

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Dialing Services, LLC) File No.: EB-TCD-12-00001812
)
)

CITATION AND ORDER

PRERECORDED MESSAGE VIOLATIONS

Adopted: March 15, 2013

Released: March 15, 2013

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation), issued by the Federal Communications Commission (Commission or FCC) pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. § 503(b)(5), for violations of the Act and the Commission’s rules that govern telephone solicitations, prerecorded, and autodialed telephone calls.¹ Specifically, Dialing Services, LLC (“Dialing Services” or “Company”) is being cited for violations of the provisions of the Act and Commission’s rules that (1) prohibit making any calls to cell phones using autodialers or artificial or prerecorded messages absent an emergency purpose or prior express consent² and (2) for calls that are otherwise permissible, require certain identification information to be present in prerecorded messages.³

2. Notice of Duty to Comply With Law: Dialing Services is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Section 227 of the Act or Sections 64.1200 or 64.1601(e) of the Commission’s rules, it may be subject to further legal action, including monetary fines (forfeitures).⁴ Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁵

¹ See 47 U.S.C. § 227; 47 C.F.R. §§ 64.1200, 64.1601(e). Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227), and is most commonly known as the TCPA. The TCPA and the Commission’s rules restrict a variety of practices that are associated with telephone solicitation and the use of the telephone network to deliver unsolicited advertisements or prerecorded and autodialed telephone calls.

² See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

³ See 47 U.S.C. § 227(d)(3)(A); 47 C.F.R. § 64.1200(b).

⁴ This Citation is being issued to the company named above and includes all other entity names through which it does business, as well as its owners, principals, and officers. Accordingly, all references in this Citation to Dialing Services,

3. **Response Required:** Pursuant to Sections 4(i), (j), and 403 of the Communications Act,⁶ we also direct the Company to confirm within fifteen (15) calendar days after the release date of this Citation that it has (1) ceased making calls to cell phones using autodialers or artificial or prerecorded messages and (2) ceased making any prerecorded message calls (to cell phones or otherwise) without the identification information required in the Act and Commission's rules.

II. BACKGROUND

4. The Company offers a service—commonly referred to as “robocalling”—whereby clients use the Company to make artificial or prerecorded voice calls to telephone numbers of the clients' choosing.⁷ The Company markets its services under various brand names on the Internet. Clients may use the Company's website to upload sound recordings (i.e., prerecorded messages) to the Company's servers.⁸ Alternatively, clients may create prerecorded messages by dialing one of the Company's phone numbers and recording a message over the phone.⁹ For a fee, the Company will then make calls using the prerecorded messages to a list of telephone numbers that its clients provide the Company, via the Company's autodialing equipment.¹⁰ The Company notes that it is able to make millions of autodialed calls for its clients.¹¹ The Company's clients include commercial entities (such as multi-level marketers, carpet cleaners and mortgage brokers, among others), non-profit organizations (such as churches, schools, and political action committees), and political campaigns supporting candidates for public office.¹²

Company, or you also include all names through which the company does business, and its owners, principals, and officers.

⁵ See 47 U.S.C § 503(b)(5). See also 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)).

⁶ 47 U.S.C. §§ 154(i), (j), 403.

⁷ See Dialing Services Order Form, <http://www.politicalcaller.com/ORDER%20FORM.pdf> (last visited Feb. 13, 2013) (“Dialing Services, LLC will dial the phone numbers provided by Customer and play the recorded message provided by Customer to live answered calls and/or answer machines as indicated by Customer on this order form”).

⁸ See Dialing Services Website, Uploading Message, <https://www.dialingservices.com/MessagesUpload.aspx> (last visited Feb. 13, 2013); see also 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) (Dialing Services June 13 Response).

⁹ See Dialing Services Website, Upload Message, <https://www.dialingservices.com/MessagesRecord.aspx> (last visited Feb. 13, 2013); see also Dialing Services June 13 Response at 7.

¹⁰ See generally Premier Calling Website, Premiere Dialing Services LLC, <http://www.premiercalling.com> (last visited Feb. 13, 2013); In Touch Systems Website, Products – In Touch, <http://www.gointouch.com/products.html> (last visited Feb. 13, 2013); GOTV Calls Website, Pricing, <http://gotvcalls.com/pricing.aspx> (last visited Feb. 13, 2013).

