

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Consumer and Governmental Affairs Bureau)	CG Docket No. 18-152
Seeks Comment on Interpretation of the)	
Telephone Consumer Protection Act in Light)	
of the D.C. Circuit's <i>ACA International</i>)	
Decision)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

REPLY COMMENTS OF CTIA

Thomas C. Power
Senior Vice President, General Counsel

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Matthew Gerst
Assistant Vice President, Regulatory Affairs

Krista Witanowski
Assistant Vice President, Regulatory Affairs

CTIA
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

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REPLY COMMENTS OF CTIA

I. INTRODUCTION AND SUMMARY.

CTIA respectfully submits these reply comments in the above-captioned proceedings,¹ which concern calls to reassigned telephone numbers. The Federal Communications Commission (FCC or Commission) Consumer & Government Affairs Bureau’s (Bureau) Public Notice seeks comment on certain issues regarding the “interpretation and implementation of the Telephone Consumer Protection Act (TCPA), following the recent decision of the U.S. Court of Appeals for the District of Columbia in *ACA International v. FCC*,”² including, *inter alia*, “how to treat calls to reassigned wireless numbers under the TCPA.”³ The *Second Further Notice of*

¹ *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 Nos. 18-152, 02-278 (rel. May 14, 2018) (*Public Notice*).

² *Id.*; see also *ACA Int’l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

³ *Public Notice* at 3-4.

Proposed Rulemaking,⁴ meanwhile, proposes “to ensure that one or more databases are available to provide callers with the comprehensive and timely information they need to avoid calling reassigned numbers.”⁵

CTIA appreciates the Commission’s efforts in these proceedings to help reduce unwanted calls to reassigned wireless telephone numbers and mitigate TCPA liability for callers acting in good faith. CTIA also supports the Commission’s objectives in both proceedings to ensure that consumers receive the calls that they want and to reduce the calls that consumers do not want. CTIA has encouraged the Commission to adopt a sequenced approach to resolve the outstanding reassigned numbers issues, and the record in these proceedings supports that approach. The Commission should first resolve the legal liability issues for calls to reassigned numbers, as the Bureau seeks to do in the Public Notice, before considering any new database requirements in the *Second FNPRM*—especially when other, more effective solutions are available.

As CTIA and other commenters have explained, designing, launching, and operating a new, centralized database of reassigned telephone numbers would be a complex endeavor with unique operational, financial, and technical challenges.⁶ Such a database is also unlikely to outperform existing solutions that are currently available on the market to assist good-faith callers in mitigating unwanted calls to reassigned wireless telephone numbers.⁷ Commenters

⁴ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking, CG Docket No. 17-59 (rel. Mar. 23, 2018) (*Second FNPRM*).

⁵ *Id.* ¶ 8.

⁶ See Comments of CTIA, CG Docket No. 18-152 (filed June 13, 2018); Comments of CTIA, CG Docket No. 17-59 (filed June 7, 2018) (CTIA *Second FNPRM* Comments); Comments of CTIA, CG Docket No. 17-59 (filed Aug. 28, 2017) (CTIA *Second NOI* Comments); Reply Comments of CTIA, CG Docket No. 17-59 (filed Sept. 26, 2017).

⁷ See, e.g., Neustar TCPA Compliance, <http://bit.ly/2uYHQ6c> (last visited June 27, 2018); Early Warning Mobile Number Verification, <http://bit.ly/2idGgLx> (last visited June 27, 2018); Danal TCPA Compliance Solution, <http://bit.ly/2vKvdOK> (last visited June 27, 2018); Payfone TCPA Compliance,

have also expressed concerns about the feasibility of the proposals in the *Second FNPRM* and the overall utility of a new reassigned numbers database, and they agree that none of the efforts or solutions discussed in the *Second FNPRM* will reduce unwanted robocalls from scammers, spoofers, or other bad actors.⁸

While CTIA appreciates the concerns raised by some commenters who support a new, centralized reassigned numbers database, their submissions do not address the operational, financial, and technical challenges associated with a new database mandate. The Commission therefore should weigh more heavily the comments from parties who have experience operating similar databases, such as the Local Number Portability Administrator (LNPA), and who have noted the challenges involved with designing and operating a centralized reassigned numbers database.

