

April 3, 2014

VIA ECFS

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street NW  
Washington, DC 20554

Ian D. Volner

T 202.344.4814  
F 202.344.8300  
IDVolner@Venable.com

Re: Notice of Permitted Ex Parte Presentation – Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 CG Docket No. 02-278

Dear Ms. Dortch:

On April 3, 2014, Ian D. Volner, Michael Signorelli, and James Arden Barnett, Jr., of the law firm Venable LLP, attorneys representing The Direct Marketing Association (“DMA”), met at the Federal Communications Commission (“FCC”) with:

- Kurt Schroeder, Division Chief, Consumer Policy Division, FCC Consumer and Governmental Affairs Bureau
- John B. Adams, Acting Deputy Chief, Consumer Policy Division, FCC Consumer and Governmental Affairs Bureau
- Mark Stone, Deputy Bureau Chief, Office of the Bureau Chief, FCC Consumer and Governmental Affairs Bureau
- Kristi Lemoine, Attorney Advisor, Consumer Policy Division, FCC Consumer and Governmental Affairs Bureau
- Aaron Garza, Attorney Advisor, Office of the Bureau Chief, FCC Consumer and Governmental Affairs Bureau

The purpose of the meeting was to discuss procedural avenues that would result in an early and expeditious resolution of the narrow but important issue raised by the DMA Petition for Forbearance. On behalf of the DMA we urged the Bureau to act upon the Petition pursuant to delegated authority. We suggested that this procedural approach is appropriate for the following reasons:

1. This Petition needs to be resolved quickly. Although no objections to the Petition have been filed with the Commission, there remains uncertainty as to whether written consents, obtained prior to the effective date of October 16, 2013, are invalid because these agreements do not contain the disclosures now required by Section 64.1200(f)

Ms. Marlene H. Dortch  
April 3, 2014  
Page 2

(8)(i) (A) and (B). Because of the uncertainty and attendant risk under the Telephone Consumer Protection Act (“TCPA”) caused by the ambiguity of the application of these disclosure requirements to preexisting written agreements, many DMA members, to their economic detriment, have discontinued the initiation of these messages to consumers. No less importantly, the uncertainty as to the applicability of the disclosure requirements causes harm to consumers. Consumers who signed up in writing to receive calls and messages to wireless devices before the effective date of the new disclosure requirements did so precisely because the messages provide information (such as news and weather reports, and status of warranties) and purchase opportunities that they want to receive, but which they are no longer receiving. The harm to consumers and to industry exists solely because of the legal risk associated with the validity of the agreements previously entered into, in many cases long before the rule came into effect. The public interest, as well as the interest of the industry, warrants prompt action. This can best be achieved by the Bureau acting under delegated authority.

2. Action by delegated authority is the best way to reach an early resolution of the issue presented and does no harm to other administrative considerations. The DMA Petition focuses on a narrow issue: it only entails clarification of whether the failure to include the two disclosure requirements in the new TCPA provisions invalidates an otherwise valid written agreement entered into prior to the effective date of the rule. No other pending petition related to the TCPA Rules presents the same or a similar issue.

Similarly, the narrow relief requested has no effect upon applicability of the disclosure requirements to written consent agreements entered into after the effective date of the rule; as to these agreements, the rule remains and would remain in force in accordance with its terms. Thus, resolution of the ambiguity in the rule will not pre-judge the outcome of other petitions now pending and does not otherwise impinge upon the jurisdiction of the Full Commission. Additionally, in this case, action by delegated authority will not pretermitt the authority of any court to which the issue may be presented in the future. Accordingly, whether the Bureau’s decision is treated as a grant of forbearance, or of a limited waiver, the decision will serve only to provide guidance to the industry on a narrow, but nonetheless important, issue. Our

Ms. Marlene H. Dortch  
April 3, 2014  
Page 3

request is not only consistent with the public interest, but with considerations of administrative efficiency.

This disclosure is made in compliance with 47 C.F.R. §1.1206.

Sincerely,

*/s/ Ian D. Volner*

---

Ian D. Volner, Esq.  
*Counsel for the Direct Marketing Association*  
Venable LLP

cc: Mr. Kurt Schroeder  
Mr. John B. Adams  
Mr. Mark Stone  
Ms. Kristi Lemoine  
Mr. Aaron Garza