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TCPA – Is a Text Message a "Telephone Call"? Courts are Split Following McLaughlin

by Jeffrey H. Fisher

Takeaway: Following the Supreme Court's decision in *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 U.S. 146 (2025), three district courts have found that a "text message" is not a "telephone call" under Section 227(c)(5) of Telephone Consumer Protection Act ("TCPA"), which provides a private right of action to individuals registered on the National Do-Not-Call Registry ("DNC"). Other courts have disagreed, following a long line of district court and FCC precedent interpreting "telephone call" to include text messages. While it is not clear whether these decisions signal a narrowing of Section 227(c)(5), they certainly highlight the increasing uncertainty about the meaning of the TCPA after *McLaughlin*.

Background: The TCPA and the "Telephone Call" Question

Section 227(c)(5) of the TCPA provides a private right of action to persons who "received more than one ***telephone call*** within any 12-month period" in violation of regulations, including regulations establishing the DNC. Prior to the Supreme Court's decision in *McLaughlin*, courts had followed FCC guidance and interpreted 227(c)(5) to prohibit both text message and telephone calls to those registered on the DNC. Following the Supreme Court's narrowing of the definition of "automatic telephone dialing system" ("ATDS") in *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021) (discussed here), text message TCPA claims had increasingly shifted toward texts allegedly sent without consent to individuals on the DNC.

The Supreme Court's *McLaughlin* Decision

At the heart of the recent judicial shift is the Supreme Court's June 2025 opinion in *McLaughlin*. In *McLaughlin*, a chiropractic clinic brought a putative TCPA class action alleging that McKesson sent unsolicited advertisements by fax without the required opt-out notice. The certified class included those who received faxes via traditional fax machines and those who received them via online fax services. While the case was pending, the FCC issued an order finding that the TCPA's restrictions did not apply to faxes received via online fax services. 606 U.S. at 150. The district court treated the FCC's order as dispositive, granted summary judgment for McKesson as to faxes sent to online fax numbers, and decertified the class. *Id.* at 151. The Ninth Circuit affirmed. The Supreme Court granted cert "to decide whether the Hobbs Act required the District Court to follow the FCC's legal interpretation of the TCPA." *Id.*

The Supreme Court reversed and remanded, holding that "the default rule is that district courts in

enforcement proceedings may conclude that an agency's interpretation is incorrect." Rather than defer to FCC guidance, district courts must "determine the meaning of the law under ordinary principles of statutory interpretation, affording appropriate respect to the agency's interpretation." *Id.* at 155.

Three District Courts Find Text Messages Are Not "Telephone Calls"

Following *McLaughlin*, three district courts have found that text messages are not "telephone calls" under Section 227(c)(5).

First, in July 2025, Judge Jonathan Hawley of the Central District of Illinois ruled that the statutory phrase "telephone call" does not encompass text messages or SMS, finding that "text messaging was not an available technology in 1991, and thus 'telephone call' would not have included text messages," and that "in today's American parlance, 'telephone call' means something entirely different from text message." *Jones v. Blackstone Medical Services, LLC*, 792 F. Supp. 3d 894, 900 (C.D. Ill. 2025). The court declined to defer to FCC orders, noting that the FCC's 2003 Order "explicitly references only 227(b)," the section governing calls made using an ATDS, not 227(c). *See* 18 F.C.C. Rcd. 14014, 14115 (F.C.C. 2003) (finding ATDS restriction "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls"). The court concluded that "it is for Congress to respond to the issues presented in this case and to address the realities of today's technology (and the intrusions caused therefrom) which is commonplace in American life in 2025." *Jones*, 792 F. Supp. 3d at 900.

An appeal of *Jones* is currently pending in the Seventh Circuit. Notably, at least one district court has stayed resolution of a motion to dismiss a TCPA claim that turned on whether a text message is a telephone call pending the Seventh Circuit's decision in *Jones*. *Richards v. Fashion Nova, LLC*, 1:25-CV-01145-TWP-MKK, 2025 WL 3167069, at *2 (S.D. Ind. Oct. 27, 2025).

Two Florida district courts have followed Judge Hawley's reasoning. In *Davis v. CVS Pharmacy, Inc.*, 2025 WL 2491195, at *1 (N.D. Fla. 2025 Aug. 26, 2025), the court found that a text message is not a "telephone call" under § 227(c)(5), reasoning that "no ordinary person would think of a text message as a 'telephone call.'" The court relied on the statutory text's plain meaning and observed that Congress used "telephone call or message" elsewhere in the TCPA, but not in § 227(c)(5). The court rejected arguments based on FCC orders and legislative purpose, stating that "the best evidence of [Congress's] purpose is the language of the statute itself." *Id.*

In *Sayed v. Naturopathica Holistic Health, Inc.*, 2025 WL 2997759, at *1 (M.D. Fla. Oct. 24, 2025), the court adopted *Davis*, holding that "in common American English usage, a 'telephone call' and a 'text message' are separate and distinct forms of communication." The opinion noted that Congress elsewhere distinguished between "calls" and "text messages," reinforcing that the omission of "text message" from § 227(c)(5) was intentional. The court further cited *McLaughlin* to support its independent statutory analysis, not agency deference.

The plaintiffs in *Sayed* and *Davis* both voluntarily dismissed their appeals. No appeal is currently

pending in the Eleventh Circuit.

Other District Courts Find Text Messages are "Telephone Calls"

Not every district court has agreed with the courts' reasoning in *Jones*, *Davis*, and *Sayed*. On November 10, 2025, Judge Alonso of the Central District of Illinois held that "telephone call" as used in § 227(c) *does* encompass text messages, relying on a holistic reading of the TCPA, its purpose, and dictionary definitions. *Mujahid v. Newity, LLC*, 2025 WL 3140725 (N.D. Ill. Nov. 10, 2025). The court reasoned that "text messages to a cellular telephone qualify as a 'call' within the meaning of the statute," noting the Supreme Court's recognition in *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016) that text messages are calls for purposes of 227(b), and the Seventh Circuit's similar holdings in other TCPA contexts. The decision also cited FCC guidance and a plethora of district court precedent, including cases decided after *McLaughlin*. *See, e.g.*, *Wilson v. MEDVIDI Inc.*, 2025 WL 2856295, at *4 (N.D. Cal. Oct. 7, 2025) ("[N]othing in the text, structure, or purpose of the TCPA suggests the distinction between written and oral communications that Defendant urges the Court to adopt."); *Connor v. Servicequick Inc.*, 2025 WL 2855393, at *3 (D. Colo. Oct. 8, 2025) (reading 227(c)(5) to encompass text messages without analyzing the issue); *Wilson v. Skopos Fin., LLC*, 2025 WL 2029274, at *4 (D. Or. July 21, 2025) (same).

Conclusion

McLaughlin has injected considerable uncertainty into what used to be run-of-the-mill TCPA claims. Practitioners on both sides should carefully assess whether even well-established interpretations of the TCPA are consistent with the plain statutory language. The uncertainty, of course, puts businesses in a bind. While there is certainly a strong argument that a text message is not a "telephone call," absent definitive guidance, there is continued risk that a court could find that text messages sent without consent to individuals on the DNC violate the TCPA.

In addition to defending TCPA lawsuits, Kilpatrick's Class Action Team regularly provides advice on TCPA compliance. Please do not hesitate to reach out if you have questions.