

In the Matter of the )  
Rules and Regulations )  
Implementing the Telephone ) CG Docket No. 02-278  
Consumer Protection ) CG Docket No. 18-152  
)  
Act of 1991 )

Either many calling industry commentators have no idea what statutory construction means or they are intentional misleading the Commission.

"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."

In the same manner DialAmerica Marketing Inc. writes the "or" between storing numbers and producing numbers out of the statute:

"the equipment must be able to automatically dial the telephone numbers that were stored or produced "using a random or sequential number generator"". .

Similarly, Tatango Inc. also writes the "or" between storing numbers to be called and generating numbers to be called out of the statute:

"An ATDS is a device that has the present capacity, and is being used to, dial random or sequential numbers;"

The NCTA - The Internet & Television Association also writes the "or" out of the statute:

"in order to qualify as an ATDS, equipment must use a random or sequential number generator to both store numbers and dial those numbers"

The Consumer Mortgage Coalition (which does not represent consumers) rewrites the "or" into an "and" (brazenly they bold their "and"):

To be considered an ATDS, the technology needs to generate a phone number in random and sequential order **and** call the number generated

The Student Loan Servicing Alliance; Navient Corp.; Nelnet Servicing, LLC; and Pennsylvania Higher Education Assistance Agency combines the separate and distinguishable requirements into one requirement:

"The FCC should clarify that equipment qualifies as an ATDS only if it possesses both of the enumerated functions contained in the statutory definition:"

The Retail Energy Supply Association in the same manner as the Consumer Mortgage Coalition brazenly bolds their "and" while writing the "or" out of the statute:

"the statutory definition plainly requires two prerequisites, the capacity to dial certain numbers, **"and"** the capacity "to store or produce telephone numbers to be called, using a random or sequential number generator"

The common denominator on most if not all of the calling industry comments is writing the "or" out of the statute which is not employing statutory construction of the statute.

Clearly an ATDS is any equipment that in its current configuration can call telephone numbers from a list without significant human intervention. The production of numbers using a number generator is no longer applicable as the Commission has duly noted. It is much more efficient to call from a list of telephone numbers then to call a list of generated numbers.

The Commission must use statutory construction to interpret the statute's definition of ATDS. And it must be broad as the legislature intended. If the Commission decides to follow the above calling industry definition of ATDS then cell phones will have lost all protection under the TCPA and the ATDS section of the TCPA becomes meaningless.

It is bad enough that the Commissions Robocall Task Force has failed to make a dent in the robocalls we get on our cell phones. It used to be 3 or 4 a month now it is 3 or 4

a day! The Commission must not add to the tsunami of automated calls we already are forced to endure.

The definition of ATDS must include those systems that are set up to use "click monkeys" which is the politicians go to system to harass and steal from every cell phone number in the country. The Commission must clarify that sending texts en masse to thousands of people, or many texts to the same person constitutes an ATDS under the statute. That will put an end to the harassment and stealing we are subjected to by politicians.

The Commission must also make clear that human intervention is not a defense under the statute. It must mean significant intervention if the Commission wants to subdue the onslaught of the "click monkeys".

The calling industry wants an ATDS definition that is based on the use of a number generator something not a single automated dialer has used in the last 30 years. If the Commission were to give in to the calling industry's definition of ATDS then the automated dialer portion of the statute will become meaningless and unenforceable.

As for reassigned numbers the writing is on the wall for all too plainly see. There is no "intended" called party in the statute and as such the Commission and the calling industry cannot write "intended" into the statute. The

courts are in agreement that called party is the one that receives the call. See the list of court cases attached to my earlier comments.

It is no different with revocation of consent. An intended called party cannot revoke consent since they are not the called party. It is therefore absurd to require that the actual called party opt out of automated calls.

Revocation is not rocket science. If someone says "stop calling" that should be enough, if someone texts "stop" that should be enough and if someone says "wrong number" that should be enough! Making revocation specific for every business is unmanageable and anti-consumer.

The calling industry has been at war with the TCPA since its inception. Not one of the calling industries commenting here represents consumers. The Commission needs to step up to its mandate and protect consumers from automated calls to cell phones without consent. Consent is not a monster - it is embedded in the statute and if the calling industry doesn't like it let them change the law. The Commission cannot rewrite the TCPA.

Not one consumer is asking for more automated calls in this proceeding. It is the calling industry that is making that request at times even claiming that consumers want

more automated calls. Nothing could be further from the truth.

The Commission must do what Congress directed it to do with the TCPA - PROTECT OUR PRIVACY. Anything less is unacceptable.

Respectfully submitted.

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