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Post-*McLaughlin* TCPA Chaos Begins With Contradictory Rulings on Text Messages

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Earlier this month, the U.S. Supreme Court held that district courts are not bound by the Federal Communication Commission's (FCC) interpretations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227. See *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp*., 606 U.S. —- — S.Ct. —- 2025 WL 1716136 (2025). As noted in our recent advisory, "district courts are now free to apply traditional statutory interpretation principles to re-examine prior FCC orders that have driven litigation against sellers and telemarketers."

The re-examination of FCC orders has begun. On the same day, two federal district courts reached opposite conclusions on whether a text message is a "call" for purposes of the TCPA. Compare *Jones, et al. v. Blackstone Medical Svcs., LLC*, No. 1:24-CV-01074-JEH-RLH, 2025 WL 2042764 (C.D. Ill. July 21, 2025) with *Wilson v. Skopos Fin., LLC*, No. 6:25-CV-00376-MC, 2025 WL 2029274 (D. Or. July 21, 2025). The plaintiffs in each case argued that the defendants had violated §227(c) of the TCPA by sending text messages that allegedly violated the do-not-call list regulations issued by the FCC.

Background

In *In Re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991*, 18 F.C.C. Rcd. 14014 (2003) (2003 Order), the FCC for the first time stated that the TCPA restrictions on placing calls to wireless telephone numbers using an automatic telephone dialing system in §227(b) "encompasses both voice calls and text calls to wireless numbers." 18 F.C.C. Rcd. at 14115. The 2003 Order did not analyze why the TCPA applies to text messages, a technology that did not exist in 1991 when the TCPA was passed. The FCC simply asserted that "call" includes texting for purposes of calls using an automatic telephone dialing system. In 2024, the FCC "codifie[d] that the National Do-Not-Call (DNC) Registry's protections extend to text messages." See *Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991, Advanced Methods To Target and Eliminate Unlawful Robocalls*, 89 FR 5098-01 (Jan. 26, 2024).

Text Messages Are Not Telephone Solicitations

In *Jones,* the court followed the directives in *McLaughlin* and *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024), took a fresh look at the FCC's prior order expanding "calls" to text messages, and rejected the FCC's interpretation. The court held "that based on a plain reading of the TCPA and its implementing regulations, Section 227(c)(5) does not apply to text messages." *Jones*, 2025 WL 2042764, at *3.

The *Jones* court noted that undefined words in a statute take on their normal, "contemporaneous" meaning, and

found the term “telephone call” could not include text messages because “text messaging was not an available technology in 1991 [when the TCPA was enacted], and thus ‘telephone call’ would not have included text messages or SMS messages.” 2025 WL 2042764, at *4. The court also noted that “in today’s American parlance, ‘telephone call’ means something entirely different from ‘text message.’” *Id*.

Text Messages Are Telephone Solicitations

Two times zones away, the District of Oregon came to a different conclusion. In *Wilson*, the court rejected the defendant’s argument that only Congress has the authority to dictate who has a cause of action under the TCPA and that there is no basis for the FCC’s conclusion that Congress meant the term ‘call’ to mean ‘text call.’ *Wilson*, 2025 WL 2029274, at *4.

The *Wilson* court explicitly noted that the FCC’s regulations “*expanded* the TCPA to apply to text messages,” but found the defendant’s argument that the FCC lacked authority to do so “undermined by the statutory structure of the TCPA, which explicitly delegates such authority, as well as the vast applicable case law which abides by the FCC’s regulations and guidance.” *Id*. The court added that the FCC’s expansion of the TCPA to include text messages was “congruent with Congress’s overarching goals for the TCPA.” *Id*.

While the *Jones* court noted that current American parlance distinguishes a “text message” from a “call,” the *Wilson* court stated that “it cannot be argued in good faith that text messages are so categorically different from phone calls that the former cannot be considered an invasion of consumer privacy when directed at numbers on the DNC Registry,” and noted that “as technology has developed over the years, so too has our understanding of the TCPA’s protections.” *Id*.

Takeaways

The simultaneous and contradictory rulings by these two district courts highlight the “chaos” predicted in our previous advisory. Clients should be prepared to challenge FCC interpretations of the TCPA and do-not-call regulations where appropriate, particularly where the agency’s action expands liability beyond that envisioned by the statutory text. However, sellers and telemarketers should consider delaying changes to their compliance programs until the appellate courts around the U.S. have a chance to weigh in on whether FCC orders and regulations are entitled to continued deference.

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