

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

CAROLYN ANDERSON,

Plaintiff,

v.

DOMINO'S PIZZA, INC., DOMINO'S  
PIZZA, LLC, FOUR OUR FAMILIES,  
INC. and CALL-EM-ALL, LLC,

Defendants.

CIVIL ACTION NO.: 2:11-cv-00902 RBL

**DEFENDANT CALL-EM-ALL, LLC's  
DISCLOSURE OF EXPERT TESTIMONY  
UNDER FRCP 26(A)(2)**

Defendant Call-Em-All, LLC hereby makes the following disclosure of expert  
testimony under Federal Rule of Civil Procedure 26(a)(2):

Name: Ray Horak  
Address: The Context Corporation  
1500A East College Way, PMB 443  
Mount Vernon, Washington 98273  
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Mr. Horak's expert report is attached hereto as Exhibit A.

DEFENDANT CALL-EM-ALL, LLC'S  
DISCLOSURE OF EXPERT TESTIMONY – 1  
No. 2:11-cv-00902 RBL

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1 Dated this May 18, 2012.

2 Respectfully submitted,

3 **CORR CRONIN MICHELSON**  
4 **BAUMGARDNER & PREECE LLP**

5 /s/ Christina N. Dimock

6 By: Kelly P. Corr, WSBA No. 555  
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**ATTORNEYS FOR**  
**DEFENDANT CALL-EM-ALL, LLC**

DEFENDANT CALL-EM-ALL, LLC'S  
DISCLOSURE OF EXPERT TESTIMONY – 2  
No. 2:11-cv-00902 RBL

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies as follows:

3 I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys of  
4 record for Defendant Call-Em-All, LLC herein.

5 I hereby certify that on this date, I electronically filed the attached foregoing with the  
6 Clerk of the Court using the CM/ECF system, which will send notification of such filing to  
7 the following persons:  
8

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11 WILLIAMSON & WILLIAMS  
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23 *Domino's Pizza, LLC*

24 I declare under penalty of perjury under the laws of the state of Washington that  
25 the foregoing is true and correct.

DATED: May 18, 2012 at Seattle, Washington.

  
Heidi M. Powell

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

_____	x	
	:	
<b>CAROLYN ANDERSON, individually and as</b>	:	
<b>the representative of a class of similarly-</b>	:	Case No. 11-CV-00902-RBL
<b>situated persons,</b>	:	
	:	
	:	Judge Leighton
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DOMINO’S PIZZA, INC., DOMINO’S</b>	:	
<b>PIZZA LLC, FOUR OUR FAMILIES, INC.,</b>	:	
<b>and CALL-EM-ALL, LLC,</b>	:	
	:	
<b>Defendants.</b>	:	
_____	x	

**EXPERT REPORT OF RAY HORAK**

**I. INTRODUCTION**

I, James Ray (Ray) Horak, have been retained by the law firm of Olshan Grundman Frome Rosenzweig & Wolosky LLP to provide An expert report and testimony on behalf of Call-Em-All, LLC in the matter of Carolyn Anderson vs. Domino’s Pizza, Inc., Domino’s Pizza, LLC, Four Our Families, Inc., and Call-Em-All, LLC in United States District Court, Western District of Washington (Case No. 2:11-cv-00902-RBL).

I am not a party to this matter. I am over the age of eighteen years old, have never been convicted of a felony and am competent to make this report. All statements I make within this report are within my personal knowledge and are true and correct to the best of my knowledge. My qualifications are presented in Section X (pages 8-9) of this report and in my curriculum vitae, which is attached as Exhibit A.

**II. SUMMARY OF OPINIONS**

My review and analysis in the context of the relevant statutes, and based upon my examination of various pleadings in this matter, have led me to form the following opinions:

- With respect to the telephone calls at issue in this case, defendant Call-Em-All (“CEA”) was merely a conduit through which the messages created by Four Our Families were transmitted to phone numbers that were wholly selected by Four Our Families from its own customer base. Thus, with respect to the content or legality of the phone calls, CEA should be treated no differently from common carriers such as the United States Postal Service, Federal Express courier service, an Internet service provider or a fax broadcaster, all of whom, like CEA, allow information to pass through their respective networks from party to party. Such entities are generally exempt from liability for the underlying message under both federal and state law as common carriers, with fax broadcasters receiving a specific exemption under federal telemarketing law, namely the Telephone Consumer Protection Act, 47 U.S.C. § 227, and the federal regulations promulgated thereunder.
- The role of CEA in this case is no different than that of telephone common carriers and fax broadcasters, whom I understand to be exempt under federal regulation and the laws of the State of Washington.
- Four Our Families solely developed and uploaded the list of telephone numbers and solely created (i.e., scripted and recorded) the advertising content to be broadcast.
- CEA provided only the broadcast service and physical infrastructure for defendant Four Our Families’ voice broadcast campaign.
- CEA, under the facts of this dispute, operates identically to a common carrier because it provides only the service whereby, for a fee, a customer such as Four Our Families sends its own telephone messages to specified recipients from its own list of customers or other contacts.
- Thus it is my opinion that CEA is entitled to an exemption from liability for all of the telephone calls at issue in this matter, assuming the factual requirements for such the common carrier/broadcaster exemption are present.
- It is my further opinion that the factual requirements for a common carrier or broadcaster exemption are present in this case. I base this opinion primarily on the presence of the following factors: (a) CEA lacked a “high degree of involvement” in the calls at issue; (b) CEA lacked actual notice of any unlawful activity; (c) CEA’s services were not advertised in the calls at issue; (d) CEA did not script the calls at issue; (e) CEA did not determine who would receive the calls at issue; (f) CEA had no way of knowing whether the level of consent obtained by Four Our Families from its customers rose to the levels of consent required by the laws of various jurisdictions; (g) CEA obtained written assurances from Four Our Families (and all of its clients) that conformity with state and federal laws was the responsibility of the client, not CEA; and (h) CEA voluntarily discontinued doing business with Four Our Families on August 31, 2009 (well before this action was filed) due to a change in federal law that changed the standard of consumer consent to require written consent from recipients of automated pre-recorded voice calls.

- With respect to Washington statute at issue in the case, the calls in question are not covered by statute because they did not involve the initiation of a telephone conversation. Therefore, CEA's system was not used by For Our Families for purposes of initiating a conversation, as defined by RCW 80.36.400, and the Plaintiff does not, in my opinion, have a valid claim under the Washington auto-dialer statute.

### **III. STATEMENT OF RELEVANT FACTS**

The following statement of facts was gleaned from documents provided to me by CEA's counsel.

Michael Brown, President of Four Our Families, a Domino's Pizza franchisee, attended a Domino's Pizza rally in Seattle, Washington in May 2009. Brad Herrmann, President of CEA, attended the same event as a vendor. CEA provided voice broadcasting services for both promotional and informational purposes. Mr. Brown subsequently contracted with CEA for voice broadcasting services via the CEA website. The contractual process was and is entirely self-service, meaning that the prospective customer accesses the CEA website and must follow a prescribed series of steps (Exhibit B) as a requirement of using CEA's services. After completing the required credentials, the customer is required to read and accept the Terms of Use and User Agreement (Exhibit C), one of which terms is that the customer accepts full responsibility for complying with local, state and federal regulations. The customer also must agree not to use CEA to make telemarketing calls to people with whom they do not have an existing business relationship. Mr. Brown followed this process, step-by-step, agreeing that he read the Terms of Use and User Agreement and that he would not use CEA to make telemarketing calls to people with whom he did not have an existing business relationship. Further, Mr. Brown accepted all responsibility for ensuring compliance with all local, state and federal laws.

As confirmed in the depositions of Michael Brown and CEA president Brad Herrmann, there was no conversation between Mr. Brown and any employee or other representative of CEA during the contract process. Four Our Families' resulting calling campaign began in June 2009 and continued through August 31, 2009. CEA voluntarily stopped doing business with Four Our Families on that date, as it understood that a change in federal regulations would require written consent from recipients of automated pre-recorded voice calls beginning September 1, 2009.

The database of telephone numbers to be called during the campaign was developed by Four Our Families from customers ordering pizzas from Domino's Pizza shops franchised by Four Our Families. Mr. Brown, President of Four Our Families, uploaded those telephone numbers to the CEA website. CEA then provided the calling platform (hardware and software) and network to support the campaign.

The fully automated calling campaign involved a pre-recorded message of Mr. Brown's wife offering a pizza discount that could be exercised by calling the number provided in the message and ordering a pizza. The message comprised three segments: 1) introduction and opt-out opportunity, 2) offer of discounted pizza and 3) standard menu options (e.g., To repeat this message, press 1. To opt out, press 3). The introduction and opt-out were scripted by Michael Brown, the Domino's Pizza franchisee, with only general guidance provided by the CEA

Website. The offer was scripted by Michael Brown. Only the standard menu options (e.g., To repeat this message, press 1. To opt out, press 3) were scripted and recorded by CEA. The call presented absolutely no opportunity to speak to a human being or otherwise initiate a live conversation. The message did not mention CEA or advertise any of its services.

Plaintiff Carolyn Anderson received a telephone call on her residential telephone line (telephone number 253.537.9215) from a Four Our Families Domino's Pizza shop on August 31, 2009. Plaintiff Anderson concedes that she voluntarily provided her telephone number to Four Our Families, the owner of the Domino's Pizza shop involved in this case when ordering Domino's Pizza.

#### **IV. REVISED CODE OF WASHINGTON (RCW) 80.36.400**

Relevant to this case is Revised Code of Washington (RCW) 80.36.400 Automatic dialing and announcing device — Commercial solicitation by, which reads as follows:

(1) As used in this section:

(a) An automatic dialing and announcing device [ADAD] is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices.

#### **V. CEA IS A COMMON CARRIER OF THE CALLS AT ISSUE**

In the context of telecommunications, a common carrier is a company that is licensed to provide message transport services to the general public for a fee. The Federal Communications Commission (FCC) in 47 U.S.C. § 153 defines a “common carrier” as “... any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter....” The Supreme Court of Washington has stated that the term “common



carrier” with respect to the communications industry is “broadly defined” as “[a]ny person engaged in rendering communication service for hire to the public.” *Tenore v. AT&T Wireless Services*, 136 Wash.2d 322, 333-34, 962 P.2d 104, 109 (1998) ( citing 47 C.F.R. § 101.3).

Common carriers clearly include voice and data telecommunications carriers, whether they are classified as local exchange carriers or interexchange (i.e., long distance) carriers. AT&T Inc., CenturyLink Inc., Comcast Corporation, Verizon Communications Inc., Frontier Communications Corporation, and Level 3 Communications are well known common carriers. In my opinion, CEA also qualifies as a common carrier.

The FCC exempts common carriers from liability unless they have a “high degree of involvement” or “actual notice” of the illegal use of their services. The FCC ruled in 1987, for example, that telephone carriers are immune from liability for illegal use of their services, unless there is a “high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions.” (In the Matter of Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials, 2 FCC Rcd. 2819, 2820 (May 15, 1987)).

The FCC, in its 47 CFR Parts 64 and 68: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, included fax broadcasters as common carriers, stating “The Commission’s rulings clearly indicate that a fax broadcaster’s exemption from liability is based on the type of activities it undertakes, and only exists “[i]n the absence of ‘a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions.’” 1992 TCPA Order, 7 FCC Rcd at 8780, para. 54 (quoting Use of Common Carriers, 2 FCC Rcd 2819, 2820 (1987)).

