

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
 )  
Richard Gilmore d/b/a Democratic Dialing ) File No.: EB-TCD-12-00004943  
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 )

CITATION AND ORDER

PRERECORDED MESSAGE VIOLATIONS

Adopted: March 15, 2013

Released: March 15, 2013

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation), issued by the Federal Communications Commission (Commission or FCC) pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act), 47 U.S.C. § 503(b)(5), for violations of the Act and the Commission’s rules that govern telephone solicitations, prerecorded, and autodialed telephone calls.<sup>1</sup> Specifically, Richard Gilmore d/b/a Democratic Dialing (“Democratic Dialing” or “Company”) is being cited for violations of the provisions of the Act and Commission’s rules that (1) prohibit making any calls to cell phones using autodialers or artificial or prerecorded messages absent an emergency purpose or prior express consent<sup>2</sup> and (2) for calls that are otherwise permissible, require certain identification information to be present in prerecorded messages.<sup>3</sup>

2. Notice of Duty to Comply With Law: Democratic Dialing is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Section 227 of the Act or Sections 64.1200 or 64.1601(e) of the Commission’s rules, it may be subject to further legal

<sup>1</sup>See 47 U.S.C. § 227; 47 C.F.R. §§ 64.1200, 64.1601(e). Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227), and is most commonly known as the TCPA. The TCPA and the Commission’s rules restrict a variety of practices that are associated with telephone solicitation and the use of the telephone network to deliver unsolicited advertisements or prerecorded and autodialed telephone calls.

<sup>2</sup> See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

<sup>3</sup> See 47 U.S.C. § 227(d)(3)(A); 47 C.F.R. § 64.1200(b).

action, including monetary fines (forfeitures).<sup>4</sup> Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.<sup>5</sup>

3. Your Response Required: Pursuant to Sections 4(i), (j), and 403 of the Communications Act,<sup>6</sup> we also direct you to confirm within fifteen (15) calendar days after the release date of this Citation that you have (1) ceased making calls to cell phones using autodialers or artificial or prerecorded messages (except as permitted by section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Commission's rules), and (2) ceased making any prerecorded message calls without the identification information required in the Act and Commission's rules.

## II. BACKGROUND

4. The Company offers a service—commonly referred to as “robocalling”—whereby clients use the Company to make artificial or prerecorded voice calls to telephone numbers of the clients' choosing.<sup>7</sup> The Company markets its services on the Internet at [www.democraticdialing.com](http://www.democraticdialing.com), a website that it owns and operates.<sup>8</sup> Clients submit contact information and delivery preferences by email, and the Company responds with instructions about how to create a prerecorded voice message on the Company's toll-free, digital call-in studio.<sup>9</sup> After the pre-recorded calls are made, the Company emails invoices to its Client(s) with a total count of called telephone numbers and a total price.<sup>10</sup> The Company claims that it is able to make millions of autodialed calls for its clients.<sup>11</sup> The Company's clients include individuals, “grass roots” political

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<sup>4</sup> This Citation is being issued to the company named above and includes all other entity names through which it does business, as well as its owners, principals, and officers. Accordingly, all references in this Citation to Democratic Dialing or Company also include all names through which the company does business, and its owners, principals, and officers.

<sup>5</sup> See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (if a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability “*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*” (emphasis added)).

<sup>6</sup> 47 U.S.C. §§ 154(i), (j), 403.

<sup>7</sup> See Letter from Richard Gilmore d/b/a Democratic Dialing, File No. EB-TCD-12-00004943, to William Beckwith, Attorney-Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau at 1 (Dec. 21, 2012) (on file in EB-TCD-12-00004943) (LOI Response). In addition to this cover letter of the LOI Response, the Company provided a disc containing responsive documents, which the Telecommunications Consumers Division received on December 28, 2012 (December Disc). As used in this Citation, the term “LOI Response” includes the contents of the December Disc and, because those contents are unnumbered, we specify the LOI request number and disc file name whenever citing to the contents of the December Disc. Democratic Dialing also supplemented its response to LOI request number 20A by e-mail dated January 11, 2012 (LOI Supplemental Response 20A).

