

Federal Communications Commission



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

June 26, 2007

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Why Cable? aka K&M Enterprises
Attn: Kelcey Moneymaker
P.O. Box 750
Crestline, CA 92325

Why Cable? aka K&M Enterprises
Attn: Kelcey Moneymaker
24081 Lake DR
Crestline, CA 92325

RE: File No. EB-07-TC-3617

Dear Mr. Moneymaker:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 503(b)(5), for violations of the Act and the Federal Communications Commission's rules that govern telephone solicitations and unsolicited advertisements.¹ As explained below, you may appeal this citation. In addition, future violations of the Act or Commission's rules in this regard may subject you and your company to monetary forfeitures.

Attached are consumer complaints regarding prerecorded messages that your company, acting under your direction, has delivered to a residential telephone line or lines. These complaints indicate that you and your company have violated section 227(b)(1)(B) of the Act and section 64.1200(a)(2) of the Commission's rules. *See* 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

¹ 47 U.S.C. § 227; 47 C.F.R. § 64.1200. A copy of these provisions is enclosed for your convenience. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991 and is most commonly known as the TCPA. The TCPA and the Commission's parallel rules restrict a variety of practices that are associated with telephone solicitation and use of the telephone network to deliver unsolicited advertisements, including prerecorded messages to residential telephone lines. We refer in this citation to the Commission's rules as they existed at the time of the violations in this matter. Revised rules in this area took effect on August 1, 2006.

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Under Section 227(b)(1)(B) of the Act and section 64.1200(a)(2) of the Commission's rules, it is unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call

- (i) Is made for emergency purposes,²
- (ii) Is not made for a commercial purpose,
- (iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement³ or constitute a telephone solicitation,⁴
- (iv) Is made to any person with whom the caller has an established business relationship⁵ at the time the call is made, or
- (v) Is made by or on behalf of a tax-exempt nonprofit organization.

Accordingly, it is generally unlawful to use an artificial or prerecorded voice to deliver an advertisement or telephone solicitation to a residential telephone line unless the call is made: (1)

² The term "emergency purposes" means calls made necessary in any situation affecting the health and safety of consumers." 47 C.F.R. § 64.1200(f)(2).

³ The term "unsolicited advertisement" means "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(10).

⁴ The term "telephone solicitation" means

the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

- (i) To any person with that person's prior express invitation or permission;
- (ii) To any person with whom the caller has an established business relationship; or
- (iii) By or on behalf of a tax-exempt nonprofit organization.

47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(9).

⁵ The term "established business relationship" means

a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

47 C.F.R. § 64.1200(f)(3)

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by or on behalf of a tax-exempt nonprofit organization; (2) with the prior express consent of the called party; or (3) to a person who has an established business relationship with the caller.

The attached information indicates that your company, acting under your direction, delivered an unsolicited advertisement or telephone solicitation, through a prerecorded message, to one or more residential telephone subscribers who either (1) had not expressly invited or authorized the call(s) or (2) did not have an established business relationship with you or your company (a transaction within 18 months prior to the call(s), or an inquiry or application within 3 months prior to the call(s)). As explained above, this action violates section 227(b)(1)(B) of the Communications Act and section 64.1200(a)(2) of the Commission's rules.

If, after receipt of this citation, you or your company violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁶

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. You may use this response to appeal this citation. For example, you may claim that you can document that you had an established business relationship with the called party at the time of the call or that you are a tax-exempt nonprofit organization. In addition, your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing prerecorded messages, as described above.

You may schedule a personal interview at the nearest Commission field office. These offices are located in: Atlanta, GA; Boston, MA; Chicago, IL; Columbia, MD; Dallas, TX; Denver, CO; Detroit, MI; Kansas City, MO; Los Angeles, CA; New Orleans, LA; New York, NY; Philadelphia, PA; San Diego, CA; San Francisco, CA; Seattle, WA; and Tampa, FL. Please call Al McCloud at 202-418-2499 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kurt A. Schroeder
Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W.
Rm. 4-C222
Washington, D.C. 20554

Reference EB-07-TC-3617 when corresponding with the Commission.

⁶ See 47 C.F.R. § 1.80(b)(3).

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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 5 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).

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(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.

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.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kurt A. Schroeder
Deputy Chief, Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission

Enclosures