

**Before the Federal Communications Commission**

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*IN RE*  
IMPLEMENTATION OF THE  
MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012  
ESTABLISHMENT OF A  
PUBLIC SAFETY ANSWERING POINT  
DO-NOT-CALL REGISTRY

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*ON NOTICE OF PROPOSED RULEMAKING*

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**COMMENTS OF THE  
NATIONAL EMERGENCY NUMBER ASSOCIATION**

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CG Docket No 12-129

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The National Emergency Number Association (“NENA”) respectfully submits the following comments in response to the *Notice of Proposed Rulemaking* adopted by the Commission on May 21<sup>st</sup>, 2012, in this proceeding.

**COMMENTS**

On the front lines of our nation’s public safety enterprise, telecommunicators at Public Safety Answering Points (PSAPs) and their supervisors, managers, and governing authorities field hundreds of thousands of calls each day. Many of those calls come at a critical moment in the life of the caller – the moment a disaster or illness or act of violence places the caller in immediate distress. In nearly every case, the telecommunicator and a team of field responders work together to provide the caller with needed aid. Each day, however, hundreds or even thousands of automatically-dialed calls tie up PSAPs’ 9-1-1 trunks,

10-digit emergency lines, and administrative lines. For PSAPs, these unwanted calls are not only an annoyance, but represent a significant detriment to public safety as they risk blocking legitimate emergency calls from the public or critical communications between public safety agencies. NENA worked closely with Congress to craft the terms of the Next Generation 9-1-1 Advancement Act of 2012,<sup>1</sup> and we are pleased that the Commission has moved swiftly to implement its terms. As the only organization devoted *solely* to the study, advancement, and implementation of 9-1-1 as the nation's universal emergency number, NENA represents more than 7,000 public safety professionals with responsibility for the governance, management, and supervision of 9-1-1 authorities, PSAPs, and individual watches, as well as private-sector 9-1-1 professionals who provide the products, services, and solutions that make 9-1-1 systems work. Based on the collective knowledge and experience of these professionals, we make the following recommendations to the Commission:

**I. The Registry should be permissive in scope and broadly accessible.**

NENA agrees with the Commission that the terms of the Next Generation 9-1-1 Advancement Act (NGAA) provide PSAPs with broader protections than those of the Telecommunications Consumer Protection Act of 1996 (TCPA).<sup>2</sup> Indeed, NENA worked closely with congressional staff to ensure that they do: Because the TCPA do-not-call provisions were primarily aimed at consumers, the operation of the consumer registry has, over time, proven less than ideal for PSAPs. For example, the consumer registry is effective against only telemarketers, limits the number of lines that can be registered using a single email address, and previously limited the period of time

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<sup>1</sup> Next Generation 911 Advancement Act of 2012, 47 U.S.C. § 1473 *et seq.* (Supp. 2012).

<sup>2</sup> Telecommunications Consumer Protection Act of 1991, 47 U.S.C. § 227 (2012).

during which a number could remain registered.<sup>3</sup> NENA and others therefore proposed the creation of a specialized do-not-call registry that would not suffer from the limitations of the consumer registry.

***A. Any telephone number certified by a PSAP should be registrable.***

NENA believes that providing PSAPs with broad discretion to determine the types of telephone numbers that may be placed on the registry is important for several reasons. For example, prohibiting automatically-dialed calls from reaching 9-1-1 trunks<sup>4</sup> will mitigate the single greatest harm produced by the delivery of unwanted calls to PSAPs: the blocking of a legitimate emergency call to 9-1-1. In addition, because each call that rings to a telecommunicator from a 9-1-1 trunk *must* be answered, reducing the incidence of unwanted calls will effectively increase the carrying capacity of a PSAP, preserving increasingly scarce public funds. Reducing the incidence of unwanted calls placed to 10-digit emergency lines (many of which also ring directly to telecommunicators) will have a similar effect. For “administrative” lines, too, the benefits from reducing unwanted calls are significant: These lines are often used to coordinate responses between public safety agencies, particularly when higher levels of command staff become involved in incident or resource management and coordination. Finally, providing broad discretion would also benefit the operators of automatic dialing equipment for whom calls to PSAPs do not represent an opportunity to sell, solicit, or advocate on behalf of

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<sup>3</sup> While registrations no longer expire, thanks to the Do-Not-Call Improvement Act of 2007, NENA is concerned that routine re-assignments of telephone numbers among and between public safety agencies within a particular jurisdiction could result in their accidental de-registration.

