

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**OPPOSITION OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) opposes the petition of the Professional Association for Customer Engagement (PACE) requesting that the Commission reconsider its rules governing the Reassigned Numbers Database (RND).<sup>1</sup> As explained below, the proposed changes to the Commission’s rules would reduce the effectiveness of the RND.

Under the Telephone Consumer Protection Act (TCPA), callers may face liability for certain types of calls made using an automatic telephone dialing system or a prerecorded or artificial voice, but there is no such liability in cases where the called party has provided his or her consent to be called.<sup>2</sup> As the Commission is aware, one issue that arises under these provisions is how to treat situations in which a person provides his or her consent to be called at a particular phone number, subsequently relinquishes that phone number, and the caller makes a call to the person to whom the number has been reassigned. In the 2018 *Reassigned Numbers Order*,<sup>3</sup> the Commission addressed this situation by ordering the creation of a new database identifying numbers that have been disconnected and established a safe harbor from TCPA liability for callers that consult the RND.

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<sup>1</sup> Professional Association for Customer Engagement Petition for Reconsideration, CG Docket No. 17-59 (Apr. 25, 2019) (PACE Petition).

<sup>2</sup> 47 U.S.C. § 227(b).

<sup>3</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Report and Order, 33 FCC Rcd 12,024 (2018) (*Reassigned Numbers Order*).

NCTA strongly supports the Commission’s decision to establish a comprehensive database of reassigned telephone numbers, and to encourage use of this resource by adopting a safe harbor from liability under the TCPA. As a general matter, the *Reassigned Numbers Order* appropriately weighed the costs and benefits of various approaches to the reassigned number problem, and arrived at a well-reasoned solution that will significantly reduce the number of misdirected calls and shield legitimate callers from unwarranted liability.<sup>4</sup>

The PACE Petition threatens to upset the careful balance struck in the *Reassigned Numbers Order*. In particular, PACE urges the Commission to specify that “business landlines and other toll-free numbers should not be included” in the database on the ground that such reporting would be costly for voice providers and that the inclusion of such information in the database would bring limited benefits for callers.<sup>5</sup> But in the experience of NCTA’s members, PACE’s assessment of these costs and benefits seems backwards; it likely would be more costly for voice providers to separate out business numbers and tailor their reporting only to consumer numbers, and a database that lacks such information likely would be less beneficial to callers, including in the context of TCPA compliance.

On the issue of cost, NCTA’s members expect that it may be significantly more burdensome to differentiate between business numbers and consumer numbers in reporting

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<sup>4</sup> NCTA continues to encourage the Commission to treat the intended recipient of the call as the “called party” for purposes of TCPA liability during the period between the effective date of the relevant provisions of the *2015 TCPA Order* (which were subsequently vacated) and the date on which the RND becomes operational. See Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 18-152 (Mar. 1, 2019) (“While implementation of the reassigned numbers database (and corresponding safe harbor for use of that database) will help to reduce the number of calls to unintended recipients, until that database is fully operational cable operators will continue to face unwarranted litigation risk in connection with legitimate calls to customers who have changed their number without informing their service provider. The Commission should make clear that this interpretation of ‘called party’ applies not just prospectively, but also retroactively in light of the court’s decision in *ACA International* vacating the Commission’s ‘one call’ safe harbor and the court’s analysis of the Commission’s previous interpretation of called party.”).

<sup>5</sup> PACE Petition at 5.

disconnection information to the RND. Many companies do not distinguish between business numbers and consumer numbers in tracking disconnections. Consequently, those companies would need to incur significant costs developing and implementing entirely new processes and methodologies to separate out business numbers from consumer numbers when reporting disconnection information to the database.

Moreover, efforts to distinguish between business and consumer numbers for reporting purposes likely would face practical and administrative hurdles. For instance, the line between “business” and “consumer” numbers is sometimes blurry, particularly in scenarios where small business owners and employees use their personal lines for business purposes. Difficult questions about what constitutes a “consumer” number could result in misclassification and potentially lead to the underreporting of disconnections for such numbers. Thus, even if PACE were correct that the protection of consumers should be the only goal of a reassigned number database, the RND still may not adequately serve that purpose if it becomes underinclusive as a result of PACE’s proposal.

Meanwhile, the benefits of including disconnection information about business numbers in the RND could be substantial. PACE argues that it is unlikely that business-to-business calls will be the subject of lawsuits under the TCPA and that “businesses using the database seeking to limit their liability” thus would have no reason to query the database for business numbers.<sup>6</sup> But businesses are frequently plaintiffs in TCPA cases, including cases involving calls mistakenly placed to reassigned numbers.<sup>7</sup> Accordingly, a comprehensive database that includes

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<sup>6</sup> *Id.* at 8.

<sup>7</sup> *See, e.g., AMP Auto., LLC v. BFT, LP*, 2019 U.S. Dist. LEXIS 52793 (E.D. La. Mar. 28, 2019) (involving TCPA claim brought by one business against another business where defendant had mistakenly relied on a reassigned number). Indeed, even consumer plaintiffs seeking class certification in TCPA cases involving reassigned numbers often urge the court to expand the class to include businesses that have received misdirected calls. *See, e.g., Reyes v. BCA Fin. Services*, 2018 U.S. Dist. LEXIS 106449, at \*54 (S.D. Fla. June 26, 2018)

disconnection information for consumer numbers and business numbers would provide much more significant benefits than a database tracking consumer disconnections alone.

PACE also overlooks the fact that business numbers can be—and often are—reassigned to consumers, and that, as a result, calls intended for businesses may occasionally reach consumers and trigger consumer suits under the TCPA. Thus, even if a caller were concerned solely about avoiding inadvertently calling consumers, it still would benefit from a database that includes disconnection information for numbers previously assigned to businesses.

For all of these reasons, the best path forward would be a ruling reaffirming that voice providers are required to report disconnection information for both business numbers and consumer numbers. At a minimum, the Commission should refrain from prohibiting voice providers from reporting disconnection information for business numbers in light of the significant costs such an approach would impose.

Respectfully submitted,

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May 22, 2019

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(certifying class that included “[a]ll persons and entities” that received an allegedly unlawful wrong number call); *Williams v. Bluestem Brands, Inc.*, 2019 U.S. Dist. LEXIS 56655, at \*10 (M.D. Fla. Apr. 2, 2019) (same).