

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CG Docket No. 17–59; FCC 18–177]

Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission establishes a single, comprehensive database that will contain the most recent permanent disconnection date for toll free numbers and for each number allocated to or ported to each provider that receives North American Numbering Plan U.S. geographic numbers. The Commission also sets a minimum aging period of 45 days before a permanently disconnected number may be reassigned to a new subscriber and adopts a limited safe harbor from liability for any caller that relies upon inaccurate information provided by the database.

DATES:

Effective date: This rule is effective March 26, 2019.

Compliance date: Compliance will not be required for §§ 52.15(f)(1)(ii)(8), 52.103(d), and 64.1200(l)(1) and (2) until the Commission publishes documents in the **Federal Register** announcing the compliance dates.

FOR FURTHER INFORMATION CONTACT: Josh Zeldis, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418–0715, email: Josh.Zeldis@fcc.gov.

SUPPLEMENTARY INFORMATION:

Compliance

The amendments of the Commission's rules as set forth in this document are effective 30 days after publication of a document in the **Federal Register** announcing approval by the Office of Management and Budget (OMB). Compliance will not be required for §§ 52.15(f)(1)(ii)(8), 52.103(d), and 64.1200(l)(1) until after approval by OMB of information collection requirements contained in §§ 52.15(f)(1)(ii)(8) and 64.1200(l)(1). The compliance date for §§ 52.15(f)(1)(ii)(8), 52.103(d), and 64.1200(l)(1) will be specified in a document published in the **Federal Register**. Compliance will not be required for § 64.1200(l)(2) until after approval by OMB and the reassigned numbers database administrator (Administrator) is ready to begin accepting reports of the data collected in

accordance with § 64.1200(l)(1). The Commission will publish another document in the **Federal Register** announcing the compliance date for the requirements contained in § 64.1200(l)(2).

This is a summary of the Commission's *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Report and Order (Order), document FCC 18–177, adopted on December 12, 2018, and released on December 13, 2018, in CG Docket No. 17–59. The Commission previously sought comment on these issues in *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking (Second Further Notice), published at 83 FR 17631, April 23, 2018. The full text of the Order is available for public inspection and copying via ECFS and during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It and any subsequently filed documents may also be found by searching ECFS at <http://apps.fcc.gov/ecfs/> (insert CG Docket No. 17–59 into the proceeding block). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call CGB at (202) 418–0530 (voice), (202) 418–0432 (TTY) or (844) 432–2275 (videophone).

Congressional Review Act

The Commission sent a copy of the Order to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

The Order contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 18–177 as required by the Paperwork Reduction Act PRA of 1995, Public Law 104–13. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might “further reduce the information burden for small business concerns with fewer than 25 employees.”

Synopsis

I. Second Report and Order

1. In the Order, the Commission takes another action to curb unwanted telephone calls by addressing calls to reassigned phone numbers. The problem occurs when a caller tries to reach a consumer who expects a call but, unbeknownst to the caller, has disconnected the number. That number is often reassigned to a new consumer, who then receives an unwanted call meant for the prior consumer—and all too often multiple unwanted calls when, for example, the consumer misses the call or chooses to not to answer it. As a result, the previous consumer is deprived of expected calls. In addition, unwanted calls reduce callers' operational efficiency and effectiveness, while subjecting them to potential liability for alleged violations of the Telephone Consumer Protection Act (TCPA).

2. Today the Commission addresses this problem by establishing a single, comprehensive database that will contain reassigned number information from each provider that obtains North American Numbering Plan (NANP) U.S. geographic numbers. It also will include toll free numbers. The database will enable any caller to verify whether a telephone number has been reassigned before calling that number.

A. Aging Period

3. The Commission establishes a minimum aging period of 45 days for all numbers. The Commission concludes that 45 days is an appropriate aging period because the Commission allows 31 days to ensure each month's permanent disconnects are in the database before a number is reassigned and an additional two-week buffer to ensure consumers are fully protected.

