

New Proposed Legislation Would Expand TCPA Definition of ATDS to Cover Dialers that Call from Lists of Numbers

Article By:

Womble Bond Dickinson Communications, Technology and Media

Congressman Frank Pallone, Jr. (D-NJ)—ranking member of the House Committee on Energy and Commerce—introduced a discussion draft bill that would change the definition of ATDS to include dialers that make calls from lists of numbers. The full draft is available [here](#).

The draft bill—which goes by the rather forgettable name of “Stopping Bad Robocalls Act”—directly addresses key components of the D.C. Circuit Court of Appeal’s recent *ACA Int’l* ruling. Specifically, it aims to refine the “functionalities” required of an ATDS so as to specifically include dialers that “make[] a series of calls to telephone numbers on a list.” Notably, however, the device would only be considered an ATDS if “no additional human intervention is required” to launch the calls.

Although the proposed language is not as clear as it ought to be, it seems that the legislation is designed to target calls made by predictive dialers while specifically carving out “click to dial” or “preview mode” dialing. The proposed bill also requires the FCC to promulgate yet another set of regulations implementing the TCPA—oh joy—and this time prevents the Commission from exempting categories of calls from TCPA coverage unless the Commission specifically delineates:

- (1) the classes or categories of parties that may make such calls;
- (2) the classes or categories of parties that may be called;
- (3) the purposes for which such calls may be made;
- (4) the number of calls allowed under the exemption; and
- (5) the obligation of the calling party to provide consumers with a conspicuous mechanism to stop receiving calls.

The big question in TCPAland is whether Congressman Pallone’s staff is working with the FCC’s own staff in formulating this new ATDS definition or if this was a unilateral play from the hill. As Chairman Pai is already on record stating that the current ATDS definition is likely not broad enough to cover predictive dialers this discussion draft—and others that may grow out of it—might be a face-saving move that has already been blessed by the Commission. If so this draft may gain traction and

quickly. We have reached out to Congressman Pallone's office to see if he'll join our Womble Ramble podcast in the next few weeks to discuss.

The fact that this bill was circulated, however, seems like a tacit admission from the Hill that predictive dialers are no longer covered under the current statutory definition following *ACA Int'l*. That will be a hotly debated topic in TCPAland for some time to come. The only case to address the issue so far— *Marshall v. CBE Group, Inc.*, Case No. 2:16-cv-02406-GMN, 2018 WL 1567852 (D. Nv. March 30, 2018)—found that the FCC's predictive dialer rulings were invalidated by ACA. It remains to be seen whether other courts follow *Marshall*, but Congressional Democrats are obviously not willing to wait and find out.

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