



## After *McLaughlin v. McKesson*: A Seismic Shift in TCPA Litigation and Jurisprudence

by Aaron C. Tift

The Supreme Court’s decision in *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp.*<sup>1</sup> fundamentally reorients Telephone Consumer Protection Act (“TCPA”)<sup>2</sup> litigation away from reliance on FCC determinations and toward district courts’ independent statutory analysis. In private TCPA suits and civil enforcement actions, trial courts are no longer bound by the FCC’s interpretations. Courts now must decide the “best reading” of the statute while giving agency views only “appropriate respect.”

By eliminating the binding effect of FCC interpretations in TCPA litigation, the Court handed defendants powerful new tools to challenge expansive agency readings that have previously foreclosed meritorious defenses. At the same time, plaintiffs share the same ability to challenge defense-friendly FCC interpretations. This change will reshape class certification, spur forum divergence, and require defense teams to win not on Hobbs Act deference, but on statutory text, factual development, and Article III standing challenges. The locus of interpretive authority has shifted from the Commission to the courts.

### The Stakes Have Never Been Higher

The TCPA’s combination of near strict liability, a private right of action, and enumerated statutory damages<sup>3</sup> has long produced outsized exposure in telemarketing and junk-fax cases. These features, multiplied by high-volume marketing conduct, and amplified by the class action device, create enormous potential liability.<sup>4</sup> The situation is further complicated by *Mims v. Arrow Financial Services*,<sup>5</sup> which confirmed concurrent federal and state jurisdiction, allowing plaintiffs to pick favorable fora and procedural postures.

In the post-*McLaughlin* world, litigants will spend far less time asking, “What did the FCC say?” and far more time asking, “What does § 227 mean?,” utilizing ordinary interpretive tools. This fundamental shift transforms TCPA litigation from an exercise in administrative deference to a textual battle over statutory interpretation.

### Understanding *McLaughlin*’s Groundbreaking Holding

The *McLaughlin* case arose from a seemingly routine junk-fax dispute, but its procedural complexity revealed a critical flaw in how courts had been treating FCC interpretations. *McLaughlin* sued over unsolicited fax advertisements, and the district court initially certified a class that included

<sup>1</sup> *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 145 S. Ct. 2006, 222 L. Ed. 2d 405 (2025).

<sup>2</sup> The Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227.

<sup>3</sup> The TCPA specifies damages of \$500 per violation (trebled to \$1,500 for willful or knowing violations).

<sup>4</sup> See *McLaughlin*, 606 U.S. at 149.

<sup>5</sup> *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 132 S. Ct. 740, 181 L. Ed. 2d 881 (2012).

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recipients using “online fax services,” which are cloud-based or email delivery systems. After certification, however, the FCC issued its *Amerifactors* declaratory ruling concluding that “an online fax service is not a ‘telephone facsimile machine.’”<sup>6</sup> The district court then treated Ninth Circuit precedent as requiring obedience to that order under the Hobbs Act. Consequently, the court granted summary judgment on the online fax claims and decertified the class, leaving only 12 traditional faxes and a \$6,000 award.

The Supreme Court’s reversal fundamentally altered this landscape. The Court held that the Hobbs Act does not make FCC interpretations binding in later civil enforcement or private suits. Instead, district courts must “interpret the statute as courts traditionally do under ordinary principles of statutory interpretation,” while affording the agency’s view only “appropriate respect.”<sup>7</sup>

This holding flows from the Court’s careful distinction between pre-enforcement review schemes that expressly preclude later review and the Hobbs Act, which the Court determined does not contain such preclusive language. The default rule, confirmed by the Administrative Procedure Act, allows judicial review of agency legal interpretations in enforcement proceedings.<sup>8</sup> The FCC’s 2019 *Amerifactors* ruling remains important, but now as persuasive authority rather than controlling law in TCPA litigation.