B. Database Information, Access, and Use

4. The Commission finds that the database needs only the date of the most recent permanent disconnection of a particular number in order to enable a caller to determine whether that number has been permanently disconnected since a date provided by the caller. All legitimate callers should have the telephone number associated with the consumer they are attempting to reach and either the date they contacted that consumer or the date on which the caller could be confident that the consumer could still be reached at that number. The Commission believes that this minimal amount of information strikes the correct balance between not overly burdening reporting providers

while still offering callers the necessary functionality.

5. When a caller queries the database using a U.S. NANP number and a date, the database must provide a response of “yes”, “no”, or “no data” to explain whether the number has been reassigned (or more accurately, permanently disconnected) since the date provided. The date may be any past date on which the caller reasonably is certain that the consumer the caller intends to reach could in fact be reached at that number. For example, a caller might select the date on which it last spoke to the consumer at that number or the date the consumer last updated his contact information.

6. The Commission concludes, consistent with its existing number use reporting requirements, that the obligation to provide this information will be on all reporting carriers as defined in its numbering rules, which include wireless, wireline, and interconnected VoIP providers that obtain numbers from the North American Numbering Plan Administrator (NANPA). The data must be comprehensive because any exclusions will leave both callers and consumers vulnerable to calls misdirected to reassigned numbers. The mandatory reporting is necessary because the voluntary reporting alternative would yield data no more comprehensive than existing resources because not enough providers would voluntarily report.

7. The Commission requires reporting carriers as defined in § 52.15(f)(2) of its rules, including those providers that receive their numbering resources indirectly, to provide to the database information about number disconnections. The Commission concludes, however, that these providers should be able to delegate the task of reporting to the provider that receives the numbering resources directly from the NANPA or Pooling Administrator.

8. The Commission also includes toll free numbers in the reassigned numbers database. Calls to reassigned toll free numbers pose a problem to callers who waste time calling an unintended recipient and recipients who are responsible for paying the toll charge.

9. The obligation to report the permanent disconnect status of toll free numbers will be on the Toll Free Numbering Administrator. Toll free numbers are administered separately from non-toll-free numbers by the Toll Free Numbering Administrator. The Toll Free Numbering Administrator assigns toll free numbers to Responsible Organizations and, unlike the NANPA

in relation to non-toll-free numbers, is uniquely positioned to have real-time visibility into each toll free number's disconnection status. The Commission directs the Toll Free Numbering Administrator to revise its Service Management System tariff as appropriate to embody this responsibility of the Toll Free Numbering Administrator to report the disconnect status of toll free numbers to the reassigned numbers database, as set forth herein.

10. The Commission takes three steps to ensure that the data contained in the Reassigned Numbers Database are used appropriately and accessible to the widest possible array of users. First, the Commission follows the practice of data minimization—the database will not contain information about subscribers other than the most recent date of permanent disconnections. Second, the Commission limits the data available to any individual caller to a “yes”, “no”, or “no data” in response to a particular query. And third, the Commission requires callers to certify the purpose for which they are using the database.

11. The Commission believes that establishing a database that returns only a “yes”, “no”, or “no data” response to queries best protects consumer privacy and providers' commercially sensitive information because callers will not have access to the underlying data.

12. In addition, the database will be available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts. The Administrator will obtain this certification from each new user during the enrollment process and before allowing a new user to access the database.

13. Finally, the Commission takes steps to promote the accessibility of the database to the widest array of possible users. Recognizing that callers of all sizes and levels of sophistication may choose to use the database, the Commission requires the database to offer the ability to process low-volume queries (e.g., via a website interface), as well as to support high-volume queries (e.g., via batch process and/or standardized application programming interfaces or other protocols). In addition, some callers might use a third-party contractor to scrub their calling lists or to provide the capability to place autodialed or prerecorded or artificial voice calls. It must be possible for these

third-party contractors to use it as the agent of their client callers.

C. Database Administration

14. The Commission agrees with the vast majority of commenters that a single, centralized database is the preferable option. Keeping administration of the database under the Commission's direct oversight enables the Commission to better monitor operations and address any future issues.

15. The Commission's approach has the universal benefit of reducing transaction costs by providing a single point of contact both for providers to report reassigned number information and for callers to query that information. Under this approach, providers will avoid the costs of having to enter arrangements with multiple data aggregators and of establishing mechanisms for transmitting that data to each aggregator, which might have differing technical needs.

