How McKesson Ruling Will Inform Interpretations Of The TCPA

By **Jason McElroy** (July 11, 2025)

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On June 20, the U.S. Supreme Court issued its ruling in McLaughlin Chiropractic Associates Inc. v. McKesson Corp.,[1] finding that the Hobbs Act does not divest federal district courts from revisiting Federal Communications Commission interpretations of the Telephone Consumer Protection Act and its implementing regulations.

When viewed from 30,000 feet, many will see this as the next dent in the armor of the administrative state, as the Hobbs Act places limitations on judicial review of certain administrative agency actions.

Following in the footsteps of the Supreme Court's rejection of Chevron deference in last year's ruling in Loper Bright Enterprises v. Raimondo, this is an attractive thought.

However, just as the Loper Bright decision really returned parties to the status quo of having the courts interpret the law, so does McKesson — it merely places the role of interpreting the law with the federal district courts when a TCPA action raises questions as to the legality of an FCC interpretation.

The primary outcome of this is that administrative agencies covered by the Hobbs Act are simply required to justify the legal basis of their regulations if they are challenged in court, and the McKesson decision will similarly only require courts to consider the legal basis of the TCPA interpretation being offered.

Accordingly, neither the Loper Bright decision nor the McKesson decision affects any administrative agency's actual authority to issue regulations, interpretive guidance or litigation positions — they merely subject those regulations and guidance to court scrutiny.

Presuming the rule being relied upon in any given TCPA action was well reasoned and supported by the statutory language, this ruling is unlikely to change the result from pre-McKesson decisions.

However, in instances where the FCC was interpreting new technologies or issues not specifically addressed by the original statute, we are likely to see increased litigation attacking those rules from both plaintiffs and defendants, depending on the rule at issue. This will require practitioners and companies subject to the TCPA to maintain a strong understanding of how the district courts, and eventually circuit courts, are interpreting these rules as well.

The McKesson Decision

The McKesson case arises from the TCPA's limitations on marketing solicitations sent by fax machine, specifically Title 47 of the U. S. Code, Sections 227(b)(1)(C) and (2)(D), which prohibits "a business from sending an 'unsolicited advertisement' by fax to a 'telephone facsimile machine' absent an opt-out notice informing recipients that they can choose not to receive future faxes."[2]

The plaintiff alleged violations based on faxes sent in 2009 and 2010, which were allegedly

sent without the opt-out notices.[3] As the litigation progressed, two important things occurred: (1) the district court certified a class of fax recipients that did not distinguish between those who received the fax on a standard, phone-based fax machine and those who received it using new, email-based fax technology in which the recipient receives the fax in their email; and (2) an unrelated party petitioned the FCC for a ruling on whether the email-based fax technology is covered under the TCPA's fax solicitation limitations.[4]

The FCC issued its ruling during the pendency of the McKesson trial court proceedings, finding that "an online fax service is not a 'telephone facsimile machine.'"[5] As a result, the FCC found that "the TCPA would not prohibit faxes received through online fax services."[6]

This had a major effect on the underlying McKesson litigation, as the parties then litigated the effect of the order on the district court — i.e., was the district court bound by the FCC's determination? — deciding that it was bound by the FCC's determination, granting summary judgment against the plaintiff as to all putative class members who received an online fax, and decertifying the class.[7] The U.S. Court of Appeals for the Ninth Circuit affirmed.[8]

The district court ascertained that it was bound by the FCC's determination based upon its reading of provisions of the Hobbs Act, Title 28 of the U.S. Code, Section 2342(1), which gives the courts of appeals "exclusive jurisdiction" to review final FCC orders and decisions.[9]

The Supreme Court granted certiorari to determine whether the Hobbs Act did indeed divest jurisdiction from the district courts when confronted with FCC interpretations of the TCPA in civil litigation. The court emphatically answered no.[10]

In making this determination, the court made a bright-line distinction between preenforcement challenges and as-applied enforcement challenges.[11]

The court noted that the Hobbs Act was designed to ensure that preenforcement challenges were done "promptly and in a court of appeals" — but the court also noted the practical fact that most people do not have reason to challenge an agency order until it actually affects them.[12]

Ultimately, this is both the practical and legal reality of the court's decision — parties should be allowed to challenge the legality of a rule that is being applied against them, and it would be fundamentally unfair to hold today's businessperson to standards that may were created before he or she even knew they existed, with no ability to challenge them.[13]

The court's ruling is aptly summed up by its formulation of a default rule of administrative law: "In an enforcement proceeding, a district court must independently determine for itself whether the agency's interpretation of a statute is correct."[14]

This is consistent with last year's ruling in Loper Bright, finding that courts are not required to defer to administrative agencies' regulatory interpretations.

Effects on TCPA Litigation

The McKesson decision's effect will not be limited to one side in litigation. Depending on the interpretation at issue, we can expect to see both plaintiffs and defendants utilizing the decision to revisit past FCC interpretations and decisions they did not like.

The McKesson case saw a plaintiff challenging the application of an FCC interpretation that

was unfavorable to its position — that online fax machines were not covered by the TCPA.[15]

While fax machines may not be used as much today as they were when the TCPA was passed in 1991, the proliferation of other new technologies associated with telephones has created the necessity for the FCC to issue other rulings that could be challenged in the future, such as the FCC's ruling that text messages are covered by the TCPA.

While it is likely that many of these interpretations may withstand court scrutiny, practitioners and companies dealing with the TCPA must be cognizant of rulings and orders that may now be subject to greater scrutiny as a result of the McKesson decision, as it may open up new opportunities in defending against the large volume of TCPA cases filed annually.

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[1] https://www.supremecourt.gov/opinions/24pdf/23-1226_1a72.pdf.

[2] Slip Op. at 1.

[3] Slip Op. at 2.

[4] Slip Op. at 2-3.

[5] Slip Op. at 3 (quoting In re Amerifactors Financial Group, LLC, 34 FCC Rcd. 11950 (2019) (declaratory ruling)).

[6] Slip Op. at 3.

[7] Slip Op. at 3.

[8] Slip Op. at 4.

[9] Slip Op. at 4-5. The Hobbs Act covers other agencies as well, but for purposes of this matter, the FCC is the only relevant agency.

[10] Slip Op. at 1 ("In civil enforcement proceedings under the Telephone Consumer Protection Act, are district courts bound by the Federal Communications Commission's interpretation of the Act? The answer is no.").

[11] Slip Op. at 4.

[12] Slip Op. at 4-5.

[13] Slip Op. at 8.

[14] Slip Op. at 6.

[15] In re: Amerifactors Fin. Grp., LLC, 34 F.C.C. Rcd. 11950 (2019).