FMOx)

**STIPULATED JUDGMENT
AND ORDER FOR
PERMANENT
INJUNCTION AGAINST
DIRECTV, INC.**

1 Plaintiff, the United States of America, acting upon notification and
2 authorization to the Attorney General by the Federal Trade Commission (“FTC” or
3 “Commission”), commenced this action by filing the complaint herein, and
4 Defendant DIRECTV, Inc. (“DIRECTV”) has waived service of the summons and
5 the complaint. The parties, represented by attorneys whose names appear
6 hereafter, have agreed to settlement of this action.

7 **THEREFORE**, on the joint motion of the parties, it is hereby **ORDERED**,
8 **ADJUDGED, AND DECREED** as follows:

9 **FINDINGS**

10 1. This Court has jurisdiction over the subject matter pursuant to
11 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and 15 U.S.C. §§ 45(m)(1)(A), 53(b),
12 56(a), and 57b.

13 2. Plaintiff and DIRECTV consent to jurisdiction and venue in this
14 District.

15 3. The activities of DIRECTV are in or affecting commerce, as defined
16 in Section 4 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 44.

17 4. The complaint states a claim upon which relief can be granted against
18 DIRECTV, under Sections 5(a), 5(m)(1)(a), 13(b) and 19 of the FTC Act,
19 15 U.S.C. §§ 45(a), 45(m)(1)(a), 53(b), and 57(b).

20 5. DIRECTV hereby waives all rights to appeal or otherwise challenge
21 or contest the validity of this Order.

22 6. DIRECTV agrees that this Order does not entitle it to seek or obtain
23 attorneys’ fees as a prevailing party under the Equal Access to Justice Act,
24 28 U.S.C. § 2412, and it further waives any rights to attorneys’ fees that may arise
25 under said provision of law.

26 7. Entry of this Order is in the public interest.

27 **DEFINITIONS**

28 For purposes of this Order, the following definitions shall apply:

1 1. “Authorized Marketer” means a business or other entity with whom
2 DIRECTV has entered into an agreement authorizing the solicitation of DIRECTV
3 goods or services.

4 2. “Authorized Telemarketer” means a person that has received express,
5 written authorization from DIRECTV to use telemarketing to market DIRECTV
6 goods or services.

7 3. “Customer” means any person who is or may be required to pay for
8 goods or services offered through telemarketing.

9 4. “Defendant” or “DIRECTV” means DIRECTV, Inc. and its
10 successors and assigns.

11 5. “DIRECTV goods or services” means satellite programming and all
12 other goods or services.

13 6. “Established business relationship” means a relationship between the
14 seller and a person based on: (a) the person’s purchase, rental, or lease of the
15 seller’s goods or services or a financial transaction between the person and seller,
16 within the eighteen (18) months immediately preceding the date of the
17 telemarketing call; or (b) the person’s inquiry or application regarding a product or
18 service offered by the seller, within the three months immediately preceding the
19 date of a telemarketing call.

20 7. “National Do Not Call Registry” means the National Do Not Call
21 Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R.
22 § 310.4(b)(1)(iii)(B).

23 8. “Outbound telephone call” means a telephone call initiated by a
24 telemarketer to induce the purchase of goods or services or to solicit a charitable
25 contribution.

26 9. “Person” means any individual, group, unincorporated association,
27 limited or general partnership, corporation, or other business entity.

1 10. “Prior Injunction” means the Stipulated Judgment and Order for
2 Permanent Injunction Against DIRECTV, Inc., entered on December 14, 2005 in
3 United States v. DIRECTV, Inc., et al., Civ. No. SACV05-1211 DOC (C.D. Cal.).

4 11. “Seller” means any person who, in connection with a telemarketing
5 transaction, provides, offers to provide, or arranges for others to provide goods or
6 services to the customer in exchange for consideration, whether or not such person
7 is under the jurisdiction of the Federal Trade Commission.

8 12. “Telemarketer” means any person who, in connection with
9 telemarketing, initiates or receives telephone calls to or from a customer or donor.

