

April 12, 2000

92-90/

Robert Biggerstaff  
POB 614  
Mt. Pleasant, SC 29465

RECEIVED

APR 21 2000

FCC MAIL ROOM

Office of the Secretary  
Federal Communications Commission  
445 Twelfth St. SW  
Washington DC 20554

Dear Secretary:

Please find enclosed my Request for Clarification of the Commission's rules implementing the Telephone Consumer Protection Act of 1991.

This request addresses the issue of telephone solicitations for goods or services that re "free" but ultimately connected with subsequent solicitations when partaking of those "free" goods or services.

Please feel free to contact me if you need any further information. I remain,

Sincerely,



Robert Biggerstaff  
(843) 740-4525

enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Rules and Regulations )  
Implementing the Telephone )  
Consumer Protection Act )  
of 1991 )  
\_\_\_\_\_ )

CC Docket No. 92-90

**RECEIVED**

APR 21 2000

**REQUEST FOR CLARIFICATION** **FCC MAIL ROOM**

Robert Biggerstaff ("Requester") hereby requests that the Commission clarify its prior decisions and implementing rules<sup>1</sup> in this proceeding and/or clarify the Commission's interpretation of the Telephone Consumer Protection Act of 1991 ("TCPA") (Pub. L. No. 102-243, 105 Stat. 2394, December 20, 1991), with respect to telephone solicitations.

The TCPA and the Commission's implementing rules at 47 C.F.R. 64.1200 prohibit certain types of pre-recorded message solicitations by telephone, and require that pre-recorded messages delivered by telephone contain certain minimum information identifying the entity making the calls.

Some television and radio stations are using recorded messages to solicit consumers to tune into their broadcasts. It seems that radio and TV stations are commercial entertainment "services" and make money from the viewers - even if the consumer is not paying

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<sup>1</sup> 47 C.F.R. Part 64 Subpart 1200.

the station directly for the "service." In addition, the viewers receive advertising when they tune in.

Additionally, in at least one instance an Internet web site has solicited consumers with recorded telemarketing calls to visit the "free" web site. The consumers do not pay for this service, but the web site makes money on the advertising, and the consumers are delivered advertising by the web site.

Another frequent tactic used by real estate and time-share businesses is to use pre-recorded calls to "notify" a consumer they have won a "prize" and to receive the prize, they have to come and attend a sales presentation for real estate or a time-share.

Also, some service companies are using prerecorded message calls offering "free" services (such as a free inspection of your home's air conditioning or heating units)... however, many times these "free" services are just a ruse to get a salesperson into the consumer's home who then solicits them to purchase something else.

It is not explicit in the Commission's prior orders if these examples of solicitation calls, because the products or services are "free", are covered as "unsolicited advertisements" and/or "telephone solicitations" under the TCPA.

In all these examples, the services being promoted are "free" to the consumer, ostensibly for the consumer to hear/view advertising when they partake of the "free" service. These messages clearly do advertise the "availability ... of ...

services" that the callers provide, and would constitute an "unsolicited advertisement" as defined at 47 U.S.C. § 227(a)(4). However, the fact that these are advertisements for "free" services raises a question as to the applicability of the TCPA to advertisements for "free" goods or services.

To exclude these calls for "free" commercial goods or services would eviscerate the intent of the statute. The TCPA is a remedial, not a criminal, statute and should be broadly construed to effectuate the intent of Congress. In introducing the TCPA, Senator Hollings commented on these robot calls: "They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall." This evil is the same regardless if the cost to the consumer for the "service" is free or not.

In addition, if these calls are not "telephone solicitations" or "unsolicited advertisements" then they can be made at any hour of the day or night, and as many times as the caller wants to since the statute and Commission's rules would not stop them. A consumer's "do-not-call" request would not matter if these calls do not meet the definition of "telephone solicitation" or "unsolicited advertisement" in the statute and Commission's rules.

I note that as a remedial statute, the statutory provisions of the TCPA, like "unsolicited advertisement," should be broadly construed in favor of the consumer:

We are also mindful that the TCPA is a remedial statute and "should be liberally construed and interpreted (when that is possible) in a manner tending to discourage attempted evasions by wrongdoers." Scarborough v. Atlantic Coast Line R. Co., 178 F.2d 253, 258 (4th Cir. 1950). Exemptions from provisions of remedial statutes "are to be construed narrowly to limit exemption eligibility." Hogar v. Suarez-Medina, 36 F3d 177, 182 (1st Cir 1994); accord Olsen v. Lake Country, Inc., 955 F.2d 203, 206 (4th Cir. 1991). See also 3 N. Singer, Sutherland Statutory Construction § 60.01.

Biggerstaff v. Low Country Drug Screening, No. 99-SC-86-5519 (Charleston County, S.C., Nov. 29, 1999). Construing pre-recorded message calls for "free" services to be covered by the TCPA would be both reasonable, and proper to prevent evasion of the congressional intent to protect consumer's homes from these calls.

The Commission was granted broad authority by Congress to restrict pre-recorded calls that "adversely affect the privacy rights that this section is intended to protect"<sup>2</sup> and it is clearly within the Commission's authority to consider these calls within the ambit of the statute and Commission's rules.

Based on the foregoing, Requester requests that the Commission clarify its interpretation of the TCPA and/or the Commission's rules to clarify that:

- 1) calls using a pre-recorded message advertising "free" property, goods or services are intended to be, and are,

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<sup>2</sup> 47 U.S.C. § 227(b)(2)(B).

within the ambit of the TCPA and the Commission's rules  
and;

2) the definition of "unsolicited advertisement" and  
"telephone solicitation" in the TCPA applies regardless  
of whether or not the property, goods, or services  
advertised are "free" or the services advertised involve  
no payment or purchase by the consumer.

I would respectfully ask that this request be given expedited  
review to the extent possible so that the correct interpretation of  
the TCPA and the Commission's rules can be effectuated and  
Consumers can be provided the full protections of the statute as  
soon as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert Biggerstaff', with a long horizontal flourish extending to the right.

ROBERT BIGGERSTAFF  
(843) 740-4525  
POB 614  
Mt. Pleasant, SC 29465  
April 12, 2000