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Courts Continue Dismantling the FCC's TCPA Playbook:

Fifth Circuit Rules Written Consent Not Required for Prerecorded Calls

Prepared by PossibleNOW's sister company, CompliancePoint

Federal courts continue to dismantle key Federal Communications Commission (FCC) interpretations of the Telephone Consumer Protection Act (TCPA).

First, federal district (trial) courts began holding that SMS text messages are not "calls," despite the FCC's longstanding contrary view. Now, as we anticipated, the FCC's 2012 requirement for prior express written consent for automated and prerecorded message marketing calls is the latest to be challenged.

In a significant ruling on February 25, 2026, the Fifth Circuit Court of Appeals held in ***Bradford v. Sovereign Pest Control of TX***, Inc., that **the TCPA requires only "prior express consent," not "prior express written consent," for prerecorded calls to wireless numbers.**

The written-consent requirement has now joined the growing list of FCC interpretations being challenged in the wake of the U.S. Supreme Court's decisions in ***Loper Bright*** and ***McLaughlin,*** which held that **courts must independently interpret statutes rather than be bound by agency interpretations.**

Recent district court decisions have ruled that SMS text messages are not "calls" for Do Not Call purposes. The ***Bradford*** ruling is even more significant because it comes from a federal appellate court.

Background: Long Customer Relationship

The case originated when the plaintiff entered into a service-plan agreement with Sovereign Pest Control a number of years ago in Texas. Upon signing, the plaintiff provided his cell phone number so the company could continue to contact him. Each year, Sovereign Pest used prerecorded messages to remind him to schedule his annual renewal inspections.

The plaintiff followed these prompts, scheduling inspections and renewing his service plan four separate times on an annual basis. During a later renewal cycle, he filed a putative class-action lawsuit, alleging the company violated the TCPA by failing to obtain his express written consent, which the FCC has required since 2012 for prerecorded telemarketing calls.

In 2024, the U.S. District Court for the Southern District of Texas ruled in favor of Sovereign Pest, finding the calls were "informational" rather than "telemarketing."

Under the FCC's existing regulatory framework, informational calls require only prior "express consent" (generally regarded as the mere provision of a phone number from the consumer to the seller during the normal course of business), while telemarketing calls require prior express written consent.

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The Fifth Circuit Holding

On appeal, the Fifth Circuit has now affirmed the lower court's decision but on broader grounds. Citing ***Loper Bright (2024)*** and ***McLaughlin (2025)***, the court emphasized that the TCPA must be interpreted based on its plain text, without deference to agency interpretations.

The court held that the statute requires only "prior express consent" for prerecorded calls to cell phones. Notably, the TCPA does not define that term, nor does it state that consent must be written.

Looking to traditional tools of statutory interpretation, the court relied on ***Black's Law Dictionary (6th ed. 1990, p.305)***, which, at that time, defined "express consent" as consent "directly given, either viva voce [orally] or in writing. It is positive, direct, unequivocal consent, requiring no inference or implication to supply its meaning."

Based on that understanding, the court concluded that "prior express consent" under the TCPA includes consent given either orally or in writing. **While potentially persuasive, this interpretation is not binding outside the Fifth Circuit, and other courts could reach a different conclusion.**

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What This Means for Your Business

The Fifth Circuit covers Texas, Louisiana, and Mississippi, and this ruling is binding on federal district courts in those three states only. If another Court of Appeals were to reach a different conclusion, the resulting circuit split **would likely prompt Supreme Court review**. For now:

- If your organization contacts consumers nationally, you should **continue to obtain prior express written consent for prerecorded or artificial-voice telemarketing calls.** The FCC's rule remains in effect outside the Fifth Circuit.
- If your operations are limited to Texas, Louisiana, or Mississippi, this ruling suggests reduced TCPA exposure for prerecorded telemarketing calls to wireless numbers, so long as you have prior express consent, whether oral or written. Still, we recommend **monitoring developments closely before making abrupt compliance changes.**

Businesses that rely on prerecorded or artificial-voice outreach should evaluate how this decision may impact their consent practices, documentation, and overall compliance strategy, particularly if operating within or into the Fifth Circuit. Proactive review of consent language, recordkeeping, and dialing practices remains essential as courts continue to reassess longstanding FCC interpretations.

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