

**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 COMCAST CORPORATION**

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Comcast Corporation (“Comcast”) submits these comments in response to the Second Notice of Inquiry (“NOI” or “Notice”) adopted on July 13, 2017 in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

Comcast welcomes this opportunity to provide input on the Commission’s inquiry into establishing a comprehensive resource for tracking telephone number reassignments. As the NOI correctly points out, the absence of such a resource today seriously hampers efforts by legitimate businesses to comply with the Telephone Consumer Protection Act (“TCPA”) and the Commission’s implementing rules and orders, and frustrates the ability of consumers to continue receiving desired communications as they change telephone numbers.<sup>2</sup> Comcast strongly supports the Commission’s efforts to explore how best to address these issues in the NOI.

Comcast brings a comprehensive perspective to this proceeding, as it provides voice services in areas across the United States (and thus could be supplying number reassignment information about its customers to any resource the Commission develops) and places calls to

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<sup>1</sup> See *Advanced Methods To Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Notice of Inquiry, FCC 17-90 (rel. Jul. 13, 2017) (“NOI” or “Notice”).

<sup>2</sup> See *id.* ¶ 1.

customers subject to the TCPA (and thus would also be obtaining number reassignment information from the resource). Moreover, in the latter context, Comcast has faced real challenges based on its inability to reliably track and avoid calls to reassigned numbers, resulting in multiple costly lawsuits. Accordingly, Comcast is well-positioned to provide insight on the costs and benefits of various proposed approaches, as both a potential *contributor* to the resource and a potential *user* of the resource.

Comcast supports the proposal to establish a centralized number reassignment database as well as a safe harbor from TCPA liability for callers relying on the database. As noted above, today, even committed efforts by legitimate businesses to comply with the TCPA are insufficient to ward off “gotcha” lawsuits based on inadvertent calls to reassigned numbers. To be sure, some of the Commission’s prior orders interpreting the TCPA have helped fuel this dynamic, and the Commission should undertake a broader reexamination of its TCPA regulatory regime and explore ways to provide immediate relief where possible, including, for instance, by suspending the *2015 TCPA Order*’s ruling on reassigned numbers until a more permanent solution is implemented. But in the meantime, the availability of a comprehensive reassigned number database coupled with a safe harbor would give businesses and other callers an effective compliance tool and help reduce unwarranted—and often abusive—litigation. Importantly, the adoption of a safe harbor also would provide a strong incentive for callers to make full use of the database. And widespread utilization of this resource would yield significant consumer benefits, as callers would become better able to direct communications to their intended recipients, thereby reducing the risk of their inadvertently contacting unintended or non-consenting recipients.

Comcast also looks forward to working with the Commission on how best to design this database solution in order to maximize benefits while minimizing costs where possible. As discussed further below, Comcast believes that cost-benefit considerations favor an approach in which all wireless and wireline voice providers that manage number assignments are required to report number reassignments to the database on a routine basis, and are appropriately compensated for the reasonable costs associated with this obligation (*e.g.*, through reasonable fees collected from users of the database). The Commission also should carefully consider what types of information should be reported into the database, in order to ensure that the database serves as a useful tool without imposing undue burdens on voice providers. Finally, the Commission should consider measures to protect against the improper use of information supplied to the database, including a requirement that entities seeking access to the database certify that they will use the information solely for TCPA compliance purposes.

## **I. THE STATUS QUO PRESENTS SIGNIFICANT HARMS TO LEGITIMATE BUSINESSES AND CONSUMERS ALIKE**

The reassignment of telephone numbers, while a necessary and natural feature of the marketplace for voice services, presents systemic challenges for legitimate businesses and consumers seeking to communicate with one another. As the Commission is aware, it is generally unlawful under the TCPA to “make any call” using an “automatic telephone dialing system” or an “artificial or prerecorded voice” to a wireless number without “the prior express consent of the called party.”<sup>3</sup> The TCPA also generally prohibits entities from “initiat[ing] any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver

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<sup>3</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

a message without the prior express consent of the called party.”<sup>4</sup> In recent years, several parties have asked the Commission to clarify the application of the “prior express consent” requirement in the context of reassigned telephone numbers, particularly in situations where the original assignee of the number provided the necessary consent. As the NOI points out, number reassignments occur constantly; “[a]pproximately 35 million telephone numbers are disconnected and aged each year,” and some “100,000 numbers are reassigned by wireless carriers each day.”<sup>5</sup> Yet a consumer with a reassigned number often does not “update all parties who have called in the past,” including callers that previously obtained prior express consent to contact an individual at that telephone number under the TCPA.<sup>6</sup> Accordingly, when a number is reassigned, callers “can inadvertently call the non-consenting consumer who is assigned the number,” while at the same time, the consenting individual is no longer receiving communications that he or she requested.<sup>7</sup>

