

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	File No.: EB-TCD-12-00001812
Dialing Services, LLC)	NAL/Acct. No. 201432170006
)	
)	FRN: 0023613144
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 7, 2014

Released: May 8, 2014

By the Commission:

I. INTRODUCTION

1. Robocalls are illegal when made to consumers' cell phones without consent or in the absence of an emergency. For more than two decades, Congress and the Commission have sought to protect consumers from harassing, intrusive, and unwanted robocalls to pagers, cell phones, smart phones, and other mobile devices. Dialing Services, LLC (Dialing Services or Company) made almost 200 robocalls to wireless phones using artificial or prerecorded voice messages without the prior express consent of the consumers it called. Dialing Services was warned more than a year ago that the Company's practices violated federal law—the Communications Act and our rules. Nevertheless, Dialing Services continued making unlawful robocalls to cell phones. As a result of its apparent violation of the law, Dialing Services has profited at the expense of consumers. Based on our review of the facts and circumstances surrounding the apparent violations, we propose a forfeiture penalty of \$2,944,000.

II. BACKGROUND

2. In 1991, Congress passed the Telephone Consumer Protection Act (TCPA) that, in relevant part, outlawed robocalls to mobile phones except in two limited circumstances: calls made (1) for emergency purposes or (2) with the prior express consent of the called party. While Congress recognized the transformative power of then-new technologies such as automated telephony, it likewise recognized that such power came with risks.¹ Congress thus sought to address the growing number of consumer complaints by imposing greater restrictions on robocalls than on live calls.²

¹ See S.Rep. No. 102-178, 102d Cong., 1st Sess. (1991) at 2 (noting that decreasing costs of calling and the advent of automated dialing and robocalling technology were chiefly responsible for the growing number of unsolicited calls as well as the growing number of consumer complaints about such calls).

² *Id.* at 2 (“The use of automated equipment to engage in telemarketing is generating an increasing number of consumer complaints. The Federal Communications Commission (FCC) received over 2,300 complaints about telemarketing calls over the past year. The Federal Trade Commission, State regulatory agencies, local telephone companies, and congressional offices also have received substantial numbers of complaints.”).

[I]t is clear that automated telephone calls that deliver an artificial or prerecorded voice message are more of a nuisance and a greater invasion of privacy than calls placed by “live” persons. These automated calls cannot interact with the customer except in preprogrammed ways, do not allow the caller to feel the frustration of the called party, fill an answering machine tape or a voice recording service, and do not disconnect the line even after the customer hangs up the telephone. *For all these reasons, it is legitimate and consistent with the Constitution to impose greater restrictions on automated calls than on calls placed by “live” persons.*³

3. Congress set different boundaries for calls to wireless devices than it set for other communications. In this regard, Congress permitted certain types of prerecorded voice messages or artificial voice calls to landlines even without the consent of the called party but granted no such latitude regarding wireless devices.⁴ Given the legislative history of the TCPA, Congress’ intent with respect to calls to mobile phones is clear: “The bill would accomplish the following . . . *ban all autodialed calls, and artificial or prerecorded calls, to emergency lines and paging and cellular phones.*”⁵

4. The Commission adopted rules implementing the TCPA in Section 64.1200 of the Commission’s rules (Rules).⁶ The Commission recognized Congress’ clear intent to give greater protection to wireless phones than to landlines, and adopted rules that effectively mirrored the statutory protections.⁷ As the FCC explained:

Congress found that automated or prerecorded telephone calls were a greater nuisance and invasion of privacy than live solicitation calls. Moreover, such calls can be costly and inconvenient. The Commission has long recognized, and the record in this proceeding supports the same conclusion, that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. Wireless subscribers who purchase a large “bucket” of minutes at a fixed rate nevertheless are charged for those minutes, and for any minutes that

³ *Id.* at 4–5 (emphasis added).

⁴ Compare 47 U.S.C. § 227(b)(1)(A)(iii) with 47 U.S.C. § 227(b)(1)(B) and 47 U.S.C. § 227(b)(2)(B) (granting Commission authority to adopt additional exemptions to liability with respect to robocalls made to landlines).

⁵ See S.Rep. No. 102–178, 102d Cong., 1st Sess. (1991) at 6 (emphasis added).

⁶ See 47 C.F.R. § 64.1200. See also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992) (1992 R&O).

⁷ Compare 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)(1)(iii). In 1992, when the Commission adopted then new Section 64.1200(a)(1)(iii) of the Rules, it used the term “initiate” where the statute used the word “make” in the prohibition against autodialed or prerecorded message calls to wireless devices. The Commission did not draw any distinction between the words “initiate” and “make” for purposes of Section 227(b)(1)(A) of the Communications Act of 1934, as amended (Act), and we find that the Commission intended the word “initiate” as used in Section 64.1200(a)(1)(iii) of the Rules to function as a proxy for the term “make” in Section 227(b)(1)(A) of the Act. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, 7 FCC Rcd 2736, 2737, para. 8 (1992) (“The general prohibition rules as proposed in Appendix B, section 64.1100, follow closely the language of the TCPA.”); *1992 R&O*, 7 FCC Rcd at 8754-55, para. 5 (“we adopt, as proposed: (1) the prohibitions on calls made by automated telephone dialing systems and artificial or prerecorded voice messages (in the absence of an emergency or the prior express consent of the called party) to emergency lines, health care facilities, radio common carriers or any number for which the called party is charged for the call; . . .”).

exceed the “bucket” allowance. This “bucket” could be exceeded more quickly if consumers receive numerous unwanted telemarketing calls.⁸

As the Commission noted above, Congress understood that consumers feel the sting of unwanted robocalls both to their privacy and their pocketbook.

5. In the more than twenty years since Congress first enacted the TCPA, consumer use of wireless telephones has skyrocketed, along with the potential harm of unlawful robocalls. Recent consumer research shows that 91% of adults and 78% of children aged twelve to seventeen have cell phones.⁹ In recent months, Members of Congress have re-affirmed their desire for more frequent and significant robocalling enforcement. In July 2013, for example, Senators from both sides of the aisle on the Senate Committee on Commerce, Science and Transportation agreed that consumer protection against unlawful robocalls remains a priority for Congress.¹⁰

6. Dialing Services offers a robocalling service to various third-party clients. Dialing Services’ clients pay the Company to make artificial or prerecorded voice calls to telephone numbers of the clients’ choosing.¹¹ Dialing Services’ clients may use the Company’s website to upload sound recordings (*i.e.*, prerecorded voice messages) to the Company’s servers.¹² Alternatively, clients may create prerecorded messages by dialing one of the Company’s phone numbers and recording a message over the phone.¹³ The Company advertises the fact that it is able to make millions of robocalls for its clients: “Reach thousands, hundreds of thousands or even millions of customers with your personal message.”¹⁴

7. In 2012, the Enforcement Bureau’s (Bureau) Telecommunications Consumers Division (TCD or Division) launched an investigation of Dialing Services’ robocalling services by sending a letter of inquiry (LOI) directing the Company to provide records of calls that it made, along with the sound files of the messages that were played to each of the consumer recipients.¹⁵ The Company’s call records

⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (2003 TCPA Order).

