

D.C. Circuit Pushes FCC to Clarify “Autodialer” Definition

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At a recent oral argument, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit questioned FCC attorneys on the agency’s interpretation of the definition of an “automatic telephone dialing system” or “autodialer.” ACA International, a trade group representing third-party debt collectors, filed suit last year seeking judicial review of the FCC’s [July 2015 interpretive ruling](#) on the Telephone Consumer Protection Act (TCPA). A number of other business and organizations have similarly petitioned the court in opposition to the ruling or participated as *amici curiae* in support.

These actions have been consolidated into one case before the D.C. Circuit, and the panel heard oral arguments on the substance of the petition earlier this month. The judges’ questions made clear they are grappling with the agency’s interpretation of “autodialer” to include a device’s “capacity” to dial random or sequential numbers. The court also focused on the impact that ambiguities in the statute may have on businesses, including whether companies may cease using autodialers altogether and the burden of compliance.

Separately, the FCC’s trial attorney noted that the agency does not consider smartphones to qualify as automated dialing equipment per se. But the FCC agreed that a smartphone *would* be considered an autodialer in a particular hypothetical scenario: specifically, if a telemarketing company employee downloaded a company application that enabled autodialing to her smartphone, then used the same phone over the weekend to call a phone number.

TIP: While courts and the FCC grapple with the definition of “autodialer,” companies can be left in limbo. It is thus worth examining the technology used to place calls carefully to see if it might fall within the term’s definition.

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