The *2015 TCPA Order* addressed this issue in a manner that creates substantial risk for businesses placing calls to customers with the reasonable belief that prior express consent exists. The *Order* begins by ruling that callers are responsible for obtaining the consent “not of the intended recipient of a call, but of the current subscriber (or non-subscriber customary user of the phone).”<sup>8</sup> The *Order* then states that “callers who make calls without knowledge of reassignment and with a reasonable basis to believe that they have valid consent to make the call

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<sup>4</sup> *Id.* § 227(b)(1)(B).

<sup>5</sup> NOI ¶ 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order*, 30 FCC Rcd 7961 ¶ 72 (2015) (“*2015 TCPA Order*” or “*Order*”).

should be able to initiate one call after reassignment as an additional opportunity to gain actual or constructive knowledge of the reassignment.”<sup>9</sup> However, the *Order* makes clear that, “[i]f this one additional call does not yield actual knowledge of reassignment”—e.g., because the recipient does not answer or simply hangs up—the Commission will nonetheless “deem the caller to have constructive knowledge of such.”<sup>10</sup> Accordingly, *any* further calls to that number without the consent of the current subscriber constitute violations of the TCPA and give rise to strict liability for \$500 per call (or \$1,500 per call if the violations are found to be willful or knowing).<sup>11</sup> As described further below, this includes non-marketing-related calls that are desired and requested by the customer and even essential to their service, such as calls and texts for scheduling cable service appointments, shipment notifications for online purchases, automated news alerts, information about flight delays or cancelations, and myriad other examples.

Notably, both in the *Order* and in its brief submitted to the D.C. Circuit in the pending judicial challenge to the *Order*, the Commission cited the availability of a wireless number reassignment database maintained by Neustar as a means of ensuring compliance with this requirement, but it also acknowledged the limitations of the Neustar tool. The *Order* stated that the Neustar database “can help [callers] determine whether a number has been reassigned,”<sup>12</sup> and the Commission’s brief on appeal likewise pointed to the Neustar database as an “option[]” that “may permit callers to learn of reassigned numbers.”<sup>13</sup> However, the *Order* acknowledged that

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *See* 47 U.S.C. § 227(b)(3).

<sup>12</sup> *2015 TCPA Order* ¶ 86.

<sup>13</sup> Brief for Respondents, *ACA International v. FCC*, No. 15-1211, at 18 (D.C. Cir. filed Jan. 15, 2016) (citations, quotation marks, and alterations omitted).

the Neustar database “will not in every case identify numbers that have been reassigned,” citing submissions from Neustar stating that the tool “is not a silver bullet for TCPA compliance” and that Neustar is “not aware of any telecommunications industry databases that track *all* disconnected or reassigned [wireless] telephone numbers.”<sup>14</sup> Indeed, other record evidence in that proceeding indicated that the Neustar database “does not have any information on as many as 30% of wireless numbers.”<sup>15</sup> Comcast’s experience in the marketplace confirms these concerns. In addition to Neustar, there are several other vendors (*e.g.*, Experian) that offer tools providing some means of checking calling lists for number reassignments. But no vendor has a complete solution, and it is generally understood that none of the currently available tools provides a comprehensive accounting of all wireless number reassignments.

The *Order*’s decision to charge callers with “constructive knowledge” of number reassignments—even when the one call permitted under the “safe harbor” does not yield actual knowledge of any reassignment, and in the absence of any reliable and comprehensive tool for tracking number reassignments—leaves companies exposed to a significant risk of TCPA liability without a viable means of mitigating that risk. As the U.S. Chamber of Commerce put it, “a company with millions of customers could end up significantly modifying their existing technology at a massive expense to make their systems and databases compatible with the Neustar product so that information could be provided, checked, and verified in a timely manner before calls can be made, and, yet, face the same class action suits they face today because some

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<sup>14</sup> 2015 TCPA Order ¶ 85 & nn. 297, 299 (quoting Neustar submissions) (emphasis added).