10 13. “Telemarketing” means a plan, program, or campaign which is
11 conducted to induce the purchase of goods or services or a charitable contribution,
12 by use of one or more telephones and which involves more than one interstate
13 telephone call. The term does not include the solicitation of sales through the
14 mailing of a catalog which: contains a written description or illustration of the
15 goods or services offered for sale; includes the business address of the seller;
16 includes multiple pages of written material or illustrations; and has been issued not
17 less frequently than once a year, when the person making the solicitation does not
18 solicit customers by telephone but only receives calls initiated by customers in
19 response to the catalog and during those calls takes orders only without further
20 solicitation. For purposes of the previous sentence, the term “further solicitation”
21 does not include providing the customer with information about, or attempting to
22 sell, any other item included in the same catalog which prompted the customer’s
23 call or in a substantially similar catalog.

24 14. The “Telemarketing Sales Rule” or “Rule” means the FTC Rule
25 entitled “Telemarketing Sales Rule,” 16 C.F.R. § 310, attached hereto as Appendix
26 A, or as it may be amended.

ORDER

**I. PROHIBITION AGAINST AN ABUSIVE PATTERN OF
TELEMARKETING CALLS**

IT IS HEREBY ORDERED that, in connection with telemarketing, DIRECTV and its officers, agents, servants, employees, and all those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly through Authorized Telemarketers, are hereby permanently restrained and enjoined from engaging in or assisting others in engaging in violations of the Telemarketing Sales Rule, including but not limited to:

- A. Initiating any outbound telephone call to a person when:
 - 1. that person previously has stated to DIRECTV or an Authorized Telemarketer that he or she does not wish to receive an outbound telephone call made by or on behalf of DIRECTV, unless the provisions of 16 C.F.R. § 310.4(b)(3) (the Telemarketing Sales Rule Do Not Call safe harbor) are met;
 - 2. that person’s telephone number is on the National Do Not Call Registry, unless:
 - a. DIRECTV has obtained the express agreement, in writing, of such person to place calls to that person, clearly evidencing such person’s authorization that calls made by or on behalf of DIRECTV may be placed to that person, and including the telephone number to which the calls may be placed and the signature of that person; or
 - b. DIRECTV has an established business relationship with such person, and that person has not stated to DIRECTV or an Authorized Telemarketer that he or she does not

1 wish to receive outbound telephone calls pursuant to
2 § 310.4(b)(1)(iii)(A) of the Telemarketing Sales Rule; or

3 c. The provisions of 16 C.F.R. § 310.4(b)(3) (the
4 Telemarketing Sales Rule Do Not Call safe harbor) are
5 met.

6 B. Abandoning any outbound telephone call to a person by failing to
7 connect the call to a representative within two (2) seconds of the
8 person's completed greeting, unless the following four (4) conditions
9 are met:

- 10 1. DIRECTV or an Authorized Telemarketer employs technology
11 that ensures abandonment of no more than three (3) percent of
12 all calls answered by a person, measured per day per calling
13 campaign;
- 14 2. DIRECTV or an Authorized Telemarketer, for each
15 telemarketing call placed, allows the telephone to ring for at
16 least fifteen (15) seconds or four (4) rings before
17 disconnecting;
- 18 3. Whenever a representative is not available to speak with the
19 person answering the call within two (2) seconds after the
20 person's completed greeting, DIRECTV or an Authorized
21 Telemarketer promptly plays a recorded message that states the
22 name and telephone number of the seller on whose behalf the
23 call was placed; and
- 24 4. DIRECTV or an Authorized Telemarketer retains records, in
25 accordance with 16 C.F.R. § 310.5(b)-(d), establishing
26 compliance with the preceding three conditions.

27 C. Initiating any outbound telephone call that delivers a prerecorded
28 message, other than a prerecorded message permitted for compliance

1 with the call abandonment safe harbor in 16 C.F.R. § 310.4(b)(4)(iii),
2 except as allowed by the provisions of 16 C.F.R. § 310.4(b)(1)(v).

3 D. If the Commission amends the Telemarketing Sales Rule, in whole or
4 part, DIRECTV and its Authorized Telemarketers shall, in connection
5 with telemarketing DIRECTV goods or services, comply fully and
6 completely with all applicable requirements of the amended Rule, on
7 and after the effective date of any such amended Rule.