The FCC, in its Rules and Regulations Implementing the TCPA of 1991, 68 F.R. 44144-01, 44169 (July 25, 2003), reinforced this exemption, stating “if a common carrier is merely providing the network over which a subscriber (a fax broadcaster or other individual, business, or entity) sends an unsolicited facsimile message, that common carrier will not be liable for the facsimile.” Because the party who actually provides the recipient fax numbers “is in the best position to ensure that recipients have consented to receive the faxes,” that party “should be liable for violations of the prohibition.” The FCC defined a “facsimile broadcaster” to mean “a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.” See 47 CFR 64.1200(f)(4). Like telephone common carriers, absent a “high degree of involvement” or “actual notice” of any illegal uses, these facsimile broadcasters are immune from liability under the TCPA. The FCC specified that the “high degree of involvement” it contemplated existed in situations where the fax broadcaster: (1) controls the recipient lists; and/or (2) controls the content of the advertisements. See Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68 FR 44144-01, 44169 (July 25, 2003).

The FCC further reinforced this decision in its Rules and Regulations Implementing the TCPA of 1991, Report and Order FCC 12-21 (February 15, 2012), stating (vii) A facsimile broadcaster will be liable for violations of paragraph (a)(4) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of

involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.”

CEA operates exactly like a telephone common carrier or fax broadcaster in that it provides a service whereby, for a fee, a customer can send telephone messages to a specified recipient list. CEA provided the broadcast service and physical infrastructure (i.e., the service platform and the telecommunications network). Four Our Families developed and uploaded the list of telephone numbers and solely created (i.e., scripted and recorded) the advertising content to be broadcast. CEA merely transmitted the messages created by Four Our Families to the list provided by Four Our Families. CEA had neither a “high degree of involvement” in the calls nor “actual notice” of any “unlawful activity.”

CEA requires that all customers, including Mr. Brown, read and accept the “Terms of Use” and “User Agreement.” In doing so, Mr. Brown agreed that he would not use CEA to make telemarketing calls to people with whom he did not have an existing business relationship. Further, Mr. Brown accepted all responsibility for ensuring that he was compliant with all local, state and federal laws. CEA was not in a position to verify if Mr. Brown or Four Our Families had obtained valid consent or to otherwise verify his compliance with all local, state and federal laws.

CEA, therefore should be afforded the same exemption from liability afforded telephone common carriers and fax broadcasters.

**VI. WASHINGTON’S AUTO-DIALER STATUTE DOES NOT APPLY BECAUSE THE CALL TO PLAINTIFF DID NOT PERMIT A TELEPHONE CONVERSATION TO OCCUR**

Based on industry definitions of terms employed by Washington’s auto-dialer statute, it is my opinion that RCW 80.36.400 is not implicated by a pre-recorded call with no opportunity to converse with a live person. The statute states that “No person may use an automatic dialing and announcing device for purposes of commercial solicitation,” which in turn is defined as “the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.” The statute does not define the term “conversation.” Neither do the TCPA or the FCC. However, there are many authoritative sources, both general and technical, that do define the term. I offer the following definitions:

Webster’s New World College Dictionary, Fourth Edition , Wiley Publishing, Inc. (2005) defines conversation as “the act or an instance of talking together; specif., a) verbal talk; verbal exchange of ideas, opinions, etc. b) an informal conference on a problem or area of interest by representatives of governments”

Microsoft Encarta Reference Library 2003. 1993-2002 Microsoft Corporation defines conversation as “casual talk: an informal talk with somebody, especially about opinions, ideas, feelings, or everyday matters; a telephone conversation”

Miriam-Webster.com defines conversation as “(1): oral exchange of sentiments, observations, opinions, or ideas (2): an instance of such exchange : talk <a quiet conversation> b: an informal discussion of an issue by representatives of governments, institutions, or groups”

These definitions all refer to interactive realtime verbal communications between living human beings. Brad Herrmann, president of CEA, made it quite clear in his deposition (77:15-78:3) that the CEA system did not and does not have the capacity or capability to connect the called party to a live person.

The calls in question did not involve the initiation of a telephone conversation and the CEA system did not have the capacity to do so. Clearly, therefore, the system was not used for purposes of commercial solicitation, as defined by RCW 80.36.400.

## **VII. FINAL CONCLUSIONS**

My review and analysis of the documents in this case, in the context of the relevant statutes, have led me to form the following opinions:

- With respect to the telephone calls at issue in this case, defendant Call-Em-All (“CEA”) was merely a conduit through which the messages created by Four Our Families were transmitted to phone numbers that were wholly selected by Four Our Families from its own customer base. Thus, with respect to the content or legality of the phone calls, CEA should be treated no differently from common carriers such as the United States Postal Service, Federal Express courier service, an Internet service provider or a fax broadcaster, all of whom, like CEA, allow information to pass through their respective networks from party to party. Such entities are generally exempt from liability for the underlying message under both federal and state law as common carriers, with fax broadcasters receiving a specific exemption under federal telemarketing law, namely the Telephone Consumer Protection Act, 47 U.S.C. § 227, and the federal regulations promulgated thereunder.
- The role of CEA in this case is no different than that of telephone common carriers and fax broadcasters, whom I understand to be exempt under federal regulation and the laws of the State of Washington.
- Four Our Families solely developed and uploaded the list of telephone numbers and solely created (i.e., scripted and recorded) the advertising content to be broadcast.
- CEA provided only the broadcast service and physical infrastructure for defendant Four Our Families’ voice broadcast campaign.
- CEA, under the facts of this dispute, operates identically to a common carrier because it provides only the service whereby, for a fee, a customer such as Four Our Families sends

its own telephone messages to specified recipients from its own list of customers or other contacts.

- Thus it is my opinion that CEA is entitled to an exemption from liability for all of the telephone calls at issue in this matter, assuming the factual requirements for such the common carrier/broadcaster exemption are present.
- It is my further opinion that the factual requirements for a common carrier or broadcaster exemption are present in this case. I base this opinion primarily on the presence of the following factors: (a) CEA lacked a “high degree of involvement” in the calls at issue; (b) CEA lacked actual notice of any unlawful activity; (c) CEA’s services were not advertised in the calls at issue; (d) CEA did not script the calls at issue; (e) CEA did not determine who would receive the calls at issue; (f) CEA had no way of knowing whether the level of consent obtained by Four Our Families from its customers rose to the levels of consent required by the laws of various jurisdictions; (g) CEA obtained written assurances from Four Our Families (and all of its clients) that conformity with state and federal laws was the responsibility of the client, not CEA; and (h) CEA voluntarily discontinued doing business with Four Our Families on August 31, 2009 (well before this action was filed) due to a change in federal law that changed the standard of consumer consent to require written consent from recipients of automated pre-recorded voice calls.
- With respect to Washington statute at issue in the case, the calls in question are not covered by statute because they did not involve the initiation of a telephone conversation. Therefore, CEA’s system was not used by For Our Families for purposes of initiating a conversation, as defined by RCW 80.36.400, and the Plaintiff does not, in my opinion, have a valid claim under the Washington auto-dialer statute.

### **VIII. COMPENSATION**

I am being compensated for my work at the rate of \$350 per hour.

### **IX. RESERVE RIGHT TO AMEND**

I reserve the right to amend this report in the event that additional factual evidence is presented.

### **X. QUALIFICATIONS**

As detailed below, I have more than 41 years of professional experience as a manager, executive and consultant in the field of telecommunications system and networks. I have written hundreds of articles, case studies, white papers and columns on a wide variety of technical telecommunications subjects. I have written 5 technical books, served as Senior Contributing Editor of 13 editions of another and as Technical Editor of yet another. I currently serve as Technology Editor for Telecom Reseller magazine. I have lectured at universities, conferences and a wide variety of seminar and other educational venues before tens of thousands of

telecommunications students and professionals in Africa, AustralAsia and Europe, as well as the United States and Canada.

## **Employment**

I have been involved in telecommunications at a professional level since 1970, when I began my career with Southwestern Bell Telephone Company, a wholly owned subsidiary of AT&T, a publically-owned company. I spent nine years (1970-1979) in various management positions with the AT&T Bell Telephone System, including a year on loan to a strategic planning task force co-chaired by AT&T Bell Telephone Laboratories and AT&T. I then spent seven years (1979-1986) in senior management and executive positions with Continental Telephone Company (CONTEL), a publically-owned independent telephone company, where I founded and served as an executive member of 2 non-regulated businesses (CONTEL Direct Sales and CONTEL Tenant Services) and served as General Manager of another (CONTEL Executone of Houston), all involved in the sales and servicing of telecommunications equipment and services. I then served a year (1986-1987) as an executive with Communications Group Inc., a publicly-owned network management software company, before becoming an independent consultant. I founded The Context Corporation, a privately-owned independent consultancy, in 1995. My experience covers a broad range of activities in both the regulated and non-regulated telecommunications domains. My experience encompasses a broad range of system and network technologies, which can be described as wireline and wireless, hardware and software, and LAN and WAN in nature.

My consulting activities are at the strategic and tactical levels, and I count manufacturers, distributors and end users among my clients. I have lectured on communications technologies and their practical applications to many tens of thousands of telecommunications professionals, worldwide, over the past 25 years. I have served on the faculties of a number of seminar companies and institutions, including Business Communications Review (BCR), Computer Education Services Company (CESC), The Institute for International Research (IIR), Network World Technical Seminars and Terrapin. I variously have led tutorials and seminars, moderated and served on panels, and served as a keynote speaker at hundreds of conferences. I have served as an Adjunct Faculty Member of the McLaren Graduate School of Business of The University of San Francisco, where I taught a graduate level course in telecommunications. I also served as an Adjunct Faculty Member of San Francisco State University, where I taught several undergraduate courses in telecommunications management.

## **Publications**

I have written hundreds of technical articles, columns, white papers and case studies published variously in print and electronic formats. In the last 20 years, I have written well over 100 articles for print publications including Communications Convergence, Computer Telephony, Computing Channels, Datapro Communications Analyst, Datapro Managing Global Communications, Datapro Worldwide IT Analyst, The Journal of Telecommunications in Higher Education, Network Magazine, Network World, The Prepaid Press, PROCOMM, TCA Extensions, Telecomm Reseller, Telecommunications Reseller Opportunities, Teleconnect and

Voice Processing Magazine. During the years 2001-2004, I wrote a popular monthly technical tutorial column, *In the Classroom*, for Commweb, a master Web portal for CMP Media.

I have authored three technical books on the subject of telecommunications. *Communications Systems and Networks* is a best-selling encyclopedic work that deals in detail with voice, data, facsimile, video and multimedia telecommunications technologies and their practical applications. Three editions (1997, Henry Holt and Company; 2000, IDG Books; 2002, Wiley Publishing) of that work sold in excess of 60,000 copies, in total. *Voice and Data Communications Handbook* (2007 and 2008, Wiley-Interscience and now in its 3<sup>rd</sup> printing), similarly, is a critically acclaimed encyclopedic work that deals in detail with voice, data, facsimile, video and multimedia telecommunications technologies and their practical applications. *Webster's New World Telecom Dictionary* (2007, Wiley Publishing) is a critically acclaimed telecom reference for telecommunications terminology. Each of those books deals at considerable length with relevant telecommunications technologies and applications.

Additionally, I served as Senior Contributing Editor for the best-selling *Newton's Telecom Dictionary* (12<sup>th</sup>-22<sup>nd</sup> Editions, 1997-2006) and Technical Editor for *Deploying Secure 802.11 Wireless Networks with Microsoft Windows* (2004, Microsoft Press).

