

**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)	
_____)	

COMMENTS OF BLACKBOARD INC.

Dean Newton, Associate General Counsel
Joanna Wallace, Counsel, Regulatory Compliance
Blackboard Inc.
1111 19th Street, NW
Washington, D.C. 20036
dean.newton@blackboard.com
joanna.wallace@blackboard.com

Chérie R. Kiser
Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8900 (telephone)
ckiser@cahill.com
acollins@cahill.com

Dated: August 28, 2017

Its Attorneys

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND OVERVIEW	1
I. THE COMMISSION’S CURRENT REASSIGNED NUMBER RULE THREATENS THE DELIVERY OF IMPORTANT AND ESSENTIAL EDUCATION-RELATED INFORMATIONAL MESSAGES.....	3
II. BLACKBOARD SUPPORTS THE CREATION OF A FCC-MANDATED DATABASE OF REASSIGNED NUMBERS TO BE ADMINISTERED BY A THIRD-PARTY	8
III. THE COMMISSION SHOULD ADOPT A SAFE HARBOR TO SHIELD SCHOOLS AND EDUCATIONAL INSTITUTIONS FROM LIABILITY FOR CALLS MADE TO REASSIGNED NUMBERS.....	10
CONCLUSION.....	14

**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)	
_____)	

COMMENTS OF BLACKBOARD INC.

Blackboard Inc. (“Blackboard”),¹ by its counsel, hereby respectfully submits these Comments on the Second Notice of Inquiry (“*NOI*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned docket.²

INTRODUCTION AND OVERVIEW

Blackboard provides innovative technologies and products to educational and government customers, including software-based communications solutions, consulting services, online learning environments, interactive classrooms, customer call centers, and mass notification services. Blackboard does not engage in telemarketing. It provides a mass notification platform that allows Blackboard’s customers to send emergency notifications and other informational messages to a targeted audience. Blackboard’s platform is used primarily in the educational setting to enable schools to send mass notifications to parents, guardians, students, and faculty regarding emergency weather closures, threat situations, event scheduling, and other important and essential education-related information.³

¹ Blackboard Inc. files these Comments on behalf of itself and its wholly owned subsidiary Blackboard Connect Inc. For convenience sake only, these separate and distinct legal entities will be referred to collectively as “Blackboard.”

² CG Docket No. 17-59, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, FCC 17-90 (rel. July 13, 2017) (“*NOI*”).

³ Blackboard does not take the steps necessary to physically place the call, and does not “initiate” or “make” the telephone call. *See* 47 U.S.C. § 227(b)(1)(A) (stating it is unlawful “to make” certain types of calls); 47 U.S.C. §

As the Commission is aware, private actions under the Telephone Consumer Protection Act of 1991 (“TCPA”)⁴ have become commonplace given the ease with which a consumer can file a claim for monetary damages.⁵ In recent years, Blackboard and its educational institution customers have been subjected to private actions initiated by consumers who allege they have received education-related prerecorded messages on their wireless devices in error.⁶ The “reassigned number problem” can be a significant driver of such actions because consumers often change telephone numbers, but may not provide notice of that change to every party that has permission to send automated messages to the consumer.⁷

Blackboard applauds the Commission for initiating this proceeding and supports the Commission’s effort to explore the ways in which numbering information may be used to help already overburdened schools and educational institutions reduce or eliminate unintended calls to reassigned telephone numbers. The Commission correctly states that calls to reassigned numbers can deprive consumers of desired calls,⁸ and the current rule imposing TCPA liability on entities that place more than one automated call to a reassigned number threatens the delivery of

227(b)(1)(B) (stating it is unlawful “to initiate” certain types of calls); 47 C.F.R. § 64.1200(a) (stating it is unlawful “to initiate” certain types of calls); *The Joint Petition Filed by DISH Network, LLC, the United States of America, and the States of California, Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, et al.*, 28 FCC Rcd 6574, ¶ 26 (2013) (“We conclude that a person or entity ‘initiates’ a telephone call when it takes the steps necessary to physically place a telephone call, and generally does not include persons or entities, such as third-party retailers, that might merely have some role, however minor, in the casual chain that results in the making of a telephone call.”).