⁹ Lee Rainie, *Cell phone ownership hits 91% of adults*, Pew Research Center (June 6, 2013), <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults/> (last visited Apr. 2, 2014).

¹⁰ *Stopping Fraudulent Robocall Scams: Can More Be Done? Hearing Before the Subcomm. on Consumer Protection, Product Safety, and Insurance of the S. Comm. on Commerce, Science and Transportation*, 113th Cong. 3 (2013) (statement of Sen. McCaskill, Chair, Subcomm. on Consumer Protection, Product Safety, and Insurance, and Member, S. Comm. on Commerce, Science and Transportation) (“The choice [whether to receive robocalls] should rest firmly in the hands of the phone that rings.”). *Id.* at 3–4 (statement of Sen. Heller, Ranking Member, Subcomm. on Consumer Protection, Product Safety, and Insurance, and Member, S. Comm. on Commerce, Science and Transportation) (quoting from news articles describing the use of robocalls in identity theft and other scams targeting elderly citizens, illustrating the continuing harms that unlawful robocalls cause).

¹¹ *See infra* para. 17.

¹² *See* Letter from Mitchell Roth, Roth Doner Jackson, PLC, to Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jun. 13, 2012) at 5-8 (on file in EB-TCD-12-00001812) (June 13, 2012 Response).

¹³ *See* June 13, 2012 Response at 7.

¹⁴ *See* In Touch Systems Website, Products – In Touch, <http://www.gointouch.com/products.html> (last visited Apr. 2, 2014).

¹⁵ *See* Letter from Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Anthony C. Kolker, President, Dialing Services, LLC (May 4, 2012) (on file in EB-TCD-12-00001812) (2012 LOI).

showed that it made millions of robocalls on behalf of its clients during the three months for which the Division obtained records. Based on this record, TCD determined that in just three months, Dialing Services made more than 4.7 million non-emergency robocalls to cell phones without prior consent,¹⁶ in violation of the Act and the Commission's rules.

8. Pursuant to Section 503(b)(5) of the Act, the Division cited Dialing Services for the apparent violations.¹⁷ The Citation notified Dialing Services of its obligations under the Communications Act and warned the Company that it could be liable for monetary forfeitures if it made any more unlawful robocalls to wireless phones in the future. In addition, the Citation provided Dialing Services an opportunity to meet with staff and file a written response. Dialing Services filed a response to the Citation on April 15, 2013.¹⁸

9. In June 2013, TCD initiated a second investigation to determine whether Dialing Services, in fact, had ceased making robocalls and was otherwise complying with the Communications Act and our rules as outlined in the Citation.¹⁹ TCD again requested sound files of the messages that Dialing Services delivered to consumers and call records showing the calls that the Company made after the Citation had been issued. While the Company continued to object to the Citation and investigation, it produced the requested documents and files.²⁰ TCD staff analyzed the call records and found that the Company had made 184 unauthorized autodialed or prerecorded message calls to cell phones—all of which were made after the Citation, and after the Division had specifically warned Dialing Services that making unlawful robocalls could subject the Company to significant monetary penalties.

¹⁶ TCD compared the call records to an industry-standard, commercially available database of known assigned and ported wireless numbers to determine whether the Company made robocalls to wireless telephones. See Interactive Marketing Solutions, Inc. Website, <http://www.ims-dm.com/index.shtml> (last visited Apr. 2, 2014). Interactive Marketing Solutions, Inc. is a member of the Direct Marketing Association and bills itself as “the country’s largest single-source supplier” of data identifying telephone numbers that have been assigned or ported to wireless devices, “to help businesses comply with state and federal legislation.” *Id.*

¹⁷ *Dialing Services, LLC*, Citation and Order, 28 FCC Rcd 1840 (2013) (Citation). Dialing Services does not hold any license, permit, certificate, or authorization issued by the FCC, nor is it an applicant for any. Section 503(b)(5) of the Communications Act requires the Commission, before assessing a forfeiture against a non-licensee such as Dialing Services, to first issue a citation of the violation charged and give the cited person a reasonable opportunity for a personal interview with an official of the FCC. If the cited person subsequently engages in the same conduct described in the citation, the Commission may then proceed to a forfeiture liability action against that person. 47 U.S.C. § 503(b)(5).

¹⁸ See Response and Petition for Reconsideration filed by Dialing Services, LLC (April 15, 2013) (on file in EB-TCD-12-00001812) (Citation Response). Counsel for Dialing Services and the Company’s President, Anthony C. Kolker, likewise availed themselves of the opportunity to meet with Commission staff after TCD issued the Citation.

¹⁹ Letter from Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Anthony C. Kolker, President, Dialing Services, LLC (Jun. 28, 2013) (on file in EB-TCD-12-00001812); Letter from Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Anthony C. Kolker, President, Dialing Services, LLC (Sept. 27, 2013) (on file in EB-TCD-12-00001812).

²⁰ See Letter from Mitchell Roth, Roth Doner Jackson, PLC, to Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Oct. 28, 2013) (on file in EB-TCD-12-00001812) (October 2013 Response). See also Letter from Mitchell Roth, Roth Doner Jackson, PLC, to Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Aug. 7, 2013) (on file in EB-TCD-12-00001812); Email from Mitchell Roth, Roth Doner Jackson, PLC, to Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, and Lloyd Collier, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Aug. 7, 2013, 3:22 PM EDT) (on file in EB-TCD-12-00001812).

III. DISCUSSION

A. Dialing Services Made Hundreds of Prerecorded Message Calls to Cell Phones In Apparent Violation of Federal Law

10. Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Commission's rules prohibit prerecorded voice messages and autodialed calls (including autodialed live calls and prerecorded or artificial voice messages) to cell phones and other mobile services, such as paging systems unless certain conditions are met. Specifically, the Act makes it unlawful "for any person . . . to make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."²¹ The Commission implemented the statutory prohibition in its rules without substantive change.²² The prohibitions in the Act and the FCC rules are subject to only two exceptions: (1) calls made for emergency purposes and (2) calls made with the prior express consent of the called party.²³ Callers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.²⁴

11. We find that Dialing Services apparently willfully and repeatedly violated Section 227 of the Communications Act and Section 64.1200 of the Commission's rules by making 184 prerecorded message calls to mobile phones for non-emergency purposes and without the prior express consent of the called party.²⁵ The evidence shows that (1) Dialing Services made each of the 184 calls to consumers; (2) the calls had no emergency purpose,²⁶ and (3) the Company did not provide any evidence that it or its clients had obtained prior express consent for these messages.²⁷

12. As part of its investigation, TCD staff contacted consumers who received prerecorded message calls made by Dialing Services on behalf of several different clients. TCD staff asked the recipients whether they had ever given permission to anyone to make prerecorded message calls to their respective cell phones at any time. Of the 52 people who spoke to TCD staff, the overwhelming majority

²¹ 47 U.S.C. § 227(b)(1), (b)(1)(A)(iii); *see also* 2003 TCPA Order, 18 FCC Rcd at 14115, para. 165 (discussing unlawful telemarketing calls to wireless numbers and explaining that statutory prohibition "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls").

