



Washington
Stamford
Los Angeles
San Diego
London
New York
Palo Alto
Boston

ML Strategies, LLC

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 USA
202 296 3622
202 434 7400 fax

www.mlstrategies.com

Alex Hecht
Vice President
Direct Dial 202 434 7333

April 15, 2016

Via Electronic Filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Written Ex Parte In the matter of *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (CG Docket No. 02-278)

Dear Ms. Dortch:

On Wednesday, April 13, Paul Plofchan, VP of Government and Regulatory Affairs for ADT, along with Ken Sponsler, Senior Vice President and General Manager of CompliancePoint, and Alex Hecht and Rachel Sanford Nemeth of ML Strategies, met with Diane Cornell, Office of Chairman Wheeler, and Amy Bender, Office of Commissioner O’Rielly. On Thursday, April 14, the same representatives from ADT, including Hannah Lim, Chief Litigation Counsel and Chief Compliance Counsel, and CompliancePoint and ML Strategies met with Nick Degani, Office of Commissioner Pai, by conference call. The purpose of these meetings was to discuss ways to provide consumers with greater protections under the Telephone Consumer Protection Act (TCPA).

This discussion addressed policy methods that would allow greater use of compliance programming as consumers suffer harm when businesses do not maximize their use of such innovative measures. Existing questions related to the assignment of vicarious liability cause businesses to shy away from further compliance program implementation with their third party service providers as well as independent dealers and retailers. The uncertainty raised by these questions limits the use of these compliance programs out of fear that by so doing, these businesses will be more likely to be included in TCPA litigation. This has created an unintended, anti-consumer incentive through the legal application of a theoretical liability link between businesses and their independent, third party service providers, even in cases where companies have contract language in place requiring TCPA compliance and other safeguards. In fact, some companies that have taken extra steps to strengthen TCPA compliance programs have been pulled into expensive litigation based solely on a vicarious liability link – and are forced to

confront enormous potential financial risk exposure that could ultimately, if not settled, represent a bankruptcy-level event.

ADT is the largest alarm and home monitoring service provider, helping to protect over 6.7 million homes and businesses in North America from fire, burglaries, sabotage and other emergencies, and CompliancePoint is a leading national compliance firm that offers consulting, audit, and training services to improve compliance with the complex array of state, federal, and international laws. CompliancePoint provided information to the Commission about its programs, and the value of compliance, monitoring, and enforcement programs, which is attached as Exhibit A of this filing.

ADT and CompliancePoint appreciate the Commissions' expertise on TCPA and look forward to continued engagement with the agency on this issue.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being filed via ECFS, and a copy will be provided via email to the attendees.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Hecht', with a long, sweeping horizontal stroke extending to the right.

Alex Hecht
Vice President of Government Relations
ML Strategies

Cc: Diane Cornell, Office of Chairman Wheeler
Amy Bender, Office of Commissioner O'Rielly
Nick Degani, Office of Commissioner Pai

EXHIBIT A

Monitoring & Enforcement Overview

Ensure ongoing compliance internally & with third party providers

A robust Monitoring & Enforcement Program is an essential component of a viable corporate compliance program, particularly when third-party service providers are involved.

Your company needs to ensure the consumer experience that service partners are providing measures up to your expectations of choice, privacy, integrity, fairness, dignity and respect. Standards of service partner conduct must be clearly defined within agreements and augmented by escalation policies, audits, and monitoring and enforcement programs.

Although compliance and the customer experience are shared responsibilities, robust compliance programs are essential to ensuring that checks and balances exist and the customer voice is heard. Partners who know their activities are regularly monitored pay attention to the rules and improve processes when anomalies are discovered through monitoring.

CompliancePoint can help implement an ongoing monitoring and enforcement program sufficient to ensure that your partners are conducting their services as you and your customers expect.

Policies & Procedures

While possessing written corporate compliance guidelines is crucial, their value in terms of meaningful compliance is suspect unless the procedures are monitored and enforced throughout the organization and among your service providers.

Such implemented and periodically reviewed policies and procedures should include the following:

- Written Compliance Guidelines or Manual that outlines the compliance processes in place;
- Formal Do Not Call (DNC) policies and procedures that detail the company's policy for accepting and honoring consumers' requests not to be called;

- Initial and refresher DNC training to ensure all relevant employees have received DNC training, including how to honor consumer DNC requests and how to provide a copy of the DNC policy to consumers upon request;
- Call procedures that ensure compliant dialer management policies, compliance with call time restrictions, and compliance with all call abandonment rules; and
- Record keeping or retention policy in accordance with the federal and state-specific requirements.

Escalation Plan

Regulators have demonstrated little tolerance for companies who claim that they were unaware compliance problems impacting consumers existed.

CompliancePoint can help develop an escalation plan that addresses internal and third-party issues that may arise through the business's specific consumer contact activities.

An escalation plan is a documented process describing the consumer complaints and errors/anomalies in the compliance process that must be escalated and to whom they will be escalated. Each escalation should be investigated to determine the cause of the error or consumer complaint.

Remediation must then occur to prevent the error from occurring again. This must include verifying your service providers have taken the necessary corrective action to prevent further consumer complaints or compliance errors.

Escalate

Investigate

Remediate

Ongoing Call Data Audits

Based on CompliancePoint's years of experience, data audits have shown seller and vendor behavior improves over time once regular auditing and monitoring is implemented.

Data audits include an analysis to ensure consumers are not being harassed through call procedures by validating the business's dialer management policies, verifying compliance with call time restrictions, and verifying compliance with all call abandonment rules.

CompliancePoint can perform a thorough analysis of the company's call data to identify and isolate the problem that led to the potential violation through its access to the most comprehensive database of telephone, wireless, and do not call data.



Call Recording Audits

Call recording audit programs help companies ensure internal and third-party agents make complete and accurate representations, comply with federal and state disclosures, and treat consumers with respect. These call recording audits will verify the company's employees also take the steps necessary to honor a consumer's request to cease further calls.

Call recording audits serve as an excellent tool for identifying agent/service related problems, issuing retraining, and for compliance reinforcement.

Vendors and Affiliates

Developing internal policies and procedures is only part of the monitoring and enforcement equation. Because compliance cannot be simply contracted away, all parties involved in consumer contact operations have a vested interest in ensuring compliance and the best possible consumer experience.

Therefore, any company that utilizes a third-party to assist with its marketing programs is responsible for ensuring that these third-parties act in a compliant manner. Whether it's a call center placing or receiving calls on the company's behalf or a lead generator helping the company to grow its business, there are requirements to which these vendors must adhere.

CompliancePoint can help companies ensure their vendors are operating within full regulatory compliance and consumer expectations.

Why Is Monitoring & Enforcement Beneficial?

The ongoing benefits of a robust monitoring and enforcement program include:

- Ensuring ongoing consumer protection and respect of communication wishes;
- Identifying critical consumer privacy concerns such as DNC requests, over-dialing, calling times, misrepresentation, and rude behaviors;
- Demonstrating compliance with regulatory mandates;
- Realizing problematic campaigns;
- Conducting due diligence by monitoring internal call centers and vendors
- Reducing potential risk of violations and consumer complaints; and
- Enabling the ability to make adjustments based on any issues discovered.