

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
M.J. Ross Group, Inc., d/b/a
PoliticalRobocalls.com
File No.: EB-TCD-12-00004353

CITATION AND ORDER

PRERECORDED MESSAGE VIOLATIONS

Adopted: May 4, 2015

Released: May 4, 2015

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies M.J. Ross Group, Inc., d/b/a PoliticalRobocalls.com (PoliticalRobocalls.com or Company), that it failed to comply with the provisions of the Communications Act of 1934, as amended (Act) and Commission’s rules (Rules) that prohibit making calls to cell phones using autodialers or artificial or prerecorded messages (robocalls) absent an emergency purpose or prior express consent. We therefore direct PoliticalRobocalls.com to take immediate steps to comply with FCC Rules and the Telephone Consumer Protection Act’s (TCPA) prohibitions against unlawful robocalls. If PoliticalRobocalls.com fails to comply with these laws, it may be liable for significant penalties, including fines of up to \$16,000 per call.

2. Notice of Duty to Comply with the Law: We issue this Citation pursuant to Section 503(b)(5) of the Act, which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission Rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.1 Accordingly, PoliticalRobocalls.com is hereby on notice that it must comply with Section 227 of the Act and Section 64.1200 of the Commission’s Rules.2 If PoliticalRobocalls.com subsequently engages in any conduct of the type this Citation describes — and specifically any violation of the TCPA and accompanying Rules — may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.3

II. BACKGROUND

3. Robocalls made to consumers’ cell phones without consent or in the absence of an emergency are illegal. 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. In 1991, Congress passed the TCPA and outlawed robocalls to mobile phones except in two limited circumstances: the two specific exceptions are calls made (1) for emergency purposes or (2) with the prior express consent of the called party. The Commission adopted regulations implementing the

1 See 47 U.S.C § 503(b)(5).

2 47 U.S.C. § 227, 47 C.F.R. § 64.1200, 47 C.F.R. § 64.1601(e).

3 See 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).

TCPA in Section 64.1200 of the Rules,⁴ and enforces the TCPA by conducting investigations and taking enforcement actions against violators.⁵

4. PoliticalRobocalls.com offers, among other things, a robocalling service whereby clients use the Company to make artificial or prerecorded voice calls to telephone numbers of the clients' choosing.⁶ The Company, which is the registrant of the website www.politicalrobocalls.com,⁷ conducts business under the name of PoliticalRobocalls.com⁸ and promotes clients from the Democratic Party.⁹ The Company uses the web platform of Broadnet Teleservices, LLC (Broadnet), to process calling lists and broadcast audio messages.¹⁰ Clients can either email a calling list to the Company or purchase a list through the Company from a third party vendor.¹¹ The Company checks each calling list for data issues and, where data issues are discovered, utilizes a third party to scrub such lists for National do-not-call compliance.¹² The Company then uploads the list to Broadnet's web platform, where it is scrubbed for bad entries, duplicates, and mobile numbers.¹³ Clients can provide an audio message by 1) recording it themselves and sending it to the Company via email, or 2) utilizing a toll free phone number to record the message via Broadnet's recording system.¹⁴ While the Company reviews all audio recordings, it only edits them for audio quality unless the client specifically instructs the Company to edit the content.¹⁵ Once approved by the client, the Company uploads the audio message onto Broadnet's platform. When both the audio message and the call list are ready, the Company "launch[es] a broadcast via the Broadnet platform."¹⁶

5. On March 6, 2013, the Telecommunications Consumers Division (TCD) of the FCC's Enforcement Bureau sent the Company a letter of inquiry (LOI), directing the Company to, among other things, provide: (1) a list of the telephone numbers that the Company called from September 1, 2012, to March 6, 2013, using prerecorded messages; (2) a list of the dates and times when the Company made the

⁴ 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).

⁵ See, e.g., *Dialing Servs., LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5537 (2014) (*Dialing Services*).

⁶ Letter from Sean Pasqua, M.J. Ross Group, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 2-3 (Apr. 25, 2013) (on file in EB-TCD-12-00004353) (Response); PoliticalRobocalls.com Website, Home Page, <http://www.politicalrobocalls.com/> (last visited Apr. 6, 2015) (offering clients the "ability to broadcast automated multi-question robocall campaigns of any size").

⁷ Response at 1.

⁸ Response at 2.

⁹ PoliticalRobocalls.com Website, Home Page, <http://www.politicalrobocalls.com/> (last visited Apr. 6, 2015) ("We offer political telemarketing services to Democratic Party elected officials, candidates and causes.").

¹⁰ Response at 2.

