

ADRIAN ABRAMOVICH WITNESS TESTIMONY BEFORE THE  
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

*Chairman Thune, Ranking Member Nelson and the other members of the committee:*

**INTRODUCTION**

My name is Adrian Abramovich, I have been engaged in business with long distance telephone providers, wireless service providers and conducting marketing activities for more than 15 years. On June 22, 2017, the Federal Communications Commission initiated a forfeiture action against me with a proposed penalty of \$120,000,000 and alleging that I perpetrated one of the largest spoofed robocall campaigns ever. These allegations obviously have generated immense publicity, to the point that I am here today before a Senate Committee of the United States of America.

In no way did I seek more publicity or to engage in public discussion about the pending FCC action or my defenses. I filed a response to the FCC, I denied engaging in the fraudulent activities and the misrepresentation alleged by the FCC and sought to reduce the amount of the proposed forfeiture. It was always my intent with the FCC to negotiate towards an appropriate fine within my ability to pay such amount. (A copy of my June 27, 2017 "Response" is attached hereto as Exhibit A).

I did not want to come here today to testify because putting a further spotlight on my pending case can only hurt my chances to resolve this matter with the FCC. Having to come here today will no doubt portray me as the face of these robocalls, will prejudice my ongoing case with the FCC and may also incriminate me with potential criminal charges.

I am here now because the Committee served me with a subpoena. Instead of refusing to answer questions, I will make a good faith effort to answer questions within my industry wide knowledge of telemarketing and the type of calls you are investigating. However, I will invoke my 5<sup>th</sup> amendment privilege to not answer questions seeking specific factual information regarding the allegations made by the FCC against me. With regard to the FCC allegations I will refer to and incorporate my Response to the FCC which has been filed with this Committee.

**CONDUCT ALLEGED BY THE FCC**

Because the FCC allegations will certainly be discussed today, I will briefly address the main points of my defense:

- (a) I have denied and continue to deny any intent to defraud, cause harm or wrongfully obtain anything of value. The resorts associated with my telemarketing activities were indeed real resorts, offering real vacation packages, the packages were exclusively available only to qualified persons, all the terms and conditions were clearly explained (including the timeshare presentation requirement); and the FCC

does not cite to a single complaint about the quality of the vacation, accommodations or amenities;

- (b) The extent of my activities has been significantly overstated. I am not the king pin of robocalling that is alleged. While the allegations made in my case may be the biggest for the FCC, the Federal Trade Commission also regulates telemarketing activities and conducts enforcement. In my Response, I cite to several other cases involving as much or more call volume than my case and the exact same spoofing.
- (c) One Specific case is the Caribbean Cruise Line case. This specific case alleges that the defendants made 15 times more daily spoofed robocalls than the allegations against me, falsely claimed that they were associated with a political survey, and falsely claimed that the cruises were free. None of which is alleged in my case.
- (d) In the Caribbean Cruise Line case, the enforcement efforts targeted all the participants in the autodial campaign, including lead generation, travel provider and the carrier. In my case I am the only target and my proposed fine is ten times all the fines imposed in the Caribbean Cruise case against all the participants.
- (e) The effect on consumers has also been overstated in my case. The amount of actual calls getting through to consumers is much less than the number of calls dialed. 96% of all calls detailed by the FCC were less than 1 minute. The majority of those do not bother anyone. Less than 2% of any consumers have any meaningful interaction with these calls.

### **INFORMATION FOR THE COMMITTEE**

In an effort to help the committee here today. I can generally speak about these phone calls and how to help limit them. One of the main issues you have in addressing these calls is that the technology is easy to obtain and can be used by anyone. Anyone can start a large autodial campaign from a home office.

With regard to *DIALING and SPOOFING*

There is available open source software that can be misused by someone to make thousands of automated phone calls with the click of a button. This software is totally customizable based on the needs of any particular campaign.

There are also hosted auto-dialer services that are harder to be misused because of more control by the company, but they can still be improperly used and regulation of these companies may help.