²² 47 C.F.R. § 64.1200(a)(1)(iii) (It is unlawful "to initiate any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."). As explained above, we interpret the term "initiate" in the Rule as intended to have the same meaning as "make" as used in Section 227(b)(1)(A) of the Act.

²³ *See* 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

²⁴ *See, e.g., Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that "[s]hould a question arise as to whether express consent was provided, the burden will be on [the caller] to show it obtained the necessary prior express consent").

²⁵ The Appendix identifies the 184 apparent violations of the Communications Act and the Commission's rules occurring in the last year that form the basis of the proposed forfeiture.

²⁶ *See* 47 C.F.R. § 64.1200(f)(4) ("emergency purposes means calls made necessary in any situation affecting the health and safety of consumers").

²⁷ *See supra* n. 24.

outright denied ever having given anyone permission to robocall them.²⁸ Some even expressed significant frustration and anger at receiving such unwanted prerecorded message calls. For example:

- “I’ve tried and tried to get off these lists,” explained one recipient, lamenting that “I have no recourse.”
- Another consumer reported with exasperation that “I get hundreds of [robocalls].”
- One recipient, when asked whether she had given permission to receive such calls, exclaimed “Oh my God, NEVER.”
- Others expressed frustration about receiving regular or repeated robocalls despite having added their cell phone numbers to the national or their home state’s Do-Not-Call list and thanked TCD staff for looking in to the matter: “I’m glad you’re checking it out,” one recipient remarked, stating that “I hate those damn calls.”

Based on these and other interviews, the record demonstrates that Dialing Services subjected consumers to harassing, nuisance calls despite the absence of any evidence of prior express consent and contrary to the desires and repeated efforts of the recipients to avoid receiving them. Accordingly, we find that the Company failed to satisfy its burden demonstrating that it (or its clients) obtained the necessary prior express consent.

13. Dialing Services does not contest that unlawful robocalls were made through its business, but it attempts to shift the blame to its clients. The Company asserts that it “merely offers the transmittal services and serves as a conduit” that allows its clients to engage in robocalling.²⁹ In essence, Dialing Services argues that it merely facilitates illegal robocalling but does not itself engage in the practice.

14. The lynchpin of the Company’s effort to avoid liability rests entirely on its narrow interpretation of what the statute means by “to make any call.” Specifically, Dialing Services argues that it is not legally responsible for robocalling millions of consumers and for compliance with the Communications Act or our rules because it does not “make” or “initiate” the calls.³⁰

15. We disagree. As a preliminary matter, Dialing Services suggests that both it and its clients cannot mutually be liable for calls made to consumers’ mobile phones for a non-emergency purpose without their consent. This misstates the law. In *DISH Network*, the Commission’s analysis presumed that *both* a seller who engages a telemarketer, and the telemarketer so engaged, may be liable for TCPA violations. The Commission explained that its rules identify a telemarketer as “the person or

²⁸ Of the 52 people TCD spoke with, only one person confirmed giving permission to receive robocalls; calls made to that person are not included in the 184 unlawful robocalls at issue in this NAL.

²⁹ See Citation Response at 3.

³⁰ The Act makes it unlawful “for any person . . . to make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice” to any mobile device. 47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added). As explained above, the Commission incorporated this statutory prohibition, without any change to its meaning, by using the word “to initiate” in its rules. See 47 C.F.R. § 64.1200(a)(1)(iii). The Commission uses the words “make” and “initiate” interchangeably in its rules arising under § 227(b)(1)(A) without drawing any distinction. Compare 47 C.F.R. § 64.1200(a)(1) (“No person or entity may . . . initiate any telephone call . . . using an automatic telephone dialing system or an artificial or prerecorded voice” to a mobile phone) with *id.* § 64.1200(e) (“The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone . . . calls to wireless telephone numbers”) (emphasis added). Paragraphs (c) and (d) of Section 64.1200 of the Rules both use the word initiate.

entity that *initiates* a [telemarketing] call,” and that even though “a seller does not necessarily initiate a call that is placed by a third-party telemarketer on the seller’s behalf . . . it may be held vicariously liable for certain third-party telemarketing calls.”³¹ Similarly, in evaluating the TCPA liability of third parties who engage robocalling services, courts have assumed liability of the latter for any illegal calls made using the service, explaining that “the language of the Act indicates that it is intended to apply to the individuals who use the autodialing systems that place calls, and not just to the autodialing services themselves.”³²

16. In *DISH Network*, we held that “a person or entity ‘initiates’ a telephone call when it *takes the steps necessary to physically place a telephone call*, and generally does not include persons or entities, such as third-party retailers, that might merely have some role, however minor, in the causal chain that results in the making of a telephone call.”³³ . The same logic that *DISH Network* applied to robocalls to landline phones with respect to “initiation” of calls (Section 227(b)(1)(B) of the Act) likewise applies to robocalls to wireless phones with respect to “making” calls (Section 227(b)(1)(A) of the Act).³⁴ Our definition looks for a “direct connection between a person or entity and the making of a call.”³⁵

17. The evidence shows that Dialing Services has just such a connection. In its current terms of service, the Company is “the developer of the software and provider of the Dialing Platform,” which includes “the underlying hardware, software, web interface, and connectivity to the phone network”³⁶ that is used, again in Dialing Services’ own words, to “dial the phone numbers provided by Customer and play the recorded message provided by Customer to live answered calls and/or answer machines”³⁷ Dialing Services places telephone calls for its clients and is actively engaged with its clients in robocalling.³⁸ Below are examples of affirmative acts performed by Dialing Services in the course of providing its platform services.

- Dialing Services provides the software platform that incorporates the functionality for making artificial or prerecorded voice calls.
- The Company leases or otherwise secures from the LEC or VoIP provider the necessary telephone connections for making “thousands, hundreds of thousands or even millions of” calls.³⁹ Dialing Services procures and controls the necessary software, computers, telecommunications, services, or automated dialers needed to make these calls.

³¹ *In re Joint Petition filed by DISH Network LLC, Declaratory Ruling*, 28 FCC Rcd 6574, 6583, para. 27 (2013) (*DISH Network*) (quoting Commission’s rule) (emphasis in original).

