

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Advanced Methods to Target and ) CG Docket No. 17-59  
Eliminate Unlawful Robocalls )  
)

COMMENTS ON NOTICE OF INQUIRY ON REASSIGNED WIRELESS NUMBERS

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These are the comments of the Insights Association,<sup>1</sup> the leading and largest nonprofit association representing the marketing research and analytics industry, to the Federal Communications Commission's (FCC) Second Notice of Inquiry (NOI) on advanced methods to target and eliminate unlawful robocalls,<sup>2</sup> focused on the problem of reassigned cell phone numbers.<sup>3</sup>

In order "to address the problem of robocalls made to phone numbers of consumers who had consented to receive calls but whose phone numbers have subsequently been reassigned to a new consumer," the FCC asked "about the best ways for service providers to report information about reassigned numbers, and how that information can be made available to robocallers in the most effective way, so that robocallers will be more likely to reach consumers who wish to receive the calls."

"Once a consumer drops a number," the FCC explained, "he or she might not update all parties who have called in the past, including robocallers to which the consumer gave prior express consent. When the old number is reassigned, robocallers can inadvertently call the non-consenting consumer who is assigned the number."

About 35 million numbers are "disconnected and aged" each year, and some 100,000 wireless numbers are reassigned by telecommunications carriers every day. When subscribers change numbers, they usually don't update everyone who used to have the required express prior consent to call them with an automatic telephone dialing system (also known as an "autodialer"), leaving the new subscriber subject to potentially unwanted calls.

More importantly, the 2015 Telephone Consumer Protection Act (TCPA) rules, which make it exceptionally more challenging to contact the 65.8% of U.S. households that are only reachable on their cell phones<sup>4</sup> to participate in legitimate research studies, give the unsuspecting caller in such a case only one shot to figure out that the number has been reassigned before the caller is subject to massive liability. As Commissioner Michael O'Reilly stated, this one-call-before-liability "exemption does not require consumers to accurately inform the caller that the number has been reassigned; ignores the worthlessness of uninformative voicemails; and even counts call attempts or informational texts where there was no response at all against the one call policy. Moreover, accidental misdials receive no protection whatsoever. In my limited time, I

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<sup>1</sup> Launched in 2017, the Insights Association was formed through the merger of two organizations with long, respected histories of servicing the marketing research and analytics industry: CASRO (founded in 1975) and MRA (founded in 1957). Our membership includes both research/analytics companies/organizations, as well as the researchers and research departments inside of non-research companies/organizations. The Insights Association helps empower intelligent business decisions as a voice, resource and network advancing the companies and individuals engaged in this important work. <http://www.insightsassociation.org>

<sup>2</sup> As the Insights Association explained in our reply comments on the NPRM/NOI for advanced anti-robocall methods, we applaud the FCC for finally actually trying to define (and limit) the term "illegal robocall."

<https://ecfsapi.fcc.gov/file/108010020309128/IA-Fcc-advanced-robocall-NPRMNOI-7-31-17.pdf>

<sup>3</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-90A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-90A1.pdf)

<sup>4</sup> More than half of American homes (50.8%) had cell phones and no landline phones in the 2nd half of 2016, and a sixth of American homes (15%, 41 million adults) still had a landline, but received all or almost all calls on their cell phones. (Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, July to December 2016. National Center for Health Statistics. May 2017. Available online: <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf> )

won't belabor how bankrupt this really is and how it has ensnared legitimate companies in needless, financially-crippling litigation.”

Absent broader reform of the TCPA, a comprehensive database of reassigned cell phone numbers is necessary in order to facilitate TCPA compliance and help Insights Association members avoid the growing rash of unnecessary multi-million dollar class action lawsuits.

We raised several questions about a possible database of reassigned numbers in 2016, when Senate Commerce Committee Chairman John Thune (R-SD) and Sen. Ed Markey (D-MA) sent a letter to CTIA – The Wireless Association,<sup>5</sup> and have discussed the issue since with the FCC and a lot of Congressmen and staff, because of sincere interest on both side of the political aisle in alleviating this particular problem. We hope that this NOI will help lead to a good solution for consumers and dialers.

### **Safe harbor**

The FCC asked, “Should we consider a safe harbor from TCPA violations for robocallers who use the comprehensive reassigned number resource, or is an additional incentive not needed to increase its use? What would be the advantages and disadvantages of a safe harbor?”

As Commissioner O'Reilly stated, “there must be some benefit for companies to help establish, pay for and use such a database, and a properly constructed compliance safe harbor must be part of any equation, if this item is to proceed forward.”

The Insights Association agrees that a safe harbor for dialers who scrub their calling lists against the reassigned numbers database would improve compliance, and thus benefit consumers. It would be impractical to expect voice service providers to be able to share reassigned number data with immediacy, or for dialers to be checking against the most up-to-date data every moment of every day.

The rule should be modeled on those for the national telemarketing do not call registry and the ported numbers database. Per 47 CFR § 64.1200(c)(2), a telemarketer is generally not liable for calling a number on the registry in error if the telemarketer has been appropriately scrubbing against the registry. The existing database of wireline numbers ported to wireless lines, per 47 CFR § 64.1200(a)(1)(iv), grant an autodialer user who appropriately scrubs against that database a 15 day safe harbor for calling a number after it was ported from wireline.

