

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementation of the Middle Class Tax Relief and Job Creation Act of 2012
Establishment of a Public Safety Answering Point Do-Not-Call Registry
CG Docket No. 12-129

NOTICE OF PROPOSED RULEMAKING

Adopted: May 21, 2012

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Comment Date: (30 days after date of publication in the Federal Register).
Reply Comment Date: (45 days after date of publication in the Federal Register).

By the Commission:

I. INTRODUCTION

1. Today, we initiate a proceeding to create a Do-Not-Call registry for public safety answering points (PSAP) as required by the "Middle Class Tax Relief and Job Creation Act of 2012." Specifically, section 6507 of the Tax Relief Act requires the Commission, among other things, to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibit the use of automatic dialing or "robocall" equipment to contact those numbers. In addition, the Tax Relief Act establishes a range of monetary penalties for entities that disclose the registered numbers or use automatic dialing equipment to contact a number on the PSAP registry. These provisions are designed to address concerns about the use of "automatic dialing equipment," which can generate large

1 Section 222(h)(4) of the Communications Act of 1934, as amended, defines a PSAP as "a facility that has been designated to receive emergency calls and route them to emergency service personnel." 47 U.S.C. § 222(h)(4); see also 47 C.F.R. § 64.3000(c).

2 Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012) ("Tax Relief Act").

3 Id. at § 6507(a), (b)(5).

4 Id. at § 6507(c)(1), (2).

5 Id. at § 6507(b). In one provision, the statute alternatively uses the term "robocall." See id. at § 6507(b)(5) (the Commission shall issue rules that "prohibit the use of automatic dialing or 'robocall' equipment to establish contact with registered numbers"). The term "robocall" has sometimes been used to refer both to calls placed using an automatic telephone dialing system and to prerecorded calls. See Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1831, para. 1 (2012) ("The protections we adopt will protect consumers from unwanted autodialed or prerecorded telemarketing calls, also known as 'telemarketing robocalls' ..."). Because section 6507 of the Tax Relief Act makes no

(continued...)

numbers of phone calls in a short period of time, tie up public safety lines, divert critical responder resources away from emergency services and impede access by the public to emergency lines.⁶ Because there is a statutory mandate to create such a registry, our focus in this Notice of Proposed Rulemaking (*NPRM* or *Notice*) is to obtain the information necessary to implement this mandate consistent with the requirements set forth in the Tax Relief Act.

2. In undertaking this proceeding, we seek to implement the required safeguards to assist the public safety community in a cost-effective manner that will minimize the potential administrative burdens to PSAPs and the calling parties who are subject to these rules. Therefore, we seek comment on a variety of issues relating to the establishment and ongoing management of the PSAP Do-Not-Call registry, including protecting against the unauthorized disclosure and dissemination of the PSAP numbers included on the registry. We believe the experience gained from the operation of the existing National Do-Not-Call registry for residential telephone numbers provides useful guidance on these issues, and we seek comment, in particular, from interested parties that have experience with that registry.

II. BACKGROUND

A. The Middle Class Tax Relief and Job Creation Act of 2012

3. On February 22, 2012, the President signed into law the “Middle Class Tax Relief and Job Creation Act of 2012.”⁷ In relevant part, the Tax Relief Act requires the Commission to initiate, within 90 days after enactment, a proceeding to create a specialized Do-Not-Call registry for PSAPs.⁸ Specifically, section 6507 of the Tax Relief Act requires the following:

SEC. 6507. COMMISSION PROCEEDING ON AUTODIALING.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Commission shall initiate a proceeding to create a specialized Do-Not-Call registry for public safety answering points.

(b) FEATURES OF THE REGISTRY.—The Commission shall issue regulations, after providing the public with notice and an opportunity to comment, that—

(1) permit verified public safety answering point administrators or managers to register the telephone numbers of all 9–1–1 trunks and other lines used for the provision of emergency

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reference to prerecorded calls, however, we propose to interpret the term “robocall” in section 6507(b)(5) as synonymous with calls made using “automatic dialing equipment.” As discussed below, we seek comment on this proposal.

⁶ We note that while there is a conference report accompanying the Tax Relief Act, there is no legislative history specific to section 6507.

⁷ See generally Tax Relief Act.

⁸ Tax Relief Act at § 6507(a). The 90-day period to initiate this proceeding ends on May 22, 2012. This Notice of Proposed Rulemaking fulfills that requirement.

services to the public or for communications between public safety agencies;

(2) provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry;

(3) provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment;

(4) protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry; and

(5) prohibit the use of automatic dialing or “robocall” equipment to establish contact with registered numbers.

(c) ENFORCEMENT.—The Commission shall—

(1) establish monetary penalties for violations of the protective regulations established pursuant to subsection (b)(4) of not less than \$100,000 per incident nor more than \$1,000,000 per incident;

(2) establish monetary penalties for violations of the prohibition on automatically dialing registered numbers established pursuant to subsection (b)(5) of not less than \$10,000 per call nor more than \$100,000 per call; and

(3) provide for the imposition of fines under paragraphs (1) or (2) that vary depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence.