<sup>4</sup> Although NENA considers it a best practice to deploy 9-1-1 service using trunk groups with non-dialable TNs, we are aware that this practice has not been universally observed.

a political cause or candidate by reducing the number of unsuccessful calls they place in the course of reaching their target audiences.

Although the points above highlight the seriousness of unwanted calls disrupting the operation of specific types of trunks and lines, NENA recommends that the Commission avoid casting the types of TNs that can be registered in specific terms. While researching the types of trunks and lines that PSAPs might choose to register, NENA discovered that there is some degree of confusion among PSAP and telephone company personnel as to precisely how certain types of TNs should be described. For example, NENA discovered that some PSAP and carrier personnel refer to test numbers that point to 9-1-1 trunk groups as “dialable pANIs” for historical reasons. Of course, true “pseudo Automatic Number Identification” database entries should never, in fact, be dialable TNs. Thus final rules that describe the class of registrable numbers more explicitly could inadvertently suggest that such dialable test numbers are non-registrable. NENA therefore recommends that the Commission craft a rule that allows verified PSAP personnel to register *any* TN which they can certify to be used “for the provision of emergency services to the public or for communications between public safety agencies.”<sup>5</sup>

***B. Secondary PSAPs should have equal rights of access to the registry.***

NENA agrees with the Commission’s conclusion that the benefits of the registry should be extended to secondary PSAPs.<sup>6</sup> Secondary PSAPs handle calls that have already been answered by primary PSAPs and transferred for further processing by service- or jurisdiction-specific personnel, or calls dialed to service- or jurisdiction-specific 10-digit emergency lines. The gravity of calls received and placed by secondary PSAPs is no less than that of those

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<sup>5</sup> NGAA, 47 U.S.C. § 1473(b)(1) (2012).

<sup>6</sup> *NPRM* at ¶ 9.

received and placed by primary PSAPs, and NENA therefore believes that secondary PSAPs should have equal rights of access to the registry.

***C. Sources such as NENA’s North American Resource Database represent only a starting point for the aggregation of TNs that should be registrable.***

NENA is pleased that the Commission calls attention to the PSAP data aggregated over many years by NENA.<sup>7</sup> The North American Resource Database (NRDB) is an important repository of primary-source-verified information about PSAPs and critical PSAP contacts that enables more efficient transfers of calls between services and jurisdictions, and faster notification of appropriate PSAPs by carriers and other service providers in the event of network, database, or other service outages. In addition, the NRDB can be updated by PSAP personnel, directly, or in response to inquiries from NENA or our contractors. NENA believes that the NRDB can serve as a useful starting point for the establishment of the PSAP registry, particularly for the registration of administrative and 10-digit emergency lines.

However, neither the NRDB or the Commission’s own PSAP database have ever attempted to capture the TNs of dialable 9-1-1 trunks, test TNs that point to 9-1-1 trunks, or other classes of numbers that PSAPs may find it beneficial to register. NENA therefore recommends that the Commission utilize sources such as the NRDB and its own registry only as starting points for the establishment of the registry. Doing so will reduce the administrative burden for PSAPs by allowing front-end registry systems to pre-populate some fields based on information entered by a user, and to trap errors based on inconsistencies between user-provided data and existing sources. Ultimately, however, compliance with the statute will require affirmative action on the part of PSAP administrators or

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<sup>7</sup> *NPRM* at ¶ 10.

other verified personnel to register the TNs of lines and trunk groups used for the provision of emergency service.

***D. Authorization to register TNs should be extended to progressively lower levels of government on a rolling basis.***

NENA recognizes the difficulty the Commission may encounter in operating a successful do-not-call registry if the class of persons who are eligible to register TNs is either overly narrow or overly broad. For example, 9-1-1 governance models vary from state to state and even from county to county, making it difficult to define precisely who qualifies as a PSAP administrator in any given jurisdiction. Because 9-1-1 is an inherently local service, NENA believes that it is important for individual PSAP administrators at the local level to have the ability to place TNs on the registry. At the same time, however, NENA recognizes that allowing registration only by local officials could impose undue burdens on PSAPs and the registry administrator, particularly when county, regional, or state officials may have access to existing aggregations of registrable TNs.

