Our office is a consumer rights law firm dedicated to protecting the interests of consumers. As part of our responsibilities we represent consumers that are being abused and harassed by debt collectors. This abuse and harassment takes many different forms. It is because of this harassment and abuse that Congress felt compelled to pass the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. (?FDCPA?). And while the FDCPA has been an important tool in reining in debt collection abuse and harassment, debt collectors have consistently discovered new ways of coercing payment from consumers on debts that may or may not be owed. This is evidenced by the regular increase in complaints filed with the FTC regarding debt collectors.

Many of these new methods take the form of computerized harassment over the telephone, especially through cellular technology. Consumers often find themselves in a position of having to endure a myriad of text messages and automated calls to their cellular telephones, not for any legitimate purpose, but because debt collectors know that this constant barrage of calls are expensive to the consumer, interfere with the consumer?s ability to conduct their personal and business affairs, and usually cannot be avoided. In summary, autodialed and prerecorded calls are a debt collector?s dream. They are a cheap and effective way of abusing consumers and leaving these consumers with little option but to pay the money demanded by these debt collectors, owed or otherwise.

Our office urges you to reconsider your current rules regarding autodialed and prerecorded calls, including calls to cellular telephones. Autodialed and prerecorded calls are currently used on a regular basis by debt collectors to coerce payment on alleged debts, sometimes owed, and sometimes not owed, or face harassment in a way that only a computer can provide. Our office has filed a number of lawsuits against debt collectors due to this constant computerized harassment, and we can assure you from our experience that this is a serious problem that must be addressed. Contrary to what the debt collection industry?s form letters to you might indicate, consumers who are allegedly in debt often face dozens of these calls every day from a single computer. It is hard to imagine how the purpose of multiple calls every day could be justified by a debt collector as being anything other than abuse. Further, our experience with thousands of debt collectors has shown that these cases are not aberrations. This is the debt collection industry conducting business as usual.

As a starting point, it is important to consider the TCPA, as drafted by Congress, requires not just consent to be called by autodialed and prerecorded calls, it requires prior express consent. However, the FCC has previously ruled that when a consumer provides a cellular telephone number to a creditor in a credit application this somehow provides the requisite prior express consent anticipated by Congress when drafting the TCPA. However, it is our view that this cannot even be viewed as consent to be called with autodialed and prerecorded calls, much less prior express consent. This previous decision by the FCC needs to be revised so that it is consistent with the plain language of the TCPA and the intent of Congress.

In closing, we urge you to consider the position of the one federal judge that has addressed this issue, that of the Honorable Susan Illston, District Judge, United States District Court for the Northern District of California, as expressed in Leckler v. Cashcall, Inc., 554 F. Supp. 2d 1025 (N.D. Cal. 2008). This opinion, which was in response to this firm?s August 3, 2007 lawsuit, was subsequently vacated by Judge Illston after the court became aware that it did not have the authority to overturn the FCC Declaratory Ruling, FCC 07-232, pursuant to the Hobbs Act, 28 U.S.C.S. § 2342. However, the legal analysis of Judge Illston is well reasoned and thoughtful, and represents what is certainly the proper analysis of this issue.

On page 11 of the court?s decision, Judge Illston summarizes the issues here by stating, ?In sum, the FCC?s interpretation of the TCPA reads out Congress? requirement that autodialed and prerecorded calls may be made to cell phone numbers only where the called party?s consent is express, and instead permits the application of this exemption where the consent can be implied. This interpretation is manifestly contrary to the plain language of the statute, is unreasonable, and therefore is not deserving of deference.? (Bold face added.)

This office urges the FCC to reconsider its previous position on this issue, consider the court?s ruling in Leckler, and require businesses to obtain a telephone subscriber's express written or electronic consent to receive autodialed or prerecorded calls even where there exists an established business relationship between the business and the consumer.

?Respectfully,
/s/ Robert L. Hyde
Robert L. Hyde
Hyde & Swigart, Partner