

THE  
NATIONAL LAW REVIEW

---

## Primary Jurisdiction Patience Prevails In Reassigned Number Case

---

Thursday, April 18, 2019

Of late, it seems that courts have been reluctant to stay pending TCPA cases as the Federal Communications Commission (FCC) continues to consider how to address key issues opened by the *ACA International* decision. For example, last week in *Thomas v. Smith-Palluck Assocs. Corp.*, 2019 U.S. Dist., LEXIS 63751, Case No. 2:17-cv-02001-MMD-CWH, April 12, 2019, the Court declined to defer to a new FCC decision on what constitutes an ATDS in part because “it is unclear when the FCC would issue new rules that would settle the question of whether the Defendant’s system at issue here is an ATDS....” It further noted that it was “also unclear whether the FCC Decision would definitively resolve all pertinent issues in this case....”

Now comes the Court in *Matlock v. United Healthcare Servs.*, 2019 U.S. Dist. LEXIS 65149, No. 2:13-cv-02206-MCA-EFB, April 15, 2019, a case involving the defendant’s calls to subscribers who had previously provided their consent. Unfortunately, Mr. Matlock was not the “called party” who originally acquiesced to receive flu shot reminders; the original consenting party’s wireless number had been reassigned to him. His TCPA class action ensued in October of 2013.

In early 2014, United Healthcare Services (United) petitioned the FCC to clarify expeditiously who was the “called party” in such a context. The Court, “because the [alleged] violation... is not ongoing and ... the case was in its early stages of litigation,” stayed the proceedings in March of 2014, pending an FCC decision on the petition. After the FCC’s Omnibus TCPA Order in 2015 and the immediate appeal thereof, the Court continued the stay. Then, the 2018 *ACA International* decision issued and the FCC “quickly moved to reconsider its definitions of both ‘called party’ and prior express consent.” United again asked the Court to wait until the FCC acted. And the Court this week agreed to do so.

So what were the foundations of the Court’s ruling and tenets potentially to argue?

First, “the forthcoming new guidelines from the FCC may well be determinative of the outcome” of the case.

Second, in addition to the fact that the FCC issues are “directly germane to” the litigation, they “are also being considered by the agency with primary jurisdiction for interpreting” the statute.

Third, courts have granted stays “where, as here, courts...have reached conflicting conclusions over issues where the FCC has primary jurisdiction.”

Fourth, “[g]iven the high number of both reassigned numbers and TCPA lawsuits, it is equally important that these matters be treated uniformly, and the FCC is the best party to do that in the first instance.”

Fifth, in light of the prospect that waiting for the FCC “may dispense with all or part of the issues confronted with this case, a continued stay would appear to promote economy and efficiency for both parties and” the Court.

Sixth, even after five years, “what has transpired in the meantime makes clear... [that] the process has been a continuing one with further clarity expected soon.”

The logo for Squire Patton Boggs, featuring the word "SQUIRE" in a large, bold, serif font, followed by a stylized blue and green circular icon. Below it, the words "PATTON BOGGS" are written in a smaller, all-caps, sans-serif font.

Article By  
[Paul C. Besozzi](#)  
[Squire Patton Boggs \(US\) LLP](#) [TCPA World](#)

[Communications, Media & Internet  
Litigation / Trial Practice  
All Federal](#)

Final instruction: notify the Court thirty days after further decision by the FCC and in any event provide a joint status report as to those proceedings not later than six months after the Court's action.

© Copyright 2019 Squire Patton Boggs (US) LLP

**Source URL:** <https://www.natlawreview.com/article/primary-jurisdiction-patience-prevails-reassigned-number-case>