

**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
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) respectfully submits these comments in response to the *Second Notice of Inquiry* (“NOI”) released on July 13, 2017 in the above-referenced proceeding.¹ The NOI seeks comment on the best ways for service providers to report information about telephone numbers that have been reassigned to new subscribers, and how that information can most effectively be made available to entities that place calls using an automatic telephone dialing system (“autodialer”) or an artificial or prerecorded voice.

I. INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states. Rural electric cooperatives are private, non-profit entities that are owned and governed by the members to whom they deliver electricity. They serve 56 percent of the nation, 88 percent of all counties, and 12 percent of the nation’s electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. Rural electric cooperatives serve the vast majority of the nation’s persistent poverty counties (330 out of 353, or 93 percent). These

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59 (rel. July 13, 2017) (“NOI”).

counties have deeply entrenched poverty with rates consistently 20 percent or above for the last three decades. In all, about 15.5 percent of the 42 million Americans served by electric cooperatives live below the poverty line.

NRECA member cooperatives are committed to providing safe, affordable, reliable, and efficient service to their member-owners. In furtherance of these efforts, some NRECA member cooperatives have implemented notification programs to provide timely service-related information, such as information about service outages, service interruptions and restoration, natural disasters and other emergencies, prepayment programs, and account balances. These communications may be made using an autodialer or an artificial or prerecorded voice, and they may be made to wireless phones via voice or text messaging, in addition to residential landlines.

Many electric cooperative member-owners use only wireless phones, and their wireless telephone numbers may be relinquished and subsequently reassigned from time to time. Wireless number reassignments can be expected to be relatively higher in rural and lower-income areas, where many NRECA member cooperatives serve. In many cases, wireless numbers are reassigned without a cooperative's knowledge.

The Federal Communications Commission ("Commission") has clarified that under the Telephone Consumer Protection Act ("TCPA"), callers who place calls and texts to wireless numbers using an autodialer or prerecorded voice must have the prior express consent of the current subscriber, not the intended recipient.² Callers are only permitted to place one automated call or text in error to a number that was associated with a subscriber who consented but, without

² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, ¶72 (rel. July 10, 2015) ("2015 Order").

the caller's knowledge, was subsequently reassigned to a new subscriber who did not consent.³

Absent a reliable method for NRECA member cooperatives and others to determine whether a phone number has been reassigned, they face steep penalties for violations. Indeed, some NRECA member cooperatives have chosen to discontinue important service-related calls and texts due to the threat of litigation arising out of alleged TCPA violations.

NRECA hopes that the U.S. Court of Appeals for the D.C. Circuit will overturn portions of the Commission's July 10, 2015 *Declaratory Ruling and Order*, including the "one call" standard for automated calls and texts to reassigned numbers, and/or that the Commission will initiate a new proceeding to effectuate changes. In the meantime, NRECA supports the creation of a single, comprehensive reassigned number database and a safe harbor for companies that access the database to confirm whether numbers have been reassigned. Legitimate service-related communications that consumers want and expect should be encouraged, not discouraged.

II. NRECA SUPPORTS A SINGLE, COMPREHENSIVE DATABASE

Absent reforms to the TCPA framework, a reassigned number database could potentially benefit both consumers and callers; it could help consumers avoid unwanted calls and texts, and it could help callers avoid violations of the Commission's rules. As the Commission has acknowledged, "we do not presume that a single call to a reassigned number will always be sufficient for callers to gain actual knowledge of the reassignment, nor do we somehow 'expect callers to divine from [the called consumer's] mere silence the current status of a telephone number.'"⁴

³ *Id.*

⁴ *Id.* at note 312.

In the NOI, the Commission identified four alternatives for voice service providers to report reassignments on which it seeks comment, and the Commission also seeks comment on other options.⁵ The options proposed by the Commission include having providers report to a database established by the Commission, having providers report to callers directly or to data aggregators, having providers operate databases that callers and data aggregators can query, and having providers individually make the information available to the public. NRECA supports the creation of a single, central database that includes reassignment information for all voice service providers, whether such database is administered by the Commission or a third party. NRECA members in general lack the resources to maintain their own in-house databases, and requiring NRECA members and others to subscribe to and/or query multiple databases would be administratively burdensome and potentially too costly depending on the fee structure. In addition, the existence of multiple databases or reports for callers to access would impose administrative burdens on callers, and would increase the risk that not all reassigned numbers will be discovered.

III. THE FREQUENCY OF UPDATES SHOULD VARY BY GEOGRAPHIC AREA

The Commission should carefully consider how frequently voice service providers should be required to update the number reassignment information they report. In particular, the Commission should take into account that wireless number reassignments can be expected to be higher in rural and lower-income areas, where many NRECA member cooperatives serve. While callers may over time learn that a number has been reassigned to a new subscriber, individuals who have consented to receive service-related calls and texts from NRECA member cooperatives

⁵ NOI at ¶¶ 15-19.

may receive more than one update in a day or week, for example to notify about a service outage and subsequent restoration efforts or to notify about a payment issue that may lead to service curtailment.

IV. THE COMMISSION SHOULD CAREFULLY CONSIDER HOW THE DATABASE WILL BE FUNDED

The NOI seeks comment on what measures would be necessary to ensure that the fees for accessing reassigned number information do not undermine the ability of callers to access the information.⁶ Any fees to access the database should not disproportionately impact non-profit and small businesses. In addition, basing the fees (if any) on the number of queries or volume of numbers queried will disproportionately affect NRECA member cooperatives and others in geographic areas where number reassignments are more frequent.

V. THE COMMISSION SHOULD CONSIDER A SAFE HARBOR

NRECA member cooperatives place important service-related calls and texts that their member-owners want to receive, and their members have complained when they have not received them. A safe harbor for callers that use an established reassigned number database and scrub their lists accordingly is necessary, as it will simply be impossible for callers to ascertain every instance in which a number has been reassigned, despite their best efforts, and there is no guarantee that every reassigned number will appear in the database. The Commission has itself acknowledged that even the most diligent caller cannot discover every instance in which a number has been reassigned.⁷ The Commission's "one call" threshold for calls and texts to reassigned numbers therefore offers little consolation to NRECA member cooperatives and other

⁶ *Id.* at ¶ 25.

⁷ 2015 Order at ¶ 85 ("Even where the caller is taking ongoing steps reasonably designed to discover reassignments and to cease calls, we recognize that these steps may not solve the problem in its entirety.").

callers, especially those in geographic areas where number reassignments are higher. Absent a safe harbor, NRECA member cooperatives may be forced to discontinue important calls and texts that recipients expect and want or else potentially face legal liability.

VI. CONCLUSION

Making service-related calls and texts is a widespread practice among NRECA members and other utilities. Consumers expect and want these types of messages so that they can take steps to prepare for and/or address service-related issues and avoid possible disconnection for failure to pay amounts owed for services. Accordingly, NRECA supports the creation of a single, central reassigned number database, as well as a safe harbor for callers that access and use the database, but nevertheless inadvertently place calls and texts to numbers that have been reassigned.

Respectfully submitted,

**NATIONAL RURAL ELECTRIC
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