

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	GC Docket No. 17-59
Advanced Methods to Target and Eliminate	)	
Unlawful Robocalls	)	
	)	FCC 17-90
	)	

**REPLY COMMENTS OF NOBLE SYSTEMS CORPORATION**

**Filed September 26, 2017**

Karl Koster  
Chief Intellectual and Regulatory Counsel  
Noble Systems Corporation  
1200 Ashwood Parkway  
Atlanta, GA 30338

Contents

**I. Introduction ..... 1**

**II. Providing A Safe Harbor Can Be Done Without Mandating a National Reassigned  
Number Database Infrastructure Solution..... 1**

**III. Many Call Originators Support Creating a Reassigned Number Database Subject to  
The Service Being “Affordable” ..... 2**

**IV. The Commission Should Recognized That Addressing the Reassigned Number  
Problem Will Largely Not Reduce the Volume of Illegal Robocalls ..... 4**

**V. When You Are In a Bad Situation, Any Direction Seems Better ..... 4**

**VI. The Commission Is Not Focusing On the Root Cause ..... 5**

**VII. Conclusion ..... 7**

## **I. Introduction**

Noble Systems is a provider of contact center software and hosted service solutions serving customers in a variety of industries and applications, both domestically and internationally. Noble Systems submits these reply comments in regard to the Commission’s Second Notice of Inquiry (“NOI”)<sup>1</sup> in regard to the problem of targeting and eliminating unlawful robocalls made to phone numbers of consumers using a reassigned telephone number (the “reassigned number problem”).

## **II. Providing A Safe Harbor Can Be Done Without Mandating a National Reassigned Number Database Infrastructure Solution**

The vast majority of respondents commenting on whether a safe-harbor should be offered support such a provision.<sup>2</sup> The Commission should recognize that it can *immediately* encourage existing call originators to use existing number validation services by defining a safe harbor mechanism when using any of the currently available number validation services. There is *no need to wait* for building out a national reassigned number database to test whether a safe harbor would be effective in encouraging use of such currently available number validation services. Doing so would allow the Commission to obtain and analyze data from call originators to determine the effectiveness of such current number validation services. If current number validation services are effective, then there is no need to mandate creating a national infrastructure *that may be only marginally more effective*. Further, it would appear there would be no harm in testing whether providing a safe harbor (even on an interim basis) using current number validation services would be effective in reducing inadvertent calls.

The creation of a national reassigned number database can be expected to be comparable in time and scope to the creation of the Do-Not-Call database or the Local Number Portability database, which took years to complete and involve significant costs to use and maintain. Predicating the provision of a safe-harbor upon the completion of a national reassigned database

---

<sup>1</sup> In the Matter of: *Advanced Methods to Target and Eliminate Unlawful Robocalls*, GC Docket No. 17-59 (FCC 17-90), released July 13, 2017.

<sup>2</sup> It appears the only dissent was from the aggregate comments filed by eight consumer groups, lead by the National Consumer Law Center, et al., see, e.g., page 11.

does not incentivize call originators to use existing number validation services. Consumers could receive a potential benefit immediately if such a safe harbor were defined by the Commission.

### **III. Many Call Originators Support Creating a Reassigned Number Database Subject to The Service Being “Affordable”**

Many comments from call originators (i.e., those whose business involves originating calls) largely support the creation of a reassigned number database.<sup>3</sup> However, those comments frequently include an assumption that service will be “affordable.” For example:

- “Fees for access to the reassigned number database must be affordable for all callers....” (Blackboard, p. 9.)
- “Access to any reassigned numbers database must also be affordable.” (CUNA, p. 3.)
- “Accordingly, there is work to be done to ensure that a properly secured and affordable solution can be created.” (NCTA, page 1, fn. 3.)
- “Moreover, access should be affordable.” (SLSA, p. 5.)
- “[W]e would expect that there will be some charge to callers but, whatever the charge, it would need to be reasonable if the desired outcomes are to be achieved.” (NCHER, p. 4.)
- “[T]he 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.” (Internet Association, p. 6.)

This begs the question –if such a service were *not affordable* and call originators were *mandated* to use such a service, would they support the creation of a reassigned number database? The answer to this question is likely “no.”

