

TCPA Tracker: July-August 2025

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I. Central District of Illinois Finds Text Messages Are Not Covered Under the TCPA

The United States District Court for the Central District of Illinois granted Defendant Blackstone Medical Services, LLC's motion to dismiss a putative class action complaint, holding text messages are not covered by the Do Not Call provisions of the TCPA.

The complaint alleged that Plaintiffs received repeated marketing text messages despite texting STOP in response. Based on these facts, Plaintiffs filed suit under 47 C.F.R. § 227 *et. seq.* and 47 C.F.R. §64.1200(c)(2) and (d), as well as the Florida Telephone Solicitation Act ("FTSA"), Fla. Stat. § 501.059(5). With respect to the TCPA causes of action, Defendant moved to dismiss, arguing that phrases like "text message" and "SMS message" were entirely absent from Section 227(c)(5) and its implementing instructions. Thus, by the statute's plain text, Section 227(c) only covers "telephone calls," not text messages. In response, Plaintiffs argued that the relevant FCC Orders from 2003, 2012, 2015, and 2016 established the FCC's determination that text messages are coextensive with calls and therefore are included in the statute's coverage.

The Court agreed with the Defendants. In reaching this decision, the Court first explained that the 2003 FCC Order applies to wireless numbers but expressly mentions "automatic telephone dialing systems." This implies that the 2003 FCC Order was only meant to apply to claims asserted under Section 227(b). Moreover, the Court's later decisions on the issue only served to incorporate this interpretation. Next, the Court found that text messages could not have been contemplated in the meaning of "telephone calls" at the time of drafting, given that text messages did not exist in 1991. Lastly, the Court found that there was no reason to assume that Congress intended "call" and "text" to be used interchangeably, noting that in modern day, the two terms relate to decidedly different modes of communication.

Before dismissing the complaint, the Court opined that Plaintiffs' argument was not *per se* unreasonable given the TCPA's purpose and texting's ubiquity in daily life. That said, it was not the Court's role to "legislate" by reading terms into the TCPA that are not actually present. Accordingly, the Court dismissed the TCPA causes of action for failure to state a claim, and dismissed the remaining FTSA cause of action for lack of subject matter jurisdiction.

Plaintiffs filed an appeal to the Seventh Circuit on August 12, 2025.

Jones v. Blackstone Med. Servs., LLC, 2025 WL 2042764, 2025 U.S. Dist. LEXIS 138371 (C.D. Ill. July 21, 2025).

II. Sixth Circuit Affirms Dismissal of Conclusory TCPA Claims

The Sixth Circuit affirmed the Eastern District of Michigan's dismissal with prejudice of Plaintiff Antonio L. Fluker's complaint alleging Defendant Ally Financial, Inc. placed hundreds of calls to his cell phone in violation of the TCPA.

Plaintiff's complaint alleged solely that Defendant placed more than eight hundred calls to his cell phone in a twenty month period using both an automated telephone dialing system ("ATDS") and a prerecorded voice. Defendant moved to dismiss the complaint on the grounds that Plaintiff failed to plead supporting factual allegations to make his claims plausible. The Eastern District of Michigan agreed with Defendant and dismissed the complaint.

On appeal, the Sixth Circuit reviewed Plaintiff's claims de novo. The court reviewed the complaint in the light most favorable to Plaintiff, liberally construing the pleadings because Plaintiff was a *pro se* litigant. However, even under this liberal reading, the court could not find Plaintiff's allegations plausible.

The Sixth Circuit explained that to successfully plead the use of an ATDS, a plaintiff must allege facts that plausibly support that defendant used "a machine that has the ability 'to store or produce telephone numbers to be called, using a random or sequential number generator,' and can dial these generated numbers." Yet here, the only factual support for Defendant's use of an ATDS in the complaint was the pure volume of calls. The court found this fact alone did not satisfy the plausibility standard required to state a claim.

Similarly, in support of his prerecorded-voice cause of action, Plaintiff's only factual support was once again the number of calls placed. The Sixth Circuit noted that "call volume is more persuasive on the prerecorded-voice issue than it is on the automatic-telephone-dialing-system issue," and that common sense supports that a prerecorded voice may have been used to make an average of forty calls each month for a span of twenty months. But this fact without more still was not enough to make plausible the allegation that Defendant used a prerecorded voice. The Sixth Circuit instructed that "simple observations about the nature of the call," such as "plaintiff's inability to interrupt the speaker on the other end of the line or conspicuous periods of dead air in the middle of the message," would have satisfied the pleading standard.

But because Plaintiff's complaint merely recited the causes of action without alleging crucial facts, the Sixth Circuit affirmed the Eastern District of Michigan's dismissal of the complaint with prejudice.

Fluker v. Ally Financial, Inc., 2025 WL 1827747, 2025 U.S. App. LEXIS 16515 (6th Cir. July 2, 2025).

