

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Adrian Abramovich,) File No.: EB-TCD-15-00020488
Marketing Strategy Leaders, Inc., and)
Marketing Leaders, Inc.)

CITATION AND ORDER

PRERECORDED MESSAGE VIOLATIONS AND WIRE FRAUD

Adopted: June 22, 2017

Released: June 22, 2017

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. After conducting an extensive investigation, the Commission identified Adrian Abramovich as the originator of nearly 100 million robocalls. This **CITATION AND ORDER** (Citation), notifies Mr. Abramovich, doing business as Marketing Strategy Leaders or Marketing Leaders (Abramovich), that he violated the law by making unauthorized and disruptive prerecorded telemarketing calls—or robocalls—to critical emergency phone lines, wireless phones, and residential phone lines without prior express written consent and absent an emergency purpose. Additionally, this Citation notifies Abramovich that he violated the wire fraud statute by transmitting or causing to be transmitted, by means of a wire, radio, or television communication in interstate commerce, misleading or false statements with the intent to perpetrate a fraud. We therefore direct Abramovich to take immediate steps to comply with the Communications Act of 1934, as amended (Communications Act or Act), the Telephone Consumer Protection Act (TCPA), and the Federal Communications Commission’s (Commission) rules (Rules), which prohibit making autodialed or prerecorded message calls to emergency phone lines, wireless phones, or residential telephone lines unless the calls are made for emergency purposes or with the prior express consent of the called party. We also direct Abramovich to take immediate steps to comply with the federal wire fraud statute. If Abramovich fails to comply with these laws, he may be liable for significant fines.

2. **Notice of Duty to Comply With Law:** We issue this Citation pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended,¹ which states that the Commission may not impose monetary forfeitures against non-regulatees who violate the Act or the Rules unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.² We also issue this Citation pursuant to Section 503(b)(1)(D) of the Act which allows the Commission to pursue a forfeiture penalty against any person who has violated the federal wire fraud statute.³ Accordingly, Abramovich is hereby on notice that he (or any entity through which he does business) must comply with Section 227 of the Act, Section 64.1200 of the Rules, and the federal wire fraud statute. If Abramovich subsequently engages in any conduct of the type this Citation describes—and specifically

¹ 47 U.S.C. § 503(b)(5).

² See 47 U.S.C § 503(b)(5); see also 47 CFR § 1.80(a)(5).

³ 47 U.S.C § 503(b)(1)(D).

any violation of the Act and Rules that govern solicitations, prerecorded, and autodialed telephone calls⁴ and the federal wire fraud statute⁵—Abramovich may be subject to further legal action, such as civil penalties, including substantial monetary forfeitures.⁶ In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.⁷

II. BACKGROUND

3. Making autodialed or prerecorded calls—better known as robocalls—to emergency telephone lines or to consumers’ wireless phones and residential telephone lines without consent is illegal. For more than two decades, Congress and the Commission have worked to protect consumers from these illegal, unwanted, and disruptive calls. Despite these and other efforts, robocalls continue to be the number one consumer complaint to the Commission. As technology has improved, these calls have become more prevalent, more threatening, and harder to stop. It is now easier than ever for nefarious robocallers to use spoofing technology to mask their true identities, tricking consumers into answering the call and trusting the caller, while evading detection.

4. The evidence indicates that Abramovich is the perpetrator of one of the largest—and most dangerous—illegal robocalling campaigns that the Commission has ever investigated, making nearly 100 million robocalls in just a three-month period. As explained in greater detail below, Abramovich engaged in regular mass-robocalling campaigns during 2015 and 2016 that bombarded American consumers and repeatedly disrupted a critical telecommunications service used by hospitals and emergency medical providers. Abramovich’s mass robocalling campaigns violate the Communications Act, and his misrepresentations in the prerecorded messages constitute criminal wire fraud.

A. Consumer Complaints About Robocalls Offering “Discounted” Travel Services

5. In recent years, consumers have complained about receiving spoofed robocalls offering “discounted” holiday vacations and cruises to popular destinations in Mexico, the Caribbean, and Florida. The calls appear as local numbers on caller ID systems, often tricking consumers into answering.⁸ When

⁴ See 47 U.S.C. § 227; 47 CFR § 64.1200. Section 227 was added to the Communications Act by the Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (codified at 47 U.S.C. § 227), and is most commonly known as the TCPA. The TCPA and the Commission’s rules restrict a variety of practices that are associated with telephone solicitation and the use of the telephone network to deliver unsolicited advertisements or prerecorded and autodialed telephone calls.

⁵ 18 U.S.C. § 1343.

⁶ We reference Adrian Abramovich and the companies that he owns and controls as one and the same. Abramovich has formed 12 corporations in Florida over the past two decades, many of which only existed for one year before he dissolved them. He has operated the following companies: Alphavision, Inc. (July 23, 1997 to Jan. 14, 2002); Telsur Communications, Inc. (June 18, 1999 to Dec. 18, 2003); Promociones Y Saldos de Remate de Mercancias Enterprise, Inc. (Sept. 12, 2002 to Sept. 19, 2003); Horizontes Promociones, Inc. (Apr. 7, 2003 to Oct. 1, 2004); Marketing Leaders, Inc. (Apr. 28, 2005 to Sept. 18, 2006); One Destinations, Inc. (July 2, 2007 to Sept. 2, 2011); One Destinations Telecom, Inc. (Jan. 5, 2009 to Sept. 23, 2011); Mundidiomas, Inc. (Apr. 28, 2009 to Sept. 23, 2011); Medical Imaging Equipment, Inc. (July 20, 2012 to Sept. 27, 2013); Marketing Strategy Leaders, Inc. (Mar. 10, 2004 to Jan. 29, 2016); Emerald Media, Inc. (Sept. 21, 2015 to present); Exclusive Leads Services, Inc. (Sept. 21, 2015 to present). In nearly every case, Abramovich was the sole incorporator, officer, and director; at a minimum, he controlled each of these companies. The listed addresses for the corporations appear to match residential addresses associated with Abramovich. Thus, hereinafter, all references to Abramovich include Mr. Abramovich personally and the companies that he owns or controls.

