

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA, |) | Case No. _____ |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | COMPLAINT FOR CIVIL |
| COMCAST CORPORATION, |) | PENALTIES, PERMANENT |
| a Pennsylvania corporation, |) | INJUNCTION, AND OTHER |
| |) | RELIEF |
| Defendant. |) | |
| |) | |

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission” or “FTC”), pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a) and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendant’s violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310, as amended.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).
3. Venue is proper in the United States District Court for the Eastern District of Pennsylvania under 28 U.S.C. §§ 1391(b-c) and 1395(a) and 15 U.S.C. § 53(b).

DEFENDANT

4. Defendant Comcast Corporation, a Pennsylvania corporation, (“Comcast”) has its principal place of business located within the Eastern District of Pennsylvania at One Comcast Center, 1701 JFK Boulevard, Philadelphia, PA 19103. Comcast is a seller of goods or services to consumers that has called or has caused telemarketers to call consumers to induce the purchase of its goods or services. At all times relevant to this Complaint, Comcast transacts or has transacted business in the Eastern District of Pennsylvania.

**THE DO NOT CALL PROVISIONS OF
THE TELEMARKETING SALES RULE**

5. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and the final amended TSR (the “Amended TSR”),

68 Fed. Reg. 4580, 4669. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. 16 C.F.R.

§ 310.4(b)(1)(iii)(A). A telephone call is an “outbound telephone call” under the Amended TSR if the telephone call is initiated by a telemarketer to induce the purchase of goods or services, or to solicit a charitable contribution. 16 C.F.R. § 310.2(u).

6. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANT’S BUSINESS ACTIVITIES

7. Comcast is a “seller” or “telemarketer” engaged in “telemarketing,” as defined by the Amended TSR, 16 C.F.R. § 310.2.
8. Comcast is a seller of entertainment and communication goods and services, including cable television, Internet, and Voice over Internet Protocol (“VoIP”) telephone services, to consumers. Comcast is also a telemarketer. Comcast has called or caused other telemarketers to call consumers in the United States to induce the purchase of its goods or services.
9. Comcast has engaged in telemarketing by plans, programs, or campaigns conducted to induce the purchase of goods or services by use of one or more telephones and which involve more than one interstate telephone call.

10. After January 1, 2005, Comcast caused its internal call centers and third-party telemarketing vendors to initiate outbound telephone calls to telemarket its goods or services, including Comcast's cable television, Internet, and VoIP telephone services.
11. Comcast has written policies and procedures regarding compliance by its internal call centers and third-party telemarketing vendors with the TSR's requirement that sellers and telemarketers not call any consumers who have previously stated that they do not wish to receive outbound telemarketing calls made by or on behalf of Comcast.
12. Notwithstanding Comcast's policies and procedures, some of Comcast's internal call centers and third-party telemarketing vendors did not comply with the TSR's entity-specific Do Not Call provision, and together made more than 900,000 outbound telephone calls to consumers on Comcast's behalf after those consumers specifically requested that Comcast stop calling them. Thus, Comcast failed to implement a TSR-compliant Do Not Call program which would have identified problems at internal call centers and third-party telemarketing vendors and rectified those problems in a timely manner.
13. At all times relevant to this Complaint, Comcast has maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

VIOLATIONS OF THE TELEMARKETING SALES RULE

(Ignoring Entity-Specific Do Not Call Requests)

14. In numerous instances, in connection with telemarketing, Comcast has engaged in or caused other telemarketers to engage in initiating an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of Comcast, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

CONSUMER INJURY

15. Consumers in the United States have suffered and will suffer injury as a result of Comcast's violations of the TSR. Absent injunctive relief by this Court, Comcast is likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

16. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
17. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2008) and by 74 Fed. Reg. 857 (Jan. 9, 2009) (to be codified at 16 C.F.R. § 1.98(d)), authorizes this Court to award monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, and up to \$16,000 for each violation of the TSR after February 9, 2009. Defendant's violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
18. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendant's violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America, as authorized by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b) and the Court's own equitable powers, requests that the Court:

- A. Enter judgment against Defendant and in favor of Plaintiff for each law violation alleged in this Complaint;
- B. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendant;
- C. Award Plaintiff monetary civil penalties from the Defendant for every violation of the TSR; and
- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

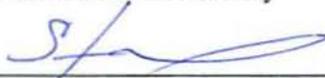
Dated: 4/15/09

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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