

**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)	

REPLY COMMENTS OF COMCAST CORPORATION

Matthew T. Murchison
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

Kathryn A. Zachem
Beth A. Choroser
Regulatory Affairs

Francis M. Buono
Legal Regulatory

COMCAST CORPORATION
300 New Jersey Avenue, NW
Suite 700
Washington, DC 20001

Brian A. Rankin
Andrew D. Fisher
COMCAST CORPORATION
1701 JFK Boulevard
Philadelphia, PA 19103

July 9, 2018

TABLE OF CONTENTS

	Page
INTRODUCTION AND SUMMARY	1
DISCUSSION.....	3
I. THE RECORD CONTINUES TO REFLECT WIDESPREAD SUPPORT FOR A CENTRALIZED DATABASE COUPLED WITH A TCPA SAFE HARBOR	3
II. PARTIES OPPOSING THIS APPROACH EITHER OVERSTATE THE COSTS OR UNDERESTIMATE THE BENEFITS	7
CONCLUSION.....	13

**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)	

REPLY COMMENTS OF COMCAST CORPORATION

Comcast Corporation (“Comcast”) submits these reply comments in connection with the Second Further Notice of Proposed Rulemaking (“FNPRM”) issued on March 22, 2018 in the above-captioned proceeding.¹

INTRODUCTION AND SUMMARY

The comments filed in the opening round reaffirm what was already clear from the record compiled in response to the earlier *Reassigned Numbers NOI*²—that a large and diverse set of stakeholders support establishing a comprehensive, Commission-designated reassigned number database and an appropriately tailored safe harbor from liability under the TCPA for entities that rely on the database. As discussed below, a significant cross-section of business commenters, consumer groups, and governmental bodies agree on the basic policy justifications for the Commission’s database and safe harbor proposals, and find substantial common ground on many of the details of implementing those proposals. Moreover, numerous parties have explained that the Commission has clear legal authority to pursue these proposals under Sections 251(e) and

¹ See *Advanced Methods To Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Further Notice of Proposed Rulemaking, FCC 18-31 (rel. Mar. 23, 2018) (“FNPRM”).

² See *Advanced Methods To Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, 32 FCC Rcd 6007 (2017) (“*Reassigned Numbers NOI*”).

227(b) of the Communications Act of 1934, as amended (the “Act”), particularly in light of the D.C. Circuit’s recent discussion of these issues in *ACA International*.³

The few commenters that question the policy merits of establishing a centralized reassigned numbers database generally overstate the costs while underestimating the benefits. Feeding information into such a database need not—and will not—be an overly burdensome endeavor for voice providers; Comcast and other commenters have identified various ways in which the Commission can minimize the associated costs to voice providers, including through the adoption of flexible reporting methods and the establishment of a cost recovery mechanism, as discussed below. On the caller side, Comcast expects that widespread use of the database, driven by the adoption of the proposed safe harbor, will enable costs to be spread over a large number of entities, thus allowing for a low-annual-fee structure similar to the Do Not Call database administered by the Federal Trade Commission (“FTC”). As for the benefits, the record demonstrates that the proposed database solution would represent a significant improvement over existing commercial tools, contrary to the assertions of the providers of those tools. And while the Commission may be able to mitigate TCPA liability for calls to reassigned numbers in other ways—including by reinterpreting the term “called party” in the statute to mean “intended recipient,” a measure that Comcast supports—the proposed database solution would yield other significant benefits as well, including eliminating the waste of resources caused by misdirecting calls and texts to reassigned numbers, and ensuring that consumers receive fewer unwanted communications (and more of the communications they desire). The record in this proceeding amply demonstrates that the benefits of the Commission’s proposals far outweigh the

³ *ACA Int’l v. FCC*, 885 F.3d 687, 709 (D.C. Cir. 2018).

costs of a properly structured database and support immediate Commission action to follow through with these proposals.