I have served on a considerable number of Advisory Boards, Editorial Advisory Boards and conference Steering Committees. I currently serve on the Editorial Advisory Boards of the *Journal of Information Communications Technology in Higher Education* and *The Prepaid Press*. I served for many years on the Advisory Board of the McLaren School of Business of the University of San Francisco. I also have served for many years and continue to serve on the Advisory Board of the Electronics/Telecommunications Technology Program of Skagit Valley College. I currently am the Technology Editor for *Telecom Reseller* magazine, for which I have written well over 150 technical articles.

## **Education**

I hold the following degrees:

Associate in Arts (AA), Del Mar College, 1966

Bachelor of Business Administration (BBA), University of Texas at Austin, 1968

Master of Business Administration (MBA), University of Texas at Austin, 1970

I have attached to this report a copy of my curriculum vitae as Exhibit A.

## **XI. MATERIALS REVIEWED**

In the process of researching this report, I reviewed the following materials:

47 CFR Parts 64 and 68: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; Final Rule; Federal Register, Part II; Friday, July 25, 2003; Federal Communications Commission

47 CFR § 64.1200: Telecommunication: Miscellaneous Rules Relating to Common Carriers: Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising: Delivery restrictions

47 U.S.C. § 153: Definitions

47 U.S.C. § 227 Telephone Consumer Protection Act

Memorandum Opinion and Order in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; CC Docket No. 92-90, Adopted July 26, 1995.

RCW 80.36.390 Telephone solicitation

RCW 80.36.400 Automatic dialing and announcing device — Commercial solicitation by

Carolyn Anderson vs. Domino's Pizza, Inc., Domino's Pizza, LLC, Four Our Families, Inc., and CEA, LLC in Superior Court of Washington in and for King County (Case No. 10-2-15941-0-SEA)

Amended Class Action Complaint for Damages, Injunctive and Declaratory Relief (May 10, 2011)

Defendant Four Our Families, Inc.'s Answer to Plaintiff's Amended Complaint (May 20, 2011)

Defendant Domino's Pizza, Inc., Domino's Pizza, LLC's Answer to Plaintiff's Amended Complaint (May 20, 2011)

Deposition of Michael Brown (December 30, 2010)

Carolyn Anderson vs. Domino's Pizza, Inc., Domino's Pizza, LLC, Four Our Families, Inc., and CEA, LLC in United States District Court Western District of Washington at Tacoma (Case No. 2:11-cv-00902-RBL)

Defendant Four Our Families, Inc.'s Motion for Summary Judgment (March 7, 2012)

Deposition of Brad Herrmann (December 2, 2011)

Deposition of Carolyn Anderson (September 21, 2011)

### **Court Decisions**

Ed Hartman, et al., v. United Bank Card, Inc., et al. in United States District Court Western District of Washington at Seattle (Case No.: C11-1753JLR)

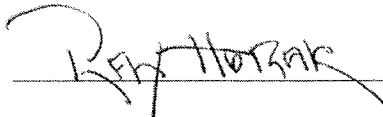
Order Denying Defendant's Motion to Dismiss (March 23, 2012)

James Cabbage v. The Talbots, Inc. and Smartreply, Inc. in United States District Court  
Western District of Washington of Washington at Tacoma (Case No.: C09-911 BHS)

Raoul Meilleur v. AT&T Inc. and Does 1 through 20 in United States District Court  
Western District of Washington of Washington at Seattle (Case No.: C11-1-25 MJP)

Dated: May 15, 2012

May 15, 2012

  
Ray Horak



## **EXHIBIT A**

## **Ray Horak**

### **The Context Corporation**

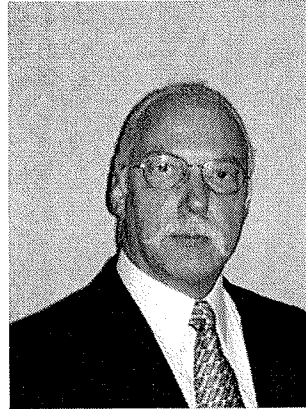
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Mount Vernon, Washington 98273

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►Website: [www.contextcorporation.com](http://www.contextcorporation.com)

►Email: [ray@contextcorporation.com](mailto:ray@contextcorporation.com)



## **Expert Witness - Forensic Expert - Litigation Support**

The Context Corporation is headed by Ray Horak, an internationally recognized telecommunications consultant, lecturer, technical writer, columnist and author with 40+ years' experience in all aspects of telecommunications (voice, data, video, image, facsimile and multimedia) systems and networks. He has provided consulting expert and testifying expert services in cases involving patent infringement, trademark/service mark infringement, product/service misrepresentation, the Telephone Consumer Protection Act (TCPA), the Junk Fax Protection Act (JFPA), and various contractual and jurisdictional disputes.

### ***Services***

The Context Corporation has provided expert services to the telecommunications carrier, manufacturer, service provider, regulator and end user communities in the United States and around the world for 20+ years. Those services include system and network technology research and analysis across the full range of telecommunications domains. Ray Horak provides litigation support services to the legal community as a consulting expert and testifying expert and has experience in cases involving patent infringement, trademark/service mark infringement, product/service misrepresentation and the Telephone Consumer Protection Act (TCPA). He also performs prior art research, background research, and proactive patent analysis. With five technical books, several hundred technical articles and columns, and many hundreds of live keynote speeches, seminars, tutorials, workshops and panel discussions to his credit, Ray Horak's research, writing and personal presentation skills are exceptional.

### ***Litigation Support Services***

Mr. Horak, President of The Context Corporation, has served as a consulting expert and expert witness in a number of cases involving patent infringement, trademark/service mark infringement, product/service misrepresentation, the Telephone Consumer Protection Act (TCPA) and various contractual and jurisdictional disputes. Horak owns an extensive library of more than 1,000 technical telecommunications books dating back as far as 1876 and including some 100 telecommunications dictionaries and encyclopedias. This exceptional library supports his work in prior art research, background research and patent analysis. With five technical books, several hundred

technical articles and columns and many hundreds of live keynote speeches, seminars, tutorials, workshops and panel discussions to his credit, Ray Horak's research, writing and personal presentation skills are exceptional.

### ***Areas of Expertise:***

Ray Horak possesses a high level of expertise in all areas of telecommunications and data communications systems and networks, including the following specific subject matter areas:

- ACDs
- ATM
- Bandwidth
- Broadband
- Cable Modems
- CATV
- Cellular Radio
- Centrex
- Computer Telephone
- Data Communications
- Digital Subscriber Line (DSL)
- Ethernet
- Facsimile (Fax)
- Fiber Optics
- Frame Relay
- Intellectual Property
- Internet
- Internet Protocol Suite (IP)
- ISDN
- IVR
- Local Area Networks (LANs)
- Messaging Systems
- Mobile Radio
- Modems
- Multimedia
- PBXs
- Packet Switching
- Passive Optical Network (PON)
- PSTN
- Satellite Systems
- Software
- SONET/SDH
- T-Carrier
- TCPA & JFPA
- Telecommunications
- Teleconferencing
- Transmission Systems
- Unified Communications (UC)
- Videoconferencing
- Virtual Private Networks (VPNs)
- Voice over IP (VoIP)
- Wide Area Networks (WANs)
- Wireless Communications
- World Wide Web (WWW)

### ***Profile***

Ray Horak is President of The Context Corporation, which he founded in 1995. Previously he was Vice President of Marketing & Sales for Communications Group Inc. (CGI), a telemanagement software development firm. Previously, Mr. Horak spent seven years with Continental Telephone Company (CONTEL) and various CONTEL subsidiaries, most recently acting as General Manager of CONTEL Executone in Houston, Texas. Prior to this position, he served as Vice President of CONTEL Tenant Services (which he founded), Assistant Vice President of CONTEL's Western Region, and Director of Sales & Marketing for the Rocky Mountain Division. Mr. Horak previously spent nine years in various general management capacities with Southwestern Bell Telephone Company (SWBTC) and served in a strategic planning capacity with the Bell System on a long-term joint project between SWBTC, AT&T and AT&T Bell Labs.

Mr. Horak has authored *Webster's New World Telecom Dictionary* (2007) for Webster's New World and *Telecommunications and Data Communications Handbook* (2007, 2008), for Wiley-Interscience, both of which are critically acclaimed. Previously, he authored three best-selling editions of *Communications Systems and Networks* (1997, 2000, & 2002), published by John Wiley & Sons and various predecessor firms. He also has served as a Technical Editor for *Deploying Secure 802.11 Wireless Networks with Microsoft Windows*, published by Microsoft Press, and was Senior Contributing Editor for the best-selling *Newton's Telecom Dictionary* (12th–22nd Editions).

Mr. Horak is a contributor to numerous leading industry trade publications and has written several hundred published articles, as well as numerous white papers and case studies. For a number of years he wrote the popular *In the Classroom* column for the Commweb portal, sponsored by CMP Media. He is a member of the Editorial Boards of *The Connectivity Management Handbook*, *The Journal of Information Communications Technology in Higher Education*, and *The Prepaid Press*. Ray Horak currently is the Technology Editor for *Telecom Reseller* newspaper.

Mr. Horak is a member of the faculties of Terrapinn (previously AIC) and Network World Technical Seminars. He also was an Adjunct Faculty member of The University of San Francisco (CA), McLaren Graduate School of Business, and served on the School of Business and Management Telecommunications Management Advisory Council of USF's Masagung Graduate School of Management. He now serves on the Advisory Committee of the Skagit Valley College (Mount Vernon, WA) Electronics/Telecommunications Technology Program.

Mr. Horak has spoken before tens of thousands communications professionals through public and private keynote speeches, seminars, tutorials, workshops and panel discussions in Australia, Canada, England, France, Germany, Hong Kong, Korea, Malaysia, The Netherlands, New Zealand, The Philippines, Poland, South Africa, Singapore, Thailand and Turkey, as well as the U.S.

### ***Professional Experience***

1995-Present: President, Context Corporation

1988-1995: Executive Vice President, The Lido Organization

1987-1988: Vice President Marketing & Sales, Communications Group, Inc.

1986-1987: General Manager, CONTEL Executone of Houston

1985-1986: Vice President (Founder), CONTEL Tenant Services, Inc.

1981-1985: Assistant Vice President Marketing & Sales, CONTEL Service Corporation

1979-1981: Director of Marketing & Sales, CONTEL Service Corporation

1970-1979: Various Management Positions, Southwestern Bell Telephone Company

### ***Litigation Support***

Ray Horak has provided litigation support in dozens of cases involving intellectual property (patents, trademarks and service marks), product misrepresentation, the Telephone Consumer Protection Act (TCPA), and various contractual and jurisdictional disputes. Litigation support services include proactive patent analysis, technology and

application research, prior art research and testimony. He is a skilled researcher, author and public speaker with a unique ability to translate highly complex technical subject matter into plain-English, commonsense terms. Example engagements are as follows:

re: Harris Corporation et al. v. Siemens AG et al.

