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Another Court Finds the TCPA Does Not Apply to Texts —Time for Supreme Court Intervention?

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In a similar ruling to the Seventh Circuit's recent decision, we analyzed in *Steidinger v. Blackston Medical Services*, a district court in North Carolina found that the Telephone Consumer Protection Act (TCPA) ban on unwanted telephone calls does not apply to text messages.

These two concurrent decisions signal a clear circuit split that may require US Supreme Court intervention sooner rather than later.

Brief Synopsis

- A North Carolina resident sued RJ Reynolds, alleging that he had received multiple unwanted telemarketing text messages between February and April 2026. The plaintiff claimed that his phone number had been added to a "do-not-call" registry, yet he still received marketing text messages from RJ Reynolds on at least three separate occasions.

- The plaintiff filed suit in May 2026 on behalf of himself and a putative class of similarly situated individuals, claiming that these text messages violated the TCPA's ban on telephone solicitation if the phone numbers appear on the National Do Not Call Registry.

- RJ Reynolds moved to dismiss and argued that § 227(c) of the TCPA does not provide a private right of action for text messages.

- The district court granted the motion to dismiss on the grounds that the plain text of § 227(c)(5) does not include text messages.

The Court's Decision

The court found that the definition of a **"telephone call"** within the TCPA explicitly applies to calls and does not include text messages. The court pointed to other provisions of the TCPA that apply to text messages, such as § 227(a)(4), which defines a "telephone solicitation" as a "telephone call or message," and § 227(e)(8)(B), which defines a "caller identification service" as one that includes services identifying the origin of a "text message," in its conclusion that Congress intended § 227(c)(5) to have a "narrower scope."

The court noted that before the *Steidinger* ruling, most courts had assumed that § 227(c)(5) did apply to text messages, largely based on the Federal Communications Commission (FCC)'s interpretation that § 227(c)(5) included text messages.

However, the court stated that the Supreme Court's decisions in *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp* "changed the standard for judicial deference to agency statutory interpretation and called into question such decisions relying on the FCC's interpretation." Accordingly, the FCC's prior interpretation of § 227(c)(5) was no longer persuasive.

The Impact of *Steidinger* on the Court's Decision

Noting that the Fourth Circuit has not addressed this issue, the court applied the reasoning of *Steidinger* and highlighted the reasons why the plaintiff had misapplied the reasoning of that decision in his briefing.

- **The plaintiff argued that the court in *Steidinger* had misinterpreted the 1991 definition of a call,** which meant "to get or try to get into communication by telephone." Because of this, a "text message" is a "call" because it is a form of communication between telephones.
  - The court pointed out that in 1991, text messages did not exist, and the 1991 definition of a "telephone call" could not have meant a "text message" because at that time, a telephone was "an instrument for reproducing sounds."
- **The plaintiff argued that *Steidinger* failed to account for § 227(c)(5)(C)'s guidance on an affirmative defense** "turns on procedures to prevent 'telephone solicitations,' meaning that the section enforces its subsection's rules.
  - The court rejected this and said the contrast in language in the prohibition and the affirmative defense supported differentiating "telephone calls" from "telephone solicitations."
- **The plaintiff argued that the court should follow the precedent set by other district courts** that held that a "telephone call" under § 227(c)(5) "encompassed" text messages.
  - The court said if Congress had intended to eliminate or include text messages within the definition of a "telephone call" under § 227(c)(5), Congress would have used a "broader term" to encompass these different communications.

Broader Implications

While the outcome in this case and *Steidinger* are promising for larger corporations that rely on text message marketing campaigns, companies should not interpret these two decisions as a “free pass” to send unwanted text messages without consequences.

The Supreme Court may choose to address this developing circuit split as to whether text messages qualify as “telephone calls” under § 227(b). The First, Second, and Eleventh Circuits have previously recognized that text messages qualify as “calls” under § 227(b). The Ninth Circuit has also found that a text message falls under this statutory definition because it is a vehicle for communication through a telephone.

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