

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

In the Matter of

Advanced Methods to Target and  
Eliminate Unlawful Robocalls

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CG Docket No. 17-59

**COMMENTS**



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**I. INTRODUCTION & SUMMARY**

The American Cable Association (“ACA”) hereby submits these comments in response to the Federal Communications Commission’s (“Commission”) Second Further Notice of Proposed Rulemaking on Advanced Methods to Target and Eliminate Unlawful Robocalls (“NPRM”).<sup>1</sup> ACA represents over 700 VoIP and traditional telephone service providers who may be affected by the NPRM’s proposals to “ensure that one or more databases are available to provide callers with the comprehensive and

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<sup>1</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking, FCC 18-31 CG Docket No. 17-59 (rel. Mar. 23, 2018) (“NPRM”).

timely information they need to discover potential number reassignments before making a call.”<sup>2</sup>

The proposals discussed in the NPRM are designed to address the problem of unwanted calls to reassigned numbers. ACA supports the Commission’s laudable goal of reducing the number of unwanted calls, and agrees that “unwanted calls to reassigned numbers can have important consequences for both consumers and callers.”<sup>3</sup> ACA also agrees that providing a way for callers to verify the numbers on their call lists would go a long way toward solving the problem. That being said, the NPRM is right to note that whatever approach the Commission takes to address the problem, it must “balance callers’ need for comprehensive and timely reassigned number information with the need to minimize the reporting burden placed on service providers.”<sup>4</sup> To that end, ACA supports an approach that relies on voluntary, bilateral agreements between service providers and commercial data aggregators that allows callers to verify that their call lists are accurate and up-to-date.

In these comments ACA first explains that to reduce the number of unwanted calls to reassigned numbers, the Commission should not focus on reporting by service providers, but rather on verification by callers. In other words, the Commission should be searching for the most effective way for callers to verify that their call lists are accurate. The most common model that is used in the market today is one in which

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<sup>2</sup> NPRM, ¶ 1.

<sup>3</sup> *Id.*, ¶ 4. (“Beyond annoying the new subscriber of the reassigned number, a misdirected call can deprive the previous subscriber of the number of a desired call from, for example, his/her school, health care provider, or financial institution. In the case of prerecorded or automated voice calls (robocalls) to reassigned numbers, a good-faith caller may be subject to liability for violations of the TCPA.”).

<sup>4</sup> *Id.*, ¶ 32.

commercial data aggregators are given access to service providers' subscriber databases, which allows the data aggregators to verify call lists provided by their customers, which in turn allows the customers to avoid calling reassigned numbers. As described in detail below, this verification model, which is already used by many callers to help them avoid making unwanted calls, provides more up-to-date and accurate information than could be obtained through any new and untested reporting model, as contemplated in the NPRM.

ACA next explains that in order to best "balance callers' need for comprehensive and timely reassigned number information with the need to minimize the reporting burden placed on service providers,"<sup>5</sup> any approach that the Commission adopts must be voluntary for service providers. Mandatory obligations will impose significant costs on service providers, especially small providers who are unlikely to benefit from any number verification mechanism, including a reassigned numbers database.

Finally, ACA explains that the Commission should adopt a safe harbor against liability under the Telephone Consumer Protection Act ("TCPA") for callers who use a qualified commercial data aggregator to verify their call lists. To be considered "qualified," a commercial data aggregator should be able to verify number information for a threshold percentage of all telephone subscribers. A safe harbor from TCPA liability that relies on an appropriate threshold is necessary to incentivize commercial data aggregators to work with small and mid-size wireline and VoIP providers with whom they do not currently have relationships.

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<sup>5</sup> *Id.*

## II. THE COMMISSION SHOULD ADOPT AN APPROACH THAT RELIES ON THE VERIFICATION OF CALL LISTS BY COMMERCIAL DATA AGGREGATORS

In its discussion of the various approaches to database administration, the NPRM frames the issue as a question of how reassigned number information should be *reported* by service providers to one or more reassigned numbers databases. ACA believes that the Commission is looking at the problem from the wrong angle. Instead of examining ways in which service providers can or should *report* reassigned number information – either to a Commission-designated database or to one or more commercial data aggregators – the Commission should be consider how best to ensure that callers can *verify* that the information they have is correct, so as to can avoid calling numbers that may have been assigned to someone else. This may seem like a distinction without a difference, but it is crucial to understanding the benefits of the current commercial model.

