

Third Circuit Rules Consumer May Revoke Consent to Call Cell Phone

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The Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), prohibits calls to cell phones using automatic telephone dialing systems or prerecorded voice messages absent the called party's prior express consent. In a 2008 declaratory ruling, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, the Federal Communications Commission (FCC), which interprets the TCPA, found that autodialed and prerecorded message calls to wireless numbers provided by the called party to a creditor in connection with an existing debt were permissible as calls made with the "prior express consent" of the called party. The FCC concluded that providing a cell phone number to a creditor in a credit application reasonably evidenced prior express consent to be contacted at that number regarding the debt. Based on the 2008 FCC ruling, courts have repeatedly rejected TCPA claims when the plaintiff provided the called number in connection with the transaction. In one of the few reported decisions addressing the revocability of consent, *Gager v. Dell Financial Services, LLC*, the district court held that where a cell number was provided to a creditor in a credit application, the consumer could not revoke consent to call the number, finding that because the TCPA is silent as to revocation of prior express consent, such a right did not exist. The *Gager* decision was relied on by creditors to defend TCPA claims by debtors who had provided cell phone numbers in their credit applications. On appeal, the Third Circuit reversed, based on a 2012 FCC ruling, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, SoundBite Communications, Inc., (SoundBite)*, which held that a consumer could revoke consent to receive text messages. In *SoundBite*, the FCC acknowledged that the TCPA does not expressly deal with revocation of consent, but ruled that a consumer may revoke such consent to receive text messages by sending an opt-out message. The Third Circuit found that even though *Soundbite* dealt with text messages, the ruling indicated that consumers can in fact revoke the prior express consent under the TCPA and therefore reversed the district court's decision in *Gager*. As a result of the Third Circuit's decision, creditors may no longer

argue that provision of the called number in a credit application prevents the consumer from thereafter revoking consent to call that number.

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Consumer Finance

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