



December 3, 2018

## EX PARTE PRESENTATION

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Ex Parte* Presentation, CG Docket No. 17-59, *Advanced Methods to Target and Eliminate Unlawful Robocalls*

Dear Ms. Dortch:

The American Cable Association, NTCA-The Rural Broadband Association, CTIA, and USTelecom support the Federal Communications Commission's (Commission) goals to protect consumers and reduce unwanted robocalls. We, along with our wireless and wireline provider member companies, have taken significant steps over the years to reduce unwanted robocalls to consumers. For example, our member companies offer call-blocking solutions, develop authentication technologies, work proactively with law enforcement stakeholders, support best practices, and use a variety of efforts to protect consumers.

We appreciate that the Commission's *Draft Second Report & Order*<sup>1</sup> seeks to address concerns from callers and consumers about unwanted calls to reassigned telephone numbers while attempting to minimize unnecessary burdens on voice providers.<sup>2</sup> With these twin goals in mind, we write to identify three areas where modest modifications to the *Draft Second Report & Order* and other prompt action can support the Commission's objectives in this proceeding.

**First**, the Commission should take steps to ensure that the work of the North American Numbering Council (NANC) is successful and ultimately advances the Commission's goals. The *Draft Second Report & Order* directs the NANC to issue technical recommendations for implementing and operating the new reassigned numbers database, a recommended fee structure, and fee amounts within six months of the release of the final *Second Report & Order*.<sup>3</sup>

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<sup>1</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Draft Second Report and Order, CG Docket No. 17-59, FCC-CIRC1812-03 (Nov. 21, 2018) (*Draft Second Report & Order*).

<sup>2</sup> See, e.g., *id.* ¶ 64 ("We have carefully crafted requirements to minimize costs and have declined requests to include additional types of data that go beyond the minimum necessary to enable callers to determine whether a number has been permanently disconnected after a date submitted by the caller.").

<sup>3</sup> *Id.* ¶ 56.

Accurately designing and finalizing such a complex set of frameworks within six months would be difficult in the best of circumstances. But that expectation is even more challenging here. The NANC is a relatively small organization that already faces imminent deadlines on substantial matters (*e.g.*, delivering the report on the National Suicide Hotline Improvement Act by February 11, 2019). It is also not clear that the NANC has the internal resources and expertise to address comprehensively the cost and usage model or fee structure issues. Moreover, we expect that the NANC may not easily be able to apply the model used to recover the North American Numbering Plan Administrator's costs given the substantial differences with the proposed reassigned numbers database framework.

To help ensure that the NANC produces a robust set of recommendations, the Commission should give the NANC at least nine months to complete its work instead of six. Moreover, the Order should make clear that in developing the technical recommendations for implementing and operating the new reassigned numbers database, the NANC should consider minimizing the burdens on reporting providers as one of its primary goals. Although the *Draft Second Report & Order* directs the NANC to “consider the most cost-effective way of administering the database,” this language is vague and could be read to justify creating a system that is low-cost for database users but extremely costly for reporting service providers (and their customers, whom the *Draft Second Report & Order* anticipates will be ultimately responsible for covering reporting costs).<sup>4</sup> Because the database as it is imagined in the *Draft Second Report & Order* ultimately imposes costs on those voice customers, it must be incumbent on the database administrator to ensure that those costs are minimal.

To meet this objective and others, the Commission should build in processes to ensure that the NANC can leverage expert and stakeholder input. The Commission should direct the NANC to seek input from a variety of interested stakeholders, especially voice providers and their numbering administration vendors who are not NANC members but can provide useful input into the development of the recommendations.<sup>5</sup> Moreover, the Commission should encourage the NANC to issue a Request for Proposals to obtain the information it needs from database administration experts and vendors who have greater visibility into the salient reassigned numbers cost and usage issues. While the Commission should not foreclose the possible consolidation of the Administrator's functions with those of the North American Numbering Plan Administrator and Pooling Administrator, it should first allow the NANC to evaluate and provide its recommendation on the appropriate path. These measures would ensure accuracy and promote transparency—after all, the ultimate determination of the burden of the database on providers and their customers will depend on the NANC's technical and operational recommendations. Finally, because the magnitude of the burden on providers will be determined by the NANC recommendations, the Commission should wait to submit its Paperwork Reduction

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<sup>4</sup> *Id.* ¶ 50 (“Accordingly, we anticipate that providers will recover these [reporting] costs in their existing fees and charges.”).

