

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
AT&T Corporation)
Apparent Liability for Forfeiture)
File Nos. EB-03-TC-020
EB-03-TC-141
NAL/Acct. No. 200332170008
FRN: 0006380976

ORDER

Adopted: July 8, 2004

Released: July 9, 2004

By the Commission:

1. In this Order, we adopt a Consent Decree terminating two investigations by the Commission, one of which led to a Notice of Apparent Liability, regarding potential non-compliance by AT&T Corporation ("AT&T") with the Do-Not-Call Requirements contained in Section 227 of the Communications Act of 1934, as amended (the "Act") and Section 64.1200 of the Commission's rules.

2. The Commission and AT&T have negotiated the terms of a Consent Decree that would resolve these matters and terminate the investigations. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigations.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended, that the attached Consent Decree IS ADOPTED.

5. AT&T shall make its voluntary contribution to the United States Treasury by mailing a check, wire transfer, or money order, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332170008 and FRN 0006380976.

1 AT&T Corporation, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 23398 (2003) (NAL).

2 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

3 47 U.S.C. §§ 154(i), 154(j), 503(b).

6. IT IS FURTHER ORDERED that the above-captioned Commission investigations into the matters described herein are terminated and the NAL is canceled.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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Federal Communications Commission
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In the Matter of)
AT&T Corporation) File No. EB-03-TC-020
Apparent Liability for Forfeiture) File No. EB-03-TC-141
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CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the "FCC" or the "Commission") and AT&T Corporation ("AT&T"), by their authorized representative, hereby enter into this Consent Decree to resolve two investigations (one of which involved a Notice of Apparent Liability ("NAL")) (together, the "Investigations") by the Commission regarding potential non-compliance with the Do-Not-Call requirements contained in Section 227 of the Communications Act of 1934, as amended (the "Act"), and Section 64.1200 of the Commission's rules. The Investigations were undertaken pursuant to Sections 4(i) and 403 of the Act.

2. In 1991, Congress enacted the Telephone Consumer Protection Act ("TCPA") to protect consumers from unwanted and unsolicited telemarketing, among other things. The Commission in 1992 adopted section 64.1200(e) of the rules to require that any entity engaged in telephone solicitation maintain a Do-Not-Call list to record residential telephone subscribers' requests not to receive future solicitations from that entity. In July 2003, the Commission adopted new rules that supplement the company-specific Do-Not-Call requirements with a National Do-Not-Call Registry that is maintained by the Federal Trade Commission. Those amendments to the FCC rules took effect October 1, 2003.

1 AT&T Corporation, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 23398 (2003).

2 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

3 47 U.S.C. §§ 154(i), 403.

4 The TCPA, Pub. L. No. 102-243, 105 Stat. 2394 (1991), is codified at 47 U.S.C. § 227.

5 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992).

6 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (TCPA Revisions Report and Order).

3. On April 1, 2003, the Enforcement Bureau of the Commission initiated an inquiry into AT&T's compliance with the company-specific Do-Not-Call rules then in effect.⁷ The inquiry sought information concerning AT&T's telemarketing procedures, its monitoring of Do-Not-Call requests, and its customer records. Based on that inquiry, and its review of residential customers' complaints, on November 3, 2003 the Commission released a NAL finding AT&T apparently liable for violations of the TCPA and the Commission's rule and proposing a forfeiture of \$780,000.⁸

4. AT&T filed an Opposition to the NAL, in which it denied having placed telemarketing calls to some of the named subscribers but admitted having placed such calls in error to many of the complaining customers. AT&T contended that such inadvertent errors do not provide a basis for liability under the TCPA and section 64.1200 of the Commission's rules. AT&T also contended that no forfeiture should be assessed under Section 503 of the Act for such inadvertent errors because it had not "willfully" or "repeatedly" failed to comply with the Act and the Commission's regulations.⁹

5. On December 5, 2003, the Bureau initiated an inquiry into AT&T's compliance with the Commission's amended rules with respect to the National Do-Not-Call Registry and requested that AT&T provide certain information.¹⁰ AT&T submitted responses to the Bureau's request for such information.¹¹ On March 19, 2004, the Bureau sent a second letter of inquiry in this matter to AT&T, seeking further information about the company's compliance with Commission rules.¹² AT&T has not yet filed a response to this second letter.

