BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

**COMMENTS In the Matter of**

**Advanced Methods to Target and Eliminate Unlawful Robocalls**

**CG DOCKET 17-59**

**FCC Docket 18-31**

**[Submitted May 18, 2018]**

I am providing individual comments on the Commission’s proposal to utilize the North American Numbering Database to provide a means for business to identify if a telephone number has been reassigned prior to attempting to contact the number.

The Background section of the proposed rule provides a very good synopsis of the problem trying to be resolved by the rule. The rule is attempting to reduce the number of unwanted calls received by consumers (who are assigned a number that a Company believes it is allowed to contact), to reduce the exposure of Companies that contact customers via phone to TCPA violations, and to maintain the efficiency of Company-Customer communication via telephone.

This situation is the result of unintended interactions between several activities and selfish motivations. These are:

1. Consumers want to be free of nuisance robocalls.
2. Congress granted consumers a cause of action against robocalls (autodialers).
3. Businesses want to use autodialers to contact consumers and provide information to facilitate the Business-Customer relation, even when it exposes the Business to potential TCPA violations due to reallocated phone numbers.

**My Preference if For the Commission to Do Nothing**

I do not believe that there is a problem that requires the Commission to take action. Businesses are supposed to operate in light of existing law and regulation. A business is choosing to offer a service to its customer (telephonic communication) in light of the compliance (TCPA) risk. If the Commission does nothing then Businesses will arrive at alternative solutions to maintain their customer service.

Doing nothing will leave the playing field as established by Congress, via TCPA, intact. Consumers will retain their right to be left undisturbed by misdirected robocalls or autodialed calls. The “chilling effect” on this particular form of communication will spur the development of alternative contact solutions by businesses.

**I Do not Understand the Source of Commission Authority to Create the Proposed Database and Provide Access to Non-telecommunication Companies**

In Paragraph 10 the Commission states it has the authority to pursue this proposed scheme relying Section 215(e) of the Telecommunications Act provides such authority. I do not understand the reasoning the Commission utilized to conclude it possessed such authority. Section 215(e) provides for Numbering Administration:

“ (1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9–1–1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9–1–1 is not in use as an emergency telephone number on October 26, 1999.”

Section 251(e)(1) states the Commission authority as create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The objective is stated as managing numbers and making them available. Plain reading of this section limits the Commission activities to these functions required to issue and re-issue numbers and to track costs to be charged to telecommunication carriers.

The Commission included a reference to **WC DOCKET NO. 07-243 REPORT AND ORDER.** In this documentthere is a paragraph, "... Section 251(e) of the Communications Act of 1934, as amended (Act), gives the Commission plenary jurisdiction over the NANP and related telephone numbering issues in the United States.' Further, section 251(e)(2) states that "[the cost of establishing . . . number portability shall be borne by all telecommunications carriers on·a competitively neutral basis as determined by the Commission:'" Section 251(b)(2) of the Act requires local exchange carriers (LECs) to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'" The Act and the Commission's rules define number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."

In this section the Commission is explaining that its objective is to be used for the convenience of the consumer to maintain the same number when switching telecommunication carriers. This explanation aligns nicely with the text of section 2.15 (e) where the objective is the management of numbers and the portability.

In my opinion “to administer” means to control the issuance of numbers and collect costs. The Commission is expanding this term to include publication of information of the disconnection of numbers for use by non-telecommunication companies to facilitate TCPA compliance and reduce unwanted calls. The Commission can require the reporting of by the telecommunication company to report disconnection to facilitate the issuance of numbers, but it can not use the information for the purposes proposed in the rule.

**Database Structure and Privacy**

The Commission proposes three possible approaches: (1) Require service providers to report reassigned number information to a single, FCC-designated database; (2) require service providers to report such information to one or more commercial data aggregators; or (3) allow service providers to report such information to commercial data aggregators on a voluntary basis.

The Commission must consider the impact to personal information that may be placed at risk by this proposal. The Commission should aggressively consider the misuse and abuse of the information that it proposes to make available to general business.

**Factors for Effectiveness**

The effectiveness of the database will be based on its completeness, the accuracy and timeliness of information, and the use of it by calling businesses.

**TCPA Safe Harbor (ACA vs FCC Slip op at 40)**

The Report and Order implies the Circuit Court agreed that the proposed approach in this rulemaking would be valid. The opinion does not state that conclusion. It only states that the Commission id pursuing this approach which is factually true. It does not state the Commission is acting within its authority or provides the parameters for a reasonable basis to pride a safe harbor for TCPA compliance. The Court was concerned with the “one-call” approach to the safe harbor.

**TCPA Text Related to the Safe Harbor (section 227)**

The TCPA safe harbor is found in Section 227 (2)(b)

(2) REGULATIONS ;

EXEMPTIONS AND OTHER PROVISIONS

.—The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing

the requirements of this subsection, the Commission—

(A) [not shown]

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

To create the safe harbor the Commission will need to justify that a single unsolicited call received by a consumer is not an invasion of privacy that rises to the definition of an adverse effect of the consumer’s privacy right. Any unsolicited call is an invasion of privacy. The challenge is to scope “adverse” impact in a manner that would withstand scrutiny.

The rulemaking implies that using the proposed database would show a good faith attempt by a business to not adversely impact the privacy of an improperly contacted consumer. I do not agree that this is a proper conclusion. A business can have all intentions to never invade a consumer’s privacy with an unsolicited call and may take extreme measures to prevent such an occurrence, but that is not the measure of the establishment of a safe harbor for TCPA compliance. The only measure is the Commission determining the result of the unsolicited contact will not have an adverse impact on the consumer’s privacy.

Adverse impact would mean a harmful impact on a person’s privacy. The text does not include a qualifying term such as very large, tiny or substantial. It is simply adverse impact. Which means any level impact that a consumer finds unfavorable or harmful to their privacy. Given the Commissioners’ statements on the annoying characteristics of unsolicited calls it is valid to conclude a single call would be an adverse impact to the privacy of a consumer.

If this reasoning is accepted then it would be nearly impossible for the proposed database to justify the establishment of a TCPA safe harbor if utilized to validate a business telephone contact list.

In conclusion, I like the proposal but do not believe the Commission has the authority to implement the reassigned numbers database as part of its administrative authority on Section 251(e). I also do not believe the Commission could create a safe harbor for TCPA compliance.

Thank you,

Jonathan Appelbaum