⁷ See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (explaining that a person or entity that has been issued a citation by the Commission that thereafter engages in the conduct for which the citation was issued, the subsequent notice of apparent liability “would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation was originally sent*”) (emphasis added).

⁸ As part of the investigation, Bureau staff spoke with consumers who confirmed these same sentiments, namely extreme frustration and annoyance about these spoofed calls. One consumer said she uses her cellular phone for

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consumers answer the call, they hear a prerecorded message instructing them to “Press 1” to hear more about an “exclusive” vacation deal offered by a well-known travel or hospitality company such as TripAdvisor, Expedia, Marriott, or Hilton. Consumers are then transferred to a call center, where live operators attempt to sell the consumer one or more “discounted” vacation packages (usually involving timeshare presentations), but are not affiliated with the well-known and trusted brands presented to the consumer during the prerecorded message. Some consumers report receiving these calls multiple times per week and have stated:

- My cellphone is on the do not call registry. For the last couple of months I have been receiving robocalls to my cellphone [sic]—typically one per weekday. The robot claims that I have “been preselected by Marriott for a free night stay . . .”⁹
- I’m on the do-not-call list, and I get telemarketing robo-calls to my cell phone every 2 hours. It’s unbelievably infuriating. . . . All of them are a recording to either to [sic] redeem a Marriott vacation or to refinance my credit card debt.¹⁰
- I have daily—sometimes multiple times daily—inbound spoofed calls (same area code and prefix as my own phone number) purporting to be from [M]arriott, [P]riceline, etc. [F]irst a recorded voice, then a human ‘check’ to make sure I’m ‘older than 30,’ then a handoff to the salesperson.¹¹
- I’ve received multiple calls from a robo-dialer claiming to be associated with Marriott Hotels within the past week. Each call offers the option to “press 2” to be removed from their calling list, but I’ve used this option every time and it is not producing any change in call frequency. I am also already on the federal do-not-call list.¹²
- I have been getting at least three or four calls a week from the last several months from these Marriott Hotel “free trip” jokers. I always hang up when I here [sic] the cheesy auto voice, but even when I miss the call I am miffed that my cell phone is getting clogged from “missed call” notifications from these scumbags! They always have the same area code and first three digits as my own cell phone. . . . PLEASE TRACK DOWN THESE JERKS!¹³

6. In April 2016, TripAdvisor, Inc.¹⁴ contacted the Commission’s Enforcement Bureau (Bureau) to report that it had received a number of consumer complaints about robocalls that invoked the TripAdvisor name without TripAdvisor’s knowledge or authorization. Specifically, consumers reported

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business and cannot afford to not pick up a local call because it might be a client or business lead. She complained that these robocalls distract her from her work and waste her time. Declaration of Daniel Stepanicich, February 13, 2017 (on file in File No. EB-TCD-15-00020134) at 11 (Declaration of Daniel Stepanicich).

⁹ Zendesk Complaint #1370065 (Dec. 28, 2016).

¹⁰ Zendesk Complaint #1364829 (Dec. 22, 2016).

¹¹ Zendesk Complaint #1330923 (Nov. 28, 2016).

¹² Zendesk Complaint #1297041 (Nov. 1, 2016).

¹³ Zendesk Complaint #1382236 (Jan. 5, 2017).

¹⁴ TripAdvisor, Inc. (TripAdvisor) is a publicly traded U.S. advice and information company that offers user-generated reviews of travel accommodations, restaurants and tourism attractions. *See* TripAdvisor, *About TripAdvisor*, <https://tripadvisor.mediaroom.com/us-about-us> (last visited June 19, 2017). TripAdvisor provides a portal for third party travel provider partners to promote their services, but does not itself sell any travel tickets or vacation packages. *Id.* (“TripAdvisor [] is not a booking agent or tour operator, and does not charge any service fees to users of our site.”).

receiving unwanted calls with prerecorded messages claiming to be on behalf of TripAdvisor.¹⁵ In response to these complaints, TripAdvisor launched an independent investigation and determined that the robocalls directed consumers to various websites purporting to be travel companies.¹⁶ Furthermore, TripAdvisor's investigation found that these travel companies contracted with one of Abramovich's Florida-based companies, called Marketing Strategy Leaders, to place the robocalls.¹⁷

7. Both TripAdvisor and the Commission found evidence of common control of the various travel companies including identical webpage content, shared web hosting servers, and shared contact information.¹⁸ TripAdvisor's investigator found that these websites are linked to a group of current and former senior executives and managers at the Sunset World Group—a Mexican hotel and resort chain.¹⁹ Based on the information that TripAdvisor obtained in its investigation, the robocalling fraud scheme works as follows: Abramovich, as the service provider and lead generator, makes robocalls to American and Canadian consumers. If the robocall recipient answers and presses "1" for more information, then he or she is directed to one of several different travel agencies (such as Holiday Sands International) that have contracted with Abramovich to receive calls generated by his network. In actuality, the travel agencies were fronts for one or more Mexican-based call centers engaged in selling timeshares and vacation packages to various Mexican timeshare facilities.²⁰