⁴ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (“TCPA”), codified at 47 U.S.C. § 227.

⁵ See, e.g., CG Docket No. 02-278, Letter from the U.S. Chamber of Commerce and various other trade associations and business groups (dated Feb. 2, 2015) (“Given that compliance-minded organizations in a variety of sectors are being dragged into court and strong-armed into large settlements on an almost daily basis under the TCPA, for actions that do not remotely threaten the privacy interests that the statute was intended to protect, regulatory relief by the Commission is desperately required. We ask for clarification from the FCC to help curb abusive lawsuits that likely harm consumers overall.”).

⁶ See, e.g., No. 14-CV-10272, *Rafael Valladares v. Blackboard, Inc. et al.* (N.D. Ill. filed Dec. 22, 2014); No. 14-CV-21745, *Eric Gomez v. The Doral Academy, Inc. and Blackboard Connect, Inc.* (S.D. Fla. filed Jan. 2, 2015).

⁷ NOI ¶ 5.

⁸ NOI ¶ 6.

important and essential education-related informational messages. Blackboard therefore supports the creation of an FCC-mandated database of reassigned numbers, populated by voice service providers, for which a safe harbor from TCPA liability would extend to callers that use the database. Such a mandated resource is the most beneficial and cost-efficient way to address the reassigned number problem. This approach also has support in Commission precedent, and “would greatly benefit both consumers (by not getting unwanted calls intended for another consumer) and robocallers (by not wasting resources calling the wrong consumer and by avoiding potential TCPA violations).”⁹

I. THE COMMISSION’S CURRENT REASSIGNED NUMBER RULE THREATENS THE DELIVERY OF IMPORTANT AND ESSENTIAL EDUCATION-RELATED INFORMATIONAL MESSAGES

Under the Commission’s current rules, where a caller believes he has consent to make a call and does not discover that a wireless number has been reassigned prior to making or initiating a call to that number for the first time after reassignment, TCPA liability does not attach for that first call, but the caller could be liable for any calls thereafter.¹⁰ While Blackboard appreciates the Commission’s previous determination that “school callers may lawfully make robocalls and send automated texts to student family wireless phones pursuant to an ‘emergency purpose’ exception or with prior express consent without violating the [TCPA],”¹¹ there is no practical way for schools and other educational institutions to completely avoid calling reassigned numbers or to limit their liability under the Commission’s reassigned number rule.¹²

⁹ NOI ¶ 14.

¹⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 1830, ¶ 85 (2015) (“*2015 TCPA Order*”), *pet. for review pending sub nom Chamber of Commerce v. FCC*, No. 15-1306 (D.C. Cir. filed Sept. 2, 2015).

¹¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 31 FCC Rcd 9054, ¶ 1 (2016).

¹² *2015 TCPA Order*, Statement of Commissioner Michael O’Rielly Dissenting in Part and Approving in Part (noting the Commission’s “one free pass” rule “is particularly problematic for informational texts, such as

As Commissioner O’Rielly reinforced in his dissent of the *2015 TCPA Order*, “[m]any commenters noted the impracticability of determining whether a number has been reassigned before calling or texting. For example: Fairfax County Public Schools: ‘The messages FCPS sends are critical to and expected to be received by FCPS’s school community, especially in a threat or emergency situation. It would be impossible for FCPS to confirm whether a wireless telephone number is being used by the same recipient that gave FCPS consent before sending each automated message. The biggest advantage in using automated messages - reaching a large number of people as quickly as possible - would be lost if FCPS were required to make such a verification every time it sends an education-related message to a wireless telephone number.’”¹³

The Commission’s current “‘one free call to a consumer’ exemption”¹⁴ has been insufficient at stemming the significant (and growing) litigation risk from calls made to reassigned numbers.¹⁵ The rule incorrectly views “companies from virtually every sector of the economy as bad actors, even when they are acting in good faith to reach their customers.”¹⁶ As a result, the reassigned number issue is having a chilling effect on the ability of schools and other educational institutions to continue to send important and essential education-related information to the educational community. For parents, guardians, students, and faculty who rely on these automated messages to play an active role in education and the local community, such an outcome is detrimental to their vital participation.

reminders,” and schools have “noted the impracticability of determining whether a number has been reassigned before calling or texting”).

