

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

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| In the Matter of |) | |
| |) | |
| Advanced Methods to Target and Eliminate |) | CG Docket No. 17-59 |
| Unlawful Robocalls |) | |
| |) | |
| Rules and Regulations Implementing the |) | CG Docket No. 02-278 |
| Telephone Consumer Protection Act of 1991 |) | |

REPLY COMMENTS OF CTIA

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REPLY COMMENTS OF CTIA

I. INTRODUCTION AND SUMMARY.

CTIA respectfully submits these reply comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Second Notice of Inquiry (“*Second NOF*”)¹ in the above-captioned proceeding, which seeks input on, *inter alia*, “the best ways for service providers to report information about reassigned numbers, and how that information can be made available to robocallers in the most effective way, so that robocallers will be more likely to reach consumers who wish to receive the calls.”²

CTIA appreciates the Commission’s efforts to help reduce unwanted calls to reassigned wireless telephone numbers and mitigate Telephone Consumer Protection Act (“TCPA”) liability for callers acting in good faith. As CTIA explained in its initial comments, however, designing,

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

² *Id.* ¶ 2.

launching, and operating a new database of reassigned telephone numbers, as proposed in the *Second NOI*, would be a complex endeavor with unique operational, technical, and financial challenges.³ A diverse array of key stakeholders has also expressed concerns about the feasibility of the proposals in the *Second NOI* and the overall utility of a new reassigned numbers database. Many commenters also agree that none of the efforts or solutions discussed in the *Second NOI* will reduce unwanted robocalls from scammers, spoofers, or other bad actors.⁴

Moreover, in a separate proceeding, the Commission has rightly focused on identifying and taking actions to address the problem of unwanted robocalls from bad actors.⁵ Chairman Pai has made combatting unwanted robocalls his top consumer protection issue, and he recently called on the wireless industry to create a call authentication system for every phone call.⁶ Although the wireless industry is making strides in attacking the problem of unwanted robocalls, the proposals in the *Second NOI* should not divert the Commission and the wireless industry from this important effort.

In light of the record, the Commission should proceed cautiously as it considers any new database requirements proposed in the *Second NOI*, especially when other, more effective solutions are available. CTIA and a broad array of stakeholders representing good faith callers, including financial institutions, healthcare providers, education sector service providers, and others, agree that the *2015 TCPA Order* represents the root cause of increased TCPA liability

³ Comments of CTIA, CG Docket No. 17-59, at 9 (Aug. 28, 2017) (“CTIA Comments”).

⁴ See, e.g., *id.* at 3.

⁵ See Advanced Methods to Target and Eliminate Unlawful Robocalls, *Notice of Proposed Rulemaking and Notice of Inquiry*, 32 FCC Rcd. 2306 (2017) (“*Robocall NPRM/NOI*”).

⁶ See, e.g., Remarks of FCC Chairman Ajit Pai at Mobile World Congress Americas, San Francisco, CA (Sept. 12, 2017) (“Chairman Pai MWCA Remarks”), available at <http://bit.ly/2whf4hM>.

exposure resulting from calls unintentionally made to reassigned numbers. For this reason, CTIA encourages the Commission to take steps to reduce the number of robocalls to reassigned numbers and provide relief to good faith callers and consumers by: (1) adopting one or more safe harbors, including for callers who rely on existing marketplace solutions in good faith; and (2) revisiting the *2015 TCPA Order* to resolve issues raised in the record. Compared to a necessarily lengthy process of developing and launching any new reassigned numbers database, these actions are “low-hanging fruit” that the Commission can take promptly.

To the extent that the Commission moves forward with any of the proposals in the *Second NOI*, CTIA agrees with commenters that the Commission should first consult with the North American Numbering Council (“NANC”) to address any potential impacts to the numbering system and carriers’ operations. For example, the NANC is well positioned to provide guidance to the Commission on steps that may be necessary to harmonize the identification of reassigned numbers within the existing numbering classification framework and carrier systems as a prerequisite to any new reassigned numbers database. The NANC’s guidance and recommendations should inform the Commission’s cost-benefit analysis of any new reassigned numbers database proposed in the *Second NOI*.

