

**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 NEUSTAR, INC.

July 9, 2018

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I. INTRODUCTION AND SUMMARY

Neustar, Inc. (“Neustar”) hereby submits the following reply comments in response to the Federal Communication Commission’s (“Commission”) *Second FNPRM*.¹ While commenters uniformly share the Commission’s goal of reducing unwanted calls made to phone numbers of consumers who provided consent but which subsequently have been reassigned, they present the Commission with competing visions for achieving that goal.

On the one hand, many commenters, including Neustar, believe that the Commission should encourage the use of commercial solutions to help callers avoid calling reassigned numbers rather than establish a new government database. As the record demonstrates, these commercial solutions can more than adequately address the reassigned number problem, while avoiding the delay, expense, and inevitable implementation problems resulting from the establishment of a government reassigned numbers database.

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

Although a handful of commenters criticize the utility of existing commercial solutions, such criticisms are superficial and unfounded. Furthermore, by creating a safe harbor from liability under the Telephone Consumer Protection Act (“TCPA”) for calls to reassigned numbers when callers utilize commercial solutions and otherwise have the consent of the intended customer to place the call, the Commission would incent further innovation and competition in the commercial solution marketplace, as well as encourage greater adoption of commercial solutions that would promote TCPA compliance.

On the other hand, commenters that make calls subject to the TCPA (or whose members make such calls) support the Commission’s proposal to create a government reassigned numbers database, provided the Commission also creates a safe harbor that would allow callers to escape liability under the TCPA when using the database. However, their support is almost universally predicated on the naïve view that use of the database should involve only a “nominal” fee or should even be “free,” even while they advocate for robust features and functions. The reassigned numbers database envisioned by the Commission and endorsed by commenters would be costly to build and maintain, and users of the database are almost certain to have buyer’s remorse when confronted with the bill.

Commenters’ reliance upon the Do Not Call Registry (“DNC Registry”) as a model for the proposed reassigned numbers database is misplaced. The effectiveness of the DNC Registry is dubious. And, in contrast to a government reassigned numbers database, the DNC Registry is a flat file, is relatively stagnant, and is populated by individuals, not communications providers. Given the fundamental differences between a reassigned numbers database and the DNC Registry, comparing the two is the proverbial apples-to-oranges comparison.

Finally, commenters’ support of a government reassigned numbers database and their reliance upon the DNC Registry underscore a fundamental problem – namely, the inability of the Commission to conduct a full and complete cost-benefit analysis of the proposed database at this juncture. Until the parameters of the database are defined and the expenses of the database are determined, the Commission cannot reasonably calculate its cost. Nor can the Commission reasonably calculate the benefits of a government reassigned numbers database – particularly in comparison to the use of existing commercial solutions – when it is unclear which entities are likely to use – and thus pay for – the database. Until the Commission completes its pending proceeding resulting from the D.C. Circuit’s decision in *ACA International v. FCC*,² which many commenters agree with Neustar directly implicates the proposed creation of a reassigned numbers database, it is not possible for the Commission to conduct a meaningful cost-benefit analysis.

II. THE RECORD SUPPORTS USE OF COMMERCIAL SOLUTIONS TO ADDRESS THE PROBLEM OF CALLS TO REASSIGNED NUMBERS RATHER THAN THE CREATION OF ANOTHER GOVERNMENT DATABASE.

Many commenters in this proceeding favor the use of commercial solutions to minimize calls to reassigned numbers over the creation of another government database. Commenters explain that “commercially available solutions have significantly improved since 2015, when the Commission last considered these issues,”³ and that the proliferation of robust commercial solutions “demonstrate that there is an existing infrastructure established that could be accessed

² 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*, DA 18-493, CG Docket No. 18-152, CG Docket No. 02-278 (rel. May 14, 2018) (“Public Notice”) (citing *ACA International v. FCC*, 885 F.3d 687 (D.C. Cir. 2018)).

³ Comments of CTIA, CG Docket No. 17-59, at 5 (filed June 7, 2018) (“CTIA Comments”).

by callers and service providers.”⁴ The commercial solutions provided by data aggregators “provide[] more up-to-date and accurate information than could be obtained through any new and untested reporting model.”⁵

Because of the availability of commercial solutions, multiple commenters implore the Commission to “address the problem of unwanted calls to reassigned telephone numbers by leveraging already available resources that can expeditiously alleviate the problem.”⁶

Accordingly, many commenters share Neustar’s view that the Commission should adopt a safe harbor from TCPA liability for callers that use a commercial solution for identifying reassigned numbers.⁷

III. CRITICISMS OF EXISTING COMMERCIAL SOLUTIONS ARE MISGUIDED AND, IN ANY EVENT, IGNORE THE DYNAMIC AND EVOLVING NATURE OF THE MARKETPLACE.

