

## Court Finds Do-Not-Call Rules Apply to Marketing Text Messages

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While an ongoing **FCC rulemaking** is seeking comment on whether the FCC should clarify that TCPA's Do-No-Call rules apply to text messages as they do to voice calls, a federal court has weighed-in with its view that notwithstanding the pending FCC proceeding on the question, the DNC rules already apply to marketing text messages.

This issue was teed up in, *Reimer v. Kohl's, Inc.*, in the Eastern District of Wisconsin where the plaintiff had allegedly opted out of receiving marketing text messages from Kohl's and thereafter allegedly continued to receive marketing texts. The plaintiff, as part of a class action complaint, alleged violations of the TCPA arguing, among other things, that the DNC provisions apply to marketing text messages. The defendant filed a partial motion to dismiss arguing that the DNC rules do not apply to marketing text messages, pointing to the FCC rulemaking on the issue.

In its 2023 Further Notice of Proposed Rulemaking, the FCC proposed clarifying that the National DNC Registry protections apply to text messages as well as voice calls, and to codifying such clarification in its rules. In reviewing the FNPRM, the court found

that the FCC had concluded that the DNC rules already apply to text messages, and was merely seeking comment on whether it should codify the application of the DNC rules to text messages in its rules. In particular, the FNPRM noted that “[a]lthough the Commission has stated that ‘text messages’ are ‘calls’ for TCPA purposes, it has not explicitly included text messages in the codified DNC rules.”

In reviewing the FNPRM, the court agreed with plaintiff and denied the partial motion to dismiss concluding that the DNC rules currently apply to the marketing text messages at issue in the case.

The court’s finding in *Reimer v. Kohl* serves to reenforce the importance of Do-Not-Call compliance in connection with texting campaigns, including, for example, scrubbing marketing text lists for numbers on the Do-Not-Call Registry, and, of course, assiduously honoring do-not-call and opt-out requests.

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