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

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| In the matter of ACA's Petition for Rulemaking | Report Number 2999 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 14-974 20 June 2014 |
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Gerald Roylance's Comments re Stage Store's Petition

I. Introduction

In DA 14-974,¹ the FCC seeks comment about Stage Store, Inc.'s Petition.² Stage wants the FCC to declare that an entity may continue to illegally text messages to a reassigned cellular telephone until somebody tells it to stop. The request is similar to other requests and turns the TCPA on its head.

There is no question that Stage does not have prior express written consent to call a reassigned telephone number. The call is illegal and the FCC only has authority to grant exemptions if the consumer is not charged for the call. The FCC has been reasonably reluctant to grant such exemptions. Stage does not seek an exemption for free calls, so its petition is beyond the FCC's power to grant.

Stage's claim about frivolous TCPA lawsuits is irrelevant. The FCC should not decide issues based on the number of lawsuits whether those lawsuits are meritorious or not. That is not the FCC's function in the statutory scheme.

¹ FCC, 9 July 2014, DA 14-974, https://apps.fcc.gov/edocs_public/attachmatch/DA-14-974A1.pdf

² Stage Store, Inc., 3 June 2014, *Petition for Expedited Declaratory Ruling and Clarifications*, <http://apps.fcc.gov/ecfs/document/view?id=7521330605>

Stage can learn about reassigned cellular telephone numbers by purchasing that information from third parties such as Neustar. Given that Stage claims that 37 million phone numbers get reassigned each year, it would be prudent for Stage to invest in that information. (Petition, page 3.) The US population is about 313.9 million, so more than 10 percent of the cellular telephones are reassigned each year.

Those statistics should show that companies cannot unconditionally rely on prior express written consent.

Cellular telephones are omnipresent. It is unlikely that someone abandons their number and does not get another cellular telephone number. A person without a cellular telephone today is essentially disconnected. So that raises a question: why would a consumer abandon his current number only to use a new number? It would mean that he must tell all his friends to update his contact information. He would need to change his telephone number on several important accounts. Why would someone do that? Even if one changes carriers, they can transfer their telephone number to another carrier.

I suspect that people abandon their telephone numbers because they are getting too many calls that they don't want. That makes their telephone number less valuable, and ultimately the cost of informing friends about a new number becomes worth it for improved peace and quiet. Lots of people have acquired a cellular telephone only to be hounded with debt collection calls for the previous subscriber. Stage may think that all TCPA class actions are frivolous, but several debt collection class actions appear to have significant merit.

Some commenters have claimed that Neustar's database is incomplete. I find that hard to believe, but that does not mean that its database should not be used. If nothing else, it would cut down the number of illegal calls.

There are times when the FCC can make safe harbors. The law does not require someone to do the impossible. The FCC made a 15-day safe harbor for cellular telephone ports. That was a reasonable accommodation.

There's also a fallow period. When a consumer surrenders a telephone number, that telephone should not be immediately reassigned. The FCC should impose a minimum fallow period. Making that period 30 days would give Stage plenty of time to synchronize its database of cellular telephone numbers.

Stage makes a big deal of its double opt-in procedure. The consumer must not only sign up for the service, but the consumer must also positively respond to a subsequent text message. (Petition page 2.) That is a good procedure for assuring consent from the initial subscriber.

The procedure does not get consent from a subsequent subscriber to that number. Stage points to each marketing message having "Text STOP 2stop". (Petition page 3.) I do not see that as an effective step. Long ago, I was told not to respond to illegal solicitations. If nothing else, it makes it clear that I read the solicitation; that makes me a more valuable target. Instead of stopping illegal solicitations, a response can have the

effect of increasing solicitations. I suspect that is how a new subscriber will view these messages – if the subscriber reads the entire message or not.

A far better technique would require periodic re-opt-ins. Stage does not tell us how often it is sending texts to its opt-in consumers. Some retailers want to send 3 texts per week. What Stage should do is periodically send a re-opt-in request. If the subscriber doesn't respond in a day, then it could repeat the request. If there is still no response, then Stage should assume it has lost its prior express written consent.

Now look what happens. If the original subscriber is ignoring the texts, then Stage stops sending them. Stage could save some money that way. It will also give a more enjoyable experience to its consumers who grew weary of the texts.

If a subscriber abandons his telephone number, then when Stage sends a text, it might come back as an unassigned telephone number. Stage would then know that it lost consent. Even if there is no unassigned indication, if a re-opt-in message went out during the fallow period, Stage would not receive a re-opt-in, so it would not send any texts to the subsequent subscriber.

If it does not happen already, the FCC should require that texts to unassigned telephone numbers return a disconnected indication.

So here's a safe harbor.

The FCC should adopt a minimum fallow period for reassigning cellular telephone numbers. (If a subscriber wants a number that has not been fallow for the requisite time, then that subscriber releases claims during the fallow period. There are subtle problems here.)

A company that has prior express written consent must have checked the Neustar database for reassignments less than the fallow period before making a call. That should guarantee that if the number appears in the Neustar database, then no call will be made to the new subscriber. If there is a lawsuit, it would be the company's burden to show the number did not appear in the Neustar database. This method is suitable for infrequent calls. (Consent good until listed in Neustar.)

Alternatively, a company must get a re-opt-in at least as often as the fallow period. It may do this with a text message. This method is suitable for companies that send many texts per week to a consumer. Those companies should be taking extra care to make sure they do not flood reassigned numbers with text messages. The damages could be horrendous. (Consent only lasts a fallow period.)

If a company does not use either of the above methods, then it must contact the consumer without using an ATDS and reacquire prior express written consent. (Consent only lasts a fallow period.)

The above safe harbor has problems if Neustar's database is incomplete. In that case, new subscribers will get calls for the old subscribers. In that situation, it would

subject a company to TCPA suits. The simple way out of that would be to require common carriers to report all subscriber changes to Neustar. In addition, Neustar might be required to handle revocations: carriers would tell subscribers that they could go to a website or call an 800 number and revoke all consents for ATDS calls.

Instead of using Neustar, there might be an addition to the NDNCR that revokes all prior express written consent.

II. Conclusion

Deny the petition. Stage Stores can check if it still has consent. Alternatively, delineate a safe harbor that protects consumers while still giving companies value for acquiring prior express written consent.