

In the Matter of the)
Rules and Regulations)
Implementing the Telephone) CG Docket No. 02-278
Consumer Protection) CG Docket No. 18-152
)
Act of 1991)

Circuit's ACA International Decision

This industry will do anything and everything they can to completely neuter the TCPA. Their assault on the TCPA began the day the TCPA was enacted and will continue ad infinitum. This war on our privacy will continue until the Supreme Court settles the issue.

Definition of ATDS

The plain language of the statute states that an ATDS is "equipment which has the capacity to store... telephone numbers to be called... and to dial such numbers."

(a) Definitions

1. The term "automatic telephone dialing system" means equipment which has the capacity—

- (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and
- (B) to dial such numbers.

The plain language contained within the TCPA enumerates two separate conditions in the definition of ATDS. One is the storing of numbers to be called the other condition is producing telephone numbers to be called. Both conditions are not required for equipment to fall under the definition of ATDS.

The "producing" telephone numbers to be called "using a random or sequential number generator" has not been applicable for decades. It is more efficient to use lists of telephone numbers purchased from list brokers¹. The "using a random or sequential number generator" has never applied to the storing of numbers to be called only to the generation of numbers.

By applying the last antecedent rule the "using a random or sequential number generator" applies only to the

¹ War dialers have been used on and off the last 2 decades to identify active numbers.

preceding term which is "production" of telephone numbers. It would be illogical to apply the "using a random or sequential number generator" to the act of storing of telephone numbers.

The "or" between storing numbers and generating numbers is intentionally overlooked by the debt collection, polling, political, telemarketing industry, those providing services to these industries and those representing these industries. It makes good sense to them to treat the "or" as an "and" because that would exempt every ATDS in use today since using number generators hasn't been used in decades.

In 2008, the Commission rejected a petition that claimed: "a predictive dialer meets the definition of autodialer only when it randomly or sequentially generates telephone numbers, not when it dials numbers from customer telephone lists." See: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 23 FCC Rcd 566-67 (Jan. 4, 2008).

The Commission should look to Congressional intent and **broadly** interpret the definition of ATDS.

"It should be noted that the bill's definition of an "automatic telephone dialing system" **is broad**, not only including equipment which is designed or intended to be used to deliver automatically-dialed prerecorded messages, but also including

equipment which has the "capability" to be used in such manner. The Committee is aware of concerns that this broad definition could cover the mere ownership of office computers which are capable, perhaps when used in conjunction with other equipment, of delivering automated messages."

H.R. Rep. No. 633, 101st Cong., 2nd Sess. 1990, 1990 WL 259268 (Leg.Hist.)

Simply because more and more consumers are using cell phones is not a valid reason to limit the definition of ATDS and/or to defeat the privacy protections of the TCPA.

Human Intervention

The Commissions "human intervention" interpretation has created a significant surge of unwanted calls to consumer's cell phone numbers. The debt collection, polling, political, telemarketing industry, those providing services to these industries and those representing these industries have created "click monster" applications that blast as many calls as the click monster can click on.

My family and I have been subjected to these "click monster" ATDS calls. A political Senate candidate by the name of Robert O'Rourke decided to indiscriminately blast text message calls to a list of Texas cell phone numbers purchased from a list broker. The text messages went to every cell phone number in Texas.

Several entities helped O'Rourke set up what they call a text bank. One of those entities that assisted in setting the text bank up is on the Commissions Robocall Task Force². Inteliquent Inc. provided text enabled telephone numbers and the connection to mobile carrier networks. On its web site Inteliquent states that:

"Inteliquent offers customers the option to message enable Inteliquent purchased phone numbers or bring your own. You can choose from millions of messaging enabled numbers in our inventory. You can pick the area code, the prefix and even the line number. We can provide you with single numbers or blocks of sequential numbers."
<https://www.inteliquent.com/services/inbound-voice/sms-phone-numbers>

Inteliquent provides commercial mass texting services and does not service individual accounts.

A prior Commission petitioner and commentor, Revolution Messaging LLC, provides the opt out short message code 90975 and the txthlp.com Terms and Conditions to the O'Rourke text bank. As with Inteliquent, Revolution Messaging provides commercial mass texting services and does not service individual accounts.

The text bank software application was provided by Twilio Inc. another commentor in this very Commission

² According to a letter I received from Inteliquent they have no intention of blocking calls from its paying customers despite the fact that the calls are robocalls to cell phones without consent and some calls are using neighbor spoofing. This is the proverbial fox guarding the hen house. See the attached Inteliquent letter.

proceeding. The software application pulls the cell phone number and first name from a call list and inserts the name into an impersonal text message. Additionally, Twilio purchased the use of Inteliquent's text enabled phone numbers for the O'Rourke text bank. A text bank volunteer clicks as fast as they can on "send" which causes text message to be sent en masse to every cell phone number in Texas. See attached text messages. Twilio provides commercial mass texting services and does not service individual accounts.

