

Article

Texas Tackles the TCPA

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The Northern District of Texas picked a side on the national debate over what constitutes an ATDS.

They say everything is bigger in Texas, and that's the hope businesses are counting on right now when it comes to the Northern District of Texas' recent dive into the Telephone Consumer Protection Act pool, which was more like a tidal wave than a splash. At long last, a Texas court picked a side on the national debate over what is and is not an automatic telephone dialing system (ATDS).

Navigating uncharted waters in Texas, and the Fifth Circuit at large, Chief Judge Barbara Lynn ruled in *Adams v. Safe Home Security Inc.* that the TCPA requires proof "that an ATDS must both store and produce numbers that are randomly or sequentially generated and not merely store any numbers."

The Northern District of Texas joins cases across the country that are taking the opposite stance of the Ninth Circuit, including *Gadelhak v. AT&T Corp.*, which is currently under appeal at the Seventh Circuit and being closely tracked by businesses for favorable developments.

Instead of following the Ninth Circuit's "everything including your cellphone is an ATDS" logic, the Texas court takes the more pragmatic and common-sense approach, finding—wait for it—that the statute actually means what it says. What a crazy idea. In so doing, the Texas court made three key holdings:

- An ATDS must both store and produce numbers that are randomly or sequentially generated and not merely store any numbers.
- The Federal Communications Commission's 2003 and 2008 orders were vacated by the D.C. Circuit.
- A predictive dialer is not an ATDS under the TCPA.

There are a few noteworthy points about the Texas court's analysis. The first is that the judge made this ruling at the very beginning of the case when considering the defendant's motion to dismiss for failure to plead ATDS. Although she did not dismiss the case, Lynn made it crystal clear that the case is meritless unless the plaintiff has proof of a random or sequential number generator. It's also worth speculating that she may have wanted to be the first authority to explicitly rule on the issue in Texas in hopes that sister courts across the state follow her lead.

The second noteworthy point about the Texas court's legal analysis is that it appeared to be very thorough and independent from the parties' briefing. The court meticulously and thoroughly dissected all of the various possible readings of "using a random or sequential number generator" in the TCPA's definition of an ATDS to reach its conclusion.

Finally, the Texas court analyzed the legislative history and the FCC's pre-2003 orders to enforce its conclusion that the TCPA was not enacted to prohibit legitimate business communications or merely dialing from a list, but rather devices that generate sequences of numbers for automatic dialing. In the accounts receivable management industry in particular, many businesses are hoping this opinion creates the tidal wave we need for positive change.

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