

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Dante Sciarra
D&D Global Enterprises, LLC
File No.: EB-TCD-18-00027537

CITATION AND ORDER

PRERECORDED VOICE MESSAGE/DO-NOT-CALL VIOLATIONS

Adopted: November 27, 2019

Released: November 27, 2019

By the Division Chief, Telecommunications Consumers Division:

I. NOTICE OF CITATION

1. Today the Federal Communications Commission's Enforcement Bureau takes another step in the Commission's ongoing effort to crack down on illegal robocalls. This CITATION AND ORDER (Citation) notifies Dante Sciarra and D&D Global Enterprises, LLC (collectively, D&D), that it violated the law by making unauthorized and disruptive prerecorded calls without the required identification intended to protect the privacy of American consumers. D&D also violated the law by making prerecorded voice message calls to wireless numbers without an emergency purpose or consent, and by making solicitation calls to subscribers who had registered their telephone numbers on the National Do-Not-Call (DNC) Registry.

2. We direct D&D to take immediate steps to comply with the Communications Act of 1934, as amended (Act), the Telephone Consumer Protection Act (TCPA), and the Federal Communications Commission's (Commission) rules (Rules), which prohibit: (1) making artificial or prerecorded voice message calls without identifying the caller at the beginning of the message and providing the contact number of the caller during or after the message; (2) making autodialed, artificial, or prerecorded voice message calls to wireless phones unless the calls are made for emergency purposes or with the prior express consent of the called party; and (3) initiating telephone solicitations to residential telephone lines registered on the DNC Registry, with limited exceptions. If, after release of this Citation, D&D fails to comply with these laws, D&D may be liable for significant fines.

3. Notice of Duty to Comply with the Law: We must first issue a Citation for the violations at issue here before we may impose a monetary fine. 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 that violate the Act or the Rules 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. Accordingly, D&D is hereby on notice that it must comply with section 227 of the Act and section 64.1200 of the Rules. If D&D subsequently

1 A background check using Westlaw CLEAR, a commercially available public records search tool, identified D&D Global Enterprises, LLC, to be a business located in Florida, whose registered agent is Dante Sciarra.

2 47 U.S.C. § 503(b)(5). The Commission may propose a fine for violations of the Truth in Caller ID Act without first issuing a citation. In this case, however, the Bureau did not find evidence of Truth in Caller ID Act violations.

3 47 U.S.C. § 227; 47 CFR § 64.1200. Section 227 was added to the 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 Rules restrict a variety of practices that are associated with telephone solicitation and the

engages in any conduct of the type this Citation describes—and specifically any violation of the Act and Rules that govern identification requirements for prerecorded voice message calls, artificial/prerecorded voice message calls to wireless phones, and telephone solicitations to residential telephone lines registered on the DNC Registry—D&D may be subject to further legal action, such as 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.⁴

II. BACKGROUND

4. The Commission is charged with protecting consumers from the intrusion of unwanted, unlawful calls. Artificial or prerecorded voice message calls—commonly known as robocalls—are particularly troublesome because they often do not provide the consumer any mechanism to determine their origin or to contact the caller. The Act and Rules require consumer consent prior to making robocalls to consumers’ wireless phones. In addition, it is illegal for persons or entities to make marketing calls to telephone numbers listed on the DNC Registry.⁵

A. Scams Involving Google Business Listings

5. Scams involving Google business listings have been a growing problem in recent years. The Commission regularly receives robocalling complaints involving Google listings. While each scam is different,⁶ the basic approach involves calling a business to “inform” it that there is something wrong with its listing in Google, which could mean that the business might not be seen online and could lose thousands of dollars in business.⁷ The point of the call is for the business to accept the “help” of the calling company in exchange for a fee, often at the cost of \$1000 or more.⁸ The scammers create a feeling of urgency, attempting to rush the call recipient into a quick decision.⁹ Often the recipients of the calls erroneously think that they are talking to an employee of Google, who is reaching out to help the business owner.¹⁰

B. FCC Investigation of D&D

6. In August 2018, USTelecom contacted the Telecommunications Consumers Division (Division) of the Enforcement Bureau (Bureau) about “suspicious traffic involving individuals marketing

use of the telephone network to deliver unsolicited advertisements or prerecorded/artificial voice and autodialed telephone calls.

⁴ 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 was issued, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation of violation was originally sent.*”) (emphasis added).

⁵ There are certain exceptions to these prohibitions, none of which applies to the calls at issue in this Citation.