### **An Administrative Law Revolution, From Chevron to “Appropriate Respect”**

*McLaughlin* cannot be understood in isolation from the broader administrative law revolution that culminated in *Loper Bright Enterprises v. Raimondo*,<sup>9</sup> which overruled *Chevron* one year prior. In short, *Loper Bright* instructed courts to exercise independent judgment and to respect agency views only insofar as they persuade.<sup>10</sup> *McLaughlin* operationalizes that methodology in the TCPA context, making clear that FCC constructions do not automatically become binding law in future litigation.

This shift represents more than a technical adjustment in deference doctrine; it fundamentally alters the litigation landscape. Defense attorneys can no longer rely on favorable FCC rulings as silver bullets that end cases at summary judgment. Nor can plaintiffs depend on expansive or extra-statutory assertions of authority by the FCC to resuscitate weak claims. Instead, both sides must be prepared for textual statutory adjudication, where agency views compete with other interpretive tools rather than commanding automatic deference.

### **Why This Represents a Seismic Shift for TCPA Litigation**

The practical implications of *McLaughlin* extend far beyond procedural debates over administrative law. For TCPA defendants, the decision eliminates what had been, in some narrow cases, a predictable shield against class actions. Before *McLaughlin*, defense-favorable FCC rulings could short-circuit claims or decertify classes by virtue of their “binding effect” under the Hobbs Act. These FCC rulings now can be used to persuade but must stand primarily on the text. Similarly, plaintiff-friendly FCC rulings must also be anchored first on their statutory merit. These rulings enter as arguments in a textual debate that the district courts must resolve *de novo*. The practical result is more textual briefing, added factual development, and fewer quick dispositions based solely on agency interpretations.

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<sup>6</sup> *In the Matter of Amerifactors Fin. Grp., LLC*, 34 F.C.C. Rcd. 11950, 11953 (2019).

<sup>7</sup> *McLaughlin*, 606 U.S. at 168.

<sup>8</sup> The Court uses the term “enforcement proceedings” to include “both (i) enforcement actions brought by the Government and (ii) civil suits brought by private parties alleging a defendant’s violation of a statute, regulation, or order.” *McLaughlin*, 606 U.S. at 153 n.1.

<sup>9</sup> *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

<sup>10</sup> *Id.* at 412.

The decision opens the door to widespread forum divergence. Without binding FCC interpretations, the meaning of key TCPA terms, such as “advertisement,” and the scope of “call” in texting cases, will likely vary dramatically across districts and circuits. Plaintiffs will inevitably steer toward fora receptive to broader readings, while defendants will seek venues emphasizing textual constraint and concreteness. The concurrence to the Supreme Court’s decision in *PDR Network* had already previewed this uncertainty.<sup>11</sup> Until the emerging circuit splits reach the Supreme Court, *McLaughlin* removes the deference overlay that had previously muted such issues.

The immediate impact has been dramatic. Shortly after the decision, federal courts issued conflicting rulings on identical TCPA issues. In *Jones v. Blackstone Medical Services*, the court held that text messages are not “telephone calls” under the TCPA’s Section 227(c) Do-Not-Call provisions, conducting independent statutory interpretation.<sup>12</sup> The same day, *Wilson v. Skopos Financial* reached the opposite conclusion, finding text messages are “calls” covered by Do-Not-Call protections, also conducting its own statutory interpretation.<sup>13</sup> This divergence showcases both the opportunities and risks *McLaughlin* creates for defendants.

This shift fundamentally alters class certification dynamics. Rule 23(b)(3) commonality and predominance analyses will now hinge on statutory interpretation combined with factual development, rather than on controlling FCC orders. Defendants can argue that individualized issues, including transmitting technology, methods of receipt, consent, revocation, and the communication’s advertising or informational content, will swamp common ones. This is especially applicable in mixed traditional-fax and online-delivery classes, or classes involving varying forms of consent to receive calls or text communications.