DISCUSSION

I. THE RECORD CONTINUES TO REFLECT WIDESPREAD SUPPORT FOR A CENTRALIZED DATABASE COUPLED WITH A TCPA SAFE HARBOR

An overwhelming majority of commenters support the establishment of a centralized, comprehensive, Commission-designated database of reassigned telephone numbers. Numerous commenters representing a variety of legitimate businesses that call or text consumers with their prior express consent agree that the Commission should press forward with its proposed database solution.⁴ Consumer groups, for their part, are *unanimous* in their “strong[] support” for “the creation of a reassigned number database,” and have noted their appreciation for “the leadership shown by the Commission” on this issue.⁵ Government entities likewise urge the Commission to “establish a database of reassigned phone numbers” in a manner that “impose[s] only a minimal cost on voice service providers” and is “readily available to callers making legitimate

⁴ See, e.g., Comments of the National Retail Federation, CG Docket No. 17-59, at 4 (June 7, 2018) (noting that “there is significant support among consumer groups and businesses making automated calls and text messages for a solution to this problem through the establishment of a comprehensive and up-to-date repository of reassigned number information by which callers can verify whether a number has been reassigned prior to initiating a call”); see also, e.g., Comments of American Financial Services Association, CG Docket No. 17-59, at 1 (June 7, 2018) (“AFSA Comments”); Comments of A to Z Communications Coalition and Insights Association, CG Docket No. 17-59, at 13 (June 7, 2018) (“A to Z Communications Coalition Comments”).

⁵ Comments of National Consumer Law Center, American Association for Justice, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, Public Citizen, and U.S. PIRG, CG Docket No. 17-59, at 1 (May 29, 2018) (“Joint Consumer Group Comments”).

robocalls.”⁶ And parties commenting on the Commission’s authority to establish such a database agree that Section 251(e) of the Communications Act of 1934, as amended (the “Act”), clearly empowers the Commission to do so.⁷

Moreover, the Commission’s proposal to adopt an appropriate safe harbor from TCPA liability for entities relying on a reassigned numbers database enjoys near-universal support. Dozens of commenters representing callers,⁸ voice providers,⁹ messaging platform providers,¹⁰

⁶ Comments of the Massachusetts Department of Telecommunications and Cable, CG Docket No. 17-59, at 2 (June 7, 2018).

⁷ See, e.g., Comments of Quicken Loans, CG Docket No. 17-59, at 3 (June 6, 2018) (noting that “the FCC has been given authority to create a reassigned phone number database” under Section 251); Comments of the Retail Industry Leaders Association, CG Docket No. 17-59, at 11 (June 7, 2018) (“RILA Comments”) (explaining that the Commission’s ability to create this database lies in its “statutory authority over the North American Numbering Plan (‘NANP’)” in Section 251(e), which “empowers it to require that recipients of NANP numbers report the reassignment of those numbers”).

⁸ See, e.g., Comments of the U.S. Chamber of Commerce’s Institute for Legal Reform, CG Docket No. 17-59, at 8-9 (June 7, 2018) (“U.S. Chamber Comments”) (explaining that, “if the Commission does decide to move forward with creating a reassigned numbers database or similar system, then the Commission should establish certain safe harbors” from TCPA liability); Comments of Encore Capital Group, CG Docket No. 17-59, at 2 (June 5, 2018) (noting that a TCPA safe harbor “will incentivize callers to use a reassigned numbers database, which will result in fewer wrong calls to consumers”); Comments of Education Finance Council, CG Docket No. 17-59, at 3 (June 7, 2018) (explaining that “[a]n effective [s]afe [h]arbor that lifts the risk of litigation not only protects the caller, but also helps ensure that borrowers are receiving this important information” about their student loans).

⁹ See, e.g., Comments of CTIA, CG Docket No. 17-59, at 10-11 (June 7, 2018) (“CTIA Comments”) (noting wireless providers’ support for Commission efforts to create a safe harbor for callers that use a reassigned number lookup tools); Comments of CenturyLink, CG Docket No. 17-59, at 4 (June 7, 2018) (explaining that the safe harbor proposed in the FNPRM “would help good faith callers mitigate liability exposure under the TCPA, while avoiding any relief that could weaken TCPA enforcement against bad actors”).

