

TCPA Tracker: April-June 2025

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I. SCOTUS Overturns Ninth Circuit's Precedent on Binding FCC Interpretations of the TCPA

On June 20, 2025, the U.S. Supreme Court held that a district court in an enforcement proceeding is not bound by an agency's pre-enforcement interpretation of a statute. Rather, as the Court held in *McLaughlin Chiropractic Associates, Inc. v. McKesson Corporation*, the district court must independently interpret the statute according to traditional principles of statutory construction.

In 2009 and 2010, McKesson Corporation sent unsolicited fax advertisements to various medical practices, including McLaughlin Chiropractic Associates, Inc., in an effort to promote its products. In 2014, McLaughlin brought suit in the Northern District of California alleging that McKesson violated the TCPA by faxing unsolicited advertisements without the opt-out notice required under the statute. McLaughlin moved to certify a class of fax recipients who received the advertisements either on traditional fax machines or through online fax services. The district court certified the class without distinguishing between those two methods of receipt.

While McLaughlin's case was pending, the FCC issued [a declaratory ruling](#), interpreting "telephone facsimile machine" in the TCPA to exclude online fax services. The district court followed the Ninth Circuit precedent that, under the Hobbs Act, FCC final orders are reviewable exclusively by federal courts of appeals. As such, the district court reasoned that it lacked the authority "to question the validity of FCC final orders." It therefore treated the FCC declaratory ruling as binding and granted

summary judgment to McKesson on claims involving online fax services. The court then decertified the class, leaving McLaughlin with only twelve claims for faxes received on a traditional machine and a damages award of \$6,000. The Ninth Circuit affirmed.

The Supreme Court granted certiorari to decide whether the Hobbs Act required the district court to follow the FCC's legal interpretation of the TCPA.

In an opinion written by Justice Kavanaugh, the Court began by highlighting that pre-enforcement review statutes fall into three categories. The first category includes statutes that allow pre-enforcement review but specifically preclude judicial review in any subsequent enforcement proceedings. The next category consists of statutes that not only permit pre-enforcement judicial review but also allow judicial review in later enforcement proceedings. The final category includes statutes that allow pre-enforcement review but are silent on whether a party can challenge an agency's interpretation in future enforcement proceedings.

With respect to the Hobbs Act, which falls within the third category, the Court stated that it allows regulated and affected parties to seek review of agency orders and obtain greater clarity about their legal rights and obligations. This however did not bar district courts from reviewing and concluding that the agency incorrectly interpreted the statute in an enforcement proceeding. The Court's reasoning therefore established a default rule that the district court is not bound by an agency's interpretation but instead must independently determine for itself the meaning of the law under ordinary principles of statutory interpretation, affording appropriate respect to the agency's interpretation.

In reaching this conclusion, the Court disagreed with McKesson's argument that the Hobbs Act precluded judicial review by the district court, since it grants "exclusive jurisdiction" to the courts of appeals to "enjoin, set aside, suspend, or determine the validity" of agency orders. The Court clarified that this language applies only to courts of appeals exercising declaratory authority in pre-enforcement review, not to district courts adjudicating liability in an enforcement context. Thus, the Hobbs Act does not preclude judicial review in enforcement proceedings in such cases, and district courts must apply the default rule of independently determining whether the agency's interpretation is correct.

In light of the above, and in line with the Court's previous holding in *Loper Bright Enterprises v. Raimondo*, the Supreme Court concluded that the Hobbs Act does not require district courts in enforcement proceedings to accept an agency's statutory interpretation as binding. Accordingly, the Court reversed the judgment of the Ninth Circuit and remanded the case for further proceedings consistent with the Court's opinion.

Justices Kagan, Sotomayor, and Jackson issued a dissenting opinion, arguing the majority opinion misread the Hobbs Act in a way that was inconsistent with previous decisions reviewing the same statute.

McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp., 145 S. Ct. 2006 (2025).