II. THE COMMISSION SHOULD REVISIT AND REVISE THE *2015 TCPA ORDER*.

The record clearly illustrates that the Commission should promptly take steps to help reduce unwanted calls and the risk of TCPA liability facing good faith callers by revisiting and revising the *2015 TCPA Order*.⁷ A broad array of stakeholders representing good faith callers, including financial institutions, healthcare providers, education sector service providers, and

⁷ *Id.* at 6-7.

others, agree that the *2015 TCPA Order* represents the root cause of increased TCPA liability exposure resulting from calls unintentionally made to reassigned numbers.⁸

Commenters observe that the *2015 TCPA Order* “neither reflects the realities of how businesses and consumers communicate, nor how the number reassignment process currently works.”⁹ They explain that the FCC’s current “one call attempt” approach to reassigned numbers is unworkable because good faith callers have no realistic way to avoid calling reassigned numbers entirely (and, *e.g.*, do not know when that “one call attempt” has occurred because they are unaware of the reassignment).¹⁰ Further, commenters note that the *2015 TCPA Order* has resulted in a “continued rise in TCPA litigation that is flooding our court systems.”¹¹ These commenters urge the Commission to, for example, “shield legitimate businesses from TCPA litigation traps” by revising the Commission’s interpretation of “called party” to mean the intended recipient of the call.¹²

⁸ *See, e.g.*, Comments of ACA International, CG Docket No. 17-59, at 5 (Aug. 28, 2017) (“ACA Comments”); Comments of National Association of Federally-Insured Credit Unions, CG Docket No. 17-59, at 2 (Aug. 28, 2017) (“NAFCU Comments”) (“Credit unions have been unreasonably exposed to potentially crippling legal liability because of the 2015 Order’s restrictions on reassigned numbers.”); Comments of Anthem, CG Docket No. 17-59, at 2 (Aug. 28, 2017) (“Anthem Comments”); Comments of Tatango, Inc., CG Docket No. 17-59, at 2 (Aug. 28, 2017) (“Tatango Comments”); Comments of Internet Association, CG Docket No. 17-59, at 2-3 (Aug. 28, 2017) (“IA Comments”); Comments of Blackboard, Inc., CG Docket No. 17-59, at 3 (Aug. 28, 2017) (“Blackboard Comments”).

⁹ IA Comments at 2-3.

¹⁰ *See, e.g.*, NAFCU Comments at 2 (“The Order’s ‘constructive knowledge’ standard punishes credit unions acting in good faith because there is currently no clear process for verifying that a phone number has been reassigned. Although this Notice of Inquiry is a positive first step, the FCC should provide credit unions with further relief by reining in the standard for reassigned numbers. This Notice of Inquiry does not address the situation of accidental misdialed calls and credit unions still face significant liability under the TCPA in this instance.”); Anthem Comments at 2; Blackboard Comments at 3.

¹¹ Tatango Comments at 5.

¹² *See, e.g.*, ACA Comments at 5; *see also* Comments of the Student Loan Servicing Alliance, CG Docket No. 17-59, at 8 (Aug. 28, 2017) (asking the Commission to “revis[e] the misguided definition of ‘called party’ to mean the intended recipient.”) (“SLSA Comments”).

Revising the *2015 TCPA Order* before addressing the *Second NOI*'s proposals is not only the most resource-efficient way to accomplish the Commission's goals, but also the most logical. As discussed below, standing up a new database of reassigned numbers raises a number of complex issues; would require substantial time and financial resources; may not eliminate all unwanted calls to reassigned numbers; and would not reduce calls from scammers, spoofers, and other bad actors. By contrast, the Commission can fix the *2015 TCPA Order* through a streamlined proceeding that would take much less time than designing and operationalizing a new reassigned numbers database.¹³ Indeed, once the Commission fixes the *2015 TCPA Order*, "then the TCPA framework will be properly aligned, legitimate businesses will have a clear pathway to TCPA compliance, and other ideas – like a reassigned number database – can be more meaningfully explored."¹⁴

III. THE COMMISSION SHOULD ADOPT A SAFE HARBOR FOR CALLERS THAT UTILIZE MARKET-BASED TCPA COMPLIANCE SOLUTIONS.

As opposed to creating a new reassigned number database as proposed in the *Second NOI*, the Commission should devote its attention in the near term to creating incentives for the adoption and improvement of already-existing market-based solutions that can help good faith callers reduce unwanted calls to reassigned telephone numbers. Specifically, the Commission could help spur increasingly robust, market-based TCPA compliance solutions by establishing one or more safe harbors for callers who take reasonable steps to mitigate calls to reassigned

¹³ See, e.g., SLISA Comments at 5 (noting that because a reassigned numbers database "may take some years to implement and become operational," the Commission should, "[i]n the meantime," act to revise the definition of "called party").

