

**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	)	

**REPLY COMMENTS OF CENTURYLINK**

CenturyLink<sup>1</sup> files these reply comments in response to the Second Notice of Inquiry (“NOI”) released July 13, 2017 in the above-referenced docket. The NOI seeks comment on the problem of robocalls made to phone numbers of consumers who had consented to receive calls but whose phone numbers have been reassigned.<sup>2</sup> The NOI asks for information about the costs and benefits of voice service providers reporting reassigned number information, asserting that a comprehensive reassigned numbers resource would greatly benefit both consumers and robocallers.<sup>3</sup> CenturyLink agrees with those commenting parties that expressed concern about the feasibility of establishing a comprehensive reassigned number database that would be widely used.<sup>4</sup> Instead, the FCC should consider more targeted measures which would provide meaningful relief to this problem, including adopting a safe harbor from liability under the Telephone Consumer Protection Act (“TCPA”) for good faith actors using commercially

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<sup>1</sup> These comments are filed by and on behalf of CenturyLink, Inc. and its subsidiaries.

<sup>2</sup> *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”) at ¶ 1.

<sup>3</sup> NOI at ¶ 14.

<sup>4</sup> *See, e.g.*, ATIS Comments at pp. 2-3 (explaining that the industry does not already track disconnected and reassigned number information in a way that would be useful for the NOI’s purposes, contrary to the NOI’s assumptions).

available call validation tools and, should further action be necessary, pursuing the utility of a wireless numbering database solution.

## **I. THE FCC SHOULD ADOPT A SAFE HARBOR UNDER THE TCPA FOR GOOD FAITH ACTORS**

Legitimate callers face increasing litigation and liability when calling reassigned wireless numbers without knowledge of the reassignment due to the impractical framework of the TCPA stemming from the *2015 TCPA Declaratory Ruling*.<sup>5</sup> However, in considering how to prevent robocalls to reassigned numbers, the NOI asks commenters not to discuss either the FCC's implementation of the TCPA or any other TCPA precedent.<sup>6</sup> Despite the NOI's request, the vast majority of commenters describe the significant compliance hurdles this faulty framework poses and the real liability that follows from "gotcha" litigation<sup>7</sup> in advocating for some type of reassigned number database resource or other TCPA safe harbor to remedy these issues.<sup>8</sup> Indeed, the NOI "shines a bright light on just how misguided and fundamentally broken the [FCC's] *2015 TCPA Declaratory Ruling* really was."<sup>9</sup> The record shows that overcoming the compliance

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<sup>5</sup> See, e.g., Comments of Comcast Corporation at pp. 4-7; Comments of CTIA at pp. 6-7. Under the *2015 TCPA Declaratory Ruling, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015), callers are imputed with constructive knowledge of number reassignments even when the one call allowed by the safe harbor fails to provide actual knowledge of any reassignment, and in the absence of any comprehensive resource to track number reassignments. Further calls to that number once constructive knowledge of reassignment is imputed are TCPA violations and are subject to a \$500 per call strict liability penalty. Willful or knowing violations are subject to a \$1500 per call penalty.

<sup>6</sup> NOI at ¶ 2 fn. 3.

<sup>7</sup> See, e.g., Comments of Comcast Corporation at p. 2; Comments of U.S. Chamber Institute for Legal Reform at pp. 1-2 (citing 46% increase in litigation in the 17 month period after the FCC issued its *2015 TCPA Declaratory Ruling*).

<sup>8</sup> See, e.g., Comments of ACA International at p. 2; Comments of the Credit Union National Association at p. 7.

<sup>9</sup> NOI Statement of Commissioner Michael O'Rielly.

obstacles brought about by the TCPA's own framework is at least as strong a driver, if not stronger, to adopt some type of number reassignment database resource than the consumer benefits that may result from this tool.<sup>10</sup> Thus, TCPA implementation must be considered in conjunction with the NOI's examination of a reassigned number database so any solution that might be adopted can provide much-needed mitigation for these issues.

The record clearly shows compliance is not reasonably achievable under the current TCPA implementation framework. Given the high volume of number reassignment, good faith callers have no surefire resource to meet TCPA standards and verify whether numbers have been reassigned to wireless subscribers that have provided consent for autodialed calls.<sup>11</sup> Commercial solutions are available, but do not reliably meet the exacting standards the TCPA framework demands for good faith callers to avoid liability in an increasingly litigious environment.<sup>12</sup> The question then is how best to resolve these flaws in the TCPA implementation framework – by fixing the framework (an approach the NOI seems to ignore) or by working around the flaws in the framework by mandating some sort of database. The TCPA implementation framework should be modified to make it more reasonable and mitigate at least some of the flaws that have been identified. Without this essential step, any database resource stands to be of only limited success as it will be insufficient to rectify the other systemic deficiencies in the TCPA regime that are the root cause of the concerns described in the NOI.<sup>13</sup>

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<sup>10</sup> See, e.g., Comments of the Credit Union National Association at pp. 2-3; Comments of the U.S. Chamber Institute for Legal Reform at p. 9.

<sup>11</sup> See, e.g., Comments of Comcast Corporation at pp. 6-7.

<sup>12</sup> *Id.* at p. 2.

