



Federal Communications Commission
Enforcement Bureau
45 L Street, NE
Washington, DC 20554

June 7, 2023

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: Michael Lansky
Chief Executive Officer
c/o Stacey Reeves, VP Sales & Operations
Avid Telecom LLC
4729 East Sunrise Drive
Suite 209
Tucson, AZ 85718
reeves@avid-telecom.com

Re: Notice of Suspected Illegal Robocall Traffic

Dear Mr. Lansky,

We have determined that Avid Telecom LLC, also known as Michael D. Lansky, LLC d/b/a Avid Telecom, (Avid or Company) is apparently originating illegal robocall traffic on behalf of one or more of its clients. As explained more fully below, this letter provides notice of important legal obligations and steps Avid must take to address this apparent illegal traffic. Avid should investigate the identified traffic and take the steps described below, including blocking the traffic if necessary, and take steps to prevent Avid's network from continuing to be a source of apparently illegal robocalls. Failure to comply with the steps outlined in this letter **may result in downstream voice service providers blocking all of Avid's traffic, permanently.**

Why Avid Is Receiving This Letter. Avid is receiving this letter because Avid apparently originated multiple illegal telemarketing robocall campaigns to cellular telephones without prior express written consent of consumers, using an artificial or prerecorded voice.¹

The Federal Communications Commission's Enforcement Bureau (Bureau) works closely with the USTelecom's Industry Traceback Group (Traceback Consortium) to trace the origin of unlawful calls.² Between March 8, 2023 and March 23, 2023, the Traceback Consortium investigated prerecorded voice message telemarketing calls related to health insurance that multiple state attorneys general offices identified as illegal robocalls made without consent.³ The Traceback Consortium conducted tracebacks

¹ See 47 CFR § 64.1200(a)(2); see also Attachment A (identifying such calls).

² *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870, para. 40 (EB 2022); see also *Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, Pub. L. No. 116-105, 133 Stat. 3274, Sec. 13(d) (2019).

³ See Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (Apr. 18, 2023); Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (May 22, 2023).

and determined that Avid originated the calls.⁴ The Traceback Consortium previously notified Avid of these calls and provided Avid with access to supporting data identifying each call.⁵ Avid responded to the Traceback Consortium and claimed that its customer who initiated the calls had prior consent, which it purportedly obtained through opt-in webpages.⁶

Avid's customer failed to make adequate disclosures to obtain consent "that authorizes the caller to deliver advertisements or telemarketing messages using an auto-dialer or an artificial or prerecorded voice," or disregarded when a consumer revoked such alleged prior consent.⁷ To determine whether disclosure language is adequate, the Commission considers:

all relevant facts, including among other things: (a) whether the content of the disclosure language is specific or vague, (b) whether the pertinent disclosure language is prominently displayed or "buried in a lengthy disclosure," (c) whether the consumer was permitted to read the entire disclosure before agreeing to its terms, and (d) whether the "Submit" or "Agree" button was placed above or below the disclosure language.⁸

Separately, consent is no longer valid once a consumer revokes it.⁹

Of the websites Avid identified as providing adequate disclosures, two are insufficient because they are devoid of any language stating that the consumer is agreeing to receive telemarketing calls.¹⁰ To the extent the caller parties are disclosed elsewhere through a hyperlink,

⁴ See Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (Apr. 18, 2023); Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (May 22, 2023).

⁵ Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (Apr. 18, 2023); Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (May 22, 2023).

⁶ Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (Apr. 18, 2023); Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (May 22, 2023).

⁷ See 47 CFR § 64.1200(a)(2) (requiring "prior express written consent" to place telemarketing calls to cellular telephones); *id.* § 64.1200(f)(9)(i) ("prior express written consent" shall include "a clear and conspicuous disclosure").

⁸ *Gregory Robbins, Interstate Brokers of Am. LLC, & Nat'l Health Agents LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 2591, 2594, paras. 6-8 (2022) (citing *Fed. Trade Comm'n v. Amazon.com, Inc.*, 71 F. Supp. 3d 1158, 1166-67 (W.D. Wash. 2014) (finding, for purposes of ruling on a motion to dismiss, that plaintiff plausibly had alleged that consent language was ineffective because it was buried in a lengthy disclosure that was "below the fold" forcing the consumer to scroll down to read); *Sullivan v. All Web Leads, Inc.*, No. 17 C 1307, 2017 WL 2378079, at *7-*8 (N.D. Ill. Jun. 1, 2017) (finding, for purposes of ruling on a motion to dismiss, that the plaintiff plausibly had alleged that defendant had not secured consumer's prior express written consent to automatically call consumer because defendant's website did not contain language notifying consumer that he would be called and because legal disclosures appeared below the "Submit" box); *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17, 30-32 (2d Cir. 2002) (refusing to enforce arbitration agreement and holding that consumer had not provided valid consent because consumers were forced to scroll down the webpage to a screen located below the "Download" button)).

