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15 Attorneys for Plaintiff United States of America

16  
17 IN THE UNITED STATES DISTRICT COURT  
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
19 WESTERN DIVISION

20	_____ )	
21	UNITED STATES OF AMERICA, )	Civ. No.
22	Plaintiff, )	
23	v. )	STIPULATED JUDGMENT
24	DIRECTV, Inc., et al. )	AND ORDER FOR PERMANENT
	_____ )	INJUNCTION AGAINST
		AMERICAN COMMUNICATIONS
		OF THE TRIAD AND MICHAEL
		GIBSON

25 Plaintiff, the United States of America, acting upon  
26 notification and authorization to the Attorney General by the  
27 Federal Trade Commission ("FTC" or the "Commission"), has  
28 commenced this action by filing the complaint herein, and

1 defendants American Communication of the Triad and Michael Gibson  
2 have waived service of the summons and complaint. Plaintiff and  
3 the above-named defendants, represented by the attorneys whose  
4 names appear hereafter, have agreed to settlement of this action.

5 **THEREFORE**, on the joint motion of the parties, it is hereby  
6 **ORDERED, ADJUDGED AND DECREED** as follows:

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter and  
9 the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and  
10 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

11 2. Plaintiff and Defendants consent to Jurisdiction and  
12 Venue in this District.

13 3. The activities of Defendants are in or affecting  
14 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

15 4. Defendant American Communications of the Triad admits  
16 that it has engaged in telemarketing of goods or services on  
17 behalf of DIRECTV, Inc., after October 17, 2003. Defendant  
18 American Communications of the Triad admits that, while it was  
19 engaged in telemarketing of goods or service on behalf of DIRECTV  
20 after October 17, 2003, Defendant American Communications of the  
21 Triad violated the Telemarketing Sales Rule by making outbound  
22 calls to phone numbers in the National Do Not Call Registry.

23 5. The complaint states a claim upon which relief may be  
24 granted against Defendants, under Sections 5(a), 5(m)(1)(A),  
25 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15  
26 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.



1           4.    "Customer" means any person who is or may be required  
2 to pay for goods or services offered through telemarketing.

3           5.    "Outbound telephone call" means a telephone call  
4 initiated by a telemarketer to induce the purchase of goods or  
5 services or to solicit a charitable contribution.

6           6.    "Person" means any individual, group, unincorporated  
7 association, limited or general partnership, corporation, or  
8 other business entity.

9           7.    "Telemarketing" means a plan, program, or campaign  
10 which is conducted to induce the purchase of goods or services or  
11 a charitable contribution, by use of one or more telephones and  
12 which involves more than one interstate telephone call. The term  
13 does not include the solicitation of sales through the mailing of  
14 a catalog which: contains a written description or illustration  
15 of the goods or services offered for sale; includes the business  
16 address of the seller; includes multiple pages of written  
17 material or illustrations; and has been issued not less  
18 frequently than once a year, when the person making the  
19 solicitation does not solicit customers by telephone but only  
20 receives calls initiated by customers in response to the catalog  
21 and during those calls takes orders only without further  
22 solicitation. For purposes of the previous sentence, the term  
23 "further solicitation" does not include providing the customer  
24 with information about, or attempting to sell, any other item  
25 included in the same catalog which prompted the customer's call  
26 or in a substantially similar catalog.

27           8.    "Seller" means any person who, in connection with a  
28 telemarketing transaction, provides, offers to provide, or

1 arranges for others to provide goods or services to the customer  
2 in exchange for consideration, whether or not such person is  
3 under the jurisdiction of the Federal Trade Commission.

4 9. "Telemarketer" means any person who, in connection with  
5 telemarketing, initiates or receives telephone calls to or from a  
6 customer or donor.

7 10. "Representatives" means Defendants' successors,  
8 assigns, officers, agents, servants, employees and those persons  
9 in active concert or participation with them who receive actual  
10 notice of this Order by personal service or otherwise.