⁶ Some of the scams may include telling the business that: 1) its website is not listed in Google, which could cost thousands of dollars of lost business; 2) its Google listing is not up-to-date, so its website will not be found in search results; or 3) its website is at risk of being removed from search engine results altogether. SEO for Growth, *Fake Google Robocall Scams – Don’t Fall For It*, <https://seoforgrowth.com/fake-google-robocall-scams/> (last visited Nov. 14, 2019).

⁷ *Id.*

⁸ *Id.* See also Chris Edwards, *BEWARE Call From Google Business Listings is Fake*, Data Driven Labs (Sept. 22, 2017), <https://datadrivenlabs.io/blog/scam-google-business-listing-call/> (stating that the caller will sell you a service to “claim your listing for you”).

⁹ Rosario Mendéz, *Google is not calling you*, Federal Trade Commission, Consumer Information Blog (May 23, 2018), <https://www.consumer.ftc.gov/blog/2018/05/google-not-calling-you>.

¹⁰ Adam Hansen, *Overcoming the “Your Google Listing is Incomplete” Cold Call Trap*, Kite Media (July 13, 2017), <https://www.kitemedia.com/overcoming-the-your-google-listing-is-incomplete-cold-call-trap/>.

services to unsuspecting businesses and consumers.”¹¹ Division staff traced the calls to D&D and subsequently subpoenaed, among other things, D&D’s call records for the four-month period from March 1, 2018, to June 30, 2018, from a third-party robocall platform provider, ██████ (the Platform Provider).¹² According to the subpoena response, D&D made an enormous volume of calls during this time frame, averaging thousands of calls per day.¹³ The Platform Provider provided copies of the recorded messages D&D used for its outgoing and incoming calls. Both messages gave alerts that the call recipient’s business listing might be at risk for not being seen on Google and other online directories. The outgoing message encourages the recipient to press one to check the status of the business listing:

This is an important message. Do not hang up the phone. Your business listing may be at risk of not being seen on Google and other major directories online. We’ve tried numerous times to contact you by telephone so we can check the status of your listing. This will only take a few minutes of your time; press one so we can quickly check the status of your business listing to ensure that it is active. If your listing is not verified, your business may not be shown, causing customers to think you’re no longer open for business. Press one now to check the status of your listing. If you are the business owner press one now. Press two to be removed from this list.¹⁴

After pressing one, the recipient hears an incoming message that reiterates the importance of fixing the business listing:

Hello, thank you for calling us back. We called you with an important message. Your Google business listing may be at risk of not being seen. We’ve tried numerous times to contact you by telephone so we can check the status of your listing. This will only take a few minutes of your time. Press one so we can quickly check the status of your Google listing to ensure that it’s active. If your Google listing is not verified, your business may not be shown, causing customers to think you’re no longer open for business. Press one now to check the status of your Google listing. If you are the business owner press one now. Press two to be removed from this list.¹⁵

7. Division staff analyzed the details of the robocalls that D&D made to determine whether any of the robocalls went to wireless phones.¹⁶ From this analysis, Division staff confirmed that more than 2.5 million were robocalls to wireless phones. Division staff contacted 250 different wireless phone recipients of robocalls made by D&D to confirm whether the consumer was the owner of the affected telephone number, to ask whether the consumer gave D&D permission to robocall them on the affected

¹¹ Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Aug. 13, 2018) (on file in EB-TCD-18-00027537).

¹² Letter from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to ██████, CEO, ██████ (Nov. 20, 2018) (on file in EB-TCD-18-00027537).

¹³ In total, D&D made 23.5 million calls during this time frame. Letter from Zachary C. Osinski, Associate, Nixon Peabody, LLP, to Parul P. Desai, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 21, 2018) (on file in EB-TCD-18-00027537) (Platform Provider Response).

¹⁴ SEO Outbound audio file, Attach. to Platform Provider Response (on file in EB-TCD-18-00027537).

¹⁵ SEO Inbound audio file, Attach. to Platform Provider Response (on file in EB-TCD-18-00027537).

