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Court Finds Texting Platform Not ATDS Under "Plain Meaning" of TCPA Statute

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It has almost been a year since the U.S. Court of Appeals for the District of Columbia Circuit released its decision in *ACA International v. FCC*, and since that time we have highlighted numerous cases in which a court's interpretation of "automatic telephone dialing system," or "ATDS," has made the difference as to a TCPA defendant's liability for calls or texts it has made. Indeed, over the past year *many* federal courts have reached *many* different – and oftentimes opposing – interpretations of this critical TCPA term. Month after month, however, new ATDS decisions continue to emerge, and on March 29, the District Court for the Northern District of Illinois joined the ATDS interpretation cacophony with its decision in *Gadelhak v. AT&T Services, Inc*.

Background of the *Gadelhak* Decision

In *Gadelhak*, the district court was asked to rule on competing motions for summary judgment, wherein both parties disagreed over the proper definition of the ATDS term and whether AT&T had employed one when it sent Gadelhak and others survey-type text messages in Spanish. According to AT&T, the system it employed was not an ATDS, and that Gadelhak applied an incorrect, overly expansive ATDS definition that was used in the FCC's 2003, 2008, and 2015 Orders, all of which AT&T claims were vacated by the D.C. Circuit's March 2018 ruling in *ACA International*. AT&T asserted that a narrower interpretation of ATDS based on the D.C. Circuit's decision applied instead, and that such a definition did not include predictive-dialer-type devices (which was the type of device that Gadelhak asserted AT&T used to generate and send text messages to him).

Because the predominant arguments made by AT&T were based on its interpretation of the *ACA International* decision, the court began its analysis by determining the scope of the holdings in *ACA International*. The court agreed with AT&T that the D.C. Circuit's ruling had the effect of overturning the FCC's earlier interpretations of the ATDS term, determining that, through its ruling, the D.C. Circuit struck down the 2015 Order interpreting the ATDS term, along with the "repeated affirmations of the prior [2003 and 2008] orders" as discussed by the FCC in its 2015 Order.

The court next turned to deciding how it would interpret the ATDS term now that binding FCC precedent was lacking to guide its analysis. According to the court, "[b]ecause *ACA International* invalidated the Commission's prior orders defining the term ATDS—and also declined to articulate their own definition of the term—the Court moves on to interpreting the TCPA unburdened by the Commission's definitions." The court then engaged in this analysis, ultimately concluding that a dialing/calling device could only meet the plain language of the TCPA if it "*generate[s]* telephone numbers randomly or sequentially," and that, because AT&T's system could only send texts to numbers provided on a stored list, it did not meet the ATDS definition and fell outside of the TCPA's jurisdiction.

The *Gadelhak* Court's Analysis:

In arriving at its decision about the ATDS definition, the district court engaged in the following analysis:

1. The "Plain Meaning" of the ATDS Term: Noting that courts are to engage in their interpretation analysis by first looking to the "plain meaning" of the statute at issue, the court determined that it would initially analyze "the language itself," attending to "the specific context in which that language is used" in the statute. Here, the particular phrase at issue was that contained in 47 U.S.C. § 227(a)(1), wherein ATDS is defined as including devices that have "the capacity to store or produce telephone numbers to be called, using a random or sequential number generator" and then call those numbers. In analyzing this phrasing, the court echoed the conclusion reached by courts in the Third Circuit, determining that the phrase "using a random or sequential number generator" did not modify the words "store" or "produce," but rather the phrase that came right before it – "telephone numbers to be called." Hence, according to the court,

> [T]he most sensible reading of the provision is that the phrase "using a

random or sequential number generator" describes a required characteristic of the *number* to be dialed by an ATDS—that is, *what* generates the numbers.

2. The Meaning & Effect of Surrounding Provisions: To resist the court's interpretation of the statute's plain meaning, Gadelhak used as support an argument that had been employed in the Ninth Circuit's ruling in *Marks v. Crunch San Diego, LLC* to reach a far broader ATDS interpretation. Specifically, Gadelhak pointed to two other TCPA provisions that, he claimed, when read in conjunction with § 227(a)(1), signaled that predictive dialers were to be included in the ATDS definition.

- **The Consent Exception:** First, Gadelhak asserted that the TCPA's provision excepting from TCPA liability those calls made with the prior consent of the called party signaled that predictive dialers were to be included in the ATDS term, as there is "no way to take advantage of this exception without dialing from a list of telephone numbers belonging to consenting individuals." However, according to the court, Gadelhak overlooked the fact that the consent exception was drafted such that it also applies to calls made using an artificial or prerecorded voice, meaning that, even if the ATDS term does not include systems dialing from preset lists, the consent exception still has an effect.
- **The Federal-Debt Exception:** Next, Gadelhak argued that, by adding in 2015 the provision exempting from liability calls "made solely to collect a debt owed to or guaranteed by the United States" (the "federal-debt exception") but not revising the ATDS definition, Congress implicitly ratified the Commission's 2015, 2008, and 2003 construction of the ATDS term and its application to predictive dialers. Again, though, the court was not persuaded, explaining that, at the time of Congress's amendment, the FCC's 2015 Order – and thus its ATDS interpretation – was already pending judicial review. As a result, "there was no 'consistent judicial construction' at the time of the amendment, precluding any conclusions about Congress's approval of the Commission's interpretation of the statute."

With Gadelhak's arguments exhausted and the court rebuffing each of them, the court determined that the ATDS term was limited to devices that could *generate* telephone numbers randomly or sequentially and that, because AT&T's texting platform could only text numbers from a stored list, it could not be subject to TCPA liability.