¹³ *Id.* (internal citations omitted).

¹⁴ *NOI*, Statement of Commissioner Michael O’Rielly.

¹⁵ Ajit Pai, *The FCC Shouldn’t Enable More TCPA Lawsuits*, THE DAILY CALLER (June 16, 2015), <http://dailycaller.com/2015/06/16/the-fcc-shouldnt-enable-more-tcpa-lawsuits/>.

¹⁶ *2015 TCPA Order*, Statement of Commissioner Michael O’Rielly Dissenting in Part and Approving in Part.

For example, the risk of placing automated calls to reassigned numbers is particularly high for schools with large numbers of low-income families because such families often rely on prepaid wireless phones to receive automated messages from schools.¹⁷ However, prepaid wireless users often switch telephone numbers because the device deactivates from lack of use or after all prepaid minutes are used a new number must be assigned.¹⁸ Studies show that for low-income families, schools should “maintain frequent personal communications with students’ families” and “[w]hile it is important to call home with concerns as soon as possible, it is perhaps even more important to call with good news or information that can help involve the family in school events” because “[b]alancing positive communication with calls for discipline and academic concerns is vital in helping families feel supported by the school.”¹⁹

Further, the elimination of education-related informational messages also could affect a school’s overall mission to educate and protect America’s children.²⁰ The lack of informational messages regarding lunch money balances could affect a child’s ability to purchase meals, and studies show students “who eat regular, healthy meals are less likely to be tired, are more attentive in class, and retain more information” and that being “well fed is paramount to their

¹⁷ In 2005, the Commission expanded its low-income telephone support program to include prepaid wireless providers. *See, e.g., Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095 (2005); *see also* Marc Lifsher, *More cellphone users switch to prepaid plans*, LOS ANGELES TIMES (Feb. 19, 2013) (stating “millions of American cellphone users fed up with soaring bills are flocking to prepaid plans. Long a lifeline for low-income consumers and people with bad credit, these phones have become one of the hottest performers in the U.S. wireless market”), <http://articles.latimes.com/2013/feb/19/business/la-fi-0220-prepaid-cellphone-boom-20130220>.

¹⁸ *The Pros and Cons of a Prepaid Cell Phone*, TIMES UNION (Dec. 31, 2012), <http://www.timesunion.com/business/article/The-Pros-and-Cons-of-a-Prepaid-Cell-Phone-4158058.php>.

¹⁹ MARK LINEBURG, REX GEARHEART, EDUCATING STUDENTS IN POVERTY: EFFECTIVE PRACTICES FOR LEADERSHIP AND TEACHING 34 (2013), https://books.google.com/books?id=jfUiAQAAQBAJ&pg=PA33&lpg=PA33&dq=phone+calls+from+schools+to+poor+families&source=bl&ots=tN3xS8DHMn&sig=w3avUIphe8Wl5j9y_X5AGEQnl7c&hl=en&sa=X&ved=0ahUKEwiZxMCopMrVAhWG8oMKHdJwBVIQ6AEILDAB#v=onepage&q=phone%20calls%20from%20schools%20to%20poor%20families&f=false.

²⁰ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 665 (1995) (describing a school system’s responsibilities as “guardian and tutor of children entrusted to its care”).

ability to succeed academically.”²¹ Similarly, elimination of low-grade or classroom performance alert messages could undermine a student’s academic success as a recent Columbia University study concluded that automated text message alerts sent to parents about their child’s missed assignments, grades, and absences reduced course failures by 39% and increased class attendance by 17%.²² Similarly, discontinuing literacy²³ and college enrollment reminders²⁴ could have profound and damaging effects on the success of students and parents that receive such messages.

Even elimination of reminders about bake sales, fundraisers, and community or social events could have a detrimental impact on the educational mission of schools. There is no question that “one factor - family engagement - remains critical to student achievement.

²¹ Jane E. Brody, *Feeding Young Minds: The Importance of School Lunches*, N.Y. TIMES (June 5, 2017), https://www.nytimes.com/2017/06/05/well/feeding-young-minds-the-importance-of-school-lunches.html?_r=0.

