

**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)	FCC 18-31
)	

Comments of Professional Association for Customer Engagement

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I. Introduction

The Professional Association for Customer Engagement (“PACE”)¹ respectfully submits these Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Second Further Notice of Proposed Rulemaking (“SFNPRM”)² regarding the creation of a reassigned number database. Following the D.C. Circuit Court of Appeals decision in *ACA Int’l v. FCC*,³ the value of a reassigned number database to callers has been arguably diminished in relation to the likely costs it would impose. PACE recommends the Commission delay consideration of a reassigned number database until the Commission issues a new definition of “called party” and interested parties evaluate the need for a reassigned number database in light of the new definition.

II. Database Not Warranted at this Time

Callers may not “make any call (other than a call made for emergency purposes or made with the prior express consent of the *called party*) using any automatic telephone dialing equipment or prerecorded voice.”⁴ In its 2015 Declaratory Ruling and Order, the Commission defined “called party” as the subscriber of the number (or non-subscriber customary user of the phone) rather than the intended recipient of the call.⁵ Recognizing that a caller may not know of a number’s reassignment prior to the call, and seeking to effect a “reasonable reliance” approach, the Commission instituted a one-call safe harbor.⁶ Under the one-call safe harbor, a caller may make one erroneous call to a reassigned number without TCPA liability, but would be liable for all subsequent calls, even if nothing in the first call informed the caller that the number had been reassigned.

¹ 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, BPOs, economic development organizations and technology suppliers that enable companies to contact or enhance contact with their customers.

² Second Further Notice of Proposed Rulemaking, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, FCC 18-31 (Mar. 23, 2018).

³ *ACA Int’l v. FCC*, 2018 U.S. App. LEXIS 6535 (D.C. Cir. 2018).

⁴ 47 U.S.C. § 227(b)(1)(A) (emphasis added).

⁵ Declaratory Ruling and Order, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (Jul. 10, 2015), ¶¶ 72-73 (“2015 Ruling”).

⁶ *Id.* at ¶¶ 88-90.

Callers sought a reassigned number database in earnest following the 2015 Ruling because of the substantial liability they faced for calls made with the intent to reach one party but inadvertently reaching another party because of number reassignment. At the time of the Commission's 2015 Ruling, callers could use non-governmental compliance tools to attempt compliance, but they found that these solutions were often only partially effective.⁷ PACE took the position early-on, however, that the Commission should not consider a reassigned number database until the *ACA Int'l* decision because the root of the problem is not the lack of a database, but rather the Commission's definition of "called party" and implementation of an arbitrary one-call safe harbor.⁸ That decision has now arrived.

The *ACA Int'l* Court vacated the Commission's one-call safe harbor as arbitrary, stating:

The Commission thus consistently adopted a "reasonable reliance" approach when interpreting the TCPA's approval of calls based on "prior express consent," including as the justification for allowing a one-call safe harbor when a consenting party's number is reassigned. The Commission, though, gave no explanation of why reasonable-reliance considerations would support limiting the safe harbor to just one call or message. . . . **The first call or text message, after all, might give the caller no indication whatsoever of a possible reassignment** (if, for instance, there is no response to a text message, as would often be the case with or without a reassignment).⁹

The Court went on to also invalidate the Commission's treatment of reassigned numbers as a whole, including the definition "called party," because failure to do so would result in a strict-liability regime without any safe harbor.¹⁰ Whether a reassigned number database is warranted in the future, depends largely on the Commission's response to this ruling.

PACE believes that the Commission should promptly define "called party" as the party whom the caller reasonably expected to receive the call (*i.e.*, the caller may rely on previously-provided consent until the caller has actual notice of the number's reassignment).¹¹ By defining

⁷ SFNPRM at ¶ 5.

⁸ Comments of Professional Association for Customer Engagement, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, FCC 17-90 (Aug. 28, 2017).

⁹ *ACA Int'l* at *48 (emphasis added).

¹⁰ *Id.* at **52-53.

¹¹ At least two Commissioners have affirmed the reasonableness of defining "called party" as the intended recipient of the call. Dissenting Statement of Commissioner Ajit Pai, 2015 Ruling, 7 ("Interpreting the term 'called party' to mean the expected recipient—that is, the party expected to answer the call—is by far the best reading of the statute."); Statement of Commissioner Michael O'Rielly Dissenting in Part and Approving in Part, 2015 Ruling, 11 ("Sadly, there were reasonable options that the Commission rejected. In particular, a number of petitioners and commenters

“called party” in this manner, the Commission would negate the need for a potentially costly¹² reassigned number database while preserving the ability of consumers to stop calls to their numbers simply by informing the caller that the number was reassigned. Additionally, the Commission would resolve current ambiguity in case law that may result in strict liability for some calls to reassigned numbers.¹³

III. Conclusion

Consequently, PACE urges the Commission to delay further consideration of a reassigned number database until after it issues a new definition of “called party” and interested parties have had an opportunity to evaluate the associated compliance implications. Through a considered ruling on the “called party” question, the Commission may avoid the need for a complicated and costly database. By taking each step in turn, the Commission will promote efficiency in its rulemaking process and in the teleservices ecosystem.

Respectfully submitted,

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asked the FCC to interpret ‘called party’ to mean the ‘intended recipient’. This commonsense approach would have allowed a company to reasonably rely on consent obtained for a particular number.”). PACE will further address the “called party” definition and treatment of reassigned numbers in its forthcoming Comments to the Commission’s request for comments on the interpretation of the TCPA in light of *ACA Int’l* (CG Docket Nos. 02-278, 18-152; DA 18-493).

¹² See SFNPRM at ¶ 7 (“Several other commenters contend that establishing a reassigned numbers database is too costly as compared to the likely benefit.”).

¹³ See *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637 (7th Cir. 2012) (holding that “called party” means the person subscribing to the called number at the time the call is made); *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242 (11th Cir. 2014) (agreeing with *Soppet* interpretation of “called party”).