

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	CG Docket No. 17-59
Advanced Methods to Target and Eliminate	)	
Unlawful Robocalls	)	

**Professional Association for Customer Engagement  
Petition for Reconsideration**

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**I. Introduction and Summary**

The Professional Association for Customer Engagement (“PACE”) is the only non-profit trade organization dedicated exclusively to the advancement of companies that use a multi-channel contact center approach to engage their customers, both business-to-business and business-to-consumer. These channels include telephone, email, chat, social media, web, and text. Our membership is made up of Fortune 500 companies, contact centers, business process outsourcing (“BPO”) companies, economic development organizations, and technology suppliers that enable companies to contact or enhance contact with their customers.

Founded in 1983, PACE represents thousands of contact centers that account for over one million professionals worldwide. Contact centers offer traditional and interactive services that support the e-commerce revolution, provide specialized customer service for companies of all sizes, and having an overall marketplace estimated at \$200 billion.<sup>1</sup>

Pursuant to the Administrative Procedures Act (“APA”), 5 U.S.C. § 553(e), and the Federal Communications Commission's (“Commission”) Rules of Practice and Procedure, 47 C.F.R. § 1.3, PACE files this Petition for Reconsideration (“Petition”) of the Commission’s recent Final Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls<sup>2</sup> (“Order”) creating a comprehensive reassigned numbers database (“RND”). PACE respectfully requests the Commission modify the Order as follows: (1) eliminate the Commission’s requirement that business landline and toll-free numbers be included in the RND and (2) modify the regulation’s

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<sup>1</sup> *Market Size: Just How Big is the Call Center Industry*, CustomerServ (Oct. 25, 2017), available at <https://www.customerserv.com/blog/how-big-call-center-industry>.

<sup>2</sup> Second Report and Order, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, FCC 17-151 (Released Dec. 12, 2018; Pub. in Fed. Reg. Mar. 26, 2019).

safe harbor language concerning “dates” to more accurately reflect the Commission’s intentions reflected in the explicit language of the Order creating the RND.

**II. Business Landlines and Toll-Free Numbers Should Not Be Included in the RND**

The RND was created with the primary purpose of stopping unwanted telephone calls received by consumers by establishing a single, comprehensive database containing all of the reassigned number information from providers of North American Numbering Plan (“NANP”) U.S. geographic numbers (“Providers”).<sup>3</sup> As ordered by the Commission, the database will include the reporting data of reassigned business landline numbers and toll-free numbers.<sup>4</sup> Providers that fall within the RND’s jurisdiction are required to report the last date of permanent disconnection associated with their allocated and ported-in numbers to an RND administrator.<sup>5</sup> Numbers reported to the RND must then undergo a forty-five day “cooling off” period before being reassigned.<sup>6</sup>

Callers wishing to use the RND may submit queries to the database which must include a NANP number and a date.<sup>7</sup> The date may be any past date on which the caller is reasonably certain that the intended called party could in fact be reached at the number being queried.<sup>8</sup> To incentivize the use of the RND, callers who use and rely on the database to learn if a number has been reassigned are provided a safe harbor from liability under the Telephone Consumer Protection

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<sup>3</sup> *Id.* at ¶ 1, 3.

<sup>4</sup> *Id.* at ¶ 3.

<sup>5</sup> Order at ¶ 11.

<sup>6</sup> *Id.* at ¶ 16

<sup>7</sup> *Id.* at ¶ 19.

<sup>8</sup> Order at ¶ 19.

Act.<sup>9</sup> Callers wishing to take advantage of this safe harbor are required to query the database before making calls.<sup>10</sup>

With all this in mind, business landlines and other toll-free numbers should not be included in the RND because doing so will create an unnecessary burden for Providers seeking to comply with the RND's requirements while accomplishing nothing in achieving the Commission's goal of protecting consumers from unwanted calls. Additionally, including business landlines and toll-free numbers needlessly increases the cost of database administration and neither businesses nor consumers are expected to query the database for such numbers. For example, consumers would not feel the need to query for individual calls and businesses will not incur the cost of querying when there is no or exceptionally minimal risk of liability for failing to do so. Furthermore, including business landlines was not the goal of commentators who encouraged a "comprehensive" database and including the numbers will create issues of accuracy for the database administrator, and also for users. Including business landlines and toll-free numbers is an unnecessary regulation that will only cause additional complications and expense in the administration of the database.

**A. The Inclusion of Business Landlines and TFN's Does Not Further the  
Commission's Goal of Protecting Consumers from Unwanted Calls**

The inclusion of business landlines and TFN's in the RND is unnecessary because the Commission created the RND to protect consumers, not businesses, from unwanted calls. The Commission emphasized the importance of its goal to protect consumers in paragraph one of the Order stating: "The problem occurs when a caller tries to *reach a consumer* who expects a call but,

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<sup>9</sup> *Id.* at ¶ 53.