<sup>15</sup> Letter of William Kovacs, U.S. Chamber of Commerce, to Marlene Dortch, Secretary, FCC, CG Docket No. 02-278, at 2-4 (filed Mar. 24, 2014) (relying on statements from a Vice President of Product Development at Neustar).



number of reassigned numbers in their customer databases fall into that 30% category of omissions in Neustar’s database.”<sup>16</sup>

This risk is particularly acute in the context of *wireless* number reassignments. As noted above, for calls to wireless numbers, the use of an “automatic telephone dialing system,” or ATDS, is sufficient to trigger the requirement to obtain prior express consent. And the *2015 TCPA Order* adopted an expansive reading of the statute’s definition of ATDS, sweeping in not only dialing systems with the current ability to generate, store, and dial random or sequential numbers, but also systems with the “potential ability” to do so if modified in the future.<sup>17</sup> This construction of the statute significantly expands the universe of wireless calls potentially subject to the TCPA, and in turn dramatically increases the number of instances where a reassignment made unbeknownst to the caller could give rise to TCPA liability.

These risks are not merely theoretical. TCPA litigation has exploded in recent years; according to the U.S. Chamber of Commerce, “the number of TCPA lawsuits filed around the country last year hit an all-time high at 4,860—with a 1,272 percent increase in TCPA case filings since 2010.”<sup>18</sup> Companies increasingly are struggling to defend against claims brought by opportunistic plaintiffs’ lawyers who “actively recruit clients and friends willing to act as class representatives” in TCPA cases—including cases involving alleged calls to reassigned numbers—and then file lawsuits seeking “potentially billions of dollars on a class-wide basis” from companies that often had no knowledge that the numbers at issue were reassigned and no

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<sup>16</sup> *Id.*

<sup>17</sup> *2015 TCPA Order* ¶ 19.

<sup>18</sup> Letter of U.S. Chamber of Commerce *et al.* to Rep. Greg Walden and Rep. Frank Pallone, at 1, Mar. 8, 2017, available at [http://www.instituteforlegalreform.com/uploads/sites/1/TCPA\\_Coalition\\_Letter\\_FICAL\\_A\\_-\\_House\\_EC.pdf](http://www.instituteforlegalreform.com/uploads/sites/1/TCPA_Coalition_Letter_FICAL_A_-_House_EC.pdf) (“Mar. 8. Chamber of Commerce Letter”).

means of defending against such claims under the Commission’s rules.<sup>19</sup> In fact, this “innocent mistake” of calling reassigned numbers “has become the most significant driver of new TCPA litigation[.]” since the adoption of the *2015 TCPA Order*.<sup>20</sup> In one recent example, JPMorgan Chase was forced to pay out a multi-million dollar settlement to resolve a class action TCPA lawsuit alleging that it had placed up to 675,000 calls to numbers that had been reassigned without its knowledge—claims that could have resulted in over \$1 billion in liability if plaintiffs had successfully litigated to judgment and obtained treble damages.<sup>21</sup> Moreover, the principal beneficiaries of these payouts are *not* consumers, but plaintiffs’ lawyers; one recent study found that, “on average, consumers received only \$4.12 from a TCPA settlement, while the plaintiffs’ attorneys received \$2.4 million.”<sup>22</sup>

The absence of a comprehensive reassigned number resource also poses harms to consumers by preventing legitimate communications that they desire and expect from businesses in a wide range of industries. As the NOI points out, when callers are unable to track number reassignments with confidence and inevitably place calls intended for one customer to another individual, “the previous holder of the reassigned number is no longer receiving those calls for

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<sup>19</sup> U.S. Chamber of Commerce’s Institute for Legal Reform, *The Juggernaut of TCPA Litigation: The Problems with Uncapped Statutory Damages*, at 6 (Oct. 2013), available at [http://www.instituteforlegalreform.com/uploads/sites/1/TheJuggernautofTCPALit\\_WEB.PDF](http://www.instituteforlegalreform.com/uploads/sites/1/TheJuggernautofTCPALit_WEB.PDF).

<sup>20</sup> *Lawsuit Abuse and the Telephone Consumer Protection Act: Hearing before the H. Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice* (June 13, 2017) (statement of Becca Wahlquist on behalf of the U.S. Chamber of Commerce’s Institute for Legal Reform), available at <https://judiciary.house.gov/wp-content/uploads/2017/06/Witness-Testimony-Wahlquist-06.13.2017.pdf>.

