

PayPal draws consumer ire over robo-texting rights

When eBay cuts PayPal loose this summer, users of the new digital money giant will find they've agreed to new terms of service that take effect July 1. Those terms include PayPal giving itself the right to robocall or robo-text members at any phone number the firm can find, for just about any reason — from debt collecting to advertisements to opinion polling.

The fine print also says PayPal can pass along the same rights to its affiliates. Here's the language, in black and white, from the company's website:

You consent to receive autodialed or prerecorded calls and text messages from PayPal at any telephone number that you have provided us or that we have otherwise obtained . . . (PayPal) may share your phone numbers with our Affiliates or with our service providers, such as billing or collections companies, who we have contracted with to assist us in pursuing our rights.

Given that both the Telephone Consumer Protection Act (which created the Do Not Call list) and the Fair Debt Collection Practices Act ban most robocalling and texting, this seemed in direct opposition to consumer protections granted Americans by Congress. And the FCC has made clear that the "existing business relationship" exception that applies to the Do Not Call list doesn't give companies the right to robocall consumers. They must acquire written or oral consent. Could a change in terms of service constitute such consent?

How Consumer Advocates See It

So I contacted the National Consumer Law Center to ask about it, and lawyer Margot Saunders reminded me that consumers can consent to all sorts of things — including consenting to getting robocalls from debt collectors and advertisers. Critically, however, this consent is not a waiver or rights, she said, and it can be withdrawn at any time.

At least, that's her opinion. But it's not what PayPal has told at least one customer. When PayPal consumer Robert Pascarella questioned PayPal about the terms of service on the company's Facebook page recently, he requested an opt-out for the provision and was shot down.

"Regrettably, there isn't an opt out option to certain items within our User Agreement," PayPal responded. When he objected, PayPal posted directions for closing his account.

PayPal did not return a request for comment by deadline. **UPDATE:** PayPal sent a comment to Credit.com after the story was published. PayPal spokeswoman Amanda Miller said, "PayPal takes consumer protection very seriously and we have processes in place designed to ensure compliance with all collection laws."

When I pointed out the Facebook conversation's all-or-nothing response to Saunders, she decided it was important enough to file a petition with the Federal Communications Commission and ask for a ruling. In a draft letter provided to Credit.com that will be signed by several consumer groups and delivered this week, the National Consumer Law Center will ask the FCC to "clarify that withdrawal of consent for auto-dialed calls cannot be grounds for terminating a contract."

That petition will also ask the FCC, which administers the Telephone Consumer Protection Act, to beat back a number of industry requests that consumer groups say could weaken the Do Not Call list. The FCC will vote on a declaratory ruling June 18 that looks to affirm consumer-friendly provisions; FCC Chairman Tom Wheeler has proposed, for example, that consumers be able to withdraw consent to receive robocalls at any time (industry groups have argued that consent should be permanent).

While the PayPal corporate structure is new — this summer, it will be permanently separated from eBay, which acquired the payments giant in 2002 — the robocalling language is not really new. It is derived from eBay's terms of service, which back in 2012 added the right to contact consumers "at any telephone number ... you provide to us or from which you place a call to us, or any telephone number at which we reasonably believe we may reach you," according to Practical Nomad blogger Edward Hasbrouck.

eBay did not respond to a request for comment.

Hasbrouck had created a stir about the fine-print robocalling issue even earlier, in 2009, when he noticed it in his American Express terms of service.

For now, there's not much consumers can do, other than the drastic step of closing their accounts. Given PayPal's immense market reach — it has 160 million users worldwide — that's not a practical option. We'll keep an eye on the FCC vote and let you know what happens. You keep an eye on your cellphone bills. Why? The PayPal / eBay terms of agreement also includes this warning: "Standard telephone minute and text charges may apply if we contact you."