<sup>8</sup> See Letter of Inquiry from Richard Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Richard Gilmore d/b/a Democratic Dialing at 3 (Nov. 20, 2012) (on file in EB-TCD-12-00004943) (LOI); LOI Response 7 (verifying the accuracy of the Telecommunications Consumers Division's description of the Company's business model).

<sup>9</sup> See note 8, above.

<sup>10</sup> See *id.*

<sup>11</sup> See Democratic Dialing Website, Welcome to Democratic Dialing, available at <http://www.democraticdialing.com> (“We've dialed millions of Democratic Robo Calls calls [sic] since 2002”) (visited January 23, 2013); Democratic

campaigns supporting candidates for public office, and public relations firms.<sup>12</sup>

5. On November 20, 2012, the Telecommunications Consumers Division (TCD) of the FCC's Enforcement Bureau sent the Company a letter of inquiry (LOI), directing the Company to, among other things, provide (1) a list of the telephone numbers that the Company called from November 2011 through November 20, 2012 using prerecorded messages; (2) a list of the dates and times when the Company made the calls using the prerecorded messages; and (3) sound files of the delivered prerecorded messages.<sup>13</sup> On December 21, 2012, the Company filed a response to the LOI.<sup>14</sup> The Company's response included the requested information for the month of November 2012, as well as spreadsheets indicating the dates and times that the Company made calls and the phone numbers that Democratic Dialing called during that month.<sup>15</sup> On January 11, 2012, at the request of TCD staff, the Company supplemented its response to LOI request number 20A by providing a list of the Company's clients from November 1, 2011 through November 20, 2012.<sup>16</sup>

### III. APPLICABLE LAW AND VIOLATIONS

#### A. Prohibitions Against Prerecorded Voice Messages and Autodialed Calls To Cell Phones

6. Under Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Commission's rules, prerecorded voice messages and autodialed calls (including autodialed live calls, prerecorded or artificial voice messages, and autodialed text messages) to cell phones and other mobile services, such as paging systems, are generally prohibited. Specifically, Section 227(b)(1)(A)(iii) of the Act states that it is unlawful "for any person . . . to make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."<sup>17</sup> Section 64.1200(a)(1)(iii) of the Commission's rules states that it is unlawful "to initiate any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."<sup>18</sup>

7. The prohibitions in the Act and the FCC rules are subject to only two exceptions: (1) calls made for emergency purposes; and (2) calls made with the prior express consent of the called party.<sup>19</sup> These

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Dialing Website, About Democratic Dialing, [http://www.democraticdialing.com/About\\_Us.html](http://www.democraticdialing.com/About_Us.html) (visited January 7, 2013) ("We have worked in the political calling industry for several years, making hundreds of millions of robocalls.")

<sup>12</sup> See LOI Supplemental Response 20A (Jan. 11, 2013) (listing clients) (on file in EB-TCD-12-00004943).

<sup>13</sup> See LOI at 4-5.

<sup>14</sup> See LOI Response at 1 (on file in EB-TCD-12-00004943).

<sup>15</sup> See LOI Response at 3.

<sup>16</sup> See LOI Supplemental Response 20A.

<sup>17</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>18</sup> 47 C.F.R. § 64.1200(a)(1)(iii).

