

Seventh Circuit Rules Text Messages Are Not “Telephone Calls” Under TCPA § 227(c)(5) — A Circuit Split Emerges

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KEY POINTS

- The Seventh Circuit has held, in *Steidinger v. Blackstone Medical Services*, No. 25-2398 (7th Cir. July 14, 2026), that text messages are NOT “telephone calls” within the meaning of § 227(c)(5) of the Telephone Consumer Protection Act (TCPA), eliminating a private right of action for consumers who receive unwanted marketing texts in the Seventh Circuit.
- The Ninth Circuit reached the OPPOSITE conclusion in *Howard v. Republican National Committee*, 164 F.4th 1119 (9th Cir. Jan. 13, 2026), holding that text messages are “calls” under § 227(b) of the TCPA (though ultimately affirming dismissal on other grounds).
- The two decisions create a circuit split on a question of major commercial significance for any business that uses text messaging for marketing or customer outreach.
- Supreme Court review is likely. Companies should not treat the Seventh Circuit’s ruling as a permanent safe harbor and should continue to implement robust TCPA compliance programs.

BACKGROUND: THE TCPA’S PRIVATE RIGHT OF ACTION FOR UNWANTED CALLS

Congress enacted the TCPA in 1991 to address the proliferation of unwanted telephone solicitations. The statute defines “telephone solicitation” 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.” 47 U.S.C. § 227(a)(4) (emphasis added).

Despite the definition in § 227(a)(4) that references calls and messages, the private right of action available to consumers only references “calls.” Section 227(c)(5) creates a cause of action for individuals “who have received more than one telephone *call* within any 12-month period by or on behalf of the same entity in violation of the [FCC’s] regulations.” 47 U.S.C. § 227(c)(5) (emphasis added). Plaintiffs who prevail may recover up to \$500 per violation in statutory damages — a figure that can multiply rapidly in class action litigation.

The Federal Communications Commission (FCC) implemented regulations under § 227(c)(3) prohibiting telephone solicitations to numbers on the National Do-Not-Call Registry. In 2003, the FCC interpreted “telephone call” to include text messages. Until recently, federal courts were required to apply the FCC’s interpretation under the Hobbs Act. That changed in 2025 when the Supreme Court held that federal courts are not bound by FCC orders and must interpret the TCPA under ordinary principles of statutory construction, opening the door to the split we now have.

THE SEVENTH CIRCUIT'S DECISION: *STEIDINGER V. BLACKSTONE MEDICAL SERVICES*

FACTS

Seth Steidinger and a class of plaintiffs received marketing text messages from Blackstone Medical Services promoting home sleep tests. The plaintiffs alleged that these messages continued even after they opted out (e.g., by replying “STOP” or registering on the National Do-Not-Call Registry). They filed a consolidated class action under § 227(c)(5) of the TCPA and the Florida Telephone Solicitation Act (FTSA). The district court dismissed the TCPA claims on the ground that § 227(c)(5)’s private right of action extends only to telephone calls, not text messages, and declined to exercise supplemental jurisdiction over the state-law claim.

THE SEVENTH CIRCUIT'S REASONING

A unanimous panel (Judges Kirsch, Pryor, and Maldonado) affirmed, employing a rigorous textualist analysis.

1. Plain Meaning at Enactment. The court anchored its analysis in the ordinary public meaning of “telephone call” as of 1991, when the TCPA was enacted. Citing contemporaneous dictionary definitions, the court found that a “telephone” was “an instrument for reproducing sounds at a distance” and a “call” meant “to get or try to get into communication by telephone.” Webster’s Ninth New Collegiate Dictionary (1991). Accordingly, a “telephone call” referred to sound-based communication. Because text messages do not reproduce sounds, the court held they do not qualify as telephone calls under § 227(c)(5).

The court acknowledged the general principle that statutory language can encompass new applications of old concepts as technology evolves, but it rejected the plaintiffs’ invitation to stretch “telephone call” to cover text messages. Citing its own precedent, the court cautioned that “[t]oo much liberality will undermine the statute as surely as too literal an interpretation would.” *Matter of Erickson*, 815 F.2d 1090, 1094 (7th Cir. 1987).

2. Statutory Structure — “Calls” vs. “Messages.” The court found compelling structural evidence within the TCPA itself. While § 227(c)(5) creates a private right of action only for “telephone calls,” other subsections of § 227(c) use the broader term “telephone solicitation” — which § 227(a)(4) expressly defines to include both “a telephone call or message.” The court applied the meaningful-variation canon: because Congress used different terms in adjacent subsections, it must have intended different meanings. The private right of action in § 227(c)(5) is therefore narrower than the full scope of telephone solicitations regulated elsewhere in § 227(c).

3. No Deference to the FCC. The court reviewed the FCC’s contrary interpretation without deference, applying independent statutory construction. It found that, although the FCC extended Do-Not-Call Registry protections to texts, that extension was made under § 227(c)(3) (which covers “telephone solicitations”), not under § 227(c)(5) (which covers only “telephone calls”). The FCC’s interpretation of other provisions therefore did not control the meaning of § 227(c)(5).