It is axiomatic that users of a service receive a benefit and they would be expected to pay accordingly. Users can decide whether the benefit is worth the cost. Thus, it is easy for call originators to support creation of such a database if they have the freedom to decide whether they

---

<sup>3</sup> See, e.g., comments from NCHER, NCTA, Anthem, Blackboard, NCLC, NRECA, and NRF.

would use it. However, mandating the use of such a service removes this decision and no doubt many of the commentators would qualify their support for creating such a database. Thus, it is easy for call originators, who have been beleaguered with TCPA class actions under the current one-call scheme, to support creation of a reassigned number database. At most, they will readily promise to consider using such a database if they deem it is affordable, but few will commit to using one without knowing what costs would be associated with it.

However, this is an exceedingly sketchy basis for mandating carriers incur expenses of building the corresponding infrastructure, without any guarantee of cost recovery. On the other hand, any type of guarantee that carriers will recover their costs suggests imposing an industry-wide fee of some sort on call originators. Would call originators agree to pay fees for a reassigned number database regardless of whether they used the service or not? Hardly. On the other hand, if the service is optional for call originators, then the fees will likely be higher than if all call originators were mandated to use the service.

The organizations that aware of the technical impacts indicate that the endeavor of building out a national reassigned number database is complex. For example:

- NCTA advocates exempting rural carriers because of the burdens. (NCTA, page 2.)
- iconective identifies some of the additional costs and burdens (iconectiv, page 3.)
- CTIA states “it would be a complex endeavor with unique operation, technical, and financial challenges.” (CTIA, page 3.)
- Neustar indicates “...the creation of a single database of reassigned numbers would be a costly and complicated exercise....” (Neustar, page 3.)

The Commission should have a clear cost recovery framework before proceeding with any mandate to create a reassigned number database. This warrants obtaining further data before proceeding, *which can be accomplishing by defining a safe harbor to encourage call originators to use current number validation services.* If the usage of existing number validation services proves insufficient in addressing the reassigned number problem, then the Commission will be in a better position to evaluate whether the problem is with the accuracy of current number validation services or the prices charged for using such services, and how to remedy the problem.

**IV. The Commission Should Recognized That Addressing the Reassigned Number Problem Will Largely Not Reduce the Volume of Illegal Robocalls**

One comment, from iconectiv, summarized the situation succinctly in that “it is important for the Commission to recognize and distinguish those entities inadvertently violating the TCPA from those intentionally doing so, regardless of the existence of a central reassigned number system.” (Page 3.) In short, those entities initiating illegal calls (of any type) in blatant disregard of federal and state regulations, such as entities:

- initiating telemarketing calls to numbers on the Do-Not-Call list,
- initiating any type of deceptive or fraudulent telemarketing call,
- initiating calls outside of defined calling windows,
- initiating calls playing a pre-recorded solicitation announcement without the called party’s permission,

are the same entities that will likely *not* query a reassigned number database. As stated more bluntly by the CTIA, “the Commission should recognize that none of the efforts or solutions discussed in the Second NOI or these comments will reduce unwanted robocalls from bad actors.” (CTIA, page 3.) Thus, the Commission should not expect the creation of a reassigned number database to reduce the above illegal calls and the Commission should not justify the creation of such a database based on the volume of consumer complaints it receives about such illegal calls.

**V. When You Are In a Bad Situation, Any Direction Seems Better**

Evaluating the comments must be made in the context of the unworkable situation the Commission has imposed on the industry via its “one call exemption” and a number of commentators urge the Commission to review the basis of the “one-call exemption” to a reassigned number. Specifically:

- NCHER: “...the one-call exemption is essentially meaningless. For this reason, NCHER strongly supports action by the Commission to establish a mechanism for voice service providers to report reassignments and for callers to access that information.” (NCHER, page 3.)

- CTIA: “the Commission should recognize that its interpretation of ‘called party’ in the *2015 TCPA Order* is the root cause of this liability exposure.” (CTIA, page 6.)
- COHEAO: “Instead callers should only be held liable once the owner of the new number has communicated (verbally or in writing) the new number has been reassigned.” (COHEAO, page 3.)
- ACA: “While a reassigned number database maybe something to consider in the future as a tool for businesses to increase right party contacts, it cannot take the place of desperately-needed revisions to the Commission’s flawed interpretations in the *2015 TCPA Order* which the Commission should prioritize.” (ACA, page 5.)
- NRECA: “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 with numbers have been reassigned.” (NRECA, page 2.)
- NAFCU: “Credit unions have been unreasonably exposed to potential crippling legal liability because of the 2015 Order’s restrictions on reassigned numbers.” (NAFCU, page 2.)

