

MODEL TCPA ALLEGATIONS (ROBOCALLS TO CELL PHONES)

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. § 227

1. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.
2. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii). The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).
3. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls. In passing the TCPA, Congress found that “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy” and that “[m]any consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.” TCPA §§ 2(5) & (6). The privacy interests that Congress sought to protect are exactly the kinds of privacy harms recognized at common law. “[T]he ordinary meaning of the term ‘right of privacy’ easily includes violations of the type of privacy interest protected by the TCPA.” *Owens Ins. Co. v. European Auto Works, Inc.*, 695 F.3d 814, 819-20 (8th Cir. 2012). This invasion of privacy thus constitutes a concrete harm.
4. Courts have also recognized that one purpose of the TCPA is to “keep[] telephone lines from being tied up.” *American States Ins. Co. v. Capital Assocs.*, 392 F.3d 939, 942 (7th Cir. 2004). This interest in preventing intrusions upon the cellular telephone lines of consumers is closely related to the traditional recognition at common law of the tort of trespass to chattels. Common-law courts recognized the action for trespass to chattels for temporary dispossession of

personal objects “although there has been no impairment of the condition, quality, or value of the chattel, and no other harm to any interest of the possessor,” and “he is not deprived of the use of the chattel for any substantial length of time.” *Restatement (Second) of Torts* § 218 cmt. d. This temporary intrusion on the use of one’s cellular telephone thus constitutes a concrete harm.

5. The FCC has also recognized that wireless customers are charged for incoming calls, whether they pay in advance or after the minutes are used. *See In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 F.C.C. Rcd. 14014 (2003). Because cell-phone users “often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call”—they ultimately bear the costs of these calls, regardless of “whether they pay in advance or after the minutes are used.” *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). That is true “even in cases where the amount of time consumed by the calls is deducted from a bucket of minutes.” *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830, 1839–40 (2012). As a result, automated calls to cellular telephones inflict economic harm on consumers.

FACTUAL ALLEGATIONS

[INSERT FACTS RE CALLS HERE]

6. Defendant is responsible for making the above-described ATDS-generated and/or automated or prerecorded calls.

7. Defendant has made a significant number of similar ATDS generated and/or automated or pre-recorded calls to persons on their cellular telephones in _____ and throughout the entire United States.

8. Defendant intends to continue to make similar ATDS-generated and/or automated or prerecorded calls to persons on their cellular telephones in _____ and throughout the entire United States.

9. Plaintiff and class members have been harmed by Defendant’s unlawful calls to cellular telephones. Defendant’s calls caused economic harm by using up Plaintiff’s and class members’ cellular telephone minutes.

10. Defendant's calls harmed Plaintiff and class members by depriving them of the use of their cell phone for a period of time. While the unlawful calls were in progress, Defendant trespassed upon Plaintiff's and class members' right to use their person property without interference. During this time, Plaintiff and class members could not place an outgoing call or receive another incoming call.

11. Plaintiff and class members have been further harmed by the acts of Defendant because their privacy has been violated, and they were subject to annoying and harassing calls that constitute a nuisance. Defendant's calls intruded upon the rights of Plaintiff and class members to be free from invasion of their interest in seclusion.