O'Rourke knows that people pay for text messages and admits so on his web page:

"Mobile alerts from Beto for Texas. Periodic messages. Beto for Texas will never charge for these updates, but carrier message & data rates may apply. Text STOP to 90975 to stop receiving messages. Text HELP to 90975 for more information. For tech support, email sms@txthlp.com (mailto:sms@txthlp.com)"

O'Rourke's text message blast campaign evidences an irresponsible attitude toward recipients of his text messages. Where someone was or what someone was doing when the text messages were sent did not matter to him. Knowing that some people pay for text messages didn't stop O'Rourke. Prior express consent was something O'Rourke did not stop to consider. We were working on repairing our home flooded by Harvey when we received the text messages. The text messages were addressed to me but were sent to my wife's

cell phone number. Of course she had to ask me who these strange women were that were texting me on her phone.

To add insult to injury there was no opt out code in the text messages. One had to go to O'Rourke's web site to find the opt out code. The text message calls were made from the telephone numbers 737-201-7963 and 512-357-7696. When I called those numbers I was met with a recorded message: "Thank you for calling the RelayEX System. Unfortunately your number does not seem to be associated with an active conversation. Have a nice day." When we called from my wife's cell phone we got a recorded message that said the caller was notified of the call but no one ever called back.

I ask the Commission to make clear that systems such as used by O'Rourke are an ATDS. I ask the Commission to go further and stress that human intervention must be substantial and not just one step in an automated process. The Commission created this human intervention monster and is now on the hook to reign these click monsters in.

The Commission should determine that the plain language of the statute states that an ATDS is a system which has the capacity to store telephone numbers to be called and to dial such numbers without significant human intervention. The 1st part is straight from the plain

language of the statute. The 2nd part "without significant human intervention" will put a stop to the abuses of the Commission's "human intervention" interpretation. The Commission's human intervention has added political, polling, and charity ATDS calls to the tsunami of illegal robocalls we were already getting on our cell phones. The onus is on the Commission to put a stop to click monsters or click monkeys or whatever one wants to call those individuals that click on send as fast and as many times as they can.

Called Party

This has been commented on ad infinitum. The Commission erred in creating a one call good faith exemption when at that time not one court had found that called party means intended called party. I am attaching a list of 38 cases that hold that called party is the actual recipient of the call and even one call to the actual recipient without consent is a violation of the TCPA. That makes 35 district courts and 3 appellate courts that have rejected the "intended" called party interpretation. There is only one outlier case that has erroneously decided in favor of a good faith defense. It is included with the attached list.

The comments on called party will become moot once a database of reassigned numbers is created. Nevertheless, I

would caution against creating a good faith exemption as there will undoubtedly be those that will not change their ways of calling every cell phone number they can and will simply use the database as a defense.

Revoking Consent

Revoking consent is not rocket science. Revoking consent can be made orally during a call, can be made via a "STOP" text, can be made by written letter and can be made in any fashion which is acceptable evidence in a court of law. There will be those that make revocation hard or even impossible which the ACA court did not consider.

Should every employee know how to handle a do not call request? If a company conducts business over the phone then yes their entire work force should know how to handle a stop calling me request. It shouldn't take but a few seconds to convey "don't call me again". Callers should make all reasonable methods available to opt out. During a call, in response to a text message and by written letter are all reasonable means of revocation of consent. Again this has been commented on ad infinitum and those previous comments answer the questions the Commission raises.

The Broadnet Declaratory Ruling

A contractor for the government is a person under the TCPA. Any other interpretation will only increase the number of unwanted calls we are already receiving.

Conclusion

Commission enforcement is lacking for the illegal calls we are getting from both legitimate callers and scammers. We have received six hundred and fourteen (614) Rachel robocalls to our land line and cell phone numbers. We have received dozens of sham survey vacation robocalls. We have received dozens of scam auto warranty calls. Politicians, pollster, charities have been calling nonstop since the ACA ruling. Their calls have added to the number of illegal robocalls we are getting. Cell phones are being treated like land lines by debt collectors, pollsters, political callers, charity callers and telemarketers. Those providing services to these industries and those representing these industries are seeking numerous exemptions which the Commission must deny. **Our cell phone are for our families and friends only!**

The Commission must do what congress directed it to do in the TCPA - **PROTECT OUR PRIVACY**. Anything less is unacceptable.

Respectfully submitted.

_____/s/_____

Joe Shields

Texas Government & Public Relations Spokesperson for
Private Citizen Inc.