8 **II. MONITORING OF AUTHORIZED TELEMARKETERS**

9 **IT IS FURTHER ORDERED** that DIRECTV and its officers, agents,
10 servants, employees, and all those persons in active concert or participation with
11 them who receive actual notice of this Order by personal service or otherwise, are
12 hereby permanently restrained and enjoined from:

13 A. Failing to conduct a reasonable due diligence investigation of a
14 person before making the person an Authorized Telemarketer, to
15 ensure that the person has established and actively enforces effective
16 policies and procedures for compliance with the Telemarketing Sales
17 Rule, including procedures to prevent the initiation of outbound
18 telemarketing calls to numbers on the National Do Not Call Registry,
19 in violation of 16 C.F.R. § 310.4(b)(1)(iii), and to prevent call
20 abandonment, in violation of § 310.4(b)(1)(iv).

21 B. Failing to have a written contract with each Authorized Telemarketer.

22 C. Failing to include, in the written contract with each Authorized
23 Telemarketer, requirements that the Authorized Telemarketer comply
24 with all provisions of the Telemarketing Sales Rule, including, but
25 not limited to, § 310.4 (b)(1)(iii) and (iv).

26 D. Failing to monitor outbound telemarketing campaigns conducted by
27 an Authorized Telemarketer to determine whether:
28

- 1 1. Any telemarketing call is placed only to a telephone number
2 that is –
 - 3 a. not on the National Do Not Call Registry and not on an
4 individual do not call list maintained by DIRECTV or
5 any of its Authorized Telemarketers; or
 - 6 b. on the National Do Not Call Registry, provided that the
7 customer either has given his or her express agreement in
8 writing to receive telemarketing calls at that number, or
9 has an established business relationship with DIRECTV.
- 10 2. Not more than three percent (3%) of telemarketing calls
11 answered by a person, measured per day per calling campaign,
12 are being connected to a prerecorded message in lieu of a live
13 sales representative, pursuant to 16 C.F.R. §§ 310.4(b)(1)(iv)
14 and 310.4(b)(4).

15 E. Providing any monetary compensation for any telemarketing related
16 sales or activities, including but not limited to hourly rates of pay or
17 commissions, to any Authorized Telemarketer after DIRECTV knows
18 or reasonably should have known that such Authorized Telemarketer
19 has, in connection with telemarketing DIRECTV goods and services;

- 20 1. failed to fulfill contract requirements with respect to
21 compliance with the Telemarketing Sales Rule; or
- 22 2. violated the Telemarketing Sales Rule.

23 F. Continuing to do business with any Authorized Telemarketer that
24 fails to fulfill contract requirements with respect to compliance with
25 the Telemarketing Sales Rule, or violates any provision of the
26 Telemarketing Sales Rule. Provided, however, that this Paragraph
27 does not prohibit DIRECTV from entering into a subscription
28 agreement with a consumer who was called by an Authorized

1 Telemarketer that: fails to fulfill contract requirements with respect
2 to compliance with the Telemarketing Sales Rule, violates any
3 provision of the Telemarketing Sales Rule, or fails to comply with
4 Paragraph I of this Order.

5 **III. MONITORING OF AUTHORIZED MARKETERS**

6 **IT IS FURTHER ORDERED** that DIRECTV and its officers, agents,
7 servants, employees, and all those persons in active concert or participation with
8 them who receive actual notice of this Order by personal service or otherwise, are
9 hereby permanently restrained and enjoined from:

- 10 A. Failing to monitor Authorized Marketers to determine whether they
11 are initiating contact with consumers through outbound telephone
12 calls to telemarket DIRECTV goods or services; and
- 13 B. Doing business with any Authorized Marketer and providing any
14 monetary compensation, including but not limited to hourly rates of
15 pay or commissions, to any Authorized Marketer who DIRECTV
16 knows or should know engages in the following conduct:
- 17 1. initiating contact with consumers through outbound telephone
18 calls to telemarket DIRECTV goods or services without
19 express, written authorization from DIRECTV; or
 - 20 2. entering into any type of agreement with any other person to
21 initiate contact with consumers through outbound telephone
22 calls to telemarket DIRECTV goods or services. Provided,
23 however, this Paragraph does not prohibit DIRECTV from
24 entering into a subscription agreement with a consumer who
25 was called in violation of the Telemarketing Sales Rule, or by a
26 person who has engaged in any of the conduct described in
27 subparagraph B of this Paragraph of this Order.
- 28