4. In addition, section 6003(a) of the Tax Relief Act provides that “[t]he Commission shall implement and enforce this title as if this title is part of the Communications Act of 1934 (47 U.S.C. § 151 *et seq.*). A violation of this title, or a regulation promulgated under this title, shall be considered to be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.”⁹

B. The Telephone Consumer Protection Act

5. In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA) in an effort to address a growing number of telephone marketing calls and certain telemarketing practices thought to be

⁹ See Tax Relief Act at § 6003(a). The Tax Relief Act does not indicate whether section 6507 will be codified in the Communications Act.

an invasion of consumer privacy and even a risk to public safety.¹⁰ In relevant part, the TCPA prohibits certain categories of automated calls absent an emergency purpose or the prior express consent of the called party.¹¹ Specifically, this provision prohibits the use of “automatic telephone dialing systems” (autodialers)¹² or artificial or prerecorded messages to make non-emergency calls without prior express consent to: emergency telephone lines, health care facilities, telephone numbers assigned to wireless services, and services for which the called party is charged for the call, among other recipients.¹³ In the *2003 TCPA Order*, the Commission noted that Congress prohibited the use of such automated equipment with respect to these particular categories of calls because such practices were determined “to threaten public safety and inappropriately shift marketing costs from sellers to consumers.”¹⁴

6. In the *2003 TCPA Order*, the Commission, citing “widespread consumer dissatisfaction” with ever-increasing numbers of telemarketing calls, revised its TCPA rules to establish a National Do-Not-Call registry which prohibits telemarketers from contacting a residential subscriber whose telephone number appears on that registry, unless the call is subject to a recognized exemption.¹⁵ The National Do-Not-Call registry is administered by the Federal Trade Commission (FTC).¹⁶ As of the end of fiscal year 2011, the FTC reports there were more than 209 million telephone numbers registered on the National Do-Not-Call registry.¹⁷

III. DISCUSSION

7. Section 6507(a) of the Tax Relief Act requires the Commission to initiate a proceeding to create a specialized Do-Not-Call registry for PSAPs.¹⁸ Consistent with that mandate, we propose to create such a registry and seek comment on the structure and operation of the proposed registry. Specifically, we seek comment on the most efficient means of establishing a PSAP Do-Not-Call registry, the process for accessing the registry by operators of automatic dialing equipment, safeguards to protect the registry from unauthorized disclosure or dissemination, rules to prohibit the use of automatic dialing equipment to contact numbers on the registry, and the enforcement provisions contained in section 6507(c) of the Tax Relief Act. In particular, we seek comment on the costs and benefits of the proposals

¹⁰ See 47 U.S.C. § 227.

¹¹ 47 U.S.C. § 227(b)(1)(A).

¹² Under the TCPA, the term “automatic telephone dialing system” is defined as “equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” *Id.* at § 227(a)(1). The Commission has emphasized that this definition covers any equipment that has the specified *capacity* to generate numbers and dial them without human intervention whether or not the numbers called are randomly or sequentially generated or come from calling lists. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 at 14092, para. 133 (2003) (*2003 TCPA Order*).

¹³ 47 U.S.C. § 227(b)(1)(A); see also 47 C.F.R. § 64.1200(a)(1).

¹⁴ *2003 TCPA Order*, 18 FCC Rcd at 14092, para. 133.

¹⁵ *Id.* at 14033, para. 25.

¹⁶ See, e.g., Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), codified at 15 U.S.C. § 6101.

¹⁷ See *National Do-Not-Call Registry Data Book FY 2011*, 3, at <http://ftc.gov/os/2011/11/111130dncdatabook.pdf> (November 2011).

¹⁸ Tax Relief Act at § 6507(a).

to implement the various provisions of section 6507. There is no legislative history for section 6507 and we thus seek comment on how we should interpret specific terms in this section.¹⁹ We also discuss and seek comment on administrative aspects of the PSAP Do-Not-Call registry.

A. Establishment of a PSAP Do-Not-Call Registry

8. *Numbers and Registration.* At the outset, we must first determine which telephone numbers may be placed on the new registry and how that registration will take place. The Tax Relief Act requires that we “permit verified public safety answering point administrators or managers to register the telephone numbers of all 9-1-1 trunks and other lines used for the provision of emergency services to the public or for communications between public safety agencies.”²⁰ The statute, however, does not define “911 trunks” and “other lines used for the provision of emergency services to the public or for communications between public safety agencies.” Nor has the Commission itself defined those terms. In addition, we note that the TCPA already prohibits the use of autodialers to make a non-emergency call without prior express consent to any emergency telephone line, including any autodialed call to 911 lines and emergency lines of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.²¹

9. To give the Tax Relief Act meaning beyond what the TCPA requires, we believe that the Tax Relief Act should be interpreted as giving PSAP telephone numbers protections against the use of autodialed equipment that are broader than those provided by the TCPA. In this regard, we believe PSAPs may be best positioned to determine which of their telephone numbers require such additional protections, and we believe we have the statutory leeway to allow them to do so.²² As a result, we propose that PSAPs should be given substantial discretion to designate which numbers to include on the PSAP Do-Not-Call registry so long as they are associated with the provision of emergency services or communications with other public safety agencies. This designation could include, for example, administrative lines that may be used in some cases for overflow emergency calls. In addition, we propose that secondary PSAPs should also be permitted to place numbers on the registry.²³ Secondary PSAPs are also vulnerable to autodialed calls in the same way as primary PSAPs. Therefore, we see no valid reason to withhold the safeguards provided under the Tax Relief Act from secondary PSAPs. We seek comment on these proposals.

¹⁹ As noted above, while there is a conference report accompanying the Tax Relief Act, there is no legislative history specific to section 6507.

²⁰ *Id.* at § 6507(b)(1).

²¹ 47 U.S.C. § 227(b)(1)(A).

²² The Tax Relief Act itself appears to provide a basis for allowing PSAPs to determine which of their numbers to place in the registry. Section 6507(b)(1) of the Tax Relief Act permits verified PSAPs to “register telephone numbers of all 9-1-1 trunks and other lines used for the provision of emergency services to the public or for communications between public safety agencies.” To the extent that there is any ambiguity in these terms, the Commission may provide a reasonable construction of those terms. *See, e.g., Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (where a statute’s plain terms do not directly address the precise question at issue and the statute is ambiguous on the point, courts are required to defer to the implementing agency’s reasonable construction).

²³ A primary PSAP is defined as a PSAP to which 911 calls are routed directly from the 911 Control Office. A secondary PSAP is defined as a PSAP to which 911 calls are transferred from a primary PSAP. *See, e.g., Wireless Telecommunications Bureau Announces Updates and Enhancements to FCC’s Master Public Safety Answering Point (PSAP) Registry*, CC Docket No. 94-102, Public Notice, 19 FCC Rcd 13820 at n.4 (2004).