<sup>21</sup> See Shayna Posses, *Chase Will Pay \$3.75 To Settle Wrong Number TCPA Spat*, Law360, Jun. 24, 2016, available at <https://www.law360.com/articles/810966>.

<sup>22</sup> Mar. 8. Chamber of Commerce Letter at 1.

which she gave consent.”<sup>23</sup> These communications include calls or messages to “confirm service installation or repair, to alert customers to planned outages required to maintain or update the network, to inform home security customers that a security or fire alarm was triggered, to alert customers that the provider has detected a virus or bot through online Internet security software, and to notify customers when a bill is ready or when payment is due or past due.”<sup>24</sup> The inability of callers to track these number reassignments therefore potentially leaves consumers without easy access to critical information about the services they receive.

Moreover, consumers might be harmed in other ways if, for example, a customer misses a service call, or is otherwise unaware that an account is facing termination due to non-payment (with potentially adverse implications for the customer’s credit rating).<sup>25</sup> And at the same time, “the recipient of the reassigned number” also may be subject to unwanted calls.<sup>26</sup> In sum, the current difficulty in tracking number reassignments and the treatment of reassigned numbers in the *2015 TCPA Order* present potentially significant harms for consumers and legitimate businesses alike—harms that the Commission now has the opportunity to begin to address in this proceeding.

## **II. THE NOTICE REPRESENTS A LAUDABLE STEP IN THE RIGHT DIRECTION**

As various parties have recommended, the Commission should undertake a broad reexamination of its rules and orders under the TCPA to ensure that businesses and consumers are able to engage in desired communications without the threat of unwarranted litigation. The

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<sup>23</sup> NOI ¶ 1.

<sup>24</sup> Reply Comments of NCTA – The Internet & Television Association, CG Docket Nos. 02-278, 05-338, at 8-9 (filed Mar. 27, 2017) (internal citations, quotation marks, and alterations omitted).

<sup>25</sup> *See id.* at 9.

<sup>26</sup> NOI ¶ 1.

*2015 TCPA Order* is deeply flawed in various respects—not only in its treatment of calls to reassigned numbers but also in its overbroad construction of ATDS (sweeping in any device that could *potentially* be modified to perform the functions enumerated in the statute),<sup>27</sup> and in its rulings on consent revocation (frustrating efforts to establish reliable channels for processing such revocations)<sup>28</sup>—and both Chairman Pai and Commissioner O’Rielly have rightly indicated that the Commission should revisit that *Order*.<sup>29</sup> Indeed, the Commission should strongly consider ways in which it could take prompt action to address these issues as expeditiously as possible—including, for instance, by suspending the *2015 TCPA Order*’s ruling on reassigned numbers to provide interim relief from the harms detailed above.

But pending (and in parallel with) broader reforms to the TCPA regulatory regime—through the Commission’s adoption of more reasonable constructions of the statute’s provisions or the enactment of new legislation—the Commission’s NOI is a welcome development, and Comcast is eager to work closely with the Commission to turn its vision of a comprehensive reassigned number resource into a reality. Establishing such a resource plainly would serve the public interest and help address many of the problems discussed above. A comprehensive lookup tool for reassigned numbers would facilitate meaningful compliance with the existing regulatory framework and would better align the Commission’s approach with the realities of the

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<sup>27</sup> See *2015 TCPA Order* ¶ 19 (adopting a “broad interpretation of ‘capacity’” in the statutory definition of ATDS “to include ‘potential ability’”).

<sup>28</sup> See *id.* ¶ 47 (preventing callers from specifying “the manner in which revocation may occur” and ruling that “a called party may revoke consent at any time and through any reasonable means”).

<sup>29</sup> See *2015 TCPA Order*, Statement of Commissioner Pai, at 2 (noting that the *2015 TCPA Order* “stray[s] far from [the TCPA’s] original purpose” and that “the FCC has the power to fix that”); NOI, Statement of Commissioner O’Rielly, at 1 (suggesting that the Commission “initiate a new proceeding” to undo aspects of the *2015 TCPA Order*).

modern communications marketplace. By providing a resource that callers could use to avoid mistakenly calling reassigned numbers and to maintain contact with existing customers whose numbers have changed, such an initiative would help ensure that consumers receive the communications they desire.

