

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

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	

SECOND NOTICE OF INQUIRY

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Comment Date: August 28, 2017

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By the Commission: Chairman Pai and Commissioners Clyburn and O’Rielly issuing separate statements.

I. INTRODUCTION

1. In this *Second Notice of Inquiry*, we initiate a proceeding to address the problem of robocalls made to phone numbers of consumers who had consented to receive calls but whose phone numbers have subsequently been reassigned to a new consumer. Because of this problem, the recipient of the reassigned number is subject to unwanted calls; conversely, the previous holder of the reassigned number is no longer receiving those calls for which she gave consent.¹ To mitigate this problem, one approach is to develop a means for robocallers to verify whether a number has been reassigned prior to initiating the call. This approach has broad support among both robocallers and consumers, all of whom may benefit if robocallers have better access to information about when numbers have been reassigned.²

2. With this action, we initiate an inquiry into using numbering information to address this significant and longstanding robocall problem. We ask about the best ways for service providers to report information about reassigned numbers, and how that information can be made available to robocallers in the most effective way, so that robocallers will be more likely to reach consumers who wish to receive the calls.³

¹ The problem occurs when a consumer consents to receive robocalls at a specific number, but then terminates service to the number. If the robocaller continues to make robocalls to the number after it is reassigned to another consumer who has not consented to the robocalls, the robocaller might violate the law while the consumer who previously used the number might miss calls he or she had requested.

² See *infra* Part II.B and note 18.

³ While in this proceeding we inquire about how to prevent robocalls to reassigned numbers, we do not seek comment regarding the Commission’s rules implementing the TCPA, nor do we seek comment on any other precedent arising under the TCPA. The Commission’s most recent ruling regarding liability for robocalls to reassigned numbers is currently under review by the D.C. Circuit. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830 (2012) (*2012 TCPA Order*); *pets. for review pending sub nom Chamber of Commerce v. FCC*, No. 15-1306 (D.C. Cir. filed Sept. 2, 2015); see also Letter from Rebecca A. Cantrell, Senior Manager of Government Affairs, Electronic Transactions Association, to Marlene H. Dortch, Secretary, FCC, at 1 (July 6, 2017) (ETA Letter) (urging Commission to address TCPA issues, including issues on appeal).

II. BACKGROUND

A. The TCPA and Commission's Rules

3. In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA), stating that “[i]ndividuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.”⁴ The TCPA makes it unlawful for “any person” to make robocalls that do not comply with the provisions of the statute.⁵ More specifically, the TCPA and the Commission’s rules require a caller to obtain the prior express consent of the called party when: (1) making a non-emergency telemarketing call using an artificial or prerecorded voice to *residential* telephone lines⁶ and (2) making any non-emergency call using an automatic telephone dialing system (autodialer) or an artificial or prerecorded voice to a *wireless* telephone number.⁷ In implementing the TCPA, the Commission has sought to “reasonably accommodate [] individuals’ rights to privacy as well as the legitimate business interests of telemarketers.”⁸

4. Despite the TCPA and the Commission’s rules, complaints about unwanted calls, including robocalls, historically have been one of our largest sources of informal complaints.⁹ For example, we received approximately 165,000 complaints related to unwanted calls in Fiscal Year 2016.¹⁰ The Federal Trade Commission (FTC) received approximately five million unwanted call complaints over the same period.¹¹ The Commission has addressed the robocall problem in several ways including, most recently, by proposing to expressly authorize voice providers to block illegal robocalls instead of completing them to consumers’ phones.¹² With this *Second Notice of Inquiry*, we inquire about ways to minimize or eliminate robocalls to consumers with reassigned numbers.

⁴ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(9); codified at 47 U.S.C. § 227. The Commission’s implementing rules are codified at 47 CFR § 64.1200.

⁵ See 47 U.S.C. § 227(b)(1).

⁶ *Id.* § 227(b)(1)(B); 47 CFR § 64.1200(a)(3). Consent to such telemarketing calls must be in writing. 47 CFR § 64.1200(a)(3). Telemarketing calls to residential lines that are made by or on behalf of a tax-exempt nonprofit organization and telemarketing calls subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) may be made without the prior express written consent of the called party. *Id.*

⁷ 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1)-(2). The restriction also applies to such calls directed to emergency numbers and other specified locations. For autodialed or artificial- or prerecorded- voice telemarketing calls to wireless numbers, prior express consent must be in writing. *2012 TCPA Order*, 27 FCC Rcd 1830, 1838, para. 20; 47 CFR § 64.1200(a)(2); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, 30 FCC Rcd 7961, 8000-06, paras. 73-84 (2015) (*2015 TCPA Declaratory Ruling*).

⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8754, para. 3 (1992).

⁹ See Federal Communications Commission Encyclopedia, Quarterly Reports-Consumer Inquiries and Complaints, Top Complaint Subjects, <http://www.fcc.gov/encyclopedia/quarterly-reports-consumer-inquiries-and-complaints> (last visited Jul.13, 2017).

