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Reading the Tea Leaves: Text Messages May Not Be TCPA Calls in the Seventh Circuit

WRITTEN BY

Brian I. Hays | Virginia Bell Flynn | Chad R. Fuller | Stefanie H. Jackman

KEY POINTS

- Companies sending marketing texts face unsettled TCPA questions as the Seventh Circuit considers in *Steidinger v. Blackstone Medical Services* whether texts are "telephone calls" under the provision allowing consumers to sue over Do Not Call violations.
- A ruling for the defendant would create a circuit split with the Ninth Circuit's *Howard v. Republican National Committee*, likely forcing Supreme Court review to resolve whether text messages can violate the TCPA's Do Not Call provisions.

On May 21, a panel of the Seventh Circuit Court of Appeals heard argument in *Steidinger v. Blackstone Medical Services* on whether text messages are covered as "telephone calls" in § 227(c)(5) of the Telephone Consumer Protection Act (TCPA). While questions asked by judges during oral arguments are no guarantee of how the court will ultimately rule, Judge Thomas K. Kirsch II and Judge Doris L. Pryor appeared skeptical of the plaintiff's position that Congress intended "telephone call" to include text messaging in 1991. Judge Nancy L. Maldonado did not ask any questions. While we will need to wait for the decision, there is an excellent chance that the panel will hold that plaintiffs cannot sue over marketing text messages under § 227(c)(5), creating a potential circuit split with the Ninth Circuit's opinion in *Howard v. Republican National Committee* that will need to be decided by the U.S. Supreme Court.

Background

Congress enacted the TCPA in 1991 to address the proliferation of unwanted telephone solicitations to consumers. The TCPA defines "telephone solicitations" as "the initiation of a **telephone call or message** for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services." § 227(a)(4) (emphasis added). Congress authorized the Federal Communications Commission (FCC) to adopt rules to protect residential subscribers' privacy rights to avoid receiving telephone solicitations to which they object. § 227(c)(1). Congress created a private right of action allowing any person "who has received more than one **telephone call** within any 12-month period by or on behalf of the same that violates one of the FCC regulations. Plaintiffs can recover up to $500 in statutory damages for each violation. § 227(c)(5) (emphasis added).

The FCC implemented regulations prohibiting any person from "initiat[ing] any telephone solicitation to" a telephone number on the federal Do Not Call Registry. 47 C.F.R. § 64.1200(c)(2). In 2003, the FCC issued an order expanding the definition of "telephone call" to include text messages. Until recently, federal courts were bound by the FCC's interpretation under the Hobbs Act. However, in 2025, the Supreme Court issued an opinion holding that federal district courts are not bound by FCC orders.

Since *McLaughlin*, courts have split over whether text messages should be considered "telephone calls" under § 227(c)(5), thus giving consumers a right to sue for statutory damages.

Seventh Circuit Oral Argument in *Steidinger*

In *Steidinger*, the district court applied ordinary principles of statutory construction to hold that "telephone calls" did not include text messages. On appeal, the Seventh Circuit panel was laser-focused on the definition of "telephone" and "telephone call" as they existed in 1991 when the TCPA was enacted.

Judge Kirsch and Judge Pryor focused on the distinction in the text of the TCPA between "telephone call" and "telephone message." Judge Kirsch appeared to interpret "telephone message" as limited to voice messages. Judge Pryor was more open to the argument that text messages could fall within the definition of "telephone message." Both judges pressed plaintiff's counsel on whether texts should be treated as "telephone messages" rather than "telephone calls." If text messages are "telephone messages," § 227(c)(5) would not give plaintiffs a cause of action because the plain text of that section is expressly limited to "telephone calls."

Judge Pryor also pressed plaintiff's counsel to explain why Congress did not amend § 227(c)(5) to include text messages in 2018 when Congress amended § 227(e) to expressly address text messages. If as plaintiff argued the definition of "telephone call" always included text messages, why did Congress not use "telephone call" in § 227(e)?

Judge Pryor then pressed the defendant on its position. She asked counsel to distinguish the FCC's prior interpretation of "call" to include text messages in § 227(b) which prohibits "calls" using a random or sequential telephone number generator to numbers "assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call."

Interestingly, neither judge showed any interest in the public policy arguments of whether it is a good idea to prohibit marketing text messages. The panel's decision will instead focus on the plain meaning of the statutory text at the time the TCPA was enacted in 1991 and an analysis of what, if any, deference should be shown to the FCC's interpretation.

Next Steps

Based on the oral argument, it appears Judge Kirsch is solidly with the defendant. Judge Pryor is likely with the defendant but could have second thoughts. If the judges do split, Judge Maldonado, who kept her thoughts to herself, will be the deciding vote. The decision is expected in late August or early September. Regardless of the outcome, we hope the losing party appeals to the Supreme Court to get a definitive ruling on whether text messages can violate the TCPA.

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