¹¹ See In Touch Systems Website, Products – In Touch, <http://www.gointouch.com/products.html> (last visited Feb. 13, 2013) (“Reach thousands, hundreds of thousands or even millions of customers with your personal message”).

¹² See *id.* (“Find prospective customers for any kind of product or service. Whether it's Mortgage Refinance, [Multi-Level Marketing], Carpet Cleaning or Political ‘Get-Out-The-Vote’, [Company] is your answer”); see also Premier Calling Website, Premiere Dialing Services LLC, <http://www.premiercalling.com/> (last visited Feb. 13, 2013) (“[Company] is the industry leader in providing automated calling, voice broadcasting, and robo calling solutions for all

5. On May 4, 2012, 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 in November 2011, January 2012 and April 2012 using prerecorded messages; (2) a list of the dates and times when the Company made the calls using the prerecorded messages; and (3) sound files of the delivered prerecorded messages.¹³ On June 13, 2012, the Company filed a response to the LOI.¹⁴ The Company's response included the requested information for the months of November 2011, January 2012, and April 2012, as well as spreadsheets indicating the dates and times that the Company made calls and the phone numbers that Dialing Services called during those months.¹⁵

III. APPLICABLE LAW AND VIOLATIONS

A. Prohibitions Against Prerecorded Voice Messages and Autodialed Calls To Cell Phones

6. Under Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Commission's rules, prerecorded voice messages and autodialed calls (including autodialed live calls, prerecorded or artificial voice messages, and autodialed text messages) to cell phones and other mobile services, such as paging systems, are generally prohibited. Specifically, Section 227(b)(1)(A)(iii) of the Act states that it is 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."¹⁶ Section 64.1200(a)(1)(iii) of the Commission's rules states that 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."¹⁷

7. 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.¹⁸ These broad prohibitions cover all prerecorded voice and autodialed calls, including political calls and calls made by or on behalf of nonprofit organizations. Callers contending that they have the prior express consent to

types of business and organizations. [. . .] Thousands of business [sic] and organizations have used voice broadcasting services from [Company] to send automated calls and pre-recorded messages. Some include AAA, He[r]balife, Planet Hollywood Resort and Casino, The Robert O. Anderson School of Management, marketing research firms, political candidates and elected officials, and numerous mortgage brokers").

¹³ 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).

¹⁴ See Dialing Services June 13 Response.

¹⁵ See *id.*

¹⁶ 47 U.S.C. § 227(b)(1)(A)(iii).

¹⁷ 47 C.F.R. § 64.1200(a)(1)(iii).

¹⁸ See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

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.¹⁹

8. In addition, Section 227(d)(3)(A) of the Communications Act and Section 64.1200(b) of the Commission's rules require that all otherwise permissible prerecorded messages must include certain information to identify the party responsible for the message. In particular, all permissible prerecorded messages must state clearly at the beginning of the message the identity of the business, individual, or other entity that is responsible for the call.²⁰ If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity's official business name (the name registered with a state corporation commission or other regulatory authority).²¹ In addition, the telephone number²² of such business, individual, or other entity must be provided either during or after the prerecorded voice message.²³

B. Dialing Services' Automatic Telephone Dialing System Made Numerous Prerecorded Message Calls to Cell Phones In Violation of Federal Law

9. Prerecorded Voice Messages and Autodialed Calls to Cell Phones. TCD staff compared lists of the thousands of phone numbers to which the Company made autodialed or prerecorded message calls²⁴ to an industry-standard, commercially available database of known assigned and ported wireless numbers to determine whether the Company made such calls to wireless telephones.²⁵ From that analysis, TCD staff determined that the Company made 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.²⁶

¹⁹ 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”).

²⁰ 47 U.S.C. § 227(d)(3)(A)(i); 47 C.F.R. § 64.1200(b)(1).

²¹ 47 C.F.R. § 64.1200(b)(1).

²² Any telephone number so provided may not be for (1) the autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. 47 C.F.R. § 64.1200(b)(2).