<sup>10</sup> *Id.* at ¶ 55.

unbeknownst to the caller, has disconnected the number. That number is often reassigned to a *new consumer*, who then receives an unwanted call meant for the *prior consumer*—and all too often multiple unwanted calls when, for example, *the consumer* misses the call or chooses to not to answer it. As a result, the *previous consumer* is deprived of expected calls.”<sup>11</sup> In creating the RND, the Commission was not addressing an issue with businesses getting unwanted calls to numbers reassigned from other businesses. It is explicitly clear from the Commission’s own chosen language that their mission was to prevent consumers receiving unwanted calls to numbers that had been reassigned from other consumers.

Assuming the Commission was concerned about businesses receiving unwanted calls due to numbers being reassigned, including them in the RND would still be unnecessary because business landlines are comparatively rarely reassigned. The majority of businesses and toll-free users keep their numbers for long periods of time because they have campaigns of marketing materials publishing those numbers for consumers to use. It is a business best-practice to then retain those numbers so that they may be reached by the largest volume of consumers. Even if a business landline or TFN were reassigned, and on the off chance that reassignment was made to a consumer, the reassignment would never be detected because, as discussed further below, businesses are unlikely to query the database for other business numbers. The quantity of business landlines and other TFN’s being reassigned and the risk of those numbers being reassigned to consumers is so small that including them in the database is an inefficient use of resources and an unnecessary burden on Providers.

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<sup>11</sup> Order at ¶ 1 (emphasis added).

**B. Business Landlines and Toll-Free Numbers Were Never Meant to Be Part of the “Comprehensive” Database**

Business landlines and toll-free numbers should not be included in the RND because they were never meant to be a part of the Commission’s goal of creating a comprehensive database. In the Order, the Commission states, “We agree with the vast majority of commentators in the record that to be effective, the RND needs to be as comprehensive as possible so that *consumers* are not left vulnerable.”<sup>12</sup> However, interpreting comments that “comprehensive” means *all* numbers is incorrect. For example, the Commission supports its position by citing to comments made by a number of organizations that the database should be comprehensive,<sup>13</sup> but on a closer reading many of those commenters are discussing comprehensiveness in the context of consumer numbers or Provider types.<sup>14</sup> Interpreting these comments to include business landlines as a requirement of a “comprehensive” database creates unnecessary and overly burdensome regulation.

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<sup>12</sup> *Id.* at ¶ 22 (emphasis added).

<sup>13</sup> *Id.* at n. 61.

<sup>14</sup> *See, e.g.*, Comments of Nat. Council of Higher Ed. Resources, *In the Matter of Advance Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59 (Aug. 28, 2017) at 3 (“The goal in this case should be to assist callers in connecting with the right party.”); Comments of Tatango, Inc. (Aug. 28, 2017) at 9 (“Consumers will benefit not only from reducing unintended text messages, but also benefit financially by not having to pay their wireless carrier for those unwanted text messages. Businesses sending text messages to consumers will also benefit.”); Comments of NCTA (Aug. 28, 2017) at 4 (“We can support a centralized, Commission-led effort to create an appropriate mechanism, rules, liability protection, cost-allocation, and enforcement of the obligations and industry-wide cooperation that will be required to address robocalling issues.”); Comments of Anthem, Inc. (Aug. 28, 2017) at 3 (“The primary benefit to consumers is that consumers with reassigned numbers will not receive unwanted or irrelevant calls intended to a prior holder of the number. The primary benefit to businesses is reducing the risk of severe financial exposure when customers change phone numbers without a company’s knowledge.”); Comments of Insights Assoc. (Aug. 28, 2017) at 3 (“Absent broader reform of the TCPA, a comprehensive database of reassigned cell phone numbers is necessary in order to facilitate TCPA compliance and help Insights Association members avoid the growing rash of unnecessary multi-million-dollar class action lawsuits.”); Comments of Nat. Retail Federation (August 28, 2017) at 14-15 (“NRF urges the FCC to move swiftly to establish a centralized database for reassigned numbers that serves as a comprehensive, single source of truth regarding number reassignments

**C. Businesses Will Not Query the Numbers of Other Businesses in the Database**

Including business landlines and toll-free numbers in the RND is unnecessary because businesses using the database seeking to limit their liability under the Telephone Consumer Protection Act<sup>15</sup> will not be querying the database for landlines and toll-free numbers of other businesses. Businesses incur liability under the TCPA for calling wireless numbers using an automated telephone dialing system (“ATDS”).<sup>16</sup> However, businesses do not incur liability for using an ATDS to place calls to a business landline or toll-free number. Businesses may additionally incur liability for calling wireless or residential numbers and playing a pre-recorded message, but again, businesses are not liable for such calls placed to a non-residential landline or toll-free number.<sup>17</sup> One could argue that, while businesses may not query the database for other businesses’ landlines or toll-free numbers, a consumer might still do so, but believing consumers will spend their already limited excess funds on querying the RND is simply unreasonable. Thus, requiring business landline and toll-free number reassignments to be reported in the RND will do nothing more than increase the reporting burden placed on Providers and the costs of administrating the database.