Because the statute allows certification by “verified public safety answering point administrators” but omits a definition of that term, NENA believes the Commission should read that provision to encompass, *e.g.*, 9-1-1 authority administrators, council of governments administrators with responsibilities for 9-1-1 management, and state 9-1-1 administrators. Based on such a reading, the Commission could minimize the burden of initially setting up the registry by authorizing access to it on a top-down basis. For example, the Commission could initially allow only state 9-1-1 administrators or their equivalents to enter TNs on the registry. This would provide a small but knowledgeable user group to effectively beta-test the registry and its interfaces, and produce a valuable cadre of trained personnel who can assist with efforts to promote the registry and to train personnel at lower levels of government in its use. Finally, state administrators might be

able to provide the registry with large initial data sets at a lower transactional volume than could other administrators with narrower geographic or professional scopes. Following the roll-out to state administrators, the Commission could allow access to the registry by regional (district, COG, etc.) officials, county officials, and, finally, managers of individual PSAPs. NENA believes that such a phased approach will ensure a successful and minimally-invasive launch of the registry.

1. *At a minimum, mail-back verification and electronic certification should be used to confirm the eligibility of an administrator seeking to place TNs on the registry.*

Because of the significant protections afforded to telephone numbers placed on the registry and the severity of the penalties associated with making automatically-dialed calls to registered TNs, NENA believes that the ability to place TNs on the registry should be strictly controlled. To ensure an appropriate level of control, NENA recommends that the Commission implement two practices aimed at preventing registration of ineligible TNs. First, the Commission should require an administrator to certify, under penalty of perjury, that he or she is eligible to register numbers and that the numbers she or he is registering are eligible for registration. This certification should, in general, be electronic, so as speed the registration of eligible TNs. Second, the Commission should require a response from a valid .gov email address or on official letterhead from a government postal address.<sup>8</sup> Verification processes such as these are already familiar to PSAP administrators and managers at every level of gov-

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<sup>8</sup> NENA recognizes that many local governments have not registered .gov domains and that the administrative process for doing so can be burdensome and difficult to navigate. Consequently, there will continue to be a need for a postal mail option until either an authoritative list of government domain names comes into existence or all state, regional, and local government entities abandon the use of .org and other non-governmental top-level domains.

ernment who are frequently charged with controlling access to sensitive information and facilities, and NENA believes that, taken together, they provide an appropriate balance between the need to minimize the administrative burden placed on PSAP administrators while maximizing the security and integrity of the registry.

2. *The Commission should work with NENA and other stakeholders to publicize the Do-Not-Call registry.*

In order for the registry to successfully reduce the number of unwanted calls made to PSAPs by the operators of automatic dialing equipment, PSAP administrators at all levels of government must be made aware of the registry's existence and the procedures for registering eligible TNs. To ensure the widest possible dissemination of information about the registry, NENA recommends that the Commission proceed along two fronts: engaging stakeholders and leveraging existing communications channels.

To better engage with PSAP stakeholders, the Commission should work with NENA and others in the public safety community to design a coordinated publicity campaign aimed at reaching all of the administrators at a given level of government during the relevant roll-out time period for that group. For example, during the initial roll-out to state 9-1-1 administrators, the Commission could work with NENA and the National Association of State 9-1-1 Administrators to host conference calls or webinars demonstrating the features of the registry and its interfaces and soliciting feedback about how improvements might be made to the registry before access is extended to administrators at lower levels of government. Later, as the scope of eligible administrators and managers is expanded, the Commission could work with NENA and others to coordinate less costly campaign elements like mass email efforts, website updates, etc. NENA believes that such an approach will ensure community buy-in and lead to significant synergies as state administrators pass on valuable information to regional and county administrators during the course of their routine communications.

In addition to engaging stakeholders, NENA recommends that the Commission leverage its existing communications channels to PSAPs to publicize the availability and features of the registry. The Commission might, for example, engage in a direct-mail campaign targeted at PSAPs on the Commission's or NENA's registry that have not registered any TNs after some date certain. Earlier on, the Commission might place a "Did-You-Know?" statement on periodic notices sent to public safety land-mobile radio licensees the registered administrators of which often share space in PSAPs with 9-1-1 personnel. Both methods leverage existing assets and could provide substantial publicity about the registry and its features at minimal cost to the Commission.