³² *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 378-79 (4th Cir. 2013). See also *Lucas v. Telemarketer Calling from (407) 476-5670 & Other Telephone Numbers*, No. 1:12-CV-630, 2014 WL 1119594, at 10 (S.D. Ohio Mar. 20, 2014) .

³³ *DISH Network*, 28 FCC Rcd at 6583, para. 26.

³⁴ That said, we need not and do not reach the question of whether the terms “initiate” and “make” are in all respects the same for the purposes of statutory interpretation of Section 227 of the Act.

³⁵ *DISH Network*, 28 FCC Rcd. at 6583, para. 26.

³⁶ Dialing Services Terms of Use, <https://www.dialingservices.com/TermsOfUse.aspx> (last visited Apr. 17, 2014).

³⁷ Dialing Services Order Form, <http://www.politicaller.com/ORDER FORM.pdf> (last visited Apr. 2, 2014).

³⁸ See June 13, 2012 Response, *passim*; see also *infra* para. 20.

³⁹ See In Touch Systems Website, Products – In Touch, <http://www.gointouch.com/products.html> (last visited Apr. 2, 2014).

- When requested, the Company purchases voter lists for its clients' use.⁴⁰
- Dialing Services provides technical support to assist clients.⁴¹
- The Company also “review[s] or edit[s] messages if the messages appear to be in furtherance of unlawful or fraudulent activity. . . .”⁴²
- Dialing Services also reviews the phone numbers to be called to determine if they are valid ten-digit numbers and informs the client of the total number of calls that will be made.⁴³
- Dialing Services transmits the calling party number to be displayed by the call recipients' caller identification services. Dialing Services can also transmit “spoofed” caller ID numbers and names that are displayed at a client's request.
- While a customer may upload the prerecorded message, Dialing Services stores the prerecorded messages on servers owned, leased, or otherwise under its control. Further, in some cases the Company actually records and then stores the messages. The Company also “assist[s] [clients] in the proper structuring of a message.” Finally, the Company's software “plays” those sound recordings to the called party.⁴⁴
- The Company has pre-programmed its software platform to detect whether the call has been answered by a live person, or by an answering machine or voice mail system, and to select whether and when to play the prerecorded message.
- The Company provides reports to its clients of call history, results, and polling.⁴⁵
- While the customer may enter dates and times that it wants the calls to be made, the Company alone dials the telephone numbers and makes the calls—and the customers pay the Company so that it will do so.⁴⁶

18. Whether one uses the term “make” or “initiate,” the fact is that Dialing Services is directly involved in the phone calls it dials for its clients. In its own words, Dialing Services says that it will “dial the phone numbers provided by Customer and play the recorded message provided by Customer to live answered calls and/or answer machines”⁴⁷ and that it may, among other things control the numbers to be dialed (*e.g.*, by providing voter lists), and review and edit messages.⁴⁸ This is plainly

⁴⁰ See June 13, 2012 Response at 9.

⁴¹ See June 13, 2012 Response at 5, 6.

⁴² See June 13, 2012 Response at 8.

⁴³ See June 13, 2012 Response at 10, 12.

⁴⁴ See June 13, 2012 Response at 7, 8.

⁴⁵ See June 13, 2012 Response at 12-13.

⁴⁶ *Id.* See also Dialing Services Order Form, <http://www.politicalcaller.com/ORDER FORM.pdf> (last visited Apr. 2, 2014).

⁴⁷ Dialing Services Order Form, <http://www.politicalcaller.com/ORDER FORM.pdf> (last visited Apr. 2, 2014).

⁴⁸ In this NAL, we do not hold that a robocalling platform *must* assist its clients in identifying or selecting the individuals or phone numbers to be called, or in formatting the prerecorded message to be played, to be held liable under the TCPA for prerecorded calls made via its platform. Rather, in this NAL, we note the presence of these facts as additional support for our conclusion that Dialing Services is liable for the calls in this case made via its platform.

within the understanding of “making” or “initiating” a call under the *DISH Network* standard. That Dialing Services does not choose the numbers is not dispositive, and the fact that the physical aspect of a call’s initiation takes place through the electronic running of the Company’s computer software—not through a person dialing a phone—is irrelevant. Thus, we find Dialing Services made each of the 184 calls at issue in this case.

19. As a secondary argument, Dialing Services also claims that, notwithstanding who “initiates” the call, it “should be afforded the same protection as companies offering similar transmittal services as fax broadcasters,”⁴⁹—that is, companies that “simply provide transmission facilities that are used to transmit others’ unsolicited facsimile advertisements.”⁵⁰ Under the Commission’s rules, a fax broadcaster will not be held liable for violations of the TCPA’s prohibitions against unsolicited advertisement faxes unless the broadcaster demonstrates “a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions”⁵¹ Because these rules do not apply outside the context of the restrictions on unsolicited advertisement faxes, they do not apply to Dialing Services’ conduct here.

20. As discussed above, the legislative history and the text of the TCPA makes it clear that Congress viewed unsolicited calls and texts to cell phones as a greater invasion of privacy, and a greater harm, than calls to residential lines or unsolicited advertisements sent to fax machines. In contrast, faxes have enjoyed significantly more Congressional latitude than messages to wireless devices or landlines. In the 2005 Junk Fax Prevention Act (JFPA), Congress loosened the restrictions of the TCPA surrounding faxing of unsolicited advertisements.⁵² In contrast, neither the JFPA nor any subsequent Congressional legislation has ever provided exceptions to the provisions concerning artificial or prerecorded message calls to wireless phones. Even after more than twenty years of opportunity to amend the law, Congress has let the prohibition against unsolicited robocalls stand.

21. In sum, the dispositive issue here is whether Dialing Services “makes” or “initiates” calls with its platform service. For the foregoing reasons, we find that Dialing Services made over 4.7 million calls over the course of the Bureau’s two investigations, and 184 of those calls took place after Dialing Services was warned by the Bureau in an official citation that the Company’s practices violated the TCPA. Accordingly, we find that Dialing Services apparently willfully and repeatedly violated Section 227 of the Communications Act and Section 64.1200 of the Commission’s rules by making prerecorded message calls to mobile phones for non-emergency purposes and without the prior express consent of the called party.

B. Dialing Services’ “Petition for Reconsideration” of the Citation Is Dismissed

22. As indicated above, pursuant to Section 503(b)(5) of the Act, the Bureau cited Dialing Services for making more than 4.7 million autodialed or prerecorded message calls to cell phones, in violation of Section 227(b)(1)(A)(iii) of the Act and Section 64.1200(a)(1)(iii) of the Commission’s rules.⁵³ The Bureau warned Dialing Services that if it engaged in the same unlawful conduct, the

⁴⁹ See Citation Response at 3.

⁵⁰ See 1992 R&O, 7 FCC Rcd at 8780, para. 54. For example, various national and local printing and shipping retailers offer fax transmission services to the public for a fee. See, e.g., FedEx Office – Fax Services, available at <http://www.fedex.com/us/office/fax-services.html> (last visited Mar. 25, 2014) (“Send and receive local, domestic and international faxes”).