¹¹ *Id.*

¹² *Id.*

¹³ Response at 2.

¹⁴ PoliticalRobocalls.com Website, Home Page, <http://www.politicalrobocalls.com/> (last visited Apr. 6, 2015) (Sidebar, answering the question of what is needed to start robocall broadcasts: "Record your message via telephone, just like recording a voice mail message. Your call list can be sent to us via e-mail.").

¹⁵ Response at 4.

¹⁶ *Id.* at 2. The Company states that Broadnet monitors all broadcast audios and alerts the Company to any issues with FCC compliance. If an issue is discovered, the broadcast is cancelled before it is dialed and the Company notifies the client of the issue. *Id.* at 3.

calls using the prerecorded messages; and (3) sound files of the delivered prerecorded messages.¹⁷ On April 25, 2013, the Company filed a response to the LOI.¹⁸ The Company's response included the requested information, including spreadsheets indicating the dates and times that the Company made calls and the telephone numbers that the Company called during the relevant time period.¹⁹

III. APPLICABLE LAW AND VIOLATIONS

6. Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the 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.”²⁰ The Commission implemented the statutory prohibition in its Rules without substantive change.²¹ 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.²² 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.²³

7. TCD staff compared lists of the telephone numbers to which PoliticalRobocalls.com made autodialed or prerecorded message calls to an industry-standard, commercially available database of known assigned and ported wireless numbers to determine whether PoliticalRobocalls.com made such calls to wireless telephones.²⁴ TCD staff determined that PoliticalRobocalls.com made 293 autodialed or prerecorded message calls to cell phones, in violation of Section 227(b)(1)(A)(iii) of the Act and Section

¹⁷ See Letter from Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Moses Ross, M.J. Ross Group, Inc., d/b/a politicalrobocalls.com (Mar. 6, 2013) (on file in EB-TCD-12-00004353).

¹⁸ See Response.

¹⁹ See *id.*, Attachments.

²⁰ 47 U.S.C. § 227(b)(1), (b)(1)(A)(iii). See also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (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”).

²¹ 47 C.F.R. § 64.1200(a)(1)(iii) (making it 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.

²² See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

²³ 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.”).

²⁴ See Interactive Marketing Solutions, Inc., Website, Homepage, <https://www.ims-dm.com/mvc/index.php> (last visited Apr. 6, 2015). 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.*

64.1200(a)(1)(iii) of the Commission's Rules.²⁵

8. The Company has offered no evidence demonstrating that the calls made to wireless telephone numbers were made for an emergency purpose. TCD staff reviewed over 150 sound files provided by PoliticalRobocalls.com. The majority of these sound files were recorded for a political purpose (political surveys, endorsing a candidate for political office, etc.), and not made for any emergency purpose.²⁶

9. In addition, PoliticalRobocalls.com did not provide evidence of prior express consent for any of the calls that led to this Citation. Independently, TCD staff randomly chose 10 cell phone numbers that PoliticalRobocalls.com called with a non-emergency prerecorded message in October 2012, and spoke with each call recipient. A chart listing these 10 randomly identified cell phone numbers and the dates and times that PoliticalRobocalls.com made autodialed calls and delivered prerecorded messages to the recipients is attached at the Appendix. Without exception, each and every recipient denied giving anyone permission to make autodialed calls or prerecorded messages to their respective cell phones at any time.²⁷ This further shows that PoliticalRobocalls.com did not have the prior express consent of these called parties to make autodialed, prerecorded calls to their mobile phones. Therefore, we conclude that these calls were made to cell phones without the prior express consent of the recipients.²⁸

10. Based on the record developed in this case, the Enforcement Bureau, acting through its delegated authority, finds that PoliticalRobocalls.com made one or more calls with prerecorded voice messages in violation of Section 227(b)(1)(A)(iii) of the Act and Section 64.1200(a)(1)(iii) of the Rules.²⁹

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

11. PoliticalRobocalls.com may respond to this Citation within thirty (30) calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to PoliticalRobocalls.com's place of business. The Commission Field Office nearest PoliticalRobocalls.com is located in Portland, Oregon.

7. If PoliticalRobocalls.com requests a teleconference or personal interview, contact Kristi Thompson at (202) 418-1318. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If PoliticalRobocalls.com prefers to submit a written response with supporting documentation, it must send the response within thirty (30) calendar days of the release date of this Citation to the contact and address provided in paragraph below.