Under the current commercial model, commercial data aggregators do not rely on reassigned number information reported by service providers, but rather on access to service providers' subscriber databases. Relying on an API linked to a service provider's subscriber database, a commercial data aggregator can query the provider's database to verify the accuracy of a customer's call list.<sup>6</sup> The data aggregator will concurrently do this with each provider for which it has a relationship, then report any inaccuracies to the customer based on all of its queries. Once a service provider has implemented the API that allows the commercial data aggregator to access their

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<sup>6</sup> All subscriber data is appropriately encrypted to protect subscriber privacy and ensure against violations of the Commission's rules regarding telephone subscriber privacy. 47 C.F.R. §§ 64.1600-64.1605. Given that the commercial data aggregator is only querying the service provider's billing database for purposes of reporting to a caller about the accuracy of its calling list, the service providers' subscriber data always remains safely with the provider.

database, the aggregator can conduct its queries at any time, imposing little to no additional burden on the provider.

This verification model has many advantages over the reporting models contemplated in the NPRM. First, the commercial model minimizes burdens on service providers – once they have implemented the APIs necessary to allow the commercial data aggregator to access their subscriber databases, service providers are essentially passive actors in the verification process.<sup>7</sup> In contrast, active reporting appears to require significantly more effort on the part of the service provider, especially since most service providers do not track reassigned numbers, and indeed have no way of doing so.<sup>8</sup>

Second, it ensures that the information reported to the calling party is up-to-date as of the moment of the query. Service providers update their subscriber databases in real time as part of their regular course of business, so whenever a commercial data aggregator runs its query, it will be receiving the most recent information possible.

Under the active reporting model contemplated in the NPRM, there will always be a time

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<sup>7</sup> Most phone customers are served by service providers that operate billing systems that allow for APIs. According to ACA's research with vendors and service providers, the one-time cost to develop the necessary APIs is reasonable, and does not require service providers to materially change the data it tracks and holds onto.

<sup>8</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59, Comments of the Alliance for Telecommunications Industry Solution at 2-3 ("ATIS disagrees with [the Commission's assumption that voice providers "already track disconnected and reassigned number information] and maintains that the industry does not in fact generally track when disconnected numbers are reassigned in a way that would be useful or applicable to call authentication.") (filed Aug. 29, 2017); Reply Comments of Neustar at 3 ("Among other issues, a telecommunications carrier to which telephone numbers have been allocated often lacks knowledge about which of its telephone numbers have been reassigned because it is often two or three levels removed from the service provider with the relationship with the end user) (filed Sep. 27, 2017).

lag of some duration.<sup>9</sup> Given how often wireless numbers in particular are reassigned – as many as 100,000 per day<sup>10</sup> – service providers would have to report reassigned numbers information in near real-time – a completely impossible task – to come anywhere close to the level of accuracy that a commercial data aggregator can provide using the verification model.

For these reasons, the Commission should shift its focus away from any approach that relies on active reporting by service providers, and instead think in terms of how best to ensure that callers can *verify* that their call lists are accurate and up-to-date.

### **III. THE COMMISSION SHOULD NOT IMPOSE ANY REPORTING OR VERIFICATION MANDATES ON SERVICE PROVIDERS**

The NPRM outlines three different approaches to ensuring that callers have access to reassigned number information, two of which would impose reporting mandates on service providers,<sup>11</sup> and one that would encourage voluntary reporting to commercial data aggregators.<sup>12</sup> As discussed above, ACA believes that the correct model is one in which callers use service providers' subscriber data to verify call lists rather than rely on service providers to "report" reassigned number information, but

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<sup>9</sup> In seeking comment on the approach in which service providers would be required to report reassigned number information to a Commission-designated database, the NPRM asks "how often they should be required to report." NPRM, ¶ 42. Periodic reporting, as contemplated in the NPRM, can never provide information that is as up-to-date as the information in service providers' subscriber databases, which is updated in real time.

<sup>10</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59, ¶ 5 (rel. July 13, 2017), *citing* Joint Brief for Petitioners at 17, ACA International, *et al.* Petition for Review from *2015 TCPA Declaratory Ruling* (D.C. Cir. Nov. 25, 2015); Comments of Twitter, CG Docket No. 02-278, at 3 (Apr. 22, 2015); Stage Stores, Inc. Petition for Expedited Declaratory Ruling and Clarifications, CG Docket No. 02-278, at 3 (filed June 3, 2014).