Although the record is replete with support for the notion that commercial solutions are a viable—and preferable—means to protect against the placement of unwanted calls to reassigned numbers, a handful of commenters raise issues with these solutions. However, these criticisms are either inaccurate or overstated. They also fail to take into account the evolving nature of the

⁴ *Id.* at 5 (quotation marks and citation omitted).

⁵ Comments of the American Cable Association, CG Docket No. 17-59, at 3 (filed June 7, 2018) (“ACA Comments”); *see also* Reply Comments of CTIA, CG Docket No. 17-59, at 2 (filed June 28, 2018) (noting that a government reassigned numbers database is “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”).

⁶ Comments of NTCA – The Rural Broadband Association, CG Docket No. 17-59, at 3 (filed June 7, 2018) (“NTCA Comments”); *see also* CTIA Comments at 10.

⁷ *See* ACA Comments at 8; Comments of CenturyLink, CG Docket No. 17-59, at 5 (filed June 7, 2018); CTIA Comments at 10; Comments of the U.S. Chamber Institute for Legal Reform and Chamber Technology Engagement Center, CG Docket No. 17-59, at 8 (filed June 7, 2018) (“Chamber Comments”).

market for reassigned number solutions and the competitive effects that a safe harbor would have on commercial offerings.

Two commenters raise specific concerns about the sufficiency of data provided through available commercial solutions, claiming that the data includes all disconnected numbers instead of those that actually have been reassigned,⁸ and does not accurately identify business numbers or “whether phone numbers that belong to a family calling plan or to a prepaid phone have been reassigned from the caller’s customer to another customer.”⁹ These commenters fail to explain how a government database containing disconnect data as proposed by the Commission will do any better at addressing these perceived deficiencies than existing commercial solutions.

Furthermore, although these issues may exist with some commercial solutions (and without any insight into the solutions these commenters purport to use currently), Neustar’s product is far more robust than the mere collection of disconnect data. As it explained in its opening comments, Neustar employs a number of techniques to track the movement of telephone numbers across users and networks and verify name to number linkage. Accordingly, Neustar’s solution utilizes comprehensive information that can accurately identify the user of a telephone number, notwithstanding commenters’ suggestions otherwise.

⁸ Comments of Vibes Media, LLC, CG Docket No. 17-59, at 6 (filed June 7, 2018) (“Vibes Media Comments”).

⁹ Comments of American Bankers Association, CG Docket No. 17-59, at 7 (filed June 7, 2018) (“ABA Comments”).

There is no merit to concerns that commercial databases may not be “complete,”¹⁰ may be under-inclusive, or may not be timely updated.¹¹ Neustar’s service contains disconnect data for approximately 95% of wireless telephone numbers and can identify name to phone linkages for 90% of wireless telephone numbers.¹² Neustar can establish similar linkages for wireline telephone numbers, even though calling parties have not been as concerned with TCPA liability for calls to reassigned wireline numbers since such liability only attaches to prerecorded or autodialed telemarketing calls made without consent.

Nevertheless, the reality is that no data solution of this scale can be perfect and free of any errors or lag time. “The more salient question is whether the new database proposals in the *Second FNPRM* are likely to significantly outperform existing commercial offerings.”¹³ The answer to that question is undoubtedly “no.” As discussed in its opening round comments, Neustar utilizes all authoritative intelligence at its disposal to evaluate and update its data as new information becomes available. Further, Neustar can proactively notify its outbound dialing customers when disconnects or other changes in linkages or insights occur, thereby minimizing the opportunity for inadvertent calls to reassigned numbers. It is doubtful that any government reassigned numbers database can provide similar functionality, and certainly not for free or for a “nominal” price.

¹⁰ Comments of the National Consumer Law Center, on behalf of its low-income clients and 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 5 (filed May 29, 2018) (“Consumer Law Center Comments”); Comments of Encore Capital Group, Inc., CG Docket No. 17-59, at 1 (filed June 5, 2018) (“Encore Comments”).

