

## Digital Media Solutions' Response

Digital Media Solutions (DMS or the Company), a publicly-traded company based in Florida, would like to provide the below response to David Frankel's blog post regarding DMS. As explained further below, DMS takes its compliance obligations seriously and strives to be an industry leader in that regard. DMS has provided information below to explain its compliance practices and why it believes those practices are consistent with all applicable laws governing consent based consumer calls, including the Telephone Consumer Protection Act (TCPA), the Telemarketing Sales Rule (TSR) and all related regulations. Indeed, as the internet and online activity evolve continuously, and the regulatory landscape shifts, DMS also seeks to adapt its compliance practices and policies. Given the issues raised in Mr. Frankel's post, DMS felt it important to provide a comprehensive understanding of its commitment to compliance with all applicable laws and regulations.

Before providing a fulsome account of its compliance efforts, DMS would first like to respond to several issues that it finds with Mr. Frankel's post.

First, DMS objects to the manner in which Mr. Frankel has engaged with DMS. Ever since Mr. Frankel first reached out, DMS engaged at all times in good faith with Mr. Frankel and communicated with Mr. Frankel with as much transparency as possible. DMS was under no legal obligation to share any information with Mr. Frankel as he is a private citizen and is not affiliated with any state or federal regulator. DMS provided information in an attempt to further the discussion with Mr. Frankel so that DMS could possibly alleviate some of Mr. Frankel's concerns while also potentially learning some new information or techniques to help the Company improve its compliance practices. Indeed, DMS made all attempts to work with Mr. Frankel collaboratively and was optimistic that Mr. Frankel had the same intentions. However, Mr. Frankel's decision to use DMS's communications with him and the information provided therein in his blog post suggests otherwise to DMS. Further, Mr. Frankel criticizes DMS for not sharing sensitive, confidential information regarding consumers' personal data even after DMS explained that it had privacy obligations and therefore could not share such information with a private citizen who was not acting under any legal authority. Mr. Frankel's decision to publish these communications shows that DMS was correct not to share such sensitive information with Mr. Frankel.

Second, to the best of DMS's knowledge, Mr. Frankel is not affiliated with any state or federal regulator, or acting under any legal authority. DMS also understands that Mr. Frankel sells software that allegedly helps to identify illegal robocalling. DMS approached Mr. Frankel about working with him and potentially incorporating his software as a further compliance measure. However, Mr. Frankel advised DMS that he did not believe that his software could help DMS to identify troublesome calls. Again, at all turns, DMS has attempted to work with Mr. Frankel, including expressing a willingness to integrate his product which it understood should help identify and address robocalls. DMS was disappointed with Mr. Frankel's response.

Third, Mr. Frankel misleadingly suggests that DMS is behind "millions" of robocalls that he has been able to identify. This is simply not true. In fact, Mr. Frankel can only conclusively state that a relatively select group of calls were conducted by DMS, largely because DMS confirmed some of the calls in its attempt to have a good faith dialogue with Mr. Frankel. The only calls that Mr. Frankel can say actually came from DMS are those for which Mr. Frankel had the Industry Traceback Group perform tracebacks, which Mr. Frankel does not quantify but would be very few, and those that DMS actually

confirmed, which were also limited. Outside of this very limited pool Mr. Frankel does not know that DMS has conducted the calls he suggests it has. Instead, the large majority of the post is based on vague “calling patterns” that Mr. Frankel suggests show that all of these calls are from DMS. These so-called “calling patterns,” which are not fully explained, could apply to any marketing company that also engages in consent based consumer calls. Indeed, in our communications with Mr. Frankel he misidentified several calls that were dialed by a different company as coming from DMS, which DMS pointed out as incorrect at the time. Also, Mr. Frankel’s suggestion that DMS’s failure to rebut each and every one of the hundreds of calls he sent to DMS is somehow tacit confirmation that DMS conducted these calls when DMS was under no legal obligation to provide any information to Mr. Frankel is indicative of the flimsiness of Mr. Frankel’s arguments. In sum, Mr. Frankel simply cannot support the inferences he makes regarding the bulk of the calls he allegedly identified and fails to provide this necessary context in his blog post.

