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Supreme Court Opens New Line of Attack on Federal Agency Interpretations of Federal Law

In a recent [decision](#), the U.S. Supreme Court held that a federal district court was not necessarily bound by the Federal Communications Commission's prior interpretation of a federal statute over which the agency has authority to implement and enforce. The case, *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, effectively opens a new line of attack on FCC decisions at the trial court level notwithstanding the Hobbs Act, which gives circuit courts exclusive jurisdiction to determine the validity of final orders from the FCC.

In *PDR Network*, the publisher of a reference guide for prescription drugs sent unsolicited faxes to healthcare providers offering the providers free copies of the guide. One of the recipients of the faxes brought a putative class action against the publisher in district court, arguing that the faxes were "unsolicited advertisements" prohibited by the Telephone Consumer Protection Act. In support of this argument, the plaintiffs relied on a 2006 order issued by the FCC, in which the FCC interpreted the statutory term "unsolicited advertisements" to include faxes that promote goods or services at no cost. The district court dismissed the suit, holding that it was not bound by the FCC's interpretation. But the U.S. Court of Appeals for the Fourth Circuit disagreed, concluding that the Hobbs Act in fact precluded the district court from adopting a materially different interpretation from the FCC's.

On appeal, the Supreme Court left unresolved the question of whether the Hobbs Act required the district court to follow the FCC order construing the TCPA. Instead, the Court remanded the case back to the Fourth Circuit, stating that in order to decide whether the FCC's interpretation was entitled to deference, the circuit court must first address whether the order was a "legislative rule" (which has the force and effect of law) or an "interpretative rule" (which does not), and whether the publisher had a "prior" and "adequate" opportunity to seek judicial review of the order. In a concurrence, however, four of the justices indicated that they would have decided that the Hobbs Act does not bar a defendant in an enforcement proceeding from arguing that the agency's statutory interpretation is wrong, and set forth their analysis for use by the Fourth Circuit or other courts.

PDR Network strikes a blow to the traditional deference shown to judicial review of FCC decisions. Going forward, we anticipate that aggrieved parties will rely on *PDR Network*—including outside of the TCPA context—to oppose FCC orders on the basis that they are merely nonbinding interpretive rules or that the defendant was not given an adequate opportunity to challenge the order. In addition, this case is likely to be cited by future litigants and courts as a change in federal administrative law more broadly, providing a line of attack on all federal agency interpretations (not only FCC interpretations).

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