FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 31, 2007

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AOL Time Warner Inc. (AOL Broadband)
Attn: Correspondent
300 N. 6TH ST
Boise, ID 83702-5764

Re: File No. EB-07-TC-3402

Dear Correspondent:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (the Communications Act), 47 U.S.C. § 503(b)(5), for violations of 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 Commission's rules in this regard may subject you and your company to monetary forfeitures.

Attached are consumer complaints regarding telemarketing calls that your company, or an entity acting on behalf of your company, made to telephone lines that are contained in the National Do-Not-Call Registry. These complaints indicate that your company, acting under your direction, has violated the Commission's rules regarding telephone solicitations. *See* 47 C.F.R. § 64.1200(c)(2).

Section 64.1200(c)(2) of the Commission's rules generally prohibits the delivery of telephone solicitations to residential telephone numbers that are contained in the National Do-Not-Call Registry except in certain limited situations. Under the Communications Act and the Commission's rules, a "telephone solicitation" is "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."[2] Calls made by or on behalf of tax-exempt nonprofit groups are not considered to be telephone solicitations. Similarly, calls that are made

[1] 47 C.F.R. § 64.1200. A copy of these rules is enclosed for your convenience.

[2] 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(9).

to a person who either has provided prior express invitation or permission to call[3] or has an established business relationship[4] with the caller are not considered to be telephone solicitations. Finally, the rules permit telephone solicitations to a consumer whose number is listed on the National Do-Not-Call Registry if that consumer has a personal relationship with the individual making the calls.[5]

Accordingly, under the Commission's rules, it is unlawful to deliver a telephone solicitation to a residential telephone line on the National Do-Not-Call Registry unless: (1) the call is made by or on behalf of a tax-exempt nonprofit group; (2) the call is made by a person who has a personal relationship with the called party; (3) the called party has provided signed, written consent for the call to be made; or (4) the called party has made a purchase from, or had a transaction with, the caller within the 18 months immediately preceding the call or has made an inquiry or application regarding the caller's products or services within the three months immediately preceding the call, and the called party has not specifically asked the caller to stop all telemarketing calls.

Entities making telephone solicitations must honor do-not-call registrations no later than 31 days after a number is placed on the National Do-Not-Call Registry,[6] and for a period of no less than five years. To accomplish this, section 64.1200(c)(2)(i)(D) requires entities making telephone solicitations to use a version of the National Do-Not-Call Registry obtained no more than 31 days before any telephone solicitation is made, and to document this process. An entity that does not claim one of the exemptions set forth above is not liable for calling a telephone number on the National Do-Not-Call Registry only if it is able to demonstrate that it has fully complied with the Commission's standards governing use of the National Do-Not-Call Registry

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[3] Prior express invitation or permission to call a number contained on the National Do-Not-Call Registry must be evidenced by a signed, written agreement between a consumer and seller. The agreement must include both the consumer's consent to be called by the particular seller and the telephone number to which such calls may be placed. 47 C.F.R. § 64.1200(c)(2)(ii).

[4] An "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." 47 C.F.R. § 64.1200(f)(3). The established business relationship exception does not apply when a telephone subscriber has made a company-specific do-not-call request. A company-specific do-not-call request terminates an established business relationship for telemarketing purposes even if the requester continues to do business with the company. 47 C.F.R. § 64.1200(f)(3)(i); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Report and Order, 7 FCC Rcd 8752, 8766 n.47, 8770 n.63 (1992); *see also* H.R. Rep. 102-317, 1st Sess., 102nd Cong. at 15 (1991); *Charvat v. Dispatch Consumer Services, Inc.,* 95 Ohio St. 3d 505, 769 N.E.2d 829 (2002).

[5] 47 C.F.R. § 64.1200(c)(2)(iii). A "personal relationship" exists if the recipient of the call is a "family member, friend, or acquaintance of the telemarketer making the call." 47 C.F.R. § 64.1200(f)(11).

[6] The 31-day requirement applies to telephone solicitations made on or after January 1, 2005. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Order, 19 FCC Rcd 19215 (2004). Previously, the Commission's rules provided that do-not-call registrations had to be honored within 3 months. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Report and Order, 18 FCC Rcd 14014, 14040, para. 38 (2003). The 3-month provision applied to telephone solicitations made before January 1, 2005.

as set out in section 64.1200(c)(2)(i)(A)-(E) of the rules, and that the particular telephone solicitation call was the result of error.

If, after receipt of this citation, you 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. [7]

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 are exempt from the telephone solicitation rules,[8] that you downloaded and used the National Do-Not-Call Registry in compliance with our rules but the person's telephone number was not on that version of the Registry, or that the calls were made in error and should be covered by the Commission's safe harbor provisions, 47 C.F.R. § 64.1200(c)(2)(i). In addition, your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing telephone solicitation and unsolicited advertisements, 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 File No. EB-07-TC-3402 when corresponding with the Commission.

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:

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[7] *See* 47 C.F.R. § 1.80(b)(3).

[8] *See 2003 Order*, 18 FCC Rcd at 14042-49; 47 C.F.R. § 64.1200(f)(9) (exceptions to definition of "telephone solicitation").

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