

**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	)	

**JOINT REPLY COMMENTS OF 15 SMS INDUSTRY PARTICIPANTS**

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The parties listed in **Appendix A** (the “SMS Industry Participants”) either use text messaging to engage customers or are service providers that facilitate opt-in only text messaging services. The SMS Industry Participants respectfully submit these Joint Reply Comments in order to join in the comments filed by Tatango, Inc. Adva Mobile, Inc., Blue Heart Imports, eDealColorado, and Mobiniti on June 7, 2018 (hereinafter called the “Tatango Comments”).<sup>1</sup> The SMS Industry Participants are fully in support of the comments Tatango and the other four SMS marketers filed in response to the Federal Communication Commission’s (“FCC” or “Commission”) Second Further Notice of Proposed Rulemaking (“SFNPRM”),<sup>2</sup> which seeks input regarding potential solutions to address robocalls made to telephone numbers that have been reassigned to a new user.

As the Tatango Comments demonstrate, the D.C. Circuit’s decision in *ACA International v. Federal Communications Commission*<sup>3</sup> recognized the serious flaws in the Commission’s 2015 Declaratory Ruling and Order and vacated the Commission’s decision to impose liability for contacting a reassigned number without the new user’s consent after only one call.<sup>4</sup> And

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<sup>1</sup> Comments of Tatango, Inc., Adva Mobile, Inc., Blue Heart Imports, eDealColorado, and Mobiniti in Response to the Second Further Notice of Proposed Rulemaking, CG Docket No. 17-59 (June 7, 2018) (“Tatango Comments”).

<sup>2</sup> *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking, FCC 17-90, CG Docket No. 17-59 (Mar. 23, 2018) (“SFNPRM”).

<sup>3</sup> 885 F.3d 687 (D.C. Cir. 2018).

<sup>4</sup> *Id.* at 706-09.

while the D.C. Circuit’s decision was a step in the right direction, the confusion caused by the 2015 TCPA Order still remains and has actually muddled further since the *ACA International* decision was released, as law-abiding businesses across the country, like those named in the Tatango Comments, have been left with *no safe harbor protection*<sup>5</sup> and still “lack guaranteed methods to discover all reassignments immediately after they occur.”<sup>6</sup> As indicated by the comments filed in this proceeding, this problem is so widespread that voice service providers, platform providers, and consumer interest organizations are eager for the Commission to implement rules addressing the issue. By doing so, the Commission will not only protect the ability of consumers to receive the communications they desire, but also prevent the predatory and abusive TCPA litigation that often arises from inadvertent calls and text messages to reassigned numbers.

With those thoughts in mind, and to the extent the Commission does not decide to reinterpret the term “called party” to mean “the person the caller expected to reach,”<sup>7</sup> the SMS Industry Participants urge the Commission to require the separate reporting of permanently disconnected telephone numbers by all wireless and VoIP service providers and to adopt rules allowing Commission-accredited aggregators to access reports from wireless carriers and make the aggregated data available to robocallers and platform providers at a price to be determined by the market.<sup>8</sup> As the Tatango Comments noted, such an industry-focused solution would be the

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<sup>5</sup> In setting aside the FCC’s one-call safe harbor as arbitrary and capricious, the D.C. Circuit completely eliminated the safe harbor all together. *See id.* at 707-08. Thus, until the Commission issues new rules, no safe harbor exists for calls to reassigned numbers.

<sup>6</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act*, Declaratory Ruling and Order, 30 FCC Rcd. 7961, ¶ 85 (July 10, 2015) (“2015 TCPA Order”).

<sup>7</sup> *See 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*, Public Notice, DA 18-493, CG Docket Nos. 18-152 and 02-278, at 3-4 (May 14, 2018). In the event the Commission decides to reinterpret the term “called party” as “the person the caller expected to reach,” the SMS Industry Participants believe that the creation of a reassigned number database would likely be unnecessary.

<sup>8</sup> *See* Tatango Comments at 6-7.

easiest for the Commission and callers to implement, as it builds on the efforts that many in the industry have already made to address the issue. It would also take much less time (and be much cheaper) to implement compared to a single, FCC-designated database or the Commission's voluntary reporting proposal, thereby achieving the Commission's goals in a much shorter timeframe.

And in continuing to agree with the minimalistic, hands-off approach envisioned in the Tatango Comments, the SMS Industry Participants further contend that an easy-to-use, simplistic database will be the best option for the Commission, aggregators, and callers alike, as such a database structure can be implemented quickly and in a manner that will not confuse interested parties. Accordingly, the SMS Industry participants believe that callers should only need to input a consumer's phone number in querying the databases and that the databases should only generate back the consumer's phone number and the date on which the consumer's number was disconnected.<sup>9</sup> Furthermore, the databases should only be required to include numbers that have been disconnected since the commencement of the database, as requiring earlier disconnects could potentially require costly and time-consuming research for service providers and aggregators.<sup>10</sup>

In creating the rules and regulations pertaining to the reassigned number databases, the Commission should remain cognizant of areas where no regulation is needed and where the free market could do the Commission's work itself. For example, while the Commission should impose reporting requirements on the entity obtaining the numbers from the NANPA, it should also permit the reporting duty to be freely delegated to the provider that is actually using the numbers (such as when a VoIP service provider uses numbers originally obtained by a wireless

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<sup>9</sup> See *id.* at 7.