B. Disruptions to Emergency Medical Pager Network

8. In 1991, Congress passed the TCPA to prohibit certain autodialed and prerecorded calls to emergency lines, wireless, and residential telephone lines.²¹ Chief among the complaints cited at that time was that "automated calls are placed to lines reserved for emergency purposes, such as hospitals and fire and police stations" and that "some automatic dialers will dial numbers in sequence, thereby tying up all the lines of a business and preventing any outgoing calls."²² Congress noted that such calls were not only a nuisance, an invasion of privacy, and an impediment to interstate commerce, but also a serious threat to public safety.²³ In 1992, the Commission adopted rules implementing the TCPA.²⁴

¹⁵ These unauthorized calls caused undue harm to TripAdvisor's brand and reputation in the minds affected consumers. In one complaint, a consumer appeared particularly outraged that "TripAdvisor" was contacting them:

I JUST RECEIVED AN UNSOLICITED ROBOCALL TO MY PERSONAL PHONE NUMBER THAT IS ON A DO NOT CALL LIST. THAT CALL STATED THAT IT WAS ON BEHALF OF TRIP ADVISORS TRYING TO SELL ME SOMETHING. IF I EVER GET A CALL LIKE THAT AGAIN, I WILL CONTACT THE FCC AND I WILL OPEN THE GATES OF HELL ON TRIP ADVISORS. NEVER NEVER NEVER NEVER CALL ME LIKE THAT AGAIN. EVER. GOT IT. Declaration of [REDACTED], Apr. 4, 2017 (on file in File No. EB-TCD-15-00020134) (Declaration of [REDACTED]).

TripAdvisor did not make the offending robocall. *Id.*

¹⁶ Some of the websites included sunpricevacations.com, pricelesstimes.com, and holidaysandsinternational.com. Declaration of [REDACTED].

¹⁷ *Id.* According to the Florida Secretary of State corporate filing web database, Abramovich dissolved Marketing Strategy Leaders on January 29, 2016. The Commission's investigation, however, found call data records for Marketing Strategy Leaders as recent as December 31, 2016. *See* Carrier Call Detail Records, January 11, 2017 (on File No. EB-TCD-15-00020134) (Call Detail Records).

¹⁸ Declaration of [REDACTED].

¹⁹ *Id.*

²⁰ *Id.*

²¹ Pub. L. No. 102-243 (1991).

²² *Id.* at 2.

²³ *See* S. Rep. No. 102-178 (1991).

9. Spōk, Inc. (Spōk), headquartered in Springfield, Virginia, provides paging services for hospitals, emergency rooms, and physicians. Paging services are essential in hospitals and emergency rooms across the country, with an estimated 85 percent of hospitals relying on this technology to ensure that emergency room doctors, nurses, emergency medical technicians (EMTs), and other first responders receive immediate alerts.²⁵ Because paging technology is not equipped to handle voice calls, a large-scale robocalling campaign will disrupt—and can potentially disable—the medical pager network. Service outages, slowdowns, or other problems caused by robocalls flooding an emergency medical pager network constitute a serious risk to public safety because they interfere with critical hospital and emergency room communications. In December 2015, Spōk contacted the Commission to report and complain about a significant robocalling event that was disrupting its emergency medical paging service.²⁶ From the information provided by Spōk, the Commission traced the calls to Adrian Abramovich through his company, Marketing Strategy Leaders.

C. FCC Investigation

10. On December 13, 2016, Bureau staff subpoenaed Abramovich’s call records for the three-month period from October 1, 2016 to December 31, 2016.²⁷ According to subpoena responses received by the Commission, Abramovich, purportedly doing business as Marketing Strategy Leaders, made 96,758,223 calls during this time period,²⁸ averaging over a million calls a day.²⁹ Furthermore, Bureau staff reviewed a sample 80,000 of the calls (1,000 calls on each day that Abramovich made robocalls during the last three months of 2016). All of the calls reviewed by Bureau staff were spoofed; each calling number matched the area code (first three digits) and central office code (second three digits) of the called number.³⁰

11. The Bureau analyzed the details of the 96,758,223 robocalls using an industry-standard, commercially available software and database of known assigned and ported wireless numbers to determine whether any of the robocalls went to wireless phones.³¹ From this analysis, Bureau staff

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²⁴ 47 CFR § 64.1200. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992).

²⁵ See *Hospitals turning a ‘pager’ on data hardware*, The Boston Globe (Feb. 2, 2016), <https://www.bostonglobe.com/business/2016/02/01/beep-this-accessory-busy-doctors-finally-gets-upgrade/gRcjTy7w3RuTJiqaeKTsEN/story.html> (last visited June 19, 2017).

²⁶ See E-mail from Dexter Lee, Director, Corporate Technology Operations, Spōk, Inc., to John Healy, FCC Public Safety and Homeland Security Bureau (Dec. 15, 2015, 14:19 ET); E-mail from Dexter Lee, Director, Corporate Technology Operations, Spōk, Inc., to Kristi Thompson, Deputy Division Chief, FCC Enforcement Bureau (Dec. 17, 2015, 00:59 ET).

