



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

11th Circ. Says TCPA Consent In A Contract Can't Be Revoked

By **Anne Cullen**

Law360 (May 4, 2020, 5:13 PM EDT) -- The Eleventh Circuit has joined a growing number of courts finding that consumers who consent to receive Telephone Consumer Protection Act-barred robocalls through a binding contract can't later revoke that permission, even though federal regulations say consent can be revoked at any time.

In a published decision handed down Friday, the panel let Dish Network off the hook for alleged violations of the Telephone Consumer Protection Act — a federal law that bars the use of robocalls and other automated communications without the recipient's consent — finding the satellite provider had permission to continue robocalling a subscriber under that individual's service contract.

Although onetime Dish customer Linda Medley and her legal team repeatedly reached out to the company to try to revoke her consent, the Eleventh Circuit said she can't withdraw permission built into a legally binding agreement.

"Permitting Medley to unilaterally revoke a mutually-agreed-upon term in a contract would run counter to black-letter contract law in effect at the time Congress enacted the TCPA," the panel said.

Friday's ruling mirrors findings that **came out of the Second Circuit** three years ago, in which a panel said a consumer's repeated attempts to pull his robocall consent failed because he gave a Lincoln dealership robocall authority through a lease contract.

Both circuits' findings add to the growing chorus of cases limiting revocation rights in TCPA actions when a contract is in play.

Medley argued this interpretation flies in the face of a Federal Communications Commission order five years ago that said consumers have a right to revoke consent "using any reasonable method including orally or in writing."

The agency also pushed back on any interpretation of the TCPA that "would lock consumers into receiving unlimited, unwanted texts and voice calls," finding that would run afoul of the consumer protection goals of the law.

But the Eleventh Circuit said Friday the FCC's 2015 order was silent on the issue of contractual consent, and pointed out that under contract law, one party of a mutual agreement can't unilaterally void a provision.

While the full panel was on board with the decision, Judge Britt Grant wrote in a concurring statement that Medley missed a key argument that might've yielded a different result.

Dish's repeated robocalls to Medley centered on debt that had recently been wiped out in a bankruptcy proceeding. While the contract allowed the satellite provider to contact Medley about her account or to recover debt, Judge Grant pointed out that it's possible neither provision was met after Medley's debt had been discharged.

"The consent provision did not grant DISH an unrestricted right to contact Medley for any reason, for

eternity," the judge said.

Because Medley stopped paying her bills, her account was limited to what she owed the company, and what she owed the company had been discharged, Judge Grant said.

"In my view, the parties ignored the logical follow-on question: whether, given the discharge of Medley's debt, DISH's phone calls were permitted by the consent provision," Judge Grant said. "Had Medley raised this argument, it is not clear how we would have resolved it; that would require answering several unbriefed questions of both statutory and contractual interpretation."

"It may well be that because Medley no longer had any debt, the phone calls were not permitted," the judge said.

Medley didn't walk away completely empty-handed, as the panel revived her claims against Dish under the Florida Consumer Collection Practices Act, finding the provider may have broken the law when it attempted to collect debt from Medley that had been discharged.

Counsel for Dish declined to comment. Counsel for Medley did not immediately respond to a request for comment.

Judges Jill Pryor and Britt Grant sat on the panel for the Eleventh Circuit, with U.S. District Judge C. Ashley Royal sitting by designation.

Medley is represented by Ian R. Leavengood of LeavenLaw and Charles M. Schropp of Schopp Law Firm PA.

Dish is represented by David M. Krueger and Eric Zalud of Benesch Friedlander Coplan & Aronoff LLP.

The case is Linda Medley v. Dish Network, LLC, case number 18-13841, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Christopher Crosby. Editing by Amy Rowe.