16. The Commission concludes that it is in the public interest for the reassigned numbers database to be administered by an independent third party administrator chosen under a competitive bidding process. As the Commission stated when it previously declined to act as the NANPA, no government agency has the resources to perform both regulatory and administrative functions regarding numbering resources effectively. In contrast, the Administrator, like the NANPA, will be well situated to administer a reassigned numbers database because it will be an independent, non-governmental entity that must meet strict competitive neutrality requirements.

17. The Commission may be able to achieve operational and cost efficiencies by merging the administration of the reassigned numbers database with the already consolidated NANPA and Pooling Administrator functions under a single contract and a single administrator. The current NANPA meets the Commission's selection requirements as it is independent and was selected previously pursuant to a competitive bidding process. The Commission expects that leveraging the existing reporting and administration mechanisms between providers and the numbering administrators will result in only a small, incremental burden resulting from reporting to the Administrator the date of the most recent permanent disconnection for each number. The Commission will therefore seek to procure a contract that consolidates the Administrator's functions with the present NANPA and

Pooling Administrator functions as soon as reasonably practicable.

18. The Commission requires each provider to report to the Administrator for inclusion in the database the date of the most recent permanent disconnection for each number allocated to or ported to the provider. This is all the data that is necessary for the Administrator to be able to provide a response of “yes”, “no”, or “no data” to queries of whether a number has been permanently disconnected since a date chosen by the caller making the query.

19. Using the date of permanent disconnection in this context reduces the potential that callers will needlessly expend resources attempting to call the number, and the lead time between disconnection and reassignment reduces the likelihood that the consumer to whom the number is reassigned will receive calls intended for the prior consumer. It also minimizes the amount of information that providers must report, minimizes the complexity and size of the database, minimizes the types of inquiries the Administrator must facilitate, and minimizes the volume of data that must be supplied in response to queries.

20. Definition of Permanent Disconnection. For this purpose, the Commission defines “permanent disconnection” as occurring when a subscriber permanently has relinquished a number, or the provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated with the subscriber for active service in the service provider’s records. Permanently disconnected numbers therefore do not include instances where the phone number is still associated with the subscriber, such as when a subscriber’s phone service has been disconnected temporarily for non-payment of a bill or when a consumer ports a number to another provider. A ported number remains assigned to and associated with the same consumer even though a different provider serves the consumer after the number is ported.

21. The Commission requires providers to report data to the Administrator on the 15th day of each month. The Commission believes that monthly reporting properly balances the burden placed on providers with the need for callers to obtain timely information. Moreover, the Commission concludes that more frequent reporting is unnecessary because the Commission also establishes a minimum aging period of 45 days, which will ensure that the database reflects current permanent disconnection information.

22. The Commission requires reporting providers to keep accurate and complete records associated with the permanent disconnections of their subscribers on a going-forward basis as soon as this information collection becomes effective, regardless of when the reassigned numbers database is launched. Requiring this recordkeeping before the reassigned numbers database is launched will ensure that reporting providers are appropriately tracking and have available the information they will need to update the database once it has launched, as well as a set of initial data spanning some period of time to make it more useful from launch.

23. In order to ease the burden on small providers, the Commission will permit six additional months for them to begin maintaining and reporting data to the Administrator. A limited extension of time is appropriate for these providers because they have limited staffing resources and may require additional time to make any necessary system changes to track and report permanent disconnections. The Commission directs CGB to separately announce the effective dates for smaller reporting providers when it announces the effective dates for larger reporting providers.

24. The Commission sets the threshold for determining which providers qualify for the six-month delay as those providers with 100,000 or fewer domestic retail subscriber lines as reported on their most recent Forms 477, aggregated over all the providers’ affiliates. The Commission has used this threshold with regard to other recordkeeping, retention, and reporting requirements, including in the Rural Call Completion Order.