⁵¹ See 1992 R&O, 7 FCC Rcd at 8780, para. 54; see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12408, para. 35 (1995).

⁵² Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁵³ See generally Citation.

Company could be the subject of further enforcement actions and monetary forfeitures up to \$16,000 for each such violation.⁵⁴ Dialing Services filed a response and requested reconsideration of the Citation.⁵⁵ In seeking reconsideration, Dialing Services argues (1) that it does not initiate calls and, thus, cannot be held liable; (2) that it should be exempt from liability similar to fax broadcasters; and (3) that holding Dialing Services liable violates its First Amendment rights to commercial speech.⁵⁶

23. We dismiss the Company's request for reconsideration because it is not ripe.⁵⁷ The Citation was properly issued pursuant to Section 503(b)(5) to provide Dialing Services notice only that the practices it was engaging in violated the Act and our rules.⁵⁸ Thus, the Citation is not a "final" action in an enforcement proceeding that is ripe for reconsideration.⁵⁹

24. Section 503 of the Act prescribes the process for enforcement proceedings. First, Section 503(b)(5) affords Dialing Services a notice in the form of a citation—which Dialing Services received on March 15, 2013. Section 503(b)(5) then affords Dialing Services an opportunity for a personal interview with an official of the Commission—which Dialing Services received and availed itself of when Dialing Services' company president and its counsel met with FCC staff on April 5, 2013, and subsequent occasions. The NAL is the next step in the enforcement process but only if the subject of a citation "subsequently engages in conduct of the type described in [the] citation."⁶⁰ The statute gives the subject of the NAL (as in the instant case) an opportunity to respond to the NAL, which may then be followed by a forfeiture order; of these steps, only the forfeiture order can be the subject of a petition for reconsideration or application for review.⁶¹ Thus, we find no procedural basis under Section 503 of the Act or our rules in which to challenge the Bureau's Citation.⁶²

25. As an independent and alternative basis for this decision, we also deny Dialing Services request for reconsideration on the merits. We reject Dialing Services' first two arguments for the reasons discussed above. With respect to its First Amendment claim, we find no merit to Dialing Services' argument that, as applied to the Company's services, the TCPA's restriction on robocalling "violates protections afforded commercial speech."⁶³ It is well-settled law that the TCPA's restrictions on speech

⁵⁴ See Citation, 28 FCC Rcd at 1845-1846, para 17.

⁵⁵ See Citation Response at 2.

⁵⁶ See Citation Response at 4.

⁵⁷ 47 C.F.R. § 1.106(p)(9).

⁵⁸ See 47 U.S.C. § 503(b)(5) (requiring the Commission to issue a non-licensee a citation of the violation charged prior to issuing a forfeiture liability); see also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (legislative history, explaining that "[Section 503] . . . contains a special procedural protection comparable to existing law for those persons who will be made subject to forfeiture liability for the first time and who are presumed to be unaware of Commission regulations. For persons who are not required to hold a license, permit, certificate, or other authorization issued by the commission, no forfeiture may attach unless prior to the issuance of any notice the Commission has sent a citation for the violation and has provided an opportunity for a personal interview and the person has thereafter engaged in the prohibited conduct.").

⁵⁹ See *Bethlehem Steel Corp. v. E.P.A.*, 669 F.2d 903, 910 (3rd Cir. 1982). In contrast to "final" agency actions, a citation merely educates and warns a party who is presumed to be unaware of the provisions of the Communications Act and FCC rules about the hazards of violating the law in the future.

⁶⁰ 47 U.S.C. § 504(b)(5).

⁶¹ See *id.* § 504(b)(4)(C); 47 C.F.R. §§ 1.106, 1.115.

⁶² See 47 C.F.R. § 1.106(p)(9) (dismissal for untimeliness).

⁶³ See Citation Response at 4.

are constitutional.⁶⁴ Accordingly, we deny Dialing Services petition for failure to identify any material error, omission, or reason warranting reconsideration.⁶⁵

IV. PROPOSED FORFEITURE

26. After we have first issued a citation to a person or entity such as Dialing Services, Section 503(b) of the Act authorizes the Commission to assess a forfeiture when it subsequently determines that such person or entity willfully or repeatedly failed to comply with the Act, or any rule, regulation, or order issued by the Commission under the Act.⁶⁶ Section 503(b)(2)(E) mandates that, “[i]n determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁶⁷ In addition, the Commission has established forfeiture guidelines that set forth base penalties for certain violations and identify criteria that we consider in exercising our discretion in determining the penalties to apply in any given case.⁶⁸ Our forfeiture guidelines set forth the base amount for penalties for certain kinds of violations, and identify criteria, consistent with the Section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward.⁶⁹ For example, we may adjust a penalty upward for “[e]gregious misconduct,” an “[i]ntentional violation,” or where the subject of an

⁶⁴ See *Moser v. FCC*, 46 F.3d 970, 975 (9th Cir. 1995) (holding that “[t]he provision in the Telephone Consumer Protection Act of 1991 banning automated, prerecorded calls to residences is content-neutral. Congress adequately demonstrated that such calls pose a threat to residential privacy. The ban is narrowly tailored to advance that interest, and leaves open ample alternative channels of communication. Thus, it does not violate the First Amendment”); *Wreyford v. Citizens for Transp. Mobility, Inc.*, 957 F. Supp. 2d 1378, 1382 (N.D. Ga. 2013) (“[T]he court concludes that [S]ection 227(b)(1)(A) of the TCPA furthers the substantial government interest of reducing the number of invasive, nuisance-inducing, and potentially costly calls to consumers—especially given the growing prevalence of cell phones carried by persons outside of their homes[]. The TCPA’s restrictions are limited to the transmission of unsolicited prerecorded messages using specifically-defined equipment to cellular phones, and it leaves open ample alternative means of communication. Therefore, the TCPA is not unconstitutional as applied in this case.”); see also *Missouri v. Am. Blast Fax, Inc.*, 323 F.3d 649 (8th Cir. 2003) (overturning lower court’s decision that the TCPA violated the commercial speech rights of junk fax broadcasters and holding that TCPA restrictions on junk faxes and robocalls meet Supreme Court’s *Central Hudson* test for First Amendment restrictions on commercial speech) (citing *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of New York*, 447 U.S. 557 (1980)).

⁶⁵ 47 C.F.R. § 1.106(p)(1). Moreover, based on the foregoing, Dialing Services’ Request For Stay filed April 5, 2013 (on file in EB-TCD-12-00001812) and subsequent Request filed December 19, 2013 (requesting that the Bureau “discontinue its pursuit of Dialing Services”) (on file in EB-TCD-12-00001812) are dismissed as moot.