10. We seek comment on the best and most efficient way to acquire and verify the PSAP numbers that will be entered into the registry.²⁴ Are there ways to compile these numbers in an aggregate form from states or localities to minimize burdens on the PSAPs and the administrator of the registry? Should we consider the use of existing PSAP databases such as the one developed by the National Emergency Number Association (NENA)? Are there other such databases?²⁵ How complete are these databases? How frequently are these databases updated? Would including numbers obtained from these databases be consistent with section 6507(b)(1) of the Tax Relief Act? What sources of information do operators of automatic telephone dialing systems currently use to comply with the TCPA's existing prohibitions on the use of autodialers to call emergency numbers?²⁶

11. Alternatively, should individual PSAPs register the telephone numbers that they wish to include on the registry? If so, what is the best method for PSAPs to transmit such numbers for inclusion on the registry?²⁷ Who should be authorized to submit the telephone numbers to be entered into the registry on behalf of a PSAP? We note that section 6507(b)(1) of the Tax Relief Act makes reference to "verified" PSAP "administrators or managers."²⁸ What manner of PSAP employee should constitute an "administrator or manager" for purposes of this provision? Does each PSAP have such a designated representative? What type of verification information should be required to ensure that only a properly authorized representative of the PSAP has requested the inclusion of telephone numbers on the registry? What is the best method to inform PSAPs of the availability of the PSAP Do-Not-Call registry?

12. *Administration.* We seek comment on the most efficient and effective way to establish and maintain the PSAP Do-Not-Call registry. As noted throughout this *Notice*, the FTC has administered through a contractor the National Do-Not-Call registry for nearly a decade.²⁹ We seek comment on whether and, if so, to what extent, the FTC's approach is a useful and cost effective model for the PSAP registry. We also ask whether there are ways in which the two agencies could cooperate in order to lessen the costs involved in establishing the new PSAP registry and, if so, how the Commission would calculate and fund its share of the cost of an inter-agency effort. Many telemarketers, including those that operate automatic dialing equipment, are familiar with the use of the National Do-Not-Call registry. As a result, would the use of a similar system minimize compliance burdens on operators of automatic dialing equipment?

²⁴ As of May 2012, NENA estimates there are approximately 6,089 primary and secondary PSAPs nationwide. As result, we anticipate that the PSAP Do-Not-Call registry could contain potentially tens of thousands of telephone numbers. See NENA 9-1-1 Statistics: <http://www.nena.org/?page=911Statistics> (last visited May 22, 2012).

²⁵ The FCC maintains a registry of PSAPs. That registry, however, does not contain PSAP telephone numbers that would be necessary to populate the PSAP Do-Not-Call registry. See: <http://www.fcc.gov/encyclopedia/9-1-1-master-psap-registry> (last visited May 21, 2012).

²⁶ As discussed in greater detail below, we seek comment on whether there are instances in which some PSAP numbers would need to receive autodialed calls and, thus, whether certain autodialed calls could be exempted from the prohibition. See *infra* para. 21.

²⁷ We note that registrations on the FTC's National Do-Not-Call Registry can be made by calling a toll-free number or online. See FTC's Complying with the Telemarketing Sales Rule, <http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule#DNCprovisions> at printed page 45 (FTC TSR Compliance Guide) (visited Mar. 27, 2012).

²⁸ Tax Relief Act at § 6507(b)(1).

²⁹ The FTC's National Do-Not-Call registry has been accepting registrations from consumers who choose not to receive telemarketing sales calls since June 27, 2003.

13. *Verification.* Section 6507(b)(2) of the Tax Relief Act requires that the Commission “provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry.”³⁰ As a threshold matter, how often do PSAPs typically change telephone numbers that would necessitate removal of numbers from the registry? What are the risks if such numbers are not removed, and what steps, if any, should the Commission take to mitigate such risks? What process should be implemented to allow for verification in accordance with section 6507(b)(2) that the registered numbers should continue to appear on the registry? Should there be an ongoing means for PSAPs to remove numbers from the registry at any time?³¹ Would allowing PSAPs to verify that registered numbers should appear on the registry and remove such numbers at any time satisfy section 6507(b)(2)’s requirement that registered numbers be verified “no less frequently than once every 7 years?” Or should the Commission establish a specific timeframe when PSAPs should review and verify the numbers on the registry? What type of verification measures should be put in place for the removal of numbers? Should the Commission or its designated administrator send PSAPs periodic reminders of the necessity of removing numbers that should no longer be on the registry? If so, how often should such reminders be sent? Would a Public Notice suffice for such notification or should each individual PSAP be contacted with this reminder? What type of verification information should be required to ensure that only a properly authorized representative of the PSAP has requested removal of a number? Should each PSAP be assigned a unique identification number for that purpose? We seek comment on these and any other issues related to verification of registered numbers pursuant to section 6507(b)(2) of the Tax Relief Act.

B. Access to the Registry by Operators of Automatic Dialing Equipment

14. Section 6507(b)(3) of the Tax Relief Act requires the Commission to “provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment.”³² We seek comment on the most efficient and effective way to grant and track access to the PSAP Do-Not-Call registry. We note that a registry of PSAP emergency contact numbers contains potentially sensitive telephone numbers. Therefore, we are cognizant of the need to protect such information as required by the Tax Relief Act.³³ Consistent with section 6507(b)(3) of the Tax Relief Act, which provides for access only by “operators of automatic dialing equipment,” we propose that registry access be limited to operators of automatic dialing equipment for the limited purpose of compliance with the prohibition on contacting PSAP numbers in the registry. We propose that anyone who uses an “automatic telephone dialing system,” as defined in section 227(a)(1) of the Communications Act, to make calls qualifies as an operator of “automatic dialing” or “robocall” equipment for purposes of the Tax Relief Act.³⁴ We seek comment on these proposals and any other issues that are relevant to our implementation of section 6507(b)(3) of the Tax Relief Act.