25. The Commission declines, however, to further limit the reporting requirement for small providers, either by eliminating the obligation or by requiring less frequent reporting than larger providers. All providers, including small providers, are already required to report number usage information to the NANPA, albeit on a less frequent basis. Regardless of the size of the provider, the burden of compiling and reporting the date of permanent disconnection for NANP numbers each month is incremental and small compared to their overall reporting requirements. The Commission does not believe that this incremental burden is so significant as to outweigh the need for accurate and comprehensive data, nor does the Commission believe that the monthly reporting is overly onerous, as it is not likely to require small providers to implement new billing systems or

otherwise to incur substantial additional costs.

D. Costs and Cost Recovery

26. The Commission believes that, over the long term, callers should pay for the database. Thus, the Administrator’s costs to operate the database following its establishment will be recovered through usage charges that the Administrator will collect from callers that choose to use the database. This is consistent with the manner in which the Toll Free Numbering Administrator recovers its costs. Like the Responsible Organizations that benefit directly from the toll free numbers database, callers that choose to use the reassigned numbers database benefit directly by reducing their potential liability for unlawful calls to reassigned telephone numbers and reducing operational costs with more efficient calling. Also, like Responsible Organizations, callers that use the database are a clearly identifiable user group from which the Administrator can assess usage charges and that in turn can spread those costs across their customer bases. In contrast, costs for more generalized number administration performed by NANPA cannot be directly associated with any particular user group that could be billed for those costs and therefore are billed to providers that in turn recover those costs through charges for the services they provide. The Commission therefore concludes that it is most economically efficient and rational for the Administrator to recover reassigned numbers database costs from callers that choose to use the database.

27. The costs to establish the database and create the query functionality will be recovered using the same type of mechanism that is currently used to recover the NANPA’s costs. Thus, database creation costs will be included along with the other numbering administration costs the Billing and Collection Agent bills to and collects from providers. The Commission adopts this approach to establish the database as quickly as possible using the most practical means of funding considering that it is not possible to recover these costs through database usage charges before the database is created.

28. The Commission declines to seek Congressional funding for the database. Seeking an appropriation is unnecessary because the Commission already has authority to create the database. Further, seeking an appropriation would take additional time and therefore would delay launch of the database to the detriment of consumers and callers alike.

29. Just as providers recover other numbering administration costs, providers will be able fully to recover the costs they pay for creation of the database and query functionality, but no more. Because providers have no direct means of recovering these costs from callers that use the database, the Commission therefore will require the Administrator to set usage charges at a level designed to recover current operating costs and, over time, the database creation costs paid by providers.

30. The Commission agrees with commenters asserting that providers' internal costs of tracking and reporting permanent disconnection dates to the Administrator will be routine—and minimal—operational expenses similar to those expenses providers already incur to report other number usage data. In addition, providers have no means of recovering these costs directly from callers that choose to use the database and, because these are costs internal to providers, they cannot be recovered through the offset mechanism that enables them to recover the database creation costs they pay. Accordingly, the Commission anticipates that providers will recover these costs in their existing fees and charges.

31. The Toll Free Numbering Administrator similarly lacks a means to directly bill callers for its internal reporting costs. Therefore, it may recover these costs in the same manner as other costs of toll free number administration.

E. Safe Harbor

32. The Commission sought comment in the *Second Further Notice* on whether to adopt a safe harbor from TCPA liability for those callers that choose to use a reassigned numbers database. It adopts such a safe harbor for callers that rely on the database to learn if a number has been reassigned.

33. Nearly all commenters argue that if a reassigned numbers database is implemented, callers that make use of the database should not be subject to liability if the database reports that a number has not been reassigned and nevertheless it has been, and so a caller inadvertently calls a new consumer. The Commission agrees with consumer groups that this safe harbor should not be broadly applied to all calls made by a caller who uses the database without regard to whether the caller reasonably relied on the database when making a particular call. Indeed, the record reflects concerns about good-faith callers being subject to liability for TCPA violations, a threat that can cause callers to be overly cautious and stop

making wanted, lawful calls out of concern over potential liability for calling a reassigned number. The Commission share these concerns. And it finds that a safe harbor will incent greater usage, thereby further protecting more consumers from unwanted calls.

