

**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

REPLY COMMENTS



Matthew M. Polka
President and Chief Executive Officer
American Cable Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Mary C. Lovejoy
Vice President of Regulatory Affairs
Ross J. Lieberman
Senior Vice President of Government
Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 603-1735

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I. INTRODUCTION & SUMMARY

The American Cable Association (“ACA”) hereby submits these reply comments in response to comments on the Federal Communications Commission’s (“Commission”) Second Further Notice of Proposed Rulemaking on Advanced Methods to Target and Eliminate Unlawful Robocalls (“NPRM”).¹

The record in this proceeding demonstrates that there are two competing visions for how to solve the problem of unwanted robocalls to reassigned numbers. In its initial comments, ACA explained that the most efficient way for the Commission to reduce the

¹ *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) (“NPRM”).

number of such calls is to adopt a safe harbor for callers who verify their call lists with a qualified commercial data aggregator. Under this approach, which is supported by a number of industry participants who understand the challenges of creating and administering a reassigned numbers database, a competitive marketplace would provide voice service providers with adequate incentive to provide their numbering information to commercial data aggregators, eliminating the need for any costly reporting mandates. The alternative vision would require service providers to report information on reassigned numbers to a centralized, government-run database.

In these reply comments, ACA explains that by adopting a safe harbor for callers who use a qualified commercial data aggregator, the Commission can spur competition for number verification services, and that this competition will lead to solutions that are more cost-effective and at least as accurate as any government-run database.

If the Commission rejects this voluntary, competitive approach to reducing unwanted robocalls to reassigned numbers, ACA urges the Commission to exempt small voice service providers from any reporting requirements, and to take additional steps to reduce reporting costs for all service providers.

II. THE RECORD SUPPORTS THE ADOPTION OF A COMPETITIVE, MARKET-DRIVEN APPROACH TO REDUCING ROBOCALLS TO REASSIGNED NUMBERS

Although the NPRM sought comment on three approaches to a reassigned numbers database, initial comments suggest that most parties fall into one of two camps – those who believe that the best way to reduce unwanted robocalls to reassigned numbers is to leverage existing voluntary relationships between service providers and commercial data aggregators, and those who believe that service providers should be required to report to a single centralized, government-run database.

Supporters of both approaches favor granting a safe harbor from TCPA liability to callers who use a database.

The former approach – the “competitive model” – is overwhelmingly supported by commenters who have the clearest understanding of the costs involved in creating, maintaining, and reporting to a system by which callers can verify their call lists.² These parties recognize that the existing market for reassigned number databases could be stimulated to work even better by granting a safe harbor from TCPA liability to callers who use a qualified commercial data aggregator to verify their call list.³ The availability of a safe harbor would significantly increase the demand for such services, creating competitive conditions on the supply side, which would drive competing aggregators to

² See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of Neustar at 3 (filed Jun. 7, 2018) (“Neustar Comments”) (“[T]he Commission should adopt policies that foster continued growth in the commercial market and encourage use of available commercial solutions to address the problems associated with unwanted calls to reassigned telephone numbers.”); Comments of CTIA at 5 (filed Jun. 7, 2018) (“CTIA Comments”), *citing* Comments of Syniverse, CG Docket No. 17-59, at 2 (filed Aug. 28, 2017) (“[T]here is an existing ‘infrastructure established that could be accessed’ by callers and service providers, and the Commission should encourage and incentivize callers to use such services.”); Comments of NTCA – The Rural Broadband Association at 3 (filed Jun. 7, 2018) (“NTCA Comments”) (“The Commission should address the problem of unwanted calls to reassigned telephone numbers by leveraging already available resources that can expeditiously alleviate the problem.”); Comments of the Voice on the Net Coalition at 2 (filed Jun. 7, 2018) (“VON Comments”) (“VON believes that if a database is established, the third approach outlined in the FNPRM, which would allow service providers to report reassigned number data to commercial data aggregators on a voluntary basis, is preferred.”); Comments of Noble Systems Corporation at 4 (filed Jun. 7, 2018) (“Noble Systems Comments”) (“The approach of allowing service providers to voluntarily report to multiple aggregators appears to follow the existing arrangement of presently available reassigned number service providers. To the extent that the existing arrangement of providers can be maintained, allowed to compete, and enhance their services to meet marketplace needs, the voluntary reporting approach appears to be a preferred approach.”).