¹⁴ ACA comments at 12-13.

numbers. At a minimum, there should be a safe harbor for callers who use one or more of the market-based TCPA compliance solutions available today.

Many commenters recognize the utility of market-based compliance solutions to minimize unwanted calls to reassigned numbers. For example, Noble Systems observes that “[t]here are several providers who already provide reassigned number validation services to address the reassigned number problem. Further, several of these providers purportedly offer a relatively high level of accuracy in being able to detect whether a number for a subscriber was reassigned.”¹⁵ Neustar’s commercial solution, for instance, “utilizes a multi-faceted approach that starts at an early stage in the phone number assignment process and is based upon insights from existing industry data and expertise.”¹⁶ In addition, “Syniverse’s Number Verification Service enables callers to verify the customer contact information they have by, among other things, proactively monitoring number event changes, such as a number deactivation or reassignment.”¹⁷ And Early Warning System’s mobile number verification solution “[h]as real-time connectivity to [mobile network operators] with over 99 [percent] wireless coverage.”¹⁸

As Neustar notes, “there is no 100 percent solution or ‘silver bullet’ available when dealing with disparate and complex datasets.”¹⁹ However, commenters question whether the database proposals in the *Second NOI* could outperform existing commercial offerings. As ACA notes, “[e]ven in the best of circumstances, given the huge number of reassignments that occur

¹⁵ Comments of Noble Systems, CG Docket No. 17-59, at 4 (Aug. 28, 2017) (“Noble Systems Comments”).

¹⁶ Comments of Neustar, CG Docket No. 17-59, at 2 (Aug. 28, 2017) (“Neustar Comments”).

¹⁷ Comments of Syniverse, CG Docket No. 17-59, at 2 (Aug. 28, 2017) (“Syniverse Comments”).

¹⁸ Mobile Number Verification, Early Warning (last visited Sept. 20, 2017), <http://bit.ly/2idGgLx>.

¹⁹ Neustar Comments at 3.

on a daily basis, it is hard to imagine that [a reassigned numbers] database could be one hundred percent accurate at any given time.”²⁰ Due to the inherent challenges of dealing with these large datasets, a reassigned numbers database would be a “complex and expensive solution that promises, at best, to be only marginally better than current number validation services.”²¹

Many commenters also agree that the Commission should establish a safe harbor for callers who rely on marketplace compliance offerings in good faith. Syniverse notes, for example, that a safe harbor will incentivize callers to use market solutions and reduce the number of inadvertent calls to reassigned numbers.²² The Electronic Transactions Association (“ETA”) states that a safe harbor for callers who use market solutions in good faith “would likely achieve the goal of reducing calls to reassigned numbers without the expense and administrative burdens that would be incurred through a Commission-created reassigned number database.”²³ As Tatango notes, “consistent with a pro-competitive telecommunications market, the Commission should allow companies that have already been working hard to create solutions to the challenge created by the *2015 TCPA Order* to compete to provide aggregated data services to businesses, robocallers, and platform providers across the country.”²⁴

A safe harbor would be fully consistent with the objective of ensuring that commercially available databases are accurate and reliable, and the Commission may adopt certain standards or

²⁰ ACA Comments at 7.

²¹ Noble Systems Comments at 1.

²² Syniverse Comments at 3.

²³ Comments of the Electronic Transactions Association, CG Docket No. 17-59, at 3 (Aug. 28, 2017) (“ETA Comments”).

²⁴ Tatango Comments at 11; *see also* Comments of the Coalition of Higher Education Assistance Organizations, CG Docket No. 17-59, at 3 (Aug. 28, 2017).

guidelines to accompany one or more safe harbors. Neustar recommends, for instance, that the Commission “facilitate the development of best practices for businesses to follow in verifying who they are calling that utilize commercial solutions meeting specified criteria. For example, the Commission could issue a best practices guide for businesses.”²⁵

IV. MANY COMMENTERS AGREE THAT THE COMMISSION SHOULD PROCEED CAREFULLY BEFORE CONSIDERING A NEW DATABASE SOLUTION TO HELP PREVENT UNWANTED CALLS TO REASSIGNED NUMBERS.

