



The Association of Credit
and Collection Professionals

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Dear ACA Member,

This information is being sent to you at the request of the ACA International Executive Committee. All members using autodialers or prerecorded message technology to place calls to consumers are urged to review the following information.

The Telephone Consumer Protection Act of 1991 (TCPA) prohibits all parties from using an autodialer or prerecorded message to call a consumer's wireless telephone number without obtaining the prior express consent of the consumer to place such calls.

On January 4, 2008, the Federal Communications Commission (FCC) issued a declaratory ruling clarifying the permissibility of using an autodialer or prerecorded message to place calls to a consumer's wireless telephone number. In its ruling, the FCC clarified that an individual provides express consent to be called at her wireless number via autodialer or prerecorded message if she knowingly releases her wireless telephone number to the calling party. In particular, the FCC noted providing a wireless telephone number to a creditor, such as part of a credit application, would constitute prior express consent by the individual to be contacted at that number.

The viability of this declaratory ruling has recently been called into question. The Northern District of California recently concluded the FCC exceeded its authority in issuing the January 4, 2008 declaratory ruling.

In the California case, the creditor used an autodialer to place calls to the consumer's wireless telephone number. The creditor contended such calls were permissible because the consumer provided her wireless telephone number in a credit application and in other correspondence with the creditor, and therefore, the creditor had the consumer's prior express consent to use an autodialer to call the consumer's wireless number.

The court disagreed, finding the consumer did not provide express consent to receive autodialed or prerecorded message calls by listing her telephone number in a credit application and in other correspondence with the creditor. The court asserted to qualify as "prior express consent," the consumer must knowingly provide her wireless number for the specific purpose of receiving autodialed or prerecorded message calls.

The court found the FCC's interpretation of the phrase "prior express consent" was both "manifestly contrary to the statute" and unreasonable because it "impermissibly amends the TCPA to provide an exception for 'prior express or implied consent' and flies in the face of Congress' intent."

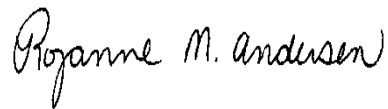
Since the consumer did not release her wireless number for the specific purpose of receiving autodialed calls via her wireless telephone, the court concluded the creditor had not obtained the requisite prior express consent required under the TCPA to place calls to the consumer's wireless number via an

autodialer. Accordingly, the court granted summary judgment in favor of the plaintiff.

Additional suits have been filed alleging similar violations. ACA is working with defense counsel to coordinate a nationwide effort on how to approach the court's ruling in future TCPA-related litigation.

ACA members currently using an autodialer to place calls to consumers are strongly urged to consult with their legal counsel to determine how this decision affects their current use of autodialers. For additional information on this topic or assistance in locating an attorney, please contact ACA's Compliance Department at +1(952) 928-6547 or e-mail compliance@acainternational.org.

Best regards,



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