16822 Stardale Lane

Friendswood, Texas 77546

Letter from Inteliquent Inc.

Note: Inteliquent claims that it has no legal duty or right to prevent third party from making the calls I complained about. That statement makes me think that the Commission Robocall taskforce isn't going to stop even one unwanted robocall. It's the same old excuse consumers have gotten the last 2-3 decades.



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June 5, 2018

VIA FEDERAL EXPRESS

Joe Shields
16822 Stardale Lane
Friendswood, Texas 77546

Re: Letter Dated May 29, 2018, Complaining of Receipt of Unwanted Calls and Texts

Dear Mr. Shields:

On June 4, 2018, we received your letter dated May 29, 2018, alleging violations of law with respect to calls and texts placed to your mobile and home phone. You complain that over the past few months, you have received multiple unwanted phone calls and texts. You further allege that the calls/texts originated from phone numbers "assigned to you by NANPA." You also write that you have registered both your landline and cellphone on the Federal "do-not-call" list.

We understand your frustration with receiving unwanted calls and we take all such complaints very seriously. We are still investigating your complaint.

As background, Inteliquent, Inc., including its subsidiaries operating as "Neutral Tandem," provides wholesale telecommunications services. What that means is that Neutral Tandem assigns telephone numbers to other carriers who either assign the numbers to other parties or use the telephone number resources themselves. We have confirmed that the telephone numbers identified below and in your correspondence are not used by us, our parent company, or any of our subsidiaries. Instead, separate third-parties, at the time the calls or texts were made, had been assigned use of the above-referenced numbers. And each third party may have assigned the telephone numbers to another party. Accordingly, Neutral Tandem had no control over how the two numbers were used or for what purpose.

In this matter, assuming the numbers were not spoofed,¹ the first three telephone number you identified [737.201.7963; 512.357.7696; and 281.612.6892] may in use by a company called Twilio. The fourth telephone number you identified [346.241.0465] may be in use by a company called Vitelity.² And the fifth telephone number you identified [281.853.8756] may be in use by a company called SIP US, LLC.

¹ Spoofing means showing a "calling number" that is not the actual calling number.

² It also appears to us that calls are being made from an entity calling itself the "US Veterans Fund Association."



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www.inteliquent.com

Our provision of such services to third parties is as a "common carrier," which means we have no liability for how third parties use such services. Neutral Tandem has no legal duty or right to prevent third parties from making the calls of which you complain.

That said, we have contacted the three entities named above and instructed them to take action and investigate further. Specifically, we have instructed them to ensure that you are on their (or their customers') do not call list.

I complained about robocalls to cell phones where do not call doesn't apply. Same old mantra.

As noted above, we ourselves are continuing our investigation. If you have any additional information or concerns, please feel free to email it to our dedicated fraud group at: Fraud@inteliquent.com.

Again, we share your concern. When my family members or I receive unwanted phone calls, it is extremely frustrating. That is one of the reasons why Inteliquent sits on an FCC Task Force related to preventing "robo-calling." We actively work to stop these calls. As noted above, we have a dedicated "Fraud Group," whose sole function is to address e.g., unwanted or fraudulent calls.

If you have any additional questions or concerns, please don't hesitate to contact me.

Sincerely,

Richard L. Monto
General Counsel – Business Units

**Revolution Messaging LLC Terms and Conditions Web
Page**

Revolution Messaging Terms

Message frequency: Periodic.

Message and Data Rates May Apply.

Must be the account holder or have account holder permission to participate.

Campaign / service is compatible with most handsets.

Supported carriers include AT&T, Verizon Wireless, Sprint, T-Mobile (T-Mobile is not liable for delayed or undelivered messages to the customer.), MetroPCS, Virgin Mobile USA, Alltel (part of Verizon Wireless), Cellular One from Dobson (part of AT&T), U.S. Cellular, ACS Wireless, Appalachian Wireless, AT&T, Bluegrass Cellular, Boost (iDEN), Boost Unlimited (CDMA), Cellcom, Cellular One of East Central Illinois, Cellular South, Centennial Wireless, Cincinnati Bell, GCI Communications, Illinois Valley Cellular, Immix Wireless, Inland Cellular, Nex-Tech Wireless, nTelos Wireless, Revol Wireless, Sprint, Thumb Cellular, Unicel, United Wireless, and West Central Wireless.

Disclaimer: Not all carriers support MMS. MMS is an optional service. AT&T, T-Mobile/Metro PCS (GSM), Verizon Wireless, Sprint and U.S. Cellular support MMS.