²² Peter Bergman and Eric W. Chan, *Leveraging Parents: The Impact of High-Frequency Information on Student Achievement*, July 2017 (Preliminary Draft), <http://www.columbia.edu/~psb2101/ParentRCT.pdf>.

²³ Studies have shown daily text messages reminding parents of preschoolers to read with their children resulted in a significant increase in the total number of minutes parents spent reading with their children. In one study, a treatment group of parents received daily text messages reminding them of the importance of reading to their children. The study concluded that “[o]n average, the treatment group read 88.3 minutes more than the control group over the six weeks of the intervention, more than doubling the amount of time spent reading to the child using the app (an increase from an average of 63.3 to 151.7 minutes). . . . [T]he average number of books read during the 6-week period was 14.8 for the control group and 31.4 for the treatment group. In other words, parents in the treatment group read an average of almost one book per weekday compared to two or three books per week for the control group.” See *Using Behavioral Insights to Increase Parental Engagement: The Parents and Children Together (PACT) Intervention*, National Bureau of Economic Research Working Paper 21602, <http://www.nber.org/papers/w21602>. Another study focused on a text messaging program for parents of preschoolers that sent automated text messages to parents that were designed to help them support their children’s literacy development. The study concluded that the text messaging program positively affected the extent to which parents engaged in home literacy activities with their children, and significantly improved parental involvement at school. See *One Step at a Time: The Effects of an Early Literacy Text Messaging Program for Parents of Preschoolers*, Benjamin N. York and Susanna Loeb NBER Working Paper No. 20659 (November 2014).

²⁴ An automated and personalized text message campaign to provide reminders, information, and support about college enrollment had “a positive impact on whether students enrolled in college – particularly students with less access to quality college information and support with the application process. For instance, in Dallas, Texas, the messages increased enrollment among low-income students by over four percentage points. In Lawrence and Springfield, Mass., where fewer than two students in 10 adults have a bachelor’s degree and where there are few school-based supports for college-going, students who received the text messages were over seven percentage points more likely to enroll in college than students who did not receive the messages.” See Benjamin L. Castleman and Lindsay C. Page, “Summer nudging: Can personalized text messages and peer mentor outreach increase college going among low-income high school graduate’s?,” *JOURNAL OF ECONOMIC BEHAVIOR & ORGANIZATION*, vol. 115, issue C, pp. 144-160 (2015).

Ongoing research shows that family engagement in schools improves student achievement, reduces absenteeism, and restores parents' confidence in their children's education. Students with involved parents or other caregivers earn higher grades and test scores, have better social skills, and show improved behavior."²⁵ Community interaction is an important component to achieving educational success and ensuring overall happiness and life satisfaction.²⁶ "When schools, families, and community groups work together to support learning, children tend to do better in school, stay in school longer, and like school more."²⁷

No serious person can argue these are the types of messages Congress intended to deter in enacting the TCPA.²⁸ Indeed, Congress specifically recognized the Commission "should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls."²⁹ The Commission must therefore ensure its approach to the reassigned number problem does not threaten the delivery of important and essential education-related informational messages.

²⁵ Lily Eskelsen Garcia and Otha Thornton, *The Enduring Importance of Parental Involvement*, NEA TODAY (Nov. 18, 2014), <http://neatoday.org/2014/11/18/the-enduring-importance-of-parental-involvement-2/>.

²⁶ Ryan O'Hare, *A sense of belonging makes you happier: Feeling connected to social groups gives people a mood boost*, DAILYMAIL (May 18, 2016), <http://www.dailymail.co.uk/sciencetech/article-3596873/A-sense-belonging-makes-happier-Feeling-connected-social-groups-gives-people-mood-boost.html>.

²⁷ Anne T. Henderson and Karen L. Mapp, *A New Wave of Evidence: The Impact of School, Family, and Community Connections on Student Achievement*, NAT'L CTR. FOR FAMILY & CMTY. CONNECTIONS WITH SCHOOLS, SOUTHWEST EDUC. DEV. LAB. (2002), <https://www.sedl.org/connections/resources/introduction.pdf>.

²⁸ *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling*, 29 FCC Rcd 3442, ¶ 8 (2012) (finding Congress did not intend "the TCPA to be a barrier to normal, expected, and desired business communications").