4. Congressional Inaction. The plaintiffs argued that Congress effectively ratified the FCC’s interpretation by repeatedly amending the TCPA without overriding the FCC’s inclusion of texts as calls. The court was unpersuaded, noting that Congress has specifically amended other TCPA provisions to address text messages when it chose to do so — most notably amending § 227(e) in 2018 to expressly cover texts and define “text message.” Congress’s failure to make a comparable amendment to § 227(c)(5) cuts against, not in favor of, the

plaintiffs' position.

THE NINTH CIRCUIT'S DECISION: *HOWARD V. REPUBLICAN NATIONAL COMMITTEE*

FACTS AND HOLDING

Jacob Howard filed a class action alleging that the Republican National Committee sent him automated text messages containing embedded video files with a prerecorded voice, without his consent, in violation of § 227(b)(1)(A)(iii) of the TCPA. The Ninth Circuit affirmed dismissal, but for a narrow reason: the text message was not “made or initiated using an artificial or prerecorded voice” because the video required the recipient to press play before any voice was heard. The key point for present purposes is what the court held on the threshold question — that a text message qualifies as a “call” under the TCPA.

THE NINTH CIRCUIT'S REASONING

The Ninth Circuit reached the opposite conclusion from the Seventh Circuit on the text-as-call question. Its reasoning rested on three pillars:

1. Plain Language — “Call” Means an Attempt to Communicate. The court looked to the dictionary definition of “call” as “an attempt to communicate by telephone,” and held that “text messaging plainly fits within that literal definition because it is a form of communication between telephones.” Unlike the Seventh Circuit, the Ninth Circuit did not cite to the dictionary definition of “telephone” at the time of enactment. The court concluded that text messages trigger the same kind of immediate privacy intrusion as voice calls — ringing the phone and demanding the recipient’s attention — and are therefore “calls” within the ordinary understanding of the term.

2. Independence from FCC Deference. The Ninth Circuit emphasized that its conclusion rested on the statute’s plain language, not on deference to the FCC. This makes the circuit split a clean statutory interpretation dispute, not one that can be resolved by future FCC rulemaking alone.

One important nuance: *Steidinger* construed § 227(c)(5) and *Howard* construed § 227(b). The Seventh Circuit specifically distinguished prior cases (from the First, Second, Ninth, and Eleventh Circuits, and from its own precedent) on the ground that they involved § 227(b), not § 227(c)(5). It is possible — though uncertain — that a future Seventh Circuit panel would interpret “call” differently in § 227(b), which uses broader language and creates a more broadly framed private right of action. For now, however, the conflict is real, and other circuits will need to weigh in.

WHAT THIS MEANS FOR YOUR BUSINESS

IMMEDIATE IMPACT IN THE SEVENTH CIRCUIT (ILLINOIS, INDIANA, WISCONSIN)

Businesses that conduct text message marketing campaigns have significantly reduced exposure to class action claims under § 227(c)(5) in the Seventh Circuit. Class actions predicated solely on unwanted marketing texts are now subject to dismissal in district courts within the Seventh Circuit.

However, several important caveats apply:

- Plaintiffs will continue to file complaints alleging that text messages are covered by § 227(c)(5) in courts outside

the Seventh Circuit, where this ruling has no binding effect.

- State law claims remain. The FTSA and other state analogs to the TCPA may still provide plaintiffs with viable causes of action. Many state statutes expressly cover text messages.
- The Supreme Court will likely have the final word. A circuit split of this magnitude on a high-volume litigation issue is precisely the type of conflict the Supreme Court takes. Businesses should plan for the risk that the Supreme Court might reverse *Steidinger* and create a uniform national rule extending § 227(c)(5) liability to texts.

COMPLIANCE RECOMMENDATIONS

Regardless of the current circuit split, companies should maintain — and strengthen — their text message compliance programs:

1. Obtain and document prior express written consent before sending marketing texts to customers. This is the safest course available regardless of how the circuit split is ultimately resolved.
2. Honor opt-out requests promptly. A consumer who replies “STOP” or otherwise requests no further contact must be removed from text lists immediately, and systems should be in place to prevent re-inclusion.
3. Maintain Do-Not-Call compliance. The FCC’s regulations extending Do-Not-Call Registry protections to text messages remain in effect: even if a private right of action under § 227(c)(5) is unavailable in some circuits, FCC enforcement authority is unaffected by *Steidinger*.
4. Review your consent records. Class actions frequently succeed or fail based on the adequacy of consent documentation. Now is a good time to review how consent is captured, stored, and evidenced.
5. Monitor state-law developments. Several states have enacted their own telephone solicitation statutes with express coverage of text messages, and plaintiffs’ counsel will increasingly rely on these statutes as federal fallback erodes.

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