**A. Comcast Supports the Establishment of a Centralized Number Reassignment Database and a Safe Harbor for Callers Relying on the Database**

Comcast appreciates the Commission’s open-minded assessment of the various approaches it could adopt in creating a comprehensive reassigned number resource,<sup>30</sup> and believes that the best solution would be to establish a centralized database in which all voice providers that manage number reassignments would be required to feed updated information on a daily basis.<sup>31</sup> Ideally, such a database would be managed by the Commission itself—or, alternatively, by the Federal Trade Commission (“FTC”), which currently manages the federal do-not-call database.<sup>32</sup> Among other benefits, such an approach likely would result in lower costs for participating entities to access and use the database, as the Commission (or the FTC) would be in the position to charge only the administrative costs of populating and updating the database. However, if the Commission were to rely on an outside vendor to manage the database on its behalf, it should maintain close oversight and institute strict price controls to guard against profiteering, as Neustar was criticized for doing in its role as the Local Number Portability (“LNP”) administrator.<sup>33</sup>

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<sup>30</sup> See NOI ¶¶ 15-19.

<sup>31</sup> See *id.* ¶ 16.

<sup>32</sup> See FTC, “National Do-Not-Call Registry,” available at <https://www.ftc.gov/do-not-call> (last accessed Aug. 11, 2017).

<sup>33</sup> See, e.g., Concurring Statement of Commissioner Ajit Pai, *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for*

By contrast, the other alternatives set forth in the NOI likely would prove less cost-effective. For instance, requiring voice providers to report reassigned number data directly to numerous different data aggregators would impose greater costs and other burdens on voice providers than reporting into a single, centralized database, and profit-motivated aggregators may also seek to charge callers high fees for access to that information.<sup>34</sup> Similarly, a system in which voice providers merely provide their own queriable databases would be far less efficient (and therefore significantly more costly) for callers than creating a single database that tracks *all* number reassignments, particularly if callers would be forced to keep tabs on when numbers are ported from one voice provider to another for purposes of determining which provider's database to query.<sup>35</sup> Finally, an approach where voice providers would simply release reassignment information to the public would present similar inefficiencies to those noted above, and also would create a risk that the information could be used for anticompetitive or other improper purposes. Establishing a centrally managed database, on the other hand, would enable the Commission (or the FTC) to establish access restrictions aimed at ensuring that the information is used only for TCPA compliance purposes, as discussed further below.<sup>36</sup>

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*Number Portability Administration*, Order, 31 FCC Rcd 8406 (2016) (lamenting that, “[o]ver the last three years, [the FCC’s] contract with the incumbent LNP administrator, Neustar, has cost consumers \$1.4 billion, or \$466.4 million a year,” despite evidence that costs could be far lower); *see also, e.g.*, Letter of John T. Nakahata, Counsel for Telcordia Technologies, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-129 & 09-109, at 4-5 (filed Mar. 20, 2015) (claiming that “Neustar ha[d] been gouging the industry and consumers for years” in its role as LNP administrator).

<sup>34</sup> See NOI ¶ 17.

<sup>35</sup> See *id.* ¶ 18.

<sup>36</sup> See *id.* ¶ 19.

Comcast also strongly supports the Commission’s consideration of “a safe harbor from TCPA violations” for callers that “use the comprehensive reassigned number resource.”<sup>37</sup> Such a safe harbor is vitally important to ensure that legitimate businesses calling consumers in reliance on information obtained from the database will not face TCPA lawsuits in the rare instances where a particular number reassignment is *not* captured (*e.g.*, due to an inadvertent reporting error by the underlying voice provider or a delay in uploading or syncing the relevant information). A safe harbor also would help spur widespread use of the database by callers. To be sure, callers already would have significant business incentives to make use of the database, as such a tool would lead to lower rates of calls and messages being directed inadvertently to reassigned numbers, thus increasing the percentage of calls and messages that make it to their intended recipients, and likely reducing the number of abusive and unwarranted TCPA claims faced by users of the database to some degree. But those benefits may not be sufficient on their own to encourage all callers to undertake the cost of using the database (however reasonable the associated fees may be)—whereas adopting a safe harbor providing *complete* protection from TCPA claims based on number reassignments would be far more likely to provide the incentive necessary to encourage pervasive use of the tool.