¹⁶ Division staff used an industry-standard, commercially available software and database of known assigned and ported wireless numbers. Interactive Marketing Solutions, *EasyID*, <https://www.ims-dm.com/mvc/page/easyid/> (last visited Nov. 14, 2019). EasyID is Interactive Marketing Solution’s software that allows clients to eliminate wireless numbers from calling lists. *Id.* 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.” Interactive Marketing Solution, Inc., <https://www.ims-dm.com/mvc/index.php> (last visited Nov. 14, 2019).

phone number, and to determine whether the telephone numbers were used for residential purposes.¹⁷ Of the 20 consumers that the staff reached, most confirmed that they never gave permission—to D&D or anyone else—to make robocalls to their phones and several confirmed that the phone numbers were used for residential purposes.¹⁸ We find the statements of the consumers to be credible. Finally, by comparing the wireless numbers D&D called to the DNC Registry, Division staff were able to confirm that almost 228,000 of those phone numbers were registered on the DNC Registry at the time that D&D called with the prerecorded messages,¹⁹ and that D&D made more than 1.4 million robocalls to those numbers.²⁰

III. APPLICABLE LAW AND VIOLATIONS

A. Violations of the TCPA

8. For purposes of administrative simplicity, the Division focused its investigation on violations to wireless telephones. However, violations of the TCPA and the Rules—specifically, failing to identify the caller and provide contact information at the outset of the message—also apply to prerecorded messages sent to wireline telephones.²¹ Thus, pursuant to this Citation, D&D is on notice that future violations of the provisions, whether to wireline or wireless telephones, may be subject to penalties including those set forth in paragraph 28 herein.

9. Identification Requirements for Prerecorded Voice Messages. Section 227(d)(3)(A) of the Act and section 64.1200(b) of the Rules require that all artificial or prerecorded voice message calls meet certain standards. First, all prerecorded voice message calls must, “at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call”²² Second, the prerecorded voice message calls must, “during or after the message, state clearly the telephone number or address of [the] business, other entity, or individual”²³ The Rules additionally require that the telephone number provided in the message must be a number other than that of the autodialer or prerecorded message player that placed the call.²⁴

10. Division staff reviewed and transcribed D&D’s outgoing and incoming prerecorded messages used to make more than 2.5 million calls to wireless telephones. Neither the name of the entity calling nor the entity’s phone number was included in D&D’s messages. Thus, we find that D&D violated section 227(d)(3)(A) of the Act and 64.1200(b) of the Rules by making more than 2.5 million calls with prerecorded messages that failed to contain the identifying information required by the Act and the Rules.²⁵

¹⁷ Declaration of ██████████, June 5, 2019; Declaration of ██████████, June 5, 2019; Declaration of ██████████, June 10, 2019; Declaration of ██████████, June 11, 2019; Declaration of ██████████, June 12, 2019 (on file in EB-TCD-18-00027537).

¹⁸ *Id.* Some of the consumers did not state whether or not they had given consent, but no one said that he or she *had* consented to the calls.

¹⁹ Citation Attachment.

²⁰ The vast majority of the 228,000 phone numbers received more than one call and one number received more than 1200 calls. Division Analysis is on file in EB-TCD-18-00027537.

²¹ The identification requirements for prerecorded voice messages apply to “all” such messages—i.e., those sent to wireless and wireline phones. See 47 U.S.C. § 227(d)(3)(A); 47 CFR § 64.1200(b). Similarly, the Rules apply to calls made to *all* residential numbers (i.e. wireless and wireline) registered on the DNC Registry. See 47 CFR § 64.1200(c)(2).

²² 47 U.S.C. § 227(d)(3)(A)(i); 47 CFR § 64.1200(b)(1). The Rules further require that businesses must use the name under which the entity is registered to conduct business. 47 CFR § 64.1200(b)(1).

²³ 47 U.S.C. § 227(d)(3)(A)(ii); see also 47 CFR § 64.1200(b)(2).

²⁴ 47 CFR § 64.1200(b)(2).

²⁵ The Division did not quantify the violations of the calls to wireline telephones.

11. Prohibition Against Sending Prerecorded Messages to Wireless Phones. Section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Rules prohibit prerecorded voice message calls to cell phones and other mobile services, such as paging systems.²⁶ Two exceptions to these prohibitions are: (1) calls made for emergency purposes; and (2) calls made with the prior express consent of the called party.²⁷ The exceptions are not applicable to the calls at issue in the Citation.

12. As part of the investigation, Division staff spoke with 20 wireless phone subscribers who received robocalls from D&D on their wireless phones. None of those subscribers stated that they gave consent.²⁸ Thus, we find that D&D violated section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Rules by making many prerecorded message calls to wireless numbers—perhaps more than 2.5 million calls—without prior express consent as required by the Act and the Rules.

