

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Interpretation of the Telephone Consumer
Protection Act of 1991 in Light of the D.C.
Circuit’s *ACA International* Decision

CG Docket No. 18-152
CG Docket No. 02-278

COMMENTS OF RINGCENTRAL, INC.

RingCentral, Inc. respectfully asks the Commission to adopt a clear and commonsense definition of what constitutes an automatic dialing system (“ATDS”) pursuant to the Telephone Consumer Protection Act (“TCPA”).¹ Specifically, the Commission should define an ATDS as equipment that can by itself—without the introduction of additional software or other alteration—(1) generate random or sequential numbers; (2) use the generator to store or produce numbers to be called; and (3) dial those numbers automatically. That definition is consistent with Congress’s intent in enacting the TCPA, would provide much-needed clarity to callers, and would ensure that businesses continue to invest in innovative technological solutions that benefit consumers.

I. Introduction

RingCentral writes in response to the Commission’s May 14, 2018 Public Notice seeking comment on what constitutes an ATDS pursuant to the TCPA. RingCentral is a global provider of cloud unified communications and collaboration solutions, including voice over internet

¹ The TCPA is codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 CFR § 64.1200.

protocol (“VoIP”) calling. The market for iVoIP, a scalable and flexible technology, is expanding.² Among other advantages, iVoIP allows for software-based calling, which presents enormous potential for integrated calling solutions that benefit businesses and consumers alike.

II. The Commission Should Define an ATDS as Equipment That Can by Itself — Without the Introduction of Additional Software or Other Alteration — (1) Generate Random or Sequential Numbers; (2) Use the Generator to Store or Produce Numbers to Be Called; and (3) Dial Those Numbers Automatically

Consistent with the legislative history behind the classification of ATDS, an ATDS must have the capacity to generate random or sequential numbers, to use the generator to store or produce numbers, and to dial those numbers automatically. Defining “capacity” as the equipment’s present ability given its current configuration, and “automatic” as performing the three requisite functions without human intervention, would be consistent with the statutory text and congressional intent. It would also provide the industry with the certainty it needs to develop innovative dialing solutions that benefit both legitimate businesses and call recipients.

A. Capacity Should Be Defined as Present Ability Given the Current Configuration

RingCentral agrees with the Chamber of Commerce that “capacity,” as used in 47 U.S.C. § 227(a)(1), must be defined as capacity to perform the requisite function given the device’s current configuration.³ Defining capacity as what equipment can do now—not potential

² See Transparency Market Research, VoIP Services (End-use – Corporate Consumers and Individual Consumers) Market - Global Industry Analysis, Size, Share, Growth, Trends and Forecast, 2014 – 2020, Report Preview (2014), <https://www.transparencymarketresearch.com/voip-services-market.html> (noting that the VoIP services market is expected to grow to \$137 billion by 2020).

³ See U.S. Chamber of Commerce Petition for Declaratory Ruling at 23, CG Docket No. 02-278 (filed May 3, 2018) (“[D]evices that require alteration to add autodialing capability are not ATDS. Rather, the capability must be inherent or built into the device for it to constitute an ATDS.”).

functionalities if modified at some point in the future—is consistent with the congressional intent behind the TCPA.

The “actual purpose” of the ATDS prohibition was to prevent automated dialers from reaching unlisted specialized numbers by dialing randomly and from knocking specialized lines out of service by dialing sequential blocks of numbers.⁴ In passing the TCPA, Congress prohibited a particular type of equipment with the present ability to automatically generate and dial sequential blocks of numbers.⁵ The now-rejected definition of ATDS went beyond the statute and swept in technology that cannot cause the harms Congress sought to prevent.

A properly tailored definition of ATDS, by contrast, can satisfy congressional intent and protect the public. If a caller places a call using equipment with the ability to generate and automatically dial random numbers, that equipment should qualify as an ATDS as it has the potential to cause the precise type of harm Congress sought to avoid when enacting the TCPA. On the other hand, if a caller places a call using equipment that is not configured to be able to generate and dial random numbers at the time the call was placed, the call should not fall within the scope of the TCPA because the call cannot cause the type of harm Congress sought to address in passing the TCPA. Of course, equipment can be converted from a non-ATDS to an ATDS. But equipment that has not been converted should not qualify as an ATDS simply because someone could turn it into one by modifying or adding to the original product.

⁴ See H.R. Rep. No. 102-317, at 10 (1991) (stating that the “capability” of an ATDS to “‘seize’ a recipient’s telephone line and not release it until the prerecorded message is played, even when the called party hangs up” is “in an emergency [] potentially dangerous” because it ties up the phone line).

⁵ See 47 U.S.C. § 227(a)(1) (stating that an ATDS “*means*” equipment that “*has*” the requisite capacity) (emphases added).

A clear and properly tailored definition would benefit both call recipients and legitimate callers. Encouraging industry to innovate with new technologies may protect consumers by helping businesses carefully target only those customers who want to be contacted about a particular product or service, practically eliminating the need for indiscriminate calling campaigns. For example, OTT VoIP providers may offer products that can integrate with CSM or similar services, to allow customers to easily call contacts already in the customer's contact database and, at the same time, use information in the customer's contact database to carefully target call recipients. A badly defined ATDS creates enormous legal risks for companies seeking to use these innovative technologies to better serve customers and potential customers. In defining ATDS, the Commission should be careful not to chill the development of products and services like these that enable businesses to carefully target calling campaigns to interested consumers who want to be contacted.