### **Database options**

The NOI suggested four potential approaches for the agency's “involvement in the establishment and operation of a database or other mechanism by which voice service providers could report reassigned number information and by which robocallers could access that information.”

We see some problems with the proposal for voice service providers to report reassigned numbers directly to dialers or to “aggregators” of reassigned numbers (which, in the marketing research industry's case, would mean telephone sample providers),<sup>6</sup> which would require every voice service provider to know and maintain contact with every potential dialer and aggregator.

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<sup>5</sup> <http://www.insightsassociation.org/article/potential-database-reassigned-mobile-numbers-raises-more-tcpa-questions>

<sup>6</sup> Report to Reassigned Number Data Aggregators and Robocallers. Each voice service provider could report reassigned numbers “to robocallers directly or to reassigned number data aggregators, such as those already aggregating reassigned number information from various sources and providing it to robocallers.” Dialers would have to keep their own databases or rely upon such aggregators' services.

The proposal to have all providers publicly report their reassigned number data<sup>7</sup> presents a privacy concern by producing new regularly updated lists for scammers to plunder.

The proposal to have voice service providers operating their own queryable databases<sup>8</sup> would require dialers and sample providers to know and keep in contact with all voice service providers (and to a certain extent presumes a static market for voice service provision), which would prove costly for dialers and sample providers, especially smaller businesses.

However, in order to standardize control over who can access the database and the manner and mode in which data is made available, the FCC database would be the simplest and most effective solution. The FCC would “establish and select an administrator of a central database of reassigned numbers,” under which “voice service providers would report information to the reassigned number database, and robocallers would in turn query the database for information about reassigned numbers.” This would allow for the FCC to oversee data and operational quality, restrict access to only the appropriate entities, and “ensure that the data continues to be available for as long as necessary, unlike commercial databases that might cease operations.” It would also simplify operations for dialers and sample providers, who would only have to work with one predictable source.

Dialers or sample providers who need to access the database would need to provide the database administrator with enough information to demonstrate that they are legitimate businesses and allow the administrator to keep track of data accessed or downloaded by businesses accessing the database. The FCC should utilize relevant trade associations to determine such legitimacy, and would also need to establish an appeals process for any dialer or sample provider that may claim to have been unduly denied access to the database.

The Insights Association emphasizes the importance that sample providers (aggregators) must be able to access the reassigned numbers database just like dialers. We seek to avoid the mistake made by the FCC in the 2012 Report and Order<sup>9</sup> on a do not call database for emergency lines (known as Public Safety Answering Points, or PSAPs), wherein the agency determined that only dialers themselves could access the database, even though most scrubbing of lists would be handled by a third party (telephone sample providers).<sup>10</sup> The only reason this determination has not proven to be a major problem so far has been that the FCC hasn't yet launched the registry.

As with any database of phone numbers, there is a risk that this “repository of disconnected or aging numbers” could, as the FCC postulates, effectively “become a list of available numbers to be spoofed by fraudulent robocallers if such bad actors gain access to this information.” If the

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<sup>7</sup> Public Reports. Voice service providers could “make reassigned number data reports available to the public” -- such as in PDF, spreadsheet, comma separated values (CSV), or JavaScript Object Notation (JSON) format – “for download on their websites or by another interface.” Anyone could access such reports “from as many or as few” providers “as they choose.”

<sup>8</sup> Providers Operate Queryable Databases. Every voice service provider could offer dialers and aggregators the ability to query the provider's own reassigned number information. “For example, a voice service provider could create an application programming interface (API) that would enable queries of its own reassigned number information or provide a web interface for such queries.” Dialers would decide which providers they want to query, or choose to rely on various aggregators who would query for them.

<sup>9</sup> [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-12-129A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-129A1.pdf)

<sup>10</sup> The Insights Association publicly supported the launch of this registry, to improve the efficiency of marketing research and compliance. No one in the research profession wants to call an emergency line for a research study – it wastes time and money. Researchers that accidentally do so could face fines and visits from the police. The FCC strictly interpreted the law so that only operators of autodialers are allowed to use the registry. Unfortunately, almost all telephone research samples (calling lists) are provided by or at least scrubbed by telephone sampling companies. <http://www.insightsassociation.org/legal-article/do-not-call-registry-emergency-lines-ensuring-marketing-research-compliance>

administrator collects and tracks details on database access, it will allow for regular audits on database users. Moreover, database users should have to certify that the data they access will only be used for compliance. While the FCC is not in the position to be able to assess the privacy and security processes and practices of the dialers and sample providers who will use the reassigned numbers database, their public certification would, in most cases, allow the Federal Trade Commission (FTC) to police the users' practices, under the agency's Section 5 authority.

### **Conclusion**

The Insights Association urges the establishment of an FCC-administered database of reassigned cell phone numbers, accessible in a controlled and trackable fashion by dialers and telephone sample providers (aggregators), in conjunction with a safe harbor to protect them. This will improve TCPA compliance, protecting consumers and reducing unnecessary litigation.

We look forward to working with the FCC to achieve these goals and, more importantly, reform the TCPA as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Fienberg". The signature is fluid and cursive, with a large initial "H" and "F".

Howard Fienberg, PLC, PPC  
Director of Government Affairs  
The Insights Association