<sup>10</sup> See *id.* at 13.

provider).<sup>11</sup> And while the agency should require providers to deliver disconnect data in a structured, consistent file type, such as CSV or something similar, it should not prohibit aggregators from negotiating to obtain data through API or other automated processes that aggregators may currently use.<sup>12</sup> In continuing to emphasize free market principles, the SMS Industry Participants also do not believe the Commission should impose database access tracking,<sup>13</sup> cost-of-use,<sup>14</sup> or service provider cost recovery rules.<sup>15</sup> Creating rules with respect to these issues would similarly generate needless regulation and would disrupt a *status quo* among present database structures that Tatango and other commenters have already shown to be successful in limiting calls and text messages to reassigned numbers.

Finally, and most importantly, the SMS Industry Participants ask the Commission to propose and adopt a safe harbor for callers who use a comprehensive and FCC-accredited reassigned number database. In particular, we believe the safe harbor provision proposed in the Tatango Comments<sup>16</sup> would be the most effective, as it will promote participation in the database

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<sup>11</sup> See *id.* at 13-14.

<sup>12</sup> See *id.* at 14-15.

<sup>13</sup> See *id.* at 17.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.* at 17-18.

<sup>16</sup> The safe harbor proposed in the Tatango Comments reads:

Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made), whether via voice call, SMS, MMS, or other technology, will not be liable for violating the requirements of 47 C.F.R. § 64.1200(a)(1)(iii) if:

(i) It can demonstrate that it has prior express consent to call the number, and that, as part of its routine business practice, it meets the following standards:

(A) Written procedures. It has established and implemented written procedures to avoid making calls and/or sending messages to disconnected telephone numbers;

(B) Removing disconnected numbers based on data from a Commission-accredited aggregator. It uses a process to prevent telephone solicitations to any telephone number reported as having been recently disconnected by verifying, based on data obtained from a Commission-accredited reassigned number aggregator no more than 15 days prior to the date any call is made, that it has removed all numbers listed as recently disconnected, and maintains records documenting this process.

*Id.* at 16.

system and further the FCC's mission of eliminating inadvertent communications and oppressive TCPA litigation.

We applaud and thank the Commission for its focus on ways to minimize text messages to reassigned telephone numbers and are eager to work with the Commission and the industry to develop an efficient and effective solution that enables text message providers to remove disconnected numbers from their databases. As the Tatango Comments noted,<sup>17</sup> the industry itself has been working to tackle this problem, and, with access to better and more complete data, their databases will greatly benefit callers and consumers alike.

Sincerely,



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Participants*

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<sup>17</sup> See *id.* at 5-6

## **APPENDIX A**

### **SMS INDUSTRY PARTICIPANTS**

**Advanced Telecom Services**

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King of Prussia, Pennsylvania 19406

**Alive5, Inc.**

2100 West Loop South  
Suite 900  
Houston, Texas 77027

**Auspicious Fish, Inc.**

815 North Homestead Boulevard  
P.M.B. 218  
Homestead, Florida 33030

**Global Callcenter Solutions**

225 West 2nd Street  
Pueblo, Colorado 81003

**Incept, LLC**

599 Delaware Avenue  
Suite 206  
Buffalo, New York 14202

**Issues & Answers Network, Inc.**

5151 Bonney Road  
Virginia Beach, Virginia 23462

**Noc Solutions, LLC**

3651 Lindell Road  
Suite D-1118  
Las Vegas, Nevada 89103

**NorthStar Alarm Services, LLC**

545 East University Parkway  
Suite 500  
Orem, Utah 84097

**Preferred Collection and Management Services, Inc.**

1000 North Ashley Drive  
# 600  
Tampa, Florida 33602

**Purplegator**

1150 First Avenue

Suite 105

King of Prussia, Pennsylvania 19406

**Red Oxygen, Inc.**

275 Orion Lane

Unit D

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Stateline, Nevada 89449

**Schaeon, Inc.**

2421 West Horizon Ridge Parkway

# 110

Henderson, Nevada 89052

**Text2Drive**

223 West Erie Street

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Chicago, Illinois 60654

**TextPower, Inc.**

27134-A Paseo Espada

# 324

San Juan, Capistrano, California 92675

**The Premier Group**

7806 Hillmont Street

Houston, Texas 77040