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

In the matter of	CG Docket No. 02-278
CallAssistant LLC's Petition	Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991
	DA 12-1654 October 16, 2012

Gerald Roylance's Late Comment to CallAssistant LLC's Petition

CallAssistant LLC petitioned the FCC to allow its automated technology; later it asked to withdraw the petition as no longer necessary. I opposed the petition and the withdrawal. I recently received another CallAssistant-style automated call that violated FCC rules and regulations. The petition should not be dismissed – it should be denied.

On May 30, 2013, I answered a telephone call to a National-Do-Not-Call Registry residential telephone line. I said “Hello”, but the line was silent. If the call were for telemarketing purposes, then it would be an abandoned call under the FCC Regulations.

After at least 5 seconds of silence, I said “Hello” again. At that point, I was greeted with a voice giving a first name and claiming to be with the “American Veteran’s Foundation”. The voice said that the call was being recorded.

California requires all parties consent to a recorded (California Penal Code § 632), so I asked that the caller stop recording. I did not get an intelligent response to that request.

There were cues that suggested CallAssistant-style technology. I asked the caller to spell “cat”, a tactic suggested by commenters on this Docket. I did not get an intelligent response.

A live person never came on the line to field any of my requests.

I asked who the caller was, and the initial opening identification was repeated.

The call ended. I was not able to ask for information about the charity or other details. I was not told the identity of the telemarketer. The caller never provided a telephone number or a street address as required of even tax-exempt nonprofits at 47 C.F.R. § 64.1200(b) (“all artificial or prerecorded messages”). The identity of the caller is not clear.

CallAssistant’s technology is automated telemarketing, and it should not be permitted to operate as if it were live voice. If the call, instead of trying to deceptively appear as a live call, were a straight prerecorded call, then it would have (under the Regulations) included at least a telephone number. Instead, the call aborted with no significant information about the charity or its telemarketer.

There are four “American Veterans Foundation” charitable entities listed at the California Attorney General website. (<http://rct.doj.ca.gov/MyLicenseVerification/Search.aspx?facility=Y>) Only a Georgia entity is currently registered (http://rct.doj.ca.gov/MyLicenseVerification/Details.aspx?agency_id=1&license_id=1388621&), but it has not registered any current charity campaigns. The last campaign expired December 2011. The professional fundraiser was “The Campaign Center”.

Searching the web turns up an American Veterans Foundation (<http://avetsfoundation.org/contact.html>), but its street address is shared by a CPA. The email address is also at aol.com rather than its own domain name. The EIN is 800273572. I’ve downloaded the IRS Form 990 from GuideStar.org (last available year is 2011). (<http://www.guidestar.org/organizations/80-0273572/american-veterans-foundation.aspx>) GuideStar and the charity website indicate the city as Sarasota, FL, but the Form 990 has it in Woodstock, GA 30189. According to the 2011 Form 990, the organization took in \$647,668; it paid \$457,109 (71%) in professional fundraising fees and \$74,976 in employee compensation (\$68,540 went to President Paul Monville). Another \$68,304 went to advertising and promotion, \$18,941 in legal expenses, \$1,925 in accounting expenses, \$2,400 for office expense, and \$1,275 for state registration. It’s barely out of the gate (we haven’t hit all the expenses) and it has only \$22,738 (3.5%) left. The organization claims to have lost \$19,644 for the year. Part III claims program service accomplishments of \$47,881 (7.4%) for assisting homeless veterans (\$17,181 of the \$47,881 was salary for officers, directors, trustees, and key employees; a good chunk had to be Monville’s salary; \$2000 was for program legal services). Who in their right mind would donate to such an inefficient charity?

Schedule G identifies 4 professional fundraisers: Independent Marketing Solutions, Inc.; Telequal LLC, The Campaign Center, Inc.; and Menacola Marketing Inc. The numbers fit with the telemarketers keeping 82% described in the Iowa action below.

That organization may be the same that ran into trouble in Iowa: http://www.state.ia.us/government/ag/latest_news/releases/aug_2011/Linos_ban.html. That article is disturbing because the telemarketers kept between 80 and 85 cents of every dollar raised. In addition, the telemarketers repeatedly lied about how much went to charitable purposes.

I recommend reading the search warrant affidavit at http://www.state.ia.us/government/ag/latest_news/releases/aug_2011/linos_sw.pdf. Iowa has gone to great lengths to find charity scams – even to the point of maintaining the telephone number of a deceased resident to find illicit calls. Page 9 describes a contract with American Veterans Foundation where the telemarketer gets to keep 82% of the donated funds. The charity is not ignorant of the skim rate. Given such a high take by the telemarketer, it is dubious that such fundraising efforts should be viewed as a legitimate TENP activity. The activity is more along the lines of deception: the telemarketer sells some vacuous good feelings to the “donor”, and then pays 18% to the charity to immunize itself from the TCPA.