²⁹ TCPA § 2(13).

II. BLACKBOARD SUPPORTS THE CREATION OF A FCC-MANDATED DATABASE OF REASSIGNED NUMBERS TO BE ADMINISTERED BY A THIRD-PARTY

Blackboard supports the *NOI*'s suggestion for the Commission to establish and select an administrator of a central database of reassigned numbers.³⁰ Under this approach, voice service providers would report information regarding reassigned numbers to the database, and callers would in turn query the database for information about reassigned numbers. The establishment of a reassigned number database has broad support from the Commission, as well as many industry sectors.³¹

In the past, the Commission successfully has used centralized databases administered by third-parties to solve numbering challenges. As the Commission notes, it relies on a third-party administrator to facilitate many aspects of local number portability ("LNP"),³² including databases to support the porting of telephone numbers between carriers and number pooling.³³ In addition, the FCC has used a centralized database system administered by a third-party for management of toll-free numbers.³⁴ Under this regime, the regulations, rates, and charges

³⁰ *NOI* ¶ 16.

³¹ See, e.g., *NOI*, Statement of Commissioner Mignon L. Clyburn ("This has led to calls for establishing a reassigned number database, an undertaking that has my support."); CG Docket No. 02-278, Letter from National Consumer Law Center (dated July 7, 2017) ("The idea for a reassigned number database has been supported by both industry and consumer advocates."); CG Docket No. 02-278, Letter from Great Lakes Higher Education Corp. *et al.* (dated April 11, 2017) ("While we agree with NCLC that a database could help callers avoid some calls to reassigned numbers, no such database containing all reassigned numbers currently exists, and callers currently have no other viable means to entirely avoid reassigned numbers.").

³² *NOI* ¶ 16.

³³ *Numbering Resource Optimization*, 15 FCC Rcd 7574, ¶ 28 (2000) ("We conclude that national thousands-block number pooling should be administered by a single national pooling administrator because we seek to ensure consistency and uniformity in pooling administration in a cost-effective manner."); *Telephone Number Portability*, 12 FCC Rcd 12281, ¶¶ 25-35 (1997) (discussing the designation of third-party administrators to oversee local number portability databases).

³⁴ *Toll Free Service Access Codes*, 28 FCC Rcd 15328 (2013) ("800 Database Order"). While the Commission originally mandated the Bell Operating Companies ("BOCs") to establish the database in 1993, the database later was transferred to an impartial administrator after the neutrality provisions of Section 251(e) were added to the Communications Act in 1996. See *id.* ¶¶ 5, 8.

applicable to accessing the toll-free number database are established in a publicly-available document (tariff) overseen by the Commission.³⁵

The Commission correctly recognizes there are existing marketplace tools that can help callers identify reassigned numbers, but those tools “lack guaranteed methods to discover all reassignments immediately after they occur.”³⁶ Furthermore, as noted by commenters in other Commission proceedings, these tools are far too expensive for most callers, especially schools and educational institutions.³⁷ Neustar itself has admitted it “is not aware of any telecommunications industry databases that track all disconnected or reassigned telephone numbers,” and that its own service “is not a silver bullet for TCPA compliance.”³⁸ By contrast, a centralized database established by the Commission would allow callers to more quickly learn of reassignments³⁹ and would allow the Commission to “oversee the quality of the data and of database operations,”⁴⁰ including the cost for accessing the database. Fees for access to the reassigned number database must be affordable for all callers, including non-profit entities such as schools and other educational institutions. The Commission must “ensure that such fees do not undermine the ability of robocallers to access reassigned number information, including non-commercial robocallers such as schools.”⁴¹ This could be accomplished in the same manner in

³⁵ 800 Database Order ¶¶ 21-22, 34.

³⁶ NOI ¶ 6.

³⁷ Neustar, for example, states that its customers pay based on the number of queries that are submitted for verification, and the current customer base is primarily mid-sized to large companies. *See* CG Docket No. 02-278, Letter from Neustar, Inc. (dated Feb. 5, 2015); *see also* CG Docket No. 02-278, Comments of the Computer & Communications Industry Association (CCIA) (dated Nov. 17, 2014) (“CCIA member companies cannot be expected to subscribe to a commercially driven private company’s service in order to comply with the TCPA, especially when their service imposes a 30 percent chance of facing liability in spite of the precaution.”).

