

8-December 2022

Margaret E. Krawiec
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Dear Ms. Krawiec,

Thank you for your response dated 5 December 2022.

You indicated that your client is implementing a “voluntary” scrub against the Reassigned Numbers Database. My understanding is that the RND scrub provides your client with a “safe harbor.” Without RND deployment, your client is liable for calls to numbers that have been reassigned subsequent to the consent date. If your client does in fact scrub against RND, then the safe harbor would apply should they call a number which, per the RND, has NOT been reassigned (or more precisely, disconnected) since the consent date.

You wrote that DMS “is troubled by the notion that someone who purportedly did not consent to receive a call nonetheless was called.” I am similarly troubled. You wrote that “DMS is hopeful that [RND deployment] will mitigate any issues arising with reassigned numbers going forward.” I share this hope. However, I believe it is important for us both to understand the extent to which number reassignment is responsible for the errant calls.

In my previous communications, I indicated that I wanted to see proof-of-consent to call the numbers I identified. You and your client have declined to provide same, but you explicitly confirmed that you do indeed have such consent, for a total of thirteen of my numbers that I shared. You stated that the consent information includes potentially “sensitive and personally identifiable consumer information.”

I respect your concern. What I would like you to provide, for each of the thirteen numbers, is the date of consent. With this, I can query the RND and share the result. This will allow both of us to understand which of the errant calls would have been prevented had your RND deployment been in place. To the extent that there are calls that would have still proceeded, we can then work together to understand what other factors are contributing to the problem.

There were other issues raised in my letter that I do not believe you addressed in your response.

The regulations require that the name of the entity responsible for the call, as registered with the appropriate agency, be stated at the beginning of a recorded message. I tabulated in my letter the names I heard (with audio examples). I would like you to address the discrepancies that appeared:

- I heard “Advocacy Center” but only found “Consumer Advocacy Center.” Are these calls in fact from the Consumer Advocacy Center I found, and if so, do you intend to correct this discrepancy? If Consumer Advocacy Center is NOT the calling entity, can you please point me to the proper registration?
- I heard “National Disability” and I heard “Vehicle Care Department.” Are there registrations for these entities, and if so, can you please point me to them?

In my letter, I noted that the calls I was receiving were coming from many different telephone numbers reflecting area codes in many different states, often matching the area code of the called number. I indicated that this appeared to be done with the objective of misleading the called party (or analytics software) regarding the source of the call.

In a July 21, 2022 Order (File No. EB-TCD-21-00031913), the FCC identified a similar practice and wrote, "The calls apparently also were made with the intent to violate the TCPA and the calls displayed inaccurate or misleading caller identification, with an apparent intent to defraud, cause harm, or wrongfully obtain something of value, in violation of the Truth in Caller ID Act and section 64.1604 of the Commission's rules." (See paragraph 8.) This suggests that DMS' practice in this regard is problematic.

To summarize:

- 1) Would you please provide dates of consent for the 13 numbers I previously provided, so that I can query the RND and, depending on the outcomes, we can work cooperatively to find the root cause of the problematic consents?
- 2) Can you provide the registrations of the entities responsible for the calls that identify in the recording as coming from "Advocacy Center," "National Disability" and "Vehicle Care Department"?
- 3) Can you confirm that you've advised your client appropriately regarding use of deceptive caller-IDs and that their practices going forward will be compliant with the regulations?

Thanks; I'm looking forward to another prompt response.

Regards,



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