II. Northern District of Illinois Dismisses TCPA Claim for Failure to Establish Connection Between Defendant and Marketing Calls

The United States District Court for the Northern District of Illinois granted Defendant SelectQuote's motion to dismiss on the grounds that Plaintiff Ronald Lightfoot failed to sufficiently allege that the marketing calls at issue were made by, or on behalf of, Defendant.

Plaintiff alleged that Defendant conducted a nationwide marketing campaign aimed at selling insurance products using a prerecorded message. The alleged calls were made by “Ashley, your health center representative,” calling to check eligibility for Medicare plans. Plaintiff further alleged that Defendant had engaged third-party marketing operators to place these calls on its behalf and that individuals who qualified during the calls were subsequently transferred to Defendant’s representatives.

On that basis, Plaintiff filed a putative class action lawsuit on behalf of all persons in the United States who (i) received a prerecorded telemarketing call, (ii) on their cellular telephone, (iii) from Defendant or an agent acting on its behalf.

In granting Defendant’s motion to dismiss, the Court emphasized that a successful TCPA claim requires the plaintiff to plausibly allege a connection between the defendant and the calls at issue, which can be vicariously through third parties. The Court found that Plaintiff’s complaint failed to meet this standard because the prerecorded message alleged in the complaint did not contain any information identifying Defendant as the caller, nor did the complaint allege facts sufficient to demonstrate that Defendant authorized the third party to make the calls. Consequently, the Court determined that Plaintiff had not plausibly shown that Defendant was responsible for the alleged calls.

Accordingly, the Court granted Defendant’s motion to dismiss without prejudice, allowing the plaintiff an opportunity to amend the complaint to address these deficiencies.

Lightfoot v. SelectQuote, Inc., 2025 WL 1547495, 2025 U.S. Dist. LEXIS 103026 (N.D. Ill. May 30, 2025).

III. Eastern District of Virginia Dismisses TCPA Claim for Failure to Plead Facts Establishing Defendant Initiated Marketing Calls

The United States District Court for the Eastern District of Virginia granted Defendant Senior Life Insurance Company’s (“SLIC”) motion to dismiss Plaintiff Thomas Matthew’s TCPA class action claim.

Plaintiff alleged that, despite his telephone number being registered on the National Do Not Call Registry since August 2021, he received three unsolicited phone calls promoting life insurance products purportedly offered by Defendant. He contended that the calls were similar, and during each he was asked qualifying questions related to eligibility for Defendant’s insurance services. He asserted that despite indicating his disinterest in the services, the calls persisted.

Based on these alleged facts, Matthews filed a single-count class action lawsuit asserting a violation of Section 227(b) of the TCPA. He sought injunctive relief barring Defendant from contacting individuals on the National Do Not Call Registry or using automated dialing systems, in addition to statutory damages, and any other relief the Court deemed appropriate.

Defendant challenged Plaintiff’s claim under two separate theories: first, Plaintiff lacked standing to bring suit because he failed to establish traceability, and second, Plaintiff failed to state a claim upon which relief can be granted because Plaintiff did not adequately allege that Defendant was directly or vicariously responsible for the calls. The Court rejected the first theory, but agreed on the second.

With respect to Defendant’s argument that Plaintiff lacked standing, Defendant highlighted that Plaintiff’s factual allegations failed to show Defendant initiated the calls, and therefore Plaintiff could not trace the injurious behavior back to Defendant. The Court found this standing argument to be too intertwined with the merits of the case because whether or not Defendant made the violating calls

would be dispositive of both jurisdiction and liability. Therefore, the Court denied Defendant's motion to dismiss for lack of subject matter jurisdiction.