## **II. The process for verification of registered TNs should be minimally burdensome for PSAPs.**

One of the key motivating factors for NENA's advocacy on behalf of a specialized do-not-call registry for PSAPs was the need for longevity in the validity of TN registrations: Until 2007 protections afforded to emergency lines placed on the consumer registry would periodically expire, leaving PSAPs vulnerable to unwanted calls from the operators of automatic dialing equipment. As discussed above, the potential impact of such a vulnerability is large. Conversely, NENA believes that the risk posed by the continuation of no-longer-eligible numbers on the registry are minimal: At worst, consumers who may have wanted to receive telemarketing, charitable solicitation, survey, or political advocacy calls would miss opportunities to receive those calls. However, based on the number of TNs placed on the consumer registry since its inception, NENA believes that such risks are negligible.<sup>9</sup> On balance, therefore, NENA recommends that the Commission design a

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<sup>9</sup> National Do-Not-Call Registry Databook for 2011 4 (*available at: <http://ftc.gov/os/2011/11/111130dncdatabook.pdf>* (last accessed July 23, 2012)). In 2011, there were more than 209 million active telephone numbers on the consumer registry.

verification process for registered TNs that emphasizes longevity of registration and ease of renewal. In particular, NENA believes that PSAP administrators should be required to affirmatively re-verify the registration of TNs no more frequently than once every seven years.

***A. Administrators should have access to flexible, intuitive tools to manage registered TNs.***

Based on extensive conversations with PSAP administrators, NENA believes that registrable PSAP TNs change only infrequently – on the order of once per decade for some eligible TNs. Because existing 9-1-1 and E9-1-1 services are still largely fixed-network services, heavily dependent on the physical architecture of local telephone systems, changes to TNs that point to dialable 9-1-1 trunk groups would represent the least-frequently changing eligible numbers in most cases. Similarly, 10-digit emergency numbers are usually changed only infrequently in order to reduce the incidence of failed contacts resulting from continued public use of previously-publicized TNs. At the most-frequent end of the scale, PSAP administrative numbers may change every three to five years as telephony contract expire or equipment is updated. However, changes in every type of eligible TN can occur in response to PSAP creation, consolidation, division, or disbandment. Consequently, NENA believes that PSAP administrators and managers should have flexible tools at their disposal to actively manage their registered TNs.

A minimum set of management tools should include the following: an add-change-delete tool for PSAPs, an add-change-delete tool for administrators and managers, an add-delete tool for TNs, and a recovery tool to permit new administrators to obtain access to the registry on an expedited basis when unexpected personnel changes lead to lapses in positional continuity. To the greatest extent possible, these tools should leverage existing data so as not to require duplicative entry of, for example, physical address information each time a record or field is changed. Finally, a self-auditing tool that provides admin-

istrators and managers with a clear trail of record- and field-level transactions will likely prove helpful as PSAPs undergo consolidations and divisions.

***B. Verification procedures should leverage inferential data to reduce the frequency of required formal actions.***

NENA believes that many of the formalities of verification relied upon by the Commission in other contexts could be safely forgone in the operation of the PSAP Do-Not-Call Registry *if* the Commission leverages data that can be inferred from the actions of registry users. A traditional verification procedure would encompass mailing PSAPs with registered TNs a septennial notice requiring them to respond in writing to continue the registration of their TNs. However, a more modern approach would allow PSAP managers and administrators to certify the currency of their registered TNs during any transaction (add, change, delete) involving one or more of those numbers. Similarly, the Commission could infer that a registration is still current based on the assignment of that TN to a different PSAP, or from a change in the designated administrator for a particular TN. NENA believes that such procedures could significantly reduce the time required for the Commission to handle TN verifications and for PSAP administrators to complete them. Consequently, we encourage the Commission to explore the types of inferential data that could be useful in reducing the necessity for more formal verification actions, and to incorporate the results of that work into its final rules.

**III. Access to the Registry should be strictly controlled.**

As the Commission rightly recognizes, the information contained on the PSAP registry will be sensitive, particularly in its aggregate form. NENA therefore supports the Commissions proposed regime for granting and tracking access to the registry, and its alignment with the successful aspects of the FTC-administered consumer registry.

