

In Points II and III of its petition, Dish Network refers only to conduct and knowledge that occur prior to the making of a telemarketing call, and argues that such conduct should determine whether a seller is liable for telephone calls that violate Section 227(c) of the TCPA. However, once the seller is aware that the calls are being made but (1) fails to disavow the calls such as by terminating its relationship with, or meaningfully disciplining, the telemarketer, yet (2) proceeds to retain the benefits of the calls, such as by profiting from the resulting sales, it is foolish to argue that the calls were not made on the seller's behalf. In addition, a seller that is not liable in such a situation will play the very kind of "wink-wink nod-nod" games that Dish Network is reputed for having played for years, and which it is obviously hoping to be able to continue to play.