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

In the matter of ACA's Petition for Rulemaking	Report Number 2999 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 14-976 20 June 2014
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Gerald Roylance's Comments re Lucas' Petition

I. Introduction

In DA 14-976,¹ the FCC seeks comment about Lucas' Petition.² Lucas wants the FCC to declare that an entity that knowingly supports TCPA violations can be held liable for those violations. In particular, TMC Group allowed its Caller ID numbers to be used in the notorious Rachel with Cardholder Services calls. TMC Group then apparently split its income from the Caller ID dips with the Rachel caller.

I support the Petition. However, the path to liability seems much more direct than Petitioner argues.

Petitioner received several Rachel with Cardholder Services prerecorded calls. The Caller ID on those calls led to TMC Group. TMC Group willingly wanted its Caller ID numbers used, so it sought companies that had huge outgoing call volumes. TMC Group was apparently not interested in examining why its clients had huge call volumes.

¹ FCC, 9 July 2014, DA 14-976, https://apps.fcc.gov/edocs_public/attachmatch/DA-14-976A1.pdf

² Vincent Lucas, 20 June 2014, *Petition for Expedited Declaratory Ruling*, <http://apps.fcc.gov/ecfs/document/view?id=7521330605>

We can also infer that TMC Group, itself skilled in shielding corporate owners, would be able to spot clients who also engaged in such shielding. (Petition, page 8.) I've gone after several TCPA violators, and I'm shocked by some business practices I come across. One mortgage company hired a TM who did not give them an address; instead, a guy came by every week to collect the TM commissions – and the guy was to be paid in cash. An alarm company hired a TM whose only contacts were through a cellular telephone. Many TMs only give PMB addresses. Such games should be red flags to legitimate businesses.

TMC Group should be liable as a joint adventurer. TMC Group does not directly share the profits of Rachel's illegal enterprise. In other words, TMC Group is not a shareholder and does not get a percentage of the illegal income. However, TMC Group knows that it is getting paid with illegal income. In the movie *The Sting*, a realtor provides the confidence men (Paul Newman's group) with a location and furnishings. The realtor asked who the mark is; when he learns who it is, he just wants a flat rate. The realtor knows what is going on, and he should not escape liability for the bad acts just because he got paid a flat rate.

TMC Group was on notice through several paths that the calls were illegal. (Petition cf. page 5.) Once TMC Group learns of or suspects a client is doing illegal telemarketing, then the client should be dropped. By failing to drop Rachel as a client, TMC Group has ratified Rachel's bad acts. TMC Group should be liable as Rachel's agent.

TMC Group could have a defense as a common carrier. The FCC has already stated that common carriers are not liable unless they have "a high degree of involvement in or actual notice of the unlawful activity." That metric seems to be an appropriate one to use in this situation, too. TMC Group is not party to making the actual calls, but TMC Group's services are part of the calls; the CID lookup happens during the call.

Adopting Lucas' request would also harmonize the FCC and FTC regulations.

There is a downside to the collapse of TMC Group. I get many illegal calls, and some of those calls go back to TMC Group numbers. That was part of the illegal caller's greed: they wanted to lower their telephone costs by getting a share of the dip, and to get the dip, it had to use the same Caller ID number. Now Caller ID information is merely spoofed – but now the spoofing is more sophisticated because it continually changes. In the past, one could search for CIDs on the internet and find them at 800notes or whocalled. Now the CID is much less useful.

II. Conclusion

Grant the petition or at least state that TMC Group could be liable.