⁹ See *ACA Int'l v. Fed. Commc'n Comm'n*, 885 F.3d 687, 709 (D.C. Cir. 2018) (upholding the Commission's determination that consent can be revoked and stating that "[i]t is undisputed that consumers . . . are entitled to revoke their consent.").

¹⁰ OnlyGreatJobs, *Find Jobs*, <https://www.onlygreatjobs.com/> (last visited June 5, 2023); PrimeRewardSpot, *PrimeRewardSpot: Your One Stop Destination for Rewards*, <https://primerewardspot.com/> (last visited June 5, 2023).

such disclosures are insufficient.¹¹ For a separate call, where a consumer explicitly revoked any alleged consent, Avid provided no defense for the subsequent unconsented-to call.¹² Absent consent, such calls are illegal.¹³

Under our rules, and as explained further below, providers that originate illegal robocall traffic face serious consequences, **including blocking by downstream providers of all of the originating provider's traffic**. To avoid such blocking, Avid must take corrective actions immediately.

Applicable FCC Rules. This letter notifies Avid of relevant rules binding upon it as an originating provider, as well as rules binding upon other downstream providers that may interact with Avid.

First, any provider may block calls from an originating provider that, when notified by the Commission, “fails to effectively mitigate illegal traffic within 48 hours or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls.”¹⁴ This letter provides notice under section 64.1200(k)(4) and describes the mitigation steps Avid must take.

Second, “providers shall accept calls directly from a domestic voice service provider *only* if that voice service provider’s filing appears in the Robocall Mitigation Database.”¹⁵ As explained below, if Avid continues to transmit illegal robocalls the Bureau may initiate proceedings to remove Avid’s certification(s) from the database, thereby requiring providers to cease accepting calls directly from Avid.

Third, sections 64.1200(n) and 64.6305 prescribe various additional obligations for mitigating and preventing illegal robocalls. We remind Avid that failure to comply with any of these obligations may result in additional enforcement action pursuant to the Communications Act and our rules.¹⁶

Mitigation Requirements under Section 64.1200(k)(4). Avid must immediately take certain actions to address the identified apparently illegal traffic in order to avoid downstream providers blocking *all* of Avid’s traffic.¹⁷ Specifically Avid must:

1. Promptly investigate the transmissions identified in Attachment A.
2. “Effectively mitigate”¹⁸ any unlawful traffic by “identifying the source of the traffic and preventing that source from continuing to originate traffic of the same or similar nature.”¹⁹

¹¹ See *Urth Access, LLC*, Order, DA 22-1271, at 7, para. 16 (“We find that listing more than 5,000 ‘marketing partners’ on a secondary website is not sufficient to demonstrate that the called parties consented to the calls from any one of these ‘marketing partners.’”).

¹² Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (Apr. 18, 2023); Traceback Consortium Subpoena Response on file at EB-TCD-23-00035301 (May 22, 2023).

¹³ See 47 CFR § 64.1200(a)(2).

¹⁴ *Id.* § 64.1200(k)(4).

¹⁵ *Id.* § 64.6305(e)(1) (emphasis added).

¹⁶ See 47 U.S.C. § 503; 47 CFR §§ 64.1200(n), 64.6305.

¹⁷ 47 CFR § 64.1200(n)(2).

¹⁸ *Id.* § 64.1200(k)(4)

¹⁹ *Id.* § 64.1200(f)(18).