### **Core Opportunities and Challenges Defendants Will Face**

***Win with Superior Textual Analysis.*** Defendants no longer need to overcome, nor can they casually rely on, binding FCC interpretations. All parties now require better statutory arguments. Defense briefs must now win the statutory question on the merits through careful textual analysis. In online-fax cases, for example, the defense frame should emphasize that “telephone facsimile machine” denotes a physical device whose misuse imposes the specific harms Congress identified in 1991: line blocking and paper, ink, and time costs. These harms are typically absent with cloud-delivered PDFs that recipients view like email.

This is also seen in the developing cases interpreting the definition of “call” under the TCPA. The FCC has long interpreted “call” to encompass text messages, treating SMS communications as functionally equivalent to voice calls. Defendants can now build comprehensive textual arguments emphasizing the ordinary meaning of “call” at the enactment of the TCPA and the lack of identified harms with text, rather than voice, messages.

***Early Merits Fights Will Be Deeper and More Technical.*** *McLaughlin* ensures that motions to dismiss and motions to strike class allegations will increasingly hinge on the pleading of technological facts that bear on the best reading of the statute. Courts will need to understand how calls/messages traverse networks, what resources are actually consumed, how numbers are stored, generated, and dialed, and whether any random or sequential number generator is used dialing or placing the communication. Previous reliance on FCC orders constraining or defining the analysis will no longer carry the day.

<sup>11</sup> *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 588 U.S. 1, 26, 139 S. Ct. 2051, 2066, 204 L. Ed. 2d 433 (2019) (Kavanaugh, J., concurring).

<sup>12</sup> *Jones v. Blackstone Med. Servs., LLC*, No. 1:24-CV-01074-JEH-RLH, 2025 WL 2042764 (C.D. Ill. July 21, 2025). The author notes that this case is currently under appeal in the Seventh Circuit Court of Appeals, at the time of publication briefing by the parties is ongoing.

<sup>13</sup> *Wilson v. Skopos Fin., LLC*, No. 6:25-CV-00376-MC, 2025 WL 2029274, at \*4 (D. Or. July 21, 2025).

This provides defendants with new opportunities to challenge plaintiffs' class allegations under the Rule 23 framework. With broader plaintiff theories now subject to independent judicial scrutiny, defendants can demonstrate how individualized issues require fact intensive mini trials. Issues involving the methods of receipt, forms of consent, types of revocation, whether particular devices qualify as "machines" or "autodialers," and reassigned numbers, all can involve differing and diverging analysis.

**Article III Standing Remains a Potent Gatekeeper.** *TransUnion LLC v. Ramirez*<sup>14</sup> requires plaintiffs to demonstrate concrete harm for each class member. This requirement takes on increasing significance in the post-*McLaughlin* landscape. For traditional voice calls or paper faxes, plaintiffs can readily point to annoyance, time, paper, and ink burdens as applicable. For text messaging or online fax delivery, however, defendants should argue the absence or reduced materiality of those harms and the need for individualized proof of injury. Defendants should press these standing challenges at every stage: pleading, certification, summary judgment, and trial.

**Keep ATDS Claims Cabined by Duguid.** The Supreme Court's holding in *Duguid*,<sup>15</sup> that an ATDS must use a random or sequential number generator to store or produce numbers, provides defendants with a clear textual anchor. However, plaintiffs will attempt to re-expand this definition in a world without FCC deference by invoking statutory purpose or contextual arguments. Defendants must resist efforts to re-import vacated FCC interpretations and maintain focus on what dialing systems specifically do and how those functions relate to the purpose of the TCPA at the time of enactment. The *Duguid* standard provides a concrete, technology-focused test that can be applied through careful factual development and expert testimony.

**Primary-Jurisdiction Stays Will Be Harder to Justify.** If courts must interpret the TCPA themselves while giving the FCC only "appropriate respect," stays pending FCC action become much more difficult to justify. While stays may still make sense for narrow technical questions that the agency is actively addressing, *McLaughlin* pushes district courts toward deciding statutory issues immediately rather than waiting for agency guidance. This shift places the defense of TCPA claims squarely in the hands of the parties directly under threat.