A number of parties have raised significant concerns about the feasibility of the proposals in the *Second NOI* and the overall utility of a new centralized database of reassigned telephone numbers. Given these legitimate concerns, the Commission should proceed cautiously as it considers any new database requirements, especially when other, more effective solutions such as those described above are available to mitigate unwanted calls to reassigned numbers.

Many commenters, for instance, question the utility of a new, centralized reassigned numbers database to help mitigate unwanted calls to reassigned telephone numbers. The Chamber of Commerce, for example, expresses “concerns about the establishment, maintenance, use, and practicality of a reassigned numbers database in any of the proposed forms and questions whether it will ultimately serve to perpetuate the abusive litigation already stemming from the outdated language of the [TCPA].”²⁶ The Chamber also notes that “the proposed database is an unwieldy solution to a problem that could be solved in a much easier fashion.”²⁷

²⁵ Neustar Comments at 3.

²⁶ Comments of the Chamber of Commerce, CG Docket No. 17-59, at 2 (Aug. 28, 2017).

²⁷ *Id.*

Commenters also echo CTIA’s concerns²⁸ that none of the efforts or solutions discussed in the *Second NOI* will reduce unwanted robocalls from bad actors. ETA observes that a reassigned numbers database will do nothing to prevent calls from scammers and spoofers: “[C]ompanies that are operating in intentional violation of the TCPA or with willful blindness to its restrictions are unlikely to utilize any reassigned number database or take any material steps to comply with the law. Even if a database is created, these companies will continue business as usual, and it is highly unlikely that consumers will see any reduction in the number of unwanted pre-recorded, autodialed, and artificial voice calls from such entities.”²⁹ ACA similarly concludes that “if a reassigned number database is established, illegal robocallers – who have zero interest in following the law, much less scrub against any new reassigned number database – will still be operating unlawfully while legitimate businesses seeking to communicate with consumers – who expressly consented to be called – will face even more regulatory burdens under the TCPA.”³⁰

Moreover, in a separate proceeding, the Commission has rightly focused on identifying and taking actions to address the problem of unwanted robocalls from bad actors.³¹ Chairman Pai has made combatting unwanted robocalls his top consumer protection issue, and he recently called on the wireless industry to create a call authentication system for every phone call that can help the Commission crack down on malicious robocallers who hide their true phone number to

²⁸ CTIA Comments at 3.

²⁹ ETA Comments at 2.

³⁰ ACA Comments at 5-6.

³¹ See *Robocall NPRM/NOI*.

evade call-blocking tools and dupe consumers.³² The wireless industry is making strides in attacking the problem of unwanted robocalls by developing tools and services that will give consumers meaningful relief, and the proposals in the *Second NOI* should not divert the Commission and the wireless industry from this important effort.

Commenters also highlight the myriad financial, operational, and technical challenges inherent to creating a new FCC-mandated database of reassigned numbers. Telcordia, for example, describes the complexities in requiring carriers to track reassigned numbers: “As there are no real-time reassigned number databases to integrate with a central database, voice providers would be required to first devise their own systems and structures. Those costs and burdens would be in addition to what also would be required for the creation of operational, technical, and financial systems to implement and maintain the sort of centralized real-time number database the FCC seeks to make available to commercial callers.”³³ In addition, the Alliance for Telecommunications Industry Solutions (“ATIS”) disagrees with the *Second NOI*’s assumption that voice providers would not be “greatly burdened” if they were required to report disconnected and reassigned numbers.³⁴ ATIS “maintains that the industry does not in fact generally track when disconnected numbers are reassigned in a way that would be useful or applicable to call authentication,” and it is “unaware of any carrier that already tracks this information for any purpose.”³⁵ Telcordia’s and ATIS’s statements align with CTIA’s concerns

³² See Chairman Pai MWCA Remarks.

³³ Comments of Telcordia, Inc. d/b/a iconectiv, CG Docket No. 17-59, at 4 (Aug. 28, 2017) (“Telcordia Comments”).

³⁴ See *Second NOI* ¶ 14.