¹⁰ See Federal Communications Commission, Consumer Complaint Data Center, Quarterly Reports-Consumer Inquiries and Complaints, Consumer Complaint Data – Unwanted Calls, <https://opendata.fcc.gov/Consumer-and-Government-Affairs/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Jul. 13, 2017).

¹¹ Federal Trade Commission, National Do Not Call Registry Data Book (December 2016), https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf (last visited Jul. 13, 2017).

¹² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Noticed of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 2306 (2017).

B. The Reassigned Number Problem

5. As required by the Commission's rules, the North American Numbering Plan Administrator (NANPA) allocates a limited quantity of telephone numbers to voice service providers, usually in blocks of a thousand numbers. These providers routinely "recycle" telephone numbers by returning them to their aging numbers pool for a period of time following disconnection and by subsequently reassigning them to new subscribers.¹³ Approximately 35 million telephone numbers are disconnected and aged each year,¹⁴ and according to one source 100,000 numbers are reassigned by wireless carriers every day.¹⁵ Consumers change telephone numbers for a variety of reasons, including switching wireless providers without porting numbers and getting new wireline telephone numbers when they move. Once a consumer drops a number, he or she might not update all parties who have called in the past, including robocallers to which the consumer gave prior express consent. When the old number is reassigned, robocallers can inadvertently call the non-consenting consumer who is assigned the number.

6. Existing tools can help callers identify reassignments,¹⁶ yet "callers lack guaranteed methods to discover all reassignments immediately after they occur."¹⁷ Because calls to reassigned numbers can deprive consumers of desired robocalls and annoy others with unwanted robocalls, both consumer groups and robocallers support enabling robocallers to more quickly learn of reassignments, e.g., via a comprehensive reassigned numbers database.¹⁸

C. Legal Authority

7. Section 251(e)(1) of the Communications Act of 1934, as amended (the Act), gives the Commission plenary authority over that portion of the North American Numbering Plan (NANP) that pertains to the United States¹⁹ and the Commission has authority to set policy on all facets of numbering

¹³ See generally 47 CFR § 52.15.

¹⁴ See North American Numbering Plan Administrator Number Resource Utilization/Forecast Reports (average of aggregate numbers for the time period January 1, 2013 through December 31, 2016).

¹⁵ See Joint Brief for Petitioners at 17, ACA International, et al. Petition for Review from 2015 TCPA Declaratory Ruling (D.C. Cir. Nov. 25, 2015); see also Comments of Twitter, CG Docket No. 02-278, at 3 (Apr. 22, 2015); Stage Stores, Inc. Petition for Expedited Declaratory Ruling and Clarifications, CG Docket No. 02-278, at 3 (filed June 3, 2014). While a number of parties have cited these figures, we note that at least one has questioned whether they accurately reflect the volume of number reassignments. See Brief of *Amici Curiae* Electronic Privacy Information Center (EPIC) and Six Consumer Privacy Organizations In Support of Respondents at 17-23, ACA International, et al. Petition for Review from 2015 TCPA Declaratory Ruling (D.C. Cir. Nov. 25, 2015). We seek comment on this point below in paragraph 14.

¹⁶ See, e.g., NeuStar TCPA Compliance Solutions, <https://www.neustar.biz/risk/compliance-solutions/tcpa> (last visited Jul. 13, 2017); Danal TCPA Compliance Solution, <https://tcpaconfidence.com/> (last visited Jul. 13, 2017); Payfone TCPA Compliance, <https://www.twilio.com/marketplace/add-ons/payfone-tcpa-compliance> (last visited Jul. 13, 2017); see also 2015 TCPA Declaratory Ruling, 30 FCC Rcd at 7999, n.254 (citing comments stating that marketplace solutions to inform callers about reassigned numbers are available).

¹⁷ See 2015 TCPA Declaratory Ruling, 30 FCC Rcd at 8007-08, para. 85; see also *id.* at 8092, Statement of Commissioner O'Reilly (noting that existing solutions are incomplete and not timely updated).

¹⁸ See, e.g., Reply Comments of the National Consumer Law Center, CG Docket No. 02-278, at 8 (June 21, 2016); Reply Comments of Stage Stores, Inc., CG Docket No. 02-278, at 7-8 (Aug. 26, 2014); Reply Comments of the Computer & Communications Industry Association (CCIA), CG Docket No. 02-278, at 2 (Aug. 25, 2014); Comments of Wells Fargo, CG Docket No. 02-278, at 9-10 (Aug. 8, 2014); Reply Comments of United Healthcare Services, Inc., CG Docket No. 02-278, at 12 (Mar. 24, 2014); ACA Comments, CG Docket No. 02-278, at 2 (Mar. 10, 2014); ETA Letter at 1; Letter from Margot Saunders, Senior Counsel, National Consumer Law Center, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, at 1-2 (July 6, 2017) (NCLC *Ex Parte*).

