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Supreme Shift: How McLaughlin is Reshaping the TCPA

The legal landscape for businesses facing Telephone Consumer Protection Act (“TCPA”) claims may be undergoing a seismic shift. In the wake of the Supreme Court’s decision in *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.* (which we discussed in a recent [alert](#)), federal courts are no longer bound to defer to the Federal Communications Commission’s (“FCC”) interpretations of the TCPA. Building upon our own case before the U.S. Supreme Court in 2019, *PDR Network LLC v. Carlton & Harris Chiropractic, Inc.*, *McLaughlin* held that courts must now independently interpret the statute’s text. This has led to decisions that challenge—and in some cases, outright reject—longstanding FCC rules. Two recent cases, *Jones v. Blackstone Medical Services, LLC* and the ongoing *Bradford v. Sovereign Pest Control of TX*, Inc. appeal, exemplify this new era of judicial scrutiny and offer important lessons for businesses defending against TCPA claims.

THE MCLAUGHLIN DECISION: A TURNING POINT FOR TCPA LITIGATION

The Supreme Court’s *McLaughlin* decision fundamentally altered the relationship between courts and agency interpretations in TCPA enforcement actions. The Court held that district courts are not required to follow the FCC’s interpretations of the TCPA in private litigation. Instead, courts must apply ordinary principles of statutory interpretation, giving “appropriate respect” to the agency’s views but not treating them as controlling. This ruling effectively dismantled the regime of *Chevron* deference that had, for decades, required

courts to “defer to” (follow) FCC rules—such as the requirement for “prior express written consent” for telemarketing calls—unless those rules were directly challenged through administrative channels.

For businesses, this means the statutory text of the TCPA is now the primary authority, and courts are empowered to disregard FCC rules that go beyond what Congress enacted.

DISTRICT COURT REJECTS FCC’S VIEW THAT TEXTS ARE “CALLS”

The *Jones* decision from the Northern District of Illinois is a striking example of how courts are now willing to depart from FCC precedent. In *Jones*, plaintiffs alleged Blackstone Medical Services violated the TCPA by sending them unwanted text messages, arguing such messages are “calls” under the statute and its implementing regulations—a position long supported by the FCC.

The district court, however, conducted its own analysis of the statutory text, as required by *McLaughlin* and *Loper Bright*. The Court found that the relevant TCPA provision, 47 U.S.C. § 227(c), prohibits “telephone calls” but does not mention text messages. The Court reasoned that, at the time the TCPA was enacted in 1991, “telephone call” would not have included text messages, which were not yet in use. The Court further noted that the FCC’s orders and regulations tying text messages to “calls” were based on a different section of the statute (§ 227(b)), not the do-not-call provisions at issue in the case.

Ultimately, the Court held that text messages are not “calls” under § 227(c) of the TCPA, directly contradicting years of FCC guidance and industry practice. The Court dismissed the TCPA claims, emphasizing that it is not the role of the judiciary to expand the statute beyond its plain meaning, and leaving it to Congress to address technological developments if it so chooses.

FIFTH CIRCUIT TO DECIDE MEANING OF “EXPRESS CONSENT”

Meanwhile, in the Fifth Circuit, the *Bradford* appeal shows how courts are reexamining foundational TCPA concepts in light of *McLaughlin*. There, the Court is set to address a fundamental question about what constitutes “prior express consent” under the TCPA.

The case began when Radley Bradford sued Sovereign Pest Control, alleging that the company’s automated “renewal calls” to his cell phone—reminding him to schedule inspections and encouraging renewal of his pest control service plan—violated the TCPA because they were made without the required consent.

At the district court level, Sovereign argued Bradford had provided his cell phone number as part of his service agreement and never objected to the calls, thus giving “prior express consent.” The district court agreed, finding the calls were “informational” rather than telemarketing, and that Bradford’s act of providing his number was sufficient consent under then-binding FCC interpretations. The Court granted summary judgment for Sovereign.

However, while the case was on appeal, the Supreme Court decided *McLaughlin*. In response, the Fifth Circuit ordered a supplemental briefing on how *McLaughlin* and *Loper Bright* affect the appeal.

The defendant business argues that, after *McLaughlin*, courts must look to the statutory text alone, which requires only “express consent”—not “written” consent—for any call. The defendant contends that “express consent” can be given orally or by conduct, such as providing a phone number in connection with a business relationship. The plaintiff, by contrast, maintains that renewal calls were telemarketing and that more explicit, written consent is required.

The Fifth Circuit’s forthcoming decision could clarify whether businesses can rely on customers’ provision of phone numbers as sufficient consent for automated calls, or whether additional requirements—like written consent—will persist.

IMPLICATIONS FOR BUSINESSES

Jones and *Bradford* are not isolated developments. Across the country, courts are now being asked to reconsider FCC interpretations that have long governed TCPA and independently interpret the statute. Litigants are encouraging courts to revisit foundational questions, such as what the scope of “call” is under the TCPA and what “prior express consent” means.

For businesses, this new era presents both opportunities and challenges. On the one hand, companies can now rely on the plain text of the statute to challenge TCPA claims, rather than being bound by agency rules that may exceed congressional intent. On the other hand, the result in the meantime may be a patchwork of decisions, with some courts upending years of regulatory guidance and others adhering to prior interpretations, at least until higher courts weigh in. This potential for a lack of uniformity and circuit splits creates uncertainty. Indeed, the dissent in *McLaughlin* noted how the majority’s ruling could “disrupt even the most solid-seeming regulatory regimes,” and even expose those who took advantage of prior FCC “safe harbors” to liability.

Businesses must closely monitor developments in the jurisdictions where they operate and be prepared to adapt compliance strategies as courts continue to reinterpret the TCPA.

CONCLUSION

The post-*McLaughlin* era is ushering in a period of rapid change and unpredictability in TCPA litigation. Courts are no longer bound to follow the FCC’s interpretations and are instead returning to the statutory text to resolve key questions about consent and coverage. The *Jones* decision’s rejection of FCC guidance on text messages and the Fifth Circuit’s anticipated decision in *Bradford* on the meaning of “express consent” are just the beginning. Businesses defending against TCPA claims should seize this moment to reassess their risk, revisit their compliance programs, and consider new defense strategies grounded in the statute’s plain language.

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