11 11. "National Do Not Call Registry" means the National Do  
12 Not Call Registry maintained by the Federal Trade Commission  
13 pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

14 12. "Established business relationship" means a  
15 relationship between the seller and a person based on: (a) the  
16 person's purchase, rental, or lease of the seller's goods or  
17 services or a financial transaction between the person and  
18 seller, within the eighteen (18) months immediately preceding the  
19 date of the telemarketing call; or (b) the person's inquiry or  
20 application regarding a product or service offered by the seller,  
21 within the three months immediately preceding date of a  
22 telemarketing call.

23 **ORDER**

24 **I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

25 IT IS ORDERED that, in connection with telemarketing,  
26 Defendants and their Representatives are hereby permanently  
27 restrained and enjoined from engaging in, causing other persons  
28

1 to engage in, or assisting other persons to engage in, violations  
2 of the Telemarketing Sales Rule, including but not limited to:

3 A. Initiating any outbound telephone call to any person at  
4 a telephone number on the National Do Not Call Registry unless  
5 the seller provides documentation demonstrating that:

6 (1) the seller has obtained the express agreement, in  
7 writing, of such person to place calls to that person.  
8 Such written agreement shall clearly evidence such  
9 person's authorization that calls made by or on behalf  
10 of a specific party may be placed to that person, and  
11 shall include the telephone number to which the calls  
12 may be placed and the signature of that person; or

13 (2) the seller has an established business  
14 relationship with such person and that person has not  
15 previously stated that he or she does not wish to  
16 receive outbound telephone calls made by or on behalf  
17 of the seller; or

18 B. Initiating any outbound telephone call to a person when  
19 that person has previously stated that he or she does not wish to  
20 receive an outbound telephone call made by or on behalf of the  
21 seller whose goods or services are being offered or made by or on  
22 behalf of the charitable organization for which a charitable  
23 contribution is being solicited; or

24 C. Initiating any outbound telephone call to a telephone  
25 number within a given area code without first paying the required  
26 annual fee for access to the telephone numbers within that area  
27 code that are on the National Do Not Call Registry; and

28

1 D. Abandoning any outbound telephone call to a person by  
2 failing to connect the call to a live operator within two seconds  
3 of the person's completed greeting, unless the following four  
4 conditions are met:

5 1. Defendants employ technology that ensures  
6 abandonment of no more than three percent of all calls answered  
7 by a person, measured per day per calling campaign;

8 2. Defendants, for each telemarketing call placed,  
9 allow the telephone to ring for at least fifteen seconds or four  
10 rings before disconnecting an unanswered call;

11 3. Whenever a live operator is not available to speak  
12 with the person answering the call within two seconds after the  
13 person's completed greeting, the seller or telemarketer promptly  
14 plays a recorded message that states the name and telephone  
15 number of the seller on whose behalf the call was placed; and

16 4. Defendants retain records, in accordance with 16  
17 C.F.R. § 310.5 (b)-(d), establishing compliance with the  
18 preceding three conditions;

19 *Provided, however,* that if the Commission promulgates any  
20 rule that modifies or supersedes the Telemarketing Sales Rule, in  
21 whole or part, Defendants shall comply fully and completely with  
22 all applicable requirements thereof, on and after the effective  
23 date of any such rule.

## 24 II. CIVIL PENALTY AND RIGHT TO REOPEN

25 **IT IS FURTHER ORDERED** that:

26 A. Judgment in the amount of seven hundred forty six  
27 thousand, three hundred dollars (\$746,300) is hereby entered  
28 against Defendant American Communications of the Triad,, as a

1 civil penalty, pursuant to Section 5(m)(1)(A) of the Federal  
2 Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Based upon  
3 Defendant American Communications of the Triad's sworn  
4 representations in financial statements, full payment for the  
5 foregoing judgment is suspended except for fifty thousand dollars  
6 (\$50,000), contingent upon the accuracy and completeness of the  
7 financial statements as set forth in subparagraphs E and F of  
8 this Paragraph.

9 B. ~~Within five (5) days of receipt of notice of the entry~~  
10 of this Order, Defendant American Communications of the Triad  
11 shall transfer the civil penalty payment in the form of a wire  
12 transfer or certified or cashier's check made payable to the  
13 Treasurer of the United States. The check or written  
14 confirmation of the wire transfer shall be delivered to:  
15 Director, Office of Consumer Litigation, U.S. Department of  
16 Justice Civil Division, P.O. Box 386, Washington, DC 20044. The  
17 cover letter accompanying the check shall include the title of  
18 this litigation and a reference to DJ# 102-3316.