¹⁹ 47 U.S.C. § 251(e)(1).

administration in the United States.²⁰ The Commission has concluded that section 251(e)(1) supplies ample authority to extend numbering-related requirements to interconnected VoIP providers that obtain telephone numbers directly or indirectly, regardless of the statutory classification of interconnected VoIP service.²¹ Thus, any entity that obtains NANP numbers in the United States must comply with the Commission's numbering rules.²²

8. We believe our legal authority to address the matters discussed herein stems directly from sections 227(b) and 251(e) of the Act.²³ More specifically, we believe that the Commission's plenary authority over NANP numbering resources provides ample authority regarding recipients of NANP numbers reporting information about reassignments of those numbers, just as they already are required to report other information about numbering administration.²⁴ We also believe that exercising our 251(e) authority in this fashion furthers the statutory goals underlying Section 227(b) to permit legitimate telemarketing practices and to protect the privacy of individuals and, more generally, the public interest. We seek comment on the nature and scope of our authority.

III. DISCUSSION

9. As explained in more detail below, we seek comment on ways we could exercise our numbering authority to require service providers to report information about number reassignments for the purposes of reducing unwanted robocalls and improving TCPA compliance. We also inquire into methods by which such reporting would occur and how robocallers can access reassigned number information.²⁵

A. Reporting Number Reassignments

10. The first step in our inquiry into making reassigned number information available to robocallers is to consider the ways in which the voice service providers who have the information could report number reassignments in an accurate and timely way. We seek comment on how voice service providers could report information about the reassignment of NANP numbers they have been allocated. And we seek comment on whether such reporting, when coupled with a reporting mechanism as described below, will substantially improve robocallers' ability to identify reassigned numbers.

11. *Information to be Reported.* What information should voice service providers report? We believe the answer substantially affects the utility of any reporting requirement we might later propose. For instance, would requiring voice service providers to report when telephone numbers have been disconnected and become classified as aging numbers²⁶ best enable a robocaller to understand that

²⁰ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, CC Docket Nos. 96-98, 95-185, and 92-237, NSD File No. 96-8, IAD File No. 94-102, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512, para. 271 (1996).

²¹ See *Numbering Policies for Modern Communications et al.*, WC Docket Nos. 13-97, 04-36, 07-243, 10-90, CC Docket Nos. 95-116, 01-92, 99-200, Report and Order, 30 FCC Rcd 6839 (2015) (*2015 Direct Access Order*).

²² The numbering rules are located in Part 52 of the Commission's rules, 47 CFR § 52.1 *et seq.*

²³ 47 U.S.C. §§ 227(b), 251(e).

²⁴ Various reporting requirements are contained in 47 CFR § 52.15.

²⁵ See *2015 TCPA Declaratory Ruling*, 30 FCC Rcd at 8068, Statement of Commissioner Clyburn (recognizing that various approaches have been suggested).

²⁶ See 47 CFR § 52.15(f)(ii) ("Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days.").

the consumer who gave consent to be robocalled at that number is no longer reachable at that number? In the alternative, would it be more effective for voice service providers to report when numbers become classified as available²⁷ or when the classification of a number changes from available to assigned?²⁸ If so, how would this better enable robocallers to learn that the consumer who gave prior express consent can no longer be reached at that number? Is there different or other information that should be reported, such as when a number is disconnected, even temporarily? Would reporting temporary disconnections inaccurately indicate reassignments? If additional information were reported, does that raise additional concerns about private, proprietary, or commercially sensitive information being disclosed? Would consumers, robocallers, or both benefit more from ceasing robocalls to a number when the consumer who gave consent to be called at that number can no longer be reached at that number or when the number has been reassigned to a new consumer? Because disconnected numbers are not reassigned to a new consumer until after the aging period has expired, would reporting when numbers are disconnected, rather than when reassigned, diminish the usefulness of the numbering information to unscrupulous robocallers who might wish to use the information to make illegal calls? Should reassignments of toll-free numbers also be reported, or is the issue of reassignments not a significant problem in the toll-free context? If toll-free numbers were included in the reporting requirement, what information would need to be reported and what entity could best provide it?

12. *Providers to be Covered.* We seek comment on whether any reporting requirement should apply to all voice service providers; or, whether it should apply only to wireless providers, thus excluding VoIP and wireline. We note that the TCPA provides greater and unique protections to wireless consumers.²⁹ Specifically, the TCPA and the Commission's rules require prior express consent for autodialed and prerecorded calls to wireless numbers,³⁰ while requiring consent only for prerecorded telemarketing calls to residential numbers.³¹ We ask commenters to address how limiting any reporting requirement to wireless providers would impact robocallers' ability to learn when the consumer who gave consent can no longer be reached at the number given. Would limiting a reporting requirement to wireless providers make the requirement less effective in reducing the number of unwanted robocalls? We also seek comment on whether and how to balance the reporting burden placed on voice service providers against consumers' privacy interests and robocallers' interest in learning of reassignments.