1 **IV. ADDITIONAL MONITORING**

2 **IT IS FURTHER ORDERED** that DIRECTV and its officers, agents,
3 servants, employees, and all those persons in active concert or participation with
4 them who receive actual notice of this Order by personal service or otherwise, are
5 hereby permanently restrained and enjoined from failing to take the following
6 actions with regard to Authorized Telemarketers and Authorized Marketers:

- 7 A. DIRECTV shall develop, implement, adequately staff, and
8 continuously operate and maintain, a system to receive and retain
9 complaints related to telemarketing of DIRECTV goods and services
10 that are received by telephone, mail, and e-mail. DIRECTV shall take
11 all reasonable steps to obtain, record, retain, and make easily
12 accessible to DIRECTV and, upon reasonable request, the FTC, all
13 relevant information regarding all complaints relating to
14 telemarketing of DIRECTV goods or services, including but not
15 limited to: (1) the consumer’s name, address, and telephone number;
16 (2) the substance of the complaint, including the name of any person
17 referenced; (3) the nature and result of any investigation conducted
18 concerning the complaint; (4) each response to the complaint and the
19 date of such response to the complaint; (5) any final resolution of the
20 complaint, and the date of such resolution; (6) in the event of a denial
21 of any resolution, the reason for the denial; (7) the name, telephone
22 number, and address of the Authorized Telemarketer or Authorized
23 Marketer which made the call that was the basis for the complaint; (8)
24 the date of the call; and (9) any relevant information for determining
25 whether a violation of the Telemarketing Sales Rule has occurred.
26 The system for complaints related to telemarketing shall be capable of
27 producing and shall produce monthly reports that show (1) the
28 aggregate number of complaints relating to telemarketing, (2) the

1 total number and type of telemarketing complaints for each
2 Authorized Telemarketer, and (3) the total number and type of
3 telemarketing complaints for each Authorized Marketer.

4 B. DIRECTV shall promptly investigate each consumer complaint
5 relating to telemarketing or the Telemarketing Sales Rule and shall
6 take all reasonable steps to identify the person whose activities
7 prompted the complaint.

8 **V. PROHIBITION ON ASSISTING AND FACILITATING**

9 **IT IS FURTHER ORDERED** that DIRECTV and its officers, agents,
10 servants, employees, and all those persons in active concert or participation with
11 them who receive actual notice of this Order by personal service or otherwise, are
12 hereby permanently restrained and enjoined from providing substantial assistance
13 and support to any telemarketer when DIRECTV knows or consciously avoids
14 knowing that the telemarketer is engaged in one or more violations of the
15 Telemarketing Sales Rule.

16 **VI. CIVIL PENALTY**

17 **IT IS HEREBY ORDERED** that judgment in the amount of two million,
18 three hundred and ten thousand dollars (\$2,310,000.00) is hereby entered against
19 DIRECTV as a civil penalty pursuant to Section 5(m)(1)(A) of the FTC Act, 15
20 U.S.C. § 45(m)(1)(A).

21 A. Within five (5) days of receipt of notice of entry of this Order,
22 DIRECTV shall transfer the civil penalty payment in the form of a
23 wire transfer or certified or cashier's check made payable to the
24 Treasurer of the United States. The check or written confirmation of
25 the wire transfer shall be delivered to: Director, Office of Consumer
26 Litigation, U.S. Department of Justice Civil Division, P.O. Box 386,
27 Washington, DC 20044. The cover letter accompanying the check
28

1 shall include the title of this litigation and a reference to DJ 102-3542.

2 B. In the event of default on the payment required to be made by this
3 Paragraph, the entire unpaid civil penalty, together with interest
4 computed under 21 U.S.C. § 1961 – accrued from the date of default
5 until the date of payment – shall be immediately due and payable.

6 C. DIRECTV shall cooperate fully with Plaintiff and the Commission
7 and their agents in all attempts to collect the amount due pursuant to
8 this Paragraph if DIRECTV fails to pay fully the amount due at the
9 time specified herein. In such an event, DIRECTV agrees to provide
10 Plaintiff and the Commission with their federal and state tax returns
11 for the preceding two years, and to complete standard financial
12 disclosure forms fully and accurately within ten (10) business days of
13 receiving a request from Plaintiff or the Commission to do so.