¹⁰ See, e.g., Comments of Tatango, Inc., Adva Mobile, Inc., Blue Heart Imports, eDealColorado, and Mobiniti, CG Docket No. 17-59, at ii-iii (June 7, 2018) (urging the Commission to “implement a safe harbor provision protecting companies that scrub their

and others all agree that, as Comcast explained in its opening comments, “a safe harbor would strongly incentivize voluntary use of the database by callers—which in turn would enhance the benefits to consumers by driving down the number of misdirected calls and texts.”¹¹ Consumer groups are aligned with business commenters on this issue as well—explaining that an appropriately tailored safe harbor would “incentivize the use of the reassigned number database, and thus reduce the number of unwanted and illegal robocalls.”¹² Indeed, the safe harbor framework proposed by consumer groups in this proceeding shares many similarities with the framework that Comcast has proposed,¹³ as both would focus on assessing “whether the caller was reasonable in relying on the information obtained from the database.”¹⁴

In addition to this broad policy consensus on the merits of a safe harbor, a large cross-section of commenters recognizes that, as a legal matter, the Commission may use its existing authority under Section 227(b) of the Act to adopt such a safe harbor. Multiple parties point out that the Commission’s “authority . . . to establish [such] a safe harbor [w]as confirmed by [the]

robocalling and text message contact lists using data provided by an FCC-accredited source).

¹¹ Comments of Comcast Corp., CG Docket No. 17-59, at 5 (June 7, 2018) (“Comcast Comments”).

¹² Joint Consumer Group Comments at 8.

¹³ *Compare* Comcast Comments at 16 (setting forth proposed elements of a safe harbor in this context) *with* Joint Consumer Group Comments at 8-9 (proposing a similar set of elements).

¹⁴ Joint Consumer Group Comments at 8; *see also* Comcast Comments at 17 (noting that safe harbor protection should apply “where a caller relies on the comprehensive reassigned number database to ascertain whether it continues to be reasonable to rely on previously obtained consent”).

D.C. Circuit’s discussion in *ACA International*.’¹⁵ In that case, as Comcast has explained,¹⁶ the court specifically pointed to the Commission’s proposal to establish a comprehensive reassigned number database and to adopt a TCPA safe harbor for entities that rely on the database, and explained that “[t]hose proposals . . . naturally bear on the reasonableness of calling numbers that have in fact been reassigned, and have greater potential to give full effect to the Commission’s principle of reasonable reliance” grounded in Section 227(b).¹⁷ Other commenters have, like Comcast,¹⁸ observed that this proposed safe harbor “would be consistent with several other TCPA safe harbors that the Commission already has adopted, including those related to ported numbers and the national Do-Not-Call Registry.”¹⁹ The Commission thus has a solid record on which to base the establishment of a comprehensive reassigned number database and the adoption of an appropriately tailored TCPA safe harbor.

¹⁵ Comments of the Credit Union National Association, CG Docket No. 17-59, at 6 (June 7, 2018) (“CUNA Comments”); *see also, e.g.*, Comments of the American Bankers Association, CG Docket No. 17-59, at 5-6 (June 7, 2018) (observing that “the D.C. Circuit did not question the Commission’s authority to adopt [this] safe harbor” in *ACA International*, and concluding that “[t]he Commission has ample authority under the TCPA to adopt a safe harbor from liability for callers that utilize the Reassigned Numbers Database”).

¹⁶ *See* Comcast Comments at 17-20.

¹⁷ *ACA Int’l*, 885 F.3d at 709.

¹⁸ *See* Comcast Comments at 16-17, 19-20.