<sup>11</sup> See NPRM, ¶¶ 34-45 (discussing mandatory reporting to a Commission-designated database), and ¶¶ 46-55 (discussing mandatory reporting to one or more commercial data aggregators).

<sup>12</sup> *Id.*, ¶¶ 56-60.



regardless of which model is ultimately adopted, voluntary participation by service providers, in combination with a safe-harbor to protect callers who use information from a qualified data aggregator (as discussed in the next section), is the best way to ensure an appropriate balance between the need for callers to have information regarding reassigned numbers and the need to minimize the costs to service providers.

Under no circumstances should the Commission adopt any mandate that would require telephone service providers to report reassigned numbers information or to verify call lists against their subscriber data. The costs that such a mandate would impose would be significant for smaller providers, regardless of which model – reporting or verification – the Commission elects to pursue,<sup>13</sup> even if the Commission adopted some sort of cost-recovery mechanism. Providers would pass these costs on to subscribers in the form of rate hikes, or, depending on the extent of the burden, would discontinue service altogether.

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<sup>13</sup> The NPRM seeks comment on the costs and benefits of such reporting requirements, “including specific cost estimates.” NPRM, ¶ 42. In its comments in response to the Commission’s Second Notice of Inquiry in the proceeding, CTIA explained that “developing and integrating one or more new database solution(s) and operational processes could require carriers to revamp” their existing billing systems. *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59, Comments of CTIA – the Wireless Association at 8-9 (filed Aug. 28, 2017) (“CTIA Second NOI Comments”). As discussed in section II, the verification model relies on APIs that allow the aggregator to interface directly with the service provider’s billing system. While many mid-sized and larger service providers have billing systems that allow for such APIs, many smaller systems do not. Those that do not use such a system would need to upgrade or replace their billing systems entirely. Depending on the specific functionalities a service provider elects to purchase, implementing a new billing system that allows for APIs generally requires an initial outlay of anywhere between \$50,000 and \$150,000. These costs are fixed irrespective of the size of the operator. Based on ACA research, while the costs to develop an API for the first time would require a modest amount of time and expense, these costs could be shared among many service providers who use the same billing system. ACA is not aware of any member actively collecting and reporting reassigned number information and therefore the costs are more difficult to predict. However, ACA believes the active reporting model would impose significant costs, as service providers do not typically track reassigned number data and would need to develop some sort of system to allow them to do so, which would likely be a manual one for most smaller service providers.

While widespread use of a reassigned numbers database would help to eliminate some of the unwanted robocalls received by consumers,<sup>14</sup> the primary beneficiaries of such a database would be the entities who use the database – namely, callers – mostly large companies who engage in largescale automated calling campaigns and are more likely to be targeted for TCPA class action suits in the event that they inadvertently violate the TCPA. The group of beneficiaries is unlikely to include very many small telephone service providers, as they generally do not use auto-dialing technology or pre-recorded messages to contact their smaller base of customers, and thus have fewer concerns about TCPA liability. It would be patently unfair, therefore, to require small service providers and their customers to bear any of the costs of mandatory reporting, which are likely to be substantial. The NPRM acknowledges as much by stating that the Commission “seeks to balance callers’ need for comprehensive and timely reassigned number data with the need to minimize the reporting burden on service providers.”<sup>15</sup>

The best way to ensure such a balance is an approach in which service providers could, on a voluntary basis, enter into mutually beneficial bilateral agreements with commercial data aggregators. In this approach, the service provider essentially sells encrypted access to its subscriber database to the commercial data aggregator, who in turn sells its ability to verify number information to its own customers. As discussed below, this approach will work best to the extent that the Commission can increase demand for verification services by adopting a safe harbor against TCPA liability for callers who use a qualified data aggregator to verify their call lists. As long as these

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<sup>14</sup> Most of the illegal robocalls received by consumers originate from bad actors who will not use the reassigned numbers database.

<sup>15</sup> NPRM, ¶ 42.

arrangements are voluntary, service providers and qualified commercial data aggregators could work together to develop the most efficient and cost effective method for verifying number information, and whatever costs are incurred could be offset by the financial or other consideration provided by the data aggregator as the aggregator and provider decide in their private arrangement.

