LEGAL UPDATES

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Supreme Court Clarifies District Courts' Independence from FCC's TCPA Interpretations

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In a decision with sweeping implications for the administrative law and the regulation of tele-communications practices—to say nothing of one of the most dangerous class-action devices in history—the Supreme Court ruled in *McLaughlin Chiropractic v. McKesson Corporation* that district courts are not bound to follow the Federal Communications Commission's (FCC) interpretations of the Telephone Consumer Protection Act (TCPA) when deciding private lawsuits. The ruling builds on the court's recent precedent in *Loper Bright Enterprises v. Raimondo*, which curtailed judicial deference to administrative agencies.

Background: the TCPA and agency deference

The TCPA, enacted in 1991, restricts certain telephone calls, faxes, and text messages. It is an incredibly dangerous statute. Designed to crack down on rogue telemarketers, the TCPA has become—in the words of the former chairman of the FCC—"the poster child for lawsuit abuse." The TCPA has led to lawsuits threatening crippling liability against legitimate businesses seeking only to quickly and efficiently communicate important information to customers and potential customers. At $500 to $1,500 in statutory damages per *violation* (without any need to show actual damages), TCPA claims quickly add up. Class action lawsuits seeking tens of millions of dollars (or more) are not unusual.

Through a series of rules, orders, and interpretive guidance, the FCC has significantly influenced how businesses communicate with consumers and how courts adjudicate TCPA disputes. For the most part, the FCC has been a bad influence. To take just one example, the FCC's expansive interpretation of the term "automatic telephone dialing system" (ATDS) under the TCPA

spawned nearly two decades of litigation, costing businesses unmeasurable dollars in defense costs, judgments, and settlements. Fortunately, as we covered previously, the Supreme Court put the brakes on the scourge of ATDS litigation a few years ago.

Unfortunately, between *Chevron* deference and the Hobbs Act, it was difficult to challenge the FCC's often-wayward interpretations of the TCPA. However, in *Loper Bright*, the Supreme Court overruled *Chevron*, holding that courts must exercise their independent judgment in interpreting statutes and are not bound to defer to agency interpretations. And the Hobbs Act was next up on the chopping block.

The dispute in *McLaughlin Chiropractic v. McKesson*

The case arose when McLaughlin Chiropractic, a medical practice, filed a putative class action against McKesson Corporation, alleging that unsolicited fax advertisements sent by McKesson violated the TCPA. But McLaughlin's class definition did not distinguish between members who received faxes on traditional fax machines and those that received the faxes by email or online portal. The district court certified the class without regard to the type of device involved.

While McLaughlin's lawsuit was pending, another company petitioned the FCC to decide whether the TCPA applies to faxes received online. In a rare pro-defense ruling, the FCC held that "an online fax service is not a 'telephone facsimile machine'" subject to the TCPA. *In re Amerifactors Financial Group, LLC*, 34 FCC Rcd. 11950, 11953, ¶11 (2019). The district court in *McLaughlin* concluded it had no authority to question *Amerifactors* under the Hobbs Act, applied the *Amerifactors* ruling as binding law, and de-certified the class because of individual issues relating to how a fax was received (and therefore whether the fax was actionable). On appeal, the Ninth Circuit agreed that the district court was "bound" by the FCC's *Amerifactors* order.

Supreme Court's decision

The Supreme Court rejected that conclusion. Specifically, the court held that district courts are not bound to follow the FCC's interpretation of the TCPA when adjudicating private litigation. The court reasoned that:

1. ***Chevron* is no longer good law:** Building on *Loper Bright*, the court reiterated that federal courts must independently determine the meaning of statutes by applying original rules of statutory interpretation and apply "appropriate respect" to the agency's interpretation.
2. **The Hobbs Act does not override judicial independence:** The court clarified that the Hobbs Act's procedural requirements do not transform agency interpretations into binding law for district courts. District courts retain the authority—and the obligation—to interpret the statutory text of the TCPA in private litigation. To reach this conclusion, the court reasoned,

among other things, that the Hobbs Act does not expressly limit to the courts of appeals jurisdiction over challenges to the FCC's interpretations of the TCPA.

3. **FCC interpretations are persuasive, not binding:** While FCC guidance may be considered for its persuasive value, it does not carry the force of law in private TCPA suits. District courts may agree or disagree with the FCC's reasoning, but they are not compelled to adopt it. This is huge, as discussed below.

Implications

This decision has significant ramifications for private litigants, businesses, and regulatory agencies:

Litigation strategy: District courts now have clear authority to interpret the TCPA without being bound by agency interpretations. This means that defendants are free to challenge unfavorable FCC pronouncements (and there are a lot of them) in defending cases on the merits and against class certification. Indeed, in the barely over a week since *McLaughlin Chiropractic* came down, defendants have relied on that decision to challenge the FCC's conclusion that, even though cell phones are (quite obviously) not physically connected to a specific residence, cell phones are "residential" phones under the TCPA.

Agency guidance: As noted, although the *McLaughlin Chiropractic* shift introduces new uncertainty, it also gives businesses the opportunity to argue statutory meaning directly, rather than being strictly governed by agency guidance. Nonetheless, the FCC's interpretations will likely remain influential. Indeed, in just the last week, a district court has already rejected a defendant's challenge to the FCC's above-noted interpretation of "residential."

The downside: As noted, parties in TCPA litigation can no longer rely on the FCC's interpretations as dispositive; instead, they must argue the merits of the statutory text itself. So, on those occasions when the FCC has issued a helpful interpretation (like the one in *McLaughlin Chiropractic* itself), defendants will need to defend that position anew. That said, because the FCC's interpretation at issue in *McLaughlin Chiropractic* makes good sense, we are hopeful that courts will continue to follow it.

What this means to you

McLaughlin Chiropractic marks a pivotal moment in administrative law and statutory interpretation. By reinforcing *Loper Bright* and clarifying the limits of agency interpretive authority, the Supreme Court has returned primary responsibility for interpreting federal statutes to the judiciary, ensuring

that agency guidance is advisory rather than obligatory in district court proceedings. This decision will shape the landscape of TCPA litigation—and administrative law more broadly—for years to come.

Contact us

If you have questions regarding the *McLaughlin Chiropractic* decision and its impact on TCPA lawsuits, contact Colleen Fox, Scott Helfand, or your Husch Blackwell attorney.