¹⁹ RILA Comments at 11; *see also* CTIA Comments at 11 (explaining that “the Commission has ample authority under the TCPA to adopt [a] safe harbor” in this context, and that “such a safe harbor would be similar to other TCPA compliance frameworks that the Commission has adopted in the past”).

II. PARTIES OPPOSING THIS APPROACH EITHER OVERSTATE THE COSTS OR UNDERESTIMATE THE BENEFITS

Comcast shares the Commission’s interest in ensuring that any regulatory solution to the problem of reassigned numbers maximizes the benefits to consumers and legitimate businesses while minimizing any associated costs. The FNPRM correctly stresses the need to ensure that the approach adopted in this proceeding will not be “too costly as compared to the likely benefit,”²⁰ and individual Commissioners have appropriately highlighted the same important considerations.²¹ Comcast is particularly attuned to the cost-benefit calculus in this context given its role as both a voice provider serving millions of customers and a business that seeks to communicate with consenting customers through calls and texts—that is, as both a potential contributor to and user of a centralized reassigned number resource. And after carefully weighing the benefits and costs of such a resource for its own business and for its customers, Comcast is confident that the benefits would far outweigh the costs²²—especially if the Commission takes the cost-reducing steps set forth in Comcast’s opening comments when implementing the database.²³

Those who raise cost-related concerns about the database tend to portray it in its costliest form—one structured in a way that would require voice providers to undertake herculean efforts to reconstruct specific types of number reassignment data and to conform their recordkeeping

²⁰ FNPRM ¶ 7.

²¹ *See, e.g.*, FNPRM, Statement of Chairman Ajit Pai at 31 (“With a robust record, we hope to adopt an approach that’s easy-to-use and cost-effective for callers while minimizing the reporting burdens on service providers.”); FNPRM, Statement of Commissioner Michael O’Rielly at 33 (emphasizing the need for careful consideration of “the costs and benefits of creating a reassigned numbers database”).

²² *See* Comcast Comments at 5-8.

²³ *See id.* at 8-14; *see also infra* at 8-10.

practices to fit a one-size-fits-all reporting mechanism, and that would require callers to pay astronomical amounts to use the database. That, however, is not the kind of database the Commission had in mind when it proposed to create a resource that would be “easy to use and cost-effective for callers while minimizing the burden on service providers supplying the data.”²⁴ And as noted above, Comcast has come forward with several ideas for structuring the database in a manner that would keep costs low, consistent with the FNPRM’s vision.²⁵ For example, instead of imposing a top-down mandate obligating voice providers to track and report when a number has passed specific points in the number recycling process—*i.e.*, when a number has been “disconnected,” “aged out,” and/or “reassigned,” according to existing or new definitions of those terms—the Commission can and should adopt a flexible standard that enables voice providers to report useful information to the database based on each provider’s current recordkeeping practices.²⁶ Under this standard, a voice provider would simply “report, for each telephone number allocated to that voice provider, the date on which the provider’s records indicate that the number was most recently disassociated permanently from the number’s previous owner—according to whatever method the provider uses to track and record this information.”²⁷ That approach would give the database sufficient information to be an effective tool,²⁸ and belies claims in the record that creating a useful database would entail overly burdensome data collection and reporting obligations for voice providers.

²⁴ FNPRM ¶ 11.

²⁵ *See* Comcast Comments at 8-14.

²⁶ *See id.* at 11-12.

²⁷ *Id.* at 11.

²⁸ *See id.* at 12 (explaining how callers can use such information to determine whether consent to call or text a particular number remains valid).

