



August 29, 2018

***Ex Parte Notice***

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59**

Dear Ms. Dortch:

On Tuesday, August 28, 2018, the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> met with Erin McGrath, Legal Advisor, Wireless, Public Safety and International to Commissioner Michael O’Rielly of the Federal Communications Commission (“Commission”), to discuss the above-referenced proceeding. Specifically, the parties discussed unwanted calls to reassigned telephone numbers and methods by which the Commission could reduce the incidence of such calls as well as mitigate legitimate callers’ violations of the Telephone Consumer Protection Act (“TCPA”).

NTCA noted at the outset that the small operators the association represents understand the problem of consumers receiving calls that are unwanted but simply intended for a consumer that changed his or her telephone number without informing those parties to whom consent was granted. RLECs are committed to finding solutions that mitigate the incidence of robocalls or any other unwanted calls to their customers, whether those are originated for nefarious purposes or inadvertently as is the case with the calls that are the subject of the instant proceeding. That said, it is important that the Commission not address the problem by imposing unnecessary costs on rural carriers when the financial responsibility for reducing the incidence of unwanted calls to reassigned telephone numbers should instead fall on those that will most benefit from a method to identify such numbers: those callers in need of access to such data to avoid violations of federal law.

NTCA then stated that Commission action to encourage the expanded use of already operating commercial reassigned telephone numbers databases is the most expeditious path to addressing the problem of unwanted calls and is a solution that properly allocates the costs of providing callers access to such data. These existing “TCPA compliance solutions” that already capture a substantial percentage of reassigned telephone numbers will, if paired with a “safe harbor” for

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<sup>1</sup> NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

callers' use of these databases, be every bit as comprehensive as a Commission-established database as contemplated by the *Notice*.<sup>2</sup> Simply put, because utilization of such databases will operate as a safe harbor from liability for unintentional violations of the TCPA, data on which telephone numbers have been reassigned will become a much more valuable commodity. Those most in need of it (callers seeking to avoid liability) will provide the operators of the commercial databases the proper financial incentive to capture even more reassigned numbers data than they do today and the latter will in turn have the incentive to compensate providers for that data. These mutually beneficial relationships will ultimately capture data as comprehensive as any FCC database. This solution also ensures that rural carriers are compensated for this data, allowing them to recover costs that would otherwise be passed on to their end-users.

NTCA then stated that it is important that the costs of any database fall on the primary “cost-causers” here, the companies that need to utilize a reassigned numbers database in order to avoid violating federal law as a result of actions they take voluntarily and often as part of a money-making enterprise. While it is true that consumers subscribe to these services to get “wanted” robocalls (and it is true that many of these callers provide a valuable service), the need for a database of reassigned telephone numbers was created in the first instance by the companies that need it to avoid violating federal law. Indeed, were the Commission to create its own database, such action would be an instance of entities violating federal law and looking to a federal agency to fix the problem, while placing all of the effort of creating the safety valve on the federal agency and carriers. Carriers may then pass on said costs to consumers (even those that never signed up for such calls in the first place). The better approach would require these entities seeking to avoid violating federal law to take financial responsibility for doing so, and the commercial database solution proposed by NTCA accomplishes just that.

NTCA also stated that the Commission should reject the arguments made by some parties in the record that access to a reassigned telephone numbers database should be at a low cost or even *free*.<sup>3</sup> As a representative of small businesses, NTCA is not unsympathetic to the fact that many of the callers at issue here are small entities.<sup>4</sup> That said, NTCA members are small businesses as well (with 4,300 subscribers on average), operating in some of this nation’s most expensive-to-serve rural areas and doing so with an average of 30 total employees. These providers are already subject to hundreds of hours of annual reporting requirements,<sup>5</sup> and while many of them are welcome in that they function as accountability for the use of ratepayer dollars, they do add up. In addition, the cost to NTCA members to report to any database is not one of whether these companies track the data, it’s compiling and reporting on the data. It is also important for the Commission to recognize that the additional burden contemplated here must not be viewed in isolation, rather it must be understood in cumulative terms, adding to already existing burdens that strain small operators’ resources. It is also a burden the cost of which should be recoverable, and Commission action to encourage the use of commercial

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<sup>2</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Further Notice of Proposed Rulemaking, FCC 18-31 (rel. Mar. 23, 2018) (“*Notice*”), ¶ 34.