<sup>19</sup> See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

broad prohibitions cover all prerecorded voice and autodialed calls, including political calls and calls made by or on behalf of nonprofit organizations. Callers contending that they have the prior express consent to make prerecorded voice or autodialed calls to cell phones or other mobile service numbers have the burden of proof to show that they obtained such consent.<sup>20</sup>

8. In addition, Section 227(d)(3)(A) of the Communications Act and Section 64.1200(b) of the Commission's rules require that all otherwise permissible prerecorded messages must include certain information to identify the party responsible for the message. In particular, all permissible prerecorded messages must state clearly at the beginning of the message the identity of the business, individual, or other entity that is responsible for the call.<sup>21</sup> If a business or other corporate entity is responsible for the call, the prerecorded voice message must contain that entity's official business name (the name registered with a state corporation commission or other regulatory authority).<sup>22</sup> In addition, the telephone number<sup>23</sup> of such business, individual, or other entity must be provided either during or after the prerecorded voice message.<sup>24</sup>

**B. Democratic Dialing's Automatic Telephone Dialing System Made Numerous Prerecorded Message Calls to Cell Phones In Violation of Federal Law**

9. Prerecorded Voice Messages and Autodialed Calls to Cell Phones. TCD staff compared lists of the thousands of phone numbers to which the Company made autodialed or prerecorded message calls to an industry-standard, commercially available database of known assigned and ported wireless numbers to determine whether the Company made such calls to wireless telephones.<sup>25</sup> From that analysis, TCD staff determined that the Company made more than 1.1 million autodialed or prerecorded message calls to cell phones, in violation of Section 227(b)(1)(A)(iii) of the Act and Section 64.1200(a)(1)(iii) of the Commission's rules.<sup>26</sup>

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<sup>20</sup> See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (ACA Ruling) (concluding that "[s]hould a question arise as to whether express consent was provided, the burden will be on [the caller] to show it obtained the necessary prior express consent").

<sup>21</sup> See 47 U.S.C. § 227(d)(3)(A)(i); 47 C.F.R. § 64.1200(b)(1).

<sup>22</sup> See 47 C.F.R. § 64.1200(b)(1).

<sup>23</sup> Any telephone number so provided may not be for (1) the autodialer or prerecorded message player that placed the call, (2) a 900 number, or (3) any other number for which charges exceed local or long distance transmission charges. See 47 C.F.R. § 64.1200(b)(2).

<sup>24</sup> See 47 U.S.C. § 227(d)(3)(A)(ii); 47 C.F.R. § 64.1200(b)(2).

<sup>25</sup> See LOI Response to Request 20(c) ("Calling Lists").

<sup>26</sup> See 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii). According to the company, Democratic Dialing uses a third party autodialing service to make calls on behalf of its clients. Democratic Dialing provides its autodialing vendor with the list of numbers to be called and edits and submits prerecorded message(s) to be delivered to those numbers. See LOI Response at 1. The Commission previously has recognized that an entity can be subject to the TCPA even if it does not itself own or physically operate the autodialer. See ACA Ruling, 23 FCC Rcd at 565, para. 10 (holding that in the context of autodialed debt collection calls, the "creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission's rules" and that "[c]alls placed by a third-party collector on behalf of that creditor are treated as if the creditor itself placed the call"). Consistent with the Commission's 2008 Declaratory Ruling, under the circumstances discussed here Democratic Dialing, as the entity that placed or caused to be placed the calls in question, bears responsibility for compliance with the TCPA and the accompanying FCC rules.

10. As explained above, it is unlawful to make any call using any automatic telephone dialing system or prerecorded voice to a cell phone with only two exceptions: (1) calls made for emergency purposes; or (2) calls made with the express prior consent of the called party.<sup>27</sup> Sole proprietor Richard Gilmore represents that Democratic Dialing makes calls only political or charitable purposes except for “a very few times when I have sent emergency notifications.”<sup>28</sup> The majority of the prerecorded message calls made by the Company were for the purpose of either seeking a vote for a political candidate or endorsing a political candidate for office. None of the recordings provided by the Company in response to the LOI indicated that such calls were made for an emergency purpose.<sup>29</sup> Aside from Mr. Gilmore’s assertion above, the Company provided no evidence that any of the calls contained emergency notifications. Therefore, we conclude that the calls made to cell phones by Democratic Dialing were not made for an emergency purpose. Similarly, the Company did not provide evidence of prior express consent for these messages. We therefore conclude that the calls the Company made to cell phones were not made with the prior express consent of the recipients.<sup>30</sup>

