

# TCPA Regulatory Update: Petitions on Reassigned Numbers Database and Junk Faxes; Opposition to Possible Reconsideration of the Broadnet Declaratory Ruling

May 13, 2019 | Article | By [Russell H. Fox](#)

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### FCC Reviews Petitions for Reconsideration of the Reassigned Numbers Database

As the FCC works to stand up the Reassigned Numbers Database as part of its multipronged solution to fight unsolicited robocalls, it will need to review two Petitions for Reconsideration that address parts of its plan. As we wrote in our [December 2018 digest](#), the FCC voted to establish a single, comprehensive reassigned numbers database that will – once operational – allow a caller to check whether a telephone number still belongs to a particular consumer who has provided prior express consent. Among other requirements, the item mandates a 45-day aging period before permanently disconnected numbers can be reassigned and establishes a narrow safe harbor to account for the possibility of database errors.

Two Petitions for Reconsideration of the [Second Report and Order](#) were filed: one by the Professional Association for Consumer Engagement and a Joint Petition filed by the Competitive Carriers Association, CTIA, and USTelecom.

The Professional Association for Consumer Engagement argued that business landlines and toll-free numbers should not be included in the reassigned numbers database because including them does not further the Commission's goal of protecting consumers – not businesses – from unwanted calls, and it will cause complications and additional expense for the database administrator. Business landlines are rarely reassigned, and the risk of reassigning those numbers to consumers is low. Businesses using the database that are seeking to limit their liability under the TCPA will not query the database for landlines and toll-free numbers of other businesses. The petition also explained that the safe harbor provision is not clear because the provision uses contradictory wording regarding the date that should be queried in the database.

The Joint Petitioners asked the Commission to reconsider its decision to merge the database with the North American Numbering Plan Administrator (NANPA) and Pooling Administrator (PA) under a single contract and single administrator. They explained that by consolidating the administration of a reassigned numbers database with the administration of the NANPA and Pooling functions, the Commission is limiting the pool of potential vendors to those that can perform both of two vastly different administrative functions. The petitioners also asked the Commission to consider alternative administrator funding scenarios to recover upfront database costs from service providers through the mechanism that is currently used by NANPA and PA, and allow proposals for alternative funding mechanisms in administrator bids.

Oppositions and comments to the petitions are due on May 22, 2019, and reply comments are due on June 3, 2019.

### Junk Faxes Discussions Continue

Reply comments were due on April 23 on the [Petition for Expedited Clarification or Declaratory Ruling](#) filed by the law firm Akin Gump Strauss Hauer & Feld LLP on February 26. We wrote about the

petition, which relates to liability for junk faxes, in our [March digest](#). Only three parties, including the petitioner, filed reply comments. Reply comments generally supported the petition.

Additionally, several parties met with Commission staff to discuss application of the TCPA to junk faxes in the context of the Amerifactors petition and the Best Doctors petition. Parties highlighted the frequent use of faxes in the health care context because they are sometimes considered to be more HIPAA-compliant for the transmission of personal patient information, and the immense burden that junk faxes place on doctors' offices. Parties asked the FCC to find that "(1) a fax is an "unsolicited advertisement" if it is a pretext or precursor to a future commercial solicitation, and (2) the fax-as-pretext inquiry necessarily requires examining facts beyond the fax itself."

## Broadnet and Government Entities as Persons Under the TCPA

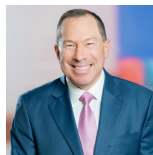
Several other parties wrote to the Commission regarding the issue raised in Secretary Ross's letter, covered in last month's [TCPA digest](#), which asked the FCC to refrain from reconsidering its 2016 decision in the [Broadnet Declaratory Ruling](#). The Broadnet Ruling found that federal agencies and contractors working on behalf of federal agencies are not "persons" under the TCPA, thereby making them immune from TCPA liability when they comply with the government's instructions. The Student Loan Servicing Alliance, Navient Solutions, LLC, Nelnet Servicing, LLC, and the Pennsylvania Higher Education Assistance Agency submitted a joint filing supporting Secretary Ross's position, and Broadnet Teleservices, LLC met with Commission staff in support. They explained that in enacting the TCPA, Congress did not intend to apply it to any government entities, whether federal, state, or local.

On a related issue, the Federal Housing Finance Agency met with Commission staff, asking them to act on their November 2017 Petition for Clarification or, in the Alternative, Declaratory Ruling asking the Commission to "clarify that calls made by mortgage holders to borrowers in disaster-affected areas, where the called individual previously approved the phone number, fit 'within the scope of consent' under the Telephone Consumer Protection Act and a 2016 Commission declaratory ruling."

## Progress on Technical Solutions to Unsolicited Robocalls

Several voice providers met with Commission staff to update the FCC on the agency's progress with STIR/SHAKEN caller authentication implementation and call traceback efforts. First Orion, a provider of blocking and call protection technology to several major voice providers, also met with Commission staff to discuss the wide array of analytics and tools it provides to its partners. First Orion asked the FCC to encourage carriers to, in addition to adopting STIR/SHAKEN, also adopt data analytics and advanced machine learning to protect their subscribers. First Orion applauded the FCC's previous ruling authorizing carrier blocking in limited circumstances but stressed the importance of not adopting overly prescriptive rules regarding carrier blocking. Enshrining such rules could give scammers a road map on how to revise their practices to evade blocking and chill innovation on call protection methods and technologies.

## Authors



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