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December 29, 2008

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: Docket No. 02-278 - Declaratory Ruling
"Expedited Request for Clarification"

Dear Ms. Dortch:

On January 4, 2008, the Federal Communications Commission ("FCC") released a Declaratory Ruling (Docket No. 02-278)("Ruling"), in response to ACA International's Petition for an Expedited Clarification and Declaratory Ruling filed October 4, 2005 ("**Petition**").¹

In that Ruling, the FCC stated, in pertinent part—

...we clarify that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the "prior express consent" of the called party. (Ruling, Pge. 1, I. INTRODUCTION). (emphasis added).

Because we find that autodialed and prerecorded message calls to wireless numbers provided by the called party in connection with an existing debt are made with the "prior express consent" of the called party...We conclude that the provision of a cell phone number to a creditor, e.g., as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt...(Ruling, Pge. 6, III. DISCUSSION, A, 9). (emphasis added).

We emphasize that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed...(Ruling, Pge. 6, III. DISCUSSION, A, 10). (emphasis added).

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¹See Note 1 of Ruling.

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Albeit I believe the FCC's statements, *supra*, are unambiguous and decisive²—an oppugn as to the [Petition's] phraseology has been raised-and-argued (by Defendants) in two (2) cases now before Nevada Courts.

In each proceeding, Defendants present the same argument[s]—

Even though the telephone number, initially provided to the original creditor (i.e., on a credit application), was a "landline" telephone number; and since that initial "landline" telephone number was ported to a cellular telephone (in the instant matter, approximately two (2) years later); and because it was (prior to porting) the same "landline" telephone number—that amounts to the same as initially providing the "wireless number" to the creditor, thus an "Established Business Relationship" was created and "prior express consent" exist.³

In other words, Defendants make the hollow argument that— inasmuch as the (now) "wireless number" was, prior to being ported, the initial "landline" telephone number provided to the creditor, they (the collection company[ies]) are [now] exempt "...from the prohibition on autodialed or prerecorded message calls to wireless numbers contained in section 227(b)(1)(A)(iii)..." (**Ruling**).

However, in each of those cases, Plaintiff maintains that—

When the original creditor is [initially] provided a "landline" (residence) telephone number, and subsequently that "landline" telephone number is ported to a cellular telephone, that **does not** create an "Established Business Relationship, nor create "prior express consent," or exempt Defendants [collection company[ies]] "...from the prohibition on autodialed or prerecorded message calls to wireless numbers contained in section 227(b)(1)(A)(iii)..."", because, that is not the same as [initially] providing a "wireless number" to the creditor.

The wording in the Ruling is self-evident—

It is the "wireless number" (**emphasis added**) that must had been [initially] provided to the original creditor to "Established [a] Business Relationship, and/or create "prior express consent," thereby exempting a collection company "...from the prohibition on autodialed or prerecorded message calls to wireless numbers contained in section 227(b)(1)(A)(iii)..."".

² "...**only if** the "wireless number" was provided...", id. (**emphasis added**).

³No Defendant has produced any contract[s], written agreement[s], or some document[s], indicating what telephone number (either landline, wireless, or both) was initially provided to the original creditor.

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Accordingly, to avoid a[ny] violation[s] of the TCPA, the onus is on the collection company[ies] to determine if the number they are auto-dialing and/or sending [anonymus], prerecorded (artificial voice) messages to, is a "landline" or "cellular" telephone.⁴

Consequently, the issue presented herein, and the clarification sought is—

If a "landline" telephone number is the telephone number provided to a creditor (i.e., on a credit application), and eventually that "landline" telephone number is ported to a cellular telephone,⁵ is that viewed as [initially] providing one's "wireless number" to the creditor, thus creating (or subsequently creating) an "Established Business Relationship," and providing "prior express consent" for allowing autodialed and/or [anonymus] pre-recorded] telephone calls from collection company[ies], to the (alleged) debtor[s] wireless telephone, thus causing the incurring of cellular phone usage charges?

To discuss this "Expedited Request for Clarification," I can be contacted, at your convenience, at the address, telephone numbers, or e-mail address indicated.

Thanking you in advance for your cooperation and understanding, and the expediency in your response for clarification of this request.

Sincerely,



Paul D.S. Edwards

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⁴...where the subscriber has not made the number available to the creditor regarding the debt, we expect debt collectors to be able to utilize the same methods and resources that telemarketers have found adequate to determine which numbers are assigned to wireless carriers, and to comply with the TCPA's prohibition on telephone calls using an autodialer or an artificial or prerecorded voice message to wireless numbers. **(III. DISCUSSION, B., 14, Pge. 9).**

⁵In it's 2003 TCPA Order, the FCC stated, in pertinent part— "We will not find persons liable for placing such autodialed or prerecorded message calls where such calls are made to a wireless number ported from wireline service within the previous 15 days...". **(Order, Pg. 1, Introduction (I)(1)). (emphasis added).**