

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)

**Proposal to Develop
A Reassigned Number Database**

Reply Comments by the

**National Consumer Law Center
on behalf of its low-income clients**

and

**Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
Public Citizen
Public Knowledge
U.S. PIRG**

September 26, 2017

These Reply comments are respectfully submitted to the Federal Communications Commission (FCC) by the **National Consumer Law Center** on behalf of its low-income clients and **Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, Public Citizen, Public Knowledge, and U.S. PIRG**. We strongly support the FCC's consideration of the creation of a reassigned number database,¹ and we

¹ In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Second Notice of Inquiry, FCC 17-90, CG Docket No. 17-59 (Rel. July 13, 2017) [hereinafter Second Notice of Inquiry], *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-90A1.pdf.

very much appreciate the leadership shown by this Commission in addressing the escalating problem of unwanted robocalls.

We articulated the reasons that we believe a reassigned number database is an essential tool in combating robocalls in our main comments, filed with the Commission on August 28, 2017.² To reiterate the most important points:

- 17.2 billion robocalls were made during the first seven months of 2017.³
- Americans received 2.59 billion robocalls in July, which is a 7.5 percent increase over July 2016 and 3 percent more than in June.⁴
- In 2016 there were over five million complaints about unwanted calls filed with the Federal Trade Commission,⁵ increasing from over three and one half million the previous year.⁶
- Unwanted calls are the leading cause of complaints to the FCC,⁷ triggering over 165,000 in 2016 alone.⁸

There is one more essential point that we must emphasize: One of the claims that robocallers cite most pressingly when they request relief from liability under the Telephone

² Comments by National Consumer Law Center on behalf of its low-income clients and Consumer Action, Consumer Federation of America, Consumers Union, National Association of Consumer Advocates, Public Citizen, Public Knowledge and U.S. PIRG on the FCC's Proposal to Develop a Reassigned Number Database, August 28, 2017, *available at* <https://ecfsapi.fcc.gov/file/10828610503710/Comments%20by%20NCLC%20and%20others%20on%20Reassigned%20Numbers%20Database.pdf>.

³ CDG, *Robocall Research: Calls Rising, Texas Worst Hit*, Aug. 14, 2017 *available at* <https://cdgportal.com/blog/index.php/2017/08/14/robocall-research-calls-rising-texas-worst-hit/>.

⁴ *Id.*

⁵ See Federal Trade Commission, National Do Not Call Registry Data Book for Fiscal Year 2016 (Dec. 2016), *available at* https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf.

⁶ See Federal Trade Commission, National Do Not Call Registry Data Book for Fiscal Year 2015 (Dec. 2015), *available at* <https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2015/dncdatabookfy2015.pdf>.

⁷ See Federal Communications Commission Encyclopedia, Quarterly Reports-Consumer Inquiries and Complaints, Top Complaint Subjects, <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints> (last visited Aug. 24, 2017).

⁸ See Federal Communications Commission, Consumer Complaint Data Center, Quarterly Reports-Consumer Inquiries and Complaints, Consumer Complaint Data – Unwanted Calls, <https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Aug. 24, 2017).

Consumer Protection Act (TCPA)⁹ is that they have no way of reasonably knowing that numbers for which they have consent have been reassigned to another person.¹⁰ This claim has also been a theme of the multiple requests for relief to the D.C. Circuit Court of Appeals from the 2015 Omnibus Order,¹¹ in which the FCC allowed callers only one call to determine whether a cell phone number had been reassigned to a new consumer.¹² Therefore it is truly disingenuous that many of these exact same petitioners/robocallers are now saying that it would be too much trouble to check a database that would allow them to avoid these calls—and the resulting TCPA liability for making them.¹³

It is popular among robocallers to complain about the strict liability standards in the TCPA, which can lead to automatic damages for multiple violations of this consumer protection law. However this liability standard is an *intended* burden on robocallers so that they ensure that they actually have the consent of the person being called before they make the call. The burden is

⁹ 47 U.S.C. § 227.

¹⁰ See e.g. In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 8006-10 ¶¶71, CG Docket No. 02-278, (2015), available at <https://ecfsapi.fcc.gov/file/60001120392.pdf>.

¹¹ See e.g. Joint Brief for Petitioners ACA International et al. for Review from the Federal Communications Commission’s TCPA 2015 Declaratory Ruling and Order, at 17 (D.C. Cir. filed Nov. 25, 2015).

¹² In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order, 30 FCC Rcd. 7961, 8006-10 ¶¶ 85-92, CG Docket No. 02-278, (2015), available at <https://ecfsapi.fcc.gov/file/60001120392.pdf>.

