

Gerald Roylance  
1168 Blackfield Way  
Mountain View, CA 94040-2305  
November 15, 2012

**Before the  
Federal Communications Commission  
Washington DC 20544**

<b>In the matter of</b>  <b>GroupMe, Inc.'s Request for an Expedited Declaratory Ruling</b>	<b>CG Docket No. 02-278</b>  <b>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</b>  <b>DA 12-1654 October 16, 2012</b>
---	--

**Gerald Roylance's Comments on CallAssistant LLC's Request for Clarification**

**I. Introduction**

In DA 12-1180,<sup>1</sup> the FCC seeks comment about CallAssistant's undated request.<sup>2</sup> Generally, CallAssistant wants the FCC to permit calls that use prerecorded voice as long as a live operator listens in while the messages play. The request should have been rejected out of hand. The TCPA prohibits initiating calls "using an artificial or prerecorded voice". The current request is about calls that use a prerecorded voice. It's a no brainer.

CallAssistant, with a simple modification, can make its calls legal. Instead of starting with a prerecorded voice, the live person should just request if s/he can use prerecorded messages at the beginning of the call. That is the method required by several state statutes. See, for example, California Public Utilities Code §§ 2871 et seq.

---

<sup>1</sup> FCC, <http://apps.fcc.gov/ecfs/document/view?id=7022036231>, "Consumer and Governmental Affairs Bureau Seeks Comment on Request for Clarification from CallAssistant, LLC"

<sup>2</sup> CallAssistant, LLC, undated, <http://apps.fcc.gov/ecfs/document/view?id=7022036232>

## II. Argument

CallAssistant makes a big deal of an FTC staff letter that says its equipment satisfies the Telemarketing Sales Rule (TSR). Such a statement is irrelevant to the TCPA. In addition, the FTC staff apparently misinterprets the plain language of 16 C.F.R. § 310.4(b)(1)(v). Initiating any outbound telephone call that delivers a prerecorded message for the purpose of selling goods and services requires prior express consent; non-profit organizations need not have prior express consent. The FTC staff opinion claims the FTC did not mean to prohibit prerecorded calls that were two way. I don't think much weight can be assigned to such an opinion. Furthermore, the letter is based on the representations made by CallAssistant.

In any event, the TSR does not have the same restrictions as the TCPA. The TCPA forbids using a prerecorded voice by statute (not just by regulation). CallAssistant does use the technology to sell goods and services, and the FCC has no power to exempt calls containing unsolicited advertisements.<sup>3</sup>

Furthermore, CallAssistant is being disingenuous. This technology was used in the Dove Foundation calls that were arguably advertising movies from Feature Films for Families. I received one or two of those calls. In addition, I received non-profit calls using this technology from Corporations 4 Character (C4C) for a California Fraternal Order of Police chapter. During that call, I learned that C4C was keeping 70% of the gross. Professional fundraisers in CA are generally limited to 50% of the gross. Unfortunately, the CA Attorney-General doesn't bother to read its required filings.

A Dove Foundation call had me fooled at first. I thought it was a live call. The audio quality was great. The callers responses were odd, and I grew suspicious. I think I asked, "Is this a prerecorded call?" The response was something like a canned "Do I sound that bad?" Ultimately, I did talk to a live person.

C4C entered into a settlement agreement with the State of Tennessee over do-not-call violations.<sup>4</sup> Fred Healey signed the settlement agreement. Fred Healey was also the Chief Operating Officer for Feature Films for Families, Inc.<sup>5</sup>

On May 9, 2011, the FTC sued Feature Films for Families, Corporations for Character, L.C., Family Films of Utah, and Forrest Sandusky Baker III.<sup>6</sup> The FTC alleges in ¶¶ 26 and 36 of its complaint that C4C made fourteen million calls in violation of the National Do Not Call Registry. FTC complaint ¶ 39 alleges that C4C keeps 67 to 85 percent of its nonprofit solicitations. Paragraph 51 alleges that the enterprise did not have "a sufficient number of representatives to speak to all the persons who answer telephone calls made by its predictive dialers. As a result, the Family Films Enterprise

---

<sup>3</sup> 47 U.S.C. § 227(b)(2)

<sup>4</sup> <http://www.state.tn.us/tra/orders/2009/0900200a.pdf> is a settlement between C4C and Tennessee about do not call violations.

<sup>5</sup> <http://www.linkedin.com/pub/fred-healey/a/53b/859>

<sup>6</sup> <http://www.ftc.gov/os/caselist/1023023/index.shtm> FTC information page for Case 11-197

has abandoned the telephone calls that it initiated by failing to connect a call answered by a person to a representative within two seconds of the person's completed greeting."

Forrest S. Baker not only controlled the entities listed above, but he is the president of CallAssistant Limited, the manager of CallAssistant, L.C, and managing member of Corporations for Character, L.C.<sup>7</sup> All of these entities are tightly bound together.

To spell it out a little more clearly, these companies have made a concerted effort to avoid the proscriptions of the TCPA. The companies knew that prerecorded calls could not be used for unsolicited advertisements, so a non-profit foundation was formed. Non-profits are permitted to make prerecorded calls under FCC regulations. What does the non-profit do? It uses CallAssistant-style prerecorded messages to get people interested in buying family-oriented DVDs.

I looked at the Dove Foundation IRS 990 forms for 2007 and 2008. They are confusing. It is not clear how much Dove spent on telephone calls. It's not worth the trouble to sort it all out.

The current FCC request gives the impression that the operator is listening to only one call, but that is not the sense I got when I received my calls. My impression was the calls were using voice recognition and even had canned responses when confused. The live operator was not listening to a single conversation but rather listening to many conversations at once. When a call went south, the live operator would step in.

The request refers to technology that "enables human-to-human interaction, one-on-one contact with every call, throughout the entire call". Such a claim is open to interpretation. The one-on-one contact might be an AVR system. A similar, carefully worded statement by Utah lawmakers is also on the TCPA docket.<sup>8</sup>

So here's the thing. If the call is exclusively monitored by a one-on-one live agent, then why bother with the prerecorded messages at all? Why doesn't the operator just speak? We have lots of telemarketers doing that today. Their voices don't seem to give out. It seems to be a lot of trouble to listen, and then select one of many possible canned responses. And then what does the operator do? Twiddle his thumbs while the message plays? Something else must be going on. If the live agent is actually monitoring several calls at once, but letting AVR do most of the heavy lifting, then we have something much different – and something that would require prerecorded messages.

If C4C is keeping 85 percent of the donations to charity, does it really need to use sophisticated technology? Any saving due to technology will probably go into the professional fundraiser's pocket rather than the charity.

---

<sup>7</sup> <http://www.bizapedia.com/people/FORREST-BAKER.html>

<sup>8</sup> <http://ecfsdocs.fcc.gov/filings/2010/09/28/6016058912.html> Bennett et al letters.

### **III. Conclusion**

The technology, as far as it is described, admits to using prerecorded voice messages. It does not make any claim that the recipient has consented to the calls. On its face, the technology violates the TCPA.

The technology is not described well, and there is no adequate explanation about why the technology would be used at all if the call were indeed a one-on-one human interaction. It does not make sense.

If the technology were allowed, how is a recipient of such a call supposed to distinguish between a real person and a computer employing AVR? Unscrupulous operators could deploy an AVR system and claim that a real person was listening in. In fact, any one using prerecorded telemarketing could claim they were using CallAssistant technology, but something went wrong.

We cannot say much good about the primary users of this technology. They have settled a do-not-call complaint, and they have been sued by the FTC. There is no lofty business model here; the principals skirt the TCPA, solicit for charity, and keep the lion's share.