April 18, 2018  
Adrian Abramovich Opening Testimony

There are websites right now you can find on google that offer volume pricing for using their "robocalling" system that can handle "millions upon millions of calls". I found these advertisements using google a few days ago.

*With regard to LONG DISTANCE PROVIDERS*

Once you have this software all you need is to then install your now customized auto-dialer platform to a cloud service and using the right long distance company to start placing calls.

There are companies that advertise on the web right now that offer long distance carrier service for "Dialer/Short Duration Termination" calls. These are robocalls. Clearly regulation needs to address the carriers and providers and require the major carriers to detect robocalls activity.

**CONCLUSION**

As you have notice today, English is not my first language, and I have of course prepared this statement with the assistance of counsel. Throughout my questioning I may need for you to repeat or rephrase a question and I may also need to confer with my attorney prior to answering a question. I will do my best to answer your questions here today and to cooperate in this legislative hearing.

# EXHIBIT A

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July 27, 2017

**Via Overnight Delivery**

Richard A. Hindman, Chief  
Telecommunications Consumers Division  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Rm. 4-C224  
Washington, DC 20554

**RE:** In the Matter of Adrian Abramovich, Marketing Strategy Leaders,  
Inc. and Marketing Leaders, Inc.  
**File No.:** EB-TCD-15-00020488  
**NAL/Acct. No.:** 0026627141

Dear Mr. Hindman:

Please be advised that undersigned counsel, a member in good standing of the Florida Bar, hereby appears on behalf of Adrian Abramovich, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc. (hereinafter collectively referred to as "Respondents") in the above referenced matter before the Federal Communication Commission (hereinafter referred to as the "FCC" or "Commission"). Any future notices or other written communications pertaining to this matter should be furnished and/or copied to my attention. The following constitutes a written statement in response to the Citation and Order and the Notice of Apparent Liability for Forfeiture that were Released on June 22, 2017.

**Introduction**

First and foremost, Adrian Abramovich denies the factual allegations made in the Notice of Apparent Liability for Forfeiture (hereinafter referred to as "NAL") and the Citation and Order (hereinafter referred to as "Citation") specifically regarding any intent on his part to defraud, cause harm or wrongfully obtain anything of value. For purposes of this written statement and in an attempt to amicably resolve the NAL, Mr. Abramovich neither admits nor denies the factual allegations of conducting telemarketing activities through the use of prerecorded calls and transmitting inaccurate caller ID information.

Both the NAL and Citation allege that Mr. Abramovich assisted travel companies by providing telemarketing efforts that would generate leads for live operators to offer discounted vacation packages to consumers. These live operators were employed and directed by unrelated third parties that were clients of Mr. Abramovich.

In response to the Citation, the affidavit of Mr. Abramovich is contemporaneously being submitted. In the Affidavit, Mr. Abramovich states that on the release date of June 22, 2017, he became aware of the Citation and immediately ceased to conduct any activity that could possibly be associated with the violations described in the Citation, specifically any violation of the Act and Rules that govern solicitations, prerecorded, and autodialed telephone calls and the federal wire fraud statute. As of June 22, 2017, Mr. Abramovich ceased any and all telemarketing or lead generation activities.

With regard to the Notice of Apparent Liability for Forfeiture, and as more fully set forth below, Mr. Abramovich contends that the proposed forfeiture amount fails to properly apply the factors necessary for the imposition of a forfeiture order against Mr. Abramovich, including his ability to pay the proposed forfeiture amount and is otherwise unconstitutional. Based on the facts and arguments presented below, Respondents contend that a significant reduction of the proposed forfeiture amount is warranted. Moreover, Mr. Abramovich stands ready to engage in negotiations with the Commission for the purpose of reaching a consent judgment concerning the acts alleged in the Citation and NAL.