⁶⁶ 47 U.S.C. § 503(b)(1)(B). See also *id.* § 503(b)(5) (the Commission may assess a forfeiture penalty against any person who does not hold a license, permit, certificate or other authorization issued by the Commission, or an applicant for any of those listed instrumentalities, so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person’s place of residence; and (C) subsequently engages in conduct of the type described in the citation).

⁶⁷ *Id.* § 503(b)(2)(E).

⁶⁸ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

⁶⁹ *Id.* The absence of a particular type of violation from the forfeiture guidelines must “not be taken to mean that the violation is unimportant or nonexistent,” and “the Commission retains discretion to impose forfeitures for other violations.” *Commission’s Forfeiture Policy Statement*, Report & Order, 12 FCC Rcd 17,087, 17,110 (1997).

enforcement action has engaged in “[r]epeated or continuous violation.”⁷⁰ The maximum penalty for each such violation in the present case is \$16,000.⁷¹

27. The Commission has previously considered \$4,500 per violation to be an appropriate base amount for delivering unsolicited, prerecorded messages to landline phones.⁷² In addition, the Commission has issued one other NAL in connection with unlawful robocalls to wireless phones: the 2011 *Travel Club* NAL.⁷³ In that case, the Commission assessed the violation at the statutory maximum of \$16,000.⁷⁴ The Commission determined that the statutory maximum penalty was warranted in that case based on the large number of violations (144 robocalls to 113 cellular consumers), the company’s deliberate disregard of the law (as evidenced by its making such calls after receiving two citations), and a pattern of deceptive, evasive, and misleading behavior in response to the FCC’s warnings and communications.⁷⁵

28. Here, we again propose the statutory maximum penalty of \$16,000 for each of Dialing Services’ 184 apparent violations at issue in this NAL, for a total proposed forfeiture of \$2,944,000. The Act requires us to take into account a target’s prior actions and history of non-compliance, among other factors, when determining the penalty.⁷⁶ This penalty is based on the number of apparent willful, repeated violations involved, all of which occurred after the Commission warned the Company of its obligations under the law and the consequences for non-compliance. Similar to the violator in *Travel Club*, Dialing Services made a large number of apparently unlawful robocalls to wireless phones. In addition, TCD’s post-Citation investigation uncovered evidence of more than 300 additional unlawful calls to wireless phones that, although falling outside of the applicable statute of limitations in this case, likewise persuade us that a larger penalty is warranted. Moreover, as stated in the Citation, forfeitures may be based on both

⁷⁰ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

⁷¹ Section 503(b)(2)(D) of the Act provides for forfeitures of up to \$10,000 for each violation or each day of a continuing violation, up to a maximum of \$75,000 for a single continuing violation in cases, as here, where the violation does not involve a Commission licensee or common carriers, among others. See 47 U.S.C. § 503(b)(2)(D). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(D) to \$16,000 for each violation or each day of a continuing violation, up to a maximum of \$112,500 for any single continuing violation. See 47 C.F.R. § 1.80(b). See also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008). In 2013, the Commission increased its maximum statutory forfeitures to reflect further inflation. See *Amendment Of Section 1.80(B) Of The Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 13-1615, 78 Fed. Reg. 49,371 (Rel. Aug. 1, 2013) (amending section 1.80(b) to reflect inflation of the forfeiture maxima applicable in this case).

⁷² See *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23648, 23652 (2004) (first FCC NAL to address pre-recorded advertising messages); see also *Septic Safety, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd. 2179 (2005); *Septic Safety, Inc.*, Forfeiture Order, 21 FCC Rcd 6868 (2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 11852 (2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Forfeiture Order, 24 FCC Rcd 2888 (2009).

⁷³ *Travel Club Marketing Inc., dba Travelink Corp., dba Proven Results Direct Marketing Inc., dba Direct Marketing Travel Services Inc., dba Diamond Vacations, dba Great Vacations*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15831 (2011).

⁷⁴ *Id.* at 15834–15835.

⁷⁵ *Id.*

⁷⁶ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8) (upward and downward adjustment factors).

the conduct that led to a Citation and the conduct following it.⁷⁷ The Citation was based on evidence of 4.7 million unlawful robocalls to wireless phones that Dialing Services made during three months in 2011 and 2012. We find that the staggering number of unlawful robocalls the Company made prior to the Citation further justifies a penalty at the statutory maximum. We also find that Dialing Services intentionally disregarded the prohibitions in the Act and the Commission's rules in making the 184 calls directly at issue in this NAL, given that it did so after the Bureau had issued its warning Citation to the Company. Finally, we recognize that Congress noted the costs and harms to privacy that particularly affect wireless consumers, and prescribed strict prohibitions on robocalls to wireless telephones. Accordingly, we find that Dialing Services' egregious conduct caused serious harm to consumers, and the statutory maximum penalty is therefore appropriate.

29. We conclude that Dialing Services apparently has violated Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Commission's rules by delivering 184 unauthorized prerecorded messages calls to the wireless phones identified in the Appendix. We further conclude that Dialing Services is apparently liable for a forfeiture in the amount of \$2,944,000 for its apparent violations of Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Commission's rules.

V. ORDERING CLAUSES

30. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Dialing Services, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$2,944,000 for willfully and repeatedly violating Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Commission's rules by making unauthorized prerecorded message calls to telephone numbers assigned to wireless phones.

31. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,⁷⁸ within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Dialing Services, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

32. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Message Communications, Inc. shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁷⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions Dialing Services should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be

⁷⁷ See Citation, 28 FCC Rcd at 1840, 1845-46, paras. 2, 17. See also 47 U.S.C § 503(b)(5); S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (if a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently but *also for the conduct for which the citation was originally sent.*" (emphasis added)).

⁷⁸ 47 C.F.R. § 1.80.

⁷⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.⁸⁰ If Dialing Services has questions regarding payment procedures, it may contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

33. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

34. The Commission will not consider reducing or canceling a proposed forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted

⁸⁰ See 47 C.F.R. § 1.1914.