¹³ See e.g. Comments of ACA International (received Aug. 28, 2017), (database would create enormous burdens) available at <https://ecfsapi.fcc.gov/file/1082873823450/Comments%20of%20ACA%20Intl-Reassigned%20Numbers%20NOI-8-28-17-FINAL.pdf>; Comments of Noble Systems Corporation (received Aug. 28, 2017) (complaining that a database will be “too complicated, expensive and time consuming”), available at https://ecfsapi.fcc.gov/file/10828929621881/Noble_System_Comments_FCC_17-90.pdf; Comments of the Professional Association for Customer Engagement (received Aug. 28, 2017) (“a reassigned number database would impose additional obligations upon callers that may not be needed depending upon the outcome of the PACE Appeal. PACE recommends the Commission hold any action on a reassigned number database in abeyance until the PACE Appeal.”) available at [https://ecfsapi.fcc.gov/file/108281750504055/PACE%20Comments%20in%20FCC%2017-90%20\(Final\).pdf](https://ecfsapi.fcc.gov/file/108281750504055/PACE%20Comments%20in%20FCC%2017-90%20(Final).pdf).

inconvenient for robocallers because it interferes with the automated nature of their calls. But the burden on consumers from unwanted robocalls is worse. Every call to low-income telephone users with limited minutes costs them money.¹⁴ Every call to any cell phone users interrupts their day, requires their attention, is an invasion of their privacy, and can interrupt work tasks or driving.

The point of the proposed database is to cut down on unwanted calls to cell phones. The reduction in unconsented-to calls to cell phones will reduce liability for callers, and thus they will save considerably in compliance expenses.

The database should only be considered a tool for callers to assist them in complying with the TCPA. It should not be considered a mechanism for callers to avoid liability for making robocalls to consumers that can be avoided. Therefore, as the FCC moves forward with designing the database, it is essential that it maintain incentives for callers to comply with the TCPA and avoid making unconsented-to calls. Experience has demonstrated that without proper incentives, too many callers see no reason to go to the trouble of maintaining and updating their records to make sure they are robocalling only those consumers who have provided consent. Ensuring vigorous enforcement of the TCPA provides those incentives.

If designed correctly, the database should provide an efficient means for callers to protect themselves from TCPA liability by checking the database. But use of the database should not shield callers from liability for other violations of the TCPA.¹⁵

¹⁴ Approximately one quarter of the population in the United States has cell phone plans with limited minutes. *See CTIA-The Wireless Association, CTIA's Wireless Industry Summary Report, Year-End 2013 Results, 2014, Prepaid Connections Make Up 23.4 Percent of Wireless Market, available at <http://www.ctia.org/industry-data/facts-and-infographics-details/factand-infographics/prepaid-connections-make-up-23-4-percent-of-wireless-market> (accessed Jan. 29, 2017) .*

¹⁵ Even if it is 100% reliable, a database will not be a panacea. Alone, a perfect database will not stop all these calls. We know this because there have been many cases against robocallers for not just calling the wrong number, but for continuing to call the wrong number *even after* being notified that the number was wrong. *See e.g.* Settlement Agreement and Release at ¶¶ 28, 29, *Johnson v. Navient Solutions, Inc.*, Case No. 1:15-cv-00071-LJM-MJD and *Toure v. Navient Solutions*, Case No. 1:17-

All of the comments filed by callers, telephone service providers, and providers of related services push for a safe harbor to be applicable to callers who use the database. We—representing American consumers—are not wholly opposed to a safe harbor: so long as it is carefully and narrowly crafted to ensure that callers maintain their compliance requirements with the TCPA.

We propose a safe harbor that a caller could use to avoid liability for a call made to a reassigned number only when *all* of the following conditions apply:

1. The caller must have checked the database *before* making the call to the reassigned number, and have made the call within the number of days for which the database provides reliable information.¹⁶
2. The call was made to the reassigned number as the result of a mistake made by either the database or the telephone company making the report about the disconnection date of the phone number.
3. The caller must show it had the consent of the prior subscriber of the telephone number.
4. The safe harbor would not shield the caller from any other TCPA violations (such as calling after a revocation or the called party's telling the caller that it had reached the wrong party).
5. The caller must show that it took affirmative steps to correct its internal records and report any discovered mistakes to the database administrator.

We appreciate the FCC's innovative and vigorous approach to dealing with the continuing problem of invasive and annoying robocalls. We are happy to respond to any questions.

cv-00071-LJM-TAB (S.D. Ind. filed Dec. 23, 2016) (Navient paid over \$17 million to settle a class action case alleging that it had *continued to call over 350,000* cell phone owners repeatedly, even after it had noted in its own records that the numbers were wrong.), *available at* <https://johnsoncpasettlement.com/Portals/0/Documents/Settlement%20Agreement%20and%20Release1.pdf>.

¹⁶ For example, if the database is updated daily by the telephone companies, then the call must have been made within one day of the check. On the other hand, some have discussed designing the database with a concomitant number aging requirement imposed on telephone service providers, of—for example—90 days. If no disconnected number were permitted to be reassigned within 90 days of disconnection, then providers would only need to report information to the database once every quarter, and callers would only need check the database once every quarter. In this situation, the caller would have to have checked the database at the beginning of the quarter and made the call during the quarter to qualify for the safe harbor.

Respectfully submitted, this the 26th day of September, 2017, by:

Margot Saunders

Margot Saunders
Senior Counsel
National Consumer Law Center
1001 Connecticut Ave, NW
Washington, D.C. 20036
202 452 6252, ext. 104
msaunders@nclc.org
www.NCLC.org

on behalf of the low-income clients of the National Consumer Law Center, and

Consumer Action
Consumer Federation of America
Consumers Union
National Association of Consumer Advocates
Public Citizen
Public Knowledge
U.S. PIRG.