<sup>5</sup> For example, the American Cable Association is not, and has not found the need to participate in the NANC, and does not believe that its members who are often small VoIP providers are participants at all or sufficiently represented by those who may be.

Act analysis of the final rules until the details regarding the interface specifications and reporting format recommendations of the NANC are shared with the Commission.

More fundamentally, while the *Draft Second Report & Order* contains tentative conclusions regarding the technical, financial, and operational feasibility of the database (in particular that providers' reporting costs will be minimal<sup>6</sup>), it is possible that the NANC, after considering available input, will develop recommendations that differ from the tentative conclusions. If the Commission's cost-benefit analysis as described in the *Draft Second Report & Order* proves inconsistent with the NANC's recommendations, the Commission should ensure that it retains the flexibility to evolve its database rules by adopting a mechanism to account for intervening factual or legal developments prior to launch, and should expressly contemplate that modifications to the existing implementation plans may be necessary and appropriate depending upon the NANC's findings. Even once the database is available, the Commission should establish a process to evaluate the ongoing utility of the database to callers and burden on providers, including, for example, evaluating after two years whether the database has helped to reduce unwanted calls to consumers.

**Second**, the Commission should build in a measure of flexibility for voice providers to comply with the proposed 45-day minimum aging period. While providers expect to be able to meet the 45-day aging requirement under routine conditions, there are some circumstances in which a voice provider may need to reassign a disconnected number back to the original subscriber (or somebody within the household) without waiting 45 days. For example, as children grow up, they may want to keep their number from a family plan but establish their own account. Providers should be permitted to reassign the child's telephone number to their individual account once that telephone number is permanently disconnected from the family plan. As another example, providers may face a temporary numbering exhaust problem in which they run out of numbers in a block and need to reassign telephone numbers from that block within the 45-day window, rather than utilizing a whole new number block.

The Commission has recognized that mandatory aging limits may not always be appropriate in the context of natural disasters.<sup>7</sup> Because these exceptional circumstances are often fact-specific, difficult to generalize *ex ante*, and potentially too numerous to resolve via individual waiver requests, the Commission should revise the proposed 47 C.F.R.

§ 52.15(f)(1)(ii) in the *Draft Second Report & Order* to clarify that a voice provider may

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<sup>6</sup> *Second Draft Report and Order* ¶ 50 ("We agree with commenters asserting that providers' internal costs of tracking and reporting permanent disconnection dates to the Administrator will be routine—and minimal—operational expenses similar to those expenses providers already incur to report other number usage data.").

<sup>7</sup> See, e.g., *Telephone Number Portability, Numbering Resources Optimization*, CC Docket Nos. 95-116 and 99-200, Order, DA 18-1193 (rel. Nov. 23, 2018) (temporary waiver for certain areas of California affected by wildfires); *Telephone Number Portability, Numbering Resources Optimization*, CC Docket Nos. 95-116 and 99-200, Order, DA 18-951 (rel. Sept. 14, 2018) (temporary waiver for areas in North Carolina, South Carolina, and Virginia affected by Hurricane Florence); *Telephone Number Portability, Numbering Resources Optimization*, Order, 32 FCC Rcd 7005 (2017) (temporary waiver for the U.S. Virgin Islands and Puerto Rico in wake of Hurricane Maria).

reassign a number in fewer than 45 days if consistent with reasonable number management principles. Such a modification would be consistent with the expectation that the new database would contain data only about telephone numbers that are “permanently disconnected” after 45 days, as well as the Commission’s consumer-oriented numbering policies.<sup>8</sup>

**Finally**, we encourage the Commission to address TCPA liability issues promptly and provide a safe harbor for callers that utilize the new database. Doing so will promote use of the new database and support the Commissions’ cost estimates, while also reducing further the potential for unwanted calls to reassigned numbers.

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We thank the Commission for its attention to these important issues and its continued efforts to fight unwanted robocalls. Please contact us with any questions.

Respectfully submitted,

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<sup>8</sup> The Commission could separately address the impact that calls to telephone numbers reassigned within the 45-day period would have under TCPA liability.