



May 6, 2020

ELEVENTH CIRCUIT RULES NO UNILATERAL REVOCATION OF CONTRACTUAL TCPA CONSENTS

On May 1st, the U.S. Court of Appeals for the Eleventh Circuit held that the federal Telephone Consumer Protection Act ("TCPA") does not permit the unilateral revocation of consent given in a bargained-for contract and dismissed a consumer's TCPA claim. *Medley v. Dish Network LLC*, No. 18-13841, 2020 WL 2092594 (11th Cir. May 1, 2020).

As part of a satellite television services agreement, a consumer provided her mobile phone and expressly authorized the provider to contact her regarding her account or to recover any unpaid portion of her obligation to the provider through an automated or predictive dialing system or prerecorded messaging system. In response to emails sent to the consumer from the provider regarding unpaid amounts, the consumer's attorneys sent facsimiles to the provider, which among other things, expressly stated that their client expressly revoked any prior consent given for calls made using an automatic telephone dialing system or artificial or prerecorded voice messages. The provider subsequently made multiple automated calls to the consumer's mobile phone. The consumer's complaint alleged violations of the TCPA as well as Florida collection laws.

The Eleventh Circuit concluded that the consumer's attempt to revoke her call consent unilaterally via fax sent by her attorneys was ineffective because she expressly consented to automated calls in a legally binding agreement. The Eleventh Circuit's decision follows the reasoning in the Second Circuit's 2017 *Reyes* decision. See *Reyes v. Lincoln Auto. Fin. Servs.*, 861 F.3d 51 (2d Cir. 2017). The *Reyes* court noted that the text of the TCPA is silent on consent revocation but presumed that Congress intended to incorporate existing common law concepts of consent into the TCPA. The consent in *Reyes* appeared in a bargained-for contract. The Second Circuit simply applied common law contract rules to find that consent given as a mutually-agreed-upon term is legally binding and is not unilaterally revocable. The Eleventh Circuit agreed.

The Eleventh Circuit rejected the consumer's arguments that a "no unilateral revocation" determination would be inconsistent with a prior Eleventh Circuit case and 2015 Federal Communication Commission ("FCC") ruling. The Eleventh Circuit distinguished its prior case, which involved oral revocation of a consent given

gratuitously in a credit application, not revocation of a contractual consent. Similarly, the Eleventh Circuit observed that the FCC's 2015 ruling did not address consent given in a legally binding agreement. Here, the consumer gave consent as a mutually-agreed-upon term of a contract. Common law principles governing contracts apply.

The Eleventh Circuit's *Medley* decision adds another favorable circuit court decision that addresses whether the TCPA permits a consumer to unilaterally revoke consent in a bargained-for contract. We advise clients regularly on their TCPA consents, policies and processes. We are here to help. ☐

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