³ Several other commenters, while not expressly supporting the competitive model described herein, did express opposition to the government model. See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of INCOMPAS at 2 (filed Jun. 7, 2018) (“INCOMPAS Comments”) (“Like others in the record, our member companies have expressed serious concerns about the costs associated with [the development of a single, FCC-designated reassigned numbers database] as well as its overall effectiveness ultimately.”); Comments of the Alliance for Telecommunications Industry Solutions at 3 (filed Jun. 7, 2018) (“ATIS Comments”) (noting that the majority of its members oppose the implementation of a new reassigned number database).

offer access to their database at even more affordable rates, further encouraging more and more callers to take advantage of these services. Moreover, the safe harbor could be designed to force existing aggregators to work with more service providers to create even more reliable databases.

Proponents of the competitive model – ACA among them – believe that this approach, which relies on incentives and competitive considerations rather than costly mandates, is both the most cost-efficient way to reduce robocalls and the most equitable way to apportion the costs of verification. Those who support the latter approach – the “government model” – do so because they believe that a government-run database will be less expensive for callers to use and have more accurate data.⁴

Nearly all parties agree that no solution will do much to reduce the number of robocalls to reassigned numbers if it is not accompanied by a safe harbor for callers

⁴ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of Comcast Corporation at 9 (filed Jun. 7, 2018) (“Comcast Comments”) (“Comcast continues to believe that the best approach is to ‘require service providers to report reassigned number information to a single, FCC-designated database’—the route favored by “[m]ost commenters addressing this issue” in response to the Reassigned Numbers NOI. ... The alternative approaches noted in the FNPRM are substantially less promising from a cost-benefit perspective.”) (citations omitted); Comments of the American Bankers Association at 4 (filed Jun. 7, 2018) (“ABA supports the creation of a Reassigned Numbers Database that contains information regarding (a) the permanent disconnection (relinquishment) of a number from the consumer to whom it was assigned, and (b) the reassignment of that number to another consumer. We continue to believe it is critical that this information be accessible from a centrally administered source. Requiring callers to query or otherwise receive information from multiple data sources, such as from multiple data aggregators or from all Voice Service Providers, is not efficient or cost-effective for callers or providers of the information.”); Comments of AlaskaUSA Federal Credit Union at 1 (filed Jun. 7, 2018) (“AlaskaUSA FCU Comments”) (“Utilizing one or more commercial data aggregators may cause unnecessary inflation of the expense related to the use of the database(s) and cost will be a major factor in end user adoption. ... For [this] reason[], the credit union supports a single FCC-controlled database with mandatory reporting by all service providers.”); Comments of the Credit Union National Association at 2 (filed Jun. 7, 2018) (“CUNA Comments”) (“CUNA supports the establishment of a single, centralized and comprehensive database to which all providers with access to telephone numbers should report reassigned numbers. Because the majority of credit unions are small businesses with limited resources, access to the database must be affordable ... and its use should be as straightforward and easy as possible.”) (citations omitted).

who make a good faith effort to verify their call lists.⁵ Despite the present lack of a safe harbor, many callers still “find that the costs of available commercial solutions to ensure TCPA compliance are offset by gains in operational and dialing efficiency and reductions in their TCPA exposure,”⁶ but the record makes clear that without the incentive of a safe harbor, some callers see no benefit at all in using a database that does not guarantee protection from liability for those who make a good faith effort to avoid making unlawful calls.⁷