To unsubscribe from this service at any time simply text **STOP** to the short code you want to stop receiving messages from: 225568, 228466, 235246, 48728, 62227, 62571, 64336, 736283, 738674, 787753, 675309, 82623, 83224, 91990, 698329, 99795, 43362, **90975**, 69238, 86466.

For help, email sms@txthlp.com or text **HELP** to the applicable short code: 225568, 228466, 235246, 48728, 62227, 62571, 64336, 736283, 738674, 787753, 675309, 82623, 83224, 91990, 698329, 99795, 43362, 90975, 69238, 86466.

PROGRAMS AVAILABLE ON SHORT CODE: Standard rate alerts.

Short code found on
O'Rourke's web page.

RM acts as application provider for campaigns and committees who want to allow supporters to donate via text message. Program sponsors are candidate or other political committees, currently including the following:

Bernie 2016 - 82623

The program sponsor (campaign) determines how often you are contacted about making a contribution.

When you text the designated keyword to the above short code, you will be asked to affirm certain information including amount of the contribution you wish to make. You may be asked to provide additional information, including name, address, occupation and name of employer, required by Federal Election Commission regulations.

If you affirm your desire to contribute, you will be charged by your wireless carrier for the amount of the contribution. These amounts will be added to your wireless phone bill or deducted from your prepaid account.

The amount you contribute, minus transaction charges and discounts for advancing funds (factoring) will be transmitted to the campaign to which you indicated you want to contribute.

Your contribution is not tax deductible as a charitable contribution for federal income tax purposes.

To unsubscribe from this service at any time text **STOP** to the short code for the applicable campaign.

For help email sms@txthlp.com or text **HELP** to the applicable short code.

For contact information see below "How to Contact Us"

Message frequency: Periodic.

This Privacy Policy applies to the website [Revolution Messaging, LLC and its web properties](#) (the "Site") and messaging programs owned and operated by Revolution Messaging LLC ("RM") a District of Columbia limited liability company.

RM has created this privacy policy to explain how we use information that you may provide while visiting this Site and to demonstrate our firm commitment to Internet privacy. RM may modify this policy from time to time so we encourage you to check this page when revisiting this Site.

By using this Site, you agree to the terms of this Privacy Policy and of the Terms of Use for this Site.

How We Use Your Information

When you register to obtain services through this Site, we may ask you to give us contact information, including your name, address, telephone number, mobile telephone number and/or e-mail address. We may obtain information about you from outside sources and add it to or combine it with the information we collect through this Site. We use this information to operate this Site, send you news and information to you about RM and its services and to maintain and improve the quality of the services we provide to you. We use your e-mail address to send such information by e-mail and may use your mobile telephone number to call you, send you a text message, or send you an MMS message about our services.

We will never provide your e-mail address or any of your personal information to any other person or organization, for any purpose, except

- To companies that assist us in maintaining this Site or with RM activities, but only for purposes of providing services to RM and with the strict requirement that any such company will never itself have the right to contact you for any reason
- To comply with applicable law or legal requirements (for example, a lawful subpoena), to protect our rights or property, or to protect our supporters from fraudulent, abusive, or unlawful conduct, or if we reasonably believe that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of communications or justifies disclosure of records
- If you donate to a federal political candidate or committee via text message, we provide to that candidate or committee information that they and/or we have collected about you and your contribution, that the candidate or committee is required to maintain and, depending on the amount of your contribution, to report to the Federal Election Commission. Such information includes your name and address and, if you have contributed more than \$50 per month or \$200 per calendar year, your occupation and name of your employer. That information is required to be reported to, and will be made public by, the Federal Election Commission.

When you connect to the RM services on your mobile device, if your mobile phone service provider uniquely identifies the device, RM will receive this information. RM may use your unique mobile device identification information to offer you extended services and/or functionality. Certain RM services may require our collection from you of the phone number,

and/or other unique identifiers, for your device. We may associate that phone number to the mobile device identification information and to other information we have collected from and about you; however we will not use that number for telemarketing. Some mobile phone service providers are required to operate a system that will record the physical location of devices that use their service. Depending on the mobile phone service provider, RM may automatically receive this information.

Children

RM complies with the Children's Online Privacy Protection Act. RM does not solicit and does not accept personally identifying information from any person under 13 years of age. Visitors to this Site who are under 13 years of age should not use this Site except under the supervision and with the assistance of their parent or legal guardian, and should never submit any personally identifying information to the Site. For example, visitors under 13 years of age should not register, purchase or use services or take any actions on or through this Site.

