

**Via Electronic Submission**

**October 20, 2004**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission (FCC)  
445 12th Street, S.W., Room TWB-204  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation by Venable LLP  
filed on 9/28/04 in CG Docket No. 02-278

Dear FCC:

I hereby strongly object to the position filed in these proceedings by Venable LLP and DialAmerica Marketing Inc., in their Ex Parte Presentation dated 9/28/04. In their filed position they state that telephone calls initiated under the "DialAmerica Sponsor Program" are made on behalf of tax-exempt nonprofit entities. Nothing could be further from the truth. It is patently clear that these are commercial calls made by a telemarketer on behalf of a for-profit entity for the purpose of selling commercially available goods or services. The fact that some small portion of the profits from these commercial calls is donated to a tax-exempt nonprofit entity does not mean that these calls are made on behalf of that tax-exempt nonprofit entity.

If a company can circumvent the Telephone Consumer Protection Act (TCPA), and the FCC's rules promulgated under that Act, simply by donating a portion of the profits that they make from their telemarketing calls to a specific tax-exempt nonprofit entity, then that is what every telemarketer will do to retain their customers. Telemarketers will set up their own tax-exempt nonprofit entity, or simply chose one already in existence, and then tack on a small "tax-exempt nonprofit donation" surcharge to the costs of their telemarketing services. Given the fact that predictive dialer telemarketing, and particularly prerecorded telephone solicitations, are significantly less expensive than other means of advertising, this small "tax-exempt nonprofit donation" surcharge will be inconsequential to the telemarketer's profits.

I would like to provide an illustrative case in point. In 2003 I received several prerecorded telephone message calls that were made by a telemarketer named Aegis Insurance Agency, Inc. The messages said:

"Did you know that most families have to pay for funeral and final expenses out of their own pocket, and that those expenses can often exceed \$10,000. This state-regulated insurance plan offers permanent whole life coverage that can protect your family for up to \$20,000. Your coverage can never be canceled for medical reasons, or due to age. Best of all, there are no medical exams, and your coverage will start from the very first day. The plan has manageable monthly rates, and builds cash and loan values too. We are currently taking applications through age 85. The information is free and without obligation. Remember, there is no better time to secure your family against financial disaster than right now. To take advantage of this valuable program, please leave your name, phone number, and the best time to contact you after the tone. [ sound of tone ] Bless you and have a great day."

I left a fake name and my telephone number. Within a few weeks I received a call from an insurance agent. The agent asked for the fake name, and then tried to sell me insurance. I complained about the TCPA violations to Aegis and settled with them out of court. Aegis then set up a tax-exempt nonprofit entity called The Insurance Brotherhood of America.

In 2004 I received new prerecorded telephone message calls made by Aegis Insurance Agency, Inc. This time the messages said:

“This is the Insurance Brotherhood of America, a tax-exempt organization at 610-994-4288, conducting a survey that will give you free information that could save your family thousands of dollars. Last year families spent an average of over 5000 dollars for funeral expenses, and that doesn't count all of the additional miscellaneous costs. Money our loved ones will most likely have to scrape together. Well there's now a new nationwide program for people through age 85, designed to protect your family from paying these high costs. For only pennies a day, you and your family can be protected with coverage between 1,000 and 10,000 dollars. Money your family can use at a critical time. There are no medical exams or price increases, and the best part is your coverage can begin immediately. There's no need to make a decision right now. We'd simply like to give you free information with absolutely no obligation. To find out how to save your family thousands of dollars, at the sound of the tone please leave your name, age, phone number, and best time to reach you. [ sound of tone ] Thank you, and have a great day.”

Again I left a fake name and my telephone number, and again the same insurance agent called me, asked for the fake name, and tried to sell me insurance. Of course Aegis claims that their recent calls to me were exempt from the TCPA because they were made on behalf of the tax-exempt nonprofit Insurance Brotherhood of America. This issue is currently under review by the Court of Common Pleas, Allegheny County Pennsylvania, in a civil case titled Abramson v. Aegis Insurance Agency, docket # AR-04-3029.

I humbly urge the FCC to clarify Paragraph 128 of their July 2003 Report and Order . I urge the FCC to make it clear, beyond a shadow of any doubt, that a telephone call cannot serve two masters. If the call is on behalf of a tax-exempt nonprofit entity, and no other entity, then the call should be exempt from the prohibitions and requirements of the TCPA. However, if the call is on behalf of a tax-exempt nonprofit entity, and it is also a commercial call promoting goods or services on behalf of a for-profit entity, then the FCC must make it clear that the call is on behalf of the for-profit entity rather than the tax-exempt nonprofit entity. To rule otherwise is to invite every telemarketer in the world to do exactly what Aegis is currently trying to do.

Thank you for your consideration.

Sincerely  
Stewart Abramson  
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