6. On February 24, 2004, AT&T filed a Complaint for Injunctive Relief in United States District Court for the District of Columbia, seeking judicial enforcement of requests it had previously made to the Commission under the Freedom of Information Act ("FOIA") which it claimed were related to the NAL.¹³

⁷ Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Michael F. Del Casino, Regulatory Division Manager, AT&T (Apr. 1, 2003); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Michael F. Del Casino, Regulatory Division Manager, AT&T (Apr. 10, 2003); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Michael F. Del Casino, Regulatory Division Manager, AT&T (Apr. 29, 2003); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Michael F. Del Casino, Regulatory Division Manager, AT&T (June 2, 2003); Letter from Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Michael F. Del Casino, Regulatory Division Manager, AT&T (Aug. 15, 2003).

⁸ The NAL alleged violations of the company-specific Do-Not-Call requirements, not the Commission's rules with respect to the National Do-Not-Call Registry.

⁹ AT&T Opposition, filed December 17, 2003.

¹⁰ See Letter from Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC to Michael Del Casino, Regulatory Division Manager, AT&T Corporation, dated December 5, 2003.

¹¹ See Letter from Michael C. Lamb, Chief Counsel – AT&T Consumer Marketing and Sales, to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC dated February 2, 2004; Letter from Dermot Bree, Senior Attorney – AT&T Small Business Marketing and Sales, to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC dated February 6, 2004.

¹² See Letter from Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC to Michael Del Casino, Regulatory Division Manager, AT&T Corporation, dated March 19, 2004.

¹³ *AT&T Corp. v. FCC*, Case No. 1:04CVV00249 (D.D.C., filed Feb. 17, 2004).

II. DEFINITIONS

7. For the Purposes of this Consent Decree, the following definitions shall apply:
- (a) The “FCC” or the “Commission” means the Federal Communications Commission and all bureaus and offices of the Commission, including the Enforcement Bureau.
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “AT&T” or the “Company” means AT&T Corporation, and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns.
 - (d) “Parties” means AT&T and the Federal Communications Commission.
 - (e) “Communications Act” or “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (f) “Adopting Order” means an Order of the Commission adopting the terms and conditions of this Consent Decree without change, addition or modification.
 - (g) “Effective Date” means the date on which the Commission adopts the Adopting Order.
 - (h) “Notice of Apparent Liability” or “NAL” means the Notice of Apparent Liability for Forfeiture released on November 3, 2003, *AT&T Corporation*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 23398 (2003).
 - (i) “Investigations” means the NAL and the Bureau’s letters of inquiry in File Nos. EB-03-TC-020 and EB-03-TC-141, together with all other Do-Not-Call complaints against AT&T received by the Commission prior to the Effective Date.

III. AGREEMENT

8. AT&T represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. AT&T further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative, as a true act and deed, as of the date affixed next to said representative’s signature. Said representative and AT&T respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of AT&T, and on behalf of AT&T and that by his/her signature said representative is binding AT&T to the terms and conditions of this Consent Decree.

9. AT&T agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. AT&T will make a voluntary contribution to the United States Treasury in the amount of four hundred ninety thousand dollars (\$490,000) within 14 calendar days after the Commission Order adopting this Consent Decree becomes final. AT&T must make this payment by check, wire transfer, or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer, or money order should refer to “NAL Acct. No. 200332170008.” If AT&T makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If AT&T makes this payment by wire transfer, it must wire such payment in accordance with

Commission procedures for wire transfers.