Establishing a safe harbor also would bring substantial benefits to consumers, for many of the same reasons noted above. In particular, as more callers make use of the database due to the existence of the safe harbor and as fewer calls are mistakenly directed to reassigned telephone numbers, consumers would benefit from receiving more of the communications they have requested or consented to as they change from one number to another. As discussed above, these communications include a wide range of calls and messages that consumers specifically

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<sup>37</sup> See *id.* ¶ 14.

ask to receive and in many cases relay important service-related information.<sup>38</sup> Encouraging widespread use of the database by adopting a safe harbor would help ensure that these beneficial communications are not chilled by the threat of TCPA litigation and reach the consumers who desire them. Moreover, because a centralized database backed by a safe harbor would reduce the rate of misdirected communications more effectively, consumers likely would receive significantly fewer unwanted calls or messages when a number has been reassigned to them.

The NOI correctly points out that the Commission could look to similar safe harbors in its rules—such as those “regarding calls to numbers ported from wireline to wireless service or regarding telemarketing calls to numbers on the national do-not-call registry”—as guidance in crafting a similar rule here.<sup>39</sup> Notably, in adopting its safe harbor for calls to numbers on the do-not-call registry where the caller routinely checks the registry and takes other concrete steps to comply with applicable rules, the Commission concluded that a caller “that has made a good faith effort to provide consumers with an opportunity to exercise their do-not-call rights should not be liable for violations that result from an error.”<sup>40</sup> The FTC reached a similar conclusion in adopting an analogous safe harbor in its own rules.<sup>41</sup> The same fundamental fairness considerations militate strongly in favor of adopting a similar safe harbor in this context.

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<sup>38</sup> See *supra* at 5, 8-9.

<sup>39</sup> See NOI ¶ 14 (citing 47 C.F.R. §§ 64.1200(a)(1)(iv), (c)(2)).

<sup>40</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶ 38 (2003).

<sup>41</sup> See *Telemarketing Sales Rule*, 68 Fed. Reg. 4580, 4646 (Jan. 29, 2003) (“Sellers or telemarketers who have made a good faith effort to provide consumers or donors with an opportunity to exercise their ‘do-not-call’ rights should not be liable for violations that result from error.”); see also 16 C.F.R. § 310.4(b)(3) (codifying FTC safe harbor).



**B. The Commission Should Establish the Database in a Manner That Maximizes Benefits While Minimizing Costs**

As the Commission further considers the logistical details of establishing and managing such a database, Comcast agrees with the NOI that it should carefully weigh the relevant costs and benefits in determining the best path forward.<sup>42</sup> Accordingly, the Commission should seek to ensure that the database it establishes maximizes the benefits to legitimate businesses and consumers by providing relevant information in a timely, inexpensive, and accessible manner, without imposing undue costs on callers seeking to use the information or on the voice providers tasked with supplying relevant information.

As an initial matter, Comcast believes that cost-benefit considerations favor an approach in which *all* wireless and wireline voice providers that manage number assignments (1) have a duty to report number reassignments to the database (on a daily basis, along with a monthly reconciliation process to check for errors),<sup>43</sup> and (2) are appropriately compensated for the reasonable costs associated with the obligation to report number reassignments. Mandatory participation by all voice providers (wireline and wireless alike) is necessary to ensure that both consumers and businesses realize the full benefits of the database. Otherwise, the database would contain insufficient reassignment information about a potentially large set of numbers, and thus likely would not be any more “comprehensive” than existing tools.

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<sup>42</sup> See NOI ¶ 14.

<sup>43</sup> As the NOI correctly points out, “[s]ome service providers, including many interconnected VoIP providers” and mobile virtual network operators, “do not obtain numbers directly from the numbering administrators, but rather obtain numbers for their residential or business customers from carrier partners.” *Id.* ¶ 13. Thus, “any obligation to report reassignment information for such providers” should “attach to the carriers that provide these number resources.” *Id.*

At the same time, while Comcast agrees with the NOI's observation that "voice providers, which presumably already track disconnected and reassigned number information for multiple reasons, would [not] be greatly burdened" if the Commission were to impose reporting requirements,<sup>44</sup> the Commission should establish a mechanism whereby voice providers can recoup at least some of the costs associated with mandatory participation in this initiative. The Commission could do so through the collection of reasonable usage fees from entities accessing the database, as the NOI recommends,<sup>45</sup> and then using those revenues to compensate voice providers. One possible fee model the Commission should consider is the Federal Trade Commission's subscription-based approach for the federal do-not-call list—under which most callers pay a flat fee of roughly \$16,000 annually for full access to the database, without paying additional per-dip fees over and above that amount.<sup>46</sup>

The Commission also should carefully consider what types of information should be reported into the database—again by weighing the costs and benefits of the various possible reporting approaches. For the database to be useful to callers, each database entry likely would need to include certain key information,<sup>47</sup> including the telephone number, the name of the individual currently associated with the number, and some kind of information about when the

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<sup>44</sup> *Id.* ¶ 14.