³⁰ Tax Relief Act at § 6507(b)(2).

³¹ We note that numbers can be removed from the National Do-Not-Call Registry by calling a toll-free number. *See* FTC Q&A The National Do-Not-Call Registry (question 6): <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt107.shtm> (visited Mar. 27, 2012).

³² Tax Relief Act at § 6507(b)(3).

³³ *See* Tax Relief Act at § 6507(b)(4).

³⁴ *See* 47 U.S.C. § 227(a)(1). As discussed below, we seek further comment on the use of this definition. *See infra* para. 20.

15. Consistent with the operation of the existing National Do-Not-Call registry, we propose to require that any entity that accesses the PSAP registry certify, under penalty of law, that it is accessing the registry solely to determine whether any telephone numbers to which it intends to place autodialed calls are listed on such registry for the purpose of complying with section 6507 of the Tax Relief Act.³⁵ We propose to prohibit use of the registry by operators of automatic dialing equipment for any other purpose. We propose that the first time an operator of automatic dialing equipment accesses the registry, the operator establish a profile and provide identifying information about its organization that would include the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number and email address, and a list of all outbound telephone numbers used for autodialing. We propose that all information be updated within 30 days of the date on which any change occurs. We propose that every operator of automatic dialing equipment with access to the PSAP registry be given a unique identification number, which must be submitted each time the secure database is accessed.³⁶ We also propose that this number be used to grant and track access to the secure database of registered PSAP numbers.

16. Once operators of automatic dialing equipment have successfully registered and obtained a unique identification number, we seek comment on how the registered telephone numbers should be made accessible to them. Does the FTC's National Do-Not-Call registry provide a useful model for these steps? For example, would it be useful to offer such operators the ability to gain access to the registry by specific geographic areas or area codes? Would this option benefit smaller businesses? Are there specific formats that should be used for the data?³⁷ How often should operators of automatic dialing equipment be required to access the registry of PSAP numbers and update their calling lists to delete registered PSAP numbers? For example, our rules require telemarketers to "employ a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintain records documenting this process."³⁸ We propose and seek comment on whether a similar timeframe and process should be required for operators of automatic dialing equipment to access the numbers on the PSAP registry and update their calling lists to delete registered PSAP numbers.

C. Protecting the Registry from Unauthorized Disclosure or Dissemination

17. Section 6507(b)(4) of the Tax Relief Act requires the Commission to "protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry."³⁹ Consistent with our rules relating to the National Do-Not-Call registry, we propose to adopt a rule that would prohibit parties from selling, renting, leasing, purchasing, or using the PSAP registry, or any part thereof, for any purpose except compliance with this section and any state or Federal law enacted to prevent autodialed calls to telephone numbers in the registry.⁴⁰ In addition, as discussed above, we

³⁵ See FTC TSR Compliance Guide at 47.

³⁶ We note this process is similar to the existing process utilized under the National Do-Not-Call registry where a unique Subscription Account Number is assigned to every party who accesses the registry. See *id.* at 50.

³⁷ Data from the National Do-Not-Call registry is available using Internet-based formats and download methods. Data is also available in three different sets: full lists, change lists, and small list look-ups. Full lists and change lists are available as flat files or XML tagged data files. See *id.* at 48.

³⁸ 47 C.F.R. § 64.1200(c)(2)(i)(D).

³⁹ Tax Relief Act at § 6507(b)(4).

⁴⁰ 47 C.F.R. § 64.1200(c)(2)(i)(E).

propose safeguards designed to limit and track access to the registry including a requirement that operators of automatic dialing equipment certify, under penalty of law, that they are accessing the registry solely to prevent autodialed calls to numbers on the registry.⁴¹ As discussed below, Congress prescribed substantial monetary penalties for disclosure or dissemination of the registered numbers in violation of section 6507(b)(4) of the Tax Relief Act.⁴² Are there any additional safeguards that we should consider to ensure that parties accessing the registry do not disclose the list of registered numbers? For example, should operators of automatic dialing equipment be required to certify compliance with the Commission's rules designed to protect the list of registered numbers from disclosure or dissemination pursuant to section 6507(b)(4) of the Tax Relief Act?

18. Some operators of automatic dialing equipment make autodialed calls on behalf of other entities, *e.g.*, vendors. In these situations, how should the Commission address the prohibition on disclosure or dissemination of registered numbers? Section 6507(b)(3) of the Tax Relief Act requires the Commission to "provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment" which does not appear to contemplate access by third parties who hire such operators. We propose that access to the registered numbers be limited to operators of automated dialing equipment who have complied with the authorized process to obtain access to that information. The purpose of the database is to prohibit autodialed calls to the registered PSAP numbers. We believe that objective can be accomplished without greater dissemination of these numbers to third parties. This proposal would further the protections against disclosure or dissemination of the registered numbers by limiting disclosure to a smaller number of entities. However, we seek comment on whether there is any reason that the third parties on whose behalf autodialed calls are made should have access to these numbers. Does section 6507(b)(4) of the Tax Relief Act prohibit such third parties from being provided access to these numbers? We seek comment on this proposal and any other issues relevant to our implementation of section 6507(b)(4) of the Tax Relief Act.

D. Prohibiting the Use of Automatic Dialing or "Robocall" Equipment to Contact Registered PSAP Numbers

19. Section 6507(b)(5) of the Tax Relief Act prohibits "the use of automatic dialing or 'robocall' equipment to establish contact with registered numbers."⁴³ We propose to prohibit operators of automatic dialing or robocall equipment from contacting any PSAP number that has been registered on the PSAP Do-Not-Call registry. We note that the Commission has concluded in the TCPA context that the prohibition on using autodialers to contact emergency telephone lines encompasses both voice and text calls, including short message service (SMS) calls.⁴⁴ Similarly, we propose that the use of an autodialer to make either voice or text message calls to numbers on the PSAP registry constitutes a prohibited contact under section 6507(b)(5).