13. *Indirect Assignment.* Some service providers, including many interconnected VoIP providers, do not obtain numbers directly from the numbering administrators, but rather obtain numbers for their residential or business customers from carrier partners.³² Should, as with our current number utilization reporting requirements, any obligation to report reassignment information for such providers

²⁷ See *id.* § 52.15(f)(iv) (“Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.”).

²⁸ See *id.* § 52.15(f)(iii) (“Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.”).

²⁹ 47 U.S.C. § 227 (b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii); see also *2012 TCPA Order*, 27 FCC Rcd at 1839-40, para. 25.

³⁰ 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(2). We use the term “prerecorded” to refer to calls that utilize either a prerecorded voice or an artificial voice.

³¹ 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3).

³² See *2015 Direct Access Order*, 30 FCC Rcd at 6847, para. 19, fn. 57 (“We expect interconnected VoIP providers will continue to use carrier partners [to obtain access to numbers] in some instances. . . . This Order does not prohibit those partner relationships.”).

attach to the carriers that provide these number resources or should it be placed on some other entity?³³ Should voice service providers that offer NANP numbers to downstream entities obligate these entities to report reassignments, either contractually or otherwise? Is there any way for the Commission to require these downstream entities to report and, if so, how? For wireless providers, should mobile virtual network operators be treated the same as facilities-based providers?

14. *Costs and Benefits.* Although we are not proposing rules at this time, we seek comment on the costs and benefits of voice service providers reporting reassigned number information. We believe such reporting as part of a comprehensive reassigned numbers resource would greatly benefit both consumers (by not getting unwanted calls intended for another consumer) and robocallers (by not wasting resources calling the wrong consumer and by avoiding potential TCPA violations). At the same time, we do not believe that voice providers, which presumably already track disconnected and reassigned number information for multiple reasons, would be greatly burdened if we were to consider such reporting requirements. We seek comment on these views, including whether they are true for small providers as well as larger providers. We also seek comment on how we can reduce the burden on smaller providers, including by extending implementation timelines. Finally, we seek comment on the quantity of telephone numbers that are reassigned, including the type of service involved in reassignments and over what time period reassignments are made. We also ask that commenters quantify the benefits of reducing unwanted calls to these numbers.³⁴ Should we consider a safe harbor from TCPA violations for robocallers who use the comprehensive reassigned number resource, or is an additional incentive not needed to increase its use?³⁵ What would be the advantages and disadvantages of a safe harbor? Could the Commission's rules regarding calls to numbers ported from wireline to wireless service³⁶ or regarding telemarketing calls to numbers on the national do-not-call registry³⁷ provide a model, or would the safe harbor necessarily take a unique form for each of the reporting alternatives mentioned below?³⁸

B. Reporting Alternatives

15. We seek comment on the most appropriate mechanism for voice providers to report reassignments and for robocallers to access that information. The four alternatives below represent a range of options that reflect varying degrees of Commission involvement in the establishment and operation of a database or other mechanism by which voice service providers could report reassigned number information and by which robocallers could access that information. We seek comment on each option, as well as on other options we should consider. As a general matter, we note that there are existing solutions designed to help robocallers detect reassignments.³⁹ As described above, we believe these solutions are helpful but not comprehensive. We seek comment on how we could leverage those existing tools to meet our goals here.

³³ See *2015 Direct Access Order*, 30 FCC Rcd at 6853-56, paras. 30-32, (clarifying how number utilization data is to be reported in cases where carriers assign numbers to “a wholesale customer, such as an interconnected VoIP provider”); see also 47 CFR § 52.15(f)(1)(iii).

³⁴ See *supra* note 15.

³⁵ NCLC *Ex Parte* at 1-2 (asserting that a safe harbor is unnecessary because a reliable reassigned number resource inherently provides sufficient incentive for robocallers to use it).

³⁶ See 47 CFR § 64.1200(a)(1)(iv) (robocaller is not liable under specified conditions for making certain calls to a wireless number within 15 days after the number was ported from wireline).

³⁷ See 47 CFR § 64.1200(c)(2) (telemarketer is not liable under specified conditions for making a call in error to a number on the national do-not-call registry).

³⁸ See *infra* Section III.B.

³⁹ See *supra* note 16.

16. *Report to FCC-established Database.* The first alternative is for the Commission to establish and select an administrator of a central database of reassigned numbers, much as it did to facilitate Local Number Portability (LNP).⁴⁰ Under this approach, voice service providers would report information to the reassigned number database, and robocallers would in turn query the database for information about reassigned numbers. This approach, if adopted, would allow the Commission to oversee the quality of the data and of database operations, to restrict access to the data to appropriate entities under reasonable terms and conditions, and to ensure that the data continues to be available for as long as necessary, unlike commercial databases that might cease operations.

