

**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)	

COMMENTS OF CENTURYLINK

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I. INTRODUCTION.

CenturyLink¹ files these comments in response to the Second Further Notice of Proposed Rulemaking (“SFNPRM”) released March 23, 2018 in the above-referenced docket. The SFNPRM continues to explore solutions to the problem of robocalls made to phone numbers of consumers who had consented to receive calls but whose phone numbers have been reassigned.² CenturyLink appreciates the Commission’s concerted efforts to reduce unwanted and illegal calls to remedy the considerable consumer stress and frustration those calls cause. CenturyLink is concerned, however, that reassigned numbers represent an undetermined, yet potentially quite narrow, issue that will not appreciably reduce unwanted or illegal robocalls overall. Because of this uncertainty, the Commission should proceed carefully and avoid burdensome mandates until more information is available to confirm that the benefits of a reassigned number database will outweigh the costs and positively impact consumers in a meaningful way. If the Commission decides to move forward despite that unknown, the Commission should consider implementing a

¹ These comments are filed by and on behalf of CenturyLink, Inc. and its subsidiaries.

² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Further Notice of Proposed Rulemaking, FCC 18-31, at ¶ 2 (rel. Mar. 23, 2018) (“SFNPRM”). See also *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Notice of Inquiry, 32 FCC Rcd 6007 (2017) (“Second NOI”).

wireless-only database to address the most acute reassignment issues while gaining practical experience on the benefits a database resource could produce before considering expanding the database to wireline providers.

II. IT IS UNCLEAR WHETHER CALLS TO REASSIGNED NUMBERS ARE A SIGNIFICANT PROBLEM FOR CONSUMERS.

To be sure, illegal robocalls are a universal consumer nuisance and CenturyLink appreciates the continued focus of the Commission, the Federal Trade Commission, the industry, and other stakeholders to free consumers from this harm. In her statement accompanying the SFNPRM, Commissioner Rosenworcel observed that there are approximately 5,000 robocalls made every minute, which is staggering by any measure.³ But illegal robocalls to reassigned numbers are only a subset of the robocalling problem, and CenturyLink is concerned that they represent only a small sliver of unwanted calls overall. What has not yet been adequately defined is how many illegal robocalls would be prevented through establishment and use of a reassigned number database resource. Further, even if this limited portion of illegal robocalls could be abated through a reassigned number database, many illegal robocalls would continue unabated notwithstanding a reassigned number database because the bad actors responsible for those calls cannot be reasonably expected to make use of this new resource. Calls from bad actors are the most damaging and harmful to consumers – these are the calls that, for example, threaten consumers with legal action from the IRS, or otherwise scam and swindle members of the public out of their hard-earned savings – and will not be reduced by this action. Given these concerns, there are serious questions about the impact a reassigned number database would have and if it would prompt an appreciable decline in illegal robocalls.

³ See Statement of Commissioner Jessica Rosenworcel Approving in Part, Dissenting in Part, at 1, in association with the SFNPRM, *supra*, n. 2.

The Commission sought information about the scope of the reassigned number problem in its Second Notice of Inquiry on this matter issued in July 2017⁴ and the tangible consumer benefits that stand to be realized from implementation. Unfortunately, there was little, if any, evidence put in the record about such benefits during the NOI phase of this proceeding. The SFNPRM is also bereft of this important data. While reducing illegal robocalls is a top priority of the FCC's Enforcement Bureau and myriad other entities, virtually all stakeholders have acknowledged that it is a complex and multi-faceted problem that will require a variety of solutions.⁵ To this end, the industry is proceeding on parallel paths to develop call authentication methodologies to ensure calls are valid, to perform tracebacks of suspicious calls, and to implement predictive call blocking solutions through apps and devices to block illegal calls. Taken together, these actions are expected to significantly reduce illegal robocalls overall and provide substantial consumer benefits. In contrast to these significant efforts, the Commission cannot reasonably assess and scale the efforts that the industry should devote to a reassigned number database until the scope of the reassigned number problem is better defined. Before moving forward and imposing additional burdens on the industry to create another tool of potentially limited benefit, more information is needed about the consumer benefits that stand to be realized from the proposed action so a proper cost-benefit analysis can be performed.

⁴ Second NOI, 32 FCC Rcd at 6012 ¶ 14.

⁵ See, e.g., Comments of the USTelecom Association, filed herein (July 3, 2017), at pp. 6-7; Reply Comments of CenturyLink, filed herein (July 31, 2017), at p. 8; Comments of First Orion, Corp., filed herein (July 3, 2017), at p. 3; Comments of Incompas, filed herein (June 30, 2017), at p. 2.

III. IT IS CLEAR THAT CALLS TO REASSIGNED NUMBERS CAN POSE A SIGNIFICANT LIABILITY PROBLEM UNDER THE TCPA.

As many commenters noted in the NOI preceding this item, TCPA litigation is subjecting legitimate callers to liability, potentially “catastrophic liability,” when they inadvertently call numbers that have been reassigned.⁶ The record developed in the NOI shows that overcoming the compliance obstacles brought about by the TCPA’s own framework is at least as strong a driver, if not stronger, to adopt some type of number reassignment database resource than the robocalling relief that may result from this tool. The SFNPRM states that the Commission believes its proposals “will benefit legitimate callers and consumers alike.”⁷ TCPA implementation must be purposefully considered so any database or other solution that might be adopted can realize the Commission’s intent by benefitting legitimate callers through mitigating undue TCPA liability.