20. As noted above, the Tax Relief Act does not define "automatic dialing" or "robocall" equipment. We believe, however, that these terms are equivalent to "automatic telephone dialing system" as defined in the TCPA and commonly referred to as "robocalling."⁴⁵ Specifically, the TCPA

⁴¹ See *supra* para. 15.

⁴² See *infra* para. 22; see also Tax Relief Act at § 6507(c)(1) and (2).

⁴³ Tax Relief Act at § 6507(b)(5).

⁴⁴ See 2003 TCPA Order, 18 FCC Rcd at 14115, para. 165.

⁴⁵ 47 U.S.C. § 227(a)(1).

defines “automatic telephone dialing system” as equipment “which has the *capacity* to store or produce telephone numbers to be called, using a random or sequential numbers generator; and to dial such numbers.”⁴⁶ The Commission has emphasized that this definition covers any equipment that has the specified capacity to generate numbers and dial them without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from a calling list.⁴⁷ We propose to use the TCPA’s definition, and the Commission’s relevant interpretations of that term, for purposes of determining the meaning of “automatic dialing” and “robocall” equipment in the Tax Relief Act.⁴⁸ We seek comment on the implications, if any, of using the terms “automatic dialing” or “robocall” as used in the Tax Relief Act synonymously with “automatic telephone dialing system” in the TCPA, given that the latter term includes systems with the capacity to store and produce numbers. We seek comment on these proposals and any other issues relevant to our implementation of section 6507(b)(5).

21. In addition, we seek comment on whether there are any situations in which PSAPs may wish to receive an autodialed call. For example, are there situations in which state or Federal authorities use autodialers to inform PSAPs of emergency notification alerts or information? Do PSAPs use autodialers to contact other public safety agencies that might be on the registry? We note that the Tax Relief Act’s autodialer prohibition, unlike the TCPA’s, contains no express exemption for calls made for emergency purposes.⁴⁹ If PSAPs do wish to receive such calls, would allowing PSAPs to select which individual numbers are included on the registry address this issue? For example, could they do so by not registering individual numbers that are designated to receive such emergency-related autodialed calls? If not, does the Commission have authority to establish a limited exception in the case of emergency-related autodialed calls to the numbers on the PSAP registry, and if so, what is the basis for such authority? Similarly, are there any non-emergency purposes that such autodialed calls need to be received by PSAPs? What statutory provision, if any, would allow the Commission to exempt such calls?

E. Enforcement

22. Section 6507(c) of the Tax Relief Act directs the Commission to establish specific monetary penalties for violations of: (1) the regulations established pursuant to section 6507(b)(4) regarding disclosure or dissemination of registered numbers by parties granted access to the registry;⁵⁰ and (2) the section 6507(b)(5) prohibition on the use of automatic dialing or “robocall” equipment to establish contact with registered numbers.⁵¹ In the case of violations of section 6507(b)(4) of the Tax Relief Act (disclosure or dissemination of registered numbers), section 6507(c)(1) requires the Commission to establish monetary penalties that are “not less than \$100,000 per incident nor more than \$1,000,000 per incident.”⁵² In the case of violations of section 6507(b)(5) (using automatic dialing equipment to contact numbers on the registry), section 6507(c)(2) requires the Commission to establish monetary penalties that

⁴⁶ *Id.* (emphasis added).

⁴⁷ *See 2003 TCPA Order*, 18 FCC Rcd at 14092, para. 133.

⁴⁸ *See, e.g., id.* at 14091-94, paras. 131-34 (finding that a predictive dialer falls within the TCPA’s definition of automatic telephone dialing equipment).

⁴⁹ 47 U.S.C. § 227(b)(1)(A).

⁵⁰ Tax Relief Act at § 6507(c)(1).

⁵¹ *Id.* at § 6507(c)(2).

⁵² *Id.* at § 6507(c)(1).

are “not less than \$10,000 per call nor more than \$100,000 per call.”⁵³ The Tax Relief Act specifies that these penalties vary depending “upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence.”⁵⁴ We note that these monetary penalties, to the extent that the violator is a non-regulatee, exceed the existing statutory base and maximum fines for non-regulatees under section 503(b)(2)(C) of the Communications Act and section 1.80 of our rules.⁵⁵ Because these monetary penalties are amounts prescribed by statute, the Commission does not have discretion to amend the base forfeiture amounts. Therefore, we propose to amend section 1.80 of the Commission’s rules governing forfeiture proceedings and forfeiture amounts to incorporate these new enforcement provisions specifically for the purposes of implementing section 6507 of the Tax Relief Act.⁵⁶ We seek comment on this proposal as discussed below.

23. *Process for Imposing Monetary Penalties.* We note that section 6003(a) of the Tax Relief Act provides that “[t]he Commission shall implement and enforce this title as if this title is part of the Communications Act of 1934 (47 U.S.C. 151 *et seq.*). A violation of this title, or a regulation promulgated under this title, shall be considered to be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.”⁵⁷ We seek comment on how the enforcement provisions, including the monetary penalties, of the Tax Relief Act should be implemented consistent with the Communications Act.⁵⁸ For example, under section 503(b)(5) of the Communications Act, the Commission is required in an enforcement action to issue a citation to any violator that does not hold or is not an applicant for a Commission license, permit, certification or other authorization.⁵⁹ Only if the non-licensee violator subsequently engages in conduct described in the citation may the Commission propose a forfeiture, and the forfeiture may only be issued as to the subsequent violations.⁶⁰ Section 6507(c)(3) of the Tax Relief Act suggests, however, that penalties can be imposed depending on whether the “violation was a *first* or subsequent offence” without specific reference to section 503 of the Communications Act.⁶¹ We seek comment on whether section 6507(c)(3) of the Tax Relief Act requires the Commission to impose monetary penalties upon a first violation, or whether section 503(b)(5) of the Communications Act, which is also applicable to section 6507 of the Tax Relief Act by virtue of section 6003(a) of the Tax Relief Act, requires the Commission to issue a citation first to non-licensee and non-applicant violators before it may determine liability for a monetary forfeiture.