11. Independently, TCD staff randomly chose 10 cell phone numbers that Democratic Dialing called with a prerecorded message in November 2012 and spoke with the call recipient. A chart of the identified cell phone numbers and the dates and times that Democratic Dialing made autodialed calls and delivered prerecorded messages to the recipients is attached at Attachment A. Without exception, each and every recipient denied giving anyone permission to make autodialed calls or prerecorded messages to their respective cell phones at any time.<sup>31</sup> One such recipient, when asked whether he or his wife had ever given such permission to receive calls on their respective cell phones, emphatically stated “absolutely NOT!” and said that he was so irritated by prior similar robocalls that he had filed complaints about them with the FCC previously.<sup>32</sup> Several other recipients that TCD staff spoke to also expressed significant frustration and anger at receiving autodialed and/or prerecorded message calls on their cell phones. This further demonstrates that Democratic Dialing did not have the prior express consent of these called parties to make an autodialed, prerecorded call to their mobile phones.

12. Failure to Include Identifications. Based on staff review of the 24 prerecorded messages provided by the Company in response to the LOI, TCD determined that the vast majority of the messages either did not identify the caller at the beginning of the message, or failed to include a contact telephone number, as required by the Act and the Commission’s rules.<sup>33</sup>

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<sup>27</sup> See Section III.A, above.

<sup>28</sup> See LOI Response at 1.

<sup>29</sup> See 47 C.F.R. § 64.1200(f)(4) (“emergency purposes means calls made necessary in any situation affecting the health and safety of consumers”). TCD staff reviewed sound files provided by Democratic Dialing and determined that none of those files contained content that could be characterized as an emergency notification. See LOI Response 20(b) (“Recordings”).

<sup>30</sup> See note 20, above.

<sup>31</sup> See Affidavit of Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 18, 2013) (on file in EB-TCD-12-00004943).

<sup>32</sup> See *id.* at 2 (emphasis in original).

<sup>33</sup> 47 U.S.C. § 227(d)(3)(A); 47 C.F.R. § 64.1200(b).

13. Finding of Violation. Based on the record developed in this case, the Enforcement Bureau, acting through its delegated authority, finds that Richard Gilmore d/b/a Democratic Dialing, made one or more prerecorded messages in violation of Section 227 of the Communications Act, and Section 64.1200 of the Commission's related rules.

#### IV. RESPONDING TO THIS CITATION

14. Democratic Dialing may respond to this Citation within thirty (30) days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview with the Commission's Telecommunications Consumers Division in Washington, DC, or (3) a personal interview at the Commission Field Office nearest to its place of business. Democratic Dialing's response should specify the actions that the company is taking to ensure that it does not violate the Communications Act or the Commission's rules governing TCPA violations, as described herein.

15. If you would like to arrange a teleconference or personal interview, please contact William Beckwith at (202) 418-0134. Such teleconference or interview must take place within thirty (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) days of the date of this Citation to the address below.

Richard A. Hindman, Chief  
Telecommunications Consumers Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, SW, Rm. 4-C224  
Washington, DC 20554

#### Reference EB-TCD-12-00004943 when corresponding with the Commission.

16. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations: 202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format): 202-418-0531 (voice), 202-418-7365 (tty).

#### V. FUTURE VIOLATIONS

17. If, after receipt of this Citation, Democratic Dialing again violates Section 227 of the Act, Sections 64.1200, or 64.1601(e) of the Commission's rules in any manner, or violates Section 1.17 of our rules (discussed below) when responding to this Citation, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation.<sup>34</sup> As discussed above, such forfeitures may be based on both

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<sup>34</sup> 47 U.S.C. § 503(b)(2)(D). Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation in cases, as in the instant case, where the violation does not involve a Commission licensee or common carriers, among others. See 47 U.S.C. § 503(b)(2)(D). In accordance with the inflation-adjustment requirements contained in the Debt

the conduct that led to the Citation and the conduct following it.<sup>35</sup> In this case, there were over 1.1 million violations that occurred in the period of call records reviewed by TCD staff. A subsequent forfeiture action based on just the first three hundred (300) of those violations, calculated at the statutory maximum of \$16,000 per violation, would result in a potential forfeiture of four million, eight hundred thousand dollars (\$4,800,000) against the Company.

