

Prior Express Consent

Good Idea	Bad Idea
Oral or written consent	Phone number capture through Caller ID
Consent must be provided to the creditor for FCC pass through consent to apply	Ignoring an express request not to call cell number
Consumers can give PEC directly to a collector	Skip tracing

- **Note:** Consent provided to one creditor or collector is not consent to call on behalf of other creditors or collectors.

According to the FCC, consent is “deemed” provided only if the debtor gives it to the creditor or collector during the transaction that created the debt itself. Consent is proper if the consumer provides it in connection with the original debt. In 2012, the U.S. 9th Circuit Court of Appeals reaffirmed that, “Pursuant to the FCC 2008 ruling, prior express consent is consent to call a particular telephone number **in connection with** a particular debt that is given before the call in question is placed.”

According to the U.S. 3rd Circuit Court of Appeals, the consumer can orally revoke prior express consent at any time. However, some court say that when it comes to debt collection, withdrawal of consent is governed by the FDCPA instead of the TCPA; in these cases, the consumer must revoke consent in writing because it’s considered a “cease and desist” request.

In August 2013, the U.S. 3rd Circuit Court of Appeals ruled in [Gager v. Dell Financial Services, LLC](#) that consumers have a right under a federal law to revoke their consent to being contacted on their cell phones by an ATDS. The ruling directly applies to debt collectors that use automated calls to notify customers of delinquent payments. Now, if a consumer says in writing (s)he wants robo-calls to stop, collection agencies have to comply.

The court said that Congress intended for the TCPA to protect consumers from unwanted automated calls, period. According to the ruling, collectors may still call a consumer’s cell phone about a delinquent account, but “the only limitation imposed by the TCPA is that [collectors] will not be able to use an automated dialing system to do so.”