²⁷ See Call Detail Records.

²⁸ *Id.* Abramovich made calls to consumers in both the United States and Canada. He called 84,866,060 U.S. consumers and 11,892,163 Canadian consumers during the three-month period examined by the Bureau. *Id.* Total calls for each month are as follows: 36,539,978 (October), 30,716,165 (November), and 29,502,080 (December). *Id.*

²⁹ *Id.* On his busiest day, October 19, 2016, Abramovich made 2,121,106 calls. The fewest calls he made on a single business day was 644,051 and averaged over 200,000 calls on Saturdays.

³⁰ *Id.* The apparent spoofing violations are discussed further in a separate Notice of Apparent Liability issued by the Commission. See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 17-80 (June 22, 2017).

³¹ See Interactive Marketing Solutions, *EasyID*, <https://www.ims-dm.com/mvc/page/easyid/> (last visited June 19, 2017). EasyID is Interactive Marketing Solution’s software that allows clients to eliminate wireless numbers from calling lists. *Id.* Interactive Marketing Solutions, Inc. is a member of the Direct Marketing Association and bills itself as “the country’s largest single-source supplier” of data identifying telephone numbers that have been assigned

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confirmed that, of the calls to consumers in the United States, 75,307,389 were robocalls to wireless phones, while 9,558,671 were robocalls to landline phones.³² Bureau staff randomly contacted 105 different recipients of robocalls made by Abramovich and spoke with 43 of them to confirm that they were the owner of the affected telephone number and received the calls, and to ask whether the consumer gave permission to Abramovich to robocall them on the affected phone number.³³ None of the consumers that the Bureau contacted gave permission—written or otherwise—to Abramovich to make robocalls to their phones. Of the 43 consumers contacted by the Bureau, 38 received robocalls from Abramovich on their wireless numbers, 4 received robocalls on their residential lines, and one was unable to recall the robocall that Abramovich made to her phone. Additionally, Bureau staff examined robocall complaints received by the Commission in late 2016 and compared them to the records of calls that Abramovich made in the last three months of 2016. Bureau staff matched 66 complaints to robocalls made by Abramovich—including 61 robocalls to wireless numbers and 5 robocalls to residential lines.

III. APPLICABLE LAW AND VIOLATIONS

12. Based on the evidence gathered in the Bureau’s investigation, we find that Abramovich violated multiple provisions of the Communications Act and the Rules. Specifically, we find that Abramovich violated provisions of the Telephone Consumer Protection Act (TCPA) and the Commission’s rules that prohibit making (1) prerecorded voice messages and autodialed calls to emergency telephone lines,³⁴ (2) prerecorded messages and autodialed calls to cell phones,³⁵ and (3) prerecorded telemarketing calls to residential phone lines without prior express written consent absent an emergency purpose.³⁶ In addition, and pursuant to Section 503(b)(1)(D) of the Communications Act, we find that Abramovich knowingly, willfully, and with reckless disregard for the truth, violated the federal wire fraud statute.³⁷

A. Violations of TCPA

13. Prohibitions Against Prerecorded Voice Messages. The TCPA prohibits certain prerecorded message calls to consumers. Section 227(b)(1)(A)(i) of the Communications Act and Section 64.1200(a)(1)(i) of the Rules prohibit prerecorded voice message calls to “any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.”³⁸ Similarly, Section 227(b)(1)(A)(iii) of the Communications Act and Section 64.1200(a)(1)(iii) of the Rules prohibit calls to cell phones and other mobile services, such as paging systems. It is unlawful “for any person . . . to make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio

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or ported to wireless devices, “to help businesses comply with state and federal legislation.” Interactive Marketing Solution – Do Not Contact List Solutions, <https://www.ims-dm.com/mvc/index.php> (last visited June 19, 2017).

³² In addition, Abramovich made 6,172,394 calls to Canadian wireless subscribers and 5,720,369 calls to Canadian landline subscribers between November 17, 2016, and December 20, 2016. *See* Call Detail Records.

³³ *See* Declaration of Daniel Stepanicich; Declaration of Bridgette Washington, February 17, 2017 (on file in File No. EB-TCD-15-00020134).

³⁴ *See* 47 U.S.C. § 227(b)(1)(A)(i); 47 CFR § 64.1200(a)(1)(i).

³⁵ *See* 47 U.S.C. §§ 227(b)(1)(A)(i), (iii); 47 CFR § 64.1200(a)(1)(iii).

³⁶ *See* 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

³⁷ *See* 47 U.S.C. § 503(b)(1)(D); 18 U.S.C. § 1343.

³⁸ 47 U.S.C. § 227(b)(1)(A)(i); 47 CFR § 64.1200(a)(1)(i).

service, or other radio common carrier service, or any service for which the called party is charged for the call.”³⁹ These broad prohibitions cover all prerecorded voice and autodialed calls.

