

**Reply Comment of Michael C. Worsham to ACA Petition on calls by predictive or auto-dialers to cell phones - May 19, 2006**

This Reply Comment is directed in particular to the May 8, 2006 comments of Verizon Communications, Inc. It includes a good real example involving Verizon of the type of abuse caused by auto-dialed cell phone calls by collectors, which I became informed of literally today.

**Is Verizon Too Lazy or Afraid To Simply Ask For Prior Express Consent?**

Verizon's comments are full of citations to obfuscate the simple point: Verizon or any collector can call a cell phone if they simply dial by hand, or alternatively, get prior express consent to call the cell phone via automated means. If Verizon is afraid of alienating its customers by asking up front for permission to make automated calls in the event an account goes to collection, that is Verizon's problem.

Verizon's laziness, timidity or hesitancy should not be made the problem of the numerous people who do not expect and certainly do not reasonably expect that permission to call them at their cell phone also includes calls from collection agencies hired by Verizon, or calls made by automated equipment used by either Verizon or a collection agency. If a person give what Verizon calls a "can be reached" number when creating a new account, they certainly do not expect to be called by collection agencies or by auto-dialed calls. If anything consumers expect to be called by a live human being about their account. It is the expectation of the consumer that should guide the FCC's rulemaking, not the business cost-cutting procedures of large corporations.

The FTC's complaint files are replete with collector harassment complaints, so "calls by collectors" means for a non-negligible percentage of persons "**harassing** calls by collectors." For auto-dialed calls this harassment percentage is even higher, since as both Congress and the FCC have recognized, for a variety of reasons auto-dialed called are more annoying and intrusive than calls by live human beings. For auto-dialed collector calls it is even higher still, since overlapping or conflicting requirements between the TCPA and the Fair Debt Collection Practices Act (FDCPA) preclude or dictate that the collector and/or the purpose of the call (to collect a debt) not be identified. This results in an auto-dialed call providing little but a mysterious phone number to call back.

The TCPA reflects this in making damages for such pre-recorded calls a mandatory \$500, rather than the more flexible "up to \$500 damages" for live telemarketer violations. Compare 47 U.S.C. § 227(b)(3)(B) to § 227(c)(5)(B). Nothing has changed in the almost 15 years since the TCPA's passage to change the public's resentment of auto-mated calls from telemarketers, and it goes without saying no one really wants to hear from a collection agency via any means.

Verizon makes the dubious claim without any support that predictive dialers reduce collection callers time and labor costs "which in turn reduces costs to consumers." Verizon Comment at 5. Nothing supports the proposition that creditors or collection agencies have ever turned any efficiencies obtained by technology over to the consumers they collect from.

### **A real current example of abuse by a collection call to a cell phone**

Here is a real current example to illustrate why ACA and Verizon's wishes are folly. I have received contact from a person whose Verizon account was turned over to a collection agency. The person claims they don't own the money, but if so that only enhances the separate calling abuse demonstrated in this example that will increase from the loosening of the rules ACA and Verizon seek.

The collection agency obtained the phone records of the Verizon account holder from whom they were trying to collect. The collection agency apparently looked at the calling pattern, and contacted a number that appeared often in the records, in an attempt to locate the Verizon customer.

Guess how the collection company called? Using automated pre-recorded voice calls. Guess what kind of number the collection agency called with this pre-recorded call? A CELL PHONE NUMBER. Not only that, but they called the cell phone number of a person who has absolutely nothing at all to do with the debt, which furthermore, may not even be owed at all.

This highlights the other problem with Verizon's argument. There is inherently a non-negligible number of customers that do not owe the debt allegedly owed. ACA and Verizon's petition is based on the unstated but incorrect assumption that everything goes right in the world of collections, or that all collection accounts are valid.

Verizon argues that in the collections context, "the caller and the called party have a preexisting relationship based on the transaction that gave rise to the debt." This may true some of the time, but was not in the real example just given above. The real target of ACA's petition to broaden the use of automated dialing are what are the "collateral damage" victims such as in the example above, who do NOT have a relationship with either the collector or original creditor.

Verizon admits that it "is faced with the risks associated with uncollected payments for services rendered." Verizon Comment at 3, middle. That is Verizon's risk, and the risk of creditors generally. They take this risk, and should not attempt to use automated equipment simply to reduce this business risk and costs at the cost of consumer privacy and other nuisance intrusions, when simple alternatives exist. Those are (1) get the prior express consent of the customer to call cell phones by auto-dialers, or (2) make collection calls with a live human being.

The latter option available to Verizon and ACA members was already pointed out in the same FCC Order that Verizon referred to in its own comments. Didn't Verizon read this part: "In any event, to the extent any conflicts [between the TCPA and FDCPA] exist, compliance with both statutes is possible through the use of live calls." 1992 TCPA Order at ¶ 39.

Massive calling with automated equipment is virtually guaranteed to reach only a small target or receptive audience, and to cell phones even less so.