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A cookie is a piece of data stored on the user's hard drive containing information about the user. Some parts of this Site may be password-protected. We may use a cookie (cookies reside on your computer and are under the control of your browser) to help us remember and process items that you purchase through this Site; and/or to compile aggregate data about visitors to the Site and their interaction with the Site for the purposes of improving the operation of the Site and/or offering better Site experiences and tools in the future. We may also use cookies to enable you to return to password-protected areas of the Site without having to re-enter your password. If you wish to disable these cookies, the help portion of the tool bar on most browsers will tell you how to do that. If you set your browser to disable cookies, however, you may not be able to access certain parts of this Site.

We may also use third-party services such as Google Analytics. This helps us understand traffic patterns and know if there are problems with our Site. We may also use embedded images in emails to track open rates for our mailings, so that we can tell which mailings appeal most to RM customers and end-users of RM services.

Links to Other Sites

The privacy policies and practices contained in this Privacy Statement do not apply to ANY external links. This Privacy Statement only applies to our Site or any future Sites that we may develop. It does not cover Sites that are linked to by this Site or Sites for which we are not responsible ("linked-Sites"). These linked-Sites will have their own policies and practices which may be different from ours. We therefore encourage you to familiarize yourself with the policies and practices of the linked-Sites, especially if you provide personal information to them.

Programs

Text **REVOLUTIONALERT** to **43362** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **48728** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **52267** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **62227** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **62571** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **64336** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **69238** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **698329** to sign up for Revolution Messaging News Alerts.

Text **REVOLUTIONALERT** to **83224** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **91990** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **225568** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **228466** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **675309** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **738674** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **787753** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **864237** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **86466** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **82623** to sign up for Revolution Messaging News Alerts.
Text **REVOLUTIONALERT** to **98199** to sign up for Revolution Messaging News Alerts.
Text **DNC** to **43367** to sign up for DNC News Alerts.
Text **HOPE** to **62262** to sign up for OFA News Alerts
Text **AFT** to **69238** to sign up for AFT News Alerts.

Amendments and Consent to This Privacy Statement

We retain the right to amend or otherwise update this Privacy Statement at any time. By using our Site, you consent to the collection and use of the information as we have described. If we change our policies and practices, we will post the changes in our Privacy Statement so that you are always aware of them. With this knowledge, you can make an informed decision about whether you wish to provide personal information to us.

How to Contact Us

If you have any questions about this Privacy Statement, you may contact us by:

- Sending an e-mail to: privacy@revolutionmessaging.com
- Telephone: 888-834-7386

O'Rourke Web Site and Text Messages

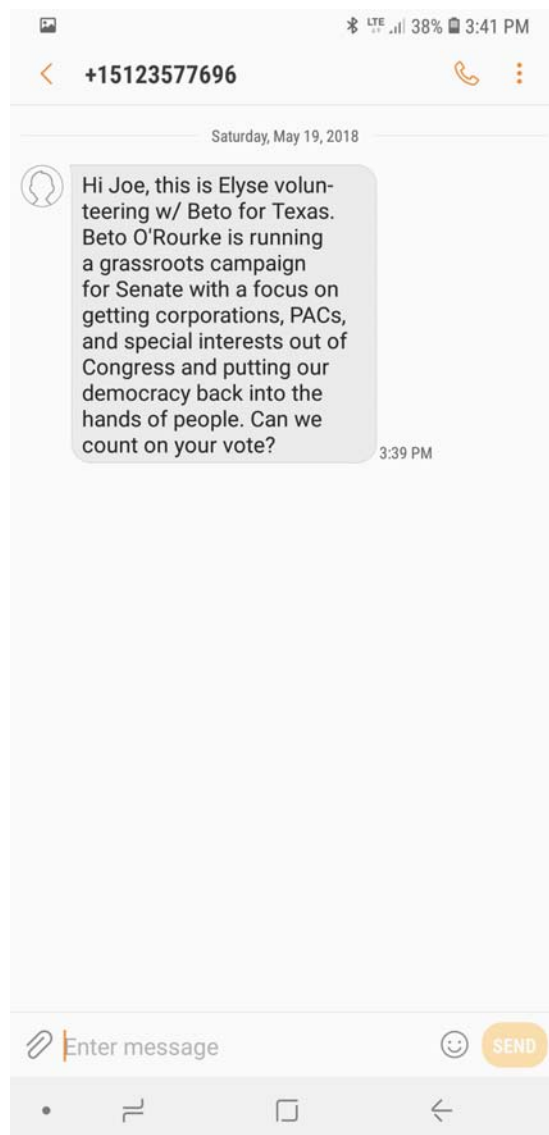
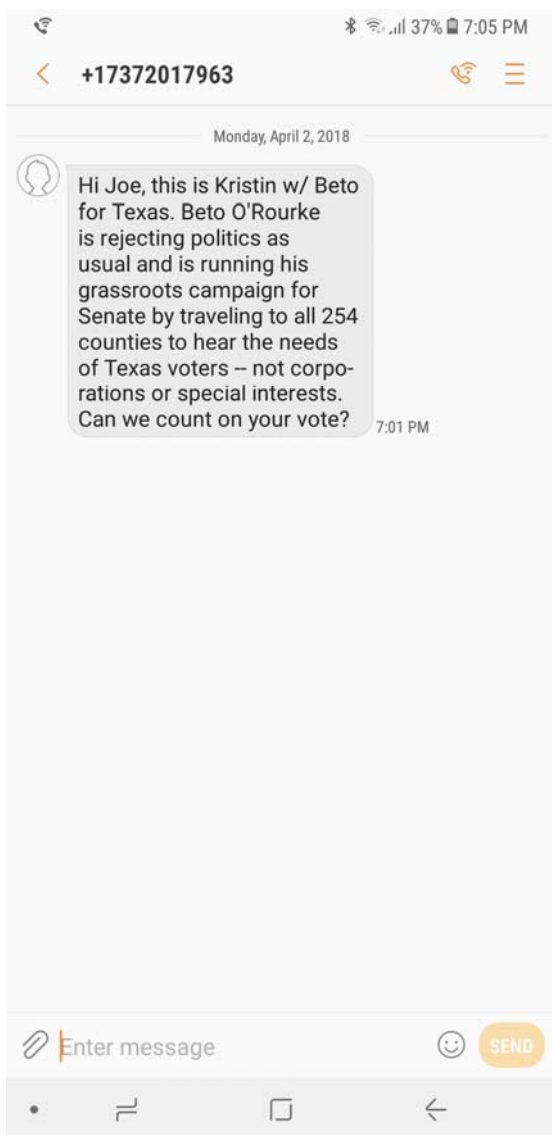
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Called Party Case Law

