

Publications

July 27, 2026 • Updates

Courts Continue to Depart From FCC TCPA Guidance After *Loper Bright* and *McKesson*

Key Takeaways

- Post-*Loper Bright* and *McKesson*, courts are increasingly interpreting the TCPA based on the statute's text rather than deferring to FCC guidance.
- That shift is narrowing some TCPA claims, with several courts holding that text messages are not "telephone calls" under Section 227(c)(5) and limiting certain FCC consent requirements.
- Businesses should revisit their TCPA litigation and compliance strategies, including evaluating early dispositive motions in text-only Section 227(c)(5) cases while continuing to monitor evolving case law.

Courts Are Moving Further Away from Automatic Deference to FCC Interpretations

For many years, courts' deference to Federal Communications Commission (FCC) guidance largely shaped how Telephone Consumer Protection Act (TCPA) cases were decided. That has changed significantly. In the wake of *Loper Bright*¹ and *McKesson*,² courts are increasingly emphasizing that they must independently interpret the TCPA's text rather than simply adopt agency guidance. Recent decisions suggest that where FCC opinions arguably go beyond the statute's language, courts are now more willing to narrowly interpret and limit application of the statutory language at issue.

"Texts Are Not Calls" Trend Reflects the Shift Away from FCC Guidance

One example of courts shifting away from deference to FCC guidance is the growing line of opinions holding that text messages are not "telephone calls" for purposes of 47 U.S.C. § 227(c)(5) (Section 227(c)(5)), the TCPA provision creating a private right of action for do-not-call claims. In *Steidinger v. Blackstone Medical Services*, the Seventh Circuit held that Section 227(c)(5) does not permit plaintiffs to sue based on unwanted text messages.³ Affirming the dismissal of the plaintiff's TCPA claims, the court concluded that the ordinary public meaning of "telephone call" at the time of the TCPA's enactment referred to communication by sound, not text.⁴ It also emphasized that Congress

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expressly distinguished between “calls” and “messages” elsewhere in the statute, but limited Section 227(c)(5)’s private right of action to persons who received more than one “telephone call.”⁵

The Seventh Circuit also rejected the plaintiff’s reliance on FCC guidance.⁶ Although the FCC has extended certain national do-not-call protections to text messages, the court explained that those regulations arise under provisions addressing the broader category of “telephone solicitations.”⁷ Section 227(c)(5), by contrast, creates a private remedy only for qualifying “telephone calls.” Consistent with *McKesson*, the court independently interpreted the statute and declined to allow the FCC’s treatment of texts in other contexts to override the language Congress enacted. *Steidinger* affirmed the Central District of Illinois’ decision in *Jones v. Blackstone Medical Services, LLC*, which had likewise declined to extend application of the statute beyond its text and held that Section 227(c)(5) does not reach text messages.⁸ The district court reasoned that whatever policy basis may exist for treating texts like calls, that judgment belongs to Congress, not the FCC or the courts, absent clear statutory language.⁹ The court’s reasoning reflects the broader post-*Loper Bright* view that statutory text, not agency expansion of the text, must guide its application.

Other courts have held similarly. In *Davis v. CVS Pharmacy Inc.*, the U.S. District Court for the Northern District of Florida held that a text message is not a “telephone call” under Section 227(c)(5),¹⁰ and in *Sayed v. Naturopathica Holistic Health, Inc.*, the U.S. District Court for the Middle District of Florida held similarly.¹¹ Since then, courts in additional “text-only do-not-call” cases have reached the same conclusion. See, e.g., *James v. Smarter Contact, Inc.*, No. 8:25-CV-1657-KKM-SPF, 2026 WL 879244 (M.D. Fla. Mar. 31, 2026) (dismissing text-only Section 227(c)(5) claims with prejudice because the 1991 meaning of “telephone call” was tied to sound and did not include text messages); *Stockdale v. Skymount Prop. Grp., LLC*, No. 1:25 CV 1282, 2026 WL 591842 (N.D. Ohio Mar. 3, 2026) (granting motion to dismiss after concluding that contemporaneous definitions of “call” and “telephone” did not reach texts); *Irvin v. Sonic Indus. Servs., LLC*, No. 3:25-CV-00242-LMM, 2026 WL 1098403 (N.D. Ga. Apr. 20, 2026) (same; rejecting reliance on pre-*McLaughlin* cases that deferred to FCC guidance); *Radvansky v. 1-800-Flowers.com, Inc.*, No. 1:25-CV-2811-TWT, 2026 WL 456919 (N.D. Ga. Feb. 17, 2026) (same); *Radvansky v. Kendo Holdings, Inc.*, No. 3:23-CV-00214-LMM, 2026 WL 810929 (N.D. Ga. Feb. 12, 2026) (granting judgment on the pleadings on the same theory). Together, those decisions reflect a broader willingness to depart from prior FCC guidance in deciding TCPA claims. The substantial number of dismissal decisions across many jurisdictions should serve as a basis for defendants alleged to have violated Section 227(c)(5) by sending texts to plaintiffs on a do-not-call list to file dispositive motions at the pleading stage.

