

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF THE INTERNET ASSOCIATION

I. INTRODUCTION

The Internet Association¹ hereby files these comments in support of the Commission’s efforts — as reflected in its July 13, 2017, Notice of Inquiry² — to advance the shared interests of consumers and businesses in ensuring that messages intended for one consumer are not misdirected to another when a consumer’s telephone number has been reassigned.

The Internet Association’s members have been pioneers in establishing new and innovative methods for people and businesses to engage in commerce and to distribute messages to users and consumers alike, including via text message. These communications are essential to a wide range of valuable services, allowing consumers to be quickly and automatically notified of anything, from their rideshare vehicle’s location and estimated time of arrival to an attempt by an unfamiliar device to sign in to an online account.

¹ The Internet Association is the unified voice of the Internet Economy, and represents the world’s leading Internet companies including: Airbnb, Amazon, Coinbase, Doordash, Dropbox, eBay, Etsy, Expedia, Facebook, Google, Groupon, Handy, Intuit, LinkedIn, Lyft, Match Group, Microsoft, Monster, Netflix, Pandora, PayPal, Pinterest, Rackspace, Reddit, Salesforce, Snap Inc., Spotify, SurveyMonkey, Ten-X, TransferWise, TripAdvisor, Turo, Twitter, Uber, Upwork, Yelp, Zenefits, and Zynga. More information is available at <https://internetassociation.org/>.

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

Yet as the Commission correctly recognizes, currently “callers lack guaranteed methods to discover all [telephone number] reassignments immediately after they occur.”³ As a result, when telephone numbers are reassigned, many consumers end up losing access to valuable communications — to which they have consented — and consumers to whom those telephone numbers have been reassigned can end up receiving unwanted calls. In other words, both recipients and callers can be affected when a message is misdirected as a result of a reassignment. As the NOI notes, “the recipient of the reassigned number is subject to unwanted calls; conversely, the previous holder of the reassigned number is no longer receiving those calls for which she gave consent.”⁴ When this occurs, callers, for their part, risk not only damaging their relationships with their customers (by failing to transmit communications their customers expect) but also inadvertent exposure to “needless, financially-crippling litigation for the simple practice of trying to contact their willing customers.”⁵

Accordingly, the Internet Association supports the Commission’s effort to comprehensively address the challenge of tracking telephone number reassignments. The Commission’s July 2015 ruling on this issue — that callers “without knowledge of [a number] reassignment and with a reasonable basis to believe that they have valid consent to make the call” remain liable for all calls made to the reassigned number after the first such call, even when the first call “does not yield actual knowledge of reassignment”⁶ — neither reflects the realities of how businesses and consumers communicate, nor how the number reassignment process

³ *Id.* ¶ 6 (quoting *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8007-08 ¶ 85 (2015) (“*2015 TCPA Declaratory Ruling*”)).

⁴ *Id.* ¶ 1.

⁵ *Id.* at p.14 (Statement of Commissioner Michael O’Rielly).

⁶ *2015 TCPA Declaratory Ruling*, 30 FCC Rcd at 8000 ¶ 71.

currently works. The approaches raised in the NOI, by contrast, suggest there are a variety of ways to protect consumers *and* preserve the communications that are at the core of the Internet ecosystem. The Commission should do this. To be effective, however, any approach the Commission ultimately selects to resolve the reassigned numbers challenge should adhere to four key principles: (1) reliability, (2) ease of access and use, (3) privacy protection, and (4) cost effectiveness. We elaborate on each below.

II. THE COMMISSION SHOULD DEVELOP A REASSIGNED NUMBERS SYSTEM THAT IS RELIABLE, EASY TO ACCESS AND USE, PROTECTS PRIVACY, AND IS COST EFFECTIVE FOR ENTITIES THAT USE IT.

To be effective, any approach the Commission ultimately proposes to address the challenge of reassigned numbers should adhere to four core principles. First, the system should be reliable, meaning not only that the information on number reassignments is accurate and up-to-date but also that the system offers sufficient safe-harbor protections for callers that use it as intended. Second, the system should be easy to access and use, not only for large, established callers but also for resource-constrained startups and other small businesses. Third, the system should protect consumer privacy. This means that it should be used only for its intended purpose and should not generate privacy vulnerabilities for consumer. Finally, the system should be cost-effective for entities that use it, both when it is established and as it is maintained on an ongoing basis.

A. Reliability

Callers that use the system to identify reassigned numbers in accordance with Commission-established procedures should be able to rely on the information provided by that system. This means that the system should, among other things, include information about all number reassignments, including numbers reassigned between wireline, wireless, and interconnected VoIP users. As the NOI notes, “[a]pproximately 35 million telephone numbers

are disconnected and aged each year,” with as many as 100,000 numbers “reassigned by wireless carriers every day.”⁷ Calls to wireless numbers face the most restrictions under the Telephone Consumer Protection Act (“TCPA”)⁸ and the Commission’s rules,⁹ but callers and consumers suffer significant inconvenience and potential harm whenever a reassignment from any type of number causes a communication to be misdirected. Moreover, given the ease with which numbers can be ported among platforms, a system that only tracks reassignments of numbers on a particular platform may suffer from crucial gaps.

