

# July 2017 FCC Meeting Recap: Commissioners Adopt Second Robocall NOI to Examine Reassigned Number Database Issues

July 18, 2017

On July 13, 2017, the three FCC Commissioners voted in favor of a [Second Notice of Inquiry](#) (NOI) to gather feedback on using numbering information to create comprehensive list that businesses can use to identify telephone numbers that have been reassigned from a consumer that consented to receiving calls to another consumer. It also asks whether the Commission should “consider a safe harbor from [Telephone Consumer Protection Act] violations” for robocallers who use the reassigned number resource. This action is the latest of several TCPA rulemaking actions initiated by Chairman Pai since he assumed leadership of the FCC. While the action is a NOI – which is a precursor to proposed rules – the action signals the importance the new Chairman has placed on reducing the number of unwanted calls consumers receive.

A Notice of Inquiry is used to gather general information on a topic, before specific rules are proposed. Here, the NOI targets information on options for establishing a database of reassigned telephone numbers.

## **Feasibility of Reporting Reassigned Numbers**

The NOI asks how service providers can report number reassignments in an accurate and timely manner, and what information the provider would need to report. The Commission seeks comment on whether a report when a telephone number is disconnected and is now “aging” would be adequate, or if the provider should also report when numbers become classified as available, or when the classification changes from available to assigned. The FCC also asks if the reporting requirement should apply to all voice service providers, or whether it should apply only to wireless providers (given the TCPA’s greater protections for wireless over wireline numbers). The Commission seeks comment on extending the reporting requirements to interconnected VoIP providers or Mobile Virtual Network Operators (MNVOs).

The NOI suggests that approximately 35 million telephone numbers are “disconnected and aged” each year, but seeks 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. The NOI next seeks comment on the costs and benefits of voice service providers reporting reassigned number information. It suggests that providers would not be “greatly burdened” by such reporting, but seeks feedback on how the Commission “can reduce the burden on smaller providers, including by extending implementation timelines.”

## **Safe Harbor Protection for Callers**

Because the Commission releases draft items as presented to the commissioners for consideration, it is possible to track significant changes in the proposal during the discussion on the 8<sup>th</sup> floor. A key addition to the draft NOI during this process was a request for feedback on a potential safe harbor from TCPA violations for robocallers who use the comprehensive reassigned number resource. A lack of safe harbor from TCPA liability for good actors was one of the shortcomings of the 2015 Omnibus TCPA Order identified by then-Commissioner Pai in his dissent from the order. Although consumer groups lobbied against the safe harbor, the Commission will at least consider the concept.

### **Database Issues**

Finally, the NOI seeks comment on four mechanisms for voice providers to report reassignments and for outbound callers to access that information. Option 1 is for voice providers to report to an FCC-established database, similar to what the FCC did to facilitate Local Number Portability. Option 2 is for providers to report reassigned number information to outbound callers directly or to number data aggregators. Option 3 is for providers to operate internal databases and field inquiries from outbound callers via an API. Option 4 is for providers to produce publicly available reports. For each of these options, the Commission seeks comment on whether voice service providers should be compensated for the reassigned number information; the appropriate format of the information; the frequency with which voice providers would need to update reassigned information; managing access to reassigned number information; and the level of risk to customer proprietary network information (CPNI) and how to address any risk.

### **The Road Ahead**

Initial comments on the NOI are due on **August 28, 2017** and reply comments are due on **September 26, 2017**. As noted, because this is a NOI, there are no proposed rules to address reassigned numbers. If the Commission desires to move in that direction, the Commission would have to adopt a Notice of Proposed Rulemaking at a later date, followed by another round of comments on the rulemaking proposal. Thus, more certainty for callers as to the quality of the number they're targeting is at least several months away. In the meantime, outbound callers will continue to face potential claims that the intended party is not, in fact, who the caller reached.