Call originators know the untenable position they are placed in by the Commission’s “one-call” rule. It exposes them to potential crippling legal liability. Thus, this forces them to agree to any solution, even agreeing to a reassigned number database. The number of comments requesting review of the Commission’s basis warrants the Commission to step back, clarify the problem more precisely, and reevaluate possible solutions.

## **VI. The Commission Is Not Focusing On the Root Cause**

The Commission offers no data of the extent to which individuals have complained to the Commission about receiving unwanted calls *prior* to informing the calling party of the reassigned

number status. Stated another way, a person who informs the calling party that the intended party is no longer at that number, but complains about receiving continuing call is not complaining about calls to a reassigned number. The caller is blatantly ignoring the actual notice provided by the current subscriber of the reassigned number. If the caller blatantly ignores that reassigned number status information, they would likely also ignore an indication from a reassigned number database indicating the same. Thus, the problem solved by the reassigned number database is avoiding calls directed to a number *prior* to the called party informing the caller they are not the intended person. After the caller is informed of the reassigned number status, whether by actual noticed or by querying a database, subsequent calls made are not inadvertent. Thus, the real question is when does a call originator have a duty to validate a number before calling?

*Meanwhile, the consumer is not afforded with any mechanism to inform the calling party of the reassigned number status.* There is no requirement that the call originator of a pre-recorded announcement offer in some manner a method for the caller to indicate the number was reassigned.<sup>4</sup> Nor is there any requirement that the call originator indicate on a web site how the called party could correct this misconception. Legitimate call originators would likely accept a mandate to provide a mechanism for allowing called parties to inform them of a reassigned number in exchange for relief from the unworkable “one-call” scheme defined by the Commission. Of course, *illegitimate* call originators will not follow a mandate from the Commission to allow callers to indicate a reassigned number status, just as illegitimate call originators would disregard other Commission regulations and ignore a reassigned number database. The end result is that legitimate call originators are harmed, consumers are not given mechanisms to indicate their reassigned number status to callers, and an overly complicated solution is proposed, which is only palatable because the current situation is so unworkable.

The Commission should not be surprised if the outcome is as suggested in the Commission’s *July 2015 Order*, which states “[n]othing in the TCPA or our rules prevents parties from creating, through a contract or other private agreement, an obligation for the person giving consent to notify the caller when the number has been relinquished.”<sup>5</sup> Does the FCC really want a

---

<sup>4</sup> One option would be to allow the answering party to press a predefined key (e.g., “#”) during the announcement to indicate in some manner the reassigned number status.

<sup>5</sup> FCC 15-72, par. 86, see also footnote 302.



solution where companies, via their consumer agreements, require their customers relinquishing their number to indemnify the call originator for liability incurred when dialing the reassigned number? The proposal by the Commission demonstrates the need to revisit their position on the reassigned number problem.

## **VII. Conclusion**

Noble Systems believes that a holistic approach should be taken to address the reassigned number problem. The scope of the reassigned number problem should not be conflated with the larger problem of illegal robocalls, which will be mitigated to an extent with the deployment of the upcoming SHAKEN and STIR framework. The reassigned number problem is limited to a called party receiving *inadvertently* directed calls. Once the called party informs the caller, any further calls received are *not inadvertent*, but purposeful and willful, and outside the scope of the reassigned number problem and will not be solved by a reassigned number database.

Further, defining a national reassigned number database is likely to provide only a marginal improvement over existing number validation services. The existence of various number validation services available today significantly undercuts the motivation to incur the cost, complexity, and time required to build a national reassigned number database infrastructure that may be only marginally better. It will not significantly reduce illegal calls. Mandating the development of infrastructure solutions for use by compliant call center operators to resolve the problems caused by illegal operators is a misguided effort. Further, if call originators are not mandated to use such a solution, then the entire effort appears to be largely equivalent to the *status quo*, where call originators frequently do not use available optional number validation solutions today. Hence, the problem would continue to exist despite the investment of time, effort and money. In the meantime, called parties are left guessing as to how they can convey actual notice of a reassigned number or how they can convey revocation of consent to the call originator.

The Commission should instead define that call originators are required to act upon actual notice immediately and mandate specific channels by which called parties could use to indicate such actual notice. This approach provides call originators with certainty and provides simplicity for called parties, which presently neither party has.

Respectfully submitted,

/Karl Koster/

Karl Koster,  
Chief IP and Regulatory Counsel  
Noble Systems Corporation  
1200 Ashwood Parkway  
Atlanta, GA 30338  
(404) 851-1331 (x1397)

Sept. 26, 2017