



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

November 17, 2005

**VIA FACSIMILE AND EXPRESS MAIL**

Voice Mail Broadcasting Corp.  
c/o William E. Raney, Esquire  
Copilevitz & Canter, LLC  
423 West Eighth Street, Suite 400  
Kansas City, MO 64015

Re: *Petition to Limit and/or Quash Civil Investigative Demand* ("Petition")  
File No. 052-3182

Dear Mr. Raney:

This letter advises you of the disposition of the Petition filed by Voice Mail Broadcasting Corp. (hereinafter "Petitioner") in conjunction with an investigation by the Federal Trade Commission (hereinafter "FTC" or "Commission"). The Petition is hereby denied because it was not filed in conformity with the Commission's Rules of Practice, 16 C.F.R. § 2.7(d)(2) and because it was otherwise lacking in substantial merit. The new date for Petitioner to comply with the CID is November 28, 2005, at 9:00 a.m.

This ruling was made by Commissioner Pamela Jones Harbour, acting as the Commission's delegate. *See* 16 C.F.R. § 2.7(d)(4). Petitioner has the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.<sup>1</sup>

**I. BACKGROUND**

On October 14, 2005, the Commission issued a CID to Petitioner in connection with an investigation by the Commission into potential violations of the Commission's "Telemarketing Sales Rule," Petition at 1. On November 3, 2005, Petitioner filed the Petition. Petitioner asks for relief from most of the specifications of the CID on the grounds that: (1) the "definition of 'voice broadcasting services' exceeds the scope of the Telemarketing Sales Rule and/or any abusive or deceptive acts or practices prohibited by that rule or the FTC Act;" Petition at 1, and (2) Specification D-9 of the CID's Schedule of Documents to be Produced "requests documents which

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<sup>1</sup> This letter decision is being delivered by facsimile and express mail. The facsimile copy is being provided as a courtesy. Computation of the time for appeal, therefore, should be calculated from the date you receive the original by express mail.

[sic] are privileged and/or confidential based on the attorney-client privilege, trade secrets, and other applicable privileges.” Petition at 2.

## **II. Petitioner Failed to Comply with the Requirements of Our Rules.**

Petitioner failed to discharge its meet-and-confer obligations under 16 C.F.R. § 2.7(d)(2). FTC rules require a petitioner to meet with Commission counsel in a “good faith” attempt to resolve any disputes raised by the production of materials in response to our compulsory process. The rule contemplates that any adjustments to avoid undue burden or unnecessary intrusion into confidential areas can be made by well-intentioned lawyers cognizant of the specific problems raised by the production demanded. It serves the exemplary public purpose of facilitating Commission investigations without unduly intruding into other areas. In this case, it does not appear that Petitioner even attempted to contact or engage the Commission’s Staff in any discussion of the merits of the claims raised in this Petition.

The obligation on the part of the recipient of FTC compulsory process to meet and confer with Commission counsel on the merits of any objections that might arise in compliance with such demands is neither a *pro forma* one nor one that can be easily excused.<sup>2</sup> Compulsory process is routinely issued by investigatory agencies without good knowledge regarding the record keeping practices of the recipients of its process. Demanding good faith attempts to resolve avoidable compliance problems is of equal interest and concern to the Commission and any process recipient. The meet-and-confer requirement provides both sides a mechanism within which adjustments can be made to competing interests in a quick and efficient manner.<sup>3</sup> Petitioner’s failure to comply with the meet-and-confer requirements of FTC rules is sufficient, in and of itself, to deny the instant Petition. However, inasmuch as the Petition does not otherwise exhibit any substantial merit, it is additionally denied on that ground as well.

## **III. Petitioner Failed to Provide a Factual or Legal Basis for the Relief Requested.**

The Petition asserts claims without providing any factual or legal support for those claims. This opinion has already recited the entire substantive content of the Petition in Section I, *supra*. This Petition contains no hint regarding the facts underlying the claims advanced by the Petition or any indication of the legal authority upon which Petitioner relies. We are unwilling to speculate at large on these matters about which Petitioner apparently wished us to be uninformed.

Even a casual review of the specifications of the challenged CID shows that the information requested is relevant to the subject of the Commission’s investigation. Moreover, Petitioner has not argued that the Commission’s investigation is outside its authority, or that the specifications are

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<sup>2</sup> In cases where the issue raised is primarily, if not exclusively, an issue of law, a summary meet-and-confer might be appropriate. However, where, as here, the issues are primarily mixed questions of law and fact (confidentiality, relevance and materiality), a failure on the part of counsel to engage in a meaningful meet-and-confer with Commission counsel is less tolerable.

<sup>3</sup> We understand that in most cases significant accommodation of legitimate interests can be and is achieved without the necessity of any conduct more taxing than a phone call between well-intentioned counsel.

too indefinite. Accordingly, Petitioner's jurisdictional challenge is rejected. *See United States v. Morton Salt*, 338 U.S. 632, 652 (1950) (“[I]t is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.”). *See also Federal Trade Commission v. Ken Roberts Co.*, 276 F.3d 583, 587 (D.C. Cir. 2001) (“enforcement of an agency's investigatory subpoena will be denied only when there is ‘a patent lack of jurisdiction’ in an agency to investigate or regulate”) (citations omitted).

Further, Petitioner claims privilege with respect to one specification of the CID. It, however, has not provided the Commission with a description of the information for which privilege is claimed, the actual privilege being claimed for each privileged item, or any factual basis for a claim of privilege.<sup>4</sup> Accordingly, Petitioner provides no basis for relief on this ground, and the privilege claims are denied.

#### IV. CONCLUSION

For all the foregoing reasons, the Petition should be, and it hereby is, **DENIED**. Pursuant to Rule 2.7(e),<sup>5</sup> the new date for Petitioner to comply with the subject compulsory process demands is November 28, 2005, at 9:00 a.m.

By direction of the Commission.

Donald S. Clark  
Secretary

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<sup>4</sup> Rule 2.7(d)(1) clearly requires that every “petition shall set forth all assertions of privilege or other factual and legal objections to the . . . civil investigative demand, including all appropriate arguments, affidavits and other supporting documentation.” 16 C.F.R. § 2.7(d)(1).

<sup>5</sup> 16 C.F.R. § 2.7(e).