14 DIRECTV further authorizes Plaintiff and the Commission to verify
15 all information provided on its financial disclosure forms with all
16 appropriate third parties, including but not limited to financial
17 institutions.

18 D. In accordance with 31 U.S.C. § 7701, DIRECTV is hereby required,
19 unless it has done so already, to furnish to Plaintiff and the FTC with
20 its taxpayer identification number (employer identification number),
21 which shall be used for purposes of collecting and reporting on any
22 delinquent amount arising out of DIRECTV’s relationship with the
23 government.

24 E. Defendant relinquishes all dominion, control, and title to the funds
25 paid to the fullest extent permitted by law. Defendant shall make no
26 claim to nor demand return of the funds, directly or indirectly,
27 through counsel or otherwise.
28

1 F. This judgment represents a civil penalty owed to the United States
2 Government, is not compensation for actual pecuniary loss, and,
3 therefore, is not subject to discharge under the Bankruptcy Code
4 pursuant to 11 U.S.C. § 523(a)(7). DIRECTV agrees that the facts as
5 alleged in the complaint filed in this action shall be taken as true,
6 without further proof, in any subsequent civil litigation filed by or on
7 behalf of the Commission to enforce its rights to any payment or
8 money judgment pursuant to this Order.

9 G. Proceedings instituted under this Paragraph are in addition to, and not
10 in lieu of, any other civil or criminal remedies that may be provided
11 by law, including any other proceedings the Commission may initiate
12 to enforce this Order.

13 **VII. COMPLIANCE MONITORING**

14 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
15 investigating compliance with any provision of this Order,

16 A. Within thirty (30) days of receipt of written notice from a
17 representative of the Commission, DIRECTV shall submit additional
18 written reports, sworn to under penalty of perjury; produce documents
19 for inspection and copying; appear for deposition; and/or provide
20 entry during normal business hours to any business location in
21 DIRECTV's possession or direct or indirect control to inspect the
22 business operation.

23 B. In addition, the Commission is authorized to monitor compliance with
24 this Order by all other lawful means, including, but not limited to, the
25 following:

- 26 1. obtaining discovery from any person, without further leave of
27 court, using the procedures prescribed by Fed. R. Civ. P. 30,
28 31, 33, 34, 36, and 45; and

1 2. posing as consumers and suppliers to DIRECTV, its
2 employees, or any entity managed or controlled in whole or in
3 part by it, without the necessity of identification or prior notice.

4 C. DIRECTV shall permit representatives of the Commission to
5 interview any employer, consultant, independent contractor,
6 representative, agent, or employee who has agreed to such an
7 interview, relating in any way to any conduct subject to this Order.

8 The person interviewed may have counsel present.

9 *Provided, however,* that nothing in this Order shall limit the Commission's
10 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
11 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,
12 testimony, or information relevant to unfair or deceptive acts or practices in or
13 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

14 **VIII. COMPLIANCE REPORTING**

15 **IT IS FURTHER ORDERED** that, in order that compliance with the
16 provisions of this Order may be monitored:

17 A. For a period of five (5) years from the date of entry of this Order,
18 DIRECTV shall notify the Commission of any changes in the
19 corporate structure of any business entity that it directly or indirectly
20 controls, or has an ownership interest in, that may affect compliance
21 obligations arising under this Order, including but not limited to a
22 dissolution, assignment, sale, merger, or other action that would result
23 in the emergence of a successor entity; the creation or dissolution of a
24 subsidiary, parent, or affiliate that engages in any acts or practices
25 subject to this Order; the filing of a bankruptcy petition; or a change
26 in the corporate name or address, at least thirty (30) days prior to such
27 change, *provided* that, with respect to any proposed change in a
28 corporation about which DIRECTV learns less than thirty (30) days

1 prior to the date such action is to take place, it shall notify the
2 Commission as soon as is practicable after obtaining such knowledge.