Fourth, Mr. Frankel presents many inaccurate statements about DMS’s business that show a profound lack of understanding of how DMS, and other marketing companies that conduct consent based consumer calls, conduct business. Mr. Frankel suggests that DMS “sells” Medicare advice as well as home or auto warranties. This is false. DMS does not sell anything directly to consumers or even advertise products or services on its calls. DMS, similar to other companies that conduct consent based consumer calls, engages with a consumer to determine if the consumer should be matched with an advertiser and, if appropriate, connects the consumer with the advertiser. Again, DMS does not sell, or even advertise, products or services.

Fifth, Mr. Frankel misleadingly suggests that others have successfully sued DMS for illegal telemarketing. In fact, to our knowledge, no court has ever found DMS liable for dialing an illegal call and DMS has not been forced by any court to pay damages to any plaintiff for an illegal call. Mr. Frankel’s loose treatment of facts again underscores that Mr. Frankel is less interested in truthful dialogue and more focused on painting DMS, and other marketing companies that conduct consent based consumer calls, in a bad light.

Finally, DMS wanted to provide a more fulsome background on the Company and its compliance initiatives. DMS continually evaluates its policies and procedures to adapt and enhance its compliance as well as consumer experiences. DMS has no desire or intent to mislead consumers, strives to comply with all applicable laws and regulations, and believes that its practices with respect to consumer consents meet or exceed those of the Company’s peers. Notwithstanding DMS’s belief that its practices satisfy statutory and regulatory obligations, DMS constantly works to enhance its compliance efforts. DMS has continued to refine certain practices and has implemented or enacted a plan to implement additional features in 2023 that the Company believes will further ensure that the Company’s practices are consistent with all relevant statutes and regulations.

## **I. Background**

### **A. Company Overview**

Founded in 2012, DMS is a publicly traded, premier digital performance marketing company headquartered in Clearwater, Florida. DMS offers a diversified lead and software delivery platform that drives high-value and high-intent leads to its customers. The Company uses its platforms to deliver scalable, sustainable, and measurable marketing results across a variety of industries, including insurance

and consumer finance. DMS assists its clients to accelerate their growth using innovative and data-driven advertising and customer acquisition solutions that connect clients with their prospective customers.

With over 400 employees, DMS is one of the largest marketing firms in Tampa Bay. The Company was ranked first on mThink's "Best CPA Networks for Advertisers and Merchants" list for the past two years; was recognized on *Inc.* magazine's inaugural Best Led Companies list in 2021; and ranked third on mThink's "Best CPA Networks for Affiliates and Publishers" list in 2021. DMS also is a platinum member and has executives serving on the board of the Consumer Consent Council (formally LeadsCouncil), was named to the Annual *Inc.* 5000 list for seven consecutive years, and is a two-time recipient of the *Tampa Bay Times'* Top Workplaces in the region recognition. Among other achievements, at the end of 2020, DMS also announced that as of September 2020, it successfully had connected more than 1 million consumers to health insurance providers that match those consumers' particular needs.

DMS's leaders have overseen DMS's evolution over the last decade into an award-winning, digital performance advertising company demonstrating consistent and significant year-over-year growth. DMS's executives also have been recognized for their leadership. For example, DMS's Chief Executive Officer was a recipient of Ernst & Young's Entrepreneur of the Year Florida Award in 2019, and he has served as a board member of the Consumer Consent Council, an independent association of companies in the online lead generating industry committed to promoting best practices among companies involved in online lead-generation and ethical conduct throughout the industry. Since 2019, DMS's Chief Operating Officer also has been an active board member of the Consumer Consent Council. The *Tampa Bay Business Journal* also has recognized DMS's Chief Security Officer as Chief Information Officer of the Year.

## **B. Overview of Company Structure and Business Operations**

DMS is organized into two business units and primarily provides its clients with three services: (i) customer acquisition-related services; (ii) managed services; and (iii) software services. Customer acquisition services involve the process of identifying and cultivating potential customers, or leads, for a client's business products or services. Managed services involve managing a client's marketing spend or performance. Finally, through its software services, DMS assists its clients in tracking lead counts, sources and channels, pricing, and overall spend.