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for businesses wishing to contact their customers at phone numbers for which they have already obtained consent.”); Comments of Student Loan Servicing Alliance (August 28, 2017) at 5 (“SLSA members thus would welcome a robust, comprehensive and accurate database of reassigned numbers that would allow them to scrub their borrowers’ numbers.”).

<sup>15</sup> 47 U.S.C. 227.

<sup>16</sup> *Id* at 227(b)(1)(A)(iii).

<sup>17</sup> *Id*.



**D. Including Business Landlines and Toll-Free Number Will Create Inaccuracies**

Finally, including business landlines and toll-free numbers in the database will create an issue of accuracy for the database when business numbers are periodically reassigned internally by a company while providing services to its business clients. For example, if Hosted Provider A receives a number, and allocates it to Business Client B for a campaign, and then the Hosted Provider allocates the same number later to Business Client C for a different campaign, then the number effectively was reassigned from Business Client B to Business Client C. However, the Provider who reports numbers to the reassigned numbers database will not be aware of the Hosted Provider's internal "reassignment." Querying the reassigned numbers database about the number will result in an inaccurate response because the user will not be informed that the number has been reassigned from Business Client B to Business Client C. This problem could be solved by requiring the Hosted Provider to report the reassignment to the database, or to their carrier, who will then report it, but this would result in nothing more than yet another unnecessary obligation. The simplest and most reasonable solution is to simply exempt business landlines and other toll-free numbers from the reassigned numbers database.<sup>18</sup>

**III. The Commission's Safe Harbor Provision Is Unclear and Requires Modification**

The Commission's "safe harbor" from TCPA liability created by the Order contains contradictory terms that require modification to ensure clarity and uniformity in the application of the safe harbor. In order to take advantage of the safe harbor, a user must have previously queried

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<sup>18</sup> If the Commission determines in the future that business landlines and toll-free numbers should be added to the RND, for example, due to statutory or regulatory changes, the Commission could always expand the RND to include such numbers at that time.

the database.<sup>19</sup> In their query, the user must provide a number and date for the database to check the number against to see if the number has since been reassigned.<sup>20</sup> According to the Order, the date provided by the querying partying may be “any past date on which the caller reasonably is certain that the consumer the caller intends to reach could in fact be reached” at the number being queried;<sup>21</sup> however, the actual regulatory language used by Commission to create the safe harbor rule requires the date queried to be the date on which the caller previously obtained the express consent to be called from the called party.<sup>22</sup> This contradiction poses a concerning issue for callers, such as contact centers, making calls on behalf of another party.

According to the safe harbor’s language, the caller bears the burden of proving that the date used in the query is the same date that they obtained the express consent from the called party.<sup>23</sup> A caller making calls on behalf of another party will have a reasonable expectation that their client furnished them with the proper dates to be used in querying the database and that the date the client provided the number for calling is a date upon which the caller may rely for consent. Challengingly, the caller may have insufficient proof to meet the burden that express consent was acquired on the date they’ve received from their client because such records would be within the client’s possession – not the caller’s. On the other hand, the caller would have the date upon which their client provided the number which they could use as a reasonably certain date the consumer could be reached. To correct this contradiction and resolve the potential for misapplication, the language of the safe harbor provisions should be modified as follows:

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<sup>19</sup> Order at 30.

<sup>20</sup> *Id.* at ¶ 19.

<sup>21</sup> *Id.*

<sup>22</sup> Order at 30.

<sup>23</sup> *Id.*

(m) *Safe Harbor*. A person will not be liable for violating the prohibitions in paragraphs (a)(1), (a)(2), or (a)(3) by making a call to a number for which the person previously had obtained prior express consent of the called party as required in paragraphs (a)(1), (a)(2), or (a)(3) but at the time of the call, the number is not assigned to the subscriber to whom it was assigned at the time such prior express consent was obtained if the person, bearing the burden of proof and persuasion, demonstrates that:

(1) The person, based upon the most recent numbering information reported to the Administrator pursuant to paragraph (l), by querying the database operated by the Administrator and receiving a response of “no”, has verified that the number has not been permanently disconnected since the date **the caller reasonably is certain that the consumer the caller intends to reach could in fact be reached at that number** prior express consent was obtained as required in paragraphs (a)(1), (a)(2), or (a)(3); and

(2) The person’s call to the number was the result of the database erroneously returning a response of “no” to the person’s query in (m)(3) consisting of the number for which prior express consent was obtained as required in paragraphs (a)(1), (a)(2), or (a)(3) and ~~the a~~ date on which **the called party was assigned to the number**. ~~such prior express consent was obtained.~~

#### IV. **Conclusion**

Including business and toll-free numbers in the RND is unnecessary to accomplishing the goals of the database and is an overly burdensome regulation. Even if the numbers are not included, businesses are disincentivized from using the database by a safe harbor that is currently contradictory. Therefore, PACE respectfully requests the Commission modify its Order creating a comprehensive RND as follows: (1) eliminate the Commission’s requirement that business landlines and toll-free numbers be included in the database and (2) modify the regulation’s safe harbor language concerning “dates” to more accurately reflect the Commission’s intentions expressed in the language of the Order.

Respectfully submitted,

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