²³ 47 U.S.C. § 227(d)(3)(A)(ii); 47 C.F.R. § 64.1200(b)(2).

²⁴ It appears that Dialing Services makes calls using automatic telephone dialing systems or an artificial or prerecorded voice. See Dialing Services Order Form, <http://www.politicalcaller.com/ORDER%20FORM.pdf> (last visited Feb. 13, 2013) (“Dialing Services, LLC will dial the phone numbers provided by Customer and play the recorded message provided by Customer to live answered calls and/or answer machines as indicated by Customer on this order form”); In Touch Systems Website, Services, <http://gointouch.com/services.html> (last visited Feb. 13, 2013) (“Let us make your calls for you”).

²⁵ See Interactive Marketing Solutions, Inc. Website, <http://www.ims-dm.com/index.shtml> (last visited Feb. 13, 2013). 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.*

²⁶ By making calls, Dialing Services necessarily “initiates” calls for the purposes of Section 64.1200(a)(1)(iii) of the Commission’s rules.

10. As explained above, it is unlawful to make any call using any automatic telephone dialing system or prerecorded voice to a cell phone with only two exceptions: (1) calls made for emergency purposes; or (2) calls made with the express prior consent of the called party.²⁷ TCD staff reviewed over 100 sound files provided by Dialing Services.²⁸ The majority of the prerecorded message calls made by the Company were for the purpose of either seeking a vote for a political candidate or endorsing a political candidate for office. None of the recordings provided by the Company in response to the LOI indicated that such calls were made for an emergency purpose.²⁹ Therefore, we conclude that the calls made to cell phones by Dialing Services were not made for an emergency purpose. Similarly, the Company did not provide evidence of prior express consent for these messages. Therefore, we conclude that the calls the Company made to cell phones were not made with the prior express consent of the recipients.³⁰

11. Independently, TCD staff randomly chose 10 cell phone numbers that Dialing Services called with a prerecorded message in April of 2012 and spoke with the call recipient. A chart of the identified cell phone numbers and the dates and times that Dialing Services made autodialed calls and delivered prerecorded messages to the recipients is attached at Attachment A. 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.³¹ In fact, several of the callers expressed significant frustration and anger at receiving autodialed and/or prerecorded message calls on their cell phones. One recipient, when asked whether he had given permission to receive such calls, remarked that the answer was “[n]ot only ‘no’, but HELL no.”³² This further shows that Dialing Services did not have the prior express consent of these called parties to make an autodialed, prerecorded call to their mobile phones.

12. Failure to Include Identifications. Based on staff review of the prerecorded messages provided by the Company in response to the LOI, TCD determined that 100 of the messages either did not identify the caller at the beginning of the message, or failed to include a contact telephone number, as required by the Act and the Commission’s rules.³³

13. Finding of Violation. Based on the record developed in this case, the Enforcement Bureau, acting through its delegated authority, finds that Dialing Services, LLC, made one or more calls with

²⁷ See Section III.A., above.

²⁸ The number of sound files produced by the Company in response to the LOI was a small percentage of the thousands of prerecorded messages that the Company indicated it delivered to the recipients of the autodialed calls that it made. The Company stated that its clients generally recorded their own sound files, and that those files may be deleted by either the Company or its clients. See Letter from Mitchell Roth, Roth Doner Jackson, PLC, to Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jun. 13, 2012) (on file in EB-TCD-12-00001812) at 7.

²⁹ 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”).

³⁰ See note 17, above.

³¹ See Affidavit of Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Oct. 12, 2012) (on file in EB-TCD-12-00001812).

³² See *id.* at 2 (emphasis in original).

³³ 47 U.S.C. § 227(d)(3)(A); 47 C.F.R. § 64.1200(b).

prerecorded messages in violation of Section 227 of the Communications Act, and Section 64.1200 of the Commission's related rules.

IV. RESPONDING TO THIS CITATION

14. Dialing Services may respond to this Citation within thirty (30) days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview with the Commission's Telecommunications Consumers Division in Washington, DC, or (3) a personal interview at the Commission Field Office nearest to its place of business. Dialing Service's response should specify the actions that the company is taking to ensure that it does not violate the Communications Act or the Commission's rules governing TCPA violations, as described herein.

