

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

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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.

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