

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

Second Further Notice of Proposed Rulemaking	)	
Advanced Methods to Target and Eliminate	)	CG Docket No. 17-59
Unlawful Robocalls	)	FCC CIRC1803-02
	)	

**COMMENTS OF NOBLE SYSTEMS CORPORATION**

**Filed June 7, 2018**

Karl Koster  
Chief Intellectual and Regulatory Counsel  
Noble Systems Corporation  
1200 Ashwood Parkway  
Atlanta, GA 30338

## **I. Summary**

Noble Systems, a provider of contact center software and cloud-based service solutions, submits these comments in response to the Commission’s Second Further Notice of Proposed Rulemaking on the Issue of a Reassigned Number Database (“FNPR”). Noble Systems believes the Commission’s review of the interpretation of the definition of an automatic telephone dialing system (“ATDS”) and as well as other aspects of the Telephone Consumer Protection Act (“TCPA”) significantly impact the need, utility, and expected usage for such a database. If it is determined that any such database should be deployed, it should be based on voluntary reporting by service providers to a number of available commercial data aggregators. The consideration of a safe harbor would motivate callers to use the service, but a number of issues impact the scope of such safe harbor and whether the Commission even has authority to grant a safe harbor for all wireless numbers.

## **II. The Need to Query a Reassigned Number Database May Be Changing**

The need for a reassigned number database (“RND”) is largely predicated on the potentially liability callers may incur under the TCPA. Callers texting or originating voice calls using an automatic telephone dialing system (“ATDS”), or providing a pre-recorded message may encounter reassigned numbers and potentially incur liability. Recent developments, as result of *ACA International* ruling,<sup>1</sup> have called into question the exact scope of an ATDS and the meaning of “called party.” That ruling has motivated the Commission to issue a separate request for comments which impacts aspects of the RND. (FCC DA 18-493.)<sup>2</sup>

The motivation for callers to query a RND is impacted by the definition of an ATDS. For example, if equipment used to dial calls to a wireless number is no longer consider an ATDS, then the motivation for querying the RND may be eliminated or reduced. It is recognized that any modification to the definition of an ATDS would not impact the potential liability to a caller when

---

<sup>1</sup> *ACA Int’l et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

<sup>2</sup> CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON INTERPRETATION OF THE TELEPHONE CONSUMER PROTECTION ACT IN LIGHT OF THE D.C. CIRCUIT’S *ACA INTERNATIONAL* DECISION, DA 18-493, CG Docket No. 18-152; 02-278, released May 14, 2018.

playing a pre-recorded announcement to a residential line. However, a reduction in the anticipated need for querying the RND impacts the volume of queries the RND is expected to handle, and, in turn, impacts the business case for the data aggregator(s). Until such scope of the ATDS is determined, the Commission should be cautious in proceeding. Preferably, the Commission will revisit and re-solicit comments on this issue after other aspects are settled.

Other issues are under review in the TCPA regulations, such as when liability would accrue for calling a reassigned number and the definition of “called party.” Resolutions of these issues also impact the expected demand for an RND. For example, if liability were to accrue only after the caller has actual notice of the reassigned number, the caller may instead rely on actual notice provided by the answering party instead of querying a reassigned number database beforehand.

### **III. Approaches to Database Administration - Potential Architectures**

The Commission identifies several potential architectures for which it seeks comment. A first architecture is predicated on a single RND that is controlled or authorized by the Commission that service providers report their reassigned numbers to. The second approach is to mandate service providers report reassigned numbers to a plurality of commercial data aggregators, each of which would be providing their own RND for callers to query. Finally, a third option is to voluntarily allow service providers report reassigned numbers to a plurality of commercial data aggregators, each of which are providing their own RND.

Presently, several providers purport to offer services indicating the reassigned number status. Such providers have made significant investments in offering such services, and the first architectural option appears to place the Commission in a position of determining which one of the existing providers will become the “winner” while the rest will be “losers” in this business. Had this proposal been considered earlier, prior to entry into the marketplace by these existing providers, this option may have been viable.<sup>3</sup> However, at this stage, there are a number of RND providers of reassigned number status and selecting one provider to be the “official” RND provider

---

<sup>3</sup> In contrast, another industry wide database, such as the Do-Not-Call (“DNC”) database, was created when there were no competing alternative DNC providers. Thus, no existing provider was harmed by mandating creation of a national DNC database.

seems grossly unfair and detrimental to all but the selected provider. For this reason, if it is necessary to proceed with establishing such a database, it is preferred that multiple aggregators be allowed to participate, based on their willingness.