<sup>45</sup> *Id.* ¶ 25.

<sup>46</sup> See Federal Trade Commission, "FTC Update: Telemarketer Fees for the Do Not Call Registry to Rise Slightly in FY 2017," Sep. 1, 2016, *available at* <https://www.ftc.gov/news-events/press-releases/2016/09/ftc-update-telemarketer-fees-do-not-call-registry-rise-slightly>.

<sup>47</sup> For privacy reasons, the Commission should be careful not to require voice providers to contribute more information about their customers than necessary to achieve the objectives of addressing the reassigned number issues discussed herein. The Commission also should make clear that providers' mandatory contribution of information to the database does not violate any applicable privacy statutes or regulations.

status of the number changed—whether disconnected, “aged out” and available for assignment, or reassigned. As for precisely which of these status changes should be reported, the Commission should continue to consult with stakeholders to determine the best approach.

In particular, each kind of status change that could be reported presents its own benefits and potential drawbacks. For instance, a requirement to report disconnections would have the benefit of providing the most lead-time for callers to update their call lists, as numbers typically are aged for up to 90 days before even being made available for reassignment to a new customer.<sup>48</sup> But tracking *only* disconnections may well produce false hits for callers searching the database for indications that a number is no longer associated with a particular individual, as providers will occasionally disconnect a customer (*e.g.*, for non-payment, etc.), put the number into the aging pool, but then reconnect the person to the same number once payment resumes.<sup>49</sup>

The alternative proposal to report when a number “ages out”—that is, when a number has gone through the number aging process and is available for reassignment—would largely avoid the issue of misreporting temporary disconnections, as numbers that have aged out typically are not assigned back to the original customer. This approach also would provide more lead-time for callers to update their call lists than an approach where voice providers report only when a number is actually reassigned. On the other hand, the amount of lead-time may be less predictable and likely will vary from provider to provider based on their own aging practices,

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<sup>48</sup> See 47 C.F.R. § 52.15(f)(ii) (“Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days.”).

<sup>49</sup> See NOI ¶ 11 (appropriately asking whether “reporting temporary disconnections [might] inaccurately indicate reassignments”).

and such reporting may also pose greater operational challenges for voice providers that do not track aging numbers as robustly as they track number reassignments.

An approach in which voice providers report when they have reassigned a number to a customer may be the most practical for voice providers and likely would yield the most reliable and uniform data for the database, as voice providers' reassignment practices generally do not vary as much from provider to provider (at least in comparison to disconnection or aging practices). However, tracking *only* reassignments would provide little to no lead time for callers to update their dialing lists to avoid calling consumers with newly reassigned numbers, and thus could force callers to incur additional costs to scrub their lists against the database much more frequently. Ultimately, the question of which of these status changes should be reported (disconnection, aging out, or reassignment—or perhaps a combination) is one where the Commission will benefit from further input from stakeholders.

Finally, the NOI appropriately recognizes the risk that some entities might attempt to use information in the database for improper purposes having nothing to do with TCPA compliance.<sup>50</sup> The Commission thus should require that entities accessing the database be required to certify that information will be used solely for TCPA compliance purposes and not for other improper commercial purposes.<sup>51</sup> Additionally, the Commission should consider a range of possible penalties for entities that are found to have violated that restriction, including terminating access privileges for violators and/or assessing monetary penalties.<sup>52</sup>

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<sup>50</sup> See *id.* ¶ 26.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

## CONCLUSION

Comcast commends the Commission for exploring the possible creation of a comprehensive resource for tracking telephone number reassignments. Such a tool does not exist in today's marketplace and, if properly established, would bring significant benefits to consumers and businesses alike, particularly in light of the restrictive measures adopted in the *2015 TCPA Order*. As noted above, the Commission also should undertake a broader reexamination of the *2015 TCPA Order* and related rulings to ensure that its rules do not unduly chill the communications consumers desire by exposing businesses to the threat of massive unwarranted liability, and should explore ways to provide interim relief while that effort is ongoing. But in the meantime, Comcast looks forward to continuing to provide input on the initiative described in the NOI, as a potential contributor to and user of a centralized reassigned number resource.

Respectfully submitted,

/s/

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