13. Prohibition Against Solicitations to Residential Telephone Numbers Registered on the DNC Registry. Section 64.1200(c)(2) of the Rules prohibits telephone solicitations to residential telephone numbers registered on the DNC Registry.²⁹ The Rules define a “telephone solicitation” as 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” subject to certain exceptions.³⁰ D&D’s messages warn that the call recipient’s “business listing may be at risk of not being seen on Google and other major directories online,” and offer to check the status of that business listing.³¹ D&D’s messages fit the pattern of scams involving Google business listings; these scams involve calling a business to “inform” it that there is something wrong with its listing in Google, with the goal of getting the business to accept help in exchange for a fee.³² The Commission has stated, “the fact that a sale is not completed during the call or message does not mean the message does not constitute a telephone solicitation or unsolicited advertisement.”³³ We find that both the outgoing and incoming prerecorded messages used by D&D constitute telephone solicitations as defined in the Rules.

14. Of the more than 2.5 million prerecorded voice message calls that D&D made to wireless phone numbers, Division staff found that more than 1.4 million of the calls were to numbers that were registered on the DNC Registry at the time of the calls.³⁴ Further, Division staff confirmed that at least

²⁶ Specifically, the Act and Rules state that it is unlawful for anyone to send a prerecorded message to a phone number on “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.” 47 U.S.C. § 227(b)(1)(A)(iii), 47 CFR § 64.1200(a)(1)(iii).

²⁷ See 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii).

²⁸ Eighteen of the subscribers confirmed that they (1) owned the telephone number at the time of the call, and (2) never consented to receive these calls. The other two subscribers confirmed that they had received the calls, but did not provide a substantive response about whether they had consented to the calls. Declaration of [REDACTED], June 5, 2019 (on file in EB-TCD-18-00027537).

²⁹ 47 CFR § 64.1200(c)(2).

³⁰ 47 CFR § 64.1200(f)(14). The term “telephone solicitation” does not include calls made (1) to any person that has provided prior express invitation or permission; (2) to any person with whom the caller has an established business relationship; or (3) by or on behalf of a tax-exempt nonprofit organization. See 47 CFR § 64.1200(f)(14)(i)-(iii).

³¹ See *supra* para. 6 (quoting the recorded messages used by D&D).

³² See *supra* para. 5 (describing scams involving Google business listings).

³³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788, 3804, para. 39 (2005) (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14097-98, para. 140 (2003) (*2003 TCPA Order*) (“The TCPA’s definition does not require a sale to be made during the call in order for the message to be considered an advertisement.”)).

³⁴ TCD Analysis is on file in EB-TCD-18-00027537. As noted above, we did not quantify the number of calls made to wireline telephone numbers that are included in the DNC Registry.

some of these numbers were residential. Specifically, Division staff spoke with 20 of the wireless subscribers D&D called whose numbers were registered on the DNC Registry. Of those subscribers, three affirmed that they used the number for residential purposes.³⁵ Thus, we find that D&D violated section 64.1200(c)(2) of the Rules by making solicitation calls to almost 228,000 wireless phone numbers—all of which were registered on the DNC list at the time of the calls, and at least a portion of which were used for residential purposes.

15. Finding of Violations. We find that D&D made millions of artificial or prerecorded message calls in violation of section 227 of the Act and section 64.1200 of the Rules. Specifically, we find that D&D made more than 2.5 million calls in violation of section 227(d)(3)(A) of the Act and section 64.1200(b) of the Rules,³⁶ and also made multiple calls in violation of section 227(b)(1)(A)(iii) of the Act and sections 64.1200(a)(1)(iii) and 64.1200(c)(2) of the Rules.³⁷

B. Joint and Several Liability

16. We find that Dante Sciarra can and should be held jointly and severally liable for the above violations under the principles of piercing the corporate veil. The Commission has found that personal liability is appropriate (and the Commission will pierce the corporate veil) where an individual is an officer of a closely held corporation and directly participates in the activities of that corporation, effectively dominating the entity.³⁸

17. In evaluating whether to pierce the corporate veil, the D.C. Circuit has found it useful to group the factors into a two-prong test: “(1) is there such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist?; and, (2) if the acts are treated as those of the corporation alone, will an inequitable result follow?”³⁹

18. We find that Mr. Sciarra satisfies the first “unity of interest” prong required to pierce the corporate veil. It appears that Mr. Sciarra dominates the activities of the corporation. In 2017, when D&D was incorporated in Florida, Mr. Sciarra alone signed articles of organization and listed himself as the registered agent.⁴⁰ Mr. Sciarra is also the sole signatory and listed registered agent for two subsequent

