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4th Circ. Kills Dish Network's Appeal Of \$61M TCPA Verdict

By Nadia Dreid

Law360 (May 30, 2019, 9:16 PM EDT) -- The Fourth Circuit put Dish Network's hard-fought battle against a \$61 million jury verdict and the related telemarketing class action suit to bed for good Thursday, saying the satellite company's arguments would only make sense if the Telephone Consumer Protection Act were "burdensome and toothless."

In a bluntly written, precedential opinion, the panel explained its view that the lower court had done its due diligence during Dish's repeated attempts to work its way out of the Telephone Consumer Protection Act suit.

"The appellant's suggestion otherwise is nothing more than an attempt to dismember the TCPA, converting a simple remedial scheme into a fact-intensive quarrel over how long a party was on the line or how irritated it felt when the phone rang," the panel said. "Obviously, Congress could have created such a cumbersome scheme if it wanted to."

Dish Network has spent nearly half a decade trying to convince first a North Carolina federal court and then the Fourth Circuit that it should not be held accountable for telemarketing calls made by its authorized dealer Satellite Systems Network.

But judges and juries have consistently disagreed. In the opening weeks of 2017, a federal jury awarded the proposed class around \$20.5 million, which a judge later trebled to \$61 million.

Lead plaintiff Thomas Krakauer filed the suit at the end of 2014, saying that he was called repeatedly by SSN to hawk Dish Network services despite putting his name on the Do Not Call registry.

Krakauer's counsel, John Barrett of Bailey & Glasser LLP, told Law360 in a statement Thursday that the Fourth Circuit's ruling was "thoughtful and compelling."

"It carefully explains why Dish's legal arguments lack any support and, if accepted, would make the national Do Not Call Registry — one of the most popular federal consumer protection programs of all time — utterly 'toothless,'" Barrett said.

Dish has argued that it was not responsible for SSN's lawbreaking, but the panel didn't buy that. SSN's "entire business model was to make calls like these on behalf of television service providers," the panel said, and Dish was aware of the illegal calls being placed on its behalf at several different points.

To reward that behavior would go against the spirit of the TCPA, the panel said.

"It would be dispiriting beyond belief if courts defeated Congress' obvious attempt to vindicate the public interest with interpretations that ignored the purpose, text, and structure of this act at the behest of those whose abusive practices the legislative branch had meant to curb," the opinion said.

A representative for Dish Network did not immediately return a request for comment.

The consumers are represented by Brian A. Glasser, John W. Barrett, Ryan McCune Donovan and Tillman J. Breckenridge of Bailey & Glasser LLP.

Dish is represented by Eric A. Shumsky, Kelsi Brown Corkran, Jeremy R. Peterman, E. Joshua Rosenkranz, Peter A. Bicks, Elyse D. Echtman, John L. Ewald, Christopher J. Cariello and Paul David Meyer of Orrick Herrington & Sutcliffe LLP.

The case is Thomas H. Krakauer v. Dish Network LLC, case number 18-1518, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Cara Salvatore and Ryan Boysen. Editing by Daniel King.

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