<sup>3</sup> *See, e.g.*, Comments of ACA International (“ACA”) CG Docket No. 17-59 (fil. Jun. 5, 2018), p. 5.

<sup>4</sup> *Id.*, p. 2.

<sup>5</sup> *See* Comments of NTCA-The Rural Broadband Ass’n, National Broadband Agenda, Docket No. 160831803-6803-01 (Oct. 11, 2016), available at: <https://www.ntia.doc.gov/files/ntia/publications/ntca.pdf>.

databases will, as noted above, ensure that carriers will be compensated for reporting on reassigned numbers.

NTCA then noted that creating a Commission database would simply take too long. The Commission would need to write a Request for Proposal or otherwise solicit a bid for a party to create the database and then one would need to be created, populated, and tested. If the process of transitioning the Local Number Portability Administrator (“LNPA”) responsibility is any indication, such a process could take several years. Indeed, even after the current incumbent LNPA was chosen (a process that itself took a few years) in 2015,<sup>6</sup> it took another three years for the new Number Portability Administration Center (“NPAC”) to get up and running.<sup>7</sup> Consumers in need of relief from unwanted calls need not wait that long.

NTCA then stated that the Commission has the legal authority to adopt a safe harbor from TCPA liability for callers that rely on commercial database solutions. For one, Section 251(e)(1) of the Communications Act of 1934 (as amended by the Telecommunications Act of 1996)<sup>8</sup> grants the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. A TCPA safe harbor would at bottom be a method of ensuring that numbering resources are used to benefit consumers to the fullest extent possible. More specifically, it will prevent consumers from receiving calls they do not want. Thus a safe harbor from TCPA liability is at the heart of the agency’s administration of telephone numbers.

In addition, a safe harbor as proposed herein would be entirely consistent with the Commission’s previous adoption of a similar provision with respect to robocalls to ported telephone numbers. In 2004, the Commission addressed the necessity of a safe harbor from TCPA liability for telemarketers’ calls to ported telephone numbers, stating that:

It is impossible for telemarketers to identify immediately those numbers that have been ported from a wireline service to a wireless service provider. Commenters maintain that, absent a limited safe harbor period, telemarketers simply cannot comply with the statute. The safe harbor is not an “exemption” from the requirements on calls to wireless numbers; it is instead a time period necessary to allow callers to come into compliance with the rules. Otherwise, the statute would “demand the impossible.”<sup>9</sup>

A similar line of reasoning applies here and thus confers legal authority on the Commission. Legitimate callers (in this instance businesses attempting to place calls that consumers actually want but simply directed to the wrong consumer), absent a reassigned numbers database paired

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<sup>6</sup> *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, WC Docket No. 07-149, et al., Order (rel. Mar. 27, 2015) (approving “the recommendation of the North American Numbering Council (NANC) that Telcordia Technologies, Inc. d/b/a iconectiv (Telcordia) serve as the next local number portability administrator (LNPA)”).

<sup>7</sup> Press Release, *FCC Announces Successful Transition to New Administrator for Number Porting System* (May 29, 2018).

<sup>8</sup> 47 U.S.C. § 251(e)(1).

<sup>9</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, FCC 04-204 (rel. Sep. 21, 2004), ¶ 9.

with a safe harbor, cannot comply with the TCPA 100 percent of the time. Yet a database paired with an appropriately crafted safe harbor would, rather than “demanding the impossible,” grant these legitimate callers a method by which to determine which numbers have been reassigned and to modify their calling lists and therefore come into compliance with the TCPA. In that regard, much like the ported telephone numbers safe harbor that gave callers a time period to come into compliance, this would not function as an “exemption” from the TCPA—instead, it would simply be a method of enabling compliance.

Finally, NTCA stated that the use of commercial databases that reimburse carriers for reporting on reassigned telephone numbers is not in any way precluded by the Section 251(e)(2) language that states “the cost of establishing telecommunications numbering administration arrangements...shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>10</sup> Nothing in this provision prevents carriers from recovering their costs (whether from end-users or in this instance from parties seeking access to data), and thus the Commission is on firm legal footing in deciding that the latter should provide carriers with such cost recovery.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,  
/s/ Brian Ford  
Brian Ford  
Senior Regulatory Counsel  
NTCA-The Rural Broadband Association

cc: Erin McGrath

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<sup>10</sup> 47 U.S.C. § 251(e)(2).