III. Eastern District of California Finds Offers to Buy Property Are Not Solicitations Under the TCPA

The United States District Court for the Eastern District of California issued a report and recommendation in support of Defendant Omid Aghazadeh's motion to dismiss, finding an offer to buy does not fall within the definition of a "solicitation" under the TCPA.

Plaintiff Mark Aussieker brought a putative class action complaint against Defendant after receiving

various text messages inquiring if he owned certain property and if he would be interested in selling it. Defendant moved to dismiss for lack of subject matter jurisdiction and failure to state a claim.

Section 227(c)(5) of the TCPA “prohibits initiating ‘more than one telephone [solicitation] within any 12-month period’ to a ‘residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry.’” It further defines “telephone solicitation” as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, investment in property, goods, or services, which is transmitted to any person”

In support of his argument for dismissal, Defendant relied on a recent case from the District of Arizona, *Coffey v. Fast Easy Offer LLC*, No. 2:24-cv-02725, where the court answered the same question on almost identical facts. In *Coffey*, the court rejected plaintiff’s argument that text messages offering to purchase property impliedly contained an offer of services. As the court explained, if the plaintiff engaged with the defendant’s offer, the plaintiff would be making money on the sale of her property, and thus the offer would fall outside of the TCPA’s definition of “solicitation.”

Here, the court found the decision in *Coffey* to be persuasive, noting that although offers to buy property may be as “unwelcomed and intrusive” as solicitations for the purchase or rental of investment in property, goods, or services, these offers were not contemplated by Congress in the “solicitation” definition and thus fall outside the scope of the TCPA.

As such, the court recommended dismissing Plaintiff’s complaint.

Aussieker v. Aghazadeh, 2025 WL 2021040, 2025 U.S. Dist. LEXIS 137718 (E.D. Cal. July 18, 2025).

IV. Fourth Circuit Denies Prerecorded Voice Class Certification

The Fourth Circuit affirmed the Eastern District of Virginia’s decision to deny class certification of Plaintiff’s prerecorded voice class and exclude the testimony of Plaintiff’s witness.

Plaintiff, Clarence Davis, received multiple phone calls from Defendant Capital One seeking payment for a debt. However, Plaintiff did not have a Capital One account. Instead, the cellphone number which was recently reassigned to Plaintiff had previously been assigned by the delinquent account holder. Plaintiff brought a class suit against Defendant for violations of the TCPA.

Plaintiff defined the proposed class as:

All persons or entities throughout the United States (1) to whom Capital One initiated a call (2) directed to a number assigned to a cellular telephone service, but not assigned to a current account holder of Capital One (3) in connection with which Capital One used an artificial used or prerecorded voice (4) from four years before the filing of certification.

To identify class members, Plaintiff hired expert Anya Verkhovskaya. In her expert report, Verkhovskaya identified over 600 potential class members from a 5,000 person sample. But, Defendant’s expert, David Kalat found that more than 75% of those identified were actually Capital One customers. Defendant filed a Daubert motion to disqualify Plaintiff’s expert on the grounds that this proposed methodology could not feasibly and accurately identify class members. A district court in Eastern District of Virginia agreed with Defendant and found that Plaintiff’s expert failed to identify proposed class members with a sufficient degree of feasibility. The district court further found that because these methods were unreliable, the proposed class could not satisfy the predominance or ascertainability requirements to sustain a class action in the Fourth Circuit.

The Fourth Circuit reviewed both of the district court's holdings under an abuse of discretion standard, and ultimately upheld both.

The Fourth Circuit found that there were multiple weaknesses in Plaintiff's expert's analysis to support the district court's finding. For example, although Plaintiff's expert identified a four-part methodology for identifying class members, she only completed parts one through three. Additionally, Plaintiff's expert's analysis relied on the Reassigned Numbers Database ("RND"), but the time period of the class predated the existence of the RND, and even if the RND applied to the relevant time period, the disconnect dates from the RND database are confidential and not accessible to the public. Even Plaintiff's own phone number would not be part of the proposed class under Plaintiff's expert's methodologies because his phone number was registered under a pseudonym. Taking all of this together, the Fourth Circuit found there was ample evidence available to the district court allowing it to find Plaintiff's expert's testimony was not the product of reliable principles or methodology.

Because the Fourth Circuit found the district court did not abuse its discretion in disqualifying Plaintiff's expert, the district court's conclusion that the proposed class was not sufficiently ascertainable was also supported. For a class to be ascertainable, the class must be readily identifiable using objective criteria and it must be administratively feasible to identify the class. Without reliance on his expert's testimony, Plaintiff offered little other explanation to ascertain the class. Therefore, the district court's finding was affirmed by the Fourth Circuit.

Davis v. Capital One, N.A., 2025 WL 2445880, 2025 U.S. App. LEXIS 21916 (4th Cir. Aug. 26, 2025)