A mandatory reporting regime of any kind would not be able to reimburse service providers for the cost of making their numbering data available as efficiently, as completely, or as fairly as a market-based approach. Although the NPRM contemplates permitting service providers to recover “some or all of their costs of reporting data”<sup>16</sup> under a mandatory reporting regime, any system for cost recovery would likely be both inefficient and inadequate to ensure that small service providers and their subscribers are not burdened unfairly. Indeed, regardless of whether service providers are required to report or otherwise make information available to a Commission-designated database or one or more commercial data aggregators,<sup>17</sup> it is very likely that any reimbursement process would not be equitable for everyone, and would needlessly introduce potential waste, fraud and abuse, if run through the federal government.<sup>18</sup> In contrast, the free market principles that serve as the foundation of the voluntary approach already create an efficient mechanism for ensuring that reporting costs are borne by the appropriate parties – *i.e.*, those with the most to gain from using the databases – and provides

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<sup>16</sup> *Id.*, ¶¶ 43, 52.

<sup>17</sup> Even if service providers were required to report to one or more commercial database, rather than a Commission-designated database, mandatory reporting changes the fundamental nature of the arrangement, as data aggregators would have no incentive to negotiate with service providers. Thus, regardless of which approach to mandatory reporting is employed, the mechanism for recovering costs will likely be the same, or at least similar.

flexibility for the parties to structure such mechanism for reimbursement according to their unique needs.

#### **IV. THE COMMISSION SHOULD ADOPT A SAFE HARBOR FOR CALLERS WHO USE A QUALIFIED COMMERCIAL DATA AGGREGATOR TO VERIFY THAT THEIR CALL LISTS ARE ACCURATE**

For a voluntary approach to reporting reassigned number information to be effective in reducing the number of unwanted robocalls, there must be widespread participation on the part of both callers and service providers. The framework for this approach is already in place – commercial aggregators already enter into bilateral agreements with service providers, who provide access to their subscriber databases in exchange for some consideration, financial or otherwise. This information is then provided to paying callers, who use it to update their call lists so as to avoid making calls to reassigned numbers.

Although the major wireless providers currently allow commercial data aggregators to use their subscriber records to verify call list information, ACA understands that few, if any, wireline providers have entered into such arrangements, which creates information gaps that makes the databases less valuable than they could be. ACA agrees with CTIA and other commenters that providing a safe harbor from TCPA liability to callers who use a qualified data aggregator to monitor and update their call lists who help to eliminate these information gaps.<sup>19</sup> A safe harbor from TCPA liability would significantly increase the demand for verification services offered by qualified commercial aggregators, thereby increasing competition among data

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<sup>19</sup> CTIA Second NOI Comments at 8-9; *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59, Comments of The Electronics Transaction Association Comments at 3 (filed Aug. 28, 2017); Reply Comments of CenturyLink at 4 (filed Sept. 26, 2017).

aggregators, which would “spur those aggregators to pay service providers to induce them” to provide access to subscribers’ number information[.]<sup>20</sup>

To ensure that aggregators are willing to enter into agreements with service providers and that their verification services are comprehensive and reliable enough to make a meaningful reduction in the number of unwanted calls to reassigned numbers, the safe harbor should only apply to commercial data aggregators who meet certain qualifications. Among those qualifications should be a requirement that the commercial data aggregator have access to number information that covers a threshold percentage of all telephone service subscribers. If the threshold is high enough, commercial data aggregators and their customers will have incentive to enter into agreements with other providers, perhaps with mid-sized and smaller operators in order to meet that threshold requirement, so the aggregators can offer to their customers the significant value of a safe harbor from TCPA liability.

By adopting an approach that combines voluntary participation in call list verification agreements with a safe harbor for callers who use a commercial data aggregator who can verify number information for a set threshold of all telephone service subscribers, the Commission can significantly reduce the number of unwanted calls to reassigned numbers without unfairly burdening service providers, particularly small service providers who are unlikely to use a reassigned numbers database to protect against TCPA liability.

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<sup>20</sup> NPRM, ¶ 57.

## V. CONCLUSION

For the reasons stated above, ACA encourages the Commission to adopt an approach to reducing unwanted calls to reassigned numbers that relies on voluntary agreements between service providers and commercial data aggregators that allow the aggregators to verify caller information using the providers' subscriber databases, encouraged by the adoption of a safe harbor from TCPA liability for callers who use a qualifying commercial data aggregator to update their call lists that meets a minimum threshold of telephone customers from service providers.

Respectfully submitted,



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