³⁸ CG Docket No. 02-278, Letter from Neustar, Inc. (dated Feb. 5, 2015).

³⁹ NOI ¶ 6.

⁴⁰ NOI ¶ 14.

⁴¹ NOI ¶ 25.

which the Commission currently oversees the rates, terms, and conditions of access to the toll-free number database⁴² or other similar Commission-implemented programs to recover the costs of establishing and maintaining centralized databases or services that benefit all consumers.⁴³

III. THE COMMISSION SHOULD ADOPT A SAFE HARBOR TO SHIELD SCHOOLS AND EDUCATIONAL INSTITUTIONS FROM LIABILITY FOR CALLS MADE TO REASSIGNED NUMBERS

In conjunction with the reassigned number database, the Commission must adopt a safe harbor from TCPA violations for callers who access the database prior to making calls.⁴⁴ A safe harbor to shield schools and other educational institutions from liability for any calls made in good faith to reassigned numbers based on the results of the database query is critical to ensure the continuation of important and essential education-related communications to parents, guardians, students, and faculty. As Commissioner O’Rielly points out, the creation of a safe harbor goes hand-in-hand with the creation of a reassigned number database: “Simply put, 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.”⁴⁵

Implementation of a safe harbor is critical to the efficient and effective use of the centralized database of reassigned numbers. While use of the database will reduce the number of calls made to reassigned numbers, no database will be 100 percent accurate, especially in light of the sheer volume of telephone numbers that are reassigned on a daily basis. The *NOI* indicates approximately 35 million telephone numbers are disconnected and aged each year, and according

⁴² 800 Database Order ¶¶ 21-22, 34.

⁴³ *NOI* ¶ 31.

⁴⁴ *NOI* ¶ 14.

⁴⁵ *NOI*, Statement of Commissioner Michael O’Rielly.

to one source, 100,000 numbers are reassigned by wireless carriers every day.⁴⁶ A Wall Street Journal article makes similar claims, noting “[a]lmost 37 million phone numbers get recycled each year, a 16% increase since 2007.”⁴⁷ Further, the database could contain errors due to the lag time between reporting of reassigned numbers, the failure of voice service providers to comply with reporting requirements, or simple clerical errors.

The use of a safe harbor to shield providers from liability is not a new concept.⁴⁸ For instance, the Commission previously determined there should be a “safe harbor” period in which persons will not be liable for placing autodialed or prerecorded message calls to numbers recently ported from wireline to wireless service, which “will provide a reasonable opportunity for persons, including small businesses, to identify numbers that have been ported from wireline to wireless service and, therefore, allow callers to comply with [the] rules.”⁴⁹ Similarly, the Commission has established a “safe harbor” for telemarketers that make a good faith effort to comply with the national do-not-call rules.⁵⁰ Specifically, a telemarketer will not be liable for violating the Commission’s rules if it can demonstrate it “uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained for the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.”⁵¹

⁴⁶ NOI ¶ 5, n.14.

⁴⁷ Alyssa Abkowitz, *Wrong Number? Blame Companies’ Recycling*, WALL STREET JOURNAL (Dec. 1, 2011), <https://www.wsj.com/articles/SB10001424052970204012004577070122687462582>.

⁴⁸ NOI ¶ 14.

⁴⁹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 19 FCC Rcd 19215, ¶ 7 (2004).

⁵⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, ¶ 38 (“2003 TCPA Order”).

⁵¹ 47 C.F.R. § 64.1200(c)(2)(i)(D).

In addition to the safe harbors discussed in the *NOI*, the Commission also has adopted safe harbors from liability when providers follow industry standards,⁵² comply with certain record retention requirements,⁵³ follow certain format and content for disclosures,⁵⁴ and utilize certain methodologies for revenue reporting.⁵⁵ Safe harbors have been used in the past to “minimize the burden of compliance without compromising the goals of [the] rules.”⁵⁶ As Chairman Pai previously has stated: “By aligning the safe harbor with established practices and reducing the burden of compliance, [the FCC] create[s] stronger incentives for carriers to be good actors.”⁵⁷ In the case of reassigned numbers, a safe harbor will ensure callers make a good faith effort to identify reassigned numbers prior to making a call.

