

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Rules and Regulations Implementing the Telephone
Consumer Protection Act of 1991

Petition of 3G Collect, Inc. and 3G Collect
LLC for Expedited Declaratory Ruling that
TCP A is Inapplicable to the Use of
Automated Systems by Operator Service
Providers Completing Collect Calls to
Telephone Numbers Assigned to Cellular
Telephones.

CG Docket No. 02-278

**Reply Comments to the Brief of AT&T Corp. in Support of Petition for Expedited
Declaratory Ruling of 3G Collect**

AT&T leaves a gaping flaw in its argument that the caller who “initiates” the prerecorded message is the individual using 3G (or AT&T) to place a collect call. It is the carrier (3G or AT&T) that determines 1) the content of the recording and 2) whether or not to use a prerecorded message. That is a choice that makes the carrier a *participant* and no longer a passive conduit. I agree in principle that the caller who placed things into motion should be held as the person who “initiated” the call. But who decided to make the *prerecorded* call? That is 3G (or AT&T), not the caller. From a legal standpoint, the carrier is making that decision ostensibly as the agent of the caller, so the caller is still liable for the act of its agent, but the agent who made the decision is jointly liable for its own illegal acts undertaken for a principle. 3G can simply offer a discount for a prerecorded connection process or a higher price or additional fee for a live connection process, and give the choice to the caller. This would help

place 3G back into the role of a passive conduit where it does not make decisions that violate the TCPA.

The second flaw in AT&T's filing, is the claim that consent of the called party is "implicit in the collect call process." A quick trip to any dictionary, or Blacks, will reveal that "implied" is the opposite of "express" and the TCPA requires "express" consent. Any form of "implied" consent is simply legally insufficient, and to permit it would run directly contrary to black letter statutory language.

The third flaw is the notion that "the cell phone user has obviously made his/her cell phone number known to the third-party caller so that the third-party can make a call." As someone who has been plagued by wrong-number calls to my cell phones over the years, I can attest that many of the unwanted calls I received are due to people 1) giving wrong numbers to creditors and businesses, or 2) businesses making errors when storing or retrieving those numbers. Wrong-number calls and text messages cost some users \$2¹. How many millions of these wrong numbers are costing recipients? AT&T simply ignores these people using such prepaid plans, who are often those on limited budgets.

Fourth, AT&T, like so many others, confuses the portion of the TCPA that was intended to address telemarketing calls (generally 227(c)) with the portion of the TCPA that applies to all calls regardless of type or content (generally 227(b)). "Collect calls do not have anything to do with telemarketing" may be true but collect calls to cell phones that play prerecorded messages are squarely within the statutory language of 227(b).

Respectfully submitted,

¹ For example, I have a cell plan that costs me \$2/day when any calls or texts are sent or received, but costs nothing for the days with no usage on the phone. A single unsolicited call or text can thus costs me \$2.