

I. “Called Party” Does not Mean “Intended Recipient”

In *Soppet v. Enhanced Recovery Co.*, 679 F.3d 637 (7th Cir. 2012), the court observed: “[t]he phrase ‘*intended recipient*’ does *not* appear *anywhere* in [the TCPA], so what justification could there be for *equating* ‘*called party*’ with ‘*intended recipient of the call*’?” *Id.* at 640 (these and all subsequent emphases added). Instead, the court found that the term “called party” means “*current subscriber*,” *id.*, but *not* only in the sense of being the person *whose name appears on the telephone bill*. Rather, the court used that term to mean “the person who *pays the bills or needs the line in order to receive other calls*.” *Id.* (emphasis added).

The Court reasoned as follows:

[The TCPA] uses the phrase “called party” seven times all told. Four unmistakably denote the current subscriber (the person who pays the bills or needs the line in order to receive other calls); one denotes whoever answers the call (usually the subscriber); and the others (the two that deal with consent) have a referent that cannot be pinned down by context. [The] [d]efendant asks us to conclude that, despite the presumption of uniform usage within a single statutory section, those two uses, and those two alone, denote the person [that the caller] is trying to reach — in other words, [the caller’s] [c]ustomer, who [the defendant] dubs the “intended recipient of the call.”

Id.

By way of example, the court posited the following: “[s]uppose Smith, trying to reach Jones, dials the number with a typo and reaches Perkins, who says ‘you have the wrong number.’ No colloquial user of English would call Jones rather than Perkins the ‘called party.’ So too if Jones used to be the subscriber of a number later reassigned to Perkins, and Smith’s contacts file is out of date.” *Id.* at 641.

In *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242 (11th Cir. 2014), the court reached the same conclusion as did *Soppet*, noting that, “as [*Soppet*] explained: ‘[t]he presumption that a statute uses a *single phrase consistently*, at least over *so short a span*, implies that the consent *must* come

from the *current subscriber*,” *id.* at 1251, quoting *Soppet*, 679 F.3d at 639-640 (citation omitted); that is, “the person who pays the bills or needs the line in order to receive other calls.” *Id.*, quoting *Soppet*, 679 F.3d at 640.

In *Breslow v. Wells Fargo Bank, N.A.*, 755 F.3d 1265 (11th Cir. 2014), the court applied the reasoning of *Osorio* to find that both a mother and her minor child, neither of whom were the defendant’s “intended recipient,” were “called parties” because “[the mother] was the named account holder for the cell phone number, . . . [and]] [t]he cell phone was used exclusively by her minor child,” *id.* at 1266; *see also Leyse v. Bank of America, N.A.*, 804 F.3d 316, 325 (3d Cir. 2015) (“[t]here are good reasons to doubt the equation of ‘intended recipient’ with ‘called party’” (footnote omitted)).

Numerous district courts have found, as did *Soppet* and *Osorio*, that the term “called party” is not a synonym for “intended recipient.” *See McMillion v. Rash Curtis & Associates*, No. 16-cv-03396, 2018 WL 692105, *5 (N.D. Calif. Feb. 2, 2018) (“district courts in this circuit have generally rejected the ‘intended recipient’ definition” of “called party”); *Moore v. DISH Network LLC*, 57 F. Supp. 3d 639, 649 (N.D. W. Va. Oct. 15, 2014) (“[n]o portion of § 227 states that only the intended recipient of a call can recover under it. Neither ‘intended recipient’ nor a similar term appear anywhere in § 227,” citing *Soppet*, 679 F.3d at 640 (7th Cir. 2012)); *see also id.* (noting that the TCPA “contains no language indicating that one must be the individual the caller intended to reach to sue under it [and that] [a] vast majority of the courts that have addressed th[e] issue have interpreted ‘called party’ in this manner and allowed unintended recipients of calls, like [the plaintiff in *Moore*], to recover for violations of § 227(b)(1)(A)(iii).”).

If Alan sees Charlie, but, believing that Charlie is Bob, assaults Charlie, it defies common sense to say that Bob was the “assaulted party” even though he was the *intended* victim. Imagine how

Bob would be laughed out of court if he sued Alan for this assault.

If the Commission, in disregard of the statute, were to find that “called party” means “intended recipient,” it would free every robocaller to claim that it was trying to call “someone else.” Indeed, several years ago, debt collectors would call me (typically with a prerecorded message), and ask to speak to someone else. After receiving numerous such calls, which claimed to be for various “intended recipients,” I discovered that these debt collectors were purposely calling me and asking for alleged debtors with phone numbers that had the same prefix as my number had. This was done by the debt collector in the apparent hope that the alleged debtor would be a neighbor of mine, in order that I would then ask the neighbor to pay the debt so that the annoying phone calls would stop. Apparently this was a common practice, as the same thing happened to several people I know. Such nonsense demonstrates what could be expected of telemarketing robocallers if they could come to court and insist that they were trying to reach “someone else” (whose consent the telemarketer would naturally claim to have been given).

II. “Called Party” is a Person Who is Able to Give Express Permission With Respect to Calls to a Particular Telephone Number

A “called party” should include anyone whose express permission would be *legally effective*, which would be anyone with a *sufficient relationship* to the phone number in question. This would include the person who receives the bills, the person who pays the bills, and any person who regularly uses the phone number (obviously, such persons often overlap). If any one of these persons gave express permission to a business to call that phone number, it would clearly be unfair to the business if, upon calling the number as a result of that permission, it were sued by another of those persons. Thus, although each of those persons would likewise be a “called party” with respect to any call made to the phone number in question, *none* of them would have a *claim* if *any one of them* had given express permission to the caller.