In the absence of a safe harbor, schools and educational institutions will continue to be exposed to a high risk of liability, and could be forced to discontinue the practice of sending important and essential automated informational calls. As discussed above, these informational calls are crucial to parents, guardians, students, and faculty, and critically important to the overall education mission. There is no question that “the TCPA has turned [from] a vehicle to protect consumers from unwanted random solicitations into a booming practice for opportunistic

⁵² *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, 21 FCC Rcd 5360, ¶¶ 18, 20, 22 (2006) (finding industry standards serve “as safe harbors” for compliance with Communications Assistance for Law Enforcement Act (“CALEA”) requirements).

⁵³ *Rural Call Completion*, 28 FCC Rcd 16154, ¶ 86 (2013) (adopting a safe harbor by which providers could reduce their obligations under the Commission’s rural call completion data reporting and retention obligations).

⁵⁴ *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, ¶ 179 (2015) (“we are establishing a voluntary safe harbor for the format and nature of the required disclosure to consumers”) (subsequent history omitted).

⁵⁵ *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418, ¶¶ 47-54 (2001) (stating the “allocation methods are ‘safe harbors’ and will be afforded a presumption of reasonableness in an audit or enforcement context. . . . these allocation methods provide certainty to both carriers and the Commission”); *Contributions to the Telecommunications Relay Service Fund*, 26 FCC Rcd 14532, ¶¶ 24-25 (2011) (allowing providers to use a safe harbor for reporting interstate end-user revenues).

⁵⁶ *Rural Call Completion*, 28 FCC Rcd 1569, ¶ 32 (2013).

⁵⁷ Statement of Commissioner Ajit Pai, *Rural Call Completion*, 28 FCC Rcd 16154 (2013).

attorneys to take advantage of ambiguous rules and profit personally by receiving millions of dollars by suing businesses and overburdening the courts while providing only nominal relief to their clients.”⁵⁸ Without a safe harbor, the TCPA will continue to be abused by the plaintiffs’ bar at the expense of students and educational institutions across the country.⁵⁹

⁵⁸ Letter from Rep. Marsha Blackburn, *et al.* to Tom Wheeler, FCC, at 1 (Aug. 1, 2014), <http://www.ballardspahr.com/~media/files/alerts/2014-08-07-letter1.pdf>.

⁵⁹ *NOI*, Statement of Commissioner Michael O’Rielly (“Moreover, accidental misdials receive no protection whatsoever. In my limited time, I won’t belabor how bankrupt this really is and how it has ensnared legitimate companies in needless, financially-crippling litigation for the simple practice of trying to contact their willing customers.”); *see also* CG Docket No. 02-278, Declaration of Fairfax County Public Schools (“FCPS”), in Support of Reply Comments of Blackboard Inc. (dated May 7, 2015) (noting that school “operations are government-funded” and that “expense to defend against TCPA claims would expend funds that are designated to and essential for the education of America’s school children”).

CONCLUSION

For the foregoing reasons, Blackboard supports the establishment of a centralized database of reassigned numbers along with a safe harbor for callers that query the database prior to making calls. The Commission's current rule imposing TCPA liability on entities that place more than one automated call to a reassigned number threatens the delivery of important education-related informational messages, which does not serve the public's interest. Blackboard looks forward to working with the Commission to ensure consumers can continue to receive the education-related informational calls they desire and to reduce TCPA liability for schools and other educational institutions when they make calls to reassigned numbers in error.

Respectfully submitted,

BLACKBOARD INC.

/s/ Chérie R. Kiser

Dean Newton, Associate General Counsel
Joanna Wallace, Counsel, Regulatory Compliance
Blackboard Inc.
1111 19th Street, NW
Washington, D.C. 20036
dean.newton@blackboard.com
joanna.wallace@blackboard.com

Chérie R. Kiser
Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8900 (telephone)
ckiser@cahill.com
acollins@cahill.com

Dated: August 28, 2017

Its Attorneys