**A. *Only operators of automatic dialing equipment should be permitted access to the registry.***

NENA strongly agrees with the Commission that *only* the operators of automatic dialing equipment should be permitted access to the registry.<sup>10</sup> As the Commission correctly recognizes, the market for operation of telephone campaigns (whether for telemarketing, charitable solicitation, surveying, or politicking) is now the subject of a specialized industry. Consequently, NENA agrees with the Commission's conclusion that access to registry data should not extend to third parties who purchase calling services from the operators of automatic dialing equipment. Providing such access would serve no purpose of which NENA is aware, and would place PSAPs at substantial risk of exposure to certain types of cyber attack, including, *inter alia*, a distributed denial-of-service attack.

1. *Operators of automatic dialing equipment should be required to register the actual TNs of their outgoing trunks or lines in addition to any configurable Caller ID data strings.*

NENA has previously noted the important distinction between the customer-provided and often-spoofed data in a caller ID (CID) string and the carrier-provided data in an Automatic Number Identification (ANI) database.<sup>11</sup> This

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<sup>10</sup> *NPRM* at ¶ 18.

<sup>11</sup> *In re Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, *Comments of the National Emergency Number Association* at 2-4 (Apr. 2011). NENA recognizes, however, that certain VoIP arrangements may allow operators of automatic dialing equipment to inject configurable CID information into ANI databases at call time. When this happens, transporting and terminating carriers may honor the presented CID as having validity equal to that of a regular ANI entry acquired through the service order entry process. This quirk of existing E9-1-1 systems underscores the importance of requiring registration of *both* ANI entries and configurable CID data used in conjunction with a dialing campaign.

distinction is particularly important in the context of the registry: Because PSAP 9-1-1 systems utilize ANI rather than CID to reliably determine the TN and location of a caller, it is ANI data from unwanted calls that will likely provide the basis for any enforcement action the Commission may take against an operator who violates the Act. Consequently, NENA considers it important that the Commission require, as a condition of registration, that operators of automatic telephone dialing equipment provide and periodically update the TNs that appear as ANI records for each of their trunks or lines used in automatic dialing operations, as well as the CID data that will be used for any particular dialing campaign. This will ensure that PSAPs have sufficient information to identify the operators responsible for unwanted calls and to precisely identify those parties to the FCC for possible enforcement action.

*2. Operators of automatic dialing equipment should be notified when data they have requested is updated.*

As the Commission notes,<sup>12</sup> it may be desirable for operators of automatic telephone dialing equipment to access less than the full registry when a nation-wide dialing campaign is not required. NENA agrees, and believes that offering and tracking access to subsets of the registry could provide an opportunity to increase the frequency with which updated PSAP TNs are deleted from operators' calling lists. For example, suppose that an operator of automatic dialing equipment requests and receives access to registry data encompassing the 703 (northern Virginia) area code. In the event that a TN in the 703 range is added to the registry after the dialer receives access to the relevant registry data but before the dialer is required to undertake its next periodic update, registry software could automatically notify the dialer of the addition to prevent the dialing of unwanted calls to that number. Assuming appropriate protocols can be negotiated with dial-

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<sup>12</sup> *NPRM* at 16.

ers, this process could even be automated. NENA therefore recommends that the Commission explore the possibility of creating a notify-on-change regime to reduce the level of unwanted calls below that which can be achieved with only a periodic-update process.

***B. Registry data should be protected in storage, transit, and use by appropriate cryptographic means.***

Given the sensitive nature of PSAP registry data, NENA believes that the data should be protected on an ongoing basis by appropriate cryptographic means that ensure the integrity of the data while carefully controlling who has access to which parts of the database at a given time. In particular, NENA recommends that the Commission require the storage, transmission, and use of the data to be controlled by robust cryptographic means. NENA strongly believes that such means should include a requirement that registry data be stored in an encrypted form by recipients of that data, and that access to encrypted stores should be controlled by means of revocable digital certificates that require confirmation of validity from a trusted server before decryption of the underlying data. NENA also believes that compliance with final cryptographic requirements should form part of operators' required compliance certifications.

**IV. *All users of automatic dialing equipment should be prohibited from using such equipment to dial registered PSAP telephone numbers.***

In contrast with the TCPA, the NGAA does not limit the scope of its prohibitions to telemarketers.<sup>13</sup> Because the type of auto-dialed call is irrelevant to its impact on PSAPs, and, by extension public safety, NENA considers this broader scope to be a defining characteristic and key operational element of the NGAA. Consequently, NENA believes that operators of automatic dialing equipment

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<sup>13</sup> Compare 47 U.S.C. § 227(a)(4)-(5) with 47 U.S.C. § 1473(b).

who solicit charitable contributions, conduct surveys and polls, advocate on behalf of political causes and candidates, or make calls for other purposes (or provide such services to third parties) must be subject to the Commission's implementing rules. Indeed, NENA believes that the prohibition on utilizing automatic dialing equipment to initiate calls to registered TNs should be made as broad as allowable under the statute, with only limited exceptions.