However, the Court granted Defendant's motion to dismiss based on the same factual allegations for failure to state a claim. To survive dismissal under the TCPA, a plaintiff must plausibly allege that: (i) the defendant made one or more calls, (ii) to the plaintiff's cellular telephone, (iii) using an automatic telephone dialing system ("ATDS") or an artificial or prerecorded voice, and (iv) without the recipient's prior express consent. The defendant's liability may be established directly or vicariously, such as through the actions of agents or third-party representatives acting on the defendant's behalf.

The Court found that Plaintiff's complaint failed to satisfy either theory of direct or vicarious liability. In his complaint, Plaintiff did not allege vicarious liability at all. With respect to direct liability, the Court found that Plaintiff relied on conclusory statements such as his assertion that he "repeatedly received calls from SLIC" and that the calls were "solicitations from SLIC," without any factual support to substantiate those claims.

Although the complaint identified the phone number from which the calls originated and provided a basic description of their content, it did not plead any facts indicating that the caller was employed by or acting on behalf of Defendant. The Court emphasized that mere references to the company or the use of scripts resembling those used in marketing campaigns are insufficient to plausibly allege direct involvement by Defendant.

Because the complaint failed to allege facts supporting either direct or vicarious liability under the TCPA, the Court concluded that Plaintiff had not stated a claim upon which relief could be granted. Accordingly, the Court granted Defendant's motion to dismiss without prejudice.

Mathews v. Senior Life Ins. Co., 2025 WL 1181789, 2025 U.S. Dist. LEXIS 77426 (E.D. Va. Apr. 22, 2025).

IV. Western District of Texas Dismisses Plaintiff's TCPA Claim for Failure to Connect Calls to Defendant

The United States District Court for the Western District of Texas granted Defendant Savings Bank Mutual Life Insurance Company's motion to dismiss Plaintiff Yazmin Gonzalez's First Amended Complaint. The Court held that the Plaintiff failed to plausibly allege that Defendant was either directly or vicariously responsible for the allegedly violative telephone calls under the TCPA.

Plaintiff alleged that in February 2024 she received eight unsolicited telephone calls using a prerecorded voice from an entity identifying itself as "American Benefits," despite her phone number having been registered on the National Do Not Call Registry since March 2022. On the eighth call, Plaintiff alleged that she answered and was connected to a live representative who proceeded to ask her qualifying questions before eventually transferring her to a representative of Defendant, who assisted her in completing an application for life insurance coverage. The process resulted in Plaintiff receiving an approved life insurance policy from Defendant.

Plaintiff brought a claim against Defendant under both Sections 227(b) and (c) of the TCPA, seeking statutory damages and injunctive relief on the basis that the unsolicited calls violated both her common law privacy rights and the statutory provisions of the TCPA.

In reviewing Plaintiff's complaint, the Court stated that the TCPA has two sections that grant an individual a private right of action: Section 227(b), which regulates calls made using an automatic

telephone dialing system or prerecorded voice, and Section 227(c), which prohibits telephone solicitations to individuals registered on the National Do Not Call Registry. The Court also noted that a defendant may be held liable under either provision through direct or vicarious liability.

Ultimately, the Court found that Plaintiff failed to allege facts supporting either theory of liability. With respect to direct liability, the Court noted that each of the eight calls at issue began with a message identifying the caller as “Stephanie from American Benefits.” There were no facts indicating the call was from Defendant and not American Benefits, as stated in the prerecorded message. On this basis, the Court concluded that Defendant could not be held directly liable under the TCPA.

For vicarious liability, the Court noted that to establish such a claim, a plaintiff must show that the defendant (1) granted actual or apparent authority to the third party to act on its behalf, and (2) maintained control over the third party’s conduct. The Court found that Plaintiff’s complaint lacked any factual allegations that Defendant authorized or directed American Benefits’ conduct as alleged. Accordingly, the Court concluded that Plaintiff failed to state a plausible claim for relief under the TCPA, and granted Defendant’s motion to dismiss.

Gonzalez v. Sav. Bank Mut. Life Ins. Co. of Mass., 2025 WL 1145266, 2025 U.S. Dist. LEXIS 76839 (W.D. Tex. Apr. 15, 2025).