### **Detailed Factual Statement**

1. The Commission's Notice of Apparent Liability for Forfeiture (hereinafter referred to as "NAL") relies on call records subpoenaed for the period time between October 1, 2016 through December 31, 2016.<sup>1</sup>
2. During the applicable period of time relied upon in the NAL, Mr. Abramovich was engaged in the business of lead generation for unrelated third-party clients.<sup>2</sup> Mr. Abramovich conducted these operations through two companies, namely Exclusive Leads Services, Inc. (hereinafter referred to as "Exclusive Leads") and Emerald Media, Inc. (hereinafter referred to as "Emerald Media").<sup>3</sup>
3. Mr. Abramovich ceased conducting any business through his prior company, Marketing Strategy Leaders, Inc. (hereinafter referred to as "MSL"), on or about December 23, 2015, and the company was voluntarily dissolved on January 29, 2016.<sup>4</sup>

<sup>1</sup> Notice of Apparent Liability for Forfeiture at ¶9.

<sup>2</sup> Adrian Abramovich Affidavit at ¶ 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶ 3.

4. For purposes of the analysis involving the claim that Mr. Abramovich is unable to pay the proposed forfeiture the following financial information is being provided:

5. On June 22, 2017, Mr. Abramovich became aware of the Citation and NAL and in response ceased any and all telemarketing or lead generation activities.<sup>6</sup>

#### **Appropriateness of Proposed Forfeiture Amount**

Assuming for purposes of this response that the factual allegations of conducting telemarketing activities through the use of prerecorded calls and transmitting inaccurate caller ID information can be proven at a trial de novo, the forfeiture amount is excessive and should be reduced. The Communications Act requires the FCC to appropriately consider and properly balance “the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 U.S.C. § 503(b) (2)(E). See also *United States v. Unipoint Technologies, Inc.*, 159 F. Supp.3d 262, 273 (D. Mass. 2016). In this matter, the FCC has placed undue emphasis on the sheer volume of calls made by Mr. Abramovich instead of the calls that actually affected consumers, the FCC wrongly ascribed to Mr. Abramovich the entire responsibility for the telemarketing operations, the FCC improperly attributed to Mr. Abramovich a prior offense factor, and the FCC failed to assess Mr. Abramovich’s ability to pay the historic proposed forfeiture amount.

#### **Extent and Gravity of the Violation**

The FCC has placed a disproportionate amount of emphasis on the volume of outgoing lead generating calls. In paragraph 25 of the NAL, the Commission places great weight on the call volume and the asserted egregiousness of the massive amount of activity in imposing a

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proposed base forfeiture amount of \$80 million. Then again in paragraph 26 the same volume of calls and the same egregiousness is cited as the primary reason to assess an upward adjustment of an additional \$40 million. The FCC analysis seemingly imposes the proposed forfeiture amount without any regard to the amount of calls that had any actual and meaningful impact on consumers.

The FCC is imposing the proposed forfeiture amount on a sample of 80,000 calls and such calls are set forth in the Carrier Call Detail Records cited in the NAL and provided to the Respondents. A cursory glance through the Carrier Call Detail Records reveals that the vast majority of calls depict a duration of less than one minute. Enclosed herein as Exhibit A is a breakdown of the calls identified in the Carrier Call Detail distinguishing calls by duration in accordance with the carrier provided information.<sup>7</sup> Calls identified by the carrier with a duration of 54 seconds or less comprise 76,814 calls, representing 95.99% of the entire sample upon which the forfeiture is based.<sup>8</sup> These short duration calls result from a combination of out of service or disconnected phone lines with messages, facsimile machines, voice mail, or consumers that immediately hung up the phone. In other words, less than five percent of the consumers who received calls were subjected to a prerecorded message of any kind. There were only 1,448 calls in excess of five minutes, where the consumer is likely to have listened to the initial presentation. These longer more meaningful calls represented 1.81% of the entire 80,000 call sample.

