

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS OF CALLFIRE, INC.

CallFire, Inc. (“CallFire”), by its undersigned counsel, hereby submits its comments in the above-referenced proceeding.¹

I. INTRODUCTION AND SUMMARY

CallFire is a Santa-Monica, California-based voice and messaging communications provider. CallFire provides a variety of highly scalable, platform-based communications services, including voice broadcast, SMS and MMS messaging, and Integrated Voice Response systems. Since its inception over a decade ago, CallFire has successfully delivered many billions of voice and message communications for its customers.

At the outset, CallFire submits that a valid consent from a telephone number should be sufficient to foreclose Telephone Consumer Protection Act (“TCPA”) liability. Such consents should remain valid until they are revoked by the telephone number subscriber. Specific to this proceeding, a valid revocation could come after the number is reassigned to a new consumer. The new holder of the telephone number could then “opt out” of any voice or text calls using the

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Further Notice of Proposed Rulemaking, FCC 18-31 (Mar. 22, 2018) (Reassigned Numbers Second FNPRM).

methods prescribed by the Commission, or otherwise be subject to TCPA liability for not honoring the consumer's directive.

To the extent that the Commission is determined to proceed with a reassigned numbers database, the Commission should ensure that it is equally available to all callers, voice and text, and that the proper use of use of the reassigned number database provides TCPA compliance protection to callers. Unwanted voice and text calls harm carriers and other service providers in addition to harming the consumers and businesses receiving the unwanted calls. To ensure the industry can continue evolve and grow in positive way, Commission action is necessary to protect the interests of consumers as well as those of industry participants, like CallFire.

In these comments, CallFire makes two primary points. First, any reassigned number database should be equally available to text as well as voice calls, as the Commission has regulated both types of calls under the TCPA. Second, to the extent the Commission establishes a reassigned number database, users of the database should benefit from a reasonable safe harbor from TCPA liability.

II. ANY REASSIGNED NUMBER DATABASE SHOULD SUPPORT ALL IN-SERVICE TELEPHONE NUMBERS FOR VOICE AND MESSAGING SERVICE

Regarding the comprehensiveness of information, the Commission seeks comment on whether reassignment data is needed for text messaging as well as for voice service.² The Commission established in 2003 that text messages constitute calls under the TCPA,³ and unless

² *Id.* at ¶19.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, ¶165; *see also* 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii); *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a “call”).

the Commission plans on revisiting that determination, the Commission should ensure that all TCPA compliance tools, including any recycled number database, fully support text messaging as well as voice calls.

In the 15 years since the Commission’s initial ruling on the matter, text messaging has become a primary means of communications among consumers as well as between consumers and a wide array of businesses. Indeed, a large proportion of the Commission’s omnibus 2015 TCPA order addressed numerous text messaging issues across a wide array of economic sectors, including health care, banking, and retail.⁴ Many other entities have sought various forms of Commission action regarding text messaging, and the Commission as recently as the date of this filing adopted a Declaratory Ruling and Notice of Proposed Rulemaking regulating toll-free texting.⁵

Given the obvious and increasing reliance of consumers and businesses on various forms of text messaging, we are now at (if not well past the point) where the Commission should be considering how text messaging fits into the overall legal and regulatory landscape. This is particularly true here, where inadvertently sending a “wrong number” text can subject the message initiator to eye-popping statutory damages and potential class action litigation.

For these all of these reasons, the Commission should ensure that any reassigned number database adopted fully supports text calling as well as voice calling.

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015), affirmed in part and vacated in part, *ACA Int’l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (mandate issued May 8, 2018).

⁵ *Text-Enabled Toll Free Numbers*, WC Docket No. 18-28, News Release (June 7, 2018).

III. USERS OF ANY REASSIGNED NUMBER DATABASE SHOULD RECEIVE A SAFE HARBOR FROM TCPA LIABILITY

CallFire supports Commission establishment of a safe harbor from TCPA liability to protect any voice or text caller that properly utilizes any established reassigned number database. As Commissioner O’Rielly has stated, “the true benefit of a database would be to provide legitimate callers a safe harbor from financially-crippling litigation simply because they unwittingly called a number that they thought belonged to a consenting customer.”⁶ Legitimate callers very much want to comply fully with the law, and no one should be put at risk of potentially crippling litigation based on making a valid voice or text call to number that has changed subscribers without the sender’s actual knowledge or any means of learning about the change. Litigation on this kind of basis has become all too common, and it is wasteful and patently unfair.

The Commission’s expressly stated intention is to “benefit legitimate callers and consumers alike.” CallFire couldn’t agree more. It has become all too common for many legitimate callers – good companies of all kinds – to face essentially unavoidable TCPA claims. And in many instances, even though no TCPA violation actually happened at all, companies are economically forced to settlements due to the extreme costs associated with litigation, particularly on fact-based questions, such as those posed by telephone number reassignment issues. Adding insult to this injury, the true bad actors rarely are sued because they are too hard to find, and even if found, simply close down their fly-by-night operations only to reappear somewhere else later. The plaintiff’s bar, of course, targets established companies with businesses based on complying with all laws.

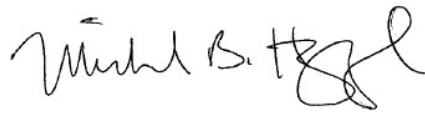
⁶ Reassigned Numbers Second FNPRM, Statement of Commissioner Michael O’Rielly.

Too often, TCPA compliance can be at best uncertain. A reassigned number database combined with a safe harbor for those utilizing it would go a long way toward giving legitimate callers certainty in their TCPA compliance efforts. Such certainty would also serve as a means of at least reducing some of the frivolous TCPA class action litigation that is glutting the court and burdening good companies. Accordingly, CallFire submits that it is critical that a safe harbor accompany any reassigned number database established by the Commission.

IV. CONCLUSION

Consistent with the foregoing, to the extent the Commission establishes a reassigned number database, it should support text as well as voice calls and provide a safe harbor from TCPA liability when properly used.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael B. Hazzard", written over a horizontal line.

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