V. District of Utah Dismisses TCPA Claim for Failure to Establish That Alleged Violative Call Was Unsolicited

The United States District Court for the District of Utah granted Defendant Sugarhouse Real Estate Group’s motion to dismiss a TCPA claim brought by Plaintiff Eric Butera, finding that the alleged violative call was not unsolicited within the meaning of the statute.

Plaintiff alleged that on November 26, 2024, he received a missed call from a phone number associated with Defendant. He later returned the call and reached a voicemail recording, which identified the user of the number as “Dave from the Utah Roost team at Keller Williams Salt Lake City,” also known as Sugarhouse Real Estate Group. Plaintiff hung up without leaving a message or otherwise communicating with Dave. The next morning, Plaintiff received a call from the same number during which an agent asked Plaintiff to relist his property for sale. Plaintiff informed the agent that his number was registered on the National Do Not Call Registry and asked not to be contacted again.

Based on these facts, Plaintiff filed a proposed class action complaint against Defendant, seeking an injunction against Defendant from training its agents to place marketing calls to consumers without consent, including calls to phone numbers that are registered on the National Do Not Call Registry. Defendant moved to dismiss the complaint, arguing that the allegations failed as a matter of law because Plaintiff identified only one solicitation call, not two; Defendant’s second call was simply in response to the call Plaintiff placed to the Defendant’s agent.

The Court agreed. It held that the return call from Defendant was made in response to Plaintiff’s own call and was not an “unsolicited” attempt to encourage the purchase or rental of goods or services. The Court reasoned that it is common in this day and age for a person to return a “missed call” that is displayed on their phone. Thus, Plaintiff’s call to Defendant, without leaving a voicemail message that he was on the Do Not Call Registry, was an invitation for a return call, and therefore, could not be considered a second “solicitation” under the TCPA.

Accordingly, the Court granted Defendant’s motion to dismiss with prejudice, concluding that

Plaintiff's allegations failed to establish the occurrence of a second unsolicited telemarketing call as required to state a claim under the TCPA.

Butera v. Sugarhouse Real Est. Grp., L.C., 2025 WL 1798968, 2025 U.S. Dist. LEXIS 125300 (D. Utah June 30, 2025).

VI. District of Arizona Dismisses Claim for Failure to Allege "Telephone Solicitation" Under the TCPA

The United States District Court for the District of Arizona granted Defendants' motion to dismiss a putative class action complaint filed by Plaintiff Vicki Coffey, holding that Plaintiff failed to plausibly allege that the communications constituted "telephone solicitations" under the TCPA.

Plaintiff claimed to receive numerous calls and text messages in early 2024 aimed at soliciting her to sell her home despite her number being registered on the National Do Not Call Registry. The number placing the calls was linked to a website operated by one of the Defendants.

Based on these alleged facts Plaintiff filed a putative class action against Defendants claiming that the calls and text messages she received constituted "telephone solicitations" in violation of the TCPA and its implementing regulations. In response, Defendants argued that the calls or texts were not "solicitations" within the meaning of the TCPA, and that claims should be dismissed because Plaintiff has failed to plausibly allege that Defendants were directly or vicariously liable under the TCPA.

The Court agreed with Defendants on the first argument, holding that Plaintiff's allegations did not meet the statutory definition of a "telephone solicitation." Finding the TCPA claims failed as a matter of law on this point alone, the Court did not address Defendants' second argument.

In its reasoning, the Court emphasized the definition of a "telephone solicitation" as the initiation of a telephone call or message for the purpose of encouraging the purchase, rental of, or investment in, property, goods, or services, which is transmitted to any person. The Court explained that whether a communication qualifies as a solicitation depends on the purpose of the message. Here, the Court found that the purpose of Defendants' communication was to offer to purchase Plaintiff's home, rather than to induce Plaintiff to purchase, rent, or invest in anything. Hence, because the messages were not aimed at encouraging Plaintiff to make a purchase or investment, they did not qualify as solicitations under the TCPA's plain language.