It is understandable that the FCC would be concerned with the sheer volume of calls and reacted accordingly in imposing a proposed forfeiture amount on the full sample of 80,000 calls. However, in a future *de novo* proceeding, the proper forfeiture amount is a question for the factfinder. See *Unipoint Technologies, Inc.*, 159 F. Supp.3d at 273. In this case, the fact finder could determine that basing the proposed forfeiture amount on calls that were not received or otherwise ignored by consumers is not reasonable and results in a proposed forfeiture amount that is just too high. A more reasonable approach would be to determine the amount of consumers that were more likely to have been subjected to the marketing efforts of the Respondents and the travel companies.

This approach would have also been more representative of the actual harm caused by the acts allegedly committed by the Respondents. The FCC investigation revealed that only 66 robocall complaints made in late 2016 could be matched to the 96,000,000 calls allegedly made by Mr. Abramovich during the three month period of call records obtained by the Commission.<sup>9</sup> Respondents are mindful that responsibility is based on the call but the actual harm to consumers is also an important factor. However, as set forth above, the volume of calls does not correspond to the number of consumers actually being affected by such calls. It is telling that the Commission has not identified a single consumer complaining about the actual vacation

<sup>7</sup> Undersigned was provided with an Excel-formatted file containing the records of the 80,000 calls at issue for use in creating the enclosed exhibit.

<sup>8</sup> Calls identified by the carrier with a duration of 30-seconds were by far the most common, comprising 43,942 calls representing 54.92% of the entire sample.

<sup>9</sup> FCC Abramovich Citation at page 6.



packages offered by the travel companies or the fulfilment of such travel arrangements. In combination, the FCC overemphasized the volume of calls in determining the gravity of the violation for purposes of setting the proposed forfeiture amount and failed to address the amount of meaningful calls actually affecting consumers. The gravity of the violation is materially minimized through the suggested approach and a reduction in the proposed forfeiture amount is warranted.

#### *Degree of Culpability/Participation*

The Citation and NAL make explicitly clear that Mr. Abramovich is but one piece of a complicated puzzle involving the marketing of vacation packages. The Respondents played a specific role, namely conducting the lead generation activities. The complete telemarketing enterprise also involved the sales of the vacation packages by live operators under the direction of third-party travel companies. Also comprising an important piece, is the carrier utilized by Mr. Abramovich. The FCC's allegations clearly establish that Mr. Abramovich's participation was limited to the making of the offending phone calls. The allegations are equally clear that Mr. Abramovich was merely providing services to the third-party travel companies. Finally, the Call Records Detail obtained from the carrier, reveal that the carrier must have had knowledge of the improper caller ID information provided to the consumers receiving calls, and facilitated the operations by allowing the calls to continue. The Citation and NAL recognize Mr. Abramovich's specific role but nevertheless proceed to impose on him and his companies culpability for the entire process. The FCC did not properly segregate the actions of Mr. Abramovich from those of the other participants and therefore a reduction in the proposed forfeiture amount is warranted.

#### *History Prior Offenses*

The Commission has also improperly attributed to Mr. Abramovich a prior offense for purposes of an upward adjustment of the proposed base forfeiture amount; increasing the proposed forfeiture amount from \$80 million to \$120 million. First and foremost, the civil case cited in footnote 60 of the NAL did not involve the Commission, did not involve the spoofing activities present in this case, and occurred over a decade ago. The reference to this prior civil case is misplaced and should not be utilized as an aggravating factor.

#### *Mr. Abramovich Does Not Have the Ability to Pay Proposed Forfeiture Amount*

The FCC by its own admission seeks to impose on Mr. Abramovich and his companies the largest fine ever sought by the Commission. This record setting penalty was decided upon by the Commission without any consideration of Mr. Abramovich's ability to pay the proposed forfeiture amount. Without any question, only the largest of corporate entities would have the ability to pay the proposed forfeiture amount. Mr. Abramovich's activities do not generate the revenues necessary to pay but a fraction of one percent of the proposed forfeiture amount. Contrary to the implied assumption that the lead generating activities generate a per-call revenue, such is not the case. As set forth above, the lead generation calls result in leads that have

substantial contact with the client travel companies in less than 2% of all calls made. Accordingly, Mr. Abramovich's compensation from the third-party travel companies does not correlate with the number of calls made.