19 C. Defendant American Communications of the Triad shall  
20 cooperate fully with Plaintiff and the Commission and its agents  
21 in all attempts to collect the amount due pursuant to this  
22 Paragraph if Defendant American Communications of the Triad fails  
23 to pay fully the amount due at the time specified herein. In  
24 such an event, Defendant American Communications of the Triad  
25 agrees to provide Plaintiff and the Commission with its federal  
26 and state tax returns for the preceding two years, and to  
27 complete new standard-form financial disclosure forms fully and  
28 accurately within ten (10) business days of receiving a request

1 from Plaintiff or the Commission to do so. Defendant American  
2 Communications of the Triad further authorizes Plaintiff and the  
3 Commission to verify all information provided on the financial  
4 disclosure form of American Communications of the Triad with all  
5 appropriate third parties, including but not limited to financial  
6 institutions.

7 D. Upon payment by Defendant American Communications  
8 of the Triad as provided in subparagraph B of this Paragraph, the  
9 ~~remainder of the civil penalty judgment shall be suspended~~  
10 subject to the conditions set forth in subparagraph E of this  
11 Paragraph.

12 E. Plaintiff's agreement to this Order is expressly  
13 premised upon the truthfulness, accuracy and completeness of  
14 Defendant American Communications of the Triad's sworn financial  
15 statements and supporting documents submitted to the Commission  
16 on September 23, 2004, October 26, 2004, May 26, 2005 and June 8,  
17 2005, which include material information upon which Plaintiff  
18 relied in negotiating and agreeing to this Order. If, upon  
19 motion by the Plaintiff, this Court finds that Defendant American  
20 Communications of the Triad has failed to disclose any material  
21 asset or materially misstated the value of any asset in the  
22 financial statements and related documents described above, or  
23 has made any other material misstatement or omission in the  
24 financial statements and related documents described above, then  
25 this Order shall be reopened and suspension of the judgment shall  
26 be lifted for the purpose of requiring payment of civil penalty  
27 in the full amount of the judgment (\$746,300), less the sum of  
28 all amounts paid to the Treasurer of the United States pursuant

1 to subparagraph B of this Paragraph. *Provided, however,* that in  
2 all other respects this Order shall remain in full force and  
3 effect, unless otherwise ordered by the Court.

4 F. In accordance with 31 U.S.C. § 7701, Defendant American  
5 Communications of the Triad is hereby required, unless it has  
6 done so already, to furnish to Plaintiff and the FTC its taxpayer  
7 identifying number(s) (social security numbers or employer  
8 identification numbers) which shall be used for purposes of  
9 ~~collecting and reporting on any delinquent amount arising out of~~  
10 Defendant American Communications of the Triad's relationship  
11 with the government.

12 G. Defendant American Communications of the Triad agrees  
13 that the facts as alleged in the complaint filed in this action  
14 shall be taken as true in any subsequent litigation filed by  
15 Plaintiff or the Commission to enforce their rights pursuant to  
16 this Order, including but not limited to a nondischargeability  
17 complaint in any subsequent bankruptcy proceeding.

18 H. Proceedings instituted under this Paragraph are in  
19 addition to, and not in lieu of, any other civil or criminal  
20 remedies as may be provided by law, including any other  
21 proceedings that the Plaintiff may initiate to enforce this  
22 Order.

### 23 III. RECORD KEEPING PROVISIONS

24 **IT IS FURTHER ORDERED** that for a period of five (5) years  
25 from the date of entry of this Order, Defendants, and their  
26 successors and assigns, shall maintain and make available to the  
27 Plaintiff or Commission, within fourteen (14) days of the receipt  
28

1 of a written request, business records demonstrating compliance  
2 with the terms and provisions of this Order.

