

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
Advanced Methods to Target and Eliminate)	WC Docket No. 17-59
Unlawful Robocalls)	

Reply Comments of the Credit Union National Association

The Credit Union National Association (“CUNA”) respectfully submits these reply comments in response to the *Second Notice of Inquiry* released by the Federal Communications Commission (“Commission”) on July 13, 2017.¹ The initial comments demonstrate overwhelming support for the establishment of a robust database of reassigned numbers and reflect virtual unanimity for the creation of a safe harbor. In light of this strong record, CUNA urges the Commission to move forward quickly to the next stage of this proceeding by issuing a notice of proposed rulemaking.

The record establishes as well nearly universal condemnation of the existing rules that effectively create strict liability for unwittingly calling a reassigned number.² Although the

¹ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, GC Docket No. 17-59, FCC 17-90 (rel. July 13, 2017) (“*Second Notice*”).

² Commenters expressing concerns over the existing rules reflect an impressively broad range of interests. *See, e.g.*, Comments of the Internet Association, CG Docket No. 17-59, at 2-3 (filed August 28, 2017) (“Internet Association Comments”); Comments of ACA International, CG Docket No. 17-59, at 4 (filed August 28, 2017) (“ACA Comments”); Comments of the Student Loan Servicing Alliance (“SLSA”), CG Docket No. 17-59, at 1-3 (filed August 28, 2017) (“SLSA Comments”); Comments of Anthem, Inc., CG Docket No. 17-59, at 1-2 (filed August 28, 2017) (“Anthem Comments”); Comments of Blackboard Inc., CG Docket No. 17-59, at 3-4 (filed August 28, 2017) (“Blackboard Comments”); Comments of District of Columbia Public Schools Comments, CG Docket No. 17-59, at 2 (filed August 28, 2017) (“DCPS Comments”); Comments of Vibes Media, LLC, CG Docket No. 17-59, at 3-5 (filed August 29, 2017) (“Vibes Comments”); Comments of the National Association of Federally-Insured Credit Unions, CG Docket No. 17-59, at 2 (filed August 28, 2017) (“NAFCU Comments”); Comments of Comcast Corporation, CG Docket No. 17-59, at 10 (filed August 28, 2017) (“Comcast Comments”); Comments of NCTA -

substance of the Commission’s reassigned number rules are not the subject of this particular proceeding, the concerns expressed in this record provide further impetus, to the extent any more is needed, to revisit those rules.

The Comments Strongly Support a Centralized Database

The comments confirm that there currently is no comprehensive source of information on reassigned numbers and that the lack of such a resource hampers the ability of legitimate companies to ensure that they are reaching the right person without incurring the risk of litigation.³ There is substantial consensus that a robust, reliable, timely, and reasonably accessible source of reassigned number information would be highly beneficial. There is also a strong consensus that, of the four options identified in the *Second Notice* for collecting and disseminating this information,⁴ a centralized, Commission-supervised database to which voice providers would report and that callers could query would be most efficient and cost-effective.⁵

The Internet & Television Association; CG Docket No. 17-59, at 2-3 (filed August 28, 2017) (“NCTA Comments”); Comments of CTIA, CG Docket No. 17-59, at 6-7 (filed August 28, 2017) (“CTIA Comments”).

³ See, e.g., SLSA Comments at 4-5; Blackboard Comments at 9 (quoting Neustar’s observation that there is no database that tracks all disconnected and reassigned numbers); Vibes Comments at 5-7 (describing limitations of carrier-provided disconnection lists that are incomplete and do not distinguish between ported numbers or reconnected numbers); Comcast Comments at 5-7 (noting, for example, that Neustar’s database does not have information on as many as 30% of numbers); Comments of Tatango, Inc., CG Docket No. 17-59, at 2-3 (filed August 29, 2017) (“Tatango Comments”) (describing its examination of current disconnect information from wireless carriers as lacking in uniformity, accuracy, and wholly missing from one-third of carriers).