35. **IT IS FURTHER ORDERED** that a copy of this NAL shall be sent by First Class U.S. Mail and Certified Mail, return receipt requested, to: Dialing Services, LLC, Attn: Anthony C. Kolker, President, 5149 Cotton RD, Roswell, NM 88201; and to Mitchell N. Roth, Esquire, Roth Doner Jackson, PLC, 8200 Greensboro Drive, Suite 820, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Dialing Services, LLC

Prerecorded message calls made to wireless telephones without subscriber consent

	Date and Time of Call ¹	Wireless Phone Number Dialed	Prerecorded Message	October 2013 Response Spreadsheet Name
1.	5/9/2013 15:35	210 [REDACTED]	[REDACTED]	[REDACTED]
2.	5/9/2013 15:37	214 [REDACTED]	[REDACTED]	[REDACTED]
3.	5/9/2013 15:35	214 [REDACTED]	[REDACTED]	[REDACTED]
4.	5/9/2013 16:41	214 [REDACTED]	[REDACTED]	[REDACTED]
5.	5/9/2013 15:39	214 [REDACTED]	[REDACTED]	[REDACTED]
6.	5/9/2013 15:38	214 [REDACTED]	[REDACTED]	[REDACTED]
7.	5/9/2013 15:37	214 [REDACTED]	[REDACTED]	[REDACTED]
8.	5/9/2013 15:32	214 [REDACTED]	[REDACTED]	[REDACTED]
9.	5/9/2013 15:24	214 [REDACTED]	[REDACTED]	[REDACTED]
10.	5/9/2013 15:32	214 [REDACTED]	[REDACTED]	[REDACTED]
11.	5/9/2013 15:34	214 [REDACTED]	[REDACTED]	[REDACTED]
12.	5/9/2013 15:38	214 [REDACTED]	[REDACTED]	[REDACTED]
13.	5/9/2013 15:42	214 [REDACTED]	[REDACTED]	[REDACTED]
14.	5/9/2013 15:33	214 [REDACTED]	[REDACTED]	[REDACTED]
15.	5/9/2013 15:38	214 [REDACTED]	[REDACTED]	[REDACTED]
16.	5/9/2013 15:32	214 [REDACTED]	[REDACTED]	[REDACTED]
17.	5/9/2013 15:43	214 [REDACTED]	[REDACTED]	[REDACTED]
18.	5/9/2013 15:35	214 [REDACTED]	[REDACTED]	[REDACTED]

¹ See Dialing Services October 2013 Response, Excel spreadsheet attachments, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, and “[REDACTED]”. The entry information listed in this Appendix appears on the call detail records produced by Dialing Services in response to the Bureau’s September 27, 2013, LOI.

	Date and Time of Call ¹	Wireless Phone Number Dialed	Prerecorded Message	October 2013 Response Spreadsheet Name
19.	5/9/2013 15:41	214 [REDACTED]	[REDACTED]	[REDACTED]
20.	5/9/2013 15:41	214 [REDACTED]	[REDACTED]	[REDACTED]
21.	5/9/2013 15:38	214 [REDACTED]	[REDACTED]	[REDACTED]
22.	5/9/2013 15:32	214 [REDACTED]	[REDACTED]	[REDACTED]
23.	5/9/2013 15:33	214 [REDACTED]	[REDACTED]	[REDACTED]
24.	5/9/2013 15:38	214 [REDACTED]	[REDACTED]	[REDACTED]
25.	5/9/2013 15:43	214 [REDACTED]	[REDACTED]	[REDACTED]
26.	5/9/2013 15:39	214 [REDACTED]	[REDACTED]	[REDACTED]
27.	5/9/2013 15:35	214 [REDACTED]	[REDACTED]	[REDACTED]
28.	5/9/2013 15:38	214 [REDACTED]	[REDACTED]	[REDACTED]
29.	5/9/2013 15:42	214 [REDACTED]	[REDACTED]	[REDACTED]
30.	5/9/2013 15:34	214 [REDACTED]	[REDACTED]	[REDACTED]
31.	5/9/2013 15:35	214 [REDACTED]	[REDACTED]	[REDACTED]
32.	5/9/2013 15:41	214 [REDACTED]	[REDACTED]	[REDACTED]
33.	5/9/2013 15:39	469 [REDACTED]	[REDACTED]	[REDACTED]
34.	5/9/2013 15:34	817 [REDACTED]	[REDACTED]	[REDACTED]
35.	5/9/2013 15:32	863 [REDACTED]	[REDACTED]	[REDACTED]
36.	5/9/2013 15:33	972 [REDACTED]	[REDACTED]	[REDACTED]
37.	5/9/2013 15:33	972 [REDACTED]	[REDACTED]	[REDACTED]
38.	5/9/2013 15:36	972 [REDACTED]	[REDACTED]	[REDACTED]
39.	5/9/2013 15:39	972 [REDACTED]	[REDACTED]	[REDACTED]
40.	5/9/2013 15:40	972 [REDACTED]	[REDACTED]	[REDACTED]
41.	5/10/2013 17:54	210 [REDACTED]	[REDACTED]	[REDACTED]
42.	5/10/2013 17:57	214 [REDACTED]	[REDACTED]	[REDACTED]

	Date and Time of Call ¹	Wireless Phone Number Dialed	Prerecorded Message	October 2013 Response Spreadsheet Name
43.	5/10/2013 17:59	214 [REDACTED]	[REDACTED]	[REDACTED]
44.	5/10/2013 17:55	214 [REDACTED]	[REDACTED]	[REDACTED]
45.	5/10/2013 17:54	214 [REDACTED]	[REDACTED]	[REDACTED]
46.	5/10/2013 17:54	214 [REDACTED]	[REDACTED]	[REDACTED]
47.	5/10/2013 17:52	214 [REDACTED]	[REDACTED]	[REDACTED]
48.	5/10/2013 17:55	214 [REDACTED]	[REDACTED]	[REDACTED]
49.	5/10/2013 17:52	214 [REDACTED]	[REDACTED]	[REDACTED]
50.	5/10/2013 17:56	214 [REDACTED]	[REDACTED]	[REDACTED]
51.	5/10/2013 17:54	214 [REDACTED]	[REDACTED]	[REDACTED]
52.	5/10/2013 17:48	214 [REDACTED]	[REDACTED]	[REDACTED]
53.	5/10/2013 17:58	214 [REDACTED]	[REDACTED]	[REDACTED]
54.	5/10/2013 17:55	214 [REDACTED]	[REDACTED]	[REDACTED]
55.	5/10/2013 17:57	214 [REDACTED]	[REDACTED]	[REDACTED]
56.	5/10/2013 17:50	214 [REDACTED]	[REDACTED]	[REDACTED]
57.	5/10/2013 17:49	214 [REDACTED]	[REDACTED]	[REDACTED]
58.	5/10/2013 17:56	214 [REDACTED]	[REDACTED]	[REDACTED]
59.	5/10/2013 17:53	214 [REDACTED]	[REDACTED]	[REDACTED]
60.	5/10/2013 17:54	214 [REDACTED]	[REDACTED]	[REDACTED]
61.	5/10/2013 17:49	214 [REDACTED]	[REDACTED]	[REDACTED]
62.	5/10/2013 17:50	214 [REDACTED]	[REDACTED]	[REDACTED]
63.	5/10/2013 17:49	214 [REDACTED]	[REDACTED]	[REDACTED]
64.	5/10/2013 17:57	214 [REDACTED]	[REDACTED]	[REDACTED]
65.	5/10/2013 17:56	214 [REDACTED]	[REDACTED]	[REDACTED]
66.	5/10/2013 17:50	214 [REDACTED]	[REDACTED]	[REDACTED]