3 B. One hundred eighty (180) days after the date of entry of this Order,
4 DIRECTV shall provide a written report to the FTC, which is true and
5 accurate and sworn to under penalty of perjury, setting forth in detail
6 the manner and form in which it has complied and is complying with
7 this Order. This report shall include, but not be limited to:

- 8 1. A copy of each acknowledgment of receipt of this Order,
9 obtained pursuant to the Section titled “Distribution of Order;”
- 10 2. Any other changes required to be reported under Subsection A
11 of this Paragraph;
- 12 3. A list of the telephone numbers that DIRECTV or any
13 Authorized Telemarketers used or uses in telemarketing since
14 entry of this Order and the name and address of the phone
15 company providing service, including any telephone number
16 programmed to be transmitted for caller identification
17 purposes;
- 18 4. A list of all subscription account numbers DIRECTV or any
19 Authorized Telemarketers have used, uses, or have obtained in
20 connection with the National Do Not Call Registry since entry
21 of this Order; and
- 22 5. A list of all Authorized Telemarketers and Authorized
23 Marketers, including the trade names and any other names
24 under which, to DIRECTV’s knowledge, these entities do
25 business.

26 C. DIRECTV shall notify the Commission of its filing of a bankruptcy
27 petition within fifteen (15) days of filing.
28

1 D. For the purposes of this Order, DIRECTV shall, unless otherwise
2 directed by the Commission’s authorized representatives, send by
3 overnight courier all reports and notifications required by this Order
4 to the Commission, to the following address:

5 Associate Director for Enforcement
6 Federal Trade Commission
7 600 Pennsylvania Avenue, N.W., Room NJ-2122
8 Washington, D.C. 20580
9 RE: FTC v. DIRECTV

10 **Provided** that, in lieu of overnight courier, DIRECTV may send such
11 reports or notifications by first-class mail, but only if it
12 contemporaneously sends an electronic version of such report or
13 notification to the Commission at: DEBrief@ftc.gov.

14 E. For purposes of the compliance reporting and monitoring required by
15 this Order, the Commission is authorized to communicate directly
16 with DIRECTV.

17 **IX. RECORD KEEPING PROVISIONS**

18 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
19 date of entry of this Order, DIRECTV and its officers, agents, servants,
20 employees, and all those persons in active concert or participation with them who
21 receive actual notice of this Order by personal service or otherwise, are hereby
22 restrained and enjoined from failing to create and retain all records and documents
23 necessary to demonstrate full compliance with each provision of this Order,
24 including but not limited to, copies of acknowledgments of receipt of this Order
25 required by the Sections titled “Distribution of Order” and “Acknowledgment of
26 Receipt of Order” and all reports submitted to the FTC pursuant to the Section
27 titled “Compliance Reporting.”
28

X. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, DIRECTV shall deliver copies of this Order as directed below:

A. DIRECTV must deliver a copy of this Order to all officers and directors. DIRECTV shall also deliver a copy of this Order to all of its employees who are responsible for telemarketing DIRECTV goods or services, handling telemarketing complaints, or maintaining records relating to telemarketing complaints or other telemarketing activities. For the current officers, directors, and employees described above, delivery of this Order shall be within five (5) days of service of this Order on DIRECTV. For new personnel, delivery shall occur prior to them assuming their responsibilities with DIRECTV. For any business entity resulting from any change in structure set forth in Paragraph VIII.A, delivery shall be at least ten (10) days prior to the change in structure.

B. DIRECTV must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Paragraph.

XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that DIRECTV, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII. EFFECT ON PRIOR INJUNCTION

IT IS FURTHER ORDERED that this Order supersedes the Prior Injunction, except for Section VIII.C of the Prior Injunction, which shall remain in full force and effect.

1 **XIII. FEES AND COSTS**

2 **IT IS FURTHER ORDERED** that each party to this Order hereby agrees
3 to bear its own costs and attorneys' fees incurred in connection with this action.

4 **XIV. COOPERATION WITH FTC COUNSEL**

5 **IT IS FURTHER ORDERED** that DIRECTV shall, in connection with
6 this action or any subsequent investigations related to or associated with the
7 transactions or the occurrences that are the subject of the FTC's complaint,
8 cooperate in good faith with the FTC and appear at such places and times as the
9 Commission shall reasonably request, after written notice, for interviews,
10 conferences, pretrial discovery, review of documents, and for such other matters as
11 may be reasonably requested by the FTC. If requested in writing by the
12 Commission, DIRECTV shall appear, or cause its officers, employees,
13 representatives, or agents to appear, and provide truthful testimony in any trial,
14 deposition, or other proceeding related to or associated with the transactions or the
15 occurrences that are the subject of the complaint, without the service of a
16 subpoena.