Case Law On Called Party Is The Current User or Subscriber Of The Cell Phone Number And Rejecting The “Intended” Called Party Interpretation

1. *Soppet v. Enhanced Recovery Co., L.L.C.*, 679 F.3d 637 (7th Cir. 2007). “Standing to bring a private right of action is recognized for the person who answers a call to their cell phone, even if the caller intended to reach a different person.”
2. *Kane V. National Action Fin. Servs., Inc.*, 2011 WL 6018403 (E.D. Mich. Nov. 7, 2011) ““called party” means the person subscribing to the called number at the time the call was made.”
3. *Harris v. World Financial Network National Bank et al*, 867 F.Supp.2d 888 (2012) WL 1110003] “Like Kane, Plaintiff has received calls on his own cellular phone from a party using an automated dialing system and intending to reach someone else.”
4. *Alea London Ltd. v. American Home Services, Inc.*, 638 F.3d 768, 776 (11 Cir. 2011) “The TCPA is essentially a strict liability statute which imposes liability for erroneous unsolicited [calls].”
5. *Dawson v. Am. Dream Home Loans*, No 06CV000513, 2006 WL 2987104 (Ohio Com. Pl. Oct. 4, 2006) “...provides for a cause of action for any person who receives an unsolicited fax and does not limit the cause of action to the intended recipient of an unsolicited fax.”
6. *Breslow v. Wells Fargo Bank, NA*, 857 F. Supp. 2d 1316 - Dist. Court, SD Florida 2012. “The use of ‘called party’ to unambiguously refer to the actual recipient in another section of the TCPA is compelling evidence that the term carries the same meaning in other provisions.” “Accordingly, the Court finds that the “called party” for the purposes of § 227(b)(1)(A)(iii) was not Former Customer, but the Plaintiffs”
7. *Olney v. Progressive Casualty Ins. Co.*, 2014 WL 294498 (S.D. Cal., Jan. 24, 2014) “Defendant’s position that only the intended recipient has standing to bring a claim under the TCPA **has been squarely rejected in no less than twenty cases**, (emphasis added) cases that are factually similar to the instant case.”
8. *Gutierrez v Barclays* Case No. 10-cv-1012 DMS (BGS) (S.D. Cal. Feb. 9, 2011) “Instead, the Court is persuaded by Plaintiffs’ argument that the TCPA is intended to protect the telephone subscriber, and thus it is the subscriber who has standing to sue for violations of the TCPA.”
9. *Osorio v. State Farm Bank, F.S.B.*, 746 F. 3d 1242 (11th Cir. 2014) “We accordingly reject State Farm’s argument that the “intended recipient” is the “called party” referred to in 47 U.S.C. § 227(b)(1)(A)”.
10. *Swope v. Credit Management LP*, 2013 WL 607830 (E.D. Mo. 2013) “**Numerous courts** that have considered this issue have held a party to be a ‘called party’ if the defendant intended to call the individual’s number, and that individual was the regular user and carrier of the phone.”
11. *Page v. Regions Bank*, 2012 WL 6913593 “...the district court held that the plaintiff qualified as a “called party” because he was “the regular user and carrier of the cellular telephone...,” “[t]he fact that the telephone number was registered to [his] fiancée’s name does not change this result.”
12. *Agne v. Papa John’s International, Inc.*, 286 F.R.D. 559, 565 (W.D. Wash. 2012) “... the plaintiff had standing to sue under the TCPA even though she was merely