**Client:** Fish & Richardson P.C.

**Nature of Case:** Patent Infringement regarding interface between voice mail system and PBX

**Nature of Engagement:** Consulting Expert

re: David Solomon, et al. v. Bell Atlantic Corporation, now known as Verizon Communications Inc., and Bell Atlantic Internet Solutions, Inc., now known as Verizon Internet Solutions, Inc. New York Supreme Court, New York County

**Client:** Abbey Gardy, LLP, representing Solomon, Scott, Croak, et al.

**Nature of Case:** Seeking Class Action status re: misrepresentations of DSL service

**Nature of Engagement:** Consulting/Testifying Expert

re: Cellco Partnership d/b/a/ Verizon Wireless v. Nextel Communications, Inc.

Civil Action No.: 03-725-KAJ (D. Del.)

**Client:** Winston & Strawn LLP, representing Verizon Wireless

**Nature of Case:** Trademark/Service Mark Infringement re: push-to-talk (PTT)

**Nature of Engagement:** Consulting/Testifying Expert

re: Robert A. Green, individually and as the representative of a class of similarly-situated persons, v. Insurance Program Managers Group, L.L.C. Case No. 07-CV-3842

**Client:** O'Halloran Kosoff Geitner & Cook LLC, representing Insurance Program Managers Group, L.L.C.

**Nature of Case:** Robert A. Green, et al seeking Class Action status for alleged junk fax violations of the Telephone Consumer Protection Act (TCPA).

**Nature of Engagement:** Consulting/Testifying Expert

re: Madison County Communications District v. BellSouth Telecommunications, Inc.

Civil Action No.: CV-06-S-1786-NE

**Client:** Madison County Communications District

**Nature of Case:** Breach of Contract

**Nature of Engagement:** Consulting Expert

## ***Affiliations***

Institute of Electronics and Electrical Engineers (IEEE)

IEEE Communications Society (COMSOC)

Electronics Technicians Association (ETA)

## ***Seminars & Training***

Telecommunications and Data Communications Masterclass

## ***Publications***

**Books: Author or Contributor**

*Telecommunications and Data Communications Handbook* (2007, 2008), Author,  
Wiley-Interscience

*Webster's New World Telecom Dictionary* (2007), Author, Webster's New World

*Communications Systems and Networks* (1997, 2000, 2002), Author, John Wiley & Sons  
*Newton's Telecom Dictionary* (1995-2005: 12th-22nd Editions), Senior Contributing Editor, CMP Books

**Books: Editor**

*Deploying Secure 802.11 Wireless Networks with Microsoft Windows* (2004), Technical Editor, Microsoft Press

**Articles and Columns (Hundreds):**

Business Communications Review, Communications Convergence, Commweb, Computing Channels, Computer Telephony, Journal of Telecommunications in Higher Education, Network Magazine, Network World, Procomm, The Prepaid Press, TCA Extensions, Telecommunications Insider, Telecommunications Reseller Opportunities, Telecom Reseller, Teleconnect and Voice Processing Magazine.

**White Papers, Analytical Reports, Case Studies and Solutions Briefs (Numerous):**

Datapro Communications Analyst, Datapro Worldwide IT Analyst, Datapro Managing Global Communications and Microsoft IT Showcase.

**Editorial: Technology Editor**

Telecom Reseller Newspaper and supplements: Avaya Extra, Cisco Telephony Tribune, Mitel Report, NATD World, NEC Newslink, Nortel Networks Now and VoIP Networks.

**Education**

MBA, University of Texas at Austin, 1970  
BBA, University of Texas at Austin, 1968  
AA, Del Mar College, 1966

## RAY HORAK

### PUBLISHED BOOKS

*Telecommunications and Data Communications Handbook (2007, 2008):*

[http://www.amazon.com/Telecommunications-Data-Communications-Handbook-Horak/dp/0470396075/ref=sr\\_1\\_1?ie=UTF8&s=books&qid=1226508503&sr=1-1](http://www.amazon.com/Telecommunications-Data-Communications-Handbook-Horak/dp/0470396075/ref=sr_1_1?ie=UTF8&s=books&qid=1226508503&sr=1-1)

*Webster's New World Telecom Dictionary (2007):*

[http://www.amazon.com/Websters-New-World-Telecom-Dictionary/dp/047177457X/ref=sr\\_1\\_5/002-9654582-0998469?ie=UTF8&s=books&qid=1185925417&sr=1-5](http://www.amazon.com/Websters-New-World-Telecom-Dictionary/dp/047177457X/ref=sr_1_5/002-9654582-0998469?ie=UTF8&s=books&qid=1185925417&sr=1-5)

*Communications Systems and Networks (1997, 2000, 2002):*

<http://www.amazon.com/exec/obidos/ASIN/0764548999/qid%3D1031326507/sr%3D2-2/ref%3Dsr%5F2%5F2/103-2106836-2423045>

### PUBLISHED COLUMNS

Ray Horak was for several years a featured columnist for Commweb, the master portal for CMP Media. Following is a partial list of *In The Classroom* columns:

- Dedicated vs. Switched Networks
- Circuits, Packets, Frames, and Cells
- Transmission Media: An Overview
- SONET vs. DWDM
- Frame Relay Basics
- Voice over Frame Relay (VoFR)
- ATM Fundamentals
- Voice over ATM (VoATM)
- TCP/IP Essentials
- Voice over IP (VoIP)
- T-Carrier Basics
- High-Bit-Rate Digital Subscriber Line (HDSL)
- Asymmetric Digital Subscriber Line (ADSL)
- G.Lite
- Voice over DSL (VoDSL)
- OSI Reference Model
- Cable Modems

- Bandwidth vs. Throughput
- Oops! All About Error Control
- Passive Optical Network (PON)
- LAN Basics
- Ethernet Essentials
- Bridges and Hubs
- LAN Switches
- Wireless LANs (WLANs): Focus on 802.11b
- Wireless LANs (WLANs): Focus on 802.11a
- Bluetooth
- Metro Ethernet
- Metro Ethernet: A Case Study
- Top 10 Rules for Networking
- Wireless Fundamentals
- Wireless Local Loop (WLL)
- Free Space Optics (FSO)
- PBXs: The Conventional Kind
- Centrex: The Conventional Way
- IP Centrex
- Pure SIPlicity
- Passive Optical Network (PON) Redux
- IP Security: Loose IPs Sink Ships
- How To Work with A Network Consultant
- MPLS: FR RIP
- Access Broadband over Power Line (BPL)
- In-House Broadband over Power Line (BPL)
- WiMAX (WLL by The Numbers)
- Voice over Wi-Fi (VoWiFi)

#### **PUBLISHED PRINT ARTICLES**

Ray Horak has authored, co-authored and collaborated on over 200 articles for major industry print publications, a representative list of which follows:

*How to Choose A TeleManagement System*, TELECONNECT, November 1988

*Using Software for Hard Results*, TCA Extensions, January/February, March/April, and May/June, 1989

*The TeleManagement Symphony*, Network World, February 1989

*Cultivating the Network, AT&T's Unified Network Management Architecture*, Network World, May, 1989, ICA Issue



*How to Build a Maker/Distributor Relationship through Software*, TELECONNECT, June 1989

*Coming to Terms*, Network World, September, 1989

*Call Accounting Advances*, TELECONNECT, October 1989

*Customized Software Development: Effective Partnership is Key*, PROCOMM, December 1989

*You Can Negotiate Anything--Within Limits!*, TELECONNECT, June, 1990

*Opportunities in Asia: A Profile of the Asia-Pacific Telecommunity*, PROCOMM, June 1990

*PTC '90 Emphasizes the Pacific Commonwealth of Communications*, PROCOMM, July/August, 1990

*Opportunities in Asia: Focus on Thailand*, PROCOMM, July/August, 1990

*Poland Examines Laws to Open Telecom Competition*, Network World, July 23, 1990

*Advanced Intelligent Nets Wave of the Future*, Network World, July 30, 1990

*World Communications--Hong Kong Perspective*, PROCOMM, January/February, 1991

*You Get Out Of It What You Put Into It--Or Do You?*, TELECONNECT, June 1991

*Cooking up a Net Management Solution*, Network World, June 3, 1991

*CBTA Emphasizes Global Communications*, PROCOMM, October, 1991

*Shows: Working the Floor*, PROCOMM, June 1992

*Networks & Network Management: 1992--The Year in Review*, Voice Processing Magazine, December 1992

*Frame Relay Quickly Becoming A Service In Demand*, Telecommunications Reseller Opportunities, February 1997.

*TeleManagement Software Systems and Service Bureaus: Critical Tools for Complex Networks*, Journal of Telecommunications in Higher Education, Spring, 1997

*CT Expo: Best of Show*, Computer Telephony, April 1997

*Computer Telephony: Ready for Prime Time?*, Telecommunications Insider, April 1997.

*The Consultant Selection Process: Defined, Described and Demystified*, Journal of Telecommunications in Higher Education, Spring, 1998

*CT Expo: Best of Show*, Computer Telephony, April 1998

*Client/server PBX? Give Me A Break!*, Point/CounterPoint, Computer Telephony, October 1998

*Are WLAN Security and Standards Enterprise-Worthy?*, Net Insights, Network Magazine, August 2002

*Convergence Technology (CT): Leading the Way*, Computing Channels, September 2002