14. Two exceptions to these prohibitions are: (1) calls made for emergency purposes; and (2) calls made with the prior express consent of the called party.⁴⁰ Prior express written consent is required if the calls include advertisements or constitute telemarketing.⁴¹ An advertisement is defined as “any material advertising the commercial availability or quality of any property, goods or services.”⁴² Likewise, the rules define “telemarketing” as “the initiation of a telephone call or message for the purpose of encouraging the purchase . . . of property, goods, or services, which is transmitted to any person.”⁴³

15. The Communications Act and the Rules also restrict prerecorded message calls to residential phone lines when the prerecorded message includes an advertisement or constitutes telemarketing.⁴⁴ Specifically, Section 64.1200(a)(3) of the Rules states that “[n]o person or entity may: . . . [i]nitiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express *written* consent of the called party” unless one or more of four enumerated exceptions apply.⁴⁵

16. Calls to Emergency Telephone Lines. On December 15, 2015, Spōk contacted Commission staff about a robocalling incident affecting its services.⁴⁶ In its December complaint, the company reported a high volume of robocalls that hit its paging network on December 14, 2015.⁴⁷ Using the affected numbers provided by Spōk, the Commission’s investigation traced the calls to Abramovich.⁴⁸ According to Spōk, the large volume of illegal calls had the potential to render Spōk’s network completely inoperable and many of Spōk’s customers reported intermittent outages.⁴⁹

17. Spōk’s paging system constitutes an “emergency telephone line.” Spōk represents that its paging system provides communications between and among physicians, nurses and patients.⁵⁰ According to Spōk, medical professionals and first responders often rely on paging during emergencies

³⁹ 47 CFR § 64.1200(a)(1)(iii); 47 U.S.C. § 227(b)(1)(A)(iii).

⁴⁰ See 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii).

⁴¹ 47 CFR §§ 64.1200(a)(2)-(3). There are exceptions for calls made on behalf of tax-exempt nonprofit organizations or a call that delivers a “health care” message made by an entity identified in the HIPAA Privacy Rule. *Id.*

⁴² 47 CFR § 64.1200(f)(1).

⁴³ 47 CFR § 64.1200(f)(12).

⁴⁴ Section 227(b)(1)(B) of the Communications Act prohibits any person “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission. . . .” 47 U.S.C. § 227(b)(1)(B). The Commission set forth specific exemptions to the prohibition in its Rules.

⁴⁵ The exceptions are calls for emergency purposes, calls not made for a commercial purpose, calls made for a commercial purpose but do not include advertisements or telemarketing, and calls made for tax-exempt nonprofit organizations. See 47 CFR § 64.1200(a)(3) (emphasis added).

⁴⁶ As discussed above, Spōk provides wireless paging systems for hospitals and medical personnel. See Spōk, *Paging Services*, <http://www.spok.com/solutions/paging-services> (last visited June 19, 2017).

⁴⁷ Spōk, Inc., Informal Complaint to the Bureau of Consumer and Governmental Affairs (Dec. 15, 2015) (Spōk Complaint).

⁴⁸ See *supra* para. 9.

⁴⁹ *Id.*

⁵⁰ Spōk, *Paging Services*, <http://www.spok.com/solutions/paging-services> (last visited June 19, 2017).

because cellular networks can fail.⁵¹ The Commission has previously made similar findings. In the aftermath of Hurricane Katrina, the Commission noted that paging services “are a critical part of emergency response” and that first responders, hospitals, and critical infrastructure providers “rely on paging services during emergencies.”⁵² Further, as one Spōk customer explained in a complaint filed with the Commission, she uses her pager as an emergency contact number for her patients.⁵³ We therefore find that Spōk’s paging system is an “emergency telephone line” as described in Section 64.1200(a)(1)(i) of the Rules because it provides critical emergency communications to hospitals and physicians and other medical personnel.

18. The calls made to Spōk’s paging system were prerecorded telemarketing calls in violation of the Act. The calls contained prerecorded messages notifying the listener that he or she was eligible for a discounted vacation.⁵⁴ The sale of vacation packages constitutes telemarketing requiring prior express written consent.⁵⁵ Because the numbers in question belong to pagers used by medical personnel in hospitals, it stands to reason that the subscribers did not provide express written permission to receive automated telemarketing calls. Moreover, Spōk itself complained that the robocalls made to phone numbers on its paging network were unauthorized when it alerted the Commission about the calls and requested assistance with stopping them. We conclude, therefore, that Abramovich made prerecorded telemarketing message calls to Spōk’s emergency paging system for a non-emergency purpose without prior express written consent in violation of Section 64.1200(a)(1)(i) of the Rules.

19. Calls to Wireless Telephone Lines. As part of the investigation, Bureau staff spoke with 39 wireless subscribers who received robocalls from Abramovich on their wireless phones. These consumers reported that the calls contained prerecorded messages telling the listeners that they had been selected by Marriott, or another travel company, to receive a discounted vacation; the vacation could be claimed by “pressing 1.”⁵⁶ The individuals each confirmed that they (1) owned the telephone number at the time of the call, and (2) never consented to receive these calls.⁵⁷ Additionally, the Commission received 61 complaints from wireless consumers that the Bureau was able to trace back to Abramovich’s call records. The complaints all state that the robocalls were unauthorized. Thus, we conclude that Abramovich made at least 100 prerecorded message calls to wireless numbers without prior express consent in violation of the Communications Act and the Rules. In addition, as noted previously, the Bureau identified that 75,307,389 of the 96,758,223 robocalls Abramovich made during the last three months of 2016 were made to wireless phones in the United States.

20. Abramovich’s robocalling campaigns tried to entice consumers to purchase vacation packages by using messages that falsely claimed affiliation with trusted travel companies. In light of the facts that: (1) numerous consumers filed complaints with the Commission about these specific robocalls, and (2) each consumer contacted by Bureau staff denied giving consent to receive such robocalls, we conclude that all 75,307,389 robocalls to wireless phones violated the TCPA’s prohibitions on unauthorized robocalls to wireless phones.