⁴ *Second Notice*, at ¶¶ 16-19 (identifying the following options for voice providers to report information regarding reassigned numbers: (1) report to a centralized FCC-established database; (2) report to aggregators or to callers operating their own databases; (3) voice providers would each operate their own databases that callers could query; or (4) voice providers could make information on reassigned numbers available to the public).

⁵ See, e.g., Comments of the Credit Union National Association, CG Docket No. 17-59, at 4 (filed August 28, 2017) (“CUNA Comments”); Comments of The American Financial Services Association, CG Docket No. 17-59, at 3 (filed August 28, 2017) (“AFSA Comments”); Comments of the Retail Industry Leaders Association, CG Docket No. 17-59, at 9-10 (filed August 28, 2017) (“RILA Comments”); Anthem Comments at 2; Blackboard Comments at 8-9; NAFCU Comments at 1; SLSA Comments at 3; Comments of the National Retail Federation, CG Docket No. 17-59, at 4-7 (filed August 29, 2017) (“NRF Comments”) (noting unanimous support among its members for the first option – creation of a single, FCC-established centralized database); Comcast Comments at 11-12; Comments of the Insights Association, CG Docket No. 17-59, at 4 (filed August 28, 2017) (“Insights Comments”); NCTA Comments at 4; Comments of the National Rural Electric Cooperative Association, CG Docket 17-59, at 3-4 (filed August 28, 2017) (“NRECA Comments”).

The comments cogently contrast the benefits of a centralized database with the drawbacks of using fragmented reporting mechanisms. A centralized database to which all voice providers must report, and that all callers may (but should not be required to)⁶ query, ensures that information and protocols will be standardized, reduces costs, and minimizes the risk that reassigned numbers will be missed.⁷ Commenters have identified various drawbacks to the other options suggested in the *Second Notice*. These other options would, for example, require callers to contact numerous different sources that may be using varying data formats and protocols, which would be a massive and expensive undertaking.⁸ As noted by Telecordia, based on its “firsthand” experience as an information aggregator to the telecommunications industry, “companies do not have the technology, operational scale, or expertise to interface to all carriers’ queriable databases individually (should they even exist) in order to aggregate this data themselves.”⁹

Some of those expressing concerns over a Commission-supervised, centralized database point to their own solutions as an alternative or more generally propose leveraging existing market-based solutions.¹⁰ As pointed out above, however, none of these solutions are comprehensive.¹¹

⁶ There should be no obligation on callers to query the database. The existence of a reliable database coupled with a safe harbor will provide strong incentives for companies seeking to reach intended recipients to use such a resource.

⁷ See, e.g., RILA Comments at 9-10; AFSA Comments at 3.

⁸ See e.g., RILA Comments at 10; Comcast Comments at 12 (“requiring voice providers to report reassigned number data directly to numerous different data aggregators would impose greater costs and other burdens on voice providers while requiring voice providers to offer their own queriable databases would be less efficient and more costly than a single centralized database”); NRECA Comments at 4 (stating that NRECA members lack the resources to establish their own databases and requiring them to subscribe to and/or query multiple databases would be administratively burdensome and costly); NRF Comments at 6 (“the logistics of businesses dealing with multiple service providers who might provide differing data sets in various formats would be costly and challenging for callers and service providers alike”).

⁹ Comments of Telecordia Technologies, Inc. D/B/A iconectiv, CG Docket 17-59, at 7 (filed August 28, 2017) (“Telecordia Comments”).

