WILTSHIRE & GRANNIS LLP

March 22, 2013

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 letter summarizes and expands upon issues raised by Stacy Fuller and undersigned counsel on behalf of DIRECTV, LLC in recent meetings to discuss the application of agency principles in connection with the Telephone Consumer Protection Act of 1991 ("TCPA").[1]

As DIRECTV and other commenters have argued in this docket, common law agency principles should govern the question of whether a call was made "on behalf of" a seller. Yet the efficacy of such an approach could be undermined if it is qualified by "examples" of activities that a reader might interpret as alone sufficient to indicate the existence of an agency relationship. The danger is that such examples could take on so much importance that they overshadow other considerations relevant to a proper, common law agency analysis. This would be especially problematic if the examples provided had the perverse effect of potentially exposing to liability a seller, such as DIRECTV, who takes responsible steps within its contracts with independent third parties to prevent illegal telemarketing, to assure the marketing of its service is done in a manner transparent and fair to consumers, and to establish its rights to validate contract performance of third parties to its high standards.

For example, DIRECTV has taken substantial steps to ensure that independent third party retailers with whom it contracts do not violate the TCPA. DIRECTV contractually forbids illegal telemarketing, and even expressly forbids methods of outbound calling that may be done legally but are most often subject to abuse (*e.g.*, pre-recorded messaging, texts, faxes, and "cold" calls). Its policies on telemarketing are available and widely known. DIRECTV monitors for compliance and fully investigates any allegations of abuse. In the event of a breach of these

[1] The DIRECTV representatives met with Elizabeth Andrion of the Commission's Office of Strategic Planning and Policy and Lyle Elder, Legal Advisor to Chairman Genachowski, on March 20; with Nicholas Degani, Legal Advisor to Commissioner Pai, on March 20; and with Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel, on March 22.

contractual provisions, DIRECTV has a strict zero tolerance policy that means termination of retailers engaged in illegal or forbidden telemarketing activities.

Improperly compromising the principles of common law agency by including examples would have real-world consequences for DIRECTV and the third party retailers with whom it contracts. 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, if a rogue employee was to violate DIRECTV's telemarketing policy and breach the retailer's contract by engaging in illegal telemarketing activities, any one of these retailers could run up prohibitively large liabilities under the TCPA. If DIRECTV's interaction with retailers wholly unrelated to telemarketing or related to preventing illegal telemarketing can form the basis for liability under the TCPA for any telemarketing conducted by one of these businesses, DIRECTV would have to reassess 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 – could suffer.

Such an outcome clearly would not serve the public interest. Common law agency principles are defined by a large, well-developed body of precedent that needs no further elaboration or "examples." If the Commission nonetheless feels the need to provide additional guidance, however, it must ensure that such guidance is not outcome determinative, but rather reflects matters that can be considered among all of the others relevant to the agency analysis.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel for DIRECTV

cc: Elizabeth Andrion
Lyle Elder
Nicholas Degani
Priscilla Delgado Argeris