The question, then, is which of two competing models, if used in tandem with a safe harbor, is more likely to provide a cost-effective means for callers to verify their call lists, and therefore reduce the number of unwanted calls to reassigned numbers. While many parties – nearly all of whom represent callers – urge the Commission to adopt a model in which voice service providers of all types would be required to report to a centralized, government-run database, they provide no evidence beyond speculation

⁵ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the National Retail Federation at 9 (filed Jun. 7, 2018) (“Our members strongly support the FCC establishing a ‘safe harbor’ from TCPA violations for callers who use or access reassigned number information provided under one of the alternative mechanisms adopted by the FCC.”); Comments of the National Association of Federally-Insured Credit Unions (filed Jun. 7, 2018) (“The FCC should also adopt a safe harbor for those callers who inadvertently make calls to reassigned numbers after checking the database.”); Comments of the Retail Industry Leaders Association (filed Jun. 7, 2018) (“RILA also supports a reasonable safe harbor for callers that use such a database, one that contains a reasonable period during which a caller can rely upon the accuracy of the information it retrieves from the database. Such a safe harbor would encourage callers to scrub calling lists against the database and thus eliminate unintended calls to reassigned numbers.”); CUNA Comments at 5 (“Given that use would be voluntary, a safe harbor would provide strong incentive to utilize the database.”); Comcast Comments at 15 (“[W]hile the Commission has made clear that it is ‘not proposing to mandate that callers use a reassigned numbers database in order to comply with the TCPA,’ establishing such a safe harbor would provide a powerful incentive for callers to encourage voluntary use of the database.”); Comments of CenturyLink at 4 (filed Jun. 7, 2018) (“One means to . . . incent use of any database resource that may be established is to link use of the database to a TCPA safe harbor.”).

⁶ Neustar Comments at 5.

⁷ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the Consumer Mortgage Coalition at 13 (filed Jun. 7, 2018) (“Companies may be reluctant to use today’s solutions because the companies do not know if they are getting accurate information.”).

that this approach is superior to the alternative. These commenters seem to imagine that a government-run database would be less costly to use and more accurate than commercial databases, but the Commission must be realistic in evaluating its options. It is unreasonable to expect that an as yet undeveloped database administered by the government according to undeveloped procedures and protocols could match the cost effectiveness or the accuracy of already existing commercial solutions, especially if those solutions are incentivized by a safe harbor to adopt high standards of quality and reduce costs to attract customers.

The commercial model is more cost effective than developing a new, government-run database. Proponents of the competitive model understand that developing a new database presents significant financial challenges.⁸ The record suggests that robocallers looking for a safe harbor from TCPA liability are extremely cost-conscious,⁹ but there is no question that developing, populating, and administering a brand new reassigned numbers database will be costly, both for the government and for the service providers who would be required to report to it.¹⁰ There is significant

⁸ See, e.g., Neustar Comments at 2 (“[T]he creation of a reassigned numbers database would be a costly and complicated exercise.”); CTIA Comments at 8 (citing the \$609.3 million price tag of the Local Number Portability Administrator as a point of comparison for evaluating the cost of a government-run reassigned numbers database).

⁹ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of Encore Capital Group at 1 (filed Jun. 5, 2018) (“A Commission-mandated database can help callers and consumers alike, so long as the information is readily available and is provided free of charge or at a nominal cost.”); Comments of ACA International – The Association of Credit and Collection Professionals at 3 (filed Jun. 5, 2018) (“ACA members have varying opinions on exactly what information is needed, however, they consistently feel that it is extremely important that information provided to callers is easily accessible, accurate, and provided for a nominal or no cost.”); Comments of the Education Finance Council at 4 (filed Jun. 7, 2018) (“EFC strongly urges the Commission to ensure that the cost of using the database is reasonable.”).