¹⁰ See, e.g., Comments of Neustar, Inc., CG Docket No. 17-59, at 2 (filed August 28, 2017) (“Neustar Comments”); Comments of Syniverse Technologies, CG Docket No. 17-59, at 2-3 (filed August 28, 2017) (“Syniverse Technologies Comments”); Comments of The Electronic Transactions Association, CG Docket 17-59, at 2-3 (filed

CUNA identified several key principles that should guide implementation of a database that are echoed by a number of commenters. Commenters, for example, joined CUNA in recognizing that the access to the database must be affordable;¹² that all voice providers that control numbers, not just wireless companies, should be required to report reassigned number information to the database;¹³ that voice providers should report on numbers before they are reassigned;¹⁴ and that access to the database should be restricted and other steps taken to protect privacy.¹⁵ CUNA also supports other suggestions for ensuring a robust, accessible database, including utilizing standardized, widely available formats;¹⁶ ensuring that ported numbers are not included in the database;¹⁷ and reporting the dates when a number is disconnected or reassigned.¹⁸

Arguments in the record objecting to moving forward with a database are not persuasive. Some commenters claim, for example, that a resource for identifying reassigned numbers would not be effective in deterring robocalls by those unconcerned with compliance or that the potential

August 28, 2017) (“ETA Comments”) (expressing concerns that the establishment of a database would be complex, expensive and lengthy); Vibes Comments at 10-12 (suggesting steps to improve carrier-provided disconnection lists).

¹¹ See Note 3 *supra*.

¹² See, e.g., CUNA Comments at 4-5; Internet Association Comments at 6-7; RILA Comments at 19; NAFCU Comments at 1-2 (credit unions should have access to the database at little or no cost given that they are not-for-profit entities with limited resources); NRF Comments at 12 (database access should be at no or nominal cost and not constitute a profit center); NRECA Comments at 5 (any fees to access database should not disproportionately impact non-profits and small businesses).

¹³ See, e.g., CUNA comments at 4-5; Internet Association Comments at 3-4; SLSA Comments at 5; Comments of the National Council of Higher Education Resources Comments, CG Docket No. 17-59, at 3 (filed August 28, 2017) (“NCHER Comments”); RILA Comments at 13-14; NRF Comments at 12-14; Comcast Comments at 15.

¹⁴ See, e.g., CUNA comments at 7; RILA Comments at 12 (noting that, of the current numbering categories, aging numbers are the best current indicator of disconnected numbers that may be available for reassignment but may not accurately capture all reassigned numbers); Tatango Comments at 4 (waiting until numbers are available or reassigned is too late and noting that some big wireless carriers are reassigning numbers as soon two days after disconnect).

¹⁵ See, e.g., CUNA Comments at 3; *see also id.* at 6; Internet Association Comments at 6; NCHER Comments at 4; RILA Comments at 17-18; NAFCU Comments at 1; NRF Comments at 12-13; Comcast Comments at 18; NCTA Comments at 5.

¹⁶ See, e.g., Internet Association Comments at 5.

¹⁷ See, e.g., Tatango Comments at 4.

¹⁸ See, e.g., ACA Comments at 8; RILA Comments at 13; Telcordia Comments at 5; AFSA Comments at 2 (callers should be advised if disconnected numbers are reinstated).

cost of creating and maintaining a reassigned numbers database is not justified because such calls are a “minor” problem in relation to robocalling generally.¹⁹ The former argument misses the point and the latter is simply inconsistent with the record. Companies like CUNA that seek to reach specific consumers with important information that consumers expect would welcome a tool that avoids wasteful, and to the recipient, annoying calls to reassigned numbers.²⁰ Establishing a database and providing a safe harbor for those who use it benefits callers and consumers by reducing the incidence of unwanted calls. Suggestions that unintentional calls to reassigned numbers is a relatively minor problem do not reflect that record, which confirms the Commission’s view that that a substantial amount of numbers are reassigned without callers knowledge leading to inadvertent calls and litigation risk.²¹

CUNA disagrees with those who would refer the question of establishing a database to the North American Numbering Council (“NANC”) in light of potential complexities.²² Deferring action while NANC deliberates is an unnecessary prescription for delay. The Commission’s rulemaking process is more than capable of addressing complexities through the collection of detailed comments and, if necessary, holding workshops with stakeholders and experts.