In addition, and most critically, the Commission should establish a safe harbor for callers who use the system in accordance with Commission-defined procedures, similar to the existing Do Not Call safe harbor.¹⁰ Under the Do Not Call safe harbor, a caller that has routine business practices designed to avoid making telephone solicitations to subscribers on the National Do Not Call Registry — including establishing written procedures, training its personnel on Do Not Call compliance, and accessing the Registry at least every 31 days — cannot be held liable for calls erroneously placed despite such practices.¹¹ Similarly, callers who access a reassigned numbers system periodically and otherwise adhere to reasonable procedures designed to timely identify reassigned numbers should not be penalized if, despite those efforts, they inadvertently place a call to a number that has been reassigned. Without such a safe harbor, honest and unavoidable

⁷ NOI ¶ 5.

⁸ The TCPA is codified at 47 U.S.C. § 227.

⁹ See 47 C.F.R. § 64.1200.

¹⁰ *Id.* § 64.1200(c).

¹¹ *Id.*

errors will continue to “ensnare[] legitimate companies in needless, financially-crippling litigation.”¹² The Commission should take steps to ensure that this is avoided.

B. Ease of Access and Use

Even a reassigned-number tracking system that is highly reliable in the abstract will not be effective if accessing or using the information it contains is overly cumbersome or would require callers to perform significant processing functions. Startups and other small businesses — like many of the Internet Association’s members — would be especially disadvantaged by such a system given their limited resources.

Accordingly, information on reassigned numbers should be provided in a standardized and widely available electronic form that is both easy to access (*e.g.*, through publicly accessible APIs) and use. Structured formats such as CSV spreadsheets or XML would be appropriate.¹³ In contrast, requiring callers to extract reassigned number information from unstructured documents such as PDFs would be needlessly burdensome and impractical, given how many numbers are reassigned every day. Moreover, if the Commission were to adopt a system involving multiple databases rather than a single, central database, the Commission would need to ensure that information on how to access all such databases is well-publicized and readily available, such as through a listing (with clear instructions) on the Commission’s website. Finally, the system should permit access both by callers directly and by aggregators, so that neither large entities (which are capable of accessing the system on their own) nor small entities (which are more likely to rely on third parties to access the system) are unfairly disadvantaged.

¹² NOI at p.14 (Statement of Commissioner Michael O’Rielly).

¹³ *See id.* ¶ 22.

C. Privacy

The Internet Association is dedicated to protecting the privacy of consumers and agrees that the Commission should design any reassigned number system in a way that avoids implicating privacy concerns.¹⁴ Fortunately, such a system need not include much, if any, personally identifiable information, only the status of telephone numbers that have been or are in the process of being reassigned. In this respect, the system would be markedly similar (in terms of the information it contains) to the existing National Do Not Call Registry, which to the Internet Association's knowledge has not resulted in any privacy concerns. As with the National Do Not Call Registry, the Commission should further mitigate any concerns by requiring that parties that access the system use the information only for TCPA compliance purposes¹⁵ (which should include aggregators offering compliance-management solutions to businesses).

D. Cost Effectiveness

Finally, the Commission should ensure that any reassigned number database or tracking system is cost-effective for users, both in its establishment and as it is maintained. If a self-funded system is adopted, costs to access the system must be reasonable in light of the wide variety of entities — including small businesses — who will need access it. The Internet Association agrees a cost structure similar to the existing National Do Not Call Registry database may be worth considering.¹⁶ In particular, the principles underlying the National Do Not Call Registry database's cost structure — under which a certain amount of access is provided for free, with a reasonable usage-based charge imposed beyond the free tier, subject to a capped annual

¹⁴ *Id.*

¹⁵ See 47 C.F.R. § 64.1200(c)(2)(i)(E).

¹⁶ NOI ¶ 31.

fee¹⁷ — may offer an appropriate framework for developing a cost structure for a reassigned numbers system. However, given that wireless numbers — whose area codes often have little correlation with users’ locations — are can be prone to reassignment, a reassigned numbers system should not adopt the National Do Not Call Registry’s approach of basing access costs on the number of area codes for which data is accessed or sought. Rather, the Commission should consider alternative bases for establishing cost tiers, such as a user’s number of queries over a certain period (if the Commission were to propose and adopt a system in the form of a queriable database).

III. CONCLUSION

A reliable, efficient, privacy-protective and cost-effective system for tracking telephone number reassignments would be a boon to a wide range of innovative services and their users. The Internet Association urges the Commission to develop rules to establish such a system expeditiously.

Respectfully submitted,

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August 28, 2017

¹⁷ See “Q&A for Telemarketers & Sellers About DNC Provisions in TSR,” <https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr#payingforaccess> (last visited Aug. 28, 2017).