

Gerald Roylance  
1168 Blackfield Way  
Mountain View, CA 94040-2305  
November 15, 2012

**Before the  
Federal Communications Commission  
Washington DC 20544**

<b>In the matter of</b>	<b>CG Docket No. 02-278</b>
<b>Communication Innovators' Petition for an Declaratory Ruling</b>	<b>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</b>
	<b>DA 12-1653 October 16, 2012</b>

## **Gerald Roylance's Comments on Communication Innovators' Petition**

In DA 12-1653,<sup>1</sup> the FCC seeks comment about Communication Innovators' June 7, 2012 petition.<sup>2</sup> Generally, the petition renews a common but misguided attack on the definition of "automatic telephone dialing system" ("ATDS"). The issues in this petition duplicate the attacks in an earlier GroupMe petition. It is particularly distressing because the comment period for the GroupMe petition closed only a couple months back. Apparently, the FCC has no institutional memory and distains even minimal research of its own files. That explains why so many petitions languish for years. Apparently, the Commission only finishes a TCPA petition when Congress is breathing down its neck.

Consequently, this petition should never have been entertained. It only evidences that the FCC's handling of petitions is a misguided mess that fails to converge on anything unless the FTC has embarrassed them into acting responsibly. It took the FTC to make the National Do Not Call Registry that Congress had suggested to the FCC back in 1991. It took the FTC and Congress to force the FCC to moderate the FCC's stupid notion that express consent can be implied with an EBR. The FCC enforcement of the

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<sup>1</sup> FCC, <http://apps.fcc.gov/ecfs/document/view?id=7022036229>, "Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling from Communication Innovators"

<sup>2</sup> Communication Innovators, "Petition for Declaratory Ruling and Clarification", June 7, 2012, <http://apps.fcc.gov/ecfs/document/view?id=7022036230>

TCPA is a cruel joke. It is the FTC – not the FCC – that actually obtains multi-million dollar settlements with violators. The Government Accounting Office (GAO) investigated the FCC’s handling of TCPA complaints and found it wanting.<sup>3</sup> The FCC has become a haven for perpetrators caught in class action crosshairs. Filing a petition with the FCC is a sure-fire way to delay a court case until doomsday. It is the FTC (not the FCC) that is going after the Rachel with Cardholder Services calls.

The FCC is confused and lazy. Seeking comment on this redundant petition only confirms that. The GAO should expand to a Fraud, Waste, and Abuse investigation.

As to the current, redundant, petition, please see my comments for the GroupMe petition on this docket.

Roylance Comments, 8/30/2012, and Roylance Reply, 9/10/2012

Part of my comments and reply examine the definition of ATDS and conclude that the reasonable interpretation of ATDS has two prongs (storing or producing telephone numbers) and that the bad English/comma-spliced phrase about number generators only applies to the producing prong. It is a different approach than that the “capability” argument.

In addition, many of the perceived ills of automated dialing do not depend on whether the numbers are generated or looked up in a database.

Furthermore, when Congress debated the TCPA, it was looking for a broad definition of ATDS. “The Committee is aware of concerns that this broad definition could cover the mere ownership of office computers which are capable, perhaps when used in conjunction with other equipment, of delivering automated messages.”<sup>4</sup> Almost all automatic dialers now consist of computers used in conjunction with other equipment. It should come as no surprise that a dialing system that uses a computer would be a “automated telephone dialing system”. In fact, it is absurd that a system using a computer would NOT be considered “automated”.

Of course, adopting a definition that an ATDS must actually use a random or sequential number generator would mean open season on text messages.

Finally, CI is wrong that the TCPA was enacted only to curtail unwanted telemarketing calls or that it was primarily targets calls to the home. Yes, section 227(c) is primarily about telemarketing calls to residences, but the TCPA also includes section 227(b) that prohibits cost shifting or reaching privileged destinations such as hospital rooms or business fax machines.

The petition should be rejected. The issue rises or falls on an earlier petition.

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<sup>3</sup> See, for example, <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-08-125/html/GAOREPORTS-GAO-08-125.htm>

<sup>4</sup> House Report 101-633 (re H.R. 2921), July 27, 1990, Subsection A. Definitions