<sup>13</sup> “Although an appropriately structured database can help to alleviate the reassigned numbers problem, the eventual establishment of a technical solution should not be viewed as a substitute for promptly revising the current misguided numbers rules.” Credit Union National Association Comments at p. 3. “[L]egitimate callers using autodialer or prerecorded voice technology face

A key TCPA modification supported by numerous commenters, including CenturyLink, is for the FCC to adopt a TCPA compliance safe harbor for providers that utilize one or more commercially available TCPA compliance solution available today.<sup>14</sup> “By making this clarification, the [FCC] can help good faith callers mitigate liability exposure under the TCPA, while avoiding any relief that could weaken TCPA enforcement against bad actors.”<sup>15</sup> This approach would also promote the continued development and refinement of commercially available solutions. “It is possible that by encouraging the use of existing reassigned number validation services the [FCC’s] goals of improving TCPA compliance may be largely achieved” without the “massive expenditure of time, effort and resources to create a national reassigned number database.”<sup>16</sup> CenturyLink supports adopting a safe harbor as a first step, which could be implemented immediately, before pursuing other measures such as a database because they may prove costly and ultimately unnecessary.<sup>17</sup> If, however, the FCC concludes to move forward with a database at this time, CenturyLink believes a wireless solution will be sufficiently targeted to address the concerns raised in the NOI.

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increasing liability under the TCPA when unwittingly calling reassigned wireless telephone numbers without knowledge of the reassignment, but the [FCC] should also recognize that fundamental issues with its [2015 TCPA Declaratory Ruling] are the root causes of this liability exposure.” CTIA Comments at p. 2.

<sup>14</sup> See, e.g., NCTA Comments at p. 3 & n.12 (citing how, similar to the do-not-call rules, there should be an analogous safe harbor for TCPA purposes for actors making a good effort to comply).

<sup>15</sup> CTIA Comments at p. 7.

<sup>16</sup> Comments of Noble Systems at p. 9.

<sup>17</sup> See, e.g., Comments of ACA International at pp. 1-2 (stating the FCC “should first focus its efforts on addressing underlying, related definitional issues under the [TCPA] that have opened legitimate businesses up to potential catastrophic liability and hindered beneficial communications between business and consumers before attempting to create a complicated, costly, and burdensome reassigned number database.”).

## **II. IF THE FCC BELIEVES A DATABASE IS NECESSARY, A WIRELESS NUMBER DATABASE SHOULD BE EXPLORED**

If the FCC concludes to move forward with a database resource, despite widespread commenter recommendations to address the concerns in the NOI through TCPA-related changes rather than creation of another complex tool, the FCC should examine the utility of a wireless database solution. The NOI appropriately acknowledges that a wireless approach may be most sensible given the TCPA's "greater and unique protections to wireless consumers" including the requirement for prior express consent for autodialed and prerecorded calls.<sup>18</sup> Further, there is a staggering level of wireless number turnover: the NOI cites that approximately 100,000 cell phone numbers are reassigned to new users each day.<sup>19</sup> As Comcast notes, the construction of the TCPA "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."<sup>20</sup> This high volume of wireless turnover coupled with the high risk of TCPA liability for calls inadvertently placed to reassigned wireless numbers shows that a wireless numbering database would be very effective to facilitate TCPA compliance and benefit consumers.

The comments, however, describe numerous important issues to be considered before a wireless database resource should be implemented. "The [FCC] should examine comprehensively the complex scope, feasibility, costs and benefits of any new database solution."<sup>21</sup> Additionally, there needs to be sufficient funding to establish and operate such a database, and a corresponding funding model to ensure that all costs remain covered. "Even in

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<sup>18</sup> NOI at ¶ 12.

<sup>19</sup> NOI at ¶ 5.

<sup>20</sup> See Comcast Comments at p. 7.

<sup>21</sup> CTIA Comments at p. 10.

the best of circumstances, given the huge number of reassignments that occur on a daily basis, it is hard to imagine that the database could be one hundred percent accurate at any given time.”<sup>22</sup> Given this high turnover, before moving forward it will be necessary to examine how much more accurate and reliable any FCC-mandated database would be compared to number validation services that are commercially available today. Because one-hundred-percent accuracy is not likely attainable, some type of TCPA compliance safe harbor will be necessary to incent callers to use any database that may be created. Further study is needed to address these and other issues raised in the comments to ensure the benefits of establishing a wireless database resource would outweigh its costs.

### **III. CONCLUSION**

CenturyLink appreciates the FCC’s examination of the challenges presented by reassigned numbers. In light of the record in this proceeding, CenturyLink urges the FCC to undertake a broader review of TCPA compliance and, as a first step, to adopt a safe harbor for callers acting in good faith using commercially available call validation tools. If additional measures prove necessary, then a wireless number database should be more fully considered to ensure the benefits outweigh the costs. Both of these approaches will provide additional needed protection for good faith actors and help reduce unwanted calls to wireless consumers.<sup>23</sup>

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<sup>22</sup> ACA Comments at p. 7.

<sup>23</sup> These solutions leave unaddressed the ongoing problem of illegal robocallers whom have no interest in using compliance tools to better follow the law. Efforts to combat illegal robocallers are being addressed in other regulatory proceedings and industry initiatives.

CenturyLink looks forward to working together with the FCC and the industry, in this and in other proceedings, to continue to reduce unwanted and illegal robocalls.

Respectfully submitted,

**CENTURYLINK**

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September 26, 2017