

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
CallingPost Communications, Inc.
File No.: EB-TCD-12-00005015

CITATION

FAILURE TO COMPLY WITH AN FCC ORDER

Adopted: June 26, 2013

Released: June 26, 2013

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. INTRODUCTION

1. This is an official 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) to CallingPost Communications, Inc. and Mr. Phil Alexander (collectively, CallingPost or Company) for failing to comply with a Commission order issued by the Enforcement Bureau (Bureau) pursuant to delegated authority in a Letter of Inquiry (LOI) dated February 8, 2013.

II. BACKGROUND

2. The Bureau's Telecommunications Consumers Division (Division) is investigating the Company for its compliance with federal laws and FCC regulations concerning the use of automatic dialing equipment and the federal Do-Not-Call regulations, specifically, Section 227(b) of the Communications Act and Section 64.1200 of the FCC's rules. On February 8, 2013, the Division sent an

1 47 U.S.C. § 503(b)(5).

2 See 47 U.S.C. § 155(1)-(3).

3 Section 227(b)(1)(A) of the Communications Act and Section 64.1200(a)(1) of the Commission's rules specify that unless a call is made for emergency purposes or with the prior express consent of the called party, 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 calls using an automatic telephone dialing system or an artificial or prerecorded voice: 1) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency); 2) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or 3) 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. See 47 U.S.C. § 227(b)(1)(A)(i)-(iii); 47 C.F.R. § 64.1200(a)(1)(i)-(iii). By making prerecorded message calls on behalf of itself or third parties (its clients), CallingPost necessarily "initiates" calls for the purposes of Section 64.1200 of the FCC's rules. See Joint Petition Filed by DISH Network, LLC, for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, Declaratory Ruling, FCC 13-54, 2013 WL 1934349, at para. 26 (May 9, 2013) ("a person or entity 'initiates' a telephone call when it takes the steps necessary to physically place a telephone call.").

LOI to CallingPost initiating its investigation.<sup>4</sup> Tracking records show that the LOI was delivered via certified mail to CallingPost at 11:08 AM EST on February 19, 2013.<sup>5</sup> Phil Alexander, president of CallingPost, responded via e-mail on February 25, 2013, acknowledging that he had received the LOI.<sup>6</sup>

3. On February 27, 2013, the Division granted CallingPost a thirty (30) day extension of time until April 10, 2013, in which to respond to the LOI.<sup>7</sup> CallingPost failed to respond to the LOI by the April 10, 2013, deadline. Division staff called Mr. Alexander and followed up by e-mail, inquiring about the status of the Company's response.<sup>8</sup> On May 1, 2013, Mr. Alexander responded by e-mail, stating that he "feel[s] very badly that I have not been able to respond to [the FCC] but I have been absolutely swamped."<sup>9</sup> Division staff agreed to give CallingPost another extension of time until June 1, 2013, to comply with the LOI.<sup>10</sup>

4. On June 1, 2013, Mr. Alexander sent Division staff an e-mail confirming that CallingPost would not be responding by the June 1, 2013, deadline.<sup>11</sup> To date, CallingPost has never provided a single document or answered a single question of the LOI.

### III. APPLICABLE LAW AND VIOLATIONS

5. Sections 4(i), 4(j), and 403 of the Communications Act<sup>12</sup> afford the Commission broad authority to investigate potential violations of the Act. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this [Act], as may be necessary in the execution of its functions."<sup>13</sup>

<sup>4</sup> Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to CallingPost Communications, Inc. (February 8, 2013) (on file in EB-TCD-12-00005015) (LOI).

<sup>5</sup> See United States Postal Service, Proof of Delivery Record for Certified Mail No. 70090080000060695440 (on file in EB-TCD-12-00005015).

<sup>6</sup> See E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, and William Beckwith, Attorney-Advisor, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (February 25, 2013, 8:42 PM EST) (on file in EB-TCD-12-00005015) (Feb 25 E-mail).

<sup>7</sup> See E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Phil Alexander, President, CallingPost Communications, Inc. (February 27, 2013, 5:11 PM EST) (on file in EB-TCD-12-00005015).

<sup>8</sup> See E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Phil Alexander, President, CallingPost Communications, Inc. (May 1, 2013, 4:15 PM EDT) (on file in EB-TCD-12-00005015).

<sup>9</sup> See E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (May 1, 2013, 8:54 PM EDT) (on file in EB-TCD-12-00005015).

<sup>10</sup> See E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (May 21, 2013, 8:00 AM EDT) (on file in EB-TCD-12-00005015). See also E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Phil Alexander, President, CallingPost Communications, Inc. (May 21, 2013, 10:27 AM EDT) (on file in EB-TCD-12-00005015).

<sup>11</sup> E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (June 1, 2013, 11:56 PM EDT) (on file in EB-TCD-12-00005015).

<sup>12</sup> 47 U.S.C. §§ 154(i), 154(j), 403.

<sup>13</sup> 47 U.S.C. § 154(i).

