

## Court Rules Against Dish Network in Multi-State Lawsuit

By ***Christina Kuta, Associate***

On June 5, 2017, the United States District Court for the Central District of Illinois issued a ruling in a lawsuit filed against Dish Network, LLC (3:09-CV-03073). The plaintiffs in the lawsuit were the United States (on behalf of the Federal Trade Commission) and the states of California, Illinois, North Carolina and Ohio. In a ruling that could impact how businesses oversee and manage their contracted vendors, the court found in favor of the plaintiffs, awarding a collective total of \$280,000,000 in fines and penalties.

The defendants alleged that Dish Network violated several federal and state laws, including the Telemarketing Consumer Fraud and Abuse Prevention Act (15 U.S.C. § 6101 et seq.) and the Telephone Consumer Protection Act (47 U.S.C. § 227). The allegations against Dish Network related to its expansive telemarketing practices aimed at soliciting individuals to enter into agreements for Dish Network's services. The plaintiffs argued that Dish Network's telemarketing practices violated federal and state laws based on communications with third-parties who were otherwise on the national "Do Not Call List," the use of certain "robo-calls" and contact with individuals who otherwise requested not to be contacted by Dish Network.

In response to these allegations, Dish Network argued that a substantial majority of the communications in question were conducted by Dish Network's multiple contractors and subcontractors. Dish Network believed it had no meaningful control over the services provided by the contractors and subcontractors, and therefore, was not liable for any actions on their part.

The court held that Dish Network was liable for violations of the law, including the actions of its contractors for which it had no direct level of control. The court found that Dish Network acted recklessly by contracting with "anyone with a call center without any vetting or meaningful supervision demonstrate[ing] a disregard for the consuming public." In assessing liability for the actions of Dish Network's contractors, the court noted that Dish Network was fully aware of its contractors' unlawful activities and did nothing to address or prevent such actions.

Dish Network has expressed an intent to appeal the ruling. In a first step in this direction, on June 13, 2017, Dish Network filed a request to stay enforcement of the judgment to be afforded additional time to evaluate and file an appeal. This is not the first judgment against Dish Network for similar violations, but represents the largest award of its kind.

Although the court's decision relates to the specific facts, circumstances and relevant law presented in this case, the outcome arguably could be interpreted broadly to impact any business that engages third-party contractors to fulfill functions of its operations. As a result, businesses should consider whether the actions of their contractors could lead to liability and how effective corporate oversight can minimize these concerns. Such oversight may include: business-directed audits of contractor services; clear procedures to investigate and address concerns regarding contractor services; and contract management procedures, including whether contractual indemnification provisions can effectively limit liability.

Please contact any of the listed attorneys in the Roetzel & Andress Corporate, Tax and Transactional group to evaluate your current business relationships and corporate compliance initiatives.

### Authors

Christina M. Kuta  
[ckuta@ralaw.com](mailto:ckuta@ralaw.com)

**Additional Contact**

Christopher P. Reuscher  
[creuscher@ralaw.com](mailto:creuscher@ralaw.com)

**Media Contact**

Ashley McCool  
[amccool@ralaw.com](mailto:amccool@ralaw.com)

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