

March 21, 2007

Via Electronic Filing

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

Re: Ex Parte Presentation in Docket 02-278

Dear Ms. Dortch:

On March 19, 2007, Gabriel S. Joseph, III met with Commissioner Robert McDowell and John W. Hunter, the Commissioner's Chief of Staff. On March 20, 2007, Mr. Joseph and Donald P. Hodel met with Chairman Kevin Martin and Nicholas G. Alexander, the Chairman's Acting Wireline Advisor.

During these two meetings, we discussed the need for the Commission to preempt state laws that purport to apply to *interstate* prerecorded messages when those laws are inconsistent with the Telephone Consumer Protection Act ("TCPA"). To that end, we reiterated the points that ccAdvertising has made through earlier filings and during previous meetings with the Commission.

Specifically, ccAdvertising discussed the technology that it uses to place prerecorded calls and the interactive features that ccAdvertising offers to its clients. In addition to providing a mechanism for citizens to interact with elected officials and candidates, this interactivity also allows ccAdvertising to ask permission to proceed with the message and to accept a do-not-call request from the individual. We discussed the types of clients who use ccAdvertising's services, including candidates for state and federal office, state and federal political organizations and interest groups, and sitting Members of Congress. Members of Congress use ccAdvertising's technology to reach out to constituents, learn their views on important issues, and provide constituents with information about the Member's positions. These calls are paid for with the Congressional frank and supplement traditional mail or email franked communications.

We then discussed the fact that four years after the Commission invited the states to harmonize their laws with the TCPA, the states have not done so. Moreover, we discussed the fact that a number of

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state legislatures have enacted legislation that imposes conflicting requirements on interstate calls and a number of states are currently considering bills that would impose additional constraints and prohibitions on the use of interstate prerecorded messages for political purposes.

We discussed the litigation in which ccAdvertising is challenging an Indiana law that bans the use of prerecorded messages without a live introduction or prior consent to the call. This law applies to all calls, including noncommercial political calls such as those ccAdvertising makes, and conflicts with the TCPA, which allows noncommercial prerecorded message calls to be made.

Finally, we discussed our desire to have the Commission act on the pending petitions for declaratory ruling seeking preemption of state laws. We explained our concern that unless the Commission issues a clear declaratory order, it will be impossible for candidates in federal elections, and even sitting Members of Congress, to engage in pure political speech using state-of-the-art technology.

During these two meetings, we provided copies of the attached document showing the states with conflicting laws and legislation to the attendees. In accordance with the Commission's rules, a copy of this letter and the materials we provided during the meetings are being filed electronically for inclusion in the public record of this proceeding.

Sincerely,

/s/

Gabriel S. Joseph, III

Enclosure: 1

cc: The Honorable Kevin J. Martin (*via email*)
The Honorable Robert M. McDowell (*via email*)
John W. Hunter, Esq. (*via email*)
Nicholas G. Alexander, Esq. (*via email*)

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SUMMARY OF AUTOMATED CALL LAWS FOR POLITICAL CALLS

States that enforce Automated Call Laws for political calls on all calls in the state, applying their rules to *Intrastate and Interstate Calls*:

1. Indiana
2. North Dakota

States that have Automated Call Laws for political calls but *only* enforce them on *Intrastate Calls*:

1. Arkansas
2. Minnesota
3. Montana
4. New Hampshire
5. Wyoming

States where legislatures are considering Automated Call Laws that would prohibit all political calls:

1. Connecticut
2. Florida
3. Missouri
4. Pennsylvania
5. Wisconsin

States that considered Automated Call Laws but rejected or did not enact legislation this year:

1. Colorado
2. Maryland
3. Virginia