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

<b>In the matter of</b>  <b>ACA's Petition for Rulemaking</b>	<b>Report Number 2999</b>  <b>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</b>  <b>DA 14-977 20 June 2014</b>
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## **Gerald Roylance's Comments re Fried, Jr.'s Petition**

### **I. Introduction**

In DA 14-977,<sup>1</sup> the FCC seeks comment about Milton H. Fried, Jr. and Richard Evans' Petition.<sup>2</sup> This is yet another autodialer petition.

The system should be viewed as an autodialer.

Fundamentally, the defense wants to break up the system that they use into small pieces, point the small piece that they own, and claim that their piece is not an autodialer and therefore they are not liable.

The issue is what is an Automatic Telephone Dialing System. The key word for this petition is "system". It is not the little pieces but rather the entire system. Sensia Salon doesn't own the equipment, but Sensia hired Textmunications to text blast a list of numbers.

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<sup>1</sup> FCC, 9 July 2014, DA 14-977, [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-977A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-977A1.pdf)

<sup>2</sup> Vincent Lucas, 20 June 2014, *Petition for Expedited Declaratory Ruling on Autodialer Issue*, <http://apps.fcc.gov/ecfs/document/view?id=7521152209>

Textmunications stored the numbers in its database. Textmunications also had constructed a system that could dial the numbers in that database. Textmunications may not own the actual equipment that dials numbers, but its equipment is interfaced to equipment that ultimately dials the telephone numbers. That is done by sending the information to Air2Web. Air2Web does not directly dial the numbers either, but Air2Web has “a type of persistent socket connection”<sup>3</sup> to the wireless carriers’ networks. It’s another interface, and the effect is to build a “system” that dials numbers from a database.

When Air2Web loads a telephone number into an internet packet and sends that packet, it is issuing an instruction that the telephone number be dialed and the text message be delivered. If Air2Web’s system could not place calls, then its services would be worthless.

Even the wireless carriers probably do not have a system that “dials” a telephone using some sort of DTMF technology. That would be ludicrous. Electronic switching systems have evolved so that telephone numbers are essentially network addresses. Inserting a telephone number into a data packet (whether an IP packet or telephone frame) ultimately causes that data to be delivered to a cellular telephone. The process achieves exactly what dialing a telephone achieves.

Defendants’ argument would a disaster for enforcement. All a perpetrator would have to do is break his ATDS into pieces and he could escape the ATDS moniker. That is not the intention of remedial statutes such as the TCPA.

The FCC can find that the system is an ATDS without opining whether the different actors have a high degree of involvement. It could be that Air2Web is sufficiently isolated from Textmunications. See Scholl’s declaration.<sup>4</sup> I’d rather all parties be liable, but it is possible that Air2Web did not have a high degree of involvement. Many voice broadcasters employ an ignorance model: they own some equipment and make the lion’s share of the profit, but they have others be involved with the message content. I am aware of one large voice broadcaster that became afraid of TCPA lawsuits. It let go of its marketing department, but those former employees became independent contractors who beat the bushes for clients just as they did while employees. It gave the voice broadcaster a level of insulation.

## **II. Conclusion**

Find that the defendants’ system is an ATDS.

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<sup>3</sup> Memorandum and Order, 4:13-cv-00312 Document 85, page 6.

<http://apps.fcc.gov/ecfs/document/view?id=7521152210>

<sup>4</sup> <http://apps.fcc.gov/ecfs/document/view?id=7521152212>