17. *Report to Reassigned Number Data Aggregators and Robocallers.* The second alternative is for each voice service provider to report reassigned number information to robocallers directly or to reassigned number data aggregators, such as those already aggregating reassigned number information from various sources and providing it to robocallers. Under this alternative, either robocallers would operate their own in-house databases or the reassigned number data aggregators would incorporate into their databases information reported to them directly by the voice service providers and then provide the information to robocallers that purchase their services. Presumably, only large, high-volume robocallers would have the technical and other resources to operate their own in-house databases.

18. *Providers Operate Queriable Databases.* The third alternative is for each voice service provider to offer robocallers and reassigned number data aggregators the ability to query the voice service provider's own reassigned number information. For example, a voice service provider could create an application programming interface (API) that would enable queries of its own reassigned number information or provide a web interface for such queries. This approach would permit robocallers to choose how many voice service providers to query and which ones, or to use a service provided by a reassigned number data aggregator to check reassignments.

19. *Public Reports.* The fourth alternative is for voice service providers to make reassigned number data reports available to the public. For example, voice service providers could make their reports – perhaps in PDF, spreadsheet, comma separated values (CSV), or JavaScript Object Notation (JSON) format – available for download on their websites or by another interface. Under this approach, anyone, including robocallers or reassigned number data aggregators, could access reports from as many or as few voice service providers as they choose.

C. Additional Matters for Inquiry

20. We inquire about several factors relevant to the reporting alternatives. Commenters should address each general factor when commenting on the alternatives identified above and on any other alternative(s) they recommend, and should address factors specific to particular alternatives. Further, and as a general matter, we seek comment on incentives or disincentives for robocallers to utilize the comprehensive reassigned number resource, including any steps the Commission might take to further incentivize robocallers to use it.

1. General Factors

21. *Compensation for Voice Service Providers.* Should voice service providers be compensated for reporting reassigned number information? If so, how should commercially reasonable terms for compensation be developed? Should the terms be set uniformly by the Commission or

⁴⁰ The Number Portability Administration Center (NPAC) was set up in 1996 and is currently administered by Neustar. See, e.g., *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (establishing rules designed to implement local number portability); *In re Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281 (1997) (adopting the recommendation of the North American Numbering Council to, among other things, establish seven regional number portability databases); *In re Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (1997) (determining how the costs associated with local number portability should be borne by carriers).

established on a case-by-case basis through the contracts between the voice service providers and the reassigned number data aggregators or robocallers? Should the Commission require voice service providers to offer the same rates or other terms to all? If the voice service providers make reassigned number information available to the public, how should they be compensated?

22. *Format of Reassigned Number Information.* In what format should voice service providers report reassigned number information? Should the information be in a structured format, such as CSV, eXtensible Markup Language (XML), or JSON, or a text document format, such as PDF? Is the appropriate format different for each of the alternative reporting mechanisms? Are there technical considerations regarding either bulk downloads of information or query-based systems? If a voice service provider makes a queryable database available, what result should the system provide? For example, should there be a publish-subscribe interface where robocallers or reassigned number data aggregators could submit a list of NANP numbers of interest and be notified when numbers on that list are reassigned? Should the system return the date a NANP number was disconnected? Or should it be more restrictive and provide only a yes/no response to a query containing the number and a date, indicating whether the number was reassigned after that (consent) date? Should such requirements apply to reassigned number data aggregators' provision of information to robocallers, or should these aggregators be required to utilize a uniform format? If uniform, would it be necessary to create new standards, and, if so, which standards organization should be tasked with creating the format? Are there privacy concerns or concerns about commercially-sensitive information that should be taken into account when determining the way information is provided to reassigned number data aggregators or robocallers? Should there be a difference in the format or relevant fields of the report based on the type of voice service (e.g., VoIP, wireless, or landline) that uses the number?

23. *Frequency of Updates.* How often should voice service providers be required to update the reassigned number information they report? We note that the longer the delay in updating reassigned number information, the greater the likelihood that a robocaller, even after checking the reassigned number information, will call a number that has been reassigned and thus for which the robocaller has no prior consent. What time interval, including real time, best balances the reporting burden on voice service providers with the accuracy of the reassigned number information? Should the frequency of updating vary by the size of the voice service provider or the rural nature of a provider's service area? If so, would the Commission's LNP rules – which, for example, require Commercial Mobile Radio Service providers to offer LNP in certain geographic areas, but do not require deployment in additional switches until after an eligible entity requests it – provide a model?⁴¹ According to one source, 19 percent of the wireless numbers it seeks to call change within six months.⁴² Is this similar to the experience of other robocallers?

24. *Tracking Access to Reassigned Number Information.* In addition to establishing a required reporting mechanism, should the selected alternative track any information about those who access the information? Should a robocaller be required to set up an account that identifies the party obtaining the information and, if so, what information should it be required to provide? Should the reassigned number database, reassigned number data aggregators, or voice service providers track what information is provided to robocallers? Should that information be audited or reviewed in any way? Is there a risk that a repository of disconnected or aging numbers effectively could become a list of available numbers to be spoofed by fraudulent robocallers if such bad actors gain access to this information? How could that risk be mitigated?

