

Telecommunications Giant Hit With TCPA Treble Damages Award For Calls to Reassigned Cell Number

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The Telephone Consumer Protection Act (TCPA) prohibits non-emergency calls to cell phone numbers using automatic telephone dialing systems (ATDS) or prerecorded voice messages absent the called party's prior express consent. The statute authorizes a court to award \$500 for each call violation or up to \$1,500 per call violation if the defendant "willfully or knowingly" violated the statute. In July, a federal district court in New York entered summary judgment against Time Warner Cable (TWC) under the TCPA, awarding the plaintiff a treble damages judgment in the amount of \$229,500. *King vs. Time Warner Cable* involved 163 automated calls TWC made in 2013 and 2014 to a cell phone number it had consent to call from two unrelated customers. The calls at issue intended to notify TWC customer Luiz Perez that his account was past due, but were actually received by TCPA plaintiff, Araceli King. Perez and King were both TWC and Sprint cellular customers and Perez had signed up with TWC in September 2012 using the same number later assigned to King. King gave the number to TWC in connection with her cable service, and consented to receive automated calls to the cell number under the terms of her cable subscriber agreement. But after receiving 10 calls intended for Perez, King answered a call, told a TWC representative she was not Perez, and asked TWC to stop calling her cell number concerning the Perez account. On cross-motions for summary judgment filed by the parties, the court ruled in favor of TWC on 10 calls made before King's conversation with the TWC representative, finding the broad consent in King's service agreement supported TWC's prior express consent defense. The court ruled in favor of King on the remaining 153 calls, finding that King orally revoked the consent given under the service agreement, and that TWC had knowledge through its representative that she did not consent to further robo-calls. The court found calls made after King filed suit to be "particularly egregious" but assessed treble damages for all 153 calls made after revocation of consent. Notably, the determination that King orally revoked consent was based solely on evidence she presented—her sworn declaration and her Sprint call records which showed an incoming call from a TWC number that lasted over

seven minutes on the date of her alleged oral revocation. TWC had no account notes (and, apparently, no call recording) to controvert King's evidence. The *King* case illustrates **the risks involved in not honoring oral requests to stop calls, and, of reaching unintended recipients when cell phone numbers are reassigned**. Not surprisingly, the court mentioned the FCC's Declaratory TCPA Ruling issued in July, and the court's finding that King was the "called party" for TCPA purposes, and that she could and did orally revoke consent previously given is consistent with that ruling.

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