¹⁰ As ACA explained in its comments, and as others have echoed, the costs associated with mandatory reporting are likely to be substantial. See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the American Cable Association at 7, n.13 (filed Jun. 7, 2018) (“ACA Comments”); VON Comments at 2 (“Such a mandate would translate into engineering and

disagreement over who should bear the costs of reducing unwanted robocalls to reassigned numbers,¹¹ but whoever is ultimately responsible for paying, the Commission should do everything it can to minimize the capital and operational expenses associated with the building and maintenance of a database because these costs ultimately get passed through to consumers.

Even proponents of a government-run database acknowledge that, in the short term at least, relying on commercial aggregators who are already operating effective solutions for verifying call lists would be significantly less expensive than developing a new database.¹² The creation of a new database, whether it is run by a government agency or by an “outside vendor selected through a competitive bidding process,”¹³ is a massive undertaking that would require significant capital expenditures. Beyond even

other costs to develop and maintain systems for compliance[.]”). The Initial Regulatory Flexibility Analysis (“IRFA”) that accompanies this NPRM acknowledges that mandatory reporting “would necessitate that some voice service providers create new processes or make changes to their existing processes that would impose some additional costs to those service providers.” Without offering any description of the compliance requirements or projection of cost to comply, it simply assumes that the costs would not be excessive because “service providers already track phone number status information.” IRFA, ¶ 25. In making this assertion, the IRFA cites to only one party – a large cable operator who would benefit substantially from a safe harbor against TCPA liability. *Id.*, ¶ 25, n.77, citing *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Reply Comments of Comcast Corporation at 4-5 (filed Sep. 26, 2017). Other parties disagree, however, that service providers typically track reassigned numbers. ATIS Comments at 6. More importantly, there are likely to be many other significant reporting costs beyond those associated with tracking reassigned numbers information, and the IRFA does not examine these at all.

¹¹ ACA strongly agrees with INCOMPAS and others who believe that “a sound policy would be for such costs to be borne by robocallers accessing the database seeking comprehensive and timely information on reassigned numbers.” INCOMPAS Comments at 3. Further, as NTCA points out, it is the entities who make robocalls, and not voice service providers, who have created the need for a reassigned numbers database. NTCA Comments at 9. Since robocallers are the ones who are responsible for the problem and the ones who will benefit from the solution, it would be inequitable for the costs to be borne by any other parties.

¹² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the American Financial Services Association at 8 (filed Jun. 7, 2018) (“AFSA Comments”) (“[D]eveloping [a new] database would likely require substantially more time and expenditures, at least at the outset, than an approach that relies on commercial aggregators.”).

¹³ Comcast Comments at 9.

the technical challenges of creating the database itself, the government model would require the Commission to expend significant resources to develop the policies and procedures by which the database would be administered. In contrast, the infrastructure for the competitive model is already in place. The Commission's only task in implementing this model would be to define the parameters of the safe harbor.

In the longer term, the competitive model will also be less costly to maintain over time than a government-run database, as competitive market forces will drive aggregators to reduce their operating costs as much as possible in order to offer their services at competitive prices. As Neustar explains, "[t]o the extent there is a concern about the price of existing commercial solutions, the Commission should allow the market to continue to evolve, which already has led to the development of lower-price offerings to meet customer demand."¹⁴ In contrast, a government-run database would have little, if any, incentive to keep costs under control. Instead, it would be handcuffed by regulations that dictate both procedures and prices, and would ultimately be more expensive for all parties involved.

While some commenters expressed concern that voluntary reporting will lead to data that is incomplete and thus less accurate than mandatory reporting, the competitive model proposed by ACA anticipates that the Commission would adopt quality control standards that aggregators must meet in order to qualify for a safe harbor. This would ensure that the data provided by commercial aggregators will be at least as comprehensive and accurate as it is reasonable to expect any government-run

¹⁴ Neustar Comments at 5.

database to be.¹⁵ For example, the Commission should require qualified commercial aggregators to be permitted to use the safe harbor only if they have access to data on a threshold percentage of voice subscribers nationwide. This will create strong incentives for commercial data aggregators, most of whom already have service agreements with the largest wireless operators, to enter into new information sharing agreements with other voice service providers in order to reach the threshold percentage,¹⁶ including those who are mid-sized and smaller. The end result, then, would be a commercial database that is at least as accurate as any government-run database, if not more so.