*Circuit Switching: Reports of Its Death*, The Prepaid Press, May 2003

*Packet Switching: It's Better than New*, The Prepaid Press, June 2003

*IP Centrex*, Communications Convergence, January 2004

Plus approximately 100 articles as Technology Editor for Telecom Reseller, 2008-

#### **PUBLISHED WHITE PAPERS**

#### ***DATAPRO COMMUNICATIONS ANALYST***

#### **1990 & 1991**

*TeleManagement Systems and Software: Market Overview*

*TeleManagement Systems and Software: Technology Overview*

*The TeleManagement Ensemble*

*Network Design/Optimization: Technology Overview*

*NYNEX Allink Company, Allink Operations Coordinator*

*Objective Systems Integrators (OSI), NetExpert Tool Kit*

*TelWatch Inc., NetExec*

*Cincinnati Bell Information Systems (CBIS), CMS & ICE-9*

*Peregrine Systems, PNMS*

*Stonehouse & Company MONIES*

*Telco Research Corporation, CCO*

*Telecommunications Software, Inc. (TSI) Telephone*

*Analysis and Billing System (TABS)*

*Westinghouse Communications Software, Inc.*

*XTEND Communications TeleManagement Systems*

**1991**

*PBX versus Centrex Comparison*

*Rolm CBX Architecture*

*Outsourcing Telecommunications*

*ISDN: Promise, Product or Puzzle?*

**1992 & 1993**

*Pacific Telesis Network Access Services*

*US West Network Access Services*

*Pacific Telesis Centrex Services*

*The TeleManagement Ensemble*

*IBM Callpath Services*

*PBX Versus Centrex Comparison*

*TeleManagement Systems and Software: Overview*

*US West Centrex Services*

*Digital Equipment Corp. CIT*

*AT&T ASAI*

*Network Multimedia Applications*

*Centrex Management Systems*

*The Strata Group--C III*

**1992 & 1993**

*Boole & Babbage, NET Command & Command Post*

*Xiox Corporation, Telecommunications Management*

*IntegraTRAK, Inc., Integrated Tracking Systems*

*TeleManagement Service Bureau Overview*

## **1994 & 1995**

*PBX Versus Centrex Comparison*

*TeleManagement Systems and Software: Overview*

*The TeleManagement Ensemble*

*The Strata Group--C III*

*ISDN: To Be Delivered as Promised?*

*The Angeles Group*

*Xiox Corporation, Telecommunications Management*

*IntegraTRAK, Inc., Integrated Tracking Systems*

*TeleManagement Service Bureau*

*Stonehouse & Company--MONIES*

*IBM CallPath*

*Tadiran Coral ISBX*

*Telemanagement Service Bureau Overview*

## **1996**

*IBM CallPath Services Architecture*

*IBM DirecTalk*

*PBX versus Centrex Comparison*

*Voice Network Fraud*

*Fujitsu FETEX-150 ESP Series*

*Lucent Technologies GlobeView-2000*

**DATAPRO WORLDWIDE IT ANALYST**

## **1997**

*Siemens Stromberg-Carlson MainStreetXpress*

*Managing Corporate Voice Networks*

*The Evolution of Virtual Network Services to Integrated Network Services*

*CAPs/CLECs in the U.S.: Overview*

*Choosing a Public Data Service*

*Teleconferencing*

*International Virtual Network Services*

*Virtual Network Data Services in the U. S.*

*Fax Networking Services: Overview*

*Videoconferencing Services in the U.S.: Overview*

*Telemanagement Service Bureau Overview*

**1998**

*Billing Issues*

*The TeleManagement Ensemble*

*IBM CallPath Services Architecture*

*IBM DirecTalk*

## ***DATAPRO MANAGING GLOBAL COMMUNICATIONS***

**1998**

*The Angeles Group*

*PBX versus Centrex Comparison*

*Voice Network Fraud*

*Centrex: Technology Overview*

*Managing Corporate Voice Networks*

*The Evolution of Virtual Network Services to Integrated Network Services*

*Choosing a Public Data Service*

*Teleconferencing*

*Virtual Network Data Services in the United States*

*Videoconferencing Services in the United States: Overview*

*Fax Networking Services: Overview*

*Landmark Systems: The Monitor Performance Series*

**1999**

*Billing Issues*

*Managed Services*

*Telemanagement Systems and Software: Overview*

*Centrex: Technology Overview*

**2000**

*Teleconferencing*

*Introduction to ATM Technology*

*Introduction to ATM Services*

*Introduction to Frame Relay Technology*

*Introduction to Frame Relay Services*

*Centrex versus PBX Comparison*

*Centrex: An Introduction*

**2001**

*Voice over Frame Relay: Overview*

*Voice over ATM: Overview*

*Introduction to ATM Services*

*Introduction to Frame Relay Services*

*Centrex versus PBX Comparison*

**2002**

*Centrex: An Introduction*

*Voice over Frame Relay: Overview*

*Voice over ATM: Overview*

*Voice over IP and the Internet*

*Introduction to High-Speed Ethernet Services*

*Introduction to Frame Relay Services*

*Introduction to ATM Services*

*Centrex versus PBX Comparison*

## **2003**

*Basic Concepts of Communications: An Introduction*

## **TELECOM RESELLER**

## **2009**

SonicWALL: Protection at the Speed of Business

Vertical Wave Call Classifier: Enterprise-Class Call Routing on an SMB Budget

Voxbone: Virtual Number, Please—Actually, Make Than an iNumber, Please

A Brief History of Fax

Computerized Fax T.38

Prem vs Cloud (FaaS)

Rumpelstiltskin LLP

TelCentris: Hosted UC Solution Broad and Deep

Asentria Expands TeleBoss Family, Introduces SitePath

Sagem Releases XMediusFAX 6.5

CRI Virtualizes UC: Creates Lean and Green UC Machine

Cbeyond Announces Platform Partner Program

Conferencing Advisors: Take a Look at Us Now

Ecessa Introduces ClariLink

Sangoma Tightens Focus on Telecom

Enterasys HiPath Wireless: VoWLAN Success Story

Cisco Focuses on Video Certification

Vertical Wave Contact Center: Enterprise Class Optimized for SMB

SIP Forum: All About SIPification

Whaleback Systems: CrystalBlue [Managed] Voice Service

Zultys: SIP Before SIP Was Cool

Polycom: Wide Angle Focus on Video

Vertical Releases Wave ISM 1.5 SP3, WaveNet, Contact Center, Call Classifier

Shoretel: Pure IP Pays Off

Toshiba Expands Strata CIX SIP Trunking Options

A Few Minutes with Snom

Mitel Series X Collaboration

Asentria: Anything, Anywhere on Any Network

Aastra Centergy Virtual Call Center (CVCC)

Avaya IP Office Release 5: Collaboration Clear and Simple

ANDTEK: We Love Communications

Calabrio: There's No End to Better

Gigamon: Intelligent Data Access Networking

ISI Telemanagement Solutions

Cisco Offers Polycom VVX 1500 C Business Media Phone

ZOOM International: IP Solutions, Pure and Simple

XCast Labs: Digital Voice & Video Solutions

D&S Communications Awarded Nortel Premium Partner Status

Twisted Pair Solutions Untangles Radio Knots

Commview: Total Talk Management



Avaya one-X Agent

Aastra Clearspan

Cisco Systems: Open for Business

SAI: Sierra Gold

SoTel: Certified and Just in Time

Vertical Releases Wave ISM 1.5 SP2, Announces WaveNet in Beta

Snom 870 Touchscreen Debuts

Aastra: Press the Star Button

Orex (Open Source)

Nortel Carter

R\*Hub Quad Hub: Web Conferencing in a Box

Snom CEO Featured Speaker at HD Communications Summit

Jaduka Speaks to Telco 2.0

Psytechnics Experience Manager: Voice and Video Performance Management

Shortel: Pure IP

Sagem-Interstar Releases XMediusFAX 6.0

Digium: Open Source and More

Dialogic Inside

UNEDA Promotes Peace of Mind in the Secondary Data Network Equipment Market

Microsoft Re-Evaluating Response Point

Microsoft Response Point Interview Q&A

Mertek EVO6: Why Didn't I Think of That?

Rebranding of SBX IP 320 with Release 3.0 reflects Increases in Capacity

MIND PhonEX ONE

Mitel Series X and Dynamic Extension: Where You Are Should Not Dictate How You Work

Polycom Announces CX5000 Unified Conference Station

Nectar Converged Management Platform

Microsemi Announces PD-9000 Series + Green PoE Initiative

Avaya Aura: A New Era of Business Communications

Alteva's Hosted VoIP Offers Return on Innovation

Eaton Announces PowerAdvantage Partner Program

Paetec Pinnacle: Service Lifecycle Management

emFAST Releases FACSys Print-to-Fax for BlackBerry

CRI Releases UCSplash/IS: Industry's 1st UC Single Server Solution

## **2010**

Avaya Data Solutions Launches VENA, Appoints Seifert CTO

Vertical Raises the Bar: Announces MBX IP

Mitel Freedom

PINNACLE Redefines TEM

Tim Colwell AOTMP

Joe Basili TEMIA

A Few Minutes w/Rod Sagarsee (IAUG)

Digium Releases Asterisk 1.8

Fonality: The Forecast is Clearly Cloudy...to Partly Cloudy

SIP: A Reality Check (Graham Francis)

SIPconnect: Providing Best Practices for SIP Trunking (Robins)

snom technology Broadens IP Portfolio with Release of snom ONE IP PBX

ACUTA Surveys Voice and Emergency Systems

Cisco Expands SMB Portfolio

Pareto Networks Announces Channel Partner Program

Tone Software ReliaTel 3.0 Release Interview

Alteva Partners with Microsoft and Broadsoft: Delivers True UC Solution

Mitel Mobile Offers BlackBerry Solutions

Newfound Aims to Revolutionize Speech Recognition

ShoreTel 11 Looks Like Another Winner

ShoreTel Contact Center 6

Cisco Poised to Offer Hosted Collaboration

ANDTEK Takes Mobility Up a Notch

Path Solutions: QoS Right out of the Box

D&S Epiphany (wait for check)

Vertical Wave 2.0 Raises the Bar

Tone Software: ReliaTel Converged Network Management

A Few Minutes with Mario Cuello

Clarus Systems Announces Strategic Relationship with Microsoft

Mitel Mobile: Where You Are No Longer Dictates How You Work

Proposed FCC Rule Could Further Limit Calls to Cell Phones under TCPA

ShoreTel Rates a Perfect 6

Sangoma in Demand

Telesoft Tightens the Grip on TEM

Yap: Reinventing Freedom of Speech

Zultys Announces iConnected UC Client for iPhones

Avaya Positioned as Leader in Gartner Magic Quadrant

Avaya IP Office Release 6.0: Broader Appeal, More Headroom

CRI Application Center: The Next Big Step

Vuesion: UC Optimized for the SMB

Aculab ApplianX Softens and Simplifies VoIP Transition

Aastra Offers IPBX Appliance Options for SMBs

Dimension Data: Integrated Collaboration

Epygi: Reliability Built-In...In-House

INNUA: User Groups More Important Than Ever

NEC Sees Clearing, Bright Future

Nectar Unveils ESM vSBC

PAETEC Presents VoIP for Rent

Shoretel Rises to the Challenge

Clarus Systems: End-to-End VoIP Services Management

Clarus Systems Acknowledges Debt to CIPTUG

Cisco Breaks Down Barriers to Business-to-Business Collaboration

AvayaN: Avaya + Nortel = Exponentially Better...for Whom? (4)

Avaya + Nortel Integration Roadmap in Brief

Aastra MX-ONE Compact: Enterprise Functionality at SMB Prices

Avaya Introduces one-X Mobile Lite for iPhone

Polycom Makes Dust

Primas Primed to Release Call Center Solutions Suite: A First Look

ShoreTel Builds on Strong Foundations

## **2011**

snom Unveils New Class of SIP Phones

Mitel Announces Strategic Initiatives: Strengthens Channel Program

Mitel Strengthens Channel Program:

Reinforces U.S. Channel Executive Team

Revolabs FLX: TheConference Phone Evolved

Digium Unveils Asterisk 10

Aastra SmartSIP

Panasonic Completes SIP Phone Suite

Gigamon Releases GigaVUEv8.0

VMware and Mitel Team Up to Crack the Code

Toshiba Releases IPedge: Pure IP

Avaya on Video: Lights, Camera ... Time for Action

RIM Announces BlackBerry MVS 5

GigaVUE-HD8: Concentrated Simplicity at Tbps Speed

Zultys Releases Media Exchange 6.0

Rumpelstiltskin LLP

Mitel Dials in on Technical Accreditation

Open Text Fax & Document Distribution Group: Serious Fax Solutions

Scrutinizer NetFlow Analyzer 8.5 Provides Network Performance Clarity

Vertical and Telanetix Announce AccessLine Alliance

Peter Davidson: The Emergence of T.38 as the De Facto Standard for FoIP

## **2012**

Another First from Digium: Phones Designed for Asterisk

VMware and Mitel Collaboration

Mitel NetSolutions Broadens CLEC Coverage: Updates AnyWare UCC to Support Mobility

Mitel Applications Suite 4.0 Unveiled: Simplifies Business Collaboration and Mobility

Siemens Announces OpenScape UC Suite: Version 7

Toshiba Time: Syncing Up

OpenText RightFax: Right on Target

Network Instruments Forecast for Global IT Networking: Partly Cloudy to Cloudy

## **Ray Horak: Testimony, Preceding Five Years**

As of May 15, 2012

Robert A. Green v. Insurance Program Managers Group, L.L.C.; Case No. 07-CV-3842 (Northern District of Illinois, Eastern Division); August 26, 2008: Telephone Consumer Protection Act

BNS, Limited d/b/a Burien Grocery Outlet v. Redondo Family Chiropractic, Inc., P.S.; King County Cause No. 09-2-19352-5 SEA in Superior Court for the State of Washington; December 10, 2008: Telephone Consumer Protection Act

