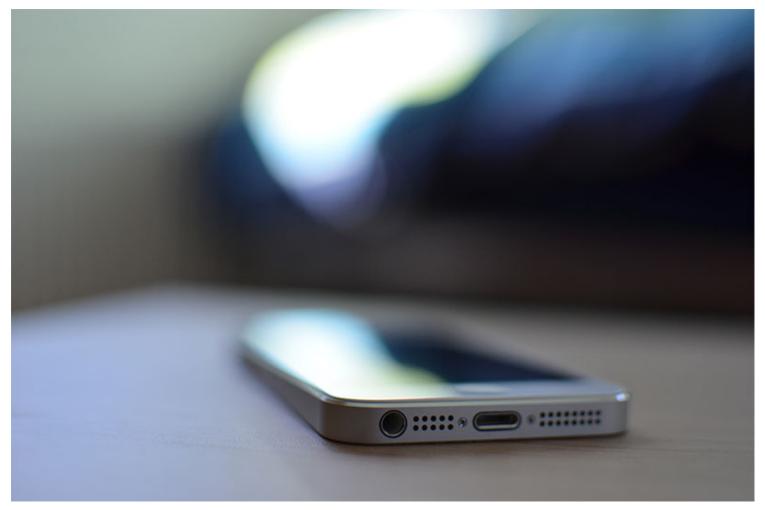


## Federal Order Addresses California Restrictions on When Wireless Providers Can Produce Documents Responsive to Subpoenas

April 27, 2015



A recent order from the U.S. District Court for the Northern District of Illinois affirms that California Public Utilities Code § 2891 applies to wireless telecommunications providers. The argument in that case focused on the statutory provision requiring subscriber consent before records related to a telecommunications subscriber can be produced:

(a) No telephone or telegraph corporation shall make available to any other person or corporation, without first obtaining the residential subscriber's consent, in writing, any of the following information: . . . (4) Demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed.

P.U.C. § 2891(a)(4). The court addressed these issues in the context of a class action lawsuit against a cruise line for the cruise line's alleged violations of the Telephone Consumer Protection Act. The TCPA restricts telephone solicitations and limits the use of automated telephone equipment. To get information for use in identifying other potential class members who might have a claim against the cruise line, the plaintiffs subpoenaed non-party wireless carriers. T-Mobile refused to provide information for its affected California subscribers, citing P.U.C. § 2891(a)(4). The plaintiffs argued, unsuccessfully, that the statute applied only to "residential" phones, not cell phones. The presiding judge rejected this argument, explaining that the fact that the law was written before the widespread use of cell phones did not limit its obvious intent to prevent disclosure without written consent from the subscriber. Thus, subpoenas for information related to California subscribers raise special

concerns for wireless providers and other telecommunications providers. For example, in addition to P.U.C. § 2891(a)(4), providers should note California Civil Procedure Code § 1985.3(f), which states that a "subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the [P.U.C.], shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the [P.U.C.]." The recent TCPA case is a reminder that providers should be attuned to subscriber privacy issues, especially when a subpoena relates to California subscribers.

## **Related Practices**

Technology Telecommunications Telephone Consumer Protection Act

## **Related Industries**

Technology Telecommunications

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.