The opportunities for reducing costs while preserving the usefulness of the database do not end there. As Comcast and other parties have explained, establishing a single database to which voice providers would report information likely would prove significantly less burdensome than requiring providers to report to multiple data aggregators.²⁹ Commenters also have explained that the Commission can give voice providers flexibility regarding the frequency and format of their reporting without compromising the effectiveness of the database.³⁰ And, as the FNPRM correctly points out, parties “largely agree that service providers should be compensated for the costs of reporting data to a reassigned numbers database” through the fees paid by callers to use the database—so that most or all of these significantly reduced costs could be recovered by voice providers.³¹

As for the costs to callers, Comcast expects that the establishment of a centralized and comprehensive reassigned number database will substantially *reduce* compliance costs compared to today’s levels, particularly considering the high fees companies currently pay for less comprehensive commercial tools. Comcast and several other parties have voiced their support for a subscription-based fee model similar to the one used for the FTC’s Do Not Call database,³²

²⁹ See Comcast Comments at 9; *see also, e.g.*, RILA Comments at 15-16; AFSA Comments at 1; A to Z Communications Coalition Comments at 13; Comments of Sorenson Communications, CG Docket No. 17-59, at 1 (June 7, 2018).

³⁰ See Comcast Comments at 12-13 & n.44 (suggesting that the Commission could adopt a weekly rather than daily reporting requirement—with potentially longer periods for smaller providers that can demonstrate an undue burden—and recommending that the database administrator “collaborate with stakeholders on an approach that minimizes the need for voice providers to reformat their own data”); *see also, e.g.*, Comments of Edison Electric Institute, CG Docket No. 17-59, at 12-14 (June 7, 2018) (“Edison Comments”).

³¹ FNPRM ¶ 29.

³² See Comcast Comments at 13-14; *see also, e.g.*, CUNA Comments at 3-5; Comments of the California and Nevada Credit Union Leagues, CG Docket No. 17-59, at 2-3 (June 7, 2018).

under which callers pay the FTC a flat fee of roughly \$17,000 annually for full access to the database (without any additional per-lookup fees).³³ A similarly low annual fee is attainable for the reassigned number database—assuming the Commission takes the steps noted above to keep the cost of creating and maintaining the database low (thereby minimizing the amount voice providers would need to recover), and as long as the Commission encourages widespread use of the database by adopting a TCPA safe harbor (thereby allowing the fees supporting that recovery mechanism to be spread out over the greatest number of parties). Comcast estimates that, if the Commission were able to ensure a fee structure similar to the FTC’s, the costs the business would incur to avoid inadvertently dialing reassigned numbers would be roughly *50 times less* than it currently pays for commercial tools.³⁴

Critics of the Commission’s proposed database solution also significantly understate the benefits of such a tool. Some of these parties attempt to argue that the incremental benefit of the proposed database will be low given the availability of commercial tools.³⁵ But the claim that, for instance, Neustar’s tool “now includes ‘greater than 95% of true wireless disconnects in its data’” provides cold comfort when examined closely.³⁶ To begin with, it is impossible to

³³ See Federal Trade Commission, “Telemarketer Fees to Access the FTC’s Do Not Call Registry to Rise Slightly in FY 2018,” Aug. 14, 2017, *available at* <https://www.ftc.gov/news-events/press-releases/2017/08/telemarketer-fees-access-ftcs-do-not-call-registry-rise-slightly>.

³⁴ As Comcast has noted previously, if the Commission uses an outside vendor to manage this database, it should take steps to ensure that fees for callers remain low, including by using a competitive bidding process to select the vendor and by instituting strict price controls to prevent profiteering. See Comcast Comments at 9.

³⁵ See, e.g., CTIA Comments at 3; Comments of Neustar, Inc., CG Docket No. 17-59, at 2-3 (June 7, 2018) (“Neustar Comments”).

³⁶ CTIA Comments at 5 (quoting Letter of Richard L. Fruchterman, III, Sr. External Affairs Counsel, Neustar, to Marlene H. Dortch, Secretary, FCC, at 2, CG Docket No. 17-59 (filed Oct. 16, 2017)).

