

Telephone Consumer Protection Act

A Burr & Forman **BLOG**

Third Circuit Holds Prior Express Consent Can Be Revoked

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Plaintiff completed a credit application to purchase computers, which required her to provide a home phone number. Plaintiff listed her cell phone number but did not identify it as her cell phone number or indicate Defendant could use an Automatic Telephone Dialing System (ATDS) to call the number. After purchasing several thousand dollars in computer equipment, Defendant began using an ATDS to call Plaintiff, leaving pre-recorded messages on her voicemail concerning debt owed. Thereafter, Plaintiff, sent Defendant a letter asking that the calls regarding her account stop. They did not and she filed suit, asserting claims for violation of the TCPA. The trial court dismissed Plaintiff's Complaint, concluding that: (1) Lack of language in the TCPA providing for "post-formation revocation of consent;" and (2) Instructions to not be called using an ATDS must be provided at the time one knowingly releases his or her phone number. The U.S. Court of Appeals for the Third Circuit reversed the trial court concluding that the TCPA's silence regarding the right to revoke consent (notwithstanding other federal statutes including the FDCPA and CAN-SPAM Act allowing consumers to stop unwanted communications and solicitations) was not dispositive placing significant emphasis on the FCC's declaratory ruling in In the matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, SoundBite Communications, Inc., 27 FCC Rcd. 15391 (Nov. 26, 2012). Therein, the FCC resolved the issue of whether a consumer's prior express consent to receive text messages from an entity can be construed to include consent to receive a final, one-time text message confirming that such consent has been revoked, concluding that such confirmation messages were permissible. The Court held that by this decision, the FCC indicated that a consumer may revoke prior express consent once given. The Court of Appeals also rejected Appellee's argument that the ability to revoke consent must occur at the time one provides his or her number. This argument was based on language in the FCC's 1992 ruling stating that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instruction to the contrary." Appellant argued that the "absent instruction to the contrary language" meant that the instruction must, and can only be given at the time the number is released. Rejecting this argument, the Court found Appellant's reading too narrow, stating that the TCPA was intended to protect consumer rights, not restrict them and that the common law notion of consent cut strongly against the argument. *For more information on TCPA regulation and effects, contact [Burr & Forman](#) attorney, Joshua Threadcraft, [here](#).*

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