DMS offers its customer acquisition-related services through a variety of approaches. Through one approach, DMS advertises directly for its client under the client's brand name by contracting with publishers to provide leads to fulfill advertising campaigns. In that scenario, the consumer interacts directly with the DMS client in the first instance, rather than with DMS. Another approach involves DMS advertising its client's business under DMS's brand name. The consumer in that situation interfaces directly with DMS's brand by, for example, visiting a DMS website and entering his or her information, and consenting expressly to be called by DMS and/or its marketing partners. In the context of a call campaign, a DMS agent may use a dialing platform to connect with a consumer who has provided express consent to be contacted. In other cases, DMS provides a list of leads and approved scripts to third-party dialers who make calls to consumers who have provided express consent to be contacted. In either scenario, the agent then goes through a script to determine whether the consumer would like to be matched with an advertiser. If appropriate, the agent connects the consumer with the advertiser's call center for further information.

DMS does not advertise products or services on its calls. Instead, in the context of a call campaign, when DMS agents contact consumers (who have provided express consent to be contacted), the agent goes

through a script to determine whether the consumer should be matched with an advertiser and if appropriate, connects the consumer with the advertiser's call center for further information. When DMS contacts consumers who have provided prior express written consent, the Company uses live agent dialing. DMS does not use an automatic telephone dialing system.

DMS does not allocate phone numbers to its customers for a fee, nor does DMS sell voice services, such as Voice over Internet Protocol (VoIP) or any telecommunications services. DMS is an end user of VoIP services and places calls to prospective customers, or engages third parties that place calls and transfer or forward those calls to DMS or a DMS advertiser client.

## **II. DMS's Robust Compliance Efforts**

DMS is dedicated to compliance with all laws and regulations relating to its business. To that end, the Company is carefully structured with a well-defined executive team, including legal and compliance functions that report to DMS's General Counsel and Executive Vice President of Compliance. DMS's General Counsel and Executive Vice President of Compliance oversees a global legal and compliance team of 9 individuals, including an Assistant General Counsel and Senior Vice President - Compliance, and a Compliance Director. Together, the Associate General Counsel and Compliance Director oversee DMS's corporate compliance program by, among other things, staying apprised of legal developments and carefully crafting and implementing new processes and procedures to bolster compliance. The legal and compliance teams also set forth policies in an effort to ensure the Company is in compliance with all relevant laws and regulations. And all new hires are required to complete a General Compliance training session prepared by the Associate General Counsel and Compliance Director. The Company continually works to refine its compliance policies and procedures, some of which are set forth below.

In addition to the dedicated Compliance team, DMS has a number of individuals from various sectors who also contribute to Compliance efforts. For example, DMS recently hired an EVP, Business Intelligence with nearly twenty years of experience in the industry and who was brought in to focus on optimizing data and analytics best practices. These best practices include developing new tools to improve compliance efforts. DMS also has other employees who report to and support the Compliance team as part of their job duties.

### **A. Express Prior Written Consent and Opt-Out Requests**

Pursuant to Company policy and in accordance with the TCPA, DMS has implemented policies and procedures in an effort to ensure that there is prior express written consent to be contacted from all consumers whom the Company or any of its clients, affiliates, or service providers may contact via automated technology, SMS, pre-recorded messages, or ringless voicemail. Express consent is required when a lead is generated on websites the Company owns and operates, as well as when a lead is generated on websites owned and operated by third-party publishers. In order for a consent to be generated, a consumer has to click on a TCPA disclosure checkbox before their data will be preserved. If a customer does not provide the requisite consent, the consumer's information is not entered into DMS's system. Without consent, no lead is created and DMS will not call the person. Consumer data also cannot be transmitted unless the user checks the box or clicks the relevant button permitting such transmission.