15. If you would like to arrange a teleconference or personal interview, please contact Lloyd Collier at (202) 418-2712. Such teleconference or interview must take place within thirty (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) days of the date of this Citation to the address below.

Richard A. Hindman, Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Rm. 4-C224
Washington, DC 20554

Reference EB-TCD-12-00001812 when corresponding with the Commission.

16. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the 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).

V. FUTURE VIOLATIONS

17. If, after receipt of this Citation, Dialing Services again violates Section 227 of the Act, Sections 64.1200, or 64.1601(e) of the Commission's rules in any manner, or violates Section 1.17 of our rules (discussed below) when responding to this Citation, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation.³⁴ As discussed above, such forfeitures may be based on both

³⁴ 47 U.S.C. § 503(b)(2)(D). Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation in cases, as in the instant case, 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. *See* 47 C.F.R. §1.80(b). *See*

the conduct that led to the Citation and the conduct following it.³⁵ In this case, there were approximately 4.7 million violations that occurred in the three month period of call records reviewed by TCD staff. A subsequent forfeiture action based on just the first three hundred (300) of those violations, calculated at the statutory maximum of \$16,000 per violation, would result in a potential forfeiture of four million, eight hundred thousand dollars (\$4,800,000) against the Company.

18. If the Company chooses to respond to this Citation, be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

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

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.³⁶

19. 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 under 18 U.S.C. § 1001.

20. If Dialing Services violates Section 1.17 of the Commission's rules or the criminal statute referenced above, Dialing Services may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.

21. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VI. REQUEST FOR INFORMATION

22. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,³⁷ Dialing Services is directed to confirm within fifteen (15) calendar days after the release date of this Citation that the Company has (1) ceased making any calls to cell phones using autodialers or artificial or prerecorded messages (except as permitted by section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Commission's rules), and (2) ceased making any prerecorded message calls without the identification information required in the

also Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

³⁵ See note 5, above.

³⁶ 47 C.F.R. § 1.17.

³⁷ 47 U.S.C. §§ 154(i), (j), 403.

Act and Commission's rules. Failure to respond to the request for information, or an inadequate, incomplete, or misleading response, may subject the Company to additional sanctions.³⁸

VII. ORDERING CLAUSES

23. **IT IS ORDERED** that pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Dialing Services, LLC must provide the information requested in paragraphs 3 and 22. The response to the request for information must be provided in the manner indicated herein and must be received by the FCC within fifteen (15) calendar days after the release date of this Citation and Order.

24. **IT IS FURTHER ORDERED** that a copy of this Citation and Order 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

Richard A. Hindman, Chief
Telecommunications Consumers Division
Enforcement Bureau

³⁸ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (\$100,000 forfeiture for refusing to attest to truthfulness and accuracy of responses to a Bureau letter of inquiry); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (\$4,000 forfeiture for failure to respond to a Bureau letter of inquiry); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (\$20,000 forfeiture for failure to respond to an LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (\$4,000 forfeiture for failure to respond to a Bureau letter of inquiry).

Attachment A**Dialing Services****Prerecorded message calls made to wireless telephones without subscriber consent¹**

Date and Time of Call²	Wireless Phone Number Dialed	Prerecorded Message
4/4/2012 8:29	[REDACTED]	[REDACTED]
4/4/2012 7:29	[REDACTED]	[REDACTED]
4/4/2012 9:53	[REDACTED]	[REDACTED]
4/4/2012 9:34	[REDACTED]	[REDACTED]
4/4/2012 9:57	[REDACTED]	[REDACTED]
4/4/2012 9:37	[REDACTED]	[REDACTED]
4/4/2012 9:56	[REDACTED]	[REDACTED]
4/4/2012 9:48	[REDACTED]	[REDACTED]
4/4/2012 9:31	[REDACTED]	[REDACTED]
4/4/2012 9:42	[REDACTED]	[REDACTED]

¹ See Affidavit of Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Oct. 12, 2012) (on file in EB-TCD-12-00001812).

² See Dialing Services June 13 Response, Excel spreadsheet attachment, [REDACTED]. The entry information listed in this Attachment A appear on the call detail records produced by Dialing Services in response to the Bureau's May 4, 2012, LOI.