17 **XV. SEVERABILITY**

18 **IT IS FURTHER ORDERED** that the provisions of this Order are separate
19 and severable from one another. If any provision is stayed or determined to be
20 invalid, the remaining provisions shall remain in full force and effect.

21 **XVI. RETENTION OF JURISDICTION**

22 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of
23 this matter for purposes of construction, modification, and enforcement of this
24 Order.

25 **XVII. COMPLETE SETTLEMENT**

26 The parties hereby consent to entry of the foregoing Order, which shall
27 constitute a final judgment and order in this matter. The parties further stipulate
28

1 and agree that the entry of the foregoing Order shall constitute a full, complete,
2 and final settlement of this action.

3 //
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5 //

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7 **IT IS SO ORDERED**, this ____ day of _____, 2009.


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United States District Judge
Central District of California

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FOR THE COMMISSION:

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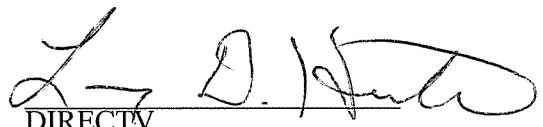
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FOR THE DEFENDANTS:



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Counsel for Defendants




DIRECTV
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Executive Vice President and
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Federal Trade Commission

§ 310.1

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Before Selecting An Alternative Fueled Vehicle Consider:

- FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.
- PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.
- EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

← 7.5 inches →

← 7 inches →

Figure 6

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

**PART 310—TELEMARKETING SALES
RULE**

- Sec.
- 310.1 Scope of regulations in this part.
 - 310.2 Definitions.
 - 310.3 Deceptive telemarketing acts or practices.
 - 310.4 Abusive telemarketing acts or practices.
 - 310.5 Recordkeeping requirements.
 - 310.6 Exemptions.
 - 310.7 Actions by states and private persons.

- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101–6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108, as amended.

§ 310.2

16 CFR Ch. I (1-1-09 Edition)

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

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(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays¹ for goods or services offered, failing to disclose

¹When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

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truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

²For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

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(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴ Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁵

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

³Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁴Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁵For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(i)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

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the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a

person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

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goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a

violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶ of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

⁶For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;⁷ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to

§ 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

⁷ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the “do-not-call” registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person’s completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone

number of the seller on whose behalf the call was placed⁸; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person’s residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person’s location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person’s chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

⁸This provision does not affect any seller’s or telemarketer’s obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004; 73 FR 51204, Aug. 29, 2008]

§310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁹

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or

express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

[68 FR 4669, Jan. 29, 2003, as amended at 51204, Aug. 29, 2008]

§310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

⁹For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

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(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this

exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by

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§ 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$54 for each area code of data accessed, up to a maximum of \$14,850; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (“the annual period”). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$54 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$27 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller’s unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of

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this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006; 73 FR 43355, July 25, 2008]

§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.

- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.
- 311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a re-

sult of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of §311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by §311.5 of this part.

§311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institutes of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API"), Publication 1509, Thirteenth Edition, January 1995. API Publication 1509, Thirteenth Edition has been updated to API Publication 1509, Fifteenth Edition, April 2002. API Publication 1509, Fifteenth Edition, April 2002, is incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials incorporated by reference may be obtained from: API, 1220 L Street, NW., Washington, DC 20005. Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration ("NARA"). For information on the availability of this material at

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DIANA MEY

(b) County of Residence of First Listed Plaintiff OHIO (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John W. Barrett, Ryan M. Donovan, Sandra H. Kinney, Bailey & Glasser LLP, 209 Capitol St., Charleston, WV 25301; 304.345.6555

DEFENDANTS

DIRECTV, LLC; ADAM COX; AC1 COMMUNICATIONS; IQ MARKETING 2, CORP. d/b/a PACIFICOM, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. § 227

Brief description of cause: Violation to TCPA, including calls to phone numbers on Do Not Call Registry and use of autodialer

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

12/11/2017 /s/John W. Barrett

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.