The Fifth Circuit Applies the Same Reasoning to Consent for Prerecorded Calls

The same post-*Loper Bright* dynamic is now affecting consent rules for prerecorded calls. In *Bradford v. Sovereign Pest Control of TX, Inc.*, the Fifth Circuit held that the TCPA requires only prior express consent for prerecorded calls to wireless numbers, thus doing away with the FCC’s requirement of prior express *written* consent for prerecorded telemarketing calls; *i.e.*, oral consent is sufficient.¹² The court reasoned that the statute solely speaks to “the prior express consent of the called party,” and that nothing in the TCPA’s text justifies imposing a written-consent requirement.¹³

Bradford is already influencing other courts. In a recent decision, a federal court in Maryland declined to certify a TCPA class after concluding the FCC lacks authority to require “prior express written consent” for telemarketing calls.¹⁴ Courts are increasingly testing FCC TCPA interpretations against the statute’s text rather than treating agency

guidance as established precedent.

A Related Trend in TCPA Class Action Litigation

Separate from these merits-based decisions, this trend of closer judicial scrutiny of expansive TCPA theories is beginning to take shape in TCPA class action litigation. The trend most recently surfaced in *Mey v. Liberty Home Guard, LLC*, where the Fourth Circuit recently agreed to an interlocutory appeal of a class-certification order after Liberty Home Guard, LLC (Liberty) argued that recurring certification issues in TCPA cases – in this case issues arising from the typicality and adequacy requirements for class certification – have too often escaped meaningful appellate review.¹⁵

In its Federal Rule of Civil Procedure 23(f) petition, Liberty argued that a district court certified a nationwide TCPA do-not-call class even though the named plaintiff's injuries arose from a wrong number typo, while absent class members allegedly had consented, made inquiries, created existing business relationships, or agreed to arbitration, thus creating salient questions as to the putative class members' ability to satisfy the typicality and adequacy requirements. The petition goes further, asserting that there are a multitude of "important, recurring questions that will continue to evade review if the Fourth Circuit does not intervene," citing among these the wave of "wrong number" TCPA class actions [that are] flooding the courts."

What This Means for Businesses

Although these decisions do not eliminate TCPA risk, they reflect a growing willingness by courts to scrutinize FCC guidance against the TCPA's statutory text. For defendants sued under Section 227(c)(5) based solely on text messages – as opposed to voice calls – an early dispositive motion should now be the default defense strategy to test whether the court will join the growing line of decisions holding that texts are not "telephone calls" under that statute. Businesses should stay connected with their litigation counsel and continue to maintain robust compliance practices as the law continues to evolve and courts remain divided on key TCPA issues. We will continue to monitor these developments. Please reach out to our team with any questions regarding TCPA compliance or litigation.

[1] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[2] *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*, 606 U.S. 146 (2025).

[3] *Steidinger v. Blackstone Med. Servs.*, No. 25-2398, 2026 WL 2028517, at *5–6 (7th Cir. July 14, 2026).

[4] *Id.* at *2.

[5] *Id.* at *2–3.

[6] *Id.* at *4–5.

[7] *Id.* at *4.

[8] *Jones v. Blackstone Med. Servs., LLC*, 792 F. Supp. 3d 894, 901–02 (C.D. Ill. 2025).

[9] *Id.*

[10] *Davis v. CVS Pharmacy, Inc.*, 797 F. Supp. 3d 1270, 1273 (N.D. Fla. 2025).

[11] *Sayed v. Naturopathica Holistic Health, Inc.*, No. 8:25-CV-00847-SDM-CPT, 2025 WL 2997759, at *2 (M.D. Fla. Oct. 24, 2025).

[12] *Bradford v. Sovereign Pest Control of TX, Inc.*, No. 24-20379, 2026 WL 520620, at *2 (5th Cir. Feb. 25, 2026).

[13] *Id.*

[14] *Deborah Bradley v. DentalPlans.com*, No. CV 20-1094-BAH, 2026 WL 788856, at *9 (D. Md. Mar. 20, 2026).

[15] *Mey v. Liberty Home Guard, LLC*, No. 25-231, Petition to Appeal Under Rule 23(f) (4th Cir. Dec. 18, 2025).