As CTIA⁹ and many commenters have also recommended, the Commission should first take steps to help reduce the number of robocalls to reassigned numbers and provide relief to good-faith callers and consumers by: (1) revisiting the *2015 TCPA Order*'s interpretation of "called party" and clarifying that the term means "intended" or "expected recipient"; and (2) adopting one or more safe harbors, including for callers that "reasonably rely" on existing marketplace solutions. Compared to a necessarily lengthy and costly process of developing and launching any new reassigned numbers database, the Commission can resolve these legal liability issues promptly to help allay the liability exposure that good-faith callers currently face

<http://bit.ly/2xbmYcj> (last visited June 27, 2018); iconectiv Right Party Verification for Messaging, <http://bit.ly/2g5ppKp> (last visited June 27, 2018).

⁸ See, e.g., CTIA *Second FNPRM* Comments at 4.

⁹ See, e.g., *id.* at 9-11.

and further protect consumers from unwanted calls while allowing them to continue receiving wanted calls.

II. THE RECORD REFLECTS THAT A NEW REASSIGNED NUMBERS DATABASE WOULD IMPOSE SUBSTANTIAL OPERATIONAL, FINANCIAL, AND TECHNICAL CHALLENGES WITH LIMITED BENEFITS TO CONSUMERS.

Numerous good-faith callers,¹⁰ service providers,¹¹ and vendors¹² agree that standing up a new, centralized database of reassigned numbers: (i) raises a number of complex issues; (ii) would require substantial time and financial resources to design and implement; (iii) is unlikely to eliminate all unwanted calls to reassigned numbers; and (iv) would not reduce calls from bad actors. Importantly, commenters with experience standing up and operating similar databases, such as the LNPA, have highlighted the myriad operational, financial, and technical challenges inherent in a new FCC-mandated database of reassigned numbers. The Commission should give more weight to the concerns from these commenters with first-hand expertise.

Operational challenges. The Alliance for Telecommunications Industry Solutions (ATIS) comments on behalf of the majority of its members that “the proposed new database may not be effective and could have negative unintended consequences, including concerns that a new database could possibly *increase* the volume of unwanted spam calls that reach non-

¹⁰ See, e.g., Comments of ACA International, CG Docket No. 17-59 (filed June 5, 2018) (ACA *Second FNPRM* Comments); Comments of U.S. Chamber Institute for Legal Reform, CG Docket No. 17-59 (filed June 7, 2018); Comments of Minnesota Credit Union Network, CG Docket No. 17-59 (filed June 7, 2018) (MnCUN *Second FNPRM* Comments).

¹¹ See, e.g., Comments of American Cable Ass’n, CG Docket No. 17-59 (filed June 7, 2018) (American Cable *Second FNPRM* Comments); Comments of Alliance for Telecommunications Industry Solutions, CG Docket No. 17-59 (filed June 7, 2018) (ATIS *Second FNPRM* Comments); Comments of NTCA – The Rural Broadband Ass’n, CG Docket No. 17-59 (filed June 7, 2018) (NTCA *Second FNPRM* Comments).

¹² See, e.g., Comments of Neustar, CG Docket No. 17-59 (filed June 7, 2018) (Neustar *Second FNPRM* Comments); Comments of Noble Systems, CG Docket No. 17-59 (filed June 7, 2018) (Noble Systems *Second FNPRM* Comments).

consenting consumers.”¹³ In addition, NTCA observes that a centralized database would introduce significant operational delays: “[t]he use of commercial databases is preferable to the proposal for a Commission established reassigned numbers database” because a “Commission-established database would, most likely, take longer to provide relief to consumers. The RFP process to select a database administrator, followed by the actual creation of the database itself, may take a year or perhaps much longer.”¹⁴ Telcordia, meanwhile, explains that “[a]s there are no real-time reassigned number databases to integrate with a central database, voice providers would be required to first devise their own systems and structures.”¹⁵ These challenges “would be in addition to what also would be required for the creation of operational, technical, and financial systems to implement and maintain the sort of centralized real-time number database the FCC seeks to make available to commercial callers.”¹⁶

Similarly, the Chamber of Commerce has expressed “concerns about the establishment, maintenance, use, and practicality of a reassigned numbers database in any of the proposed forms and questions whether it will ultimately serve to perpetuate the abusive litigation already stemming from the outdated language of the [TCPA].”¹⁷ It also notes that “the proposed database is an unwieldy solution to a problem that could be solved in a much easier fashion.”¹⁸

¹³ ATIS *Second FNPRM* Comments at 4.