B. “Automatic” Should Be Defined as the Ability to Generate Random or Sequential Numbers and Use the Generator to Store or Produce Numbers to Be Called Without Human Intervention

An “automatic” telephone dialing system must be able to perform the requisite functions of an ATDS in the absence of human intervention. To date, the Federal Communications Commission (“FCC”) has taken inconsistent positions on the definition of “automatic.” It has defined “automatic” as the absence of human intervention, while simultaneously stating that a device might be automatic even if it requires human intervention.⁶

⁶ Compare *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd. 14,014, 14,115 ¶ 132 (2003); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd. 559, 556 ¶ 13 (2008) (noting that a device is not automatic if it requires human intervention) with *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 7975 ¶ 17 (2015) (stating that a device might qualify as an ATDS even if it cannot dial numbers without human intervention).

The industry needs clarity on the definition of “automatic.” That definition should comport with the commonsense, dictionary definition of “automatic”: without human intervention.⁷ Defining “automatic” as a device or process that works by itself in the absence of human intervention is consistent with the text and purpose of the TCPA. An “elementary principle” of statutory construction “requires an interpreter ‘to give effect, if possible, to every clause and word of a statute.’”⁸ To allow equipment that requires human intervention to be deemed an ATDS would render “automatic” without “operative effect” in direct contravention of that core principle.⁹ The purpose of the TCPA was to prevent a specific type of harm, namely preventing *automated* dialers from randomly dialing sequential blocks of numbers and needlessly tying up phone lines. That purpose is subverted if a device is deemed “automatic” even though it requires human intervention.

III. A Clear Definition of an ATDS is Key to Honoring Congressional Intent and Promoting Innovation

A constantly shifting definition of ATDS has left the industry without clear guidance as to which technologies qualify, which stifles innovation. Similarly, unless the Commission

⁷ See *ACA Int’l, et al. v. FCC*, 885 F.3d 687, 703 (D.C. Cir. 2018) (mandate issued May 8, 2018) (affirming in part and vacating in part *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961 (2015)) (“‘automatic’ in ‘automatic telephone dialing system’—would seem to envision non-manual dialing of telephone numbers” (quoting 47 U.S.C. § 227(a)(1)); see also *Automatic*, Webster’s New World College Dictionary, 5th Ed., http://www.yourdictionary.com/automatic#websters?direct_search_result=yes 2018 (last visited June 13, 2018) (defining “automatic” as “moving, operating, etc. by itself; regulating itself”); see also *Automatic*, The American Heritage Dictionary, <https://www.ahdictionary.com/word/search.html?q=automatic> (last visited June 13, 2018) (defining “automatic” as “[a]cting or operating in a manner essentially independent of external influence or control”).

⁸ *King v. Burwell*, 135 S. Ct. 2480, 2498 (2015) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)).

⁹ *Id.*

adopts a very clear-cut definition, it will fail to address the *ACA* court’s concern that the Commission has expanded the TCPA beyond congressional intent.¹⁰

Moreover, a clear and precise definition of ATDS will enable good actors to comply. If there is uncertainty about whether a particular dialing technology could be viewed by a court as an ATDS, callers—and the companies that are developing new dialing technology—concerned about the high cost of TCPA litigation may be deterred from investing in it. That leaves businesses with fewer choices and less competition.¹¹ This ambiguity hurts individuals and consumers by making it harder for companies to take advantage of technological innovation that permits callers to more carefully target calls and avoid unwelcome communications. For next-generation unified communications providers, it means customers might be hesitant to utilize innovative technology that can benefit consumers by ensuring that calls are narrowly targeted to a well-suited audience that wants to receive the communications.

IV. Conclusion

RingCentral respectfully asks the Commission to define an ATDS as equipment that can by itself—without the introduction of additional software or other alteration— (1) generate random or sequential numbers; (2) use the generator to store or produce numbers to be called; and (3) dial those numbers automatically. Such a definition is narrowly tailored to achieve the

¹⁰ See *ACA Int’l*, 885 F.3d at 697 (“If every smartphone qualifies as an ATDS, the statute’s restrictions on autodialer calls assume an eye-popping sweep...The TCPA cannot reasonably be read to render every smartphone an ATDS subject to the Act’s restrictions, such that every smartphone user violates federal law whenever she makes a call or sends a text message without advance consent.”).

¹¹ See Statement of Commissioner Michael O’Rielly Dissenting in Part and Approving in Part, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 8084 (2015) (noting that “FCC decisions that expanded the scope of the TCPA,” in addition to the surge in “litigation across the country,” has “further increased liability for good actors”).

aims of the TCPA and is consistent with the congressional intent behind the TCPA. By providing certainty and predictability, this definition will enable service providers to innovate and businesses and their customers to benefit from technological solutions that can limit unwanted calls.

Respectfully submitted,



Rachel W. Petty
Assistant General Counsel
RINGCENTRAL, INC.
20 Davis Drive
Belmont, CA 94002
(650) 458-4110

Brita D. Strandberg
Hilary P. Gerzhoy
HARRIS, WILTSHIRE &
GRANNIS LLP
1919 M Street NW, 8th Floor
Washington, D.C. 20036
(202) 730-1300

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Counsel to RingCentral, Inc.