Case Law On Called Party Is The Current User or Subscriber Of The Cell Phone Number And Rejecting The “Intended” Called Party Interpretation

- “an authorized user of her shared cellular plan” and “her ex-husband was the primary account holder.”
13. *Manno v. Healthcare Revenue Recovery Group, LLC*, 289 F.R.D. 674 (S.D. Fla. 2013) The thrust of these decisions and others is that a plaintiff’s status as the “called party” depends not on such technicalities as whether he or she is the account holder or the person in whose name the phone is registered, but on whether the plaintiff is the regular user of the phone...” (emphasis added)
 14. *Zyburo v. NCSPPlus, Inc.*, No. 12-cv-6677 (S.D.N.Y. Sept. 15, 2014) "...under the TCPA, the "called party" is the subscriber assigned the cell phone number at the time the allegedly improper calls are made..."
 15. *Jamison v. First Credit Servs., Inc.*, 2013 WL 3872171, (N.D. Ill. July 29, 2013) (noting that Soppet “suggests that the subscriber is the person who pays the bill”).
 16. *Cellco v. Plaza Resorts*, 2013 WL 5436553 (finding that a subscriber who transfers primary use of a cell phone also transfers “the right to consent to the receipt of otherwise prohibited calls,” thus conferring standing to the regular user of the cell phone).
 17. *Nunes v Twitter Inc.*, Case No.: 14-cv-02843-VC (S.D. CA Nov. 26th 2014) This argument fails for all the reasons provided by Judge Easterbrook in *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637 (7th Cir. 2012). Accordingly, Twitter's motion to dismiss is denied.
 18. *Tang v. William W. Siegel & Associates*, 791 F. Supp. 2d 622, 625 (N.D. Ill. 2011) “Even if the TCPA only affords a right of relief to the “called party,” this Court finds that Plaintiff was the called party because Siegel intended to call Plaintiff’s cellular telephone number and Plaintiff is the regular user and carrier of the phone.”
 19. *Warnick v. Dish Network LLC*, Dist. Court, D. Colorado 2014, “I adopt the *Olney* rationale, and find that summary judgment should be denied as to the argument that DISH is not liable because Warnick was not the intended recipient. *See also Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, (7th Cir. 2012) ("The phrase ‘intended recipient’ does not appear anywhere in § 227, so what justification could there be for equating ‘called party’ with ‘intended recipient of the call’?).
 20. *Brown v. Enterprise Recovery Systems, Inc.*, No. 02-11-00436-CV (Tex. App. Aug. 22, 2013), **We agree with other courts** that have determined that a person has standing even if the person is not the "intended recipient" of the call...”
 21. *Abrantes v Northland Group Inc.*, (N.D. CA April. 13th 2015) **“The fact that numerous courts have interpreted the term “called party”** weighs against a stay on primary jurisdiction grounds.”
 22. *Jordan v. Nationstar Mortgage LLC* No. 14-CV-00787-WHO, 2014 WL 5359000 “...the TCPA requires consent from the person who was actually called, not the person the caller asserts it was attempting to call.” **“That “called party” has been interpreted consistently by multiple courts** suggests that interpretation of the phrase is does not require special expertise.”
 23. *Molnar v. NCO Financial Systems, Inc.*, Dist. Court, SD California 2015 In interpreting the “clear and unambiguous language” of the TCPA, district courts in