¹⁴ NTCA *Second FNPRM* Comments at 4.

¹⁵ Comments of Telcordia Technologies, Inc. d/b/a iconectiv, CG Docket No. 17-59 at 4 (filed Aug. 28, 2017).

¹⁶ *Id.*

¹⁷ Comments of the U.S. Chamber of Commerce and U.S. Chamber Institute for Legal Reform, CG Docket No. 17-59 at 1 (filed Aug. 28, 2017).

¹⁸ *Id.* at 2.

And as CTIA has previously explained,¹⁹ a new, centralized reassigned numbers database discussed in the *Second FNPRM* will not reduce unwanted robocalls from bad actors.

Financial challenges. ACA comments that “[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” and “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.”²⁰ It could also “needlessly introduce potential waste, fraud and abuse, if run through the federal government.”²¹

Some commenters who want a new database do not appear to have taken into account the challenges or costs that have been identified in the record. As one example, some commenters simultaneously insist that the centralized database be: (i) cost-free or reasonably inexpensive to callers; (ii) completely voluntary for callers; and (iii) populated with real-time information.²² But if a database is to contain the full suite of features while remaining completely voluntary, it remains unclear how the costs of operationalizing such a complex endeavor would be defrayed – and by whom. Rather, the cost of using a database would likely be prohibitively expensive without a guaranteed base of subscribers to bear the expenses of maintaining the database. As another example, callers who support a new database do not appear to have grappled with the time-to-market delays involved in selecting an administrator, creating a governance framework, building technical specifications, conducting testing and debugging, and establishing a cost-

¹⁹ CTIA *Second NOI* Comments at 3.

²⁰ American Cable *Second FNPRM* Comments at 9.

²¹ *Id.* at 9.

²² See, e.g., Comments of California and Nevada Credit Union Leagues, CG Docket No. 17-59 at 2-3 (filed June 7, 2018).

recovery mechanism, among other necessary actions.²³ These steps indicate that any consumer or caller-related benefits of a new database would take many years to realize, during which time today's existing solutions will no doubt be improved upon and supplemented.

Technical challenges. In discussing the potential burdens on voice providers from requirements to report disconnected and reassigned numbers, ATIS “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,” and it is “unaware of any carrier that already tracks this information for any purpose.”²⁴ Those statements align with CTIA’s concerns that neither the *2015 TCPA Order* nor the Commission’s number classification system explains fully how to categorize “reassigned numbers” within the existing numbering framework. These ambiguities could have a significant impact and burden on carriers’ existing numbering operations and systems.²⁵

As another example, the Minnesota Credit Union Network (MnCUN) has expressed concerns about the technical challenges of the database in light of the fact that “approximately 35 million phone numbers are reassigned each year. Given that number, [it would be] staggering to imagine the size of the database needed just to manage the data field for the phone numbers,”

²³ See, e.g., *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, Order, 31 FCC Rcd 8406 ¶¶ 3-7 (2016) (describing the more than six-year process to select an LNPA); see also *id.* at Statement of then-Commissioner Pai (noting that the previous LNPA contract cost \$466.4 million per year, and the new LNPA contract will cost \$142.9 million a year). Following the selection in 2016, it took nearly an additional two years to transition to the new LNPA. See *Ex Parte* Letter from North American Portability Management LLC to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116; WC Docket Nos. 09-109, 07-149, at App’x B (filed June 8, 2018) (providing a summary of key milestones throughout the LNPA transition).

²⁴ Comments of the Alliance for Telecommunications Industry Solutions, CG Docket No. 17-59 at 2-3 (filed Aug. 28, 2017).

²⁵ CTIA *Second NOI* Comments at 12-13.

which does not “even account for the other data fields that will likely be contained in the database.”²⁶ MnCUN adds that a database “will require significant amounts of staff time for callers to scrub their information against the information contained in the database.”²⁷

* * *

Given these legitimate concerns and the absence of a demonstrable record that the benefits of a new database outweigh its costs, the FCC instead should embrace a voluntary reassigned numbers reporting framework using existing market-based solutions and provide one or more safe harbors for callers who reasonably rely on such solutions to mitigate unwanted calls to reassigned numbers. Some commenters, for example, are concerned that the Commission’s Initial Regulatory Flexibility Analysis “offers no description of the compliance requirements and no projection of the costs as the law requires.”²⁸ For these and other reasons, INCOMPAS in its comments agrees with CTIA that the Commission should conduct a comprehensive cost-benefit analysis to evaluate the complex operational, financial, and technical issues of the reassigned number database proposal.²⁹

As discussed below, the Commission can better address reassigned numbers challenges by expeditiously resolving the open legal liability framework issues in the Public Notice. Doing so would take far less time than operationalizing a new reassigned numbers database and would represent the most resource-efficient and logical way to accomplish the Commission’s goals.