Among its efforts to strengthen its compliance functions, DMS has implemented an automated process whereby numbers are checked against the FCC's Reassigned Numbers Database before DMS

makes a call. This process should mitigate risks associated with a consumer requesting to be contacted at one number, only for that number later to be reassigned to a different person. Furthermore, consistent with industry standards, the Company also uses ActiveProspect TrustedForm and Jornaya LeadiD, which are prominent providers of third-party lead certification and verification services, to validate proof of consent for each lead that is generated. As of January 2023, third parties who provide leads to DMS also must use a lead verification service like TrustedForm and Jornaya LeadiD. These lead verification services, which provide a certification that a consumer visited the site at issue and entered the data collected, provide an extra layer of security that consents which DMS dial on or provide to others are valid. Additionally, DMS uses the Blacklist Alliance Litigation Firewall, which provides a service to scrub high-risk numbers from outbound campaigns or inbound calls.

Additionally, DMS has implemented, and continues working to refine, a detailed process for reviewing the websites of third-party publishers where leads are generated on behalf of the Company or its advertiser clients. Those third-party websites are reviewed for TCPA-compliant consent. DMS requires third-party publishers to use TrustedForm or Jornaya LeadiD for any leads provided to DMS. Furthermore, when a publisher provides proof of consent, the publisher also must provide certain data to ensure that each lead is valid, including the consumer's first and last name, phone number, email address, timestamp, and the IP address associated with the consent.

Moreover, DMS also stays abreast of all regulatory developments and is closely following FCC and FTC guidelines as the regulatory landscape changes.

DMS also continually refines its processes for ensuring it has the most up-to-date information concerning consumer revocations or opt outs. For example, DMS has an internal Do Not Contact ("DNC") policy, whereby the Company responds swiftly to consumer opt-out requests, complaints, disputes, and other issues. DMS is also in the process of revamping its DNC process so that a single DNC request will apply more broadly which will further reduce the chance of a caller receiving an unwanted call after submitting a DNC request. The Company, moreover, maintains records of opt-out or DNC requests. The Company also channels opt-out requests, complaints, and other consumer communications from various sources to identify the most up-to-date information about which consumers have revoked their consent to being contacted. In addition, DMS has adopted a policy of honoring opt-out requests within 24 hours, with a few limited exceptions.<sup>1</sup>

## **B. Third Party Audits**

DMS takes a number of steps to ensure that the parties with whom it does business comply with applicable legal requirements by conducting audits of such third parties and at times terminating the relationship if there are compliance lapses.

DMS also reviews the websites of third-party publishers where leads are generated on behalf of the Company or its advertiser clients to ensure website disclosures comply with the law. DMS also takes action to sever ties with companies that fail to meet the Company's standards for leads.

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<sup>1</sup> DMS will be able to honor DNC requests within twenty-four hours for requests that occur on a call. However, on all websites owned and operated by DMS, DMS provides an email and telephone number for consumers to submit a DNC response via an email or a voicemail box, which DMS might not receive immediately based on business hours and when the request is sent. Even in these cases, DMS will honor those requests as soon as possible.

DMS scripts also are crafted to, among other things, identify the business on whose behalf the call is being made and the purpose of the call. To the extent issues relating to scripts are brought to DMS's attention, DMS works with third parties who dial numbers for the Company to address those issues.

### **C. Independent Call Centers**

As discussed above, DMS also contracts with a number of call centers to place calls to consumers. These call centers are independent contractors and not employees or agents of DMS. However, DMS still requires that all such independent call centers that contract with DMS follow all applicable laws and regulations. A standard DMS contract requires that the call center provide its services "in full compliance with all applicable laws and regulations, including without limitation, the Telephone Consumer Protection Act and the National Do Not Call registry." Similar to other third parties that DMS works with, DMS has high expectations for these call centers and will terminate the relationship if DMS finds that the call center is not meeting DMS's high standards for compliance.

### **III. Conclusion**

DMS hopes that this submission has provided needed context to Mr. Frankel's post. DMS engaged with Mr. Frankel at all times in good faith despite the fact that they were under no legal obligation to do so. DMS is committed to its compliance objectives and strives to be an industry leader and will continue to do so, despite what it believes are unfounded and inaccurate allegations in Mr. Frankel's post.