³⁵ Comments of the Alliance for Telecommunications Industry Solutions, CG Docket No. 17-59, at 2-3 (Aug. 28, 2017) (“ATIS Comments”).

that neither the *2015 TCPA Order* nor the Commission’s number classification system explains how to categorize “reassigned numbers” within the existing numbering framework. Solving for these ambiguities could have a significant impact and burden on the carriers’ existing numbering operations and systems.³⁶

V. THE COMMISSION SHOULD ENGAGE THE NORTH AMERICAN NUMBERING COUNCIL FOR FURTHER GUIDANCE ON DATABASE ISSUES.

To the extent that the Commission moves forward with any of the proposals in the *Second NOI*, CTIA agrees with commenters that the Commission should first consult with the NANC to address any potential impacts to the numbering system and carriers’ operations.³⁷

Although the *Second NOI* proposes to leverage certain utilization data that carriers are obligated to maintain under the Commission’s numbering rules, commenters have found that the *Second NOI*’s proposals raise many complex numbering questions that warrant the NANC’s careful, expert consideration. For example, it is unclear what kind of impact a centralized reassigned numbers database would have on carriers’ existing numbering operations and systems. The Commission’s rules require carriers to classify their numbering resources as

³⁶ CTIA Comments at 12-13.

³⁷ See, e.g., CTIA Comments at 9-12; Telcordia Comments at 8 (“Should the FCC proceed to establish a reassigned number database, iconectiv recommends that it be referred to the NANC. The NANC is a longstanding well-respected advisory committee comprised of the broad spectrum of stakeholders – wireline, wireless, VoIP, interexchange, state public utility commission, state consumer protection, cable telephony and trade associations – that are well positioned to evaluate the technical, operational, and financial considerations necessary for a reassigned number database.”); ETA Comments at 3 (“Alternatively, the Commission should request that the [NANC] – the Commission’s advisory committee of telephone number experts – evaluate and provide recommendations on the scope, feasibility, costs, and benefits of a new database solution.”); Comments of NTCA, CG Docket No. 17-59, at 4 (Aug. 28, 2017) (“NTCA respectfully suggests that the Commission seek recommendations on operational, financial and other specifics from the advisory [NANC] and its applicable work groups.”).

administrative, aging, assigned, available, intermediate, or reserved, but they do not require carriers to systematically track “reassigned numbers.”

Moreover, as CTIA noted, neither the Commission’s classification system nor the *2015 TCPA Order* defines “reassigned numbers” or comprehensively identifies the different scenarios that could lead to a reassignment.³⁸ As ATIS explains, “[c]arriers comply with the Commission’s rules aimed at ensuring efficient use of telephone numbers by aging disconnected numbers, and then placing appropriately-aged numbers back into the pool of numbers that can be assigned to new customers, but there is no regulatory reason – and ATIS is aware of no business reason – for carriers to undertake the sort of granular tracking of individual numbers that the *Second NOI* contemplates mandating.”³⁹

As another example, Telcordia correctly observes that because “there are no real-time reassigned number databases to integrate with a central database,” it could be necessary for carriers “to first devise their own systems and structures,” in addition to “the creation of operational, technical, and financial systems to implement and maintain the sort of centralized real-time number database the FCC seeks to make available to commercial callers.”⁴⁰ This would affect “how voice providers could report information about the reassignment of NANP numbers they have been allocated.”⁴¹

The NANC can provide further guidance on these and other potential impacts to the numbering classification framework and carriers’ existing numbering practices. Accordingly,

³⁸ CTIA Comments at 12.

³⁹ ATIS Comments at 2-3.

⁴⁰ Telcordia Comments at 4.

⁴¹ *Id.*

the Commission should not proceed with any new reassigned numbers database solution until the NANC provides guidance on these critical numbering issues.

VI. CONCLUSION.

In light of the record, the Commission should proceed cautiously as it considers the proposals in the *Second NOI*. Rather than seeking to mandate a new, centralized database of reassigned telephone numbers, the Commission should revisit the *2015 TCPA Order* and seek to spur improvements to available marketplace TCPA compliance solutions through a safe harbor approach. At a minimum, the proposals in the *Second NOI* warrant additional study from the Commission and the NANC to evaluate the impact of a reassigned numbers database on the numbering system and carriers' numbering operations. And as the Commission conducts a thorough cost-benefit analysis of any proposals, it must remain cognizant of the fact that unlawful spoofers, scammers, and other bad actors will ignore any new database. Therefore, the Commission and the wireless industry should remain focused on their ongoing efforts to address unwanted robocalls from these bad actors, including by facilitating call authentication solutions.⁴²

⁴² See *Robocall NPRM/NOI*; see generally Comments of CTIA, CG Docket No. 17-59 (June 30, 2017).

Respectfully submitted,

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