

The Federal Communications Commission’s (FCC) rules implementing the Telephone Consumer Protection Act (TCPA) explicitly state that “[n]o person or entity shall initiate any telephone solicitation to:… [a]ny residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party’s location)…” A telephone solicitation is of course a pitch to sell products or services.

Deluge of class action litigation – In recent years, a few plaintiff’s attorneys have seized on this “Quiet Hours” proscription to bring TCPA class actions, alleging violations even where consent might have been given to receive telemarketing calls. Faced with this deluge of litigation, in March of 2025 the [ECommerce Innovation Alliance and others](#) petitioned the FCC to clarify that individuals who provide the requisite consent “cannot claim damages under the TCPA for messages received outside the hours of 8 a.m. to 9 p.m.” The FCC has yet to act on this petition. Many of the cases have been settled by defendants without any court addressing the scope of the ban in a reported decision, until the Federal District Court of Delaware did so on April 30, 2026.

Phyllis King et al. v. Bon Charge (2026 WL 1171386):

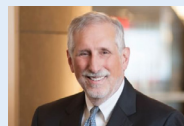
Background Facts – In February 2021, Mrs. King “subscribed” to marketing messages from Bon Charge to get a discount from its online store. After receiving “dozens of telemarketing text messages,” she added her wireless number to the “Do Not Call List” in early 2022. But she still received the texts, “some of which came in the middle of the night or early morning.” In late 2024, she finally “unsubscribed” from the texts by texting “STOP” and Bon Charge ceased sending the messages. Mrs. King sued under the TCPA and after Bon Charge moved to dismiss, she amended her complaint “to add a claim that Bon Charge had also violated” the Quiet Hours provision.

“Consent” renders the Quiet Hours provision

inapplicable here – The court noted that Mrs. King had checked the box on elements of her Quiet Hours claim until it came to consent. However, in the case of a Quiet Hours violation claim, no written form of “prior express invitation or permission” is required under the FCC’s rules. Instead, “the general definition of express consent applies and ‘an individual can provide it by ‘knowingly releas[ing] [her] phone number to the sender’” – which Mrs. King had done with Bon Charge. Such consent means that the texts were not telephone solicitations, which is what is covered by the Quiet Hours prohibition. As the court specifically held, in light of that consent, “the texts that Bon Charge sent were not ‘telephone solicitations’ and the quiet-hours provision does not apply,” and that count of her complaint was dismissed.

What Is the potential impact of the decision? –The decision could provide a “road map” for other courts who are presented with a similar question. It arguably bolsters the Ecommerce Innovation Alliance petition still pending at the FCC. Perhaps it will also have an impact on the “cost” of settling these cases, rather than taking them to court or even slowing the filing of such cases. Of course, this is but one Federal District Court precedent, based on a specific set of facts, so right now its import remains to be seen. And we will watch for more.

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