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

In the matter of Revolution Messaging, LLC's Petition for an Expedited Clarification and Declaratory Ruling	CG Docket No. 02-278 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 12-1701 October 23, 2012
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Gerald Roylance's Reply re Revolution Messaging LLC's Petition

In DA 12-1701,¹ the FCC seeks comment about Revolution Messaging LLC.'s January 19, 2012 petition.² Generally, Revolution's petition wants to confirm that Internet-to-phone text messaging is prohibited without prior express consent. Revolution has the issues right; the calls should be subject to the TCPA and the FCC Regulations.

The petition passes the duck test. Using a computer to blast emails knowing full well that the emails will turn into text messages is the same thing as automatically dialing those numbers.

The petition has industry support via CTIA who terms unwanted political campaign texts a "pervasive problem".³ "Such unwanted text messages are disruptive and potentially costly to wireless customers, and they are burdensome to carriers that must expend substantial resources to handle customer inquiries and complaints."

¹ FCC, <http://apps.fcc.gov/ecfs/document/view?id=7022037251>, "Consumer and Governmental Affairs Bureau Seeks Comment on Petition for an Expedited Clarification and Declaratory Ruling from Revolution Messaging, LLC"

² Revolution Messaging, LLC, "Revolution Messaging's Petition for Expedited Clarification and Declaratory Ruling", January 19, 2012, <http://apps.fcc.gov/ecfs/document/view?id=7022037252>

³ <http://apps.fcc.gov/ecfs/document/view?id=7022063304>

Although I agree with CTIA's conclusion that an autodialer is used, the pasting of sequential or random domain names to an existing and complete 10-digit telephone number is neither producing nor generating the telephone number. It is merely searching for a path to reach a number already in hand. Those numbers have been stored in a computer database, and a computer certainly has the capacity to produce random or sequential telephone numbers. Political speech is not telemarketing; proposals that would exclude automatically dialing from a database of numbers from the definition of an ATDS would end up permitting these unwanted calls.

Common Cause⁴ supports the petition and goes on to describe devious activity such as CCAdvertising using the domain name Aicett.com whose Internet home page was blank. Common Cause points out that the goal is to minimize the sender's costs (emails are essentially free) without worrying about the recipient's costs – which might be \$0.15 per text. The TCPA wanted to prevent cost shifting, and abusing this email-to-text message pathway is cost shifting on a grand scale.

AFSCME⁵ wants its members and the public protected from the cost shifting of unwanted text messages.

PocketSpammers.com collected almost 200 signatures supporting Revolution Messaging. One of the signers, Samuel Leo Nitz, claims to be from Emily's List. Ernesto Torres is an M.D.; he could easily be carrying his cell phone to respond to patient emergencies. In other words, he doesn't have the luxury of turning off his cellular phone; he would need to at least check every call and message he receives.

AICPAC opposes the petition and its comments⁶ appeal to First Amendment protections, but it is well settled that the TCPA's restrictions do not tread on the First Amendment. AICPAC and others are free to speak; they may not, however, use their rights to force others to pay for their message. In short, AICPAC wants everybody else to pay for its political advertising. AICPAC's rights end where other's rights begin. Congress was interested not only in cost shifting, but also protecting privacy rights. Congress intended to prohibit autodialed calls to cellular telephones even when there were no charge for receiving the call; see 47 U.S.C. § 227(b)(2) where it permits the FCC to exempt free calls if privacy is considerations are met.

Not surprisingly, ccAdvertising⁷ opposes the petition. The petition addresses calls that were clearly intended for cellular telephones. The caller intended that those cellular telephones would be reached by a machine that automatically dialed the telephone numbers. That ccAdvertising does not actually dial the telephone numbers (the wireless carrier does that upon receiving the email), it is clear that ccAdvertising is causing those telephone numbers to be dialed. The TCPA, a remedial statute, should be interpreted broadly to achieve its goals; ccAdvertising wants an absurdly narrow

⁴ <http://apps.fcc.gov/ecfs/document/view?id=7022064469>

⁵ <http://apps.fcc.gov/ecfs/document/view?id=7022063722>

⁶ <http://apps.fcc.gov/ecfs/document/view?id=7022063537>

⁷ <http://apps.fcc.gov/ecfs/document/view?id=7022064307>

interpretation to defeat those goals. Even in a criminal statute, one cannot avoid liability for a contract murder by claiming he did not pull the trigger. Although ccAdvertising wants to ignore the cost shifting aspect, it is a primary focus of subsection 227(b). The ability of the TCPA to restrict political speech is well settled. Furthermore, nothing in the TCPA prohibits ccAdvertising from manually texting messages. It can get its message out – it’s just not allowed to use a machine to do it. ccAdvertising’s arguments about statutory construction work against its own argument. Congress knew full well that it was prohibiting some forms of political speech to cellular telephones; Congress carefully crafted exceptions for tax exempt nonprofits in other parts of the TCPA.

ccAdvertising is a callous devil. “While it may be unfair for businesses to shift the cost of receiving a message on to consumers, political speech is different and citizens may have to bear some cost of receiving political speech. Alternatively, the Commission could establish a mechanism by which those who receive a text message and pay for it can seek reimbursement from the sender.” The last sentence is an admission of cost shifting. ccAdvertising does not want to play by the rules; it wants the rules to change for its own interests.

In contrast to the view of ccAdvertising, the comments of Rosanna Santiago⁸ are poignant. She not only has a pay-as-you-go cellular plan, but she also works the swingshift, so she does not get the same protection from the TCPA. Her friends would know not to call her at certain times of the day, but ccAdvertising would not. ccAdvertising wants it to be open season on every swing and graveyard shift worker who owns a cellular phone. And ccAdvertising is not making any credible claim that its calls have consent.

There is little opposition to the petition, and the petition should be granted. It appears that Revolution Messaging is caught in a bad position: its competitors are willing to ignore the rules, and that makes it difficult to compete. Consequently, Revolution Messaging has come to the FCC for relief – relief that would benefit millions of cellular phone subscribers.

⁸ <http://apps.fcc.gov/ecfs/document/view?id=7022063083>