⁴¹ 47 CFR § 52.31(a)(1)(iv). For example, a small voice service provider might not have to begin reporting its reassigned number information until after it receives a request for such information from an entity to which the provider is required to report such information.

⁴² Letter from Sheryl Wright, Senior Vice President, Encore Capital Group, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 2 (filed Apr. 27, 2017).

25. *Fees for Access to Reassigned Number Data.* We expect that data aggregators would charge robocallers for access to reassigned number information. We seek comment on what measures would be necessary to ensure that such fees do not undermine the ability of robocallers to access reassigned number information, including non-commercial robocallers such as schools.

26. *Eligibility to Access Reassigned Number Information.* Should a voice service provider be required to report reassigned number information only to entities that meet certain qualifications, such as by defining the qualifications for an entity to be considered a voice service provider or robocaller? What should those criteria be? Should robocallers or data aggregators have to certify that the information will be used only for purposes of TCPA compliance, and not for other commercial purposes, or should there be a more formal process? For example, should robocallers or data aggregators have to obtain from the Commission a certificate or other authorization by which they (1) agree that the information will be used only for purposes of TCPA compliance, and not for other commercial purposes, and (2) acknowledge that any unlawful use of the information shall subject them to enforcement, including forfeitures?⁴³ Should voice service providers be required to report reassigned number information only if the recipient uses the information solely for TCPA compliance purposes? Should or could those criteria include compliance with acceptable business practices, data security standards, data accuracy standards, privacy protections, or other standards? Should the Commission prohibit voice service providers from reporting reassigned number information to entities that do not meet these criteria? Should entities that believe they have been unreasonably denied access be able to appeal to the Commission?

27. For alternatives that envision multiple sources of data, how should robocallers be expected to discover these sources? Should they rely on reassigned number data aggregators, or should a neutral third party (such as the Commission or a trade association) offer a mandatory or voluntary registration of these data sources?

28. *Customer Proprietary Network Information.* Is there a risk that customer proprietary network information (CPNI)⁴⁴ could be disclosed without consumer consent under any of these alternatives? If so, how could that risk be addressed? Are any voice service providers already offering data aggregators, compliance services, or others access to customer records, including CPNI belonging to consumers who have consented to the disclosure? If so, what contractual, technical, or other protections have been implemented to guard against unauthorized disclosure of CPNI belonging to consenting consumers and to protect CPNI belonging to customers who have not consented to such access?

29. *Small Business Considerations.* Do any of the proposed alternatives create a different or greater burden on small businesses? What particular concerns of small businesses should we consider as we proceed?

2. Alternative-Specific Matters for Inquiry

a. FCC-Established Database

30. Would it be necessary to create an entirely new database or would it be possible to expand or modify an existing database, such as the NPAC database, to accommodate reassigned number information? If a new database is required, should the Commission follow the same processes as it did in creating other databases? What organizations have the expertise to be the administrator of such a database? If a new database is not required, which database or databases could be used for reassigned

⁴³ Under Section 503(b)(5) of the Act, a person who does not hold a license, permit, certificate, or other authorization issued by the Commission, or is not an applicant for the same, may not be issued a Notice of Apparent Liability for Forfeiture unless that person: (1) is first sent a citation of the violation charged, (2) is given an opportunity for a personal interview with an official of the Commission, and (3) subsequently engages in conduct of the type described in such citation. 47 U.S.C. § 503(b)(5).

⁴⁴ CPNI cannot be disclosed without consumer consent, and must be disclosed as directed by the consumer. See 47 CFR §§ 64.2001-12.

number information? Which of these databases would present the most efficient option in terms of cost and time? Would it be possible to amend an existing contract for this purpose? Would this approach result in unnecessary duplication of databases already operated by reassigned number data aggregators or have undesirable competitive or economic consequences on such aggregators, including small businesses? Are there other factors the Commission should consider?

31. How would the database be funded? Should the Commission establish a charge to users of the database to help offset the costs? If so, how would the billing and collection process work? Should the charge be based on the quantity of queries, the quantity of individual phone numbers queried, the frequency of activity, a flat fee, or some other basis? Can the current Do-Not-Call database mechanism serve as a model?

b. Other Alternatives

32. Are there factors specific to any of the other alternatives discussed above that the Commission should consider? How do they impact the effectiveness and efficiency of the affected alternative?

IV. PROCEDURAL MATTERS

A. *Ex Parte* Rules

33. Permit-But-Disclose. The proceeding this *Notice of Inquiry* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁴⁵ 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the 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. Filing Requirements

34. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

35. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

⁴⁵ 47 CFR §§ 1.1200 *et seq.*

36. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

37. 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.