Accordingly, the Court granted Defendants' motion to dismiss the case with prejudice, concluding that Plaintiff's TCPA claim could not be sustained as a matter of law.

Coffey v. Fast Easy Offer LLC, 2025 WL 1591302, 2025 U.S. Dist. LEXIS 106786 (D. Ariz. June 5, 2025).

VII. Northern District of New York Dismisses TCPA Claim for Failure to Establish a Violation of the TCPA Internal Policy Requirements

The United States District Court for the Northern District of New York granted Defendant Eyebuydirect's motion to dismiss Plaintiff Joseph Hulett's TCPA claim. The Court held that Plaintiff failed to plausibly allege that Defendant did not maintain the requisite internal marketing policy in accordance with the TCPA and its implementing regulations.

In his complaint, Plaintiff alleged he received a promotional text message from Defendant, and that

in response, he requested to be removed from future communications. Plaintiff further alleged that Defendant confirmed his opt-out request but nonetheless sent him three additional promotional messages over the following nine days. Based on these facts, Plaintiff filed suit under 47 C.F.R. § 64.1200(d), asserting that Defendant failed to (1) maintain a written do-not-call policy, (2) maintain an internal do-not-call list, and (3) adequately train personnel in telemarketing compliance. Plaintiff also sought to represent a class of individuals who allegedly received messages from Defendant after submitting opt-out requests.

Defendant moved to dismiss, arguing that Plaintiff failed to plausibly allege that it lacked a written “do-not-call” policy and failed to implement the required procedures. Defendant further argued that it honored Plaintiff’s opt-out request within a reasonable timeframe by halting further text messages seven business days and nine days total after Plaintiff’s request.

The central issue for the Court was whether Plaintiff’s claims adequately alleged that Defendant violated the TCPA’s internal policy requirements. Under Section 64.1200(d), any company initiating marketing calls by telephone must have a written policy which is available to consumers upon demand, in addition to training personnel as to the existence and use of the internal do-not-call list, recording and honoring do-not-call requests within a reasonable period, and maintaining records of do-not-call requests that must be honored for five years. To successfully plead a claim under Section 64.1200(d), a plaintiff must plausibly allege that the entity placing the calls failed to institute the proper procedures prior to the initiation of the call. While a plaintiff may request a copy of a defendant’s internal policies to support such a claim, courts have recognized that, in the absence of such a request, allegations of continued contact after an opt-out request may suffice to plausibly suggest that the defendant did not maintain the required internal procedures, but only if the delay in honoring the request was unreasonable.

Defendant argued that because the TCPA has a 30-day safe harbor, it had a 30-day period to stop communicating with Plaintiff after receiving his opt-out request. The Court differentiated between these two standards. In assessing what constitutes an unreasonable period to comply with an opt-out request, the Court noted that the TCPA’s 30-day provision does not permit non-compliance for 30 days, but rather it sets a maximum threshold for which continued marketing calls will be considered unreasonable. For shorter periods of continuous marketing calls, a determination of unreasonableness will depend on the facts. Citing precedent from the Second Circuit, the Court observed that a 15-day delay had previously been deemed reasonable as a matter of law, and that a three-day delay was similarly not unreasonable under the law.

Applying this reasoning, the Court found the nine-day delay in honoring the Plaintiff’s opt-out request reasonable as a matter of law. Without an unreasonable delay and a request for Defendant’s internal marketing policy, the Court found no basis for drawing the inference that Defendant violated any part of Section 64.1200(d). In light of this the Court grant Defendant’s motion to dismiss without prejudice.

Hulett v. Eyebuydirect Inc., 2025 WL 1677071, 2025 U.S. Dist. LEXIS 112645 (N.D.N.Y. June 13, 2025).