

**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 )

**COMMENTS OF INCOMPAS**

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Second Further Notice of Proposed Rulemaking* on potential mechanisms to address the problem of unwanted robocalls to reassigned telephone numbers.<sup>1</sup>

Throughout the set of proceedings that address the issue of unlawful and unwanted robocalls, INCOMPAS has encouraged the Commission to take a long-term view of the complex technical issues associated with robocalls, while aiming to achieve as much immediate relief for consumers as possible. INCOMPAS is supportive of the Commission’s efforts to curb the threat of robocalls, but has advocated restraint when the Commission’s proposals have had the potential to compromise providers’ call completion obligations or impose burdensome costs on service providers.

As part of its broader policy and enforcement efforts to target unwanted calls, the Commission now seeks comment on potential mechanisms for service providers to report reassigned number information so that good-faith robocallers will have the necessary information to avoid potential liability for violations of the Telephone Consumer Protection Act

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<sup>1</sup>*Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Further Notice of Proposed Rulemaking, FCC 18-31 (rel. Mar. 23, 2018) (“FNPRM”).

(“TCPA”). Among other proposals, the Commission seeks comment on the development of a single, FCC-designated reassigned numbers database from which callers could “discover potential reassignments before they occur.”<sup>2</sup> In the alternative, the Commission proposes to require or allow service providers to voluntarily use commercial data aggregators to report reassigned number information.

Like others in the record,<sup>3</sup> our member companies have expressed serious concerns about the costs associated with this proposal as well as its overall effectiveness ultimately. Regardless of which mechanism the Commission may prefer for reassigned number data administration, requiring service providers to report into a database will translate into significant engineering and operational costs as these companies develop and maintain compliance systems. Unlike other functions, our members would be unable to pass along this task to a numbering partner, because in the case of reassigned numbers, these companies do not have the real time information to determine if a service provider has reassigned a number to another customer. Even if the numbering partner was able to access this information in real time, service providers would likely be charged for the reporting.

Furthermore, the database administrator or data aggregator may require service providers to contribute an additional fee for participation in the database. Given the significant investment that a service provider would have to make to participate in a reassigned number solution, should

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<sup>2</sup> FNPRM at ¶ 11.

<sup>3</sup> See Comments of CTIA, CG Docket No. 17-59 (filed Aug. 28, 2017), at 10 (explaining how CTIA member companies disagreed with the Commission’s assessment that voice providers would not be “greatly burdened” by reporting reassigned number information (quoting *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59 (rel. July 13, 2017), at ¶ 14)) (“CTIA Comments”).

the Commission proceed, INCOMPAS proposes that service providers be compensated for all of their costs of reporting information either to a single database or to data aggregators. It would be a sound policy for such costs to be borne by robocallers accessing the database seeking comprehensive and timely information on reassigned numbers.

Based on the prohibitive costs to service providers together with the speculative use and ultimate value, INCOMPAS renews CTIA's appeal for the Commission to conduct "a comprehensive cost-benefit analysis to evaluate the complex financial, operational and technical issues" of the reassigned number database proposal.<sup>4</sup> Though well-intentioned, the Commission's proposal seems to benefit callers that wish to engage in telemarketing, at the expense of voice service providers. The resources that will be diverted to modifying existing systems to comply with the Commission's database of choice would be better used by these companies in the deployment and maintenance of next generation networks or by engaging existing commercial solutions.

Finally, before the Commission makes a determination on the necessity of a reassigned numbers database, INCOMPAS urges the agency to allow the Consumer and Governmental Affairs Bureau ("CGB") to complete its proceeding on how the TCPA should be interpreted following the D.C. Circuit's decision in *ACA International v. FCC*.<sup>5</sup> The D.C. Circuit's decision, which vacated the Commission's 2015 Omnibus TCPA Declaratory Ruling and Order's one-call, post reassignment safe harbor, provides an opportunity for the Commission to reconsider the treatment of liability for calls made to a phone number that, although previously

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<sup>4</sup> CTIA Comments at 13.

<sup>5</sup> See *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act In Light of the D.C. Circuit's ACA International Decisions*, CG Docket No. 18-152, CG Docket No. 02-278, Public Notice, DA 18-493 (rel. May 14, 2018).

assigned to a person who had given consent, has since been reassigned to another non-consenting person. As noted by Commissioner O’Rielly, in his statement on the FNPRM:

Now that the court has . . . made clear we can decide that callers are not liable unless they have actual knowledge that the number changed hands, there may be less value or need in creating a new database, at least from a legal liability perspective.<sup>6</sup>

With the D.C. Circuit setting aside the Commission’s treatment of reassigned numbers as a whole, the Commission should delay any decision on establishing a method for reassigned number data administration in favor of giving the CGB adequate time to put “the TCPA rules back on solid legal and practical footing.”<sup>7</sup>

For the reasons stated herein, INCOMPAS urges the Commission to adopt the recommendations in its comment, as it considers the issues raised in the Second FNPRM.

Respectfully submitted,

INCOMPAS

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<sup>6</sup> FNPRM at 33 (Statement of Commissioner Michael O’Rielly).

<sup>7</sup> *Id.*