38. 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.

39. 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.

40. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

41. 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).

42. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

43. Additional Information. For additional information on this proceeding, contact Josh Zeldis, Josh.Zeldis@fcc.gov or (202) 418-0715 or Karen Schroeder, Karen.Schroeder@fcc.gov or (202) 418-0654 of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

44. **IT IS ORDERED**, pursuant to the authority contained in sections 227(b) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 227, 251, that this *Second Notice of Inquiry* **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRMAN AJIT PAI**

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

So, you've just purchased a new mobile phone and received a new phone number. Life is good!

But then the calls start. It's an automated voice message from a doctor's office informing you about an upcoming appointment. But that's not your doctor. And you don't have any appointments on the horizon. Then more and more calls start rolling in from the same doctor's office—until, after a week's time, you end up with approximately three calls a day. You are frustrated and annoyed.

The very slight silver lining is that you're not alone. You have joined the ranks of many consumers who are getting calls intended for someone else. You're an incidental victim because the phone number you now have has been reassigned or recycled from someone else.

Now, let's look at this problem from the doctor's perspective. After placing several calls to a patient, the doctor's office is still unable to reach her, and is unsure whether she'll show up to the appointment. Additionally, the office now faces legal liability. That's because, unbeknownst to the doctor's office, the customer phone number it has on file has been reassigned to a new person.

And let's not omit the perspective of the person who had the phone number *before* it was reassigned. Although she no longer holds the phone number in question, she is not receiving the reminder she has requested and could miss her appointment.

So how can we address this problem? Today's *Second Notice of Inquiry* tees up several approaches for carriers to report phone number reassignments and for businesses to be able to access that database. For example, the FCC could designate an administrator of a central reassigned numbers database. Or, providers could report the reassigned numbers directly to businesses or to an aggregator. Or, perhaps the providers could operate a database that could be queried as needed. We hope to get solid public input on the best way to structure a useful, cost-effective database.

With today's *Second Notice of Inquiry*, the FCC takes an important first step to address the problems described above by exploring ways that businesses can verify whether a number has been reassigned prior to initiating a call. That would save everyone a lot of trouble.

What a terrific team effort this has been. My gratitude extends to the many hardworking staffers who developed this item: John B. Adams, Micah Caldwell, Karen Schroeder, Kurt Schroeder, Mark Stone, Patrick Webre, and Josh Zeldis from the Consumer and Governmental Affairs Bureau; Laurence Atlas, Doug Klein, Rick Mallen, Scott Noveck, Linda Oliver, Bill Richardson, Jennifer Tatel, and Chin Yoo from Office of the General Counsel; Heather Hendrickson, Daniel Kahn, Nirali Patel, Sherwin Siy, and Ann Stevens from the Wireline Competition Bureau; Richard Hindman and Kristi Thompson from the Enforcement Bureau; Henning Schulzrinne and Antonio Sweet from Office of Strategic Planning and Policy Analysis; Belford Lawson and Sanford Williams from the Office of Communication Business Opportunities; and Pramesh Jobanputra and Catherine Mataves from the Wireless Telecommunications Bureau.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59; *Call Authentication Trust Anchor*, WC Docket No. 17-97

The phone rings, you pick it up, then you notice a distinct pause. You sigh heavily because you know that within seconds, a recording will follow saying something like this: “Congratulations! You have just been chosen to receive an all-expenses paid vacation to Florida.”

We each have had our encounters with robocalls, and our feelings about them are rarely warm or fuzzy. Too often they come in at the worst possible times... during an important evening meeting, just when you are having a rare conversation with family members or friends, or right when you are about to take that next to the last bite into an already lukewarm previously frozen TV dinner.

According to the latest data from the YouMail Robocall Index, 2.5 billion of those robocalls were made just last month in the United States. Equally remarkable is that four telephone numbers are responsible for more than 68 million of these calls. Given the severity and complexity of the unwanted robocall problem, this agency recognizes that it must take a multi-pronged approach to address this persistent issue.

Through the combined efforts of the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB), we have before us two *Notices of Inquiry*. The first seeks comment on how to best authenticate, certify, and identify calls in an effort to eradicate unwanted and illegal ones for good. Proper authentication and identification are necessary first steps in stopping illegal robocalls dead in their tracks. Through an authentication regime, we can better ensure that no spoofed robocall goes undetected, untargeted, or unblocked.

The second *Notice* initiates an inquiry on how to deal with reassigned numbers. There is no denying that millions of phone numbers change hands each year. This has led to calls for establishing a reassigned number database, an undertaking that has my support. I appreciate the Chairman’s willingness to include suggested questions in the item, including the downsides of a safe harbor for robocallers and how to design a reassigned number database in such a way to maximize its use and reliability.