Information from commercial data aggregators is also likely to be more timely and up-to-date than information reported to a centralized, government-run database. Existing commercial data aggregators who receive information from service providers on a voluntary basis are currently able to update their information daily, or even in real-time. Motivated by competition to find efficient ways to get as much information from service providers as quickly as possible, some data aggregators developed a process in which they connect directly with service providers' customer databases and by collecting data from a wide variety of other sources. While some commenters urge the Commission to require service providers to report to a Commission run database either

¹⁵ As discussed further below, it is unreasonable to mandate all providers to report to a government run database given the significant costs that such a universal obligation would impose on smaller providers (and in truth it would be nearly impossible for the Commission to adequately enforce compliance with a reporting mandate). Accordingly, even with mandatory reporting, a government-run database would not have complete and perfect data.

¹⁶ See NTCA Comments at 4 (explaining that a safe harbor predicated on having access to data from a certain percentage of service providers would "provide database operators a strong incentive to work with providers of all sizes and technologies to agree on terms and conditions for access to provider data on reassigned numbers. Providers would be incented as well to enter into such contractual relationships with the knowledge that their data on reassigned numbers is suddenly much more valuable.").

daily or in real-time,¹⁷ others are more realistic in their expectations.¹⁸ Short of imposing unreasonable burdens on service providers who would receive no benefit from a government-run reassigned numbers database, a Commission managed database simply cannot match the ability of commercial data aggregators to provide the most up-to-date information possible.¹⁹

Finally, as Neustar points out, the competitive model will allow a complete and effective solution to come to market much more quickly than the government model, as the basic infrastructure is already in place.²⁰ As opposed to a government-run database, which would likely take years to create, test, and implement, commercial data aggregators can be ready to make their services available as soon as they meet whatever standards the Commission adopts to qualify for a safe harbor.

III. IF THE COMMISSION ADOPTS A MANDATORY REPORTING SCHEME, IT SHOULD MINIMIZE THE BURDENS ON SMALL SERVICE PROVIDERS

As explained above and supported in the record, adopting a safe harbor for callers who use a qualified commercial aggregator is by far the simplest and most cost-

¹⁷ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the National Consumer Law Center at 6 (filed May 29, 2018); Comments of Travis Credit Union at 1 (filed Jun. 6, 2018); Comments of Quicken Loans at 2 (filed Jun. 6, 2018).

¹⁸ See, e.g., AlaskaUSA FCU Comments at 2 (recommending reporting on a quarterly basis); AFSA Comments at 4 (recommending reporting every 30 days).

¹⁹ As CTIA has explained in its comments to the Notice of Inquiry, “a continuously updated database would result in greater costs by requiring carriers to establish new IT infrastructure and data feeds.” *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of CTIA at 15 (filed Aug. 28, 2017) (“CTIA NOI Comments”). ACA explained in its initial comments that real-time updates require an API that allows for direct connect between the service provider and the data aggregator. ACA Comments at 4-5. Developing a system that is interoperable with every single service provider would be extremely difficult, as “[t]oday, each carrier has its own data maintenance practices and system architectures, which would need to be harmonized to accommodate reassigned numbers database proposals.” CTIA NOI Comments at 15. Real-time reporting would therefore require service providers to alter their own system architectures to align with whatever interface the Commission develops, which could cost tens, if not hundreds, of thousands of dollars. See ACA Comments at 7, n.13.