¹¹ *Id.*; Consumer Law Center Comments at 5.

¹² Letter from Thomas J. Navin, Counsel to Neustar, Inc., to Marlene H. Dortch, FCC, CG Docket No. 17-59 (Nov. 1, 2017).

¹³ CTIA Comments at 6.

Commenter criticisms about existing commercial solutions to avoid unwanted calls to reassigned numbers also fail to recognize the dynamic and evolving nature of the marketplace. To the extent that existing solutions could provide better, more accurate data than they already do, the robust competition in the market—which would only increase following the adoption of a safe harbor from TCPA liability for use of such solutions—will ensure that callers have access to the best possible solutions for identifying and avoiding calls to reassigned numbers, at the best possible prices.¹⁴ The same could not be said about the creation of a government reassigned numbers database.

IV. THE COMMISSION CANNOT ADEQUATELY ASSESS EITHER THE COSTS OR THE BENEFITS OF A REASSIGNED NUMBERS DATABASE BASED ON THE CURRENT RECORD.

A. The Desire of Callers for a Robust Database for Which They Propose to Pay Little if Anything is Unrealistic.

To illustrate the magnitude of the challenges confronting the Commission in establishing a reassigned numbers database, there is no consensus among commenters on the functionality the database should include or who ultimately should be responsible for the costs. For example, some commenters that support creation of a government reassigned numbers database want the database to include search “options,”¹⁵ feature “sufficient capacity to handle a large number of queries at approximately the same time,”¹⁶ provide “when the number was disconnected and

¹⁴ See NTCA Comments at 4 (“Simply put, a Commission safe harbor will create the appropriate incentives for every party involved and spur further development and enhancement of such services.”); *see also* Chamber Comments at 8; CTIA Comments at 10.

¹⁵ Comments of The A to Z Communications Coalition and the Insights Association, CG Docket No. 17-59, at 17 (filed June 7, 2018) (“Joint TCPA Comments”); *see also* Comments of ACA International, CG Docket No. 17-59, at 4 (filed June 5, 2018) (“ACA Comments”).

¹⁶ ABA Comments at 5.

when it was assigned to a new subscriber,”¹⁷ and include various “format” options for downloading purposes.¹⁸ Other commenters take a more narrow view of the proposed database’s functionality.¹⁹

Likewise, some commenters urge the Commission to ensure the accuracy of the information in the database so as to minimize “false positives.”²⁰ However, achieving this objective, no matter how laudable, would require that “disconnect” data be scrubbed to eliminate those numbers that: (1) “may not actually reflect a change in the subscriber, but might simply reflect a change in the subscriber’s status,” such as porting activity; and (2) involve “temporary changes,” including “a temporary suspension of the account for non-payment” and “seasonal suspensions and re-activations.”²¹ And, in order to ensure the ongoing accuracy of the database,

¹⁷ Comments of The American Financial Services Association, CG Docket No. 17-59, at 2 (filed June 7, 2018) (“AFSA Comments”); *see also* Comments of the Student Loan Servicing Alliance, CG Docket No. 17-59, at 7 (filed June 7, 2018) (“SLSA Comments”); Comments of Travis Credit Union, CG Docket No. 17-59, at 1 (filed May 31, 2018) (“Travis Credit Union Comments”).

¹⁸ Comments of the California and Nevada Credit Union Leagues, CG Docket No. 17-59, at 2 (filed June 7, 2018) (“Leagues Comments”); SLSA Comments at 8; Travis Credit Union Comments at 1.

¹⁹ *See, e.g.*, Comments of Alaska USA Federal Credit Union, CG Docket No. 17-59, at 1-2 (filed June 1, 2018); Comments of the Alliance for Telecommunications Industry Solutions, CG Docket No. 17-59, at 5 (filed June 7, 2018).

²⁰ Joint TCPA Comments at 16.