**State-Court Risk and Fragmented Precedent.** Because *Mims* recognizes concurrent state and federal jurisdiction, plaintiffs can exploit favorable state fora to obtain expansive statutory interpretations. The risk of divergent readings across state and federal systems is particularly acute in texting and junk-fax cases. In these matters technical distinctions can drive liability determinations, and "mini-TCPAs" created by state law may have more ambiguous technical definitions that plaintiffs can attempt to improperly intertwine with the federal TCPA definitions. Removal and Class Action Fairness Act strategies remain critical tools for avoiding plaintiff-friendly venues, but defendants must also prepare for the possibility that favorable federal precedents may not bind state courts interpreting the same statutory language or similar state-based restrictions.

### **Strategic Moves in the Post-McLaughlin Era**

Successful TCPA defense in the post-*McLaughlin* era requires a fundamental strategic reorientation. First and foremost, defense arguments must lead with statutory text, building cases around ordinary meaning, structural analysis, and historical context while precisely using interpretive canons. Defendants should present FCC orders like *Amerifactors* as persuasive aids, while attacking unfavorable orders as incorrect interpretations deserving no deference. Post-*McLaughlin* courts must now approach their opinions from the text first, and defendants should be fully ready to present cogent briefs assisting them in the analysis.

<sup>14</sup> *TransUnion LLC v. Ramirez*, 594 U.S. 413, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021).

<sup>15</sup> *Facebook, Inc. v. Duguid*, 592 U.S. 395, 141 S. Ct. 1163, 209 L. Ed. 2d 272 (2021).

Finally, when the FCC issues new interpretations that could shift liability exposure, defendants should consider timely Hobbs Act petitions to obtain binding appellate review of orders' validity. *McLaughlin* clarifies that subsequent private suits will not treat such FCC orders as binding, making pre-enforcement review the only avenue for truly binding determinations. This is particularly relevant to defendants located in jurisdictions that often concur with agency interpretations or regularly adopt broad statutory interpretations.

### Immediate Compliance Adjustments

The *McLaughlin* decision demands immediate attention to compliance programs and litigation preparedness. TCPA policies should be re-anchored to statutory text and judicial precedents rather than FCC guidance, treating agency rulings as persuasive authority rather than binding law.

Data retention practices must be hardened to support the more intensive factual development that *McLaughlin* demands. Organizations should maintain provable logs of consent, revocation, delivery paths, device characteristics, and opt-out processing, recognizing that this information will be essential for standing, ascertainability, and predominance arguments in putative class action cases.

Technical expert capacity is now even more essential. Organizations and potential defendants should preemptively identify professionals who can explain dialing architecture, message routing, and delivery modalities at the pleadings stage if necessary. This combined with forum risk mapping should track how different circuits interpret key TCPA terms, and state-based "mini-TCPA," terms post-*McLaughlin*. With this data, defendants should plan and adjust removal and transfer strategies accordingly.

### Conclusion

*McLaughlin v. McKesson* did not rewrite the TCPA's text, but it fundamentally rewrote how TCPA disputes will be decided. By rejecting Hobbs Act binding effect for FCC interpretations and insisting on independent judicial interpretation, the Court transformed many once dispositive agency deference questions into fact and statutory text intensive merits battles.

For defendants, this transformation means opportunities to narrow liability through superior statutory interpretation, enhanced weapons for defeating class certification, and standing challenges with real teeth. Plaintiff-favorable FCC interpretations that once functioned as binding precedent now face *de novo* challenge through textual analysis and several may not survive scrutiny.

The stakes remain enormous. Statutory damages can still reach astronomical levels in class action cases, but the battlefield has shifted decisively toward traditional tools of statutory interpretation and factual proof.

The era of plaintiff-favorable agency deference has ended. The era of defense victories through rigorous textual advocacy and factual proof has begun. The defense teams that adapt most quickly to this new reality will be best positioned to succeed in the post-*McLaughlin* environment.

For TCPA defendants, *McLaughlin* is not a challenge to overcome, it is an opportunity to seize.