34. Once the database becomes operational, callers that wish to avail themselves of the safe harbor must demonstrate that they appropriately checked the most recent update of the database and the database reported “No” when given either the date they contacted that consumer or the date on which the caller could be confident that the consumer could still be reached at that number. Callers bear the burden of proof and persuasion to show that they checked the database before making a call.

35. The Commission disagrees with commenters seeking a more expansive safe harbor. For example, it declines to expand the period of time between checking the database and making a call beyond the most recent update to the database. This time period properly balances the burden placed on callers with the privacy interests of consumers. Moreover, by setting the minimum aging period at 45 days above, the Commission ensures that a caller that accesses the most recent update to the database will not inadvertently call a reassigned number unless the database is in error.

36. The Commission also declines to extend the safe harbor to other commercial databases. The record shows that such databases collect different information over a less-than-comprehensive set of consumers, and so the Commission is not in a position to assess whether any such database would merit a safe harbor.

37. Finally, the Commission disagrees with the one commenter who contends that the Commission lacks the statutory authority to adopt a safe harbor. First, it agrees with commenters that section 227 of the Communications Act of 1934 (the Act) supplies the Commission the authority to establish a safe harbor. Second, it notes that the vast majority of commenters support a safe harbor and yet only one party states the Commission lacks the authority to establish one. Further, the Commission notes that the court that considered its previous safe harbor, the D.C. Circuit in its *ACA International* decision, found the Commission's previous one-call safe harbor arbitrary, but did not question the Commission's authority to adopt a safe harbor. Indeed, the court favorably noted the Commission's steps to establishing a reassigned numbers database and the Commission's

consideration to adopt a safe harbor for callers that check the database as, among other things, consistent with the Commission's past practice of taking a “reasonable reliance” approach when interpreting the TCPA, and by extension, expressing no concern about the Commission interpreting the Act to not demand the impossible of callers. Further, as with the safe harbor afforded in the number portability context, the safe harbor here is not an “exemption” from the TCPA and Commission's rules, but rather a means to come into compliance. Otherwise, callers would be required to do the impossible: Identify inaccurate information in an otherwise comprehensive and timely reassigned numbers database.

F. Technical and Operational Issues

38. Commenters assert that the creation of a reassigned numbers database involves technical and operational requirements that could benefit from advice by the North American Numbering Council. The Commission agrees. It believes the Council is especially well-situated to handle matters related to this aspect of number administration because of its prior experience and collective expertise advising the Commission, among other things, on administration of number portability data and numbering administration procedures and systems. The Commission also believes that the Council can address and advise on issues and considerations related to the Administrator collecting fees from database users, the billing and collection from service providers to be administered by the Billing and Collection Agent, and interaction and coordination necessary and advisable between the Administrator and the Billing and Collection Agent in performing these roles. The Commission directs the Council to assess and address technical and operational issues consistent with the discussion below and, within six months, to report its recommendations on all of these issues to the Commission.

39. The Council, working through its Numbering Administration Oversight Working Group (Oversight Working Group), is to develop a Technical Requirements Document for the reassigned numbers database for review by the Commission. That Technical Requirements Document must contain a single, unified set of functional and interface requirements for technical interoperability and operational standards; the user interface specifications and data format for service providers to report to the Administrator; the user interfaces and

other means by which callers may submit queries, including providing callers the abilities for high-volume and batch processing or to submit individual queries; appropriate safeguards to protect the privacy and security of subscribers, protect the database from unauthorized access, and ensure the security and integrity of the data; and keeping records of service provider's reporting and accounting. In reaching its recommendations, the Council should consider the most cost-effective way of administering the database, with the goal of minimizing costs and burdens for all users and service providers, while ensuring that it will fully serve the intended purpose. The Commission also directs the Council, through the Oversight Working Group, to provide guidance on any new or modified requirements for the Billing & Collection Agent contract that may be advisable or necessary with the implementation and operation of this database.