Verizon New England Inc. and Verizon New York Inc. v RNK, Inc.; Case No. 08-CV-11457-NG-LTS (District of Massachusetts); June 9, 2010: Contract Dispute

CE Design Ltd. vs. King Architectural Metals; Case No. 09-CV-02057 (Northern District of Illinois, Eastern Division); July 22, 2010: Telephone Consumer Protection Act

Creative Montessori Learning Center v Ashford Gear L.L.C.; Case No. 09-CV-03963 (Northern District of Illinois, Eastern Division); August 19, 2010: Telephone Consumer Protection Act

Arnold Chapman v Wagener Equities, Inc.; Case No. 10-09-CV 7299 (Northern District of Illinois, Eastern Division); February 26, 2011: Telephone Consumer Protection Act

Big Thyme Enterprises, Inc. against Palmetto Gold Buying Service ; Civil Action No. 2009-CP-40-04799 in the Court of Common Pleas of the Fifth Judicial District of the State of South Carolina, County of Richland; April 22, 2011: Telephone Consumer Protection Act

CE Design, Ltd. v C&T Pizza, Inc. et al; Case No. 06 CH 27638 in the Circuit Court of Cook County Illinois, County Department, Chancery Division; June 23, 2011: Telephone Consumer Protection Act

Fun Services of Kansas City, Inc., v. Parrish Love d/b/a Asphalt Wizards in the Circuit Court of Jackson County, Missouri at Independence, Division 2, Case No. 081-CV00064; October 19, 2011: Telephone Consumer Protection Act

The Savanna Group, Inc. v. Trynex, Inc.; Case No. 10-CV-7995 (Northern District of Illinois); November 17, 2011: Telephone Consumer Protection Act

j2Global v. City of Los Angeles; Los Angeles Superior Court (Case Number BC432661); January 10, 2012: Tax Dispute

Avio v Creative Office Solutions; Case No. 10cv10622-VAR-MKM (Eastern District of Michigan); February 15, 2012: Telephone Consumer Protection Act

**EXHIBIT B**

step 1  
select a calling plan






step 2  
create your account









step 3  
enter payment information

## Enter Payment Information



Selected Calling Plan: Volume Discount Plan  
Number of calls purchased: 100  
Cost: \$9.00

Fields marked  require an entry.

 Credit Card Number: 4111111111111111  
 Credit Card Type: Visa  
 Expiration Month: 6  
 Expiration Year: 2013  
 Card Verification Number: 111

 First Name: Mike  
 Last Name: Brown  
Company / Organization: Four our Families, Inc Dt  
 Email Address: MBrown8582@aol.com  
 Phone Number: 2534688557  
 Billing Address 1: 920 E 72nd St  
Billing Address 2:  
 Billing City: Tacoma  
 Billing State/Province: WA  
 Billing Zip/Postal Code: 98404

Referred Account:

 How did you hear about Call-Em-All? Other  
 What type of organization are you? Business

I have read and agree to the [Call-Em-All Terms of Use & User Agreement](#).

I will not use Call-Em-All to make telemarketing calls to people with whom I do not have an existing business relationship.

Clicking 'Submit' now will complete your signup process. Your credit card will be charged, and you will receive an email to activate your account. Once your account is activated, you will be able to begin sending voice broadcasts immediately.

Submit





**Site Links**

[Home](#)  
[Login](#)  
[User ID & PIN Help](#)  
[Opt Out](#)  
[Privacy & Security](#)  
[Site Map](#)

**Automated Calling Service**

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[Sign Up](#)

**Who's Using Call-Em-All**

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**Company Information**

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[Blog](#)  
[FAQ](#)

## new to call-em-all?

Create an account to start using call-em-all's automated phone calling service.

[create an account](#)

## member login

Your account has not been activated. Please check your email to activate your account.

user id: 9911991199

pin: ●●●●

remember me on this computer

[login](#)

[forgot user id or pin?](#)



[how it works](#)

[pricing / get started](#)

[learn more](#)

### What is call-em-all?

Call-Em-All's automated calling service will allow you to easily record a message and automatically send it to every phone number on your list.

[how it works](#)

- ✧ Call thousands of numbers in minutes
- ✧ Fast, easy, and [incredibly affordable](#)
- ✧ No contracts or setup fees
- ✧ No hardware or software to buy
- ✧ Busy signals are automatically retried
- ✧ Your number shows as the caller ID

### call-em-all can help you!

select your group to find out how

[business](#)

[non-profit](#)

[political](#)

[religious](#)

[staffing](#)

[schools](#)

[sports](#)

[communities](#)

#### Site Links

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#### Automated Calling Service

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#### Company Information

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## Important Notice - Action Required

The Federal Trade Commission recently issued an amendment to the Telemarketing Sales Rule. This ruling affects all sales-related calls, *even to your current customers*. You may read more about this ruling and the Telemarketing Sales Rule at the following links:

<http://www.ftc.gov/opa/2008/08/tsr.shtm>

<http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtm>

As a result of this change, Call-Em-All needs to ask the following question:

Do you use Call-Em-All to make promotional or sales related calls as defined by the Federal Trade Commission, even if they are to your own customers?

**yes, I make sales calls    no, I do not make sales calls**



## Important Notice - Action Required

The Federal Trade Commission recently issued an amendment to the Telemarketing Sales Rule. This ruling affects all sales-related calls, *even to your current customers*. You may read more about this ruling and the Telemarketing Sales Rule at the following links:

<http://www.ftc.gov/opa/2008/08/tsr.shtm>

<http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtm>

User ID: 9911991199

First Name: Mike

Last Name: Brown

Sales?: YES

Do you have an existing business relationship with the people you are calling, as defined by the Federal Trade Commission and the Telemarketing Sales Rule?

**Yes, I have an existing business relationship with my recipients.**

**No, I do not have an existing business relationship with my recipients.**



## Important Notice - Action Required

The Federal Trade Commission recently issued an amendment to the Telemarketing Sales Rule. This ruling affects all sales-related calls, *even to your current customers*. You may read more about this ruling and the Telemarketing Sales Rule at the following links:

<http://www.ftc.gov/opa/2008/08/tsr.shtml>

<http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtml>

User ID: 9911991199  
First Name: Mike  
Last Name: Brown  
Sales?: YES  
Relationship?: YES

Based upon the answers to your questions, you will see a few changes to the Call-Em-All service. These changes are intended to help ensure that your use of Call-Em-All is compliant with the amendment to the Telemarketing Sales Rule. However, per our [Terms of Use](#), you are ultimately responsible for ensuring that you are compliant with all local, state, and federal laws. Below are some key provisions of the ruling, their enforcement dates, and what you can expect with regards to the Call-Em-All service.

### Key Provisions of the Telemarketing Sales Rule Amendment

#### Opt Out Requirements

- \* Beginning December 1st, 2008, telemarketers must disclose at the outset of the call that recipients can be placed on a do-not-call list by pressing a key at any time during the message; or, if an answering machine or voicemail answers, you must provide a toll-free number that allows a person to opt-out their phone number.
- \* Call-Em-All will require that all telemarketing clients record an "Intro Message" that will be played at the beginning of every call you make. This "Intro Message" will be up to 10 seconds in length and will include your company name and instructions for opting out of future messages. If you have multiple Messengers (users) on your account, each user will have the ability to set up their own Intro Message. This functionality is being provided FREE OF CHARGE by Call-Em-All.
- \* You will need to record your Intro Message. You will find instructions, samples, and requirements on the Intro Message page of our website. You'll find it after logging in by clicking 'My Account', then 'Broadcast Preferences' and 'Intro Message'.

#### Written Permission from all Recipients

- \* Beginning on September 1, 2009, no one will be able to make prerecorded sales calls to anyone, including current customers, without written consent or consent collected in a manner permitted by the Electronic Signatures In Global and National Commerce Act (E-SIGN Act).
- \* Beginning September 1, 2009, Call-Em-All will require all telemarketing customers to confirm that they have written permission to call the phone numbers on their list.
- \* If you wish to continue making telemarketing calls, you will need to begin collecting written permission from your recipients.

Do you agree to use Call-Em-All only when in compliance with the Call-Em-All [Terms of Use](#) and all local, state, and federal laws including the Federal Trade Commission Amendment to the Telemarketing Sales Rule?

**I agree   I do not agree**

## **EXHIBIT C**

## Terms Of Use

Call-Em-All, LLC ("Call-Em-All") is providing users ("User") with access to its telephone messaging services and web site, (the "Call-Em-All Service"), subject to the terms and conditions of this User Agreement (the "Terms of Use"). Any new features, changes, updates or improvements of the Call-Em-All Service, and the availability of new Call-Em-All services, shall be subject to the terms of this User Agreement unless explicitly stated otherwise.

### 1. YOUR ACCEPTANCE OF THIS USER AGREEMENT

Please read the User Agreement carefully before using or registering for the Call-Em-All Service. By using or registering for the Call-Em-All Service, you agree to be bound by the terms and conditions set forth. If you do not wish to be bound by these terms and conditions, you may not access or use the Call-Em-All Service.

### 2. MODIFICATION OF TERMS

We reserve the right to modify and restate the terms and conditions of the User Agreement, and modification(s) shall be effective immediately upon being posted on the Call-Em-All.com web site.

Unless explicitly stated otherwise, any new features that augment or enhance the current Call-Em-All Service, including the release of new Call-Em-All properties, shall be subject to the User Agreement. You understand and agree that the Call-Em-All Service is provided "AS-IS" and that Call-Em-All assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store or deliver any User communications or personalized information.

You are responsible for reviewing these terms and conditions regularly. Your continued use of the Call-Em-All Service shall be deemed to be your conclusive acceptance of all modifications to the User Agreement.

### 3. PRIVACY POLICY

By using or registering for the Call-Em-All Service you acknowledge that you have read and accept the Call-Em-All Privacy Statement. Before using or registering for the Call-Em-All Service, please carefully read the Call-Em-All Privacy Statement. A link to the Call-Em-All Privacy Statement is on the bottom of each page of Call-Em-All.com.

## CALL-EM-ALL PRIVACY STATEMENT

Call-Em-All has implemented this privacy policy to ensure that personal information (specifically set forth below) pertaining to our clients is kept private and secure subject to the Terms & Provisions of the Call-Em-All User Agreement. Call-Em-All will not distribute any of the information we receive from you while using the Call-Em-All voice broadcasting service. Financial information and other information deemed critical by Call-Em-All will be exchanged over a secure connection and encrypted within our database.

Call-Em-All does not currently have any relationships with third parties that would want or require your personal information. If any aspect of this privacy policy changes, it will be updated on both our website and our User Agreement. If Call-Em-All deems the change particularly important, we will also notify clients via email.

### What personal information does Call-Em-All collect?

#### Registration

During our registration process prior to using the site, Call-Em-All requires that you supply your name, e-mail address, phone number, and other identifying information. This information is used to establish your Call-Em-All account, and so that we may contact or identify you for support purposes.

#### Order/Purchase

During our ordering process, Call-Em-All requires that you provide us with a credit card number and other associated information. This information will be encrypted and stored so that we may process future orders and subscription renewals.

#### Phone Lists

Before sending a voice broadcast, you will need to provide Call-Em-All with a list of phone numbers and other optional information for the people you would like to call. This information will not be shared with any third parties, pursuant to this privacy policy and the Call-Em-All User Agreement.