In seeking the Commission to reduce the proposed forfeiture amount, Mr. Abramovich

Respondents are cognizant of the Commission's precedent that requires consideration of factors beyond a company's financial position.<sup>11</sup> In this case, Mr. Abramovich has ceased all telemarketing or lead generation activities, in other words he is no longer conducting the revenue generating activities that resulted in the issuance Citation and NAL, thereby further hindering his ability to pay the proposed forfeiture amount.<sup>12</sup> In this regard, and in an effort to further warrant a reduction in the proposed forfeiture amount, Mr. Abramovich would be willing to stipulate to a permanent bar to any and all telemarketing activities and provide assistance to the Commission in any related enforcement action.

#### **Unconstitutionality of Proposed Forfeiture Amount**

The forfeiture amount sought by the FCC violates the due process protections afforded by the U.S. constitution because it is grossly disproportional to the gravity of the alleged actions taken by Mr. Abramovich. In the oft cited case of *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919) the Supreme Court held that a statutory damages award violates due process "where the penalty prescribed is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." The Court held that due process "places a limitation upon the power of the states to prescribe penalties for violations of their laws." *Id.* at 66.

In this matter, the Commission for the first time is considering how to calculate a proposed forfeiture amount for spoofing under the Truth in Caller ID Act ("TCID").<sup>13</sup> Although the Commission may not have calculated or imposed forfeiture penalties under the TCID before, the Federal Trade Commission (hereinafter referred to as "FTC") has imposed civil penalties against telemarketing activities almost identical to the allegations presented against

<sup>10</sup> Accompanying this written statement is a specific Request for non-disclosure pursuant to 47 CFR § 0.459.

<sup>11</sup> *In the Matter of Advantage Telecommunications Corp.* (FCC File No.: EB-TCD-12-00004803).

<sup>12</sup> See Affidavit of Adrian Abramovich at ¶ 7.

<sup>13</sup> NAL at ¶ 23.

Respondents.<sup>14</sup> The proposed forfeiture in this case is far in excess of the previous government imposed civil penalties that involved spoofing activities similar to those presented here. The proposed forfeiture amount at issue can only be described as disproportionate to the offense and unreasonable when comparing past FTC civil penalties for similar activities.

For example, in the case of *Federal Trade Commission v. Caribbean Cruise Line, Inc., et al.*, Case No. 15-cv-60423 (S.D. Fla.), the FTC was faced with a telemarketing campaign that “bombarded consumers with an average of 12-15 million calls per day”.<sup>15</sup> The telemarketing campaign in the *Caribbean* case involved spoofed robocalls masquerading as political surveys for the purpose of offering so called “free” cruise vacations.<sup>16</sup> In almost all respects the activities involved in the *Caribbean* case are even more egregious than those alleged against the Respondents. One notable difference is that in *Caribbean* all the participants involved in the telemarketing campaign were included in the enforcement action. In the *Caribbean* case the FTC stipulated to civil penalties against certain defendants as follows: Caribbean Cruise Line (Travel Provider) in the amount of \$7,730,000 suspended upon the payment of \$500,000; LSS Defendants (Lead Generators) in the amount of \$5,000,000 suspended upon the payment of \$25,000; and Pacific Telecom (Carrier) in the amount of \$1,354,000 suspended upon the payment of \$2,500.<sup>17</sup>

The case of *U.S. v. Sonkei Communications, Inc., et al.*, Case No. SACV-11-1777 (C.D. CA) involved a lead generation business similar to that alleged against the Respondents. The telemarketing campaign conducted by the *Sonkei* defendants consisted of prerecorded robocalls that manipulated caller identification similar to the alleged spoofing here. While the alleged facts and activities are similar to those of the Respondents, the civil penalty imposed by the FTC was for \$395,000, a tiny fraction of the proposed forfeiture amount sought against the Respondents in this matter.<sup>18</sup> A final example of a similar telemarketing enforcement action is found in the case of *U.S. v. Cox*, Case No. SACV-11-1910 (C.D. CA). Another telemarketing campaign almost identical to that alleged against the Respondents, including the transmission of false and misleading caller identification information. The civil penalty entered against the individual defendant, namely Mr. Cox, was \$1,125,741 which was also suspended pending future compliance.