⁵¹ *Id.*

⁵² *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order on Reconsideration, 22 FCC Rcd 18013, 18029, para. 34 (2007).

⁵³ Zendesk Complaint #889821 (Apr. 1, 2016).

⁵⁴ Spōk Complaint.

⁵⁵ See 47 CFR § 64.1200(f)(11).

⁵⁶ See *supra* para. 5. Thus, as discussed above, these calls constitute telemarketing.

⁵⁷ Declaration of Daniel Stepanicich.

21. Calls to Residential Telephone Lines. Commission staff verified that at least four of the calls were to residential lines.⁵⁸ The calls encouraged listeners to “press 1” to purchase a discounted vacation package, and therefore constitute telemarketing calls and do not fall within one of the exceptions listed in Section 64.1200(a)(3) of the Rules. These four individuals confirmed that they (1) owned the number, and (2) did not consent to receive telemarketing calls. Furthermore, of the 66 complaints received by the Commission, five involved robocalls made to residential lines. Thus, we find that Abramovich violated the Act and the Rules by making at least nine prerecorded message telemarketing calls to residential lines without prior express written consent.

22. Finding of Violations. Based on the record developed in this case, the Commission finds that Abramovich made one or more calls with prerecorded messages in violation of Section 227 of the Communications Act and Section 64.1200 of the Rules.

B. Violations of the Federal Wire Fraud Statute

23. Section 503(b)(1)(D) of the Communications Act and Section 1.80(a)(5) of the Rules permits the Commission to propose a forfeiture against any person who violates the federal wire fraud provisions in Section 1343 of Title 18 of the U.S. Code.⁵⁹ Section 1343 states that a violation of the wire fraud statute occurs when a person:

[H]aving devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs signals, pictures, or sounds for the purpose of executing such schemes or artifice. . . .⁶⁰

Under Section 1343, there are two elements to a fraud violation: “(1) a scheme to defraud, and (2) the use of an interstate wire or radio communication to further the scheme.”⁶¹

24. Scheme to Defraud. While there is no exact definition of a “scheme to defraud,” the courts and the Commission have determined that the “essence of a scheme is a plan to deceive persons as to the substantial identity of the things they are to receive in exchange.”⁶² Deception occurs when the representation would mislead a person of ordinary prudence.⁶³ A scheme to defraud requires the specific intent to make a misrepresentation or omission that is material to the scheme.⁶⁴

25. Specific intent requires the wrongdoer to have undertaken the act or omission “willfully and with specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial

⁵⁸ See *supra* para. 19. As noted above, 9,558,671 of the 96,758,223 robocalls reviewed by the Bureau were made to landline phones in the United States. However, the Bureau’s review did not ascertain the percentage of these calls placed to residential lines. See *supra* para. 11.

⁵⁹ 47 U.S.C. § 503(b)(1)(D); 47 CFR § 1.80(a)(5).

⁶⁰ 18 U.S.C. § 1343.

⁶¹ *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990). See *United States v. Lemire*, 720 F.2d 1327, 1334-35 (D.C. Cir. 1983); *United States v. Pollack*, 534 F.2d 964, 971 (1976); *Network Services Solutions, LLC, Scott Madison*, Notice of Apparent Liability, 31 FCC Rcd 12238, 12276, para. 112 (2016); *KHTK (FM)*, Notice of Apparent Liability, 7 FCC Rcd 5108, 5108 (Mass Media Bur. 1992).

⁶² *United States v. Brien*, 617 F.2d 299, 307 (1st Cir. 1990). See *Harrison v. United States*, 200 F. 662 (6th Cir. 1912); *Network Services Solutions*, 31 FCC Rcd at 12276, para. 112; *KHTK (FM)*, 7 FCC Rcd at 5108. But see *United States v. Novak*, 443 F.3d 150, 159 (2d Cir. 2006) (holding that defendant could not be convicted of mail fraud because the “victims” received exactly what they bargained for).

⁶³ *United States v. Louderman*, 576 F.2d 1383, 1388 (9th Cir. 1978), *cert. denied*, 439 U.S. 896.

⁶⁴ *Neder v. United States*, 527 U.S. 1, 25 (1999).

loss to another or bringing about some financial gain to one's self."⁶⁵ The scheme, however, does not need to be fraudulent upon its face or even misrepresent any material fact.⁶⁶ The scheme only needs to be "reasonably calculated to *deceive* persons of ordinary prudence and comprehension."⁶⁷ In fact, the scheme does not even need to successfully defraud anyone—it is only necessary to show that the scheme had the potential to defraud.⁶⁸ Intent can be inferred from the totality of the circumstances rather than direct evidence.⁶⁹ Several factors can be considered to determine intent: whether the wrongdoer acted with reckless disregard for the truth;⁷⁰ whether the wrongdoer avoided knowledge of the scheme;⁷¹ whether the wrongdoer made affirmative misrepresentations by statements, acts, or omissions;⁷² or whether the victim relied on those misrepresentations.⁷³