²⁰ Neustar Comments at 2 (“It would be years before any such database would be operational[.]”).

effective way to balance callers' need for accurate and up-to-date information on reassigned numbers with the need to minimize the costs to service providers. Nonetheless, if the Commission decides to impose reporting mandates on service providers, it should take steps to reduce the burden on small providers.

First, the Commission should exempt small voice service providers from any reporting requirements. As discussed above, the burdens associated with mandatory reporting are likely to be substantial, especially for small providers.²¹ ACA members operate with limited resources, and most have fewer than ten employees, each of whom wears multiple hats and thus cannot devote all of their time to regulatory compliance. These providers simply cannot afford to absorb the cost of complying with burdensome new regulatory mandates, and in the best case scenario these costs would be passed on to consumers. In the worst-case, some providers may cease offering voice service altogether. Further, small providers – wireline providers in particular – serve a small (and diminishing) portion of the total number of voice subscribers, so providing an exemption would have a negligible impact on the database's efficacy.

Second, the Commission should structure its database to minimize reporting costs for covered service providers. One way to do this would be to adopt an approach that would “enable voice providers to rely on existing recordkeeping practices where possible,” as recommended by Comcast.²² This would reduce costs substantially by eliminating the need for service providers to make significant changes to their systems. Additionally, the Commission should make reporting as simple as possible by allowing

²¹ See Comcast Comments at 13 (noting that small providers have “greater sensitivity to costs”).

²² Comcast Comments at 11.

providers to report by uploading their records in whatever reporting format their current billing system allows, whether it be a comma-separated values (CSV) file, an eXtensible Markup Language (XML) format, or any other format that is simple to use. The Commission should also limit the frequency of the reporting requirements.

Finally, the Commission must permit voice service providers to recover all of their reporting costs out of the fees paid by callers who wish to access the reassigned numbers database, and must ensure that the mechanism for seeking and receiving reimbursement is not onerous. As explained above, service providers who report to a reassigned numbers database of any kind will incur costs, and those costs are likely to be substantial, particularly for small providers. Commenters agree that it is appropriate for service providers to be permitted to recover these costs, rather than absorb them or pass them on to subscribers.²³ Although ACA and others have pointed out that relying on market forces to facilitate cost recovery is far superior to a government-run system,²⁴ even an inefficient and potentially inequitable system is better than none.

ACA believes that the only way to truly ensure that callers receive accurate and up-to-date information at a low-cost and with minimal burden on service providers is to adopt a safe harbor for callers who verify their call lists with a qualified commercial data aggregator, but if the Commission does move forward with an ill-advised mandatory

²³ See INCOMPAS Comments at 2-3 (“Given the significant investment that a service provider would have to make to participate in a reassigned number solution, should the Commission proceed, INCOMPAS proposes that service providers be compensated for all of their costs of reporting either to a single database or to data aggregators.”); Comcast Comments at 13 (“Comcast continues to support the establishment of a mechanism whereby voice providers can recoup at least some of the costs associated with mandatory participation, funded by the collection of usage fees from entities accessing the database.”); AFSA Comments at 4-5 (“While it would be great for the database to be offered free of charge, AFSA understands that service providers will incur costs to update the database. We would support a yearly subscription fee to be charged to users to offset the cost of the database.”).

²⁴ See ACA Comments at 9; NTCA Comments at 9-10.

reporting scheme, it should take the above steps to reduce the burdens on small providers.

IV. CONCLUSION

For the reasons stated above, ACA urges the Commission to reject any proposals designed to reduce unwanted calls to reassigned numbers that would require voice service providers to report reassigned call information to the government. The Commission should instead adopt an approach 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. If the Commission does impose reporting obligations on voice service providers, it should exempt small providers and should otherwise structure the database to minimize the costs of compliance.

Respectfully submitted,



Matthew M. Polka
President and Chief Executive Officer
American Cable Association
Seven Parkway Center
Suite 755
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Mary C. Lovejoy
Vice President of Regulatory Affairs
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