24. *Amount of Monetary Penalties.* As required by the Tax Relief Act, we propose to adopt the specific monetary penalties for violations of sections 6507(b)(4) and (b)(5) of the Tax Relief Act and otherwise treat any violations of those provisions as violations of the Communications Act. Section 6507(c)(3) provides for the imposition of fines that vary depending “upon whether the conduct leading to

⁵³ *Id.* at § 6507(c)(2).

⁵⁴ *Id.* at § 6507(c)(3).

⁵⁵ *See* 47 U.S.C. § 503(b)(2)(C), 47 C.F.R. § 1.80.

⁵⁶ 47 C.F.R. § 1.80.

⁵⁷ Tax Relief Act at § 6003.

⁵⁸ 47 U.S.C. § 503(b)(5).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Tax Relief Act at § 6507(c)(3) (emphasis added).

the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence.”⁶² We seek comment on how these terms should be interpreted in determining the monetary penalties for violations of the Tax Relief Act. To the extent that the Commission has addressed such terms in an enforcement context, we seek comment on whether to adopt those definitions for purposes of the Tax Relief Act. For example, section 503(b)(1) of the Communications Act authorizes the Commission to impose forfeitures for “willful” violations.⁶³ Section 312(f)(1) of the Communications Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁶⁴ The legislative history to section 312(f)(1) of the Communications Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁶⁵ and the Commission has so interpreted the term in the section 503(b) context.⁶⁶ In addition, section 503(b)(2)(E) of the Communications Act and section 1.80(b)(6) of our rules set forth the factors to be considered when determining the amount of forfeiture penalties.⁶⁷ Specifically, these provisions specify that the Commission “take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁶⁸ Do these provisions take into account the factors necessary to distinguish between negligent, grossly negligent, reckless or willful conduct, as used in the Tax Relief Act, without the need for further clarification on this point? Are there additional factors we should consider in determining appropriate penalties for violations of sections 6507(b)(4) and (b)(5)? We note that the monetary penalties contained in section 6507(c)(1) are assessed on a “per incident” basis and section 6507(c)(2) are assessed on a “per call” basis. We seek comment on what is meant in this context by these terms. For example, should we interpret per call to mean every call made to a number on the PSAP registry or entire calling campaigns?

25. *Calls on Behalf of Third Parties.* In some instances operators of automatic dialing equipment are hired to make such calls on behalf of other entities. We seek comment on whether the responsibility for compliance with our proposed rules falls entirely on the operator of the automatic dialing equipment or whether there are situations in which the third party should be jointly and severally liable. We note that the prohibition on the use of automatic dialing equipment to contact registered numbers is not expressly limited to operators of automatic dialing equipment.⁶⁹ The Tax Relief Act suggests, however, that access to the registry is limited to operators of automatic dialing equipment.⁷⁰ Are there any situations in which the third party entity will have a “high degree” of involvement in ensuring that the automatic dialing calls are not made to numbers on the PSAP registry?⁷¹ For example, are there

⁶² Tax Relief Act at § 6507(c)(3).

⁶³ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(6).

⁶⁴ 47 U.S.C. § 312(f)(1).

⁶⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁶⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1992).

⁶⁷ 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(6).

⁶⁸ 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(6).

⁶⁹ See Tax Relief Act at § 6507(b)(5).

⁷⁰ *Id.* at § 6507(b)(3) (requiring the Commission to “provide a process for granting and tracking access to the registry by operators of automatic dialing equipment”) (emphasis added).

⁷¹ See 2003 TCPA Order, 18 FCC Rcd at 14131, para. 195.

situations where such third parties might become aware through complaints that an operator of automatic dialing equipment is not complying with the provisions of our proposed rules and should be subject to the monetary penalties provided in the Tax Relief Act for continued violations? Are there principles of agency law that might impose liability on third parties for the acts or omissions of the operator of automatic dialing equipment making calls on their behalf? We seek comment on this issue and any other issues relating to our enforcement of section 6507 of the Tax Relief Act.

26. *Safe Harbor*. Finally, we seek comment on whether the Commission should establish a safe harbor provision for operators of automatic dialing equipment who can demonstrate that any prohibited call to or disclosure of the registered numbers is the result of an error despite routine business practices designed to ensure compliance. We note that such a provision is recognized for calls made to numbers registered on the National Do-Not-Call registry where the caller can demonstrate that it has: (1) established written procedures to comply with the Do-Not-Call rules; (2) trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the Do-Not-Call rules; (3) maintained and recorded a list of telephone numbers that it may not contact; and (4) used a process to prevent telephone solicitations to any telephone number on any list established pursuant to the Do-Not-Call rules, employing a version of the registry obtained from the administrator no more than 31 days prior to the date any call is made, and maintains records documenting this process.⁷² If emergency-related numbers on the PSAP Do-Not-Call registry necessitate a higher level of protection from automated calls and unauthorized disclosure, would a similar safe harbor still be appropriate in this context? Section 6507(c)(3) of the Tax Relief Act contemplates monetary penalties for negligent or grossly negligent conduct. Does this provision distinguish the PSAP situation from the TCPA one and impact our ability to create a similar safe harbor in this instance? We seek comment on these and any other issues relevant to the enforcement provisions contained in section 6507(c) of the Tax Relief Act.

IV. PROCEDURAL MATTERS

A. *Ex Parte* Rules – Permit-But-Disclose

27. The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b).⁷⁴ In proceedings governed by section 1.49(f)⁷⁵ or for which the

⁷² See 47 C.F.R. § 64.1200(c)(2)(i).

⁷³ 47 C.F.R. § 1.1200 *et seq.*

⁷⁴ 47 C.F.R. § 1.1206(b).