26. In this case, we find that Abramovich made affirmative misrepresentations through statements in prerecorded messages, consumers relied upon those misrepresentations, and that those misrepresentations harmed the companies and consumers, and benefitted Abramovich. The evidence shows that Abramovich falsely represented that the called party was receiving an offer associated with a well-known, reputable travel or hospitality company, such as Marriott, TripAdvisor, Hilton, or Expedia. This misrepresentation was critical to inducing consumers to "press 1" and listen to the sales pitches of his client travel companies. As noted, for example, one complainant said that he responded to the pitch because of his participation in the named company's rewards program.⁷⁴ After proceeding through the calls, consumers reported being pressured into purchasing stays at unfamiliar hotel chains and timeshare resorts with no affiliation to the well-known brands invoked in the opening prerecorded message.⁷⁵ The fact that consumers could purchase vacation packages does not negate the material misrepresentation; consumers were induced into thinking they had the opportunity to purchase a name-brand commodity at a discounted rate, and then were offered an unknown or significantly less valuable option instead.⁷⁶

27. Abramovich received financial gain by making prerecorded messages containing false representations about who the consumer would be dealing with when she "pressed 1." Instead of a

⁶⁵ *Network Services Solutions*, 31 FCC Rcd at 12277, para. 113 (quoting *United States v. Lemire*, 720 F.2d 1327, 1341 (D.C. Cir. 1983)).

⁶⁶ *United States v. Bruce*, 488 F.2d 1224, 1229 (5th Cir. 1973).

⁶⁷ *Id.* (emphasis in original). See *United States v. Church*, 888 F.2d 20, 24 (5th Cir. 1989) ("The essence of fraud is that its perpetrator has persuaded his victim to believe, beyond the dictates of reason or prudence, what is not so.").

⁶⁸ See *Church*, 888 F.2d at 24; see also *United States v. Stargell*, 738 F.2d 1018 (9th Cir. 2013), *cert. denied*, 134 S.Ct. 2289 (2014); *United States v. Stouffer*, 986 F.2d 916, 922 (5th Cir. 1993); *United States v. Schaffer*, 599 F.2d 678, 679-80 (5th Cir. 1979).

⁶⁹ See *United States v. O'Connell*, 172 F.3d 921 (D.C. Cir. 1998); see also *United States v. Alston*, 609 F.2d 531, 538 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 918. Specific intent does not require that the wrongdoer intended to violate the law. *United States v. Bibby*, 719 F.2d 1116, 1124 (6th Cir. 1985).

⁷⁰ *United States v. Cusino*, 694 F.2d 185, 187 (9th Cir. 1982), *cert. denied*, 461 U.S. 932.

⁷¹ *United States v. Ramsey*, 785 F.2d 184 (7th Cir. 1986), *cert. denied*, 476 U.S. 1186, 1189.

⁷² See *Cusino*, 694 F.2d at 187; see also *Durland v. United States*, 161 U.S. 306, 314 (1896) (noting that the mail fraud statute—and by extension the wire fraud statute—is broader than just an actual misrepresentation and also include the allurement of a promise).

⁷³ *United States v. Ranney*, 719 F.2d 1183, 1188-89 (1st Cir. 1983). *But see Neder*, 527 U.S. at 25 (stating that the government does not have to prove actual reliance on the misrepresentations to establish a wire fraud case).

⁷⁴ Declaration of Daniel Stepanicich at 10.

⁷⁵ *Id.* at 1-11.

⁷⁶ See *Brien*, 617 F.2d at 307 (holding that fraud occurs when a person is deceived as to the substantial identity of what he or she was to receive).

reputable and well-known U.S. company, e.g., Marriott, the consumer would be transferred to an unknown Mexican call center. TripAdvisor spoke with an owner of one of the Mexican call centers selling vacation packages who explained Abramovich's business model.⁷⁷ Various Mexican call centers contracted with Abramovich to reach out to American consumers via phone campaigns and direct consumers who "pressed 1" to their call agents.⁷⁸ This traffic provided by Abramovich could be adjusted up or down based on the call center's capacity and needs.⁷⁹ The call centers paid Abramovich daily for various amounts of traffic.⁸⁰ Abramovich's misrepresentations sent traffic to the call centers who financially compensated him for the traffic.

28. Additionally, a scheme to defraud under the wire fraud statute is not limited to tangible items such as money from which the fraudster obtains a financial benefit. The statute protects all forms of property which includes intangible property rights even if the property owner does not experience any monetary loss. The goodwill of a business is one such intangible property right. When intangible rights are involved, however, there must be more than mere interference with the right—the defendant must also obtain some personal gain such as using the victim's property.

29. Abramovich intended to defraud Marriott, TripAdvisor, and other companies of their goodwill. The prerecorded messages contained statements that gave the impression to consumers that the offers were from well-known travel companies when in fact Abramovich had no affiliation with those companies and no authority to use their names in his marketing scheme. The use of the well-known companies' names was central to Abramovich's telemarketing scheme,⁸¹ and resulted in harm to these companies' goodwill. After receiving the calls, numerous consumers filed complaints with the companies. According to TripAdvisor, these complainants often threatened to cease doing business with TripAdvisor if the calls continued.⁸² By using the TripAdvisor, Marriott, and other travel company names in his telemarketing scheme, Abramovich tarnished the goodwill of these companies. Thus, we find that Abramovich made affirmative misrepresentations by wrongfully using the names of well-known businesses, including TripAdvisor and Marriott, thereby misappropriating their goodwill for the purpose of enticing trusting consumers into receiving sales pitches in furtherance of a fraudulent travel scheme.

