

November 4, 2009



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 October 27, 2009, I, along with Ronald Jacobs of Venable LLP, met with Christine D. Kurth, Policy Director and Wireline Counsel in the office of Commissioner Robert M. McDowell. During the meeting, 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"). During the meeting, we reiterated points that FreeEats has made through earlier filings and during previous meetings with the Commission.

Specifically, FreeEats discussed the technology that it uses to place prerecorded calls and the interactive features that FreeEats offers to its clients. In addition to providing a mechanism for citizens to interact with elected officials and candidates, this interactivity also allows FreeEats 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 FreeEats' 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 FreeEats' 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 six 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 state legislatures have considered bills that would impose additional constraints and prohibitions on the use of prerecorded messages for political purposes.

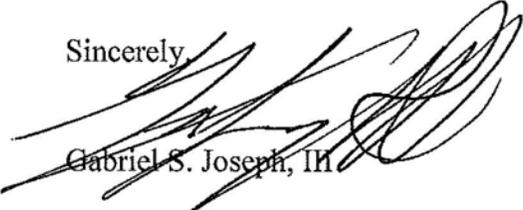
We then discussed the litigation in which FreeEats is challenging an Indiana law that bans the use of prerecorded messages without a live introduction or prior consent to the call. This law applies to all calls, including noncommercial political calls such as those FreeEats makes, and conflicts with 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 the meeting, we provided Ms. Kurth with a copy of the our pending petition CG Docket No. 02-278; DA 05-1347; DA 04-3187. In accordance with the Commission's rules, a copy of this letter and the materials we provided during the meeting are being filed electronically for inclusion in the public record of this proceeding.

Sincerely,


Gabriel S. Joseph, III

cc: Ms. Christine D. Kurth (via email)