	Date and Time of Call ¹	Wireless Phone Number Dialed	Prerecorded Message	October 2013 Response Spreadsheet Name
67.	5/10/2013 17:48	214 [REDACTED]	[REDACTED]	[REDACTED]
68.	5/10/2013 17:56	214 [REDACTED]	[REDACTED]	[REDACTED]
69.	5/10/2013 17:55	214 [REDACTED]	[REDACTED]	[REDACTED]
70.	5/10/2013 17:57	214 [REDACTED]	[REDACTED]	[REDACTED]
71.	5/10/2013 17:56	214 [REDACTED]	[REDACTED]	[REDACTED]
72.	5/10/2013 17:56	214 [REDACTED]	[REDACTED]	[REDACTED]
73.	5/10/2013 17:52	469 [REDACTED]	[REDACTED]	[REDACTED]
74.	5/10/2013 17:57	469 [REDACTED]	[REDACTED]	[REDACTED]
75.	5/10/2013 17:51	817 [REDACTED]	[REDACTED]	[REDACTED]
76.	5/10/2013 17:54	863 [REDACTED]	[REDACTED]	[REDACTED]
77.	5/10/2013 17:55	972 [REDACTED]	[REDACTED]	[REDACTED]
78.	5/10/2013 17:55	972 [REDACTED]	[REDACTED]	[REDACTED]
79.	5/10/2013 17:52	972 [REDACTED]	[REDACTED]	[REDACTED]
80.	5/10/2013 17:53	972 [REDACTED]	[REDACTED]	[REDACTED]
81.	5/10/2013 17:56	972 [REDACTED]	[REDACTED]	[REDACTED]
82.	5/10/2013 17:53	972 [REDACTED]	[REDACTED]	[REDACTED]
83.	5/10/2013 17:55	972 [REDACTED]	[REDACTED]	[REDACTED]
84.	5/16/2013 11:26	215 [REDACTED]	[REDACTED]	[REDACTED]
85.	5/16/2013 11:35	215 [REDACTED]	[REDACTED]	[REDACTED]
86.	5/16/2013 11:10	215 [REDACTED]	[REDACTED]	[REDACTED]
87.	5/16/2013 11:17	215 [REDACTED]	[REDACTED]	[REDACTED]
88.	5/16/2013 11:34	215 [REDACTED]	[REDACTED]	[REDACTED]
89.	5/16/2013 11:29	941 [REDACTED]	[REDACTED]	[REDACTED]
90.	5/17/2013 7:05	267 [REDACTED]	[REDACTED]	[REDACTED]
91.	5/16/2013 16:03	267 [REDACTED]	[REDACTED]	[REDACTED]
92.	5/17/2013 7:05	484 [REDACTED]	[REDACTED]	[REDACTED]

	Date and Time of Call ¹	Wireless Phone Number Dialed	Prerecorded Message	October 2013 Response Spreadsheet Name
93.	5/16/2013 16:05	484		
94.	5/17/2013 7:07	484		
95.	5/16/2013 16:08	484		
96.	5/17/2013 7:02	484		
97.	5/16/2013 16:04	484		
98.	5/16/2013 16:06	484		
99.	5/17/2013 7:02	484		
100.	5/16/2013 16:06	484		
101.	5/17/2013 8:12	484		
102.	5/17/2013 7:05	484		
103.	5/16/2013 16:10	484		
104.	5/17/2013 7:06	484		
105.	5/16/2013 16:08	484		
106.	5/17/2013 7:07	484		
107.	5/16/2013 16:09	484		
108.	5/16/2013 16:10	484		
109.	5/16/2013 16:05	484		
110.	5/16/2013 16:06	484		
111.	5/16/2013 16:06	610		
112.	5/16/2013 16:08	610		
113.	5/16/2013 16:12	610		
114.	5/17/2013 7:03	610		
115.	5/17/2013 7:05	610		
116.	5/16/2013 16:08	610		
117.	5/16/2013 16:04	610		
118.	5/17/2013 7:04	610		
119.	5/16/2013 16:06	610		
120.	5/17/2013 7:09	610		
121.	5/16/2013 16:12	610		
122.	5/17/2013 7:03	610		
123.	5/17/2013 7:03	610		
124.	5/16/2013 16:08	610		
125.	5/16/2013 16:07	610		
126.	5/17/2013 7:10	610		
127.	5/17/2013 7:09	610		
128.	5/16/2013 16:05	610		
129.	5/17/2013 7:09	610		
130.	5/16/2013 16:11	610		
131.	5/17/2013 7:09	610		
132.	5/16/2013 16:10	610		
133.	5/17/2013 7:08	610		
134.	5/16/2013 16:11	610		
135.	5/17/2013 7:02	610		
136.	5/16/2013 16:07	610		
137.	5/16/2013 16:09	610		
138.	5/17/2013 7:06	610		
139.	5/16/2013 16:08	610		
140.	5/17/2013 7:09	610		

	Date and Time of Call ¹	Wireless Phone Number Dialed	Prerecorded Message	October 2013 Response Spreadsheet Name
141.	5/16/2013 16:03	610		
142.	5/17/2013 7:07	610		
143.	5/17/2013 7:08	610		
144.	5/16/2013 16:08	610		
145.	5/16/2013 16:11	610		
146.	5/17/2013 7:10	610		
147.	5/16/2013 16:06	610		
148.	5/17/2013 7:10	610		
149.	5/16/2013 16:07	610		
150.	5/16/2013 16:06	610		
151.	5/17/2013 7:10	610		
152.	5/17/2013 7:04	610		
153.	5/16/2013 16:03	610		
154.	5/17/2013 7:03	610		
155.	5/16/2013 16:11	610		
156.	5/16/2013 16:05	610		
157.	5/17/2013 8:09	610		
158.	5/16/2013 16:07	610		
159.	5/17/2013 7:09	610		
160.	5/16/2013 16:09	610		
161.	5/17/2013 7:06	610		
162.	5/17/2013 7:09	610		
163.	5/16/2013 16:03	610		
164.	5/16/2013 16:08	724		
165.	5/17/2013 8:08	724		
166.	5/17/2013 7:10	732		
167.	5/16/2013 16:03	732		
168.	5/17/2013 7:07	732		
169.	5/16/2013 16:03	732		
170.	5/16/2013 16:11	908		
171.	5/17/2013 7:05	908		
172.	5/17/2013 7:05	908		
173.	5/16/2013 16:08	908		
174.	5/16/2013 16:10	908		
175.	5/17/2013 7:04	908		
176.	5/16/2013 16:07	908		
177.	5/16/2013 16:05	917		
178.	5/17/2013 7:05	917		
179.	5/17/2013 7:10	973		
180.	5/16/2013 16:07	973		
181.	5/20/2013 11:58	570		
182.	5/20/2013 10:27	570		
183.	5/20/2013 10:28	570		
184.	5/20/2013 10:14	570		