⁷⁵ 47 C.F.R. § 1.49(f).

Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Period and Procedures

28. Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁷⁶ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments and reply comments should refer to **CG Docket No. 12-129**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁷⁷

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

29. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

C. Initial Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980 (RFA),⁷⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *NPRM*. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed by the same dates as listed on the first page of this document and must have a separate and distinct heading designating them as

⁷⁶ 47 C.F.R. §§ 1.415, 1.419.

⁷⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁷⁸ 5 U.S.C. § 603.

responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Initial Paperwork Reduction Analysis

31. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁷⁹ we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

V. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 227 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 227, 503, and sections 6003 and 6507 of the Middle Class Tax Relief and Job Creation Act of 2012, that this Notice of Proposed Rulemaking IS ADOPTED.

33. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷⁹ See 44 U.S.C. § 3506(c)(4).

APPENDIX A**Proposed Rules**

The Federal Communications Commission proposes to amend Parts 1 and 64 of Title 47 of the Code of Federal Regulations as follows:

PART 1 – PRACTICE AND PROCEDURE

Subpart A – General Rules of Practice and Procedure

1. Section 1.80 is amended by adding new paragraph (a)(6), redesignating paragraphs (b)(5) and (6) as paragraphs (b)(7) and (8), and adding new paragraphs (b)(5) and (6) to read as follows:

§ 1.80 Forfeiture Proceedings.

(a) ***

(6) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

(b) ***

(5) If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$100,000 per incident nor more than \$1,000,000 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(6) If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012, the monetary penalty for contacting such a telephone number shall be not less than \$10,000 per call nor more than \$100,000 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart L - Restrictions on Telemarketing and Telephone Solicitation

2. Subpart L is amended by adding new section 64.1202 to read as follows:

§ 64.1202 Public Safety Answering Point Do-Not-Call Registry.

(a) As used in this section, the following terms are defined as:

(1) *Operators of automatic dialing or robocall equipment.* Any person or entity who uses an automatic telephone dialing system, as defined in section 227(a)(1) of the Communications Act of 1934, as amended, to make telephone calls with such equipment.

(2) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive emergency calls and route them to emergency service personnel pursuant to section 222(h)(4) of the Communications Act of 1934, as amended. As used in this section, this term includes both primary and secondary PSAPs.

(b) An operator of automatic dialing or robocall equipment is prohibited from using such equipment to contact any telephone number registered on the PSAP Do-Not-Call registry. This prohibition on using automatic dialing equipment to contact numbers on the PSAP Do-Not-Call registry encompasses both voice and text calls. Such Do-Not-Call registrations must be honored indefinitely, or until the registration is removed by a designated PSAP representative or the Commission or its designated registry administrator.

(c) An operator of automatic dialing or robocall equipment may not obtain access or use the PSAP Do-Not-Call registry until it has first provided to the Commission or its designated registry administrator contact information that includes the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number and email address, and a list of all outbound telephone numbers used for autodialing, and thereafter obtained a unique identification number from the Commission or its designated registry administrator. All information provided to the Commission or its designated registry administrator must be updated within 30 days of making any change to such information. In addition, an operator must certify during each use, under penalty of law, that it is accessing the registry solely to prevent autodialed calls to numbers on the registry.

(d) An operator of automatic dialing or robocall equipment that accesses the PSAP Do-Not-Call registry shall, to prevent such calls to any telephone number on the registry, employ a version of the PSAP Do-Not-Call registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and shall maintain records documenting this process.

(e) No person or entity, including an operator of automatic dialing equipment or robocall equipment, may sell, rent, lease, purchase or use the PSAP Do-Not-Call registry, or any part thereof, for any purpose except to comply with this section and any such state or Federal law enacted to prevent autodialed calls to telephone numbers in the PSAP registry. Any party granted access to the registry is prohibited from disclosing or disseminating the registered numbers to any other person or entity.

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA)¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The “Middle Class Tax Relief and Job Creation Act of 2012” requires the Commission to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibits the use of automatic dialing or “robocall” equipment to contact those numbers.⁴ This requirement is designed to address concerns about the use of autodialers, which can generate large numbers of phone calls, to tie up public safety lines, and divert critical responder resources away from emergency services. As discussed in greater detail below, operators of automatic dialing equipment, which may include small businesses, will be required to provide certain contact information to obtain access to a registry of PSAP telephone numbers. Such operators must periodically update the list of registered numbers and take measures to ensure that they do not use such automatic dialing equipment to contact any number listed on that registry or disclose the registered numbers to any other party.

B. Legal Basis

3. The legal basis for any actions that may be taken pursuant to this NPRM are contained in sections 1, 2, 4(i), 227 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 227, and 503 and sections 6003 and 6507 of the Middle Class Tax Relief and Job Creation Act of 2012. In particular, section 6507 of the Tax Relief Act requires the Commission to “initiate a proceeding to create a specialized Do-Not-Call registry for public safety answering points.”⁵

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁶ The RFA generally

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See Tax Relief Act at § 6507.

⁵ *Id.* at § 6507(a).

⁶ 5 U.S.C. § 603(b)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration (SBA).⁹

5. In general, our proposed rules prohibiting the use of automatic dialing equipment to contact numbers on the PSAP Do-Not-Call registry would apply to a wide range of entities. The proposed rules, in particular, would apply to all operators of automatic dialing equipment.¹⁰ Therefore, we expect that the proposals in this proceeding could have a significant economic impact on a substantial number of small entities. Determining the precise number of small entities that would be subject to the requirements proposed in this NPRM, however, is not readily feasible.¹¹ Therefore, we invite comment on such number and, after evaluating the comments, will examine further the effect of any rule changes on small entities in the Final Regulatory Flexibility Analysis. Below, we have described some current data that are helpful in describing the number of small entities that might be affected by our proposed action, if adopted.

6. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.¹² A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ Nationwide, as of 2007, there were approximately 1.6 million small organizations.¹⁴

7. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.¹⁵ First, nationwide, there

⁷ 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ See Tax Relief Act at § 6507(b).

