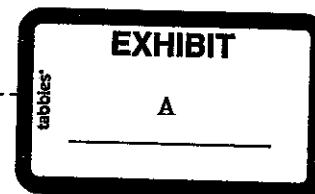


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO



THE DIRECT MARKETING ASSOCIATION,

Plaintiff,

v. Civil Action No.: 10-CV-01546-REB-CBS

ROXY HUBER, in her capacity as
Executive Director, Colorado
Department of Revenue,

Defendant.

DEPOSITION OF F. CURTIS BARRY

October 19, 2010

Sandston, Virginia

HALASZ REPORTING & VIDEO
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Reported by: Mary L. Rosser, RPR

1 total.

2 Q Right. All of these numbers are total one-year
3 buyers?

4 A Right.

5 Q So they could have millions of companies; the
6 larger companies may have as many as millions of one-year
7 buyers?

8 A Yes.

9 Q We talked about this this morning a good deal,
10 but just to reset the stage, as a result of your work as
11 a professional consultant to direct marketers, are you
12 familiar with the business operations and systems of
13 direct marketers?

14 A Yes, I am.

15 Q And are you familiar with the costs associated
16 with developing and modifying such systems?

17 A Yes, I am.

18 Q I think this morning, in response to questions
19 by Ms. Scoville, you indicated that you do about 30
20 projects a year?

21 A Yes, I do.

22 Q And about 40 percent of those are in the area of
23 systems development and modification?

24 A Yes, I do.

25 Q That's about 12 projects a year?

1 A Yes.

2 Q Has that been fairly consistent over the last
3 decade or so?

4 A It has.

5 Q And so if you take a 10-year history, you've
6 done perhaps 120 projects in the last decade involving
7 direct marketers' systems?

8 A That would be a minimum.

9 Q And in that work, have you had occasion to
10 consider the impact on systems and operations of
11 different requirements or objectives that direct
12 marketers are trying to satisfy?

13 A We spend a lot of time coming up with user
14 requirements that interpret why the system should be
15 changed, either submitted by the department user or the
16 management or, in this case, an outside entity. We
17 interpret that, we help companies decide how they're
18 going to answer that, help them look at how they design
19 it. Sometimes we're involved with the testing of it and
20 the implementation of it. And it depends on how much
21 help the client company wants, but it's very detailed
22 oriented, and we have been involved with that kind of
23 activity for 40 years in different companies.

24 Q There's been a number of references to a process
25 called a request for proposal or RFP. Can you explain

1 what an RFP process involves?

2 A It involves coming up with the user
3 requirements, putting those in a document that can be
4 generally put out as a bid process with multiple vendors,
5 so we have commonality of what we're telling the user --
6 excuse me, the vendors. We answer their concerns about
7 what it is that it's going to take to meet the
8 requirements. We tease out from that what the
9 modifications are, what the costs of implementing it are
10 in terms of professional services and setting up the
11 system in terms of the configuration, the training, and
12 then on the inside of the company, the user procedures,
13 how are they going to train the users. Most of these
14 systems require a total change-out of the old system, so
15 there's a lot of concern about making that culture change
16 and that systems change smoothly. And then sometimes we
17 do an operational audit 30 or 60 days afterward to see if
18 there are additional people that need training, did the
19 vendor deliver what he said he was going to, are they
20 still outstanding, changes that are required. So we're
21 involved all along the process of researching, selecting,
22 programming, implementing systems, but it's dependent on
23 what the client wants us to do. We don't necessarily do
24 everything for everybody.

25 Q So you take a set of requirements and you ask

1 someone to make a proposal for how to, in effect, achieve
2 those desired objectives?

3 A Yes.

4 Q For an individual project when you put out a
5 request for proposal, do you send it to only one vendor
6 or one company?

7 A Rarely, rarely ever.

8 Q How many, typically, are asked to provide a
9 response to a request for proposal?

10 A For a big system, three or four.

11 Q So with regard to the 120 projects over the last
12 decade or so, those would have had perhaps three or four
13 vendor responses to a request for proposal for any
14 individual project?

15 A For that kind of a project, yes.

16 Q So you've probably reviewed, in your estimate,
17 how many requests for proposal in the last 10 years, in
18 regard to modifying direct marketer systems or developing
19 such systems?

20 A Well, probably half of those 120, if that's an
21 accurate number. We use a number in the 25-year period
22 that we've been involved with 300 or 400 systems projects
23 of varying scales. So, you know, maybe half of those
24 we're looking at either an RFP somebody else has sent
25 out, looking at the results, trying to help them make the

1 right decision.

2 Q So would it be fair to say hundreds of RFPs
3 you've reviewed in the last --

4 A Of various different kinds. Some are marketing,
5 you know, some are order management, some are web.

6 Q Okay. To prepare this report, you didn't
7 consult any one of those specific RFP responses?

8 A No.

9 Q So you've acquired experience over the years
10 from having worked in this field with company systems,
11 both in terms of putting out bids for RFP and also
12 working on them internally?

13 A Yes.

14 Q You relied on that experience?

15 A Solely on -- pretty much on that experience.

16 Q Were you attempting to determine the costs of
17 compliance with Colorado House Bill 10-1193 and the
18 regulations for any particular company?

19 A No.

20 Q What was your objective?

21 A It was to determine what would be all the
22 changes in a general, big-picture way that the companies
23 will be required to answer, and then to come up with what
24 a reasonable estimate was, in terms of being
25 conservative, what those added costs are going to be.

1 Q Okay. There will be a range of companies
2 affected of different sizes?

3 A Yes.

4 Q And as a consequence, there will be a range of
5 different costs depending upon the particular
6 companies?

7 A Yes, there will.

8 Q Was it your effort to identify a range of costs
9 in that regard?

10 A In most cases, I have -- you have to deal with a
11 range of costs. I wasn't trying to come up with a
12 specific individual company picture, and I didn't have
13 the specifics of, you know, average order, repeat buyers
14 and so forth, so we had to deal with general
15 principles.

16 Q Were you asked to provide your opinion with
17 regard to the cost of compliance for companies affected
18 by the law?

19 A Yes, I was.

20 Q And are your opinions set forth in the expert
21 report of F. Curtis Barry that's marked as Exhibit 1?

22 A They are.

23 Q And are they contained in the statement of
24 opinions that appears on pages 1 through 3?

25 A They are.

1 Q Do you have an opinion as to whether companies
2 that are required to comply with the new Colorado
3 statute, House Bill 101193, and the regulations that were
4 adopted pursuant to that law, will incur costs to satisfy
5 those requirements?

6 A I think they will have to incur significant
7 costs, which I have generally summarized on page 2, and
8 in each of the Exhibits A, B, C, and I have generalized
9 potential expenses in Exhibit D.

10 Q So you've evaluated the cost of compliance, as
11 you indicate, in regard to each of the broad requirements
12 of the new law?

13 A Yes.

14 Q And I think Ms. Scoville asked you questions
15 about the transactional notice requirement, the annual
16 purchase summary and the annual report to the
17 Department?

18 A And I have broken the report down in that way.

19 Q Now, with regard to the transactional notice
20 requirement, Ms. Scoville asked you a number of questions
21 about that, and turn to Exhibit A.1 of your report that's
22 marked as Exhibit 1. The first item with a cost figure
23 attached to it at the top of the page indicates Modify
24 the e-commerce order path, and you made a range of costs
25 associated with modifying the e-commerce order path?