³⁵ Declaration of ██████████, June 5, 2019 (on file in EB-TCD-18-00027537); see also *Emanuel “Manny” Hernandez; Click Cash Marketing, LLC; and Rock Solid Traffic*, Citation and Order, 33 FCC Rcd 12382, 12386, para. 10 n.30 (EB 2018) (“There is a presumption that ‘wireless subscribers who ask to be put on the national do-not-call list [are considered] to be ‘residential subscribers.’”) (citing *2003 TCPA Order*, 18 FCC Rcd at 14039, para. 36 (stating that such presumption “may require a complaining wireless subscriber to provide further proof of the validity of that presumption should we need to take enforcement action”). The Commission determined that interpreting “residential” to encompass wireless subscribers was “consistent with the overall intent of the TCPA to allow wireless subscribers to benefit from the full range of TCPA protections.” *Id.*

³⁶ 47 U.S.C. § 227(d)(3)(A); 47 CFR § 64.1200(b).

³⁷ 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR §§ 64.1200(a)(1)(iii), (c)(2).

³⁸ See *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Citation and Order, 32 FCC Rcd 5516, 5524-25, paras. 25-26 (EB 2017) (piercing the veil of a company that functioned merely as the instrumentality of a single individual who was, among other things, “the company’s sole incorporator, the sole shareholder, and the sole registered agent”); *Scott Malcolm, DSM Supply, LLC, Somaticare, LLC*, Forfeiture Order, 31 FCC Rcd 1652, 1653, para. 5 (2016) (finding personal liability for TCPA violations against an individual who served as his company’s sole member and sole corporate officer).

³⁹ *Labadie Coal Co. v. Black*, 672 F.2d. 92, 96 (D.C. Cir. 1982).

⁴⁰ D&D Global Enterprises, LLC, *Electronic Articles of Organization for Florida Limited Liability Company*, Division of Corporations, Florida Department of State, <http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2017%5C0407%5C50581955.tif&documentNumber=L17000076131> (filed Apr. 4, 2017) (last visited Nov. 14, 2019). According to the Articles, Mr. Sciarra is listed as one of only two officers associated with the corporation. *Id.*

filings with Florida.⁴¹ In all the filings with Florida, Mr. Sciarra listed D&D's mailing address as an address, different than its principal business address; that mailing address turns out to be a residential address associated with Mr. Sciarra.⁴² Further, the Platform Provider lists Mr. Sciarra as D&D's owner and the only person responsible for setting the caller ID information for any outbound calls.⁴³ Thus, we conclude that the first prong is satisfied because Mr. Sciarra appears to be the sole force behind D&D's personality and actions. The Bureau found no evidence that D&D possesses a corporate identity apart from Mr. Sciarra.

19. We find that the second "inequitable result" prong also warrants piercing the corporate veil.⁴⁴ If we do not apply this Citation to Mr. Sciarra for his personal actions in violating the Act and Rules, then he could simply evade subsequent enforcement action, including potential fines, by continuing these illegal actions under a new corporate identity.⁴⁵ Allowing Mr. Sciarra's personal actions in this case to go unchecked could essentially allow him to escape his obligation to comply with the law, and continue to subject consumers to unlawful calls.⁴⁶ Thus, D&D Global Enterprises, LLC, and Dante Sciarra are jointly and severally liable for the unlawful conduct described above.

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

20. D&D may respond to this Citation within 30 calendar days from the release date of this Citation by a personal interview at the Commission Field Office nearest to D&D's place of business.⁴⁷ Alternatively, D&D may elect to respond by a written statement or a teleconference with the nearest Commission Field Office or Commission Headquarters in Washington, D.C. The Commission Field

⁴¹ Mr. Sciarra filed a limited liability company reinstatement in 2018, and an annual report in 2019. *See* D&D Global Enterprises, LLC, *2018 Florida Limited Liability Company Reinstatement*, Division of Corporations, Florida Department of State, Document Number L17000076131, <http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=flal-117000076131-6a872ccc-e209-4420-aa7d-adb1f9ead922&transactionId=117000076131-re-0c417b61-8a11-4975-82f2-3e24df5b4888&formatType=PDF> (filed Nov. 6, 2018) (last visited Nov. 14, 2019); D&D Global Enterprises, LLC, *2019 Florida Limited Liability Company Annual Report*, Division of corporations, Florida Department of State, Document Number L170000076131, <http://search.sunbiz.org/Inquiry/CorporationSearch/GetDocument?aggregateId=flal-117000076131-6a872ccc-e209-4420-aa7d-adb1f9ead922&transactionId=117000076131-90955af6-b5cf-424c-b753-5ffb81ffffb7&formatType=PDF> (filed Feb. 18, 2019) (last visited Nov. 14, 2019).

