

Do Not Call Class Certified in Dish Network Lawsuit

09.09.2015

Class of those on Do Not Call List seek to hold satellite giant accountable for unwanted sales calls

The national Do Not Call Registry is supposed to provide a safe haven from unwanted telemarketing calls. But Dr. Thomas Krakauer claims that Dish's telemarketers repeatedly called him to pitch its satellite TV service, despite his number being on the Do Not Call List since 2003. Today, federal judge Catherine Eagles certified a class of people who, like Krakauer, got sales calls touting Dish TV even though they were on the Do Not Call list.

Dish claimed that it was too hard to identify who was on the Do Not Call list, and that Krakauer's database expert misunderstood its records. For example, Dish submitted sworn statements to the Court that the "DNC" code on its internally kept Do Not Call list did not mean "do not call," but instead meant that the associated number was a hot sales prospect, and the sales agent who flagged it "DNC" was telling other salespeople not to steal it. It also argued that although Krakauer testified that he called Dish "to see if Dish could stop" these unwanted sales calls, that was not a clear enough request under the Telephone Consumer Protection Act to legally obligate it to stop calling him.

Judge Eagles rejected these supposed obstacles to class certification, noting with respect to Krakauer's "stop" request that Dish's argument "depends on a strained interpretation of its own internal documents and... ignores their common sense meaning."

The TCPA allows businesses to call their own customers, even if those customers' otherwise have Do Not Call list protection. But the judge found that the customer list Dish submitted in a vain attempt to defeat certification was "incomprehensible," and so failed to prove that it had the right to call certain established customers. The court found that as "Dish has done little more than speculate" about ostensible hurdles to class certification, the case should proceed to trial. One of the issues to be tried is whether Dish is liable for calls made by its exclusive sales agent, Satellite Systems Network. This is important, because big corporations like Dish often depend on relationships with telemarketers to get new customers, and these telemarketers often go out of business, as SSN did.

Bailey Glasser attorneys John Barrett, John Roddy, and Jonathan Marshall represent Dr. Krakauer and the class. They are joined in this class action by Matt McCue, Ted Broderick and Anthony Paronich, Massachusetts class action lawyers who, like Bailey Glasser, have substantial experience

and success in TCPA cases. *Krakauer v Dish Network*, Docket Number, 1:14-CV-333, will be tried in federal court in the middle district of North Carolina.

Attorneys

John W. Barrett

Jonathan R. Marshall

John Roddy

Practice Areas

Class Actions

Telephone Consumer Protection Act (TCPA)