40. The Commission will refer to the Council questions of how the fee structure should be designed and the initial amount of fees. Specifically, the Council, through its Oversight Working Group, is to consider technical issues surrounding how the Administrator can collect fees from callers that use the database. How this can be best achieved will depend in part, the Commission believes, on the user interface, the fee structure, the Administrator's costs to operate the database, and the amount of the fees necessary to enable providers to recover their costs of reassigned numbers database costs they pay to the Administrator. Therefore, the Council is to consider how to structure fees and the amount of such fees. Given the success of the National Do-Not-Call Registry and support in the record for using its fee structure as a model, the Council is to consider using that or a similar fee or subscription structure. The Council is also to consider using a per-query fee structure, which may be better suited to the manner in which this database will accept and respond to queries about individual numbers and may also be more appropriate for small-volume callers. The Commission does not, however, now require use of any particular fee structure.

41. The Council will, within six months from the release of the *Order*, issue its recommendations for implementing and operating the reassigned numbers database, including a Technical Requirements Document, and recommended fee structure, and fee amounts. The Council will meet to discuss these issues and vote on whether to approve the recommendations of its Oversight

Working Group, subject to any amendments the Council may consider appropriate. The Commission directs the Wireline Competition Bureau (WCB) in coordination with CGB to seek public comment on the Technical Requirements Document. The Commission expects the Council's guidance, as well as any relevant comments submitted by interested parties, will be incorporated into any contracting decisions.

G. Costs and Benefits

42. The Commission concludes that the benefits of this database outweigh the costs imposed.

43. A comprehensive database has not been created in the absence of Commission action. Until now, the Commission's rules have not required providers to report data to this extent and frequency about disconnections or reassignments, or otherwise to make this data available. There is no comprehensive solution at present and it is evident that the marketplace is highly unlikely to create one on its own. Moreover, no provider is capable of offering a comprehensive resource because each provider has access only to its own reassigned numbers data. Similarly, the Commission does not anticipate that data aggregators will provide an equivalent resource because doing so would require each aggregator to contract with every provider to obtain comprehensive data. The transaction costs of negotiating and administering thousands of bilateral contracts, and of incenting the providers to provide such data voluntarily, would be prohibitive. Further, because providers do not all keep records in the same manner there is no certainty that the technical arrangements necessary to obtain the data would be uniform across all providers or that the data could be obtained within the same timeframes from all providers. If updates were made at different times, callers would be forced to submit queries before each call, which greatly increases transaction costs compared to the monthly checks enabled by this database.

44. The broad support among callers and consumer groups representing the interests of called parties—the two groups that ultimately will pay for this database and enjoy its benefits—therefore amply demonstrates that the benefits outweigh the costs. The Commission finds that both of these groups are rational economic actors that have estimated costs and benefits in deciding to support this database.

G. Legal Authority

45. As the Commission recently has with regard to other aspects of number administration, it finds that sections 251(e) and 201 of the Act provide ample legal authority for the requirements it adopts today. Section 251(e) of the Act gives the Commission, “authority to set policy with respect to all facets of numbering administration in the United States.” Section 201 of the Act authorizes the Commission to ensure that interstate rates are just and reasonable and to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.”

46. Section 251(e)(1) of the Act plainly gives the Commission authority to designate administrators for purposes of numbering administration. Databases long have been a tool used in numbering administration. Congress in enacting the Act and the Commission in various proceedings have recognized that fair and impartial access to numbering resources is critical because “telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network.” The purpose of telephone numbers is to enable callers to place calls to the person they wish to reach. These requirements promote that purpose.

47. Certain aspects of numbering administration long have been conducted by carriers themselves as part of the services they offer or provided on their behalf by the various numbering administrators, or both. For example, carriers and their numbering-related systems play a substantial role in local number porting in conjunction with the central role of the Local Number Portability Administrator and its NPAC system, and, in toll free call numbering, some carriers operate their own Service Control Point databases (updated periodically with data from a database operated by the Toll Free Number Administrator) for servicing real-time per-call toll free call routing queries from originating carriers. The Commission similarly finds it is just and reasonable, in accordance with section 201 of the Act, for the Administrator to collect fees for using the database.

