

# Will More Clarity on Definition of ATDS Under TCPA Finally Be Here Soon?

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The Sixth Circuit is the latest court to weigh in on the definition of ATDS under TCPA. The TCPA defines ATDS as equipment that has the capacity “to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.” Generally, the TCPA prohibits calls and text messages to cell phones using an ATDS without prior express consent.

In *Gary v. Trueblue, Inc.*, although the Sixth Circuit did not explicitly define the meaning of ATDS, the court implicitly approved the district court’s rejection of the plaintiff’s argument that a system is ATDS just because it can operate without human intervention. The lower court explained that “the TCPA does not prohibit the use of devices with automated functions.” Rather, “the statute requires a showing that the system has the capacity to randomly and sequentially dial or text phone numbers.” In contrast, the Ninth Circuit has ruled that a device is an ATDS if it has the capacity to automatically dial phone numbers or send text messages from a stored list (unlike a manual click-to-dial/text system). You can read more about how these circuit courts’ analyzed the definition of ATDS [here](#).

In light of these varied court opinions, organizations are anxious for the FCC to release its findings from its [Public Notice](#) period commenced nearly a year ago seeking comment on how to interpret and apply the meaning of ATDS. On the legislative front, the [Stopping Bad Robocalls Act](#), could also bring more clarity to the definition of ATDS. This bill, which has passed the House, does not redefine ATDS, but would force the FCC to do so within 6 months of enactment.

**Putting it Into Practice.** While for the time being, existing caselaw and FCC rulings may continue to leave companies with little concrete guidance on how to determine if its equipment is an ATDS, defaulting to having suitable consent if the technology is viewed as an ATDS can be a solution. Remember, to be safe, consent should be *written and signed* where the autodialed message contains advertising.

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National Law Review, Volume IX, Number 270

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