As is evidenced by recent actions taken by the FCC, including last month’s *Notice of Apparent Liability (NAL)* against an individual alleged to have spoofed nearly 100 million calls, no one action will rid this nation of illegal robocalls for good. But support for both of these *NOIs* affirms our commitment and willingness to work together, and find new and innovative ways to make sure this Commission stays one step ahead.

Thanks are due to the staff of WCB and CGB for your continuing efforts to stop unwanted and illegal robocalls.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59; *Call Authentication Trust Anchor*, WC Docket No. 17-97

Many thanks to the Chairman for combining the discussion of these two items, addressing similar but distinct aspects of the same topic.

Overall, I appreciate the challenge of trying to corral and decrease illegal robocalls, many of which originate overseas. Do note that I said *illegal* robocalls, as not every robocall is problematic. In fact, many are extremely beneficial to consumers, providing information they want and expect to receive from trusted companies. The Commission's job should be to ensure that it doesn't prevent or squash legitimate robocalls in its ferocious quest to curtail unlawful ones.

I find the second item, regarding reassigned numbers, to be extremely pertinent to the entire discussion. Quite frankly, I think this item shines a bright light on just how misguided and fundamentally broken the Commission's *2015 TCPA Declaratory Ruling* really was. At that time, I begged the Chairman, my fellow Commissioners, and the staff to accept reality and address the issue of reassigned telephone numbers in a meaningful way. I was ultimately unsuccessful. Instead, the Commission tried to pretend the problem wasn't valid despite estimates that 100,000 cell phone numbers are reassigned to new users each day and telephone numbers are typically withheld for only 90 days or less before being recycled to new users. This meant the scope of the problem was much larger and thornier than the Commission ever acknowledged, making any type of "prior consent" extremely difficult and essentially worthless in a short amount of time.

Exacerbating the situation, the Commission created a faulty and intellectually dishonest solution of "one free call to a consumer" exemption as a fig-leaf remedy. Recall that the exemption does not require consumers to accurately inform the caller that the number has been reassigned; ignores the worthlessness of uninformative voicemails; and even counts call attempts or informational texts where there was no response at all against the one call policy. Moreover, accidental misdials receive no protection whatsoever. In my limited time, I won't belabor how bankrupt this really is and how it has ensnared legitimate companies in needless, financially-crippling litigation for the simple practice of trying to contact their willing customers. I am hopeful that the D.C. Circuit will overturn this and other portions of our previous declaratory ruling and install an intended recipient or actual knowledge standard as the proper legal test, which is completely consistent with the underlying TCPA. In addition, the Commission should initiate a new proceeding to effectuate this change.

To the extent that the issue is not mooted by court action or our own initiative, the item before us explores the creation of a reassigned number database as one option to deal with the issue. The idea being that companies could cross-check their calling lists against an accurate and consistently updated database of reassigned numbers to significantly limit the number of stray calls. While not a new idea, as many people in the past have proposed differing options, such as using part of the Commission's existing numbering resources, the *Second Notice of Inquiry* explores many of the relevant issues that would need to be sufficiently answered before creating such a database. Chief among these is language, added at my behest, that examines whether to similarly create a safe harbor for companies that use the database to minimize calls to reassigned numbers. Simply put, there must be some benefit for companies to help establish, pay for and use such a database, and a properly constructed compliance safe harbor must be part of any equation, if this item is to proceed forward.

In the first item pertaining to call authentication, I am less sanguine. While I applaud the Chairman for creative efforts to further curtail illegal robocalls and will vote to approve since it's an NOI, I am not exactly as comfortable with some of the direction or suggestions posed. Certainly, I am not in favor of having the Federal government via the Commission actively involved in these functions – either as a governance authority or policy administrator – no matter how meritorious it may be for reducing unlawful robocalls. Creating, facilitating, or mandating such a regime, which seems to be very close to establishing a *de facto* technology mandate, is not the proper role of the Commission. Those functions should be left to the private sector. Moreover, ATIS, the purveyor of the SHAKEN framework, favors a minimalist government role or none at all. That seems to beg the question why we would contemplate anything more. To the extent that the Commission feels it must get involved, and we would need to see some very convincing evidence, holding roundtables with applicable parties or letters seeking information on the potential roadblocks would be the best course of action, if any. Maybe we can use the TAC and CSRIC for that?

Operationally, I am a bit puzzled how this structure would actually work in relation to the authentication that already exists for data packets, which was initiated without FCC or other government involvement. For data packets that contain voice would there be some extra certification and authentication structure separate from that applicable to all other data packets?

In the end, the item raises the most salient issue, stating: “We anticipate that adopting authentication frameworks in the United States will naturally have less effect on foreign robocalling...” In other words, if this item were eventually turned into final Commission rules, its likely to have questionable impact on illegal robocalls initiated overseas. Given that most experts agree that a good portion of robocalls initiate outside the boundaries of our good nation, this would certainly need to be fed into a cost-benefit calculation as to whether FCC intervention is warranted, as opposed to industry-led efforts.

With that, I will vote to approve each of the two items.