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- the Ninth Circuit have repeatedly declined to insulate telemarketers from liability for calling reassigned numbers.
24. *Prater v. Medicredit Inc.*, 45 F. Supp. 3d 1038 (E.D. Mo. 2014) (refusing to issue stay pending ruling on petitions addressing whether express consent attaches to cellular number or actual recipient of call and whether safe harbor exists for calls to reassigned number)
 25. *Shehan v. Wells Fargo Bank N.A.*, No. 1:14-CV-00900-JHE, 2014 WL 5529365, at *1 (N.D. Ala. Nov. 3, 2014) “As to the second factor, the Eleventh Circuit has spoken directly to this issue, **providing direct guidance for a uniform interpretation of the statute** throughout the Circuit. Wells Fargo has not provided, and the undersigned has not found, any other circuit court that has interpreted "called party" differently or that has created an exception to the rule.
 26. *Helwig v. Diversified Consultants, Inc.*, Dist. Court, WD Wisconsin 2015”... (**courts have ruled consistently** on meanings of statutory terms at issue without need to defer to commission). Citing *Jordan*, 2014 WL 5359000 at *8
 27. *Soulliere v. Central Florida Investments, Inc.*, Dist. Court, MD Florida 2015 “Plaintiff is not precluded from having standing as it is not disputed that he was the primary or regular user of his cell phone and received the calls at issue.
 28. *Sterling v. Mercantile Adjustment Bureau, LLC*, Dist. Court, WD New York 2014 “Thus, the “evil” at which the TCPA was aimed was the “recipients[’] . . . invasion of privacy” (id.). Since Jane Doe no longer uses the cellular telephone number at issue, her privacy cannot possibly be invaded by MAB’s automated calls to that number, nor could her previous consent excuse the invasion of the current user’s privacy.
 29. *Beiler v. GC Services LP*, Dist. Court, MD North Carolina 2014, “Finally, GCS seeks a referral for the FCC to determine "whether `wrong number' non-telemarketing calls can give rise to a violation of the TCPA." (Doc. 21 at 3.) But GCS makes no effort to substantiate this request. The ACA International petition does not present this question directly, but seeks a safe harbor for such wrong-number calls. **GCS fails to show that the current law is unclear on this question** or that the FCC would even have the statutory authority to create the type of safe-harbor sought by ACA International.”
 30. *Moore v. Dish Network LLC*, Dist. Court, ND West Virginia 2014, “The TCPA therefore contains no language indicating that one must be the individual the caller intended to reach to sue under it. **A vast majority of the courts** that have addressed this issue have interpreted "called party" in this manner and allowed unintended recipients of calls, like Moore, to recover for violations of § 227(b)(1)(A)(iii).” Citing *Osorio*, 746 F.3d at 1250-52
 31. *Fini v. Dish Network LLC*, 955 F. Supp. 2d 1288 - Dist. Court, MD Florida 2013, “Replacing "called party" in this sentence with "intended party" would render the statute nonsensical. Plaintiff's interpretation — that "called party" refers to the actual recipient of the call — is far superior.”
 32. *Hofer v. Synchrony Bank*, Dist. Court, ED Missouri 2015, “...**at least one Court of Appeals** has already addressed this very issue and held that the “called party” exception in § 227(b)(1) requires the consent of the "person subscribing to the

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- called number at the time the call is made." Citing *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 643 (7th Cir. 2012).
33. *Maraan v. Dish Network, LLC*, Dist. Court, SD Ohio 2014, “...**we join the Moore court, and several others**, that reject the notion that only the "called party"—again defined by Dish as the intended recipient of the call—has standing to sue. See Moore, 2014 WL 5305960, at *7-8 (citing, inter alia, Manno, supra, 289 F.R.D. at 682; Page v. Regions Bank, 917 F. Supp. 2d 1214, 1217 (N.D. Ala. 2012); Harris v World Fin. Network Nat'l Bank, 867 F. Supp. 2d 888, 894 (E.D. Mich. 2012); Swope v. Credit Mgmt., L.P., No. 4:12CV832, 2013 WL 607830, at *3 (E.D. Mo. Feb. 19, 2013)).
 34. *Meyer v. Diversified Consultants, Inc.*, 2014 WL 5471114 (M.D.Fla. 2014) “...Defendant correctly notes that the Eleventh Circuit recently held that “‘called party,’ for purposes of § 227(b)(1)(A)(iii) [of the TCPA], means the subscriber of the cell phone service.”
 35. *King v Time Warner Cable*, No. 1:14-cv-02018 (Dist. Court, SD NY 2015), “While several district courts have agreed to stay proceedings pending the FCC’s input, **the Court is not aware of any decision that has found “called party” to mean “meant-to-have-called party.”**”
 36. *Mark Leyse v. Bank of America, N.A.*, (3rd Cir. No. 14-4073) “**It is the actual recipient**, intended or not, who suffers the nuisance and invasion of privacy.”
 37. *Moore v. DISH Network L.L.C.*, 57 F. Supp. 3d 639, 649 (N.D.W. Va. 2014) “Nor does the language "intended recipient" appear anywhere within the TCPA.
 38. *Paradise v. Commonwealth Fin. Sys., Inc.*, No. 3:13-CV-00001, 2014 WL 4717966, at *3 (M.D. Pa. 22 Sept. 2014) (concluding that "called party" is not the same as the intended recipient for purposes of express consent).

Outlier case:

Danehy v. Time Warner Cable Enterprise LLC, No. 5:2014cv00133 (E.D.N.C. 2015)