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

In the matter of Professional Association for Customer Engagement's Petition	CG Docket No. 02-278 Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 DA 14-1122 November 19, 2013
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Gerald Roylance's Comments re Santander's Petition

I. Introduction

In DA 14-1122,¹ the FCC seeks comment about Santander Consumer USA, Inc.'s (Santander) 10 July 2014 Petition.² Generally, Santander wants prior express consent (PEC) to be irrevocable. Alternatively, Santander wants the procedure for revoking PEC to be so specific and secret that ordinary consumers would not know how to revoke it. The Petition flies in the face of reason.

Santander is worried about lawsuits where it had PEC but then the consumer claims such consent had been orally revoked. If Santander called one of its customers, and the customer revoked consent during the call, then why wouldn't Santander

¹ FCC, 1 August 2014, *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling filed by Santander Consumer USA, Inc.*, https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1122A1.pdf

² Santander Consumer USA, Inc., 10 July 2014, *Petition for Expedited Declaratory Ruling*, <http://apps.fcc.gov/ecfs/document/view?id=7521374912>.

understand that it no longer had PEC? If there is a debate about whether consent was revoked, then a court can decide whether there was a verbal revocation.

It is completely reasonable for someone to revoke PEC verbally. There's a long standing history of verbal revocations. Generally, telemarketers have a right to call someone who is not on the FTC's National Do-Not-Call Registry. If the telemarketer calls someone, then that person's verbal do-not-call request is effective. There's no requirement for a written request. There may also be litigation whether there was a do-not-call request.

A verbal do-not-call request also ends any established business relationship. Under the old rules, that revoked permission for telemarketing prerecorded calls. The consumer need not take any extraordinary steps. A verbal "instruction to the contrary" was enough to revoke PEC.

There has been trouble with PEC in the past and even today. I still get calls offering me diabetic testing supplies. When I ask the caller how they got my information, I'm told that I or a family member went online or called them. I did not such thing. It's a fable that they use. Some claim to be non-profits. To counter such claims, the FCC has placed the burden of proving PEC on the caller. That's a reasonable thing to do. It's the caller's business to make sure that it obeys the law. It's also not unreasonable to require businesses to keep good records.

I, as a consumer, should not be subject to stringent record keeping. Congress basically said that I should not be subjected to automated calls. The bias, therefore, is for my rights to be protected. A verbal revocation should be enough to recover my rights. Santander wants a world where if it can get me to surrender that right just once, then I have surrendered it forever.

I'm not a big believer in things being irrevocable. I've been presented with contracts full of fine print. Buried in the fine print have been TCPA-directed clauses that I give the seller an irrevocable right to call me using prerecorded messages and ATDS calls to the telephone numbers that I have provided and ANY NUMBER THAT THEY

CAN DISCOVER. That is not the intent of the TCPA or even the FCC rules (consent may not be a condition of service). The TCPA is supposed to make the world a friendly place for the consumer. Many companies don't want that.

My bank has sent me its terms and conditions, and it also assumes that it may call me with prerecorded messages and ATDS. I know what some of the reasoning behind such "PEC" means – my bank wants to do automated debt collection. For me, I'd be happy to let my bank use automated messages and texts for suspicious transactions on my account. That's reasonable (and might even be an emergency). However, my bank has always called me live over fraudulent charges. That's because they not only want to inquire about the fraudulent transaction, they want to do other things: such as research how the perp got the account number and take other correct steps – stuff that would not work well in a voice menu or text message. I would never want to consent to automated debt collection calls. I don't think any consumer in their right mind would consent to such calls. I might consent to a couple automated notices that I'd forgotten to pay a bill, but I would never consent to being inundated.

Santander has a much clearer picture of what it wants to do with automated telemarketing than the typical consumer. A general statement about using prerecorded or ATDS calls or text messages would not raise much concern in the typical consumer. I think there could be an argument that consumers never would consent to the calls for which Santander is being sued.

Santander is a debt collector. Debt collectors have a reputation for being relentless. Debt collectors want to be able to use automated calls, and the FCC essentially gave them the right to make prerecorded calls to residential telephone lines. Congress found that ALL prerecorded calls were an invasion of privacy.

Debt collectors were supposed to be reigned in by the FDCPA. A debtor could tell the debt collector to stop pestering him, but the FDCPA required that notice to be written. Most consumers don't know they can stop collection calls with written notice. They tell the caller to stop, but such requests are ignored. Also, debt collectors are not volunteering that information to debtors. It's obvious to any debt collector that it helps

them to keep that information away from debtors. That's what they do. I don't personally know any debtors, but I've fielded many questions about debt collection calls, and consumers are surprised to learn about the FDCPA.

I've also talked with several people who get debt collection calls for the previous owner of the telephone number. Such people often have no idea about the origin the debt collection call. They'd have even less information about how to stop the calls.

Santander proposes several methods for making a revocation, and each of the methods is less than ideal. Santander wants some method that is a written revocation even though the records of that revocation would end up in Santander's hands rather than the consumers. Method (1), sending a letter is a nuisance. Method (2) sending an email by its nature reveals an email address to Santander. Method (3) may reveal a new cellular telephone contact. Method (4) would reveal a fax machine contact (and consumers don't often have fax machines).

II. Conclusion

To the extent Santander is forum shopping, the Petition should be denied. Whenever anyone gets sued under the TCPA, page one of the defense handbook says to file a petition with the FCC. If nothing else, it will create delay.

I have no problem with companies getting PEC. PEC should not be eternal or irrevocable; letting a consumer revoke it orally is completely reasonable. Santander is really looking for a ruling that allows it to ignore such verbal requests. That's not playing fair.

I suspect that when companies get sued over the issue of verbally revoked consent, it is not just one call or one verbal revocation – it will be dozens of calls and many requests to stop calling. The situation would have deteriorated so badly that the consumer started making notes about when he received calls and when he verbally revoked. That's a fact pattern that is easy to discern credibility in favor of the consumer. Santander's Petition, however, would kill off such a reasonable prosecution.