Final Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice*. The Commission sought written public comment on the proposals in the *Second Further Notice*, including

comment on the IRFA. The comments received are discussed below. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Proposed Rules

49. In the *Order*, the Commission establishes a single, comprehensive database that will contain reassigned number information about toll free numbers and from each voice provider that obtains North American Numbering Plan (NANP) U.S. geographic numbers. It also will include toll free numbers. The Commission's approach solves a longstanding problem for consumers and callers alike, and does so in a way that minimizes burdens on voice providers and callers.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

50. In the *Second Further Notice*, the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses. It received one comment directly addressing the IRFA from NTCA. NTCA argues that the IRFA was deficient because the measures on which the Commission sought comment were vague and lacked specificity.

51. The Commission also received several comments addressing small business concerns. One commenter requested that small providers be excluded from any mandatory reporting requirement. In addition, it received a number of comments from small business callers that argued that access to reassigned numbers database should be affordable. None of the other commenters identified any areas where small businesses would incur a particular hardship in complying with the rules.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

52. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments in response to the proposed rules in this proceeding.

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

53. The recovery of costs by reporting carriers from callers that use the reassigned numbers database apply to a wide range of entities, including potentially all entities that use the telephone to advertise. Thus, it expects that the costs associated with the voluntary usage of the reassigned

numbers database could have a significant economic impact on a substantial number of small entities. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers and telecommunications companies could all be affected.

54. In 2013, there were approximately 28.8 million small business firms in the United States, according to SBA data. Determining a precise number of small entities that would be subject to fees to use the reassigned numbers database is not readily feasible. A list of the types of such small entities affected includes: Wired telecommunications carriers, local exchange carriers, incumbent local exchange carriers, competitive local exchange carriers, shared-tenant service providers, interexchange carriers, cable system operators, other toll carriers, wireless telecommunications carriers (except satellite), satellite telecommunications providers, all other telecommunications, toll resellers, and local resellers.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

55. This *Order* adopts rules to require the Toll Free Numbering Administrator and all reporting carriers as defined in the Commission's numbering rules, to report information on a monthly basis to a database whereby a caller can determine whether a number has been permanently disconnected since a date provided by the caller. With the exception of delayed implementation for reporting carriers with 100,000 or fewer lines, these changes affect small and large companies equally, and apply equally to all of the classes of regulated entities identified above. The database will be available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts. The Administrator will obtain this certification from each new user during the enrollment process and before allowing a new user to access the database.

56. The *Order* modifies §§ 52.15(f)(1)(ii) and 52.103(d) of the Commission's rules to establish a minimum aging period of 45 days for all aging numbers. Thus, neither a toll free number nor a U.S. NANP geographic number may be reassigned until at least 45 days after the date it was permanently disconnected.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The Commission will permit providers with 100,000 or fewer subscriber lines as reported on their most recent Forms 477, aggregated over all the providers' affiliates, six additional months to begin maintaining and reporting data to the Administrator. The Commission directs the CGB to separately announce the effective dates for smaller reporting providers when it announces the effective dates for larger reporting providers.

58. The Commission requires providers to report to the Administrator data on the 15th day of each month. It believes that monthly reporting properly balances the burden placed on providers with the need for callers to obtain timely information. The Commission concluded that alternatives, such as requiring real-time reporting, could impose disproportionate costs on small businesses and could be technically difficult to accomplish.

59. The Commission agrees with commenters in the proceeding that access to the reassigned numbers database should be affordable, and has structured the database accordingly. The information collected is minimal: A telephone number and the most recent permanent disconnection date. This reduces the cost of the database by minimizing the complexity and size of the database, minimizing the types of inquiries the Administrator must facilitate, and minimizing the volume of data that must be supplied in response to queries.

