

ATDS, WTF? The Supreme Court Finally Resolves the TCPA's Autodialer Split

APRIL 1, 2021

Authors: [Mark S. Eisen](#)

On April 1, 2021, the Supreme Court issued its long-awaited opinion in *Facebook v. Duguid*, which resolved a deep circuit split with respect to the boundaries of TCPA liability. In its holding, the court unanimously adopted a defense-friendly reading of the type of equipment that constitutes an “automatic telephone dialing system,” or ATDS. The Supreme Court held that to constitute an ATDS, the equipment at issue must have the capacity to use a random or sequential number generator to either store or produce numbers and then dial them. Equipment that merely stores numbers and then dials those numbers from a list is not an ATDS for the purposes of TCPA liability.

It is difficult to understate the significance of this ruling, which shuts down the central route Plaintiffs’ lawyers have used to drive TCPA liability--that is, that telephone equipment that merely dials from a stored list of numbers is an ATDS. The practical effect of this decision is to bring to a close a significant percentage of TCPA text message and live-call cases.

After more than a decade of detailed opinions and FCC orders that poured over the nuances of the TCPA’s legislative purpose and statutory language, the Supreme Court’s decision is surprisingly short and simple. The decision first focuses on the legislative intent of the TCPA, noting that Congress enacted the statute at a time when then-new random or sequential dialing technology was incredibly popular. The court then turned to the plain language of the statute. Unlike many prior decisions, the court quickly held that there was no logical reading of the statute that would cover equipment which stores numbers and then dials them. The court rejected any interpretation of the statute that would have broadened its plain language. In doing so, the court noted that the statute would be absurdly broad. To hold that an ATDS could be equipment that merely stored a list of numbers and then dialed them would render every cell phone with a stored list of contacts under the purview of the TCPA.

Finally, the court rejected plaintiff’s reading of the statute and ignored his pleas that failing to read the TCPA as he proposed would unleash a torrent of unwanted robocalls on consumers. Plaintiff leaned heavily on the fact that the TCPA was meant to prevent nuisance calls. The court noted that the TCPA still served its purpose by prohibiting certain prerecorded voice calls. And, the court said that ultimately Congress would have to amend the statute to cover different types of technology if it wished to do so. The Supreme Court was not tasked with interpreting the statute in such a way as to amend it to plaintiff’s liking.

The Supreme Court also dismissed an often-raised argument by plaintiffs and defendants alike in a mere footnote--whether the equipment at issue can operate with or without human intervention. Plaintiff argued that the amount of human intervention would protect against broadening the scope

of an ATDS too far. But the court recognized that all dialing equipment involves some level of human intervention. That is true regardless of whether an individual is programming a cell phone to immediately respond to text messages, or if a business is programming a computer to produce and dial phone numbers at random. Therefore, the amount of human intervention needed to place a call is not an acceptable means of determining whether the dialing equipment at issue falls within the scope of an ATDS. Furthermore, requiring courts to engage in the all-too-difficult analysis of how much automation is too much in any given context is a futile line-drawing exercise.

While a great victory in the short-term for many defendants and businesses, it remains important to keep the scope of this case in context. This decision is limited in scope to ATDS cases (not prerecorded call or do-not-call cases). Further, this only applies to the TCPA--it does not necessarily impact any state law analogue statutes. Accordingly, companies should continue to use caution in SMS programs and customer outreach. It further remains to be seen whether Congress will act to amend the TCPA to cover more types of modern technology, or whether the FCC will seek to undo the Supreme Court's decision through its rulemaking authority, as both will surely be lobbied to do.

If your business has any questions regarding the Facebook decision, or TCPA compliance in general, please contact your Benesch relationship partner or any member of the Telephone Consumer Protection Act Group. Additionally, Benesch will be hosting a complimentary webinar entitled "ATDS - Now We Know" on Wednesday, April 7th at 12:30 Eastern. [Click here to register.](#)

For more information on this topic, contact a member of Benesch's [Class Action Practice Group](#).

Mark S. Eisen at meisen@beneschlaw.com or 312.212.4956.