3 **IV. DISTRIBUTION OF ORDER BY DEFENDANT AND**  
4 **ACKNOWLEDGMENTS OF RECEIPT**

5 **IT IS FURTHER ORDERED** that Defendants, and their successors  
6 and assigns, shall within thirty (30) days of the entry of this  
7 Order, provide a copy of this Order with Appendix A to all of  
8 their owners, principals, members, officers, and directors, as  
9 well as managers, agents, servants, employees, and attorneys  
10 having decision-making authority with respect to the subject  
11 matter of this Order; secure from each such person a signed  
12 statement acknowledging receipt of a copy of this Order; and  
13 shall, within ten (10) days of complying with this Paragraph,  
14 file an affidavit with the Court and serve the Commission, by  
15 mailing a copy thereof, to the Associate Director for Marketing  
16 Practices, Bureau of Consumer Protection, Federal Trade  
17 Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580,  
18 setting forth the fact and manner of their compliance, including  
19 the name and title of each person to whom a copy of the Order has  
20 been provided.

21 **V. NOTIFICATION OF BUSINESS CHANGES**

22 **IT IS FURTHER ORDERED** that each Defendant, and its  
23 successors and assigns, shall notify the Associate Director for  
24 Marketing Practices, Bureau of Consumer Protection, Federal Trade  
25 Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580,  
26 at least thirty (30) days prior to any change in such Defendant's  
27 business, including, but not limited to, merger, incorporation,  
28 dissolution, assignment, and sale, which results in the emergence

1 of a successor corporation, the creation or dissolution of a  
2 subsidiary or parent, or any other change, which may affect  
3 Defendant's obligations under this Order.

4 **VI. NOTIFICATION OF INDIVIDUAL'S AFFILIATION**

5 **IT IS FURTHER ORDERED** that Defendant Michael Gibson shall,  
6 for a period of ten (10) years from the date of entry of this  
7 Order, notify Associate Director for Marketing Practices, Bureau  
8 of Consumer Protection, Federal Trade Commission, 600  
9 Pennsylvania Ave., N.W., Washington, D.C. 20580, within thirty  
10 (30) days of his affiliation with a new business or employment  
11 whose activities include telemarketing or his affiliation with a  
12 new business or employment in which his duties involve the sale  
13 or offering for sale of satellite programming.

14 **VII. COMMUNICATION WITH DEFENDANTS**

15 **IT IS FURTHER ORDERED** that for the purposes of compliance  
16 reporting, if undersigned counsel no longer represents a  
17 Defendant, Plaintiff and the Commission are authorized to  
18 communicate directly with such Defendant.

19 **VIII. FEES AND COSTS**

20 **IT IS FURTHER ORDERED** that each party to this Order hereby  
21 agrees to bear its own costs and attorneys' fees incurred in  
22 connection with this action.

23 **IX. SEVERABILITY**

24 **IT IS FURTHER ORDERED** that the provisions of this Order are  
25 separate and severable from one another. If any provision is  
26 stayed or determined to be invalid, the remaining provisions  
27 shall remain in full force and effect.

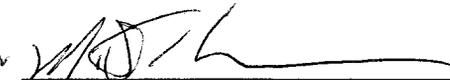
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1 JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and  
2 against Defendants, pursuant to all the terms and conditions  
3 recited above.

4  
5 **FOR THE DEFENDANTS:**

6   
7 MICHAEL GIBSON, Individually

8   
9 AMERICAN COMMUNICATIONS OF  
10 THE TRIAD, INC.  
11 Michael Gibson  
12 President, American  
13 Communications of the Triad

14   
15 DAVID K. ROSENBLUTT  
16 Morgan, Herring, Morgan,  
17 Green, Rosenblutt & Gill,  
18 L.L.P.  
19 1801 Westchester Dr., Ste 200  
20 High Point, NC 27261  
21 336-883-6177  
22 Attorney for American  
23 Communications of the Triad,  
24 and Michael Gibson

5 **FOR THE PLAINTIFF:**

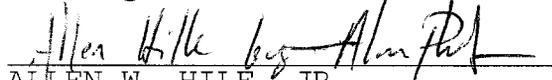
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27 Acting Associate Director for  
28 Marketing Practices

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30 RUSSELL DEITCH  
31 GARY IVENS  
32 Attorneys, Federal Trade  
33 Commission  
34 600 Pennsylvania Ave, N.W.,  
35 Washington, DC 20580

25 IT IS SO ORDERED.

26 DATED: \_\_\_\_\_

27 \_\_\_\_\_  
28 UNITED STATES DISTRICT JUDGE