⁴² *See* Dante Sciarra Westlaw CLEAR Report at 4 (on file in EB-TCD-18-00027537) (Sciarra CLEAR Report). The only other person mentioned in any of the Florida filings is Diana M. Gomez, and those filings list her as being at the same residential address as Mr. Sciarra, not at the principal place of business or a separate residential address.

⁴³ *See* Platform Provider Response at 3. Dante Sciarra provided the Platform Provider with two business addresses, but neither one was an address identified in the various Florida filings as D&D's principal place of business—instead, both were residential addresses associated with Mr. Sciarra. *See id.*; Sciarra CLEAR Report at 4. We also note that Ms. Gomez (the only other person that seems even tangentially related to D&D) was not mentioned in the Platform Provider Response.

⁴⁴ *See Labadie Coal Co. v. Black*, 672 F.2d. at 96 (“[second prong of the test]: if the acts are treated as those of the corporation alone, will an inequitable result follow?”).

⁴⁵ *See Travel Club Marketing Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15831, 15836, para. 14 (2011) (basing a forfeiture amount in part on a finding that a principal of a corporation “appear[ed] to be engaged in creating and shutting down different businesses to conduct the same or similar unlawful activities”).

⁴⁶ *See NLRB v. West Dixie Enterprises, Inc.*, 190 F.3d 1191, 1194 (11th Cir. 1999) (analyzing the second prong by looking at “whether a finding of no personal liability ‘would sanction a fraud, promote injustice, or lead to an evasion of legal obligations,’ . . .”) (quoting *White Oak Coal, Inc.*, 318 N.L.R.B. 732, 735, 1995 WL 526356, at *4 (1995)).

⁴⁷ *See* 47 U.S.C. § 503(b)(5) (stating that a citation notice must give “reasonable opportunity for a personal interview”).

Office nearest D&D is located in Miami, Florida.

21. If D&D 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 D&D prefers to submit a written response with supporting documentation, send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

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

Kristi Thompson
Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Rm. 4-C220
Washington, DC 20554
Re: EB-TCD-18-00027537

23. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, D&D 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. D&D should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. D&D 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).

24. We advise D&D that it is a violation of section 1.17 of the Rules⁴⁸ 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.

25. 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.⁴⁹

26. 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.⁵⁰

27. Finally, we warn D&D that, under the Privacy Act of 1974,⁵¹ Commission staff will use

⁴⁸ 47 CFR § 1.17.

⁴⁹ 18 U.S.C. § 1001.

⁵⁰ 47 U.S.C. § 503(b).

⁵¹ 5 U.S.C. § 552a(e)(3).

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 your compliance with the Act and Rules.

V. FUTURE VIOLATIONS

28. If, after receipt of this Citation and the foregoing opportunity to respond, D&D again violates section 227(d)(3)(A) or 227(b)(1)(A)(iii) of the Act, and section 64.1200(b), 64.1200(a)(1)(iii), or 64.1200(c)(2) of the Rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation.⁵² For example, the Commission may impose monetary forfeitures of up to \$20,134 per violation of section 227.⁵³ 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.⁵⁴ Further, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.⁵⁵

VI. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,⁵⁶ Dante Sciarra and D&D Global Enterprises must cease and desist from making autodialed, artificial or prerecorded voice message calls in violation of section 227 of the Act and section 64.1200 of the Rules.⁵⁷

30. **IT IS FURTHER ORDERED** that a copy of this Citation shall be sent by first class mail and certified mail, return receipt requested, to Dante Sciarra, D&D Global Enterprises, LLC, 520 SW 168th Terrace, Weston, FL 33326 and 3127 Enclave Way, Lauderhill, FL 33319.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thompson
Chief
Telecommunications Consumers Division
Enforcement Bureau

⁵² Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

⁵³ See 47 U.S.C. § 503; 47 CFR § 1.80(b). This amount is subject to further adjustment for inflation. See 47 CFR § 1.80(b)(9).

⁵⁴ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

⁵⁵ 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 was issued, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation of violation was originally sent.*”) (emphasis added).

⁵⁶ 47 U.S.C. §§ 154(i), 154(j).

⁵⁷ 47 U.S.C. § 227; 47 CFR § 64.1200.