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New TCPA Ruling Holds an Autodialer Must Have the Capacity to Generate Numbers Randomly or Sequentially



In the wake of the D.C. Circuit's opinion [vacating](#) the Federal Communications Commission's order interpreting the Telephone Consumer Protection Act (TCPA), federal courts have [disagreed](#) on how to define an "automated telephone dialing system" ("autodialer") under the statute.

Judge Edmond E. Chang of the U.S. District Court for the Northern District of Illinois recently stepped into the fray, holding in [Gadelhak v. AT&T Service, Inc.](#), that equipment qualifies as an autodialer only if it has the (present) capacity to *generate* numbers randomly or sequentially. Ali Gadelhak received several text messages advertising an AT&T smartphone application and asking him to answer survey questions related to customer service. Gadelhak sued AT&T under the TCPA, alleging that AT&T used an autodialer to call him without his prior express written consent and seeking to represent a putative class of similarly situated individuals. The parties filed cross-motions for summary judgment on the question of whether AT&T used an autodialer, which the statute defines as "equipment which has the capacity—(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). AT&T used automated means to compile a list of numbers to be texted *en masse* but did not randomly or sequentially generate the numbers that appeared on that list. The FCC [previously interpreted](#) the term autodialer as including devices with "the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers," i.e., devices that can store a list of numbers and automatically dial or text them. But last year, the D.C. Circuit [invalidated](#) that interpretation as arbitrary and capricious due to its "eye-popping sweep." Because the D.C. Circuit also declined to provide a replacement definition, Judge Chang joined other courts in the Northern District of Illinois and conducted his own interpretation of the statutory language "unburdened by the Commission's [prior and invalidated] definitions." Relying primarily on the plain language of the statute, Judge Chang concluded that the phrase "using a random sequential number generator" modifies "telephone numbers to be called," so the capacity to *generate* numbers randomly or sequentially (not just *dial* them in random or sequential order) is a necessary feature of an autodialer. Because AT&T's dialing system generated a list of telephone numbers to be called via automated computer processes but

those telephone numbers were not generated using a random or sequential number generator, Judge Chang granted summary judgment for AT&T. The U.S. District Court for the Northern District of Illinois thus has joined the Second and Third Circuits in adopting a narrow autodialer definition after the invalidation of the FCC's expansive interpretation. This approach departs from that of the [Ninth Circuit](#), which has applied a more expansive definition of autodialers. We will continue to monitor this body of case law as it develops and in anticipation of the FCC's new interpretation later this year.

Authors

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