

## Dish Hit With \$280M Penalty In TCPA Suit By Feds, States

By **Kelly Knaub**

Law360, New York (June 5, 2017, 8:43 PM EDT) -- An Illinois federal judge permanently blocked Dish Network from making illegal calls in violation of do-not-call laws on Monday and simultaneously awarded \$280 million to the federal government and the states of California, Illinois, North Carolina and Ohio.



The judge ordered Dish Network to pay \$168 million in civil penalties to the U.S. for violating the Federal Trade Commission's Telephone Sales Rule. (AP)

In a 475-page opinion, U.S. District Judge Sue E. Myerscough ordered Dish Network LLC to pay \$168 million in civil penalties to the U.S. for violating the Federal Trade Commission's Telephone Sales Rule and to pay the rest in civil penalties and statutory damages to the four states for violations of the Telephone Consumer Protection Act, a Federal Communications Commission rule and various state statutes.

The U.S. and the four states alleged in their complaint that Dish violated the various laws by making sales calls to individuals whose numbers were listed on the National Do Not Call Registry and to individuals who previously said they did not want to receive sales calls from Dish, abandoning calls, using prerecorded sales calls and helping others commit these violations.

In addition to being prohibited from making illegal calls and from helping authorized telemarketers or retailers do the same, Dish is also required to undergo compliance monitoring.

"The plaintiffs have established that Dish, its telemarketing vendors, and its order entry retailers violated the applicable do-not-call laws millions and millions of times," Judge Myerscough's opinion said.

Central to the case is that some of Dish's telemarketing calls were made by the company and its vendors, but many were made by Dish retailers, and the company had said it has no address information about those calls. Based on that, the states had asked the court to compel Dish to pay for state-of-resident information from PossibleNow, a contractor that helped Dish and its retailers

manage their call lists.

The judge said that the "scant, ambiguous evidence" did not show whether Dish used PossibleNow to "scrub lead tracking system calling lists or cold call calling lists."

Dish spokesman John Hall told Law360 in a statement on Monday that Dish "respectfully disagrees" with the decision and plans to appeal.

"The penalties awarded in this case radically and unjustly exceed, by orders of magnitude, those found in the settlements in similar actions, notably against DirecTV, Comcast and Caribbean Cruise Lines," Hall said. "The court is holding Dish responsible for telemarketing activities conducted by independent third-parties, including in circumstances where such third-parties intentionally hid their telemarketing efforts from Dish."

A spokeswoman for the U.S. Department of Justice said the agency would likely soon release a statement. Representatives for the states did not respond to a request for comment.

In February, Dish told Judge Myerscough that a \$20.5 million jury award in January in a North Carolina TCPA class action **had no bearing on the suit** against the company in Illinois.

Both cases involve a vendor who made sales calls on behalf of Dish; which multiple classes have said such calls were unwanted and a violation of the TCPA. In the North Carolina case, *Krakauer v. Dish Network*, a jury in January determined that telemarketing firm Satellite Systems Network acted as Dish Network's agent, carrying out the will of the company. According to the jury, the close relationship between Dish and SSN meant that Dish was culpable for the 51,000 unwanted phone calls at issue in that case.

In a letter to Judge Myerscough in January, the Justice Department said that the outcome in the *Krakauer* case is "a significant and persuasive indicator that such an agency relationship did in fact exist between Dish and its other [order entry] retailers."

Dish fired back that the conclusion in *Krakauer* should have no bearing on the case in Illinois, saying the contract with each telemarketer was not the same as it was in *Krakauer*.

In October, the judge **barred all the parties from introducing new evidence** in the case.

The states are represented by Jon Worm and Jinsook Ohta of the Office of the Attorney General of California, Elizabeth Blackston, Phillip Heimlich, Paul A. Isaac and Lisa Madigan of the Office of Attorney General of Illinois, Erin B. Leahy, Jeffrey Loeser and Mike DeWine of the Ohio Attorney General's Office and David N. Kirkman and Roy Cooper of the Office of the Attorney General of North Carolina.

Dish is represented by Peter Bicks, Elyse Echtman and John Ewald of Orrick Herrington & Sutcliffe LLP and Joseph Boyle, Lauri Mazzuchetti and Henry Kelly of Kelley Drye & Warren LLP.

The case is *U.S. et al. v. Dish Network LLC*, case number 3:09-cv-03073, in the U.S. District Court for the Central District of Illinois.

--Additional reporting by Hannah Meisel. Editing by Brian Baresch.