



Dish Subscriber Urges 11th Circ. To Revive TCPA Claims

By **Anne Cullen**

Law360 (May 26, 2020, 9:47 PM EDT) -- A former Dish Network subscriber has asked the Eleventh Circuit to reconsider axing her Telephone Consumer Protection Act claims against the satellite provider over debt-collection robocalls, arguing the panel overlooked a key provision in her Dish contract that made the calls illegal.

The Eleventh Circuit **ruled earlier this month** that the communications were on the up-and-up because Floridian Linda Medley had given Dish permission to robocall her when she signed up for the service. The TCPA bars the use of robocalls and other automated communications without the recipient's consent.

Although Medley and her legal representatives had tried to withdraw that permission, the panel said the effort was futile because she'd inked her consent into a negotiated contract.

In a rehearing petition Friday, however, Medley insisted that the Eleventh Circuit read her contract wrong. She said her consent was given voluntarily — in other words, she didn't need to give this permission to receive the service — so she was clear to withdraw it at any time.

"It stands to reason that it does no violence to the contract to allow the revocation of something that, by the express terms of the contract, did not have to be given in the first place," Medley said.

Under contract law, consent given voluntarily and gratuitously is revocable, while consent given as a mutually-agreed-upon term in a legally binding contract is not.

"While consent is included in a written contract in this case," Medley said, "that written contract is unique in that it clearly specifies that such consent was gratuitous, as no benefit or consideration was provided to the subscriber for his or her consent."

The former Dish customer took the provider to court in 2016 after it repeatedly robocalled her about debt that had recently been wiped out in a bankruptcy proceeding.

She added Friday that while the panel found the contract allowed the satellite provider to contact Medley about her account or to recover debt, neither provision was met after her debt had been discharged.

Medley's cancellation of her account and the discharge of her debt "invalidated the only reasons under the Dish agreement that Dish was allowed to contact Ms. Medley under the Dish agreement," she said.

Counsel for Dish declined to comment Tuesday.

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

--Editing by Jay Jackson Jr.

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