

Gerald Roylance
1168 Blackfield Way
Mountain View, CA 94040-2305
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**Federal Communications Commission
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Reply Comments of Gerald Roylance on the Paul D. S. Edwards Petition

The United States District Courts want prior express consent to be explicit and informed; they have criticized the FCC for using a brand of implicit consent. For the consent to be explicit, the creditors merely need to explain to the borrowers what they will do with certain telephone numbers. The anti-petition comments on this docket have not demonstrated that consumers have provided the level of prior express consent that the Courts want. The comments want the unfettered privilege to call a number that is merely placed on an application. Does such a consumer really understand that she is permitting a machine to hound her? When a consumer is porting her landline service to a cellular phone for her own convenience, does she understand the consequences it may have due to an obscure credit agreement that she filled out two years earlier?

When someone ports her landline number, she does it for her convenience and her friends' convenience. It's simpler to keep the same number rather than telling all her friends and relatives a new number. Is she permitting a manual call to the now cellular telephone? Yes. Does the change express consent for future automated calls to the new cellular telephone? No. It probably didn't even cross her mind. In fact, it never even crossed Leckler's mind that an automaton would hound her when one day she verbally provided her cellular telephone number so a CashCall employee could reach her later that day.

Expressing consent for a single call to cellular telephone does not grant consent for all possible kinds of calls on all possible days to that number. Putting a number down on an application is reasonably expressing consent for a live person to call that number. It does not express consent for relentless calls that no sane person would want.

Is the FCC permitting unreasonable behavior? What if a debt collector wants to speak to a debtor. Can the debt collector tell his automated dialer to call the debtor every half hour and deliver a message to call the debt collector? If every half-hour is unreasonable, would every 2-hours be reasonable? Is the average consumer savvy enough to know how to turn these messages off? Are debt collectors trying to side-step the intent of the FDCPA?

Even presumptively reasonable debt collectors' show their true colors in their comments.

Scot S. Stetka¹, Director of Compliance, Barclays Bank Delaware, submitted comments. He wants a consumer's prior express consent, once given, "to remain with a telephone number, regardless of status, until that consent is expressly revoked by the consumer through use of a [FDCPA] "cease and desist" request." Barclays wants implied consent for prerecorded calls that can only be revoked through the written procedures of the FDCPA. Why can't a consumer just tell the collector to stop calling his cellular telephone? Why is there the notion that express consent, once provided, cannot be as easily revoked? The FCC has used phrases such as "absent instructions to the contrary". Why does Mr. Stetka impose such harsh limitations on an instruction to the contrary? He wants the right to call to be implied, but he wants the termination of that consent to be explicit and written. Why shouldn't the verbal statement do-not-call my cellular telephone again be an instruction to the contrary? How many consumers know the FDCPA procedures?

¹ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520205013

Glenn Reynolds of the United States Telecom Association² isn't one for truth in lending practices. He wants "creditors should be allowed to make debt collection calls to any telephone number, including wireless numbers ported from wireline service, provided by the customer to the creditor for use in normal business transactions (*i.e.*, "can be reached" numbers). Mr. Reynolds isn't shy about implying expansive consent for "normal business transactions" and methods for contacting those numbers; he wants the "can be reached" label to apply to any and all methods of contacting consumers. Why doesn't Mr. Reynolds want full disclosure that he will use prerecorded dunning messages? Would a reasonable consumer think twice before agreeing to be hounded at all hours by a relentless machine? Mr. Reynolds also observes that increasing debt collection costs drive up the cost of credit for all consumers. Perhaps Mr. Reynolds should advocate against extending credit to consumers with marginal credit ratings. Twenty years ago, credit card companies realized they could make more money by managing their own "credit default swaps". The credit card companies lent money at 18%; with the high rate, they could tolerate a default rate of a few percent. Conscious business decisions led to preying on weak credit risks. Higher interest rates will cover a higher default rate.

SoundBite Communications³ is one of the few pro-debt collector comments that acknowledge "a consumer's right to withdraw consent". However, SoundBite takes the position that creditors "would not generally agree to offer credit to a consumer who refused to give any phone number in the first instance." Consequently, SoundBite's view that an expansive interpretation of consent may simply be revoked is suspect. SoundBite will permit the consent to be withdrawn if consent is given for another number. If the debtor only has a cellular telephone, then SoundBite's view reduces to consent cannot be withdrawn.

