

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the matter of Lifetime Entertainment Services, LLC	:	CG Docket No. 02-278
Petition for Declaratory Ruling or Retroactive Waiver	:	
	:	
	:	
Rules and Regulations Implementing the Telephone	:	
Consumer Protection Act of 1991	:	
	:	
	:	

REPLY COMMENTS OF VINCENT LUCAS IN OPPOSITION

I. SPECIAL INTEREST GROUP OF OVER 200 CABLE PROGRAM NETWORKS SUPPORTS THE PETITION. **NO** CONSUMERS HAVE EXPRESSED SUPPORT FOR THE PETITION.

Given what I said in my Comments at 1 about the struggle of most cable networks to attract viewership, it is no surprise that the National Cable & Telecommunications Association, a “trade association ... representing ... more than 200 cable program networks”¹ has submitted comments supporting the Petition. I have no doubt that many of the NCTA’s 200+ cable network members would love to try to attract more viewers by sending pre-recorded telephone messages informing cable subscribers of programming on their network. Imagine the possibilities if the petition is granted and the NCTA members decide to “Be there and make it work” for them! Cable subscribers could receive daily messages from over 200 cable networks informing them of unpopular, low-rated television programs that they have no interest in. Only networks that are part of the subscriber’s existing package would be permitted to send such messages, but that still leaves plenty of networks for the typical cable customer – with no restrictions on how often a cable network can call and no ability to opt-out. Time Warner’s Standard cable package in Manhattan contains over 70 channels, and its Premier package

¹ NCTA Comments at 1 n.1.

contains over 200.² Bruce Springsteen's song title "57 Channels and Nothin' On" describes how many people often feel about cable. Typical subscribers have access to hundreds (or thousands) of TV programs but are only interested in viewing a small fraction of what is available. It is not in the "public interest" to permit cable networks to call subscribers to promote thousands of TV programs.

By contrast, no consumers have submitted comments saying they would like to receive pre-recorded messages about cable programming.

The consumer comments show that typical consumers view such calls as advertising.³ There is no logical reason to think that consumers would consider calls about programming they are not interested in to be less of a nuisance and invasion of privacy than any other unsolicited advertising violating § 227(b). As I noted in my Comments at 3-4, calls about certain cable TV shows are not just a nuisance, but downright offensive, to many recipients.

II. THE ARGUMENTS IN SUPPORT OF THE PETITION ARE FALLICIOUS

As stated in my Comments, messages like Lifetime's Call are advertising. The calls encourage existing cable subscribers to renew their monthly subscription. Namely, Lifetime makes the call to encourage subscribers to watch its network. Lifetime hopes that viewers will develop fan loyalty to Project Runway. Subscribers who develop loyalty to Project Runway will

² <http://www.timewarnercable.com>, accessed 3/21/2016.

³ Roylance Comment at 1 ("The network was advertising its programming services and trying to get more viewers in the New York metropolitan area."); Sutton comment (characterizing Lifetime as "annoying telemarketers attempting to erode the already too-limited rights of consumers under the TCPA"); Lee comment (Lifetime's call was "thinly veiled attempt to reach and obtain NEW customers, which by any common understanding is a solicitation for their Service").

be more inclined to renew their cable subscriptions and accept price hikes from the cable distributor. In turn, Lifetime can point to increased viewership to demand increased carriage fees from the distributor. Subscribers ultimately pay for the increased carriage fees in their cable bills.

The arguments in support of the Petition are fallacious.

Fallacy: “[W]hen the message relates to programming on a tier that is currently available to the recipient without further purchase, the message is not an inducement to buy anything.” NCTA Comments at 4.

The message is an inducement to renew an existing subscription. The fact that the message is targeted to existing subscribers to renew a subscription, instead of new customers, does not make it less of an advertisement.

Fallacy: Lifetime’s Petition is only in regards to a single call.

Lifetime has only made a single call to each subscriber so far, but if the Petition is granted, there will be no limit to how many calls they could make in the future.

Fallacy: Lifetime’s call could not have been an advertisement to renew an existing subscription because the Call referred to only a specific program at a specific date and time for which the recipient had already paid. It does not “make any sense that Lifetime would have sought to increase revenues by touting one particular episode of 'Project Runway' the night before the season premier.” Petition at 13.

Did Lifetime hope that viewers would tune in to the Project Runway season premier and never watch the show again? Of course not! Lifetime hoped that subscribers would watch the season premier, enjoy it, and watch future episodes of the show. Viewer loyalty to Project Runway would in turn encourage viewers to renew their cable subscription and tolerate price hikes in their cable bill.

Fallacy: Lifetime's call was not an advertisement because it did not explicitly contain a solicitation to purchase something. "[T]he call did not try to solicit any new customers, nor did it provide information about how new customers might sign up. The Call gave no direction about how to contact Time Warner (much less Lifetime) to purchase a cable subscription ..." Petition at 12.

A call need not contain an overt solicitation to be considered an advertisement or solicitation under this Commission's rules. As this Commission has consistently held, a call is advertising if it is "part of an overall marketing campaign to sell property, goods, or services." 2003 TCPA Order (FCC 03-153) ¶ 140. The Call is part of an overall marketing campaign which encourages consumers to renew their cable subscription.

Fallacy: There is no logical distinction between calls from cable networks and free broadcast stations.

The distinction is that cable networks can use increased viewership to demand increased carriage fees, which ultimately show up in the subscriber's cable bill. The subscriber must either accept the increased prices or lose the programming. By contrast, free broadcast viewers have the option of viewing for free by using an antenna.

Conclusion

Granting the Petition would lead to a disastrous invasion of the privacy rights that the TCPA was designed to protect. Deny the Petition.

Respectfully submitted,

Vincent Lucas