#### Voice Broadcasts/Recordings

Call-Em-All will record your voice inputs (messages) in order to transmit them to the phone numbers you provide. Call-Em-All reserves the right to review these messages at any time and for any reason, particularly if we have reason to believe that messages are in violation of the Call-Em-All User Agreement.

#### Cookies

Call-Em-All employs cookies to recognize you and your access privileges on our site, as well as to track site usage. Subscribers who do not accept cookies cannot use the Call-Em-All voice broadcasting service. We do not use cookies for any reason other than to help make the Call-Em-All website easy for you to use.

#### IP Addresses

Call-Em-All logs IP addresses for systems administration and troubleshooting purposes. We do not use IP

address logs to track your session or your behavior on our site

#### E-Mail

Call-Em-All will use the email address you provide at registration as the primary method for communicating account-related information with you.

#### Data Security

To prevent unauthorized access, maintain data accuracy, and ensure the use of information, we have put in place appropriate physical and electronic procedures to protect the information we collect online.

Will my information be used for marketing purposes by Call-Em-All or any other company?

Call-Em-All does not currently have any relationships with any third parties that may want or require your personal information. Therefore, you will not receive marketing messages from any company other than Call-Em-All.

Call-Em-All may, from time to time, choose to send email to our users in the form of a newsletter or special offer. Should we decide to send an email to our users, it will be sent ONLY to account owners and individuals that have a login to the Call-Em-All website.

At the end of your broadcast messages, Call-Em-All may give call recipients the option to remove their phone number from your calling list.

### 4. REMOVE PHONE NUMBER

If members of your group do not wish to receive messages, they may visit our website and click 'Opt Out' on the home page of the web site. Alternatively, you may notify Call-Em-All of your request for the removal of a telephone number from a calling list by sending an e-mail to AccountSupport@call-em-all.com or by writing to: Call-Em-All, 2611 Internet Blvd., Suite 120, Frisco, TX, 75034. If no specific calling list is specified, the number will be blocked from receiving calls from any Call-Em-All user. Our Do Not Call list applies even if a calling list is uploaded to our system by a client and is not stored in our database.

### 5. REGISTRATION INFORMATION

You agree, as a condition of your use of the Call-Em-All Service, to provide Call-Em-All with accurate and complete information when registering for or using the Call-Em-All Service, and to update and maintain such information. Call-Em-All has the right to suspend, restrict or terminate your use of the Call-Em-All Service and to refuse any future use of all or portions of the Call-Em-All Service if Call-Em-All has reason to believe that you have failed to comply with these requirements.

### 6. MINIMUM AGE

If you are under the age of eighteen, you are prohibited from using or registering for the Call-Em-All Service. By using or registering for the Call-Em-All Service, you warrant to Call-Em-All that you are above the age of eighteen. In addition, parents of children under the age of 18 should be aware that the Call-Em-All Service is designed to appeal to a broad audience. Accordingly, as a parent or legal guardian, it is your responsibility to determine whether any portion of the Call-Em-All Service is inappropriate for your child.

### 7. TELEPHONE CHARGES

Access to the Call-Em-All service is achieved by dialing a toll-free number within any of the contiguous forty eight (48) states of the United States, Hawaii, and Canada. Call-Em-All Communications is not responsible for any charges that you may incur from dialing outside of the United States or any other connection charges that you may incur when calling the Call-Em-All toll-free phone number, e.g., cellular, mobile, or pay phones.

Please note that Call-Em-All delivers messages anywhere within the contiguous forty eight (48) states of the United States. Messages CANNOT be delivered to Alaska.

### 8. ACCOUNT SECURITY

When you are registered, you will establish a Username and a PIN. You are responsible for protecting the confidentiality of your Username and PIN, and you are fully responsible for all activities that occur under your Username.

You agree: (a) to exit from your account when you conclude each session, and (b) to immediately notify Call-Em-All of any loss, compromise or unauthorized use of your Username and PIN or any other breach of security. You may notify Call-Em-All by sending an e-mail to AccountSupport@call-em-all.com or by writing to: Call-Em-All, 2611 Internet Blvd., Suite 120, Frisco, TX, 75034. Call-Em-All will not be liable for any loss or damage of any kind resulting from either the authorized or unauthorized use of your Username and PIN.

### 9. CONSENT TO RECORD YOUR VOICE INPUTS

You agree and consent that Call-Em-All may record oral or voice communications, utterances, conversations or commands, made by you during the use of the Call-Em-All Service. By using the Call-Em-All Service, you expressly consent and grant to Call-Em-All the right to record and use these recordings. If you do not authorize Call-Em-All to make or use these recordings, you may not use the Call-Em-All Service.

Call-Em-All is under no obligation to monitor any recordings for accuracy, completeness, or quality. User understands that recordings may or may not resemble that which User intends to record and that Call-Em-All is under no obligation to ensure that recordings will successfully represent that which User intends to record. User agrees that all recordings become part of the Content (hereinafter defined) of the Call-Em-All Service.



## 10. RESTRICTION AND MODIFICATION OF SERVICE

You agree that Call-Em-All may limit your use of the Call-Em-All Service, including without limitation the frequency and duration for which you may access the Call-Em-All Service, and that Call-Em-All has no responsibility or liability for any unavailability or limitation on use of the Call-Em-All Service. In addition, Call-Em-All reserves the right at any time to limit, access to, modify, change or discontinue the Call-Em-All Service, or any part thereof, with or without notice. You agree that Call-Em-All shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Call-Em-All Service. You acknowledge and agree that Call-Em-All may establish general practices and limits, which may not be published, concerning the use of the Call-Em-All Service, including without limitation the maximum time that messages will be retained, the maximum number of messages that may be sent from or received by an account on the Call-Em-All Service, the length of message sent and the maximum number of times, and the maximum duration for which you may access the Service, in a given period of time. You agree that Call-Em-All has no responsibility or liability for the deletion or failure to store any messages and other communications maintained or transmitted by the Call-Em-All Service. You acknowledge that Call-Em-All reserves the right to terminate any inactive or dormant account(s). You agree and Call-Em-All reserves the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

## 11. YOUR CONDUCT

As a condition of your use of the Call-Em-All Service, you agree and warrant to Call-Em-All that you will not use the Call-Em-All Service for any purpose that is unlawful or prohibited by the User Agreement. You may not use the Call-Em-All Service in any manner that could damage, impair, disable or overburden the Call-Em-All Service, interfere in any way with Call-Em-All's rights, interfere in any way with any other user's use and enjoyment of the Call-Em-All Service, or otherwise infringe on any person's rights.

Specifically, you agree and warrant to Call-Em-All that:

You will not use, or attempt to use, the Call-Em-All Service to convey any information that may be considered unlawful, harassing, libelous, abusive, threatening, obscene, hateful, offensive, harmful, vulgar, distasteful, defamatory, indecent, objectionable, or invasive of another person's privacy or proprietary rights.

You will follow the letter and spirit of the terms of the User Agreement and all applicable laws;

You will not use, or attempt to use, the Call-Em-All Service in connection with any junk messages, spamming, advertising or messages that are duplicative, unsolicited, or promotional in nature;

You will not send, or attempt to send, messages to emergency lines, to any health care facility or similar establishment, to numbers assigned to radio common carrier services or to any service for which the called party is charged for the call;

You will not transmit, or attempt to transmit, any material that may infringe the contractual, fiduciary, intellectual property rights, or other rights of third parties, including trademark, copyright or the right of publicity;

You will not impersonate, or attempt to impersonate, any other person, falsify contact information, misrepresent a relationship with any person or entity, including misrepresenting a relationship with Call-Em-All, or otherwise attempt to mislead others as to the identity of the sender or the origin of a message;

You will not resell, or attempt to resell, the use of the Call-Em-All Service without express, prior written consent/permission from Call-Em-All;

You will not collect, or attempt to collect, or store information about the Call-Em-All Service or other users, including contact information, without their consent;

You will not interfere, or attempt to interfere, with or disrupt connections to the Call-Em-All Service or violate the regulations, policies or procedures of such connections;

You will not attempt to gain unauthorized access to the Call-Em-All Service, other accounts, computer systems or networks connected to the Service.

You will not attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password/PIN mining or any other means.

You agree and Call-Em-All retains the right, at its sole discretion, to determine whether or not User's conduct is consistent with the letter and spirit of the User Agreement. Call-Em-All may immediately terminate User's Call-Em-All account if User's conduct is found to be inconsistent with this User Agreement.

## 12. NO SPAM AND CONSENT TO DAMAGES

Call-Em-All will immediately terminate any account which it believes, in its sole discretion, is transmitting or is otherwise connected with any spam or other unsolicited messaging activities. Activities such as sending spam or other unsolicited messages can cause harm to Call-Em-All (and our customer base) in numerous ways including, but not limited to, damaging the Call-Em-All brand name, damaging our reputation for delivering relevant messages, damaging our reputation for privacy,

damaging our ability to attract and retain customers, and damaging other consumer, customer and business goals, activities, or relationships. Call-Em-All retains sole responsibility and discretion for calculating losses; because these and other damages are often difficult to quantify, if actual damages cannot be reasonably calculated by Call-Em-All; then you agree to pay Call-Em-All liquidated damages of \$5.00 for each piece of spam or unsolicited message transmitted from or otherwise connected with your Call-Em-All account; otherwise, you agree to pay Call-Em-All's actual damages, to the extent such actual damages can be reasonably calculated by Call-Em-All.

### 13. COMPLIANCE WITH FEDERAL AND STATE REGULATIONS

User agrees to comply with the anti-solicitation provisions of the Federal Telephone Consumer Protection Act of 1991, and any amendments thereto, at 47 U.S.C. § 227, the Federal Communications Commission's implementing regulations, at 47 CFR § 64.1200 et seq., the Federal Trade Commission's Telemarketing Sales Rule including the August 2008 Amendment at 16 CFR Part 310, and any other similar laws. User agrees not to violate these, or any other applicable anti-solicitation laws, and represents and warrants that its use of the Call-Em-All Service will not cause Call-Em-All to violate these or other similar laws.

User agrees to comply with the anti-solicitation provisions of the Federal Telephone Consumer Protection Act of 1991, and any amendments thereto, at 47 U.S.C. § 227, the Federal Communications Commission's implementing regulations, at 47 CFR § 64.1200 et seq., and any other similar laws. User agrees not to violate these, or any other applicable anti-solicitation laws, and represents and warrants that its use of the Call-Em-All Service will not cause Call-Em-All to violate these or other similar laws.

User agrees that it is the sole responsibility of User to abide by any laws defined by the State or Federal Government in which Call-Em-All Services will be applicable. User understands and agrees that Call-Em-All will not be held responsible for damages to the User or any third party incurred due to User's failure to abide by State and/or Federal laws. Please refer to the Telephone Consumer Protection Act of 1991. You may visit the Federal Communications Commission Web site at <http://www.fcc.gov> and the Federal Trade Commission Web site at <http://www.ftc.gov>. Please refer to the appropriate State Attorney Generals office or other applicable offices for telemarketing rules and or regulations pertaining to your intended application and use of the Call-Em-All Service.