***A. The prohibition on dialing registered numbers should extend to the origination of text messages bound for registered TNs.***

NENA agrees with the Commission that the prohibition on calling registered numbers should extend to the transmission of text messages to those numbers.<sup>14</sup> Currently pending before the Commission is a *Notice of Proposed Rulemaking* that would require cellular carriers to deliver SMS messages to PSAPs. In response to that *Notice*, NENA recommended that carriers be required to deliver SMS messages to PSAPs using one of three preferred methods. NENA is concerned, however, that enabling the delivery of text messages through TTY translation (which is likely to be a primary method of receiving text for many PSAPs, at least initially) could unintentionally lead to the delivery of automatically-dialed SMS messages if the gatekeeping function of SMS service providers is not carefully performed. NENA therefore recommends that the Commission include the delivery of text messages to registered TNs within the scope of sanctionable violations under final rules implementing the NGAA.

***B. The Commission should exclude two narrow types from the class of prohibited calls.***

NENA believes that the registry must have the broadest possible prohibitory scope in order to produce the maximum possible reduction in the incidence of unwanted calls

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<sup>14</sup> *NPRM* at ¶ 19.

to PSAPs. However, there are two circumstances of which NENA can conceive that should not come within the scope of the final rules, though for very different reasons.

*1. Government-operated emergency notification systems should not be prohibited.*

NENA agrees with the Commission that government-operated emergency notification systems that rely on automatic dialing equipment should be exempted from the prohibitory aspects of the Commission's final rules. Such an exception is consistent with the purpose of the Communications Act to "promot[e] safety of life and property through the use of wire and radio communications."<sup>15</sup> Because PSAPs may rely on such systems to receive critical information from higher authorities during times of disaster, the inability to receive such calls could adversely impact public safety by impairing the situational awareness of local PSAP personnel. Application of the do-not-call prohibitions against instrumentalities of the states might also implicate significant constitutional concerns. Finally, a contrary rule could adversely affect the Commission's own efforts to mitigate the impact of network outages on PSAPs during activations of the Disaster Information Reporting System (DIRS), assuming PSAP notification were to become a product of the DIRS enterprise in the future. NENA therefore recommends that the Commission exclude government agencies operating automatic dialing equipment for the purpose of providing emergency notifications to PSAPs from the scope of the final rules.

*2. Calls transferred to PSAP TNs or originated from sensor-based emergency calling systems should not be proscribed.*

The second exception to the broad applicability of the registry that NENA believes to be in the public interest relates to the scope of the term "automatic dialing equipment." NENA is aware of a number of services such as telematics applications and specialized personal emergen-

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<sup>15</sup> 47 U.S.C. § 151.

cy response services (PERS) which provide valuable public safety benefits, but which could be rendered inoperable if the scope of the definition of “automatic dialing equipment” adopted by the commission is overbroad.

Telematics and PERS providers may use automated systems to route calls to an appropriate PSAPs once a need for public safety services has been verified and the location of a crash or PERS activation determined, or when a human initiates a direct 9-1-1 call from a telematics or PERS device equipped to allow the origination of such calls by direct human intervention. Calls such as these which are either human-initiated or perhaps algorithmically initiated could fall within the prohibition of the final rules unless the Commission clearly delineates this key distinction: The types of automatic dialing equipment to which the prohibition should apply are those which are designed or operated so as to generate *multiple* calls to randomly, sequentially, or selectively chosen numbers (plural), without an indication that a specific incident or subscriber requires the initiation of an emergency call. For systems that generate a single call to a single number (including 9-1-1) in response to a single incident, NENA believes that operators should not be penalized: These systems have contributed to significant improvements in public safety as well as emergency response research and should be excepted from the prohibitory provisions of the rules.