²⁶ MnCUN *Second NPRM* Comments at 1.

²⁷ *Id.* at 1.

²⁸ NTCA *Second FNPRM* Comments at 11.

²⁹ Comments of INCOMPAS, CG Docket No. 17-59 at 3 (filed June 7, 2018) (INCOMPAS *Second FNPRM* Comments).

III. THE RECORD CONFIRMS THAT THE COMMISSION SHOULD FIRST REVISIT THE INTERPRETATION OF “CALLED PARTY” AND ADOPT A SAFE HARBOR FOR CALLERS THAT UTILIZE MARKET-BASED TCPA COMPLIANCE SOLUTIONS BEFORE IT CONSIDERS ANY NEW DATABASE REQUIREMENTS.

The record demonstrates that the Commission can and should promptly take steps to help reduce unwanted calls and the risk of TCPA liability facing legitimate callers in the near-term by revisiting the *2015 TCPA Order* to fix the erroneous interpretation of “called party.”³⁰

Confirming that “called party” means the “intended” or “expected” recipient of the call would be the most reasonable interpretation of the statute, given known consumer behavior and the technical challenges of detecting reassigned numbers with 100 percent certainty. An interpretation of “intended” or “expected” recipient would best align with the natural, reasonable behavior of both callers and called parties and would encourage callers to stop calling when they learn about a reassignment, or else risk penalties. The record is replete with commenters encouraging the Commission to make this interpretation.³¹

Although the D.C. Circuit suggested that “called party” may mean different things in different parts of the statute,³² a reasonable interpretation of “intended” or “expected” recipient in this circumstance best incentivizes callers to obtain robust “prior express consent” and encourages recipients of the calls to notify callers that the number has been reassigned. An

³⁰ See, e.g., Comments of ACA International, CG Docket No. 17-59 at 5 (filed Aug. 28, 2017) (stating that “the most effective way to shield legitimate businesses from TCPA litigation traps is to bring the statute in line with the statutory language”).

³¹ See, e.g., Comments of American Ass’n of Healthcare Administrative Management, CG Docket Nos. 18-152, 02-278 at 4 (filed June 12, 2018); Comments of American Financial Services Ass’n CG Docket Nos. 18-152, 02-278 at 9 (filed June 12, 2018); Comments of Bellco Credit Union, CG Docket No. 18-152 at 2 (filed June 12, 2018); Comments of Blackboard Inc., CG Docket Nos. 18-152, 02-278 at 3 (filed June 12, 2018); Comments of Coalition of Higher Education Assistance Organizations, CG Docket Nos. 18-152, 02-278 at 4 (filed June 13, 2018); Comments of Edison Electric Institute and National Rural Electric Cooperative Ass’n, CG Docket Nos. 18-152, 02-278 at 8 (filed June 13, 2018); Comments of Electronic Transactions Ass’n, CG Docket Nos. 18-152, 02-278 at 8 (filed June 13, 2018).

³² *ACA Int’l*, 885 F.3d at 706.

interpretation that “called party” means the “current subscriber,” by contrast, leaves good-faith callers guessing as to whether each call might violate the TCPA. As CTIA has explained, no solution for identifying reassigned numbers can be 100 percent foolproof,³³ and Congress cannot have intended full clairvoyance from callers. Consistent with these realities, the Commission and courts have recognized that federal statutes, including the TCPA, should not be construed to “demand the impossible.”³⁴

The Commission should also help spur increasingly robust, market-based TCPA compliance solutions by establishing one or more safe harbors for callers who take reasonable steps to mitigate calls to reassigned numbers. At a minimum, there should be a safe harbor for callers who use one or more of the market-based TCPA compliance solutions available today.³⁵ Commenters agree with CTIA that the Commission should adopt a safe harbor³⁶ and address the issues raised in the Public Notice before considering any new database requirements.³⁷ A safe harbor would establish a bright-line rule by which a caller has “reasonably relied” on the “prior

³³ See CTIA *Second FNPRM* Comments at 6.