### 14. NO RESPONSIBILITY FOR CONTENT

As part of the Call-Em-All Service, Call-Em-All may offer User access to communications, media and commerce services. Call-Em-All does not guarantee the accuracy, integrity, quality or appropriateness of any messages, communications, information, data, text, music, sound, or other materials ("Content"), whether publicly posted or privately transmitted through the Call-Em-All Service. You acknowledge that the Call-Em-All Service simply acts as a passive conduit for the distribution and transmission of information. You acknowledge that Call-Em-All has no obligation to screen, preview, or monitor such Content. By using the Call-Em-All Service, you agree that it is solely YOUR RESPONSIBILITY to evaluate the accuracy, usefulness, completeness, or appropriateness of any Content that you send, receive, access, post, or otherwise transmit through the Call-Em-All Service, including Content that may be offensive, indecent or objectionable. Under no circumstances will Call-Em-All be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content sent, accessed, posted or otherwise transmitted via the Call-Em-All Service.

### 15. DISCLOSURE

Call-Em-All may make identifiable information available to our employees and third parties with whom we contract. In addition, Call-Em-All may provide aggregate statistics, unique identifiers, demographic, and other anonymous information about our users to advertisers, Service Providers (hereinafter defined), and other third parties. You acknowledge and agree that Call-Em-All may make such uses of information you provide or Call-Em-All collects.

While Call-Em-All is committed to protect your privacy, Call-Em-All does not guarantee that your communications, contact information and other identifiable information will never be disclosed. You acknowledge and agree that Call-Em-All may disclose any information or Content as described herein, or if required to do so by law or in the good faith belief that such disclosure is reasonably necessary to: (a) comply with any legal process; (b) respond to claims of a violation of the rights of third parties; or (c) protect the rights, property, or safety of Call-Em-All, its users or the public. Call-Em-All does not accept any responsibility for accidental or inadvertent disclosure, unauthorized access or other disclosure as required by law or described herein.

As we continue to develop our business, we might sell our company or buy other companies or assets. In such transactions, customer information generally is one of the transferred business assets. Also, in the event that Call-Em-All, or substantially all of its assets are acquired, you consent to the transfer of your information as one of the transferred assets.

### 16. SERVICE FEES AND CHARGES

The basic account fees ("Service Fees") shall be provided at the rates set out in the Call-Em-All pricing plan at the time of subscription, plus applicable taxes, fees, and surcharges. Call-Em-All may modify subscription Service Fees at renewal periods.

### 17. SUBSCRIPTION BILLING

Service Fees for subscription users of the Call-Em-All Service will be automatically charged on the first day of each month to the credit or debit card on file for User.

If for any reason payment is not effected through User's credit or debit card and payment becomes past due, Call-Em-All will assess a late payment charge of 1.5% per month, or 18% annually (or the highest amount allowed by law, whichever is lower) on the amount due. The total amount of the late payment, and the late charge, shall be due and payable immediately. User is responsible for any fees, including attorney and collection fees that Call-Em-All may incur in its efforts to collect any Service Fees, surcharges and late payment charges owing from the User. Additionally, Call-Em-All reserves the right to immediately

and without notice terminate the account of any User with a past due balance.

Call-Em-All reserves the right to change the billing process upon providing the Subscriber with 30 days notice in writing or via email.

Unlimited Usage on Subscription Accounts: You agree and Call-Em-All retains the right, at its sole discretion, to determine whether or not User is abusing the unlimited usage privilege on a subscription account. If Call-Em-All determines that an account is abusing the unlimited usage privilege, Call-Em-All may restrict or terminate that account. As a guideline only, a user that creates broadcasts that result in more calls per day than the maximum number of recipients in their subscription plan will be considered in abuse of the unlimited usage privilege. Abuse may be addressed by contacting the group leader to warn of excessive usage. Call-Em-All reserves the right to charge an additional 9 cents (\$.09) per call for any excessive calls, as determined at the sole discretion of Call-Em-All.

## 18. FREE TRIALS

Call-Em-All may permit User to use the Call-Em-All Service on a free trial basis. During this time, User will not incur any charges or fees for use of the service. After the expiration of your free trial, you will have the option to purchase a Call-Em-All messaging package or subscription as described on the Call-Em-All web-site. Call-Em-All reserves the right to terminate the account of any free trial User at any time.

## 19. TERM AND TERMINATION

Call-Em-All Service subscriptions shall automatically renew on a monthly basis at the rate indicated on the pricing plans page of the Call-Em-All.com website. Users may discontinue their subscription at any time by logging in to the website and selecting "Cancel my Subscription", or by sending an email to [AccountSupport@call-em-all.com](mailto:AccountSupport@call-em-all.com). WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH SUBSCRIPTION PERIODS. Users that have no past due balance and have paid for the current month will be able to complete broadcasts on their cancelled account until their paid subscription ends.

Call-Em-All per-call service plans will expire after one hundred eighty (180) days of inactivity or upon exhaustion of the messages. Inactivity is defined to mean that User has neither purchased an additional per-call plan, nor initiated a broadcast. Call-Em-All per-call service plans are non-refundable.

## 20. SERVICE PROVIDERS

The Call-Em-All Service may provide User with opportunities to be transferred or linked to third party providers ("Service Providers") of products, services, advertisements or Content that may be accessible through and operate with the Call-Em-All Service. Call-Em-All does not endorse and is not responsible or liable for any Content, data, advertising, products or services available or unavailable from, or through, such Service Providers. You further agree that should you use or rely on such Content, data, advertisement, goods or services on, available or unavailable from, or through any such Service Providers, Call-Em-All is not responsible or liable, indirectly or directly, for any damage or loss caused or alleged to be caused by or in connection with such use or reliance. Your dealings with, or participation in promotions of Service Providers, and any other terms, conditions, representations or warranties associated with such dealings, are between you and such Service Providers exclusively and do not involve Call-Em-All.

You agree that Call-Em-All is not responsible for the accessibility or unavailability of Service Providers or for your interaction and dealings with them.

## 21. LIABILITY DISCLAIMER

YOU AGREE THAT:

A. IF YOU USE THE CALL-EM-ALL SERVICE, YOU DO SO AT YOUR OWN AND SOLE RISK. THE CALL-EM-ALL SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CALL-EM-ALL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

IN THE EVENT OF A CRITICAL EMERGENCY, REGULAR CALL-EM-ALL.COM MESSAGING SERVICES MAY TEMPORARILY BE PRE-EMPTED TO PROVIDE SERVICE TO CLIENTS WITH EMERGENCY-RELATED NEEDS.

B. CALL-EM-ALL DOES NOT WARRANT THAT (i) THE CALL-EM-ALL SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE CALL-EM-ALL SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE CALL-EM-ALL SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE CALL-EM-ALL SERVICE WILL MEET YOUR EXPECTATIONS, (v) ANY INFORMATION YOU PROVIDE OR CALL-EM-ALL COLLECTS WILL NOT BE DISCLOSED, OR (vi) ANY ERRORS IN ANY DATA OR SOFTWARE WILL BE CORRECTED. YOU ARE ESPECIALLY ADVISED NOT TO USE OR RELY ON THE CALL-EM-ALL SERVICE AND INFORMATION OR ANY OTHER PROGRAM, INFORMATION OR SERVICE WHATSOEVER RELATED THERETO FOR "CONTENT SENSITIVE" OR "MISSION CRITICAL" APPLICATIONS AND USE. "CONTENT SENSITIVE" SHALL MEAN ANY INFORMATION OR DATA YOU DO NOT WISH TO BE ACCESSIBLE TO OTHER USERS. "MISSION CRITICAL" APPLICATIONS AND USE SHALL MEAN APPLICATIONS AND USE THAT MAY RESULT IN DAMAGE.

C. IF YOU ACCESS OR TRANSMIT ANY CONTENT THROUGH THE USE OF THE CALL-EM-ALL SERVICE, YOU DO SO AT YOUR OWN DISCRETION AND YOUR SOLE RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOU IN CONNECTION WITH SUCH ACTIONS.

D. NO DATA, INFORMATION OR ADVICE OBTAINED BY YOU IN ORAL OR WRITTEN FORM FROM CALL-EM-ALL OR

THROUGH OR FROM THE CALL-EM-ALL SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

## 22. LIMITATION OF LIABILITY

YOU EXPRESSLY AGREE THAT CALL-EM-ALL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (EVEN IF CALL-EM-ALL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR INABILITY TO USE THE CALL-EM-ALL SERVICE; (ii) THE COST OF ANY SUBSTITUTE GOODS AND SERVICES PURCHASED TO REPLACE ANY GOODS OR SERVICES PURCHASED OR OBTAINED AS A RESULT OF ANY INFORMATION OBTAINED FROM OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE CALL-EM-ALL SERVICE; (iii) DISCLOSURE OF, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR INFORMATION OR MESSAGES; (iv) STATEMENTS OR CONDUCT OF ANY SERVICE PROVIDERS OR OTHER THIRD PARTY ON THE CALL-EM-ALL SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE CALL-EM-ALL SERVICE.

## 23. INDEMNIFICATION

You agree to indemnify, defend and hold harmless Call-Em-All, its officers, directors, owners, employees, agents, other Service Providers, vendors or customers from and against all losses, liabilities, expenses, damages and costs, including reasonable attorneys' fees resulting from any violation of the User Agreement by you or any harm you may cause to anyone. You agree and we reserve the right, at your expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## 24. PROPRIETARY RIGHTS

You acknowledge and agree that the Call-Em-All Service and any necessary software used in connection with the Call-Em-All Service and Service Providers contain proprietary and confidential information that are protected by applicable intellectual property and other laws. You further acknowledge and agree that Content contained in sponsor advertisements or information presented to you through the Call-Em-All Service or other users is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. You may not, and agree not to, modify, reformat, copy, display, distribute, transmit, publish, license, create derivative works from, transfer or sell any information, products or services obtained from the Call-Em-All Service, except as set forth herein. Call-Em-All, the Call-Em-All logo and other Call-Em-All logos, product and service names may be trademarks, service marks or other intellectual property of Call-Em-All (the " Call-Em-All Marks"). You agree not to display or use the Call-Em-All Marks in any manner without the prior, express written permission of Call-Em-All.

## 25. NOTICE

You agree that Call-Em-All may communicate any notices to you, including notices of changes to the User Agreement, through email, regular mail or by posting of those notices on the [Call-Em-All.com](http://Call-Em-All.com) web site or through the Call-Em-All Service.

## 26. ENTIRE AGREEMENT

The User Agreement governs your use of the Call-Em-All Service. This User Agreement, your pricing plan, and your payment agreement constitute the entire agreement between you and Call-Em-All. They supersede any prior agreements between you and Call-Em-All. Additional terms and conditions may apply when you use the services of Service Providers and others. These additional terms will not reduce, diminish, or eliminate any rights Call-Em-All possesses with respect to this User Agreement.

## 27. GOVERNING LAW AND ARBITRATION

The User Agreement and the relationship between you and Call-Em-All shall be governed by the laws of the State of Texas without regard to its conflict of law provisions. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Call-Em-All Service or to the terms of this User Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred. You agree to submit any dispute with Call-Em-All exclusively to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of any arbitration shall be in the city of Frisco, Texas. You agree any arbitrator shall not have the authority to award punitive damages. You agree to be bound by any ruling in such arbitration proceeding and that such ruling shall be enforceable in any court of competent jurisdiction.

## 28. MISCELLANEOUS

Any failure by Call-Em-All to exercise any rights or enforce any of the terms of this User Agreement shall not constitute a waiver of such rights or terms. If any portion of the User Agreement is found by an arbitrator or a court of competent jurisdiction to be invalid, the arbitrator or court should nevertheless give effect to the parties' intentions expressed herein. All other provisions of the User Agreement remain in full force and effect.