8. All written communications should be sent to the address below.

Kristi Thompson
Deputy Division Chief, EB-TCD

²⁵ By making prerecorded message calls on behalf of itself or third parties (its clients), PoliticalRobocalls.com necessarily "initiates" calls for the purposes of Section 64.1200(a)(1)(iii) of the Rules. *See Dialing Services*, 29 FCC Rcd at 5542-5545, paras. 13-18.

²⁶ TCD staff identified only three sound files that contained prerecorded voice messages arguably made for an emergency purpose. *See* 47 C.F.R. § 64.1200(f)(4) (stating that "emergency purposes means calls made necessary in any situation affecting the health and safety of consumers."). None of the calls that were made for an apparently emergency purpose are included in this Citation.

²⁷ *See* Declaration of Nakasha Ramsey, Analyst, Telecommunications Consumers Division, FCC Enforcement Bureau (June 19, 2014) (on file in EB-TCD-12-00004353).

²⁸ *See supra* note 23.

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

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9. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, PoliticalRobocalls.com should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. PoliticalRobocalls.com should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. PoliticalRobocalls.com should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

10. We advise PoliticalRobocalls.com that it is a violation of Section 1.17 of the Rules³⁰ for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.³¹

11. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.³²

12. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

13. Finally, we warn PoliticalRobocalls.com that, under the Privacy Act of 1974,³³ Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure PoliticalRobocalls.com's compliance with the Act and Rules.

V. FUTURE VIOLATIONS

14. If, after receipt of this Citation, PoliticalRobocalls.com again violates Section 227 of the Act or Section 64.1200 of the Rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures. The Commission may impose forfeitures not to exceed \$16,000 for each such violation or

³⁰ 47 C.F.R. § 1.17.

³¹ 47 C.F.R. § 1.17(a)(1)-(2).

³² 18 U.S.C. § 1001.

³³ 5 U.S.C. § 552a(e)(3).

each day of a continuing violation, and up to \$112,500 for any single act or failure to act.³⁴ The Commission may further adjust the forfeiture reflecting enumerated statutory factors, which include 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 other such matters as justice may require.³⁵ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.³⁶

VI. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 4(j) of the Act,³⁷ M.J. Ross Group, Inc. must cease and desist from making autodialed or prerecorded or artificial voice message calls to wireless phones unless such calls are made (1) for an emergency purpose, or (2) with the prior express consent of the called party, in accordance with Section 227(b)(1)(A)(iii) of the Act and Section 64.1200(a)(1)(iii) of the Rules.³⁸

16. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Moses Ross, President, M.J. Ross Group, Inc., P. O. Box 19037, Portland, OR 97280, and to Moses Ross, President, M.J. Ross Group, Inc., 2917 SW Canby CT, Portland, OR 97219.

FEDERAL COMMUNICATIONS COMMISSION

Richard A. Hindman
Division Chief

³⁴ See 47 U.S.C. § 503; 47 C.F.R. § 1.80(b). This amount is subject to further adjustment for inflation. See 47 C.F.R. § 1.80(b)(9)).

³⁵ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

³⁶ See *supra* paragraph **Error! Reference source not found.**

³⁷ 47 U.S.C. §§ 154(i), 154(j).

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

APPENDIX

PoliticalRobocalls.com

Prerecorded message calls made to wireless telephones without subscriber consent¹

Date and Time of Call ²	Wireless Phone Number Dialed	Prerecorded Message
10/11/12 11:05 AM	916 [REDACTED]	[REDACTED].wav
10/11/12 11:02 AM	916 [REDACTED]	[REDACTED].wav
10/11/12 11:09 AM	916 [REDACTED]	[REDACTED].wav
10/11/12 11:11 AM	916 [REDACTED]	[REDACTED].wav
10/19/2012 11:07:00 AM	916 [REDACTED]	[REDACTED].wav
10/11/12 11:06 AM	916 [REDACTED]	[REDACTED].wav
10/19/12 11:16 AM	916 [REDACTED]	[REDACTED].wav
10/6/2012 10:36:00 AM	928 [REDACTED]	[REDACTED].wav
10/6/2012 10:36:00 AM	928 [REDACTED]	[REDACTED].wav
10/6/2012 10:39:00 AM	928 [REDACTED]	[REDACTED].wav

¹ See Declaration of Nakasha Ramsey, Analyst, Telecommunications Consumers Division, FCC Enforcement Bureau (June 19, 2014) (on file in EB-TCD-12-00004353).

² See Response, Excel spreadsheet attachments, [REDACTED].xls, [REDACTED].xls, [REDACTED].xls. The entry information listed in this Appendix appears in the call detail records produced by PoliticalRobocalls.com in response to the Bureau's March 6, 2013, LOI.