As between the option of mandating service providers to report to multiple commercial data aggregators versus allowing service providers to voluntarily report reassigned numbers, the latter option appears preferred, at least as an initial approach. Because offering a reassigned number status information is a business venture, there is a high level of risk involved, especially in light of the uncertainty of the demand for such a service. If service providers are mandated to report information, then costs are likely to be higher and there is more likely to be defined a basis for cost recovery. Indeed, the FNPR envisions compensating service providers for their reporting costs, including potentially by passing costs on to the data aggregator. Under a mandatory reporting scheme, once this part of the business model is set, it impacts the business model of the data aggregators, and may unfairly shift risk to the data aggregator(s). Until further understanding is gained about the anticipated demand, it is more appropriate to utilize a voluntary reporting scheme. It is always possible to shift to a mandatory reporting scheme in the future, should re-evaluation in the future determine this is necessary or appropriate.

The approach of allowing service providers to voluntarily report to multiple aggregators appears to follow the existing arrangement of presently available reassigned number service providers. To the extent that the existing arrangement of providers can be maintained, allowed to compete, and enhance their services to meet marketplace needs, the voluntary reporting approach appears to be a preferred approach. In such an arrangement, there would be industry benefits gained by standardizing what information is reported, how it is reported, and when. Thus, standardization of these aspects can still occur. Further, in this arrangement, providers can decide for themselves whether such a business is viable in light of potential future changes in the TCPA landscape. It would seem advantageous for the Commission to look to existing industry associations to define the details of how such information would be conveyed.

#### IV. Safe Harbor Provisions

Callers will be largely motivated to use this service only if a safe harbor is granted. The benefits of a safe harbor are intended to mitigate risk of liability under the TCPA and justify the cost of initiating such queries. Since the risk is associated in part with using an ATDS, the risk is in flux in light of the Commission's potential re-interpretation of the scope an ATDS. The scope of a safe harbor may be impacted by other rulings interpreting other aspects under the TCPA, such as the meaning of the "called party."

The Commission seeks input in a different proceeding (DA 18-493, "Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision") on the statutory authority to grant such a safe harbor. It appears that 47 U.S.C. 227 (b)(2)(C) allows the Commission to exempt from the requirements "calls to a telephone number assigned to a cellular telephone service that are not charged to the called party...." (Emphasis added.) It would seem that any measured service cellular telephone plan, e.g., one where the subscriber effectively pays for a call on a usage basis (typically pre-paid wireless services), would be viewed as a call that is "charged to the called party." The Commission should consider the utility of a proposed safe harbor (and the utility of callers querying a RND) if pre-paid wireless numbers or some other types of numbers are exempted from the safe harbor.

The benefit of a safe harbor may depend on the degree of usage by a caller. If the caller accesses the RND before each call is made, then it would appear appropriate for the caller to obtain the full benefit of the safe harbor. However, this is also likely to be the most expensive option for the caller. What if the caller selectively determines on a number-by-number basis whether to query the RND? That is, the caller may not query numbers recently verified, but query only infrequently dialed numbers. Does the caller gain any benefits of a safe harbor if a query was not done for the current call, but was done for past calls to the same number? If the caller receives safe harbor protections only for those calls for which a query was done, then this will likely impact the demand from callers in querying the RND database. This in turn, impacts the revenue and business models of the data aggregator(s). This additional uncertainty further demonstrates the benefit of a voluntary reporting approach.

**V. Conclusion**

The Commission should proceed cautiously in proceeding in defining a reassigned number database service. A number of factors impact the business models, demand, and utility of such a service. These factors are being currently reviewed by the Commission in other proceedings and these factors are interrelated. If an architecture is selected at this time, then the architecture should be based on service providers voluntarily reporting to one or more commercial data aggregators. This will be less disturbing to the existing marketplace of existing providers of reassigned number status information. Finally, definition of a safe harbor will impact the usage of such a service, and various aspects require further consideration, including the level of statutory authority the Commission has to define a safe harbor.

Respectfully submitted on June 7, 2018,

/Karl Koster/

Karl Koster,  
Chief IP and Regulatory Counsel  
Noble Systems Corporation  
1200 Ashwood Parkway  
Atlanta, GA 30338  
(404) 851-1331 (x1397)