30. Finally, in order to be deemed a "scheme to defraud," the misrepresentation or omission must be material to the scheme.⁸³ In other words, the wrongdoer must have intended the misrepresentation or omission to induce the victim to part with property or influence the victim to undertake an action that he or she would not have otherwise done were it not for the misrepresentation.⁸⁴ As described above, Commission spoke with dozens of consumers who reported that they relied on the misrepresentations when they "pressed 1."⁸⁵ For example, one consumer stated that he only proceeded

⁷⁷ Declaration of [REDACTED].

⁷⁸ *Id.*

⁷⁹ E-mail from Brad Young, Assistant General Counsel, TripAdvisor, Inc., to Daniel Stepanicich, Telecommunications Consumers Division, FCC Enforcement Bureau (May 4, 2017, 15:24 ET).

⁸⁰ *Id.*

⁸¹ *See infra* para. 30.

⁸² *See supra* para. 6, note 15.

⁸³ *Neder*, 527 U.S. at 25. *See United States v. Daniel*, 329 F.3d 480, 487 (6th Cir. 2003) ("To convict a defendant of wire fraud the government must prove specific intent, which means not only that a defendant must knowingly omit a material fact, but also that the misrepresentation or omission must have the purpose of inducing the victim of the fraud to part with property or undertake some action that he would not otherwise do absent the misrepresentation or omission.").

⁸⁴ *United States v. Gray*, 96 F.3d 796, 775-76 (5th Cir. 1996).

⁸⁵ *See supra* para. 26; Declaration of Daniel Stepanicich at 10.

through the call because he was a Marriott Rewards member.⁸⁶ Had the calls not falsely claimed to be associated with reputable businesses to gain customers' trust, some of the consumers would not have continued listening to the call. Thus, Abramovich's misrepresentation that the calls were from Marriott or other trusted companies was highly material to his scheme. The Commission, therefore, finds that Abramovich's robocalls were part of a fraudulent scheme centered on misappropriating well-known brand names to deceive victims into listening to high-pressure vacation package sales presentations.

31. Use of Interstate Wires in Furtherance of the Scheme. To violate the federal wire fraud statute, the wrongdoer must use "wire, radio, or television communication" to further the fraudulent scheme.⁸⁷ The evidence gathered by the Commission shows that Abramovich used the interstate wires to directly further his scheme. Between October 1, 2016 and December 31, 2016, Abramovich placed 96,758,223 telephone calls to consumers across the United States and Canada.⁸⁸ Thus, we find that Abramovich made use of interstate wires via the telephone system to further his fraudulent telemarketing scheme in violation of the federal wire fraud statute.⁸⁹

32. Finding of Violations. Based on the evidence and pursuant to Section 503(b)(1)(D) of the Communications Act, the Commission finds that Abramovich made fraudulent representations over the telephone system in violation of the federal wire fraud statute codified in Section 1343 of Title 18.

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

33. Abramovich may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to Abramovich's place of business. The Commission Field Office nearest Abramovich is located in Miami, Florida.

34. If Abramovich requests a teleconference or personal interview, contact Kristi Thompson at (202) 418-1318. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Abramovich prefers to submit a written response with supporting documentation, send the response within 30 calendar days of the release date of this Citation to the contact and address provided in paragraph below.

35. All written communications should be sent to the address below.

Richard A. Hindman, Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Rm. 4-C224
Washington, DC 20554
Re: EB-TCD-15-00020488

36. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Abramovich should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. Abramovich should allow at least five business days advance notice; last minute requests will be

⁸⁶ Declaration of Daniel Stepanicich at 10. Marriott Rewards is a travel rewards program that provides various perks to members. Marriott, *Marriott Rewards*, <http://www.marriott.com/rewards/rewards-program.mi> (last visited Feb. 27, 2017).

⁸⁷ 18 U.S.C. § 1343. "Wire" includes the telephone system. See *United States v. Sun-Diamond Growers of California*, 138 F.3d 961, 972 (D.C. Cir. 1998) ("The wire fraud statute forbids the use of the interstate telephone system for the purpose of executing a scheme or artifice to defraud.").

⁸⁸ See *supra* para. 11.

⁸⁹ 18 U.S.C. § 1343.

accepted, but may be impossible to fill. Abramovich should send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format
202-418-0531 (voice), 202-418-7365 (tty).

37. We advise Abramovich that he is a violation of Section 1.17 of the Rules⁹⁰ for any person to make any false or misleading written or oral statement of fact to the Commission. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

38. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment.⁹¹

39. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.

40. Finally, we warn Abramovich that, under the Privacy Act of 1974,⁹² Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure your compliance with the Act and Rules.

V. FUTURE VIOLATIONS

41. If, after receipt of this Citation, Abramovich (or any entity through which he does business) again violates Section 227 of the Act, Sections 64.1200 of the Rules, and the federal wire fraud statute by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures of up to \$19,246 per violation of Section 227 and a base forfeiture of \$5,000 per violation of wire fraud pursuant to Section 503(b)(1)(D).⁹³ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.⁹⁴

⁹⁰ 47 CFR § 1.17.

⁹¹ 18 U.S.C. § 1001.

⁹² 5 U.S.C. § 552a(e)(3).

⁹³ 47 CFR § 1.80. See *Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-1453, (Dec. 30, 2016).

⁹⁴ See *supra* para. 2.

VI. ORDERING CLAUSE

42. **IT IS ORDERED** that a copy of this Citation shall be sent by first class mail and certified mail, return receipt requested, to Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc. at [REDACTED].

FEDERAL COMMUNICATIONS COMMISSION

Lisa S. Gelb
Deputy Chief
Enforcement Bureau