18. If you choose to respond to this Citation, be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.<sup>36</sup>

19. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

20. If you or Democratic Dialing violates Section 1.17 of the Commission's rules or the criminal statute referenced above, you or Democratic Dialing may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.

21. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

## VI. REQUEST FOR INFORMATION

22. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,<sup>37</sup> you are directed to confirm within fifteen (15) calendar days after the release date of this Citation that Democratic Dialing has (1) ceased making any calls to cell phones using autodialers or artificial or prerecorded messages (except as permitted by section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Commission's rules), and (2) ceased making any prerecorded message calls without the identification information required in the

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Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(D) to \$16,000. *See* 47 C.F.R. § 1.80(b). *See also Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

<sup>35</sup> *See* note 5, above.

<sup>36</sup> 47 C.F.R. § 1.17.

<sup>37</sup> 47 U.S.C. §§ 154(i), (j), 403.

Act and Commission's rules. Failure to respond to the request for information, or an inadequate, incomplete, or misleading response, may subject you to additional sanctions.<sup>38</sup>

**VII. ORDERING CLAUSES**

23. **IT IS ORDERED** that pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Richard Gilmore d/b/a Democratic Dialing must provide the information requested in paragraphs 3 and 22. The response to the request for information must be provided in the manner indicated herein and must be received by the FCC within fifteen (15) calendar days after the release date of this Citation and Order.

24. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by First Class U.S. Mail and Certified Mail, return receipt requested, to: Richard Gilmore d/b/a Democratic Dialing, 14207 E. Grand Dr. Unit 77, Aurora, Colorado 80015-3865.

**FEDERAL COMMUNICATIONS COMMISSION**

Richard A. Hindman, Chief  
Telecommunications Consumers Division  
Enforcement Bureau

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<sup>38</sup> See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (\$100,000 forfeiture for refusing to attest to truthfulness and accuracy of responses to a Bureau letter of inquiry); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (\$4,000 forfeiture for failure to respond to a Bureau letter of inquiry); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (\$20,000 forfeiture for failure to respond to an LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (\$4,000 forfeiture for failure to respond to a Bureau letter of inquiry).



Attachment A

## Democratic Dialing

Prerecorded message calls made to wireless telephones without subscriber permission<sup>1</sup>

Date and Time of Call <sup>2</sup>	Wireless Phone Number Dialed	Prerecorded Message <sup>3</sup>
11/5/2012 18:41	[REDACTED]	8604.wav
11/5/2012 18:29	[REDACTED]	8604.wav
11/5/2012 18:27	[REDACTED]	8604.wav
11/5/2012 18:19	[REDACTED]	8604.wav
11/5/2012 18:27	[REDACTED]	8604.wav
11/5/2012 18:21	[REDACTED]	8604.wav
11/5/2012 18:17	[REDACTED]	8604.wav
11/5/2012 18:21	[REDACTED]	8604.wav
11/5/2012 18:28	[REDACTED]	8604.wav
11/5/2012 18:26	[REDACTED]	8604.wav

<sup>1</sup> See Affidavit of Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 18, 2013) (on file in EB-TCD-12-00004943).

<sup>2</sup> See LOI Response, Text File Attachment, "8604.txt." The date, time, and phone number information listed in this Attachment A appear on the call detail records produced by Democratic Dialing in response to the Bureau's November 20, 2012, LOI.

<sup>3</sup> See LOI Response, Sound File Attachment, "8604.wav."