²¹ Joint TCPA Comments at 17; *see also* ACA Comments at 4; SLSA Comments at 7 (expressing concern “about the possibility of temporary disconnections creating false positives in terms of reassigned numbers”); Comments of Coastal Credit Union, Docket No. 17-59, at 1 (filed June 6, 2018) (“It would be ideal for the database to exclude numbers that are temporarily disconnected or suspended due to non-payment so callers can continue to maintain the numbers as being valid”) (“CCU Comments”).

many commenters propose that providers submit information “on a daily or at least weekly basis.”²²

A database that includes these requested features and functions would be costly to build and maintain – costs that someone will have to pay. Not surprisingly, the same commenters that seek a robust government reassigned numbers database insist that the cost to use the database should be “free or minimal,”²³ some even suggesting that the database should be funded by government appropriations.²⁴ By contrast, service providers and their trade associations assert that callers should pay for the cost of establishing and using any government reassigned numbers database, since it would “benefit [] calling parties (in the form of updated customer information and/or reduced risk of TCPA liability).”²⁵

²² ACA Comments at 5; Leagues Comments at 2; CCU Comments at 2; Encore Comments at 1 (“To be current, the data should be updated and released at regular periods, such as once per week”); Comments of the National Retail Federation, CG Docket No. 17-59, at 11 (June 7, 2018) (“real-time or daily reporting of reassigned number information would be ideal”) (“NRF Comments”); Travis Credit Union Comments at 1 (same); *but see* AFSA Comments at 4 (because the database must “remain affordable,” providers could be permitted to update the data less frequently if reporting “daily or in real time would make accessing the data prohibitively expensive”).

²³ ACA Comments, at 5; *see also* Comments of the Consumer Mortgage Coalition, CG Docket No. 17-59, at 7 (filed June 6, 2018) (“CMC Comments”) (“it would be great for the database to be offered free of charge”); NRF Comments at 13 (“there should be no cost associated with accessing a list of reassigned numbers or, if there is a cost, it should be capped at a minimal amount”); Comments of Quicken Loans, CG Docket No. 17-59, at 2 (filed June 6, 2018) (“Cost to access the database should include a yearly fee for unlimited access unless the cost per inquiry is low”); Vibes Media Comments at 11 (“There should be no cost to the database ...”).

²⁴ AFSA Comments at 4-5; CMC Comments at 8. Notwithstanding claims to the contrary, *see, e.g., id.*, a reassigned numbers database would be unlike PACER, which is not a “database” but rather the electronic docket management and filing system for the U.S. courts.

²⁵ CenturyLink Comments at 9; *see also* Comments of INCOMPAS, Docket No. 17-59, at 3 (filed June 7, 2018) (service providers should “be compensated for all of their costs of reporting information” for the reassigned numbers database, which should be “borne by robocallers accessing the database ...”) (“INCOMPAS Comments”); NTCA Comments at 2 (“the costs of standing up, maintaining, and reporting into *any* reassigned numbers database must be borne

That there is no consensus on the appropriate parameters of a government reassigned numbers database or a workable cost recovery framework is significant. It is hardly surprising that a party would support the creation of a database and urge that it include certain features and functions when that party expects to pay little if anything for it. However, that party is likely to have an entirely different view if presented with a sizeable bill.

Under the circumstances, the Commission runs the risk of creating a database that will be little used, either because callers conclude that the cost exceeds the benefit or because some callers have no intention of complying with their TCPA obligations regardless. As CenturyLink correctly observes, “while the Commission can compel the creation of a reassigned number database, it cannot compel calling parties to make use of the tool.”²⁶

B. The Do Not Call Registry is not a Useful Model.

In an effort to downplay the effort involved in building and maintaining and the cost of using a government reassigned numbers database, some commenters claim that it should be analogous to the DNC Registry.²⁷ Such claims are misguided.

(footnote cont’d.)

entirely by those entities that will most benefit from its use; those parties seeking to avoid placing calls to the wrong consumer”). *But see* Comments of the Retail Industry Leaders Association, CG Docket No. 17-59, at 15 (filed June 7, 2018) (“Any costs incurred by a service provider as a result of any new reporting requirements should be assumed to be incremental to, and recovered by, the provider’s operations”); Vibes Media Comments at 3 (providers should be prohibited from “charging additional fees or assess other compensation for reporting disconnected number information”).

²⁶ CenturyLink Comments at 9.

²⁷ Leagues Comments at 3 (“The fee structure for the Do Not Call Registry can provide guidance on ways to minimize cost,” noting that “telemarketers pay \$62 for yearly access to Registry phone numbers in a single area code, up to a maximum charge of \$17,021 for all area codes nationwide, and the first five area codes are free”); Comments of Comcast Corporation, CG Docket No. 17-59, at 13-14 (filed June 7, 2018); Comments of The Credit Union National Association, CG Docket No. 17-59, at 4 (filed June 7, 2018); Vibes Media Comments at 20.

