

Legal Updates & News

Legal Updates

FCC Requests Comment on Debt Collection Calls to Mobile Telephones

March 2009

In a public notice published in the Federal Register on March 18, 2009, the Federal Communications Commission (“FCC” or “Commission”) requests comment on a question that affects the ability of creditors to make collection calls to debtors’ wireless telephones.^[1] Comments are due at the FCC on or before April 2, 2009, and reply comments are due on or before April 13, 2009.

The question posed by the FCC arises under the Telephone Consumer Protection Act (“TCPA”), which generally prohibits the use of autodialers or artificial/prerecorded voices to call any telephone number assigned to a “paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.”^[2] The prohibition applies to all types of calls -- not just those made for telemarketing purposes. The only exceptions are for emergency calls and calls made with the prior express consent of the called party.

In a declaratory ruling released in January 2008, the Commission announced that the prior express consent requirement of the TCPA is satisfied when a debtor provides a wireless number to a creditor during the transaction that results in the debt owed.^[3] With this ruling, the Commission relieved debt collectors of the need to follow more onerous procedures, such as obtaining separate consents, before making collection calls to debtors at wireless telephone numbers that were provided on a loan application or otherwise furnished at the beginning of the business relationship.

In January of this year, the Commission received a petition for expedited clarification and declaratory ruling from Paul D.S. Edwards.^[4] The Edwards petition points out that many telephone customers transfer, or “port,” their landline telephone numbers to wireless carriers when they sign up for wireless service. In some cases, these customers might have given a creditor the telephone number when it still was assigned to a landline carrier. Edwards’s petition asks if the debtor, by providing a landline number at the start of the relationship, gives prior express consent to the creditor’s making autodialed calls to that number *after* its transfer to a mobile service provider. Edwards’s position, and the conclusion he urges the FCC to reach, is that any consent granted when a landline number is furnished to a creditor is

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extinguished when the number is ported to a wireless carrier.^[5]

If accepted by the FCC, Edwards's interpretation of the TCPA would significantly increase the compliance burdens of creditors and debt collectors. Before making autodialed or prerecorded/artificial voice calls to debtors, those entities would be required to determine which of the telephone numbers provided by debtors had been ported to wireless carriers. Where a number was found to have been ported since the customer relationship was established, the creditor or debt collector would be required either to obtain a new consent from the debtor, or to forgo making future collection calls to the number furnished by the debtor.

Comments may be filed electronically or in paper form before the initial comment deadline of April 2, 2009, and the reply comment deadline of April 13, 2009. Filing initial comments is not a condition for eligibility to file reply comments.

For further information on this proceeding or assistance with filing comments, please contact Cheryl A. Tritt, ctritt@mofo.com, or Charles H. Kennedy, ckennedy@mofo.com.

Footnotes

^[1] 74 FR 11581 (Mar. 18, 2009) (FCC CG Docket 02-278; DA-09-542) ("*Notice*").

^[2] 47 U.S.C § 227(b)(1)(A)(iii).

^[3] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 and Request of ACA International for Clarification and Declaratory Ruling*, 23 FCC Rcd 559 (2008).

^[4] *Notice, supra*, 74 FR at 11582.

^[5] Edwards's petition can be accessed online at <http://www.fcc.gov/cgb/ecfs>. The docket number, CG 02-278, should be entered into the "Proceeding" block on the search form.