³⁴ See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, 19 FCC Rcd 19215 ¶ 7 (2004) (adopting a 15-day safe harbor for wireline-wireless ports to avoid a construction of the statute that would “demand the impossible”); *McNeil v. Time Ins. Co.*, 205 F.3d 179, 187 (5th Cir. 2000) (“It is a flawed and unreasonable construction of any statute to read it in a manner that demands the impossible.”).

³⁵ See *supra* fn. 7.

³⁶ See, e.g., ATIS *Second FNPRM* Comments at 6; ACA *Second FNPRM* Comments at 10-11; Comments of CenturyLink, CG Docket No. 17-59 at 4-5, 9 (filed June 5, 2018); NTCA *Second FNPRM* Comments at 6-8; Comments of Tatango Inc., *et al.*, CG Docket No. 17-59 at 15-16 (filed June 5, 2018).

³⁷ See, e.g., ATIS *Second FNPRM* Comments at 3-4 (“At a very minimum, those ATIS members who oppose a reassigned number database recommend that the Commission not move forward with the present proceeding until after it has resolved the underlying TCPA interpretation issues that gave rise to this proceeding in the first place. Instead of a new database, the industry should rely on current market solutions and improve them as necessary.”); ACA *Second FNPRM* Comments at 7 (similar); INCOMPAS *Second FNPRM* Comments at 3-4 (similar).

express consent” it was given, though it would not be the only way to demonstrate reasonable reliance.

The Commission can and should adopt qualifying criteria for the market-based TCPA compliance solutions that callers can rely on under a safe harbor. For example, as CTIA has previously detailed, the Commission should establish a rule such that a caller that checks a “covered compliance solution” within a “covered period” (*e.g.*, several weeks) would not be liable for inadvertent calls to reassigned numbers.³⁸ Establishing such a safe harbor would be fully consistent with the objective of ensuring that commercially available databases are accurate and reliable. The American Cable Association agrees: “voluntary participation by service providers, in combination with a safe-harbor to protect callers who use information from a qualified data aggregator ... 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.”³⁹ Other commenters concur.⁴⁰

Commenters recognize the utility of market-based TCPA compliance solutions to minimize unwanted calls to reassigned numbers. NTCA has noted, for example, that “a mandatory reporting obligation” is “entirely unnecessary” because “[t]he creation of a market for reassigned number data” is “likely to bring commercial database operators and carriers with that data together” into relationships “that will accomplish the same end result as a mandatory reporting regime: a comprehensive data set on reassigned numbers that substantially mitigates the number of unwanted calls.”⁴¹ The American Cable Association, meanwhile, doubts that a

³⁸ CTIA *Second FNPRM* Comments at 10.

³⁹ American Cable *Second FNPRM* Comments at 7.

⁴⁰ *See, e.g.,* ACA *Second FNPRM* Comments at 5-7.

⁴¹ NTCA *Second FNPRM* Comments at 5.

centralized database could outperform existing commercial solutions.⁴² And as Neustar⁴³ and Noble Systems⁴⁴ note, a centralized database could also impede the objective of enhancing market-based TCPA compliance solutions by having the Commission pick winners and losers from a competitive private industry.

IV. CONCLUSION.

The record is clear: before considering whether to mandate a new, purpose-built database of reassigned telephone numbers, the Commission should first revisit the *2015 TCPA Order* and resolve the open issues raised in the Public Notice. To accomplish the goals articulated in these proceedings in the near-term, the Commission should adopt a safe harbor for good-faith callers that check market-based TCPA compliance solutions and embrace a voluntary reassigned numbers reporting framework. By doing so, the Commission can use market-based principles to support its objectives of incentivizing good-faith callers to reduce unwanted calls and mitigate TCPA liability exposure, and ensuring that consumers receive the calls that they want.

⁴² See, e.g., American Cable *Second FNPRM* Comments at 6 (“Given how often wireless numbers in particular are reassigned – as many as 100,000 per day – 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 . . .”).

⁴³ Neustar *Second FNPRM* Comments at 10.

⁴⁴ Noble Systems *Second FNPRM* Comments at 3-4.

Respectfully submitted,

/s/ Krista Witanowski

Krista Witanowski
Assistant Vice President, Regulatory Affairs

Thomas C. Power
Senior Vice President, General Counsel

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Matthew Gerst
Assistant Vice President, Regulatory Affairs

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