

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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

**Comments of The Results Companies, LLC in Support of the Petition
Filed by the Professional Association for Customer Engagement**

I. Introduction

The FCC has requested comments regarding the Professional Association for Customer Engagement’s (“PACE”) Petition for Expedited Ruling with regard to the definition of an automatic telephone dialing system (“ATDS”).
http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1121/DA-13-2220A1.txt

PACE has requested clarification that an ATDS dials without human intervention and the word “capacity,” in the statute and regulation, is limited to its current capacity, not what a system or piece of equipment could do with enough software or hardware modification.

Consistent with the plain meaning of these terms, court cases interpreting the terms, and the intent of the regulation, The Results Companies, LLC (“Results”) supports PACE’s position and request that the TCPA issue guidance consistent with that request.

II. The Results Companies, LLC

For more than 20 years, Results has made customer satisfaction its highest priority. It provides premier contact center, customer service, and sales solutions to its customers, backed by the best technology in the business. Results has an unblemished compliance record because its clients demand perfect compliance with applicable law.

III. Analysis

A. Plain Meaning of Terms

The TCPA defines the term “automatic telephone dialing system” as “(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1).

Two terms are the subject of PACE’s request and the plain meaning of those terms using the English language shows that the PACE position should be adopted by the FCC. Those terms are “automatic” and “capacity.”

1. Automatic

Webster's defines the term "automatic" as "having the capacity of starting, operating, moving, etc. independently; *an automatic sprinkler system....*" *Webster's New Universal Unabridged Dictionary*, Barnes & Noble Books, 1996.

In the past, the FTC has determined that the basic function of an ATDS is "the capacity to dial numbers without human intervention." 68 Fed. Reg. 44144, 44161 (July 25, 2003).

Whether something is "automatic" or not does not depend on how much human intervention is involved but whether human intervention is involved at all. All of the perceived ills associated with predictive dialing, such as abandonment, have nothing to do with how many numbers are entered by a human to initiate a call. Further, any position that ten numbers are required or else equipment is "automatic" ignores local dialing rules, speed dial, etc. where fewer digits need to be pressed.

It is clear from the plain meaning of the statute that "automatic" means without human intervention and that human intervention could amount to a single keystroke or other action so long as the ills associated with an ATDS are not created by such systems.

2. Capacity

Similarly, *Webster's* defines the term "capacity" as "the ability to receive or contain." *Webster's New Universal Unabridged Dictionary*, Barnes & Noble Books, 1996. Just as a hotel's capacity does not depend on what future modification could be made to that hotel, such as additional floors, wings, etc., dialing equipment's capacity is not determined by what future modifications can be made to it.

As set forth below, an iPhone, a computer, or nearly any other electronic equipment, can be modified, with enough hardware or software, to become an ATDS. My calculator, however, is not an ATDS because it lacks the current capacity to store or produce telephone numbers and dial those numbers without human intervention.

B. *Hunt v. 21st Century Mortgage Corp.*

On September 17, 2013, a federal court in Alabama issued a decision interpreting the term ATDS. *Hunt v. 21st Century Mortgage Corp.* (N.D. Ala. September 17, 2013). In that case, an individual alleged that a debt collector called him in violation of the TCPA. The plaintiff argued that he was contacted on his cell phone in violation of the ATDS restriction, while the defendant argued that it used manual dialing for all communications with the plaintiff.

The court reviewed other decisions on the topic and concluded that the equipment falls within the definition of an ATDS if it has the "capacity" to add predictively, even if that capacity is temporarily disabled. In this case, however, the plaintiff argued that the equipment could dial predictively with a software modification. *Id.* at *11.

The court said, however, that:

the problem with this reasoning is that, in today's world, the possibilities in modification and alteration are virtually limitless. For example, it is virtually certain that software could be written, without much trouble, which would allow iPhones "to store produced numbers to call using a random or sequential number generator, and to call them."

Id. at *11. The court held that to meet the TCPA definition of an ATDS "a system must have a present capacity" to act predictively or without human intervention. Just because it could become a dialer with software modification did not make it presently a dialer.

It is obvious that almost any electronic equipment could be modified with enough hardware and software to meet the definition of ATDS and the FCC should rule, consistent with *21st Century Mortgage*, that it is the current capacity of equipment that determines whether it is an ATDS or not, not how it could be modified with additional hardware or software to become an ATDS.

C. Intent of Congress and Regulation

While it was the intent of Congress and the FCC, in promulgating the regulation, to prevent abusive practices such as abandonment, fraud, etc., when passing the TCPA, in no way can equipment which dials only with specific direction from a human implicate any of those concerns.

III. Conclusion

For this reason, Results supports PACE's position and urges the FCC to issue guidance consistent with its request.

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/s/Gina Gregoletto

Ms. Gina Gregoletto
The Results Companies
100 NE Third Avenue, Suite 200
Fort Lauderdale, FL 33301
954-926-4137
Gina.gregoletto@resultstel.com