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

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| In the matter of YouMail Inc's Petition for an Expedited Declaratory Ruling | CG Docket No. 02-278 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 13-1433 June 25, 2013 |
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Gerald Roylance's Reply re YouMail's Petition

I. Introduction

In DA 13-1433,¹ the FCC seeks comment about YouMail, Inc.'s April 19, 2013 petition.² Generally, YouMail developed a robot receptionist application that can automatically send text messages to cellular telephones without human intervention. Consequently, YouMail has been sued for violating the TCPA. YouMail seeks declaratory rulings (1) that its automatic dialer is not an automatic telephone dialing system (ATDS), (2) that YouMail does not initiate the calls, and (3) that prior express consent can be implied.

Earlier I submitted replies to other comments but did not include a reply to GroupMe's.

¹ FCC, <http://apps.fcc.gov/ecfs/document/view?id=7520925055>, "Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from YouMail, Inc."

² YouMail, Inc., "Petition for Expedited Declaration Ruling", April 19, 2013, <http://apps.fcc.gov/ecfs/document/view?id=7022288462>

II. Comments

A. GroupMe

GroupMe's comments³ are self-serving statements to further GroupMe's petition.

GroupMe's story about text messages to the Laker's billboard is not on point. To the extent the reply is an instantaneous reply from the recipient (the Lakers), it fits the Commission's acknowledge a STOP message. Whether a text to the Laker's billboard can be viewed as signing up for further text messages from the Laker's is doubtful. To me, the Laker's reply should have included an opt-in request rather than opt-out advice. But all of that is beside the point. The Laker's fan texted a message to the Lakers. The current Petition is distinguishable because the trigger was an incoming voice call (not a text message, so there is not a reply in kind with a one-way only messaging service), the incoming call was directed to a friend (not YouMail), and the YouMail auto reply contains serves no purpose other than advertising (the person leaving the voicemail knows what he said). Any information the client wanted to pass on to the caller could have been done during the incoming call. Answering machines have had outgoing messages for a long time. GroupMe wants this bizarre notion that it can use a third-party's consent for its own purposes.

I'm not familiar with *Pinkard v. Wal-Mart*, but GroupMe's analysis is flawed. Under 1992 rules, releasing a telephone number would be consent for automated calls. Under newer FTC and FCC rules, the consent for automated calls must be more specific. Furthermore, there is more leeway for healthcare-related communications, and the *Pinkard* issue was over pharmacy calls. Pinkard gave the number to Wal-Mart; in the YouMail Petition, YouMail captured the number – and the captured number was not even directed to YouMail.

In GroupMe's situation, it should obtain consent from the recipients before sending texts. That way, there would be no risk. GroupMe should not be permitted to rely on representations of the person who created the Group. Those people are not sophisticated about the TCPA, so their representations should not be trusted. The CAA is in a similar situation. If they rely on third party representations, then they can get bit. However, both GroupMe and the CAA have a simple way out: just get consent from the recipient before using any automation. The group creator can send each member a text asking them to join the group. After all, that's how the group creator had to communicate with the group before: he had to send individual texts. And if he didn't send such individual texts or make individual calls, then how did the group creator know they had consented? GroupMe's assumption has a logical gotcha. Having the service provider acquire express consent from the recipients (independent of the group creator) also protects the recipients from chatty friends. Many years ago, people complained about getting put on email lists. Friends emailed me a lot of jokes that I did not want.

³ GroupMe, <http://apps.fcc.gov/ecfs/document/view?id=7520933734>

GroupMe's emphasis on its terms of service prohibiting noncommercial messages is misplaced. The TCPA's subsection (b) restricts all autodialed calls to cellular telephones; it does not restrict just commercial calls.

More significantly, GroupMe doesn't give us any real argument about prior express consent. It wants to ignore "express" and imply consent.

III. Conclusion

The requests for declaratory rulings should be denied. The Petition is a disaster for consumers, and the underlying auto reply feature is an advertising campaign rather than a legitimate service. GroupMe is arguing its own petition rather than the YouMail fact pattern.