One means to accomplish this as well as to incent use of any database resource that may be established is to link use of the database to a TCPA safe harbor.⁸ While care must be taken to make sure any TCPA safe harbor is not overly broad so as to fail to protect consumers or to give bad actors a “get out of jail free” card, this would be a meaningful step toward not only addressing some of the noted flaws in the current TCPA framework but also encouraging use of any newly-created database.⁹ This type of safe harbor would help good faith callers mitigate liability exposure under the TCPA, while avoiding any relief that could weaken TCPA enforcement against bad actors. This would also help ensure that any new database solution that

⁶ Comments of ACA International, filed herein (Aug. 28, 2017), at p. 1.

⁷ SFNPRM at ¶ 9.

⁸ See, e.g., Comments of U.S. Chamber Institute for Legal Reform, filed herein (Aug. 28, 2017), at p. 8 (“Chamber Comments”).

⁹ See, e.g., Comments of Comcast Corporation, filed herein (Aug. 28, 2017), at p. 2.

is created is actually used by legitimate callers; without a TCPA-based incentive, it is unclear how frequently any new database would be utilized.

It is important to note that a database solution addressed in the SFNPRM is not the only means to provide some relief for legitimate callers under the TCPA. As CenturyLink noted in its reply comments during the NOI phase of this proceeding, the Commission should consider adopting a TCPA compliance safe harbor for providers that utilize one or more commercially available TCPA compliance solutions available today that represent good faith efforts to avoid calling reassigned numbers.¹⁰ In addition, shortly after release of the SFNPRM, the Commission released a *Public Notice* seeking comment on several issues related to interpretation and implementation of the TCPA following the recent D.C. Circuit decision in *ACA International v. FCC*.¹¹ There, the FCC is also seeking comment on how to treat calls to reassigned wireless numbers under the TCPA, soliciting comment on the meaning of “called party” in the context of calls to reassigned numbers, among other issues. The issues in the *Public Notice* should be resolved in tandem with the issues in the SFNPRM in order to create a cohesive TCPA framework going forward that both furthers the goals of the law and addresses problematic implementation issues.¹² Proceeding in this manner will help the Commission more accurately assess if a database solution is needed from a TCPA perspective.

¹⁰ See generally Comments of Neustar, Inc., filed herein (Aug. 28, 2017).

¹¹ 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, CG Docket No. 18-152, CG Docket No. 02-278, Public Notice, DA 18-493 (May 14, 2018) (“*Public Notice*”).

¹² See, e.g., Reply Comments of CTIA, filed herein (Sept. 26, 2017), at pp. 2-3, stating that “CTIA and a broad array of stakeholders representing good faith callers, including financial institutions, healthcare providers, education sector service providers, and others, agree that the *2015 TCPA Order* represents the root cause of increased TCPA liability exposure resulting from

IV. IF THE FCC BELIEVES A DATABASE IS NEEDED, A WIRELESS-ONLY DATABASE SHOULD BE EXPLORED.

If the FCC decides to move forward, any reassigned number database rolled out initially should be applicable to wireless carriers only. If the database is successful, then the FCC should consider expanding it to include other services. Because the scope of the reassigned number problem has not been defined and the tangible consumer benefits are yet to be identified, CenturyLink recommends having a wireless-only trial to see if a reassigned number database would be effective before making it mandatory for all providers.

Focusing first on wireless numbers makes sense because this market segment generates more reassignments than wireline, may have shorter aging periods than wireline, and is treated more strictly under the TCPA than wireline service.¹³ The SFNPRM estimates that there are 100,000 wireless numbers reassigned every day, and approximately 35 million number reassignments annually. While these figures would suggest that virtually all number reassignments are wireless (100,000 wireless reassignments/day x 365 days = 36.5 million wireless reassignments annually), which is certainly not the case, the continued line loss experienced by wireline providers combined with the steady increase in wireless-only and wireless-primarily households certainly suggests that the growth and churn of wireless customers is creating more number reassignments in this market segment as compared to wireline. Short aging periods are likely more common in wireless service to manage numbering resources in

calls unintentionally made to reassigned numbers.” The *Public Notice* addresses many of those issues.

¹³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015) (2015 TCPA Order) at ¶ 1. (“The [TCPA] and our rules empower consumers to decide which robocalls and text messages they receive, with heightened protection to wireless consumers, for whom robocalls can be costly and particularly intrusive.”)

light of customer churn, exacerbating the likelihood that calls intended for a prior subscriber will be misdirected, causing inconvenience to the new holder of that number. For these reasons, if the Commission decides to move forward with a database solution, it should first focus on a wireless reassignment database resource to address the highest volume of reassignments and validate the benefits to consumers and legitimate callers this resource would actually provide. Then, if a wireless-only database proves effective, the FCC could consider whether it would be beneficial to expand the reassigned number database to all providers.