Respondents had no knowledge or warning prior to the imposition of the massive proposed forfeiture amount. This is especially problematic because as addressed above the FTC has imposed penalties on similar spoofing activities that while significant, were a small

<sup>14</sup> Both the FCC and FTC have been involved in the regulation of telemarketers and telemarketing in general. See *Mainstream Marketing Services, Inc. v. F.T.C.*, 358 F.3d 1228 (10<sup>th</sup> Cir. 2004).

<sup>15</sup> See ¶ 12 Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief (D.E. 1; 3/3/2015). The call volume in the *Caribbean* was more than 10 times the call volume alleged against Mr. Abramovich.

<sup>16</sup> Id. at ¶ 13-16.

<sup>17</sup> *Federal Trade Commission v. Caribbean Cruise Line, Inc., et al.*, Case No. 15-cv-60423 (S.D. Fla.), see Stipulated Orders for Permanent Injunction and Civil Penalty (D.E. 6-1; 6-4; & 90-1). The remaining defendants stipulated to civil penalties less than one million dollars, also suspended upon the making of minimal actual payment.

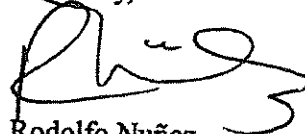
<sup>18</sup> *U.S. v. Sonkei Communications, Inc., et al.*, Case No. SACV-11-1777 (C.D. CA)(D.E. 63).

percentage of the proposed forfeiture in this matter. Moreover, the proposed forfeiture amount here was calculated on a per call basis regardless of whether the call was answered much less whether the call had any impact on consumers. Because the proposed forfeiture is so disproportionate to the actual harm to consumers and so far in excess of previous governmental statutory penalties for similar activity, a significant reduction is required.

**Conclusion and Request to Engage in Continuing Negotiations**

There can be no dispute that the allegations against the Respondents if proven would result in civil penalties. The primary purpose of this written statement is to seek a significant reduction based on the arguments presented herein. The most compelling of arguments is the absolute inability for Mr. Abramovich to make payment of the proposed forfeiture amount. A reduction is appropriate to an amount proportionate to the gross revenues disclosed by the Respondents' federal tax returns. Moreover, Mr. Abramovich would anticipate that any consent judgment with an agreed amount would impose a ban on future telemarketing activities making it all the more difficult to make payment of the proposed forfeiture amount. Respondents would welcome engagement with the Commission staff in an effort to arrive at a consent judgment resolving this matter.

Sincerely,



Rodolfo Nuñez

Enclosures

cc: Via Email Only  
Kristi Thompson, Deputy Division Chief  
Telecommunications Consumers Division  
Kristi.Thompson@fcc.gov

# EXHIBIT A

Amount of calls	Duration	%
2730	6 sec	3.4125
16136	12 sec	20.16
6277	18 sec	7.846
4660	24 sec	5.825
43942	30 sec	54.92
2123	36 sec	2.65
492	42 sec	0.615
257	48 sec	0.3125
197	54 sec	0.2462
1738	1 min to 5 min	2.1725
641	5.1 to 10 mins	0.8012
498	10.1 to 20 mins	0.6224
96	20.1 to 30 mins	0.12
59	30.1 to 40 mins	0.07375
37	40.1 to 49.3 mins	0.04625
39	50 to 60 mins	0.04874
57	60.5 mins to 100 mins	0.07125
21	101 mns to 151 mins	0.02625

80,000

TOTAL CALLS