3. “Implement effective measures to prevent new and renewing customers from using [Avid’s] network to originate illegal calls.”²⁰
4. Within 48 hours of issuance of this letter, inform the Commission and the Traceback Consortium of steps taken to mitigate the identified apparent illegal traffic.²¹ If Avid has evidence that the transmissions identified in Attachment A were legal calls, present that evidence to the Commission and the Traceback Consortium.
5. Within 14 days of the issuance of this letter, inform the Commission and the Traceback Consortium of the steps Avid is taking to prevent customers from using its network to transmit illegal robocalls.²² The Company must also include a declaration attesting to the truthfulness and accuracy of its response.²³ Failure to provide this information within 14 days shall be equivalent to having failed to put effective measures in place.²⁴

If after 48 hours from the issuance of this letter Avid continues to originate unlawful robocall traffic from the entities involved in these campaigns, downstream U.S.-based voice service providers may begin blocking all calls from Avid after notifying the Commission of their decision and providing a brief summary of their basis for making such a determination.²⁵ Furthermore, if after 14 days, Avid has not taken sufficient actions to prevent its network from continuing to be used to transmit illegal robocalls, then downstream U.S.-based providers may block calls following notice to the Commission.²⁶ **U.S.-based voice service providers may block ALL call traffic transmitting from Avid’s network if the Company fails to act within either deadline.**²⁷

Additional Consequences under 64.6305(e) and other robocalling rules. If Avid fails to take the actions listed above, or knowingly or negligently continues to originate illegal robocalls after responding to this letter, Avid may be subject to additional consequences. **Continued transmission of illegal robocalls following this notice may be used as evidence that Avid’s certification in the Robocall Mitigation Database is deficient, and the Bureau may initiate proceedings to remove the Company’s certification from the database.**²⁸ If Avid’s certification is removed from the Robocall Mitigation Database, all intermediate providers and terminating voice service providers must immediately cease accepting all of the Company’s calls.²⁹ If the Bureau initiates a proceeding to remove Avid’s certification from the Robocall Mitigation Database, the Company will have an opportunity to respond.³⁰

²⁰ *Id.* § 64.1200(k)(4).

²¹ *See Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7630, para. 42 (2020) (*Call Blocking Safe Harbor Report and Order*).

²² *See id.* at 7630, para. 43.

²³ 47 CFR § 1.17; *see also id.* § 1.16 (describing the language to be used in such declarations).

²⁴ Avid is encouraged to reach out to the Commission before the deadline if it anticipates needing more time to execute this step.

²⁵ 47 CFR § 64.1200(k)(4).

²⁶ *See Call Blocking Safe Harbor Report and Order*, 35 FCC Rcd at 7630, para. 43.

²⁷ *Id.*; 47 CFR § 64.1200(k)(4).

²⁸ *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1902-03, para. 83 (2020) (*Second Call Authentication Trust Anchor Report and Order*); *see also* 47 CFR § 64.6305(c) (prescribing Robocall Mitigation Database certification requirements for originating providers).

²⁹ 47 CFR § 64.6305(e)(1).

³⁰ *Second Call Authentication Trust Anchor Report and Order*, 36 FCC Rcd at 1903, para. 83.

Finally, Avid may also be subject to additional enforcement penalties, including monetary penalties, for failing to take steps to address illegal robocall traffic on its network as required by the Commission's rules.³¹

Please direct any inquiries or responses regarding this letter to Jane van Bente, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, at jane.vanbente@fcc.gov or (202) 418-7167; and cc: to Kristi Thompson, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, at kristi.thompson@fcc.gov. A copy of this letter has been sent to the Traceback Consortium.

Sincerely,

Loyaan A. Egal
Chief
Enforcement Bureau
Federal Communications Commission

³¹ See 47 CFR §§ 64.1200(n)(1)-(3) (prescribing steps voice service providers must take to address and prevent illegal robocalls); *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1902, para. 83; see also 47 U.S.C. § 503 (providing that a forfeiture penalty may be imposed on any person who willfully or repeatedly violates the Commission's rules).

ATTACHMENT A

Customer	Date of ITG Notification	Date of Call	Caller ID	Called Number	Description	Violation
Digital Media Solutions, LLC	Mar 08, 2023 21:54 UTC	Mar 02, 2023 17:29 UTC	(913)	(913)	SeniorAid-Helper	47 USC 227(b); 47 CFR 64.1200(a)
Digital Media Solutions, LLC	Mar 23, 2023 22:25 UTC	Mar 21, 2023 20:44 UTC	(520)	(520)	Medicare-Rewards-P1	47 USC 227(b); 47 CFR 64.1200(a)
Digital Media Solutions, LLC	Mar 23, 2023 19:45 UTC	Mar 22, 2023 16:35 UTC	(336)	(336)	SeniorAid-Helper	47 USC 227(b); 47 CFR 64.1200(a)