60. The Commission agrees with commenters that a safe harbor will incent greater usage, thereby further protecting more consumers from unwanted calls. One alternative the Commission considered was not to adopt a safe harbor. That alternative could make compliance with the TCPA's prohibition almost impossible for small businesses. It also considered, but rejected, a more expansive safe harbor because it believes requiring callers to access the most recent update to the database prior to make a call properly balances the burden placed on callers with the privacy interests of consumers. Finally, the Commission declined to extend the safe harbor to other commercial databases.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Rules

61. None.

Ordering Clauses

Pursuant to the authority contained in sections 4(i)–(j), 201(b), 227, and 251(e) of the Act, as amended, 47 U.S.C. 154(i)–(j), 201(b), 227, 251(e), that the *Order is adopted* and that Parts 52.15, 52.103, and 64.1200 of the Commission's rules, 47 CFR 52.15, 52.103, 64.1200, are amended. The North American Numbering Council shall, by June 13, 2019, address in a report to the Commission the technical and operational issues consistent with the *Order*, and that CGB, in conjunction with WCB, shall coordinate with the Council on those issues to ensure that they are addressed fully and timely.

Lists of Subjects

47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 52 and 64 as follows:

PART 52—NUMBERING

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332, unless otherwise noted.

■ 2. Amend § 52.15 by revising paragraph (f)(1)(ii) and adding paragraph (f)(8) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(f) * * *

(1) * * *

(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 less than 45 days and no more than 90 days. Numbers previously assigned to business customers may be aged for no less than 45 days and no more than 365 days.

* * * * *

(8) Reports of Permanently Disconnected Numbers—Reporting

carriers must report information regarding NANP numbers in accordance with § 64.1200(l) of this title.

* * * * *

■ 3. Amend § 52.103 by revising paragraph (d) to read as follows:

§ 52.103 Lag times.

* * * * *

(d) *Disconnect Status.* Toll free numbers must remain in disconnect status or a combination of disconnect and transitional status for no less than 45 days and for no more than 4 months. No requests for extension of the 4-month disconnect or disconnect and transitional interval will be granted. All toll free numbers in disconnect or transitional status must go directly into the spare or unavailable category upon expiration of the 4-month disconnect or transitional interval. A Responsible Organization may not retrieve a toll free number from disconnect or transitional status and return that number directly to working status at the expiration of the 4-month disconnect or transitional interval.

* * * * *

PART 64—MISCELLANEOUS RULE RELATING TO COMMON CARRIERS

■ 4. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 5. Amend § 64.1200 by adding paragraphs (l) and (m) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(l) A reporting carrier subject to § 52.15(f) of this title shall:

(1) Maintain records of the most recent date each North American Numbering Plan (NANP) telephone number allocated or ported to the reporting carrier was permanently disconnected.

(2) Beginning on the 15th day of the month after the Consumer and Governmental Affairs Bureau announces that the Administrator is ready to begin accepting these reports and on the 15th day of each month thereafter, report to the Administrator the most recent date each NANP telephone number allocated to or ported to it was permanently disconnected.

(3) For purposes of this paragraph (l), a NANP telephone number has been permanently disconnected when a subscriber permanently has relinquished the number, or the

provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated with the subscriber. A NANP telephone number that is ported to another provider is not permanently disconnected.

(4) Reporting carriers serving 100,000 or fewer domestic retail subscriber lines as reported on their most recent Forms 477, aggregated over all the providers' affiliates, must begin keeping the records required by paragraph (l)(1) of this section six months after the effective date for large providers and must begin filing the reports required by paragraph (l)(2) of this section no later than the 15th day of the month that is six months after the date announced by the Consumer and Governmental Affairs Bureau pursuant to paragraph (l)(2).

(m) A person will not be liable for violating the prohibitions in paragraph (a)(1), (2), or (3) of this section by making a call to a number for which the person previously had obtained prior express consent of the called party as required in paragraph (a)(1), (2), or (3) but at the time of the call, the number is not assigned to the subscriber to whom it was assigned at the time such prior express consent was obtained if the person, bearing the burden of proof and persuasion, demonstrates that:

(1) The person, based upon the most recent numbering information reported to the Administrator pursuant to paragraph (l) of this section, by querying the database operated by the Administrator and receiving a response of “no”, has verified that the number has not been permanently disconnected since the date prior express consent was obtained as required in paragraph (a)(1), (2), or (3) of this section; and

(2) The person's call to the number was the result of the database erroneously returning a response of “no” to the person's query consisting of the number for which prior express consent was obtained as required in paragraph (a)(1), (2), or (3) of this section and the date on which such prior express consent was obtained.

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