Support for a Safe Harbor is Virtually Unanimous

Virtually every commenter recognizes the value and need for establishing a safe harbor to shield from liability those who demonstrably use the database in a good-faith attempt to reach

¹⁹ See, e.g., Comments of Noble Systems Corporation, CG Docket No. 17-59, FCC 17-90, at 1 (filed August 28, 2017) (“Noble Systems Comments”); see also *id.* 7-8.

²⁰ See, e.g., SLISA Comments at 4; NRECA Comments at 1-2.

²¹ See, e.g., NRF Comments at 3 (“The reassigned number problem is one of significant scope and complexity, and is only growing more complicated each year.”); Comcast Comments at 8 (calls to reassigned numbers is the “most significant driver of new TCPA litigation’ since the adoption of the *2015 TCPA Order*.”) (citation omitted); NRECA Comments at 2 (noting that reassignment of wireless numbers can be expected to be relatively higher in rural areas given the prevalence of wireless only use).

²² See, e.g., ETA Comments at 3; Telcordia Comments at 8; CTIA Comments at 9-11 (expressing concern that wireless carriers would be burdened by a new database and calling for NANC review of impacts).

their intended recipients.²³ Even those who express reservations about establishing a centralized database support the adoption of a safe harbor for callers that make use of a database if one is adopted,²⁴ or more generally make good-faith efforts at compliance, such as using existing database options.²⁵ A safe harbor would create added incentives to use a reassigned number resource, which would redound to the benefit of consumers and callers.²⁶

Arguments against the establishment of a safe harbor are unpersuasive and give insufficient weight to the benefits to consumers of receiving important, informational messages that CUNA and many other commenters need to convey, yet are not being sent for fear of litigation.²⁷ Providing callers a safe harbor would have no effect on the reliability of a database because callers do not have control over the accuracy of information reported by voice service providers. A safe harbor would restore a reasonable balance between the privacy interests of consumers and the legitimate needs of companies to contact their members or customers.

CONCLUSION

The record overwhelmingly supports the establishment of a centralized, FCC-established database to which all voice providers should timely report reliable information that a number has

²³ See Internet Association Comments at 4; SLSA Comments at 6-7; Anthem Comments at 2; Blackboard Comments at 10-13 (identifying safe harbor precedents); RILA Comments at 5-9; NAFCU Comments at 2; NRF Comments at 7-10; Comcast Comments at 13 (a safe harbor that provides complete protection from TCPA claims would be far more likely to provide an incentive to use a database); Insights Comments at 3; AFSA Comments at 3; NCTA Comments at 3; NRECA Comments at 5; Tatango Comments at 9-10.

²⁴ See ACA Comments at 7-8 (arguing the Commission should revise the reassigned numbers rules before mandating use of a database, but urging adoption of a safe harbor); Comments of U.S. Chamber of Commerce, CG Docket No. 17-59, at 7 (filed August 28, 2017) (“U.S. Chamber of Commerce Comments”) (expressing concerns regarding costs if all businesses were required repeatedly to check a database to ensure a number had not been reassigned but noting that if a database is established it should be coupled with a safe harbor).

²⁵ See, e.g., Noble Systems Comments at 9; Vibes Comments at 14-19 (suggesting the Commission improve and standardize existing “workarounds” and create a safe harbor to minimize impact of “rampant” litigation); Syniverse Comments at 3; ETA Comments at 3; CTIA Comments at 7 (the Commission should establish one or more safe harbors for callers that utilize market-based TCPA solutions).

²⁶ See Comcast Comments at 13-14.

²⁷ See, e.g., NRECA Comments at 2 (describing notification programs to provide information on service outages, service interruptions and restoration, natural disasters and other emergencies, prepayment programs and account balances).

been reassigned coupled with a safe harbor shielding users of the database from liability. CUNA urges the Commission to move forward quickly and develop the details of its proposal.

Respectfully submitted,

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