Section 4(j) states that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”<sup>14</sup> Section 403 grants the Commission “full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this [Act], or concerning which any question may arise under any of the provisions of this [Act], or relating to the enforcement of any of the provisions of this [Act].”<sup>15</sup> Further, Section 403 gives “[t]he Commission . . . the power to make and enforce any order or orders” relating to its inquiries into compliance with the Act.<sup>16</sup>

6. Pursuant to this authority, the Division sent an LOI to CallingPost on February 8, 2013, directing the Company to provide certain information and documents in connection with its investigation into the Company’s compliance with Section 227(b) of the Act and Section 64.1200 of the FCC’s rules.<sup>17</sup> Postal Service tracking records confirm that CallingPost received the LOI at 11:08 AM EST on February 19, 2013, and the Company acknowledged receipt of the LOI in the e-mail from Company president Phil Alexander dated February 25, 2013.<sup>18</sup> CallingPost has failed to answer the questions and has failed to provide the documents it is required to produce under the LOI.<sup>19</sup> A party may not ignore the directives in a Commission order issued by the Bureau pursuant to delegated authority in an LOI.<sup>20</sup> CallingPost’s violation is particularly egregious, first because “[m]isconduct of this type exhibits contempt for the Commission’s authority and threatens to compromise the Commission’s ability to adequately investigate violations of its rules,”<sup>21</sup> and second because of the wide latitude of additional time the Division gave the Company to respond.<sup>22</sup>

7. Accordingly, we find that CallingPost has violated a Commission order by failing to provide the information and documents required by the LOI and by the filing date of June 1, 2013.

#### IV. NOTICE OF DUTY TO COMPLY WITH LAW:

8. CallingPost is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation it may be subject to further legal action, including monetary fines (forfeitures).

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<sup>14</sup> 47 U.S.C. § 154(j).

<sup>15</sup> 47 U.S.C. § 403.

<sup>16</sup> *Id.*

<sup>17</sup> 47 U.S.C. § 227(b)(1)(A)(i)-(iii); 47 C.F.R. § 64.1200(a)(1)(i)-(iii).

<sup>18</sup> See Feb. 25 Email at 1 (“I just minutes ago opened the subject letter dated February 8, 2013. I’m not sure why I just received the letter this long after it was sent but I will look into that tomorrow.”)

<sup>19</sup> See paras. 3-4, above.

<sup>20</sup> See 47 U.S.C. § 503(b)(1)(B). See also *Technical Commc’n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018 (Enf. Bur. 2013) (TCN NAL); *Net One Int’l Net One, LLC Farrahtel Int’l, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493 (Enf. Bur. 2011); *LDC Commc’ns, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 300 (Enf. Bur. 2012); *SBC Commc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2000). CallingPost’s concerns about the privacy implications of the LOI do not abrogate or lessen its obligation to respond in full and by the deadline to the Commission’s lawful demand for documents and information. See *id.* 17 FCC Rcd at 7591 (“parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.”)

<sup>21</sup> See TCN NAL, 28 FCC Rcd at 1020; *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074, 7081 (Enf. Bur. 2010) (*Fox Television Stations*).

<sup>22</sup> See paras. 3-4, above; see also *Fox Television Stations*, 25 FCC Rcd at 7081 (“**Prompt** and full responses to Bureau inquiry letters are **essential** to the Commission’s enforcement function.”) (emphasis added).

Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.<sup>23</sup> In this regard, we warn CallingPost that it is under a continuing obligation to respond to the LOI. Further, that failure to respond to the LOI is a continuing violation and each day that the Company fails to respond constitutes a separate violation for which enforcement action may be taken.<sup>24</sup> Accordingly, by this Citation, CallingPost is on notice that it is obligated to take immediate steps to comply with the LOI by providing the information and documents identified therein to ensure that it does not continue to violate the Communications Act.

## V. RESPONDING TO THIS CITATION

9. CallingPost 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.

10. If the Company would like to arrange a teleconference or personal interview, please contact Kristi Thompson at (202) 418-1318. Such teleconference or interview must take place within thirty (30) days of the date of this Citation. If the Company would like to submit a written response, including any supporting documentation, the Company 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-12-00005015 when corresponding with the Commission.

11. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation needed including as much detail as possible. Also include the name and contact information for the individual we can contact 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](mailto: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).

12. 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:

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<sup>23</sup> 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).

<sup>24</sup> 47 U.S.C. § 503(b)(2)(D). See Section VI—Future Compliance, below.

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.<sup>25</sup>

13. 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.

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

15. 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. FUTURE COMPLIANCE

16. If, after receipt of this Citation, CallingPost violates the Communications Act or the FCC's rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures of up to \$16,000 for each such violation or each day of a continuing violation, up to a statutory maximum of \$112,500 for any single continuing violation.<sup>26</sup> In addition, violations of the Communications Act or the Commission's rules can result in criminal sanctions, including imprisonment.<sup>27</sup>

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<sup>25</sup> 47 C.F.R. § 1.17.

<sup>26</sup> 47 U.S.C. § 503(b)(2)(D). Section 503(b)(2)(D) 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) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maxima applicable in this case).

<sup>27</sup> *See* 47 U.S.C. §§ 401, 501.

**VII. ORDERING CLAUSES**

17. **IT IS ORDERED** that a copy of this Citation shall be sent by first class mail to Phil Alexander, President, CallingPost Communications, Inc., 531 Blackburn Drive, Augusta, GA 30907, and by electronic mail to: [palexander@callingpost.com](mailto:palexander@callingpost.com).

**FEDERAL COMMUNICATIONS COMMISSION**

Richard A. Hindman  
Chief  
Telecommunications Consumers Division  
Enforcement Bureau