



November 15, 2011

**BY ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: *CG Docket No. 11-50*

Dear Ms. Dortch:

This is to inform you that on November 11, 2011, Stacy Fuller of DIRECTV, Inc. met with Angie Kronenberg, Wireline Legal Advisor to Commissioner Clyburn, to discuss the potential job-killing consequences of an incorrect interpretation of the Telephone Consumer Protection Act of 1991 (“TCPA”) in the above referenced proceeding.

Several parties have petitioned the Commission for a ruling that could impose strict liability penalties under the TCPA on a company whose goods and services are illegally telemarketed by an independent third party, even if the company expressly forbids independent businesses from telemarketing its products. There are small retailers that have been affiliated with DIRECTV since its first satellite was launched in 1994, stores in towns and cities across America that continue to sign up DIRECTV subscribers and provide DIRECTV installation services. With modern technology, any one of these retailers could run up prohibitively large liabilities under the TCPA. Applying a statutory base fine of \$500 per call to the millions of solicitations that can be sent out in a matter of just a few weeks using autodialers and similar technology, liability could quickly escalate to a billion dollars or more. If DIRECTV can be held strictly liable under the TCPA for any telemarketing conducted by one of these businesses, it would not be able run the risk of allowing such third parties to sell its branded products at all. As a result, small businesses – and the jobs they provide in towns across the country – would suffer.

DIRECTV has taken substantial steps to ensure that its retailers do not violate the TCPA. DIRECTV contractually forbids illegal telemarketing. It trains internal and external personnel on telemarketing, and regularly recirculates policies on telemarketing to third parties with which it does business. In the event of a breach of these contractual provisions, DIRECTV has a strict zero tolerance policy that means termination of retailers engaged in illegal telemarketing activities. Under these circumstances, it would be inappropriate to deem conduct undertaken

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independently, without DIRECTV's input or approval and in violation of DIRECTV's rights, as conduct executed "on the seller's behalf."

Principles of agency should apply to the question of whether a call was made "on behalf of" a seller. Such an approach is more appropriate here, as it would allow for flexibility to address a range of circumstances, including cases in which an independent retailer has engaged in telemarketing activities that are prohibited by contract and consistently punished by the seller. Accordingly, DIRECTV urges the Commission to reject calls to transmute the TCPA into a strict liability statute.

Respectfully submitted,

/s/

William M. Wiltshire  
*Counsel for DIRECTV*

cc: Angie Kronenberg