I reside in California. California sensibly requires that professional fundraisers may keep no more than 50 percent – and that does not include the bite taken by the charity’s overhead. In addition, the California Attorney General requires that at least 15 percent of the gross donations go to the charitable purpose. California Business & Professions Code § 17510.87 states:

Any individual, corporation, or other legal entity who, for compensation, solicits funds or other property in this state for charitable purposes is prohibited from retaining more than 50 percent of the net proceeds collected as a fee for fundraising services. For purposes of this section only, a fee does not include a flat fee agreed upon prior to the initiation of direct solicitation that is associated with the development of a solicitation or marketing campaign for charitable purposes.

A violation of this section shall not be a crime. However, it is subject to all applicable civil remedies. In addition, any person who collects any fee in excess of the limits imposed by this section shall be subject to a penalty in the amount of the excess fee, which penalty may be collected in an action by any person authorized to bring an enforcement action under Chapter 5 (commencing with Section 17200) and distributed as provided in that chapter.

This section shall only apply to contracts entered into or renewed on or after January 1, 1995.

Sadly, CallAssistant’s technology has a history of being deployed by marginal charities. My first encounter with the technology was with the Dove Foundation, and the “charitable purpose” of that nonprofit was to advertise the for-profit videos of a commercial company. A second episode was with a police-related charity.

I’ve encountered other marginal telemarketing charities, and the gamesmanship is stunning. One charity took out 85% in overhead, and then donated the remaining 15% to another charity to fulfill its charitable purpose. That other charity was controlled by the same officers as the first, and it took another 85% overhead bite. Overall, a million dollars in donations resulted in taking a busload of kids to a football game. Of course, management also went to the game to supervise the kids. I cringe every time I see a

bumper sticker that says the driver donated to that charity. Another good citizen duped into giving to a charity that does little for the common good.

While writing this material, I received another “charity” telemarketing call. This solicitation was live, the professional fundraiser was Charitable Resources Foundation, and the charity was “American Homeless Veterans”. I got a telephone number and a website. My question about how much went to the charitable purpose got a less-than-concrete “50% or two-thirds, we are a lean charity” answer. The named organization’s California charity registration is delinquent.

(http://rct.doj.ca.gov/MyLicenseVerification/Details.aspx?agency_id=1&license_id=1041825&) GuideStar doesn’t have any information for that charity. However, looking at the given website turns up a different charity name, Circle of Friends for American Veterans (Falls Church, VA), which is current.

(http://rct.doj.ca.gov/MyLicenseVerification/Details.aspx?agency_id=1&license_id=1003490&) EIN is 541847890. If I read the license information at

http://rct.doj.ca.gov/MyLicenseVerification/Details.aspx?agency_id=1&license_id=1475049& correctly, the professional fundraisers collected \$1,422,704.24 but only turned \$213,983.64 (15%) to the charity. Hardly a “lean charity”. These telemarketers are selling their services rather than promoting charity. They are acting more on their own behalf than the charity’s. GuideStar describes the charity at

<http://www.guidestar.org/organizations/54-1847890/circle-friends-american-veterans.aspx>. The charity is another dog. It took in \$2,151,365. Professional fundraising was \$1,791,474 (83%). Part III claims \$268,660 in program service accomplishments, but those claims seem dubious. A huge chunk of that program service accomplishment is payroll; all of Brian Hampton’s \$81,402 salary is charged, \$64,300 in other salaries, \$75,142 in payroll taxes, \$19,648 in office expenses. Those figures suggest creative accounting rather than charity: overhead is being charged to service. Even if we take the charity’s figures as accurate, only 12.5% of donations go to service.

Congress gave the FCC authority to exempt some automated calls to residences, and the FCC granted a broad exemption to tax-exempt nonprofits. There should not be an exemption for these charities-in-name-only. The FCC should consider rules that exclude charities that devote little of their gross to charitable causes. I wish the FCC could also restrict live solicitations, but Congress did not confer that ability.

I’m sorry, but I went off track with dubious charity solicitations. Back on topic. CallAssistant pushes telemarketing boundaries in a bad direction. The technology is illegal for commercial solicitations because it uses a prerecorded voice. Its current application seems to be soliciting for dubious charities. CallAssistant’s recorded voice technology should remain prohibited.

/s/ Gerald Roylance