The DMA⁴ takes the position that a debtor has expressed the preference to be hit with autodialed and prerecorded messages, so that preference should be extended to ported lines. The predicate is faulty. Leckler did not express consent for prerecorded calls when she told a live person to call her back on her cellular telephone later in the day; she expected a real person to call her back. CashCall unleashed its machines.

The ABA⁵ notes that automated technology is beneficial for identity theft and fraud alerts. The ABA also wants prerecorded messages to be used for "courtesy notices" about late payments. Certainly, those courtesy messages can be valuable and welcomed by consumers. The only thing the bank needs to do is make sure that its customers understand that the bank will send such messages, that the customer expressly consents to the automated messages, and that the customer can easily revoke his consent. The ABA then suddenly shifts gears from "courtesy notices" to warning about "Even greater harm to consumers and the economy will result if barriers are erected with respect to financial institution efforts to contact customers whose mortgage or credit card payments are seriously delinquent." The ABA has an inconsistent viewpoint about using autodialed and prerecorded messages to reach these "seriously delinquent accounts"; the ABA says the goal is to initiate early conversations and provide alternative payment arrangements. That just does not sound right. If the account is seriously delinquent, then it is too late for "early conversations". How does one have a conversation with a prerecorded message? The ABA is putting lipstick on a pig. Is a prerecorded message more effective than a letter or an email? Why not give a seriously delinquent account some solid written advice. The ABA also takes issue with the extent of cost shifting; but the FCC has no authority to overrule the Congressional prohibition on cost shifting.

None of the pro-collection agency comments have discussed what they must do avoid calling telephone numbers that debtors who have abandoned their telephone number and some innocent victim has now acquired it. What if the innocent then ports the landline to a cellular service? The anti-petition comments also do not address the situation when telephone numbers are subsequently given up by the debtor, assigned to an unrelated party, and then ported to a cellular telephone. If debt collectors want to use automation, then they need to spend the money to make sure they don't abuse the privilege. Yes, automation is cheaper. That's why the industry wants to use it. But the industry wants to pocket all of the

² http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520205017

³ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520205072

⁴ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520205082

⁵ http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520205107

savings. It wants a pass when automated calls reach the wrong person. It wants a pass when the automated calls reach a cellular telephone. A more reasoned approach is to let the industry use the automated technology but require that it use the technology reasonably.

Although the pro-collection agency comments are quick to claim the FCC's implied prior express consent for autodialed and prerecorded calls, they do not argue how that consent should get transferred. If I have a loan from ABC bank, I permit ABC to call me on my land line, and then ABC sells my loan to the XYZ collection agency, have I given consent to XYZ for automated calling? Is the FCC's implied prior express consent transferable to a debt collection agency? Even if I gave consent for "courtesy notices" from ABC bank, am I going to get "courtesy notices" from a debt collector?

Say I port my landline to a cellular telephone and tell ABC not to call my cellular telephone. Shouldn't that revoke consent at XYZ, too? Does every collection agency that gets its hands on the debt have permission to make prerecorded calls?

Previously, I had some sympathy for making automated calls to debtors. Having viewed the comments, I am now unsympathetic to their position. It seems that they are relying on debtor ignorance. They want the debtor to confront a high bar to stopping harassing automated telephone calls. That does not seem to be the intent of the FDCPA or the TCPA. The current result seems to go approve cost shifting to an unsuspecting consumer. Instead of paying for a stamp or a live call, the debt collectors are perfectly willing to shift some costs to the ill-informed debtor. The worst example of that was a collection case for the cellular phone bill of a friend's son. The debt collector would make dunning calls to the cellular telephone; the calls would both harass the debtor and jack up his cellular bill. A whole new level of cost shifting.

The FCC should require the level of prior express consent spelled out in *Leckler v Cashcall*. The FCC should make sure that a debtor may verbally revoke consent (i.e., verbally issue an instruction to the contrary) for automated calls. That revocation should apply to anyone trying to collect that debt.

The FCC should also be sure that prior express consent is not buried in the fine print of a multipage contract. Prior express consent cannot and should not be buried.