**V. The forfeiture provisions of the Act should be enforced strictly, but reasonably.**

The NGAA dramatically expands the class of individuals who may be subject to do-not-call obligations and, as a result, to enforcement actions including the imposition of severe monetary penalties. While NENA is particularly concerned that the penalties prescribed by the Act be given effect so as to deter operators of automatic dialing equipment from its use to place unwanted calls to PSAPs, we also recognize that overly strict enforcement of the Act’s provisions could unnecessarily harm some operators

of automatic dialing equipment who are unfamiliar with the procedures required for compliance with a do-not-call registry. Charities, survey firms, and political campaigns come immediately to mind. Therefore, while NENA encourages the Commission to ensure that its final rules reflect the gravity of each unwanted call received by a PSAP, NENA also recommends that the Commission take steps consistent with the broader provisions of the Communications Act to mitigate these potential harms.

***A. The Commission may issue a citation for a first offense.***

Because the NGAA is incorporated into and must be read in the context of the Communications Act, NENA believes that the Commission may issue a citation for a first violation of its rules with respect to the registry under certain circumstances.<sup>16</sup> Section 503 of the '34 Act makes issuance of a citation mandatory for apparent violators who are not otherwise subject to Commission jurisdiction based on some pre-existing jurisdictional "hook," such as licensure.<sup>17</sup> For entities that fall into that category, issuance of a citation for a first offense serves an important due-process function by placing potentially unknowing parties on notice that they are subject to the Commission's rules and that further violations of those rules may subject them to significant civil and criminal penalties. NENA is aware that many of the operators of automatic telephone dialing equipment who fall within the ambit of the NGAA do-not-call provisions have not previously been subject to FTC or FCC jurisdiction under the TCPA. Because charities, survey firms, and political campaigns may not, at first, be aware of their obligations to subscribe to the registry and remove registered TNs from their calling lists, NENA recommends that Commission consider issuing citations to entities that fail to subscribe if that failure likely resulted in little or no harm to public safety.

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<sup>16</sup> *NPRM* at 23.

<sup>17</sup> 47 U.S.C. § 503.

However, for entities that subscribe to the registry, NENA believes that the notice element of due process can best be satisfied by requiring, as a condition of their subscription, that such entities certify their understanding of the requirements for preventing calls to registered TNs. For entities that so certify, NENA believes that issuing a citation would serve no purpose, and therefore urges the Commission to impose sanctions as required by the NGAA without the issuance of a citation.

***B. The terms “incident” and “call” refer to different types of violations.***

The Commission asks how it should interpret the terms “incident” and “call” as used in the NGAA. NENA believes that the Commission should apply the ordinary meanings of both terms in the contexts for which they are applicable. The term “incident,” applicable to improper disclosure of registry data, should be interpreted to create liability for each occasion on which more than a negligible number of registry TNs are exposed to persons or entities that are not registered with the Commission as eligible to receive registry data. For example, providing an unauthorized employee with access to aggregate registry data or leaving registry data accessible from an unsecure server in a non-encrypted format should each constitute an “incident.” In each case, however, the gravity of the violation should be measured by amount of registry data exposed or potentially exposed and the length of time for which it was made vulnerable to discovery by malicious actors. Somewhat differently, the term “call” is applicable to the violation occasioned by the origination of a call to a registered PSPAP TN. NENA believes that the statute – and the intended severity of the penalties it imposes – are clear: The term “call” should be interpreted to create liability for each occasion on which an automatically dialed call is originated to a registered PSAP TN.

***C. A limited but stringent safe-harbor may be warranted.***

Under rules the Commission is required by the statute to adopt, operators of automatic dialing equipment will have an affirmative duty not to automatically dial eligible TNs placed on the registry. Placing automatically-dialed calls to such numbers will, *ipso facto*, constitute a breach of that duty. Likewise, an operator's failure to remove registered TNs from its dialing lists or to block them from its dialing ranges will be one of very few factual causes for an automatically-dialed call to reach a PSAP. Consequently, in order for the Commission to establish a safe harbor under the terms of the statute, it will be necessary for the Commission to consider what, if any, level of safeguards or best practices renders an operator's breach non-negligent by virtue of a lack of proximate causation. NENA believes that, under rare circumstances such as equipment failure, computer error, or a non-foreseeable lapse in process compliance, proximate causation may not be present and the application of a safe harbor may be appropriate. In general, however, NENA believes that the strict application the Act's prohibition on automatically dialing registered TNs will best protect the safety of the public, and recommends that the Commission consider applying a nested negligence test to each element of any proposed safe harbor test when evaluating a claim for safe harbor treatment.

**CONCLUSION**

The Commission should adopt its proposed rules with minor changes consistent with NENA's recommendations.

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