

PUBLIC STATEMENT OF CHAIRMAN PITOFSKY
COMMISSIONERS ANTHONY AND THOMPSON

EIGHT POINT COMMUNICATIONS, INC.
File No. X990004

We disagree with Commissioner Swindle's dissent in which he states that he does not support the ban on charitable solicitation that is included in Parts I and II of the Order. These provisions prohibit the defendants from "engaging or participating... in soliciting contributions from any donor..." and from providing the means and instrumentalities to any person engaged in soliciting contributions from any donor.

As alleged in the complaint the defendants solicited individuals and small, predominantly new businesses requesting donations on behalf of various non-profit organizations. On numerous instances, the defendants falsely identified themselves as local law enforcement officers or fire fighters. The defendants also misrepresented, among other things, that donations would pay for bullet-proof vests for local law enforcement officers and for benefits for families of local law enforcement officers and fire fighters who died in the line of duty.

Commissioner Swindle believes that the ban on charitable solicitation is a prior restraint on fully-protected speech that, in the absence of a waiver, would be unconstitutional. He also relies on a 1979 Fifth Circuit cases, *International Society for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809 (5th Cir. 1979). Finally, Commissioner Swindle concludes that it is "not in the public interest to seek and obtain relief that, in the absence of waiver, would flatly and permanently infringe the constitutional rights of the defendants to engage in fully-protected speech."

We believe that the ban for charitable solicitations in this matter is justified by the egregious conduct engaged in by the defendants. Further, the relief obtained is consistent with prior Commission settlements in this area. Finally, in our view, the defendants voluntarily agreed to the ban and have essentially waived any First Amendments rights in this area. *See, U.S. v Berke*, 170 F.3d 882, 884 (9th Cir. 1999) (court found that the defendant knowingly and voluntarily waived his First Amendment rights in connection with the entry of a consent decree.)