First, the effectiveness of the DNC Registry is dubious. According to the Federal Trade Commission, the DNC Registry has “continued to grow” since its inception in 2003; as of September 30, 2017, there were 229 million active registrations.²⁸ Yet, the number of complaints by consumers who nonetheless receive calls to telephone numbers on the DNC Registry continues to soar.²⁹ It is little wonder that some observers question the effectiveness of the DNC Registry.³⁰

Second, the DNC Registry is structured very differently than the proposed government reassigned numbers database. It is a flat file, consisting solely of telephone numbers that customers have added to the do-not-call list. Calling parties that subscribe to the DNC Registry initially download the complete file of telephone numbers and then download update files every 31 days. The DNC Registry is not subject to continuous change; while telephone numbers are added, numbers rarely come off unless the FTC determines that the number has been disconnected and reassigned. Furthermore, the cost of the DNC Registry is relatively modest because it is populated by consumers who want their telephone numbers included and managed by the FTC, requiring neither the involvement of a third-party administrator or communications providers.

²⁸ Do Not Call Registry Data Book 2017: About the National Do Not Call Registry, available at <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/national-do-not-call-registry-data-book-fy-5>.

²⁹ See Do Not Call Registry Data Book 2017: Complaint Figures by Year, available at <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/national-do-not-call-registry-data-book-fy-2> (noting a 121 percent increase in complaints between 2014 and 2017, from 3,241,086 to 7,157,370).

³⁰ See, e.g., John Matarese, “Why the ‘Do Not Call’ List Isn’t Working Anymore” (May 17, 2017), available at <https://www.wcpo.com/money/consumer/dont-waste-your-money/why-the-do-not-call-list-isnt-working-anymore>; Michele Debczak, “When Did The Do Not Call List Stop Working?” (May 31, 2017), available at <http://mentalfloss.com/article/500587/when-did-do-not-call-list-stop-working>.

By contrast, in order to avoid misuse of disconnected or reassigned numbers by unscrupulous callers, a government reassigned number database is likely to be a much more complex query-based system, against which callers would check regularly to scrub their planned call list of any numbers that have been reassigned or disconnected. The government database would be dynamic because of the frequency with which telephone numbers are disconnected and reassigned. And, a government reassigned number database would be populated by communications providers and administered by a third party, the involvement of which would be costly.

In short, the DNC Registry is not a useful model that should guide the Commission's consideration of the issues in this proceeding.

C. The FCC Must Define the Universe of Potential Users of any Reassigned Numbers Database, Which Cannot Reasonably be Done at This Juncture.

As Neustar noted in its initial comments, the Commission cannot adequately conduct a cost-benefit analysis of the proposed reassigned numbers database at this juncture. One reason is because of its pending proceeding to address the D.C. Circuit's decision in *ACA International* that implicates fundamental issues about TCPA implementation, the resolution of which affects the parameters of the database and the universe of potential users. Numerous commenters agree with Neustar that the Commission should delay consideration of a reassigned number database until it completes that proceeding.³¹ As one commenter correctly observed, resolution of "issues under review in the TCPA regulations" – including the definition of an automatic telephone

³¹ ACA Comments at 7 (the Commission should first address issues surrounding its interpretation of the TCPA and TCPA compliance); INCOMPAS Comments at 4; Comments of the Alliance for Telecommunications Industry Solutions, CG Docket No. 17-59, at 3-4 (filed June 7, 2018) (noting that establishment of a new database may be premature, as the Commission is contemplating potential approaches to interpreting the TCPA that could obviate the need for a reassigned number database for compliance purposes); CTIA Comments at 9; Chamber Comments at 6-7.

dialing system, when liability would accrue for calling a reassigned number, and the definition of “called party” – are certain to “impact the expected demand” for any government reassigned numbers database.³²

V. CONCLUSION

The Commission should decline invitations to create a government reassigned number database and should instead leverage existing commercial solutions to help callers avoid calling reassigned telephone numbers.

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³² Comments of Noble Systems Corp., CG Docket No. 17-59, at 2-3 (filed June 7, 2018); *see also* Comments of The Professional Association for Customer Engagement, CG Docket No. 17-59, at 3-4 (filed June 7, 2018) (redefining “‘called party’ as the party whom the caller reasonably expected to receive the call ... would negate the need for a potentially costly reassigned number database ...”) (footnote omitted).