evaluate the accuracy of that claim when Neustar’s own comments shed almost no light on how that dataset is assembled or kept current—referring only vaguely to “insights” Neustar claims to have “from existing industry data and expertise,” and notably *not* asserting that Neustar obtains this information directly from voice providers.³⁷ And even assuming that the claim is accurate—and that the 95 percent figure for *wireless* disconnects reflects the tool’s coverage of *non-wireless* disconnects as well—the tool still would have a significant gap in its dataset. As the FNPRM observes, “[a]pproximately 35 million numbers are disconnected and made available for reassignment to new consumers each year”;³⁸ thus, even a five percent gap would mean that Neustar’s tool is, at best, missing data for 1.75 million disconnects each year. Of course, existing databases like Neustar’s could serve as useful *supplemental* tools. But the notion that existing tools are just as comprehensive and provide the same benefits as the Commission’s proposed database solution—which would obtain accurate and up-to-date information directly from voice providers—does not hold water.

Some commenters suggest that the Commission could bring about the same benefits simply by reinterpreting the term “called party” in the TCPA to mean the “intended recipient” of a call or text rather than the “actual recipient.”³⁹ Comcast certainly would support such a ruling—which a recent Public Notice specifically proposed⁴⁰—and agrees that it would have a

³⁷ Neustar Comments at 4.

³⁸ FNPRM ¶ 3.

³⁹ *See, e.g.*, Comments of the Professional Association for Customer Engagement, CG Docket No. 17-59, at 3 (June 7, 2018); U.S. Chamber Comments at 6-8.

⁴⁰ *See* Public Notice, *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, DA 18-493, at 3-4 (rel. May 14, 2018).

similar effect of significantly reducing TCPA liability for inadvertent calls to reassigned numbers. But the database solution proposed in this proceeding would bring additional benefits as well. As the FNPRM recognizes, a comprehensive database also would enable businesses to avoid “wast[ing] considerable resources” in seeking to provide consumers with desired communications when they mistakenly place calls and send texts to reassigned numbers.⁴¹ Moreover, such a database would bring significant consumer benefits by “reducing unwanted calls [and texts] intended for another consumer” and by facilitating the kinds of communications they desire.⁴² These benefits, which go beyond the reduction of TCPA liability, mean that the Commission need not wait for the conclusion of its separate TCPA reform proceeding before it can justify such a database on cost-benefit grounds, as some parties have suggested.⁴³ These gains in consumer welfare and business efficiency independently support the Commission’s database proposal—and indeed warrant moving forward with establishing a database as expeditiously as possible.

⁴¹ FNPRM ¶ 27; *see also, e.g.*, Edison Comments at 1 (noting that “the problem of unwanted calls causes customers annoyance and wastes the time and effort of the electric company callers that may be attempting to reach customers during storms or about other situations closely related to their electric service,” and supporting a centralized database solution that would address these harms).

⁴² *Id.* ¶ 2; *see also, e.g.*, Joint Consumer Group Comments at 1-2 (noting that “[a]n effectively created and managed database will significantly reduce the number of unwanted calls to consumers” and will ensure that desired communications “reach their intended recipients more successfully”).

⁴³ *See, e.g.*, Comments of INCOMPAS, CG Docket No. 17-59, at 3-4 (June 7, 2018); CTIA Comments at 9.

CONCLUSION

The record in this proceeding reflects strong and wide-ranging support for the Commission's proposals to establish a comprehensive database of reassigned telephone numbers and to adopt an appropriately tailored safe harbor from TCPA liability for users of the database. Comcast and other commenters have identified various ways in which the Commission can structure these measures so that they maximize the benefits to consumers and businesses while minimizing the costs. Comcast looks forward to continuing its work with the Commission on making this much-needed resource a reality.

Respectfully submitted,

/s/ Kathryn A. Zachem

Matthew T. Murchison
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

Kathryn A. Zachem
Beth A. Choroser
Regulatory Affairs

Francis M. Buono
Legal Regulatory

COMCAST CORPORATION
300 New Jersey Avenue, NW
Suite 700
Washington, DC 20001

Brian A. Rankin
Andrew D. Fisher
COMCAST CORPORATION
1701 JFK Boulevard
Philadelphia, PA 19103

July 9, 2018