V. ANY DATABASE SHOULD LEVERAGE EXISTING COMMERCIAL CAPABILITIES TO EASE IMPLEMENTATION AND COLLECT MINIMUM INFORMATION TO PROTECT CONSUMERS.

The FCC desires any reassigned number database to be “easy to use and cost-effective for callers while minimizing the burden on service providers supplying the data.”¹⁴ To the extent the FCC concludes to move forward with a database despite the concerns expressed by CenturyLink and others in the record, CenturyLink agrees with the Commission’s goal of minimizing the burden on the service providers, but the database framework should also encourage use by calling parties while ensuring customer privacy. To this end, CenturyLink suggests that the relevant data points to be included in a database be flexible to allow the industry to best leverage existing commercially available database resources in developing a solution, while minimizing the data that is accessed. Any new database resource should also be sufficiently distinguishable from existing commercial solutions.

CenturyLink agrees that information in a reassigned number database would be business- and market-sensitive, especially as it relates to customer churn, and that efforts should be made to mitigate risk that the data could be used by fraudulent robocallers or other bad actors for illicit

¹⁴ SFNPRM at ¶ 11.

or noncompetitive purposes. Because of these concerns, CenturyLink favors limiting the information contained in the reassigned number database to reduce the possibility that it could be used for anticompetitive motives. For example, telephone numbers and either disconnect or service start dates seem to be the bare minimum of information that would be needed in order for a database resource to be useful, and CenturyLink does not believe additional information would need to be captured in order for the database to achieve its objectives. However, even this minimal information is sensitive. To protect this sensitive information, the database can be designed to provide either a positive or negative response to input queries from calling parties about whether there had been a change in status of telephone numbers belonging to calling parties' respective customers since the caller's last date of authorization. This structure would help minimize the amount of sensitive information that is provided to calling parties while still providing them with useful and actionable data.

The goal would be to harness existing resources and readily available data points as much as possible. Because these data points may not be standardized across all companies and industry segments, a third-party interface may be useful to help provide consistency despite variances in the type of data that may be readily available. CenturyLink also supports requiring some type of certification on an annual basis or through contractual terms that an entity querying the reassigned number database is doing so only for purposes of TCPA compliance as another means to help ensure the data is used for its intended purpose.¹⁵

With respect to costs, CenturyLink agrees with the Commission's goal to make the database resource cost-effective. Because establishing a reassigned database would burden participating service providers in order to provide a benefit to calling parties (in the form of

¹⁵ SFNPRM at ¶ 27.

updated customer information and/or reduced risk of TCPA liability), it is reasonable for calling parties to bear the cost of establishing and using this resource. Calling parties could work with a third party that has access to various carrier data for a fee, and, in turn, charges calling parties to access that data. The record in the NOI phase of this proceeding, however, indicated some reluctance on the part of calling parties to fund a reassigned number database or to pay to use it.¹⁶ There needs to be sufficient funding to create and operate such a database, and a corresponding funding model to ensure that all costs remain covered, or else the database risks being a non-starter.

While the Commission can compel the creation of a reassigned number database, it cannot compel entities outside of its jurisdiction to provide funding. Similarly, even if the funding issue is resolved, a database resource will not provide any benefits unless calling parties use it. Again, while the Commission can compel the creation of a reassigned number database, it cannot compel calling parties to make use of the tool.¹⁷ Thus, incenting calling parties to use a database resource through some type of TCPA safe harbor or other means is important to avoid creating a resource all for naught. Because of these obstacles, should a database resource move forward at all, CenturyLink thinks proceeding with a wireless-only trial makes sense to gain

¹⁶ See, e.g., Reply Comments of Consumer Bankers Association, filed herein (Sept. 22, 2017) at p. 2 (describing that “undue costs for CBA’s members will skyrocket if banks are charged and required to scrub their numbers against the database in real time. Even if the cost of checking the database is nominal, these costs will rise steeply if banks are required to check the database for every communication, regardless of purpose, hurting CBA’s smaller members the most . . . [p]roviding access to the database at no cost will redress these concerns, and is imperative to the database’s utility.”); Comments of the Electronic Transactions Association, filed herein (Aug. 28, 2017), at p. 2 (noting “[t]he companies that are acting in good faith should not be required to finance a database and endure the additional layers of administrative compliance that would be created by the proposed framework in the *Second NOI*”).

¹⁷ See Chamber Comments at p. 2 (expressing concern that “it would exceed the Commission’s authority to require businesses to access the database to check for reassignments before placing calls”).

more practical experience with the burden of implementing a database and the benefits it stands to provide to consumers and calling parties.

VI. CONCLUSION.

Everyone wants to stop illegal robocalls, but it is unclear how much impact this step would have on curtailing those calls. More information is needed on the tangible consumer benefits a reassigned database would provide before imposing that burden on the entire industry. Any database that may be considered should be implemented first on a limited basis to ensure it will have a meaningful consumer benefit. A wireless solution should be sufficiently targeted to address the concerns raised in this proceeding and to test whether expanding this resource to the entire industry would provide sufficient benefits to justify the costs.

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