11. For purposes of settling the matters set forth herein, AT&T agrees to take the actions described below:

- (a) For at least two (2) years from the Effective Date, AT&T will perform quality control monitoring of the compliance by its telemarketing representatives and those of AT&T's vendors with the obligation to accept Do-Not-Call requests by residential customers and appropriately transmit them for implementation on the AT&T Do-Not-Call list.
- (b) In connection with subparagraph (a), AT&T will monitor at least 40,000 telemarketing calls per month, which number shall increase or decrease proportionately to the extent that AT&T's number of monthly telemarketing calls increases or decreases from its current monthly telemarketing volume.
- (c) To the extent that such monitoring may disclose that its telemarketing representatives (or those of its vendors) have failed accurately to record and/or appropriately to transmit for implementation a Do-Not-Call request made by any customer, AT&T will promptly correct its Do-Not-Call list to reflect that request.
- (d) AT&T will take appropriate disciplinary action and/or require supplemental training in the event that its quality control monitoring or any other source establishes that any telemarketing representative has failed to follow legal obligations or AT&T policies with respect to Do-Not-Call requests. In the case of a knowing and intentional failure by a telemarketing representative employed by one of its vendors, AT&T will direct its vendor to ensure that the representative no longer performs telemarketing on AT&T's behalf. In the case of a knowing and intentional failure by an AT&T employee, AT&T will also take disciplinary action to the extent permitted under collective bargaining agreements and applicable law.
- (e) Before a telemarketing representative employed by AT&T or by an AT&T telemarketing vendor makes telephone solicitations to residential telephone subscribers on behalf of AT&T, the representative will receive thorough Do-Not-Call training. Such training will include educating the representatives concerning state and federal Do-Not-Call rules, including the requirements of the TCPA and associated federal rules currently in effect.
- (f) AT&T will retain the results of such monitoring, and any remedial action taken, for at least four (4) years from the Effective Date and shall make such results available to the Commission within twenty (20) days after the Commission submits a request for such results to AT&T.

Nothing in this Compliance Plan shall alter AT&T's obligation to otherwise comply with the Act and with the Commission's rules and orders.

12. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigations concerning compliance with Section 227 of the Act and Section 64.1200(c) of the Commission's rules and resolve the Investigations, including the NAL. By this Consent Decree, the Notice of Apparent Liability is cancelled, the apparent findings in the NAL are withdrawn, and the NAL has no legal force or effect.

13. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigations. The Commission agrees that, in the absence of new material evidence related to this matter, it will not use the facts developed in the Investigations or the existence of this Consent Decree, on its own motion, to initiate any new proceedings, formal or informal, or take any

actions, including any other enforcement action, against AT&T, nor will the Commission, on its own motion, seek any administrative or other penalties from AT&T based on these Investigations. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint.

14. AT&T agrees to file within five (5) business days of the Effective Date a notice to dismiss with prejudice the complaint for injunctive and other relief captioned *AT&T Corp. v. Federal Communications Commission*, Case Number 1:04CV00249, pending in the United States District Court for the District of Columbia. The parties also agree to cooperate in any further action to obtain dismissal of the complaint in accordance with the notice required by this paragraph.

15. AT&T waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

16. AT&T's decision to enter into this Consent Decree is expressly contingent upon the issuance of an Adopting Order by the Commission that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

17. AT&T represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation that engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree.

18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. The Parties also agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation of the subsequent rule or order, that provision will be superseded by such Commission rule or order.

20. By this Consent Decree, AT&T does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of AT&T's compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Consent Decree, and no waiver of such privileges is made by this Consent Decree.

21. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AT&T nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AT&T and the Commission will waive any statutory right to a trial de novo with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

22. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Act and the Commission's Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, AT&T does not admit or deny any

wrongdoing, non-compliance, or violation of the Act or the Commission rules in connection with the matters that are the subject of this Consent Decree.

23. AT&T agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

24. The Parties agree that the requirements of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

25. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For AT&T Corporation

By: _____
Marlene H. Dortch
Secretary

By: _____

Date

Date