

Robert V. Arkow, Founder
Californians Against Telephone Solicitation (C.A.T.S.)

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Canyon Country, CA 91351

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October 17, 1998

Via fax, e-mail, and certified mail

Ms. Dorothy Attwood, Chief
Federal Communications Commission
Common Carrier Bureau
Enforcement Division
1919 M Street NW
Washington DC 20554

Dear Ms. Attwood:

Subject: Telephone Consumer Protection Act of 1991 (TCPA)
Complaint Concerning Violation of: 47 CFR sec. 64.1200(d)(2)

Dear Ms. Attwood:

On Thursday, October 15, 1998 at approximately 11:12 AM PDT the following taped message was left on my residential telephone line's answering machine:

“Hello, this is Attorney General Dan Lundgren, and I’m calling to ask for your vote. As Governor, I’ll make public safety and education of our children my top priority. This election is extremely important to the future of California. If you have an absentee ballot, please return it right away. I hope I can count on your support. Thanks a lot.”

Mr. Lundgren is California's Attorney General, and candidate for Governor.

While it is not a violation to use an automatic telephone dialing system to deliver a prerecorded non-commercial message to a residential telephone in and of itself, it is a violation to deliver such message without including proper identification as mandated by the FCC.

As stated in the Code of Federal Regulations sec. 64.1200:

(d) All artificial or prerecorded telephone messages delivered by an automatic telephone dialing system shall:

- (1) At the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and
- (2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player which placed the call) or address of such business, other entity, or individual.

Mr. Lundgren failed to provide such identifying information at any time collateral to his prerecorded telephone message, as required by the FCC.

As Mr. Lundgren's candidacy will soon end, the FCC's quick response to this matter is imperative. Furthermore, your timely response will generate the requisite situation needed to help bring other entities into compliance with the TCPA and 47 CFR sec. 64.1200. How can we expect others to comply with the TCPA when the chief law enforcement officer of the most populated state in the nation violates it?

I have a lawfully recorded tape of the subject message. Should you need the tape as evidence, or any other assistance from myself or C.A.T.S., I will be happy to provide it.

I expect your timely response pending further action on my part.

Very truly yours,

Robert V. Arkow
Founder, Californians against telephone solicitation.

cc: Chairman William Kennard (wkennard@fcc.gov)
Commissioner Susan Ness (sness@fcc.gov)
Commissioner Harold Furchtgott-Roth (hfurchtg@fcc.gov)
Commissioner Michael Powell (mpowell@fcc.gov)
Commissioner Gloria Tristani (gtristan@fcc.gov)



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
APR 01 1999

April 13, 1999

Mr. Robert Arkow
Californians Against Telephone Solicitation

Canyon Country, CA 91351

Dear Mr. Arkow:

I am writing in response to your October 17, 1998 letter, in which you state that you received a prerecorded non-commercial message in violation of the Commission's telephone solicitation rules. I apologize for not responding to you sooner. Specifically, you state that you received a prerecorded non-commercial message from Attorney General Dan Lundgren on October 15, 1998, that did not contain the proper identification mandated by section 64.1200(d) of the Commission's rules.

Upon receipt of your letter, we evaluated the sufficiency of the message based on the information that you provided. As you recognized, section 64.1200(d)(1)-(2) requires that all prerecorded message calls delivered by an automatic telephone dialing system state "the identity of the business, individual, or other entity initiating the call" and "the telephone number . . . or address of such business, other entity or individual," 47 C.F.R. § 64.1200(d)(1)-(2). Based on your representations, it appeared that Attorney General Dan Lundgren's message regarding his candidacy for governor may not have contained the requisite identification as required pursuant to section 64.1200(d)(1)-(2) of our rules.

Because of your concern and the apparent violation, we contacted Mr. Lundgren's campaign staff to discuss this potential violation of our rules. Mr. Lundgren's staff assured the Commission that any violation was unintentional and further indicated that it would promptly correct the prerecorded message.

I hope that this information is helpful. We again apologize for the delay in responding to you directly; please be assured, however, that we acted on your behalf in discussions with Mr. Lundgren's staff.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy Attwood".

Dorothy Attwood
Chief, Enforcement Division
Common Carrier Bureau
Federal Communications Commission

cc: Congressman McKeon