¹¹ See generally *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, 1870, App. C – FRFA, para. 16 (2012) (concluding that determining the precise number of entities to which rules on autodialers apply is not currently feasible).

¹² See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

¹³ 5 U.S.C. § 601(4).

¹⁴ INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

¹⁵ See 5 U.S.C. § 601(3)–(6).

are a total of approximately 27.5 million small businesses, according to the SBA.¹⁶ In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁷ Nationwide, as of 2007, there were approximately 1,621,315 small organizations.¹⁸ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁹ Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.²⁰ We estimate that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.”²¹ Thus, we estimate that most governmental jurisdictions are small.

8. *Telemarketing Bureaus and Other Contact Centers.* According to the Census Bureau, this economic census category “comprises establishments primarily engaged in operating call centers that initiate or receive communications for others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients’ products or services; (2) taking orders for clients; (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client’s products or services.”²² The SBA has developed a small business size standard for this category, which is: all such entities having \$7 million or less in annual receipts.²³ According to Census Bureau data for 2007, there were 2,100 firms in this category that operated for the entire year.²⁴ Of this total, 1,885 firms

¹⁶ See SBA, Office of Advocacy, “Frequently Asked Questions,” web.sba.gov/faqs (last visited May 6, 2011; figures are from 2009).

¹⁷ 5 U.S.C. § 601(4).

¹⁸ INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

¹⁹ 5 U.S.C. § 601(5).

²⁰ U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2011*, Table 427 (2007)

²¹ The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 “Local Governments” in 2007. (U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES 2011*, Table 428). The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g., county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small.

²² U.S. Census Bureau, 2007 NAICS Definitions, “561422 Telemarketing Bureaus and Other Contact Centers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561422&search=2007>.

²³ 13 C.F.R. § 121.201, NAICS code 561422.

²⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Administrative and Support and Waste Management and Remediation Services; Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007,” NAICS code 561422 (2007); http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table.

had annual sales of under \$5 million, and an additional 145 had sales of \$5 million to \$9,999,999. Thus, the majority of firms in this category can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

9. The Tax Relief Act requires the Commission to establish a Do-Not-Call registry for PSAPs.²⁵ The Act specifies that PSAPs will be permitted to register telephone numbers on this registry.²⁶ This allows PSAPs or their designated representatives to review their current telephone numbers and then provide those numbers to the administrator of the registry for inclusion on the PSAP Do-Not-Call registry. This will necessitate some administrative functions. In addition, a process must be adopted for verifying, no less frequently than once every 7 years, that the registered numbers should continue to appear on the registry.²⁷ This provision may require PSAPs to periodically check and verify which numbers should continue to be included on the registry. The Tax Relief Act also prohibits the use of automatic dialing or “robocall” equipment to contact numbers listed on the Do-Not-Call registry.²⁸ As a result, operators of automatic dialing equipment will be required to periodically check the registry and update their calling systems to ensure that they do not contact any telephone number listed on the PSAP Do-Not-Call registry. In order to access the registry, operators of automatic dialing equipment will be required to provide contact information and certify that they will not use the telephone numbers for any purpose other than compliance with this Act. In addition, a process will need to be developed to ensure that the list of registered numbers obtained from the PSAP Do-Not-Call registry is not disclosed or disseminated for any purpose other than compliance with this Act. Such a process may entail training personnel, recording access to such information in a secure manner, and updating automatic dialing systems to ensure that such equipment is not used to contact numbers on the PSAP registry.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. In the NPRM, we have sought comment generally on how to implement the specific provisions of the Tax Relief Act in a cost-effective manner that minimizes the potential burdens on PSAPs and any operator of automatic dialing equipment subject to our rules. We note, for example, that the FTC’s National Do-Not-Call list has been operational for nearly a decade. Many operators of automatic dialing equipment subject to our proposed rules are familiar with that system, and we seek comment on whether the operation of that existing registry provides any guidance on how the PSAP registry should be operated in order to minimize compliance burdens.²⁹ We seek comment on whether it would be useful to offer such operators the ability to gain access to the PSAP registry by specific geographic areas or area codes rather than downloading the entire database.³⁰ This option could offer smaller businesses cost savings by limiting the telephone numbers which they must download to only those that are most relevant to the calls they are making. We also seek comment on whether to establish a safe harbor provision for those who can demonstrate that any prohibited call or disclosure of the

²⁵ See generally Tax Relief Act at § 6507.

²⁶ *Id.* at § 6507(b)(1).

²⁷ *Id.* at § 6507(b)(2).

²⁸ *Id.* at § 6507(b)(5).

²⁹ See NPRM *supra* para. 2.

³⁰ See NPRM *supra* para. 16.

registered PSAP numbers is the result of an error despite routine business practices designed to ensure compliance.³¹ In addition, we seek comment on the most efficient ways for PSAPs to compile and download the numbers which they want to enter into the PSAP registry.³² For example, to alleviate potential burdens on individual PSAPs we seek comment on whether states or localities can do this on an aggregate basis or whether there are existing databases of such information.³³

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

11. The TCPA prohibits certain categories of automated calls absent an emergency purpose or the “prior express consent” of the called party.³⁴ Specifically, this provision prohibits the use of “automatic telephone dialing systems” when calling any emergency telephone lines, including 911 lines and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.³⁵ As a result, the use of autodialers to call these numbers is prohibited under our existing rules absent a recognized exception. To the extent that any of the same emergency numbers are included in the PSAP Do-Not-Call registry, the protections afforded by our proposed rules from autodialed calls will overlap with the existing TCPA rules.

³¹ See *NPRM supra* para. 26.

³² See *NPRM supra* para. 10.

³³ See *NPRM supra* para. 10.

³⁴ 47 U.S.C. § 227(b)(1)(A).

³⁵ *Id.* See also 47 C.F.R. § 64.1200(a)(1).