

**Before the
Federal Communications Commission
Washington, DC 20554**

August 28, 2017

In the Matter of)

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

Second Notice of Inquiry)

RESPONSE OF THE NATIONAL COUNCIL OF HIGHER EDUCATION RESOURCES TO THE SECOND NOTICE OF INQUIRY ON REASSIGNED NUMBERS

The National Council of Higher Education Resources (“NCHER”) is responding to the Second Notice of Inquiry (the “NOI”), adopted by the Federal Communications Commission (the “Commission”) on July 13, 2017, in which the Commission initiated an inquiry into using numbering information to address the problem of calls being placed to numbers that have been reassigned. NCHER is a national, nonprofit trade association representing higher education service agencies that administer education programs that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education (the “Department”) to service and recover outstanding loans made under the William D. Ford Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program and private education loan programs.

BACKGROUND

The NOI asks about the best ways for voice service providers to report information about reassigned numbers, and how that information can be made available to callers¹ in the most effective way, so that callers will be more likely to reach consumers who have agreed to receive

¹ The NOI makes frequent use of the terms “robocall” and “robocaller.” NCHER is aware that questions have been raised about the definitions of such terms. We believe, for the purposes of this response, that debating the definitional issues distracts attention from the main issues involved in the NOI – which is to assist callers to ensure that their calls are placed to the right consumers and to prevent annoying and unwanted calls to those consumers who are the recipients of reassigned numbers.

the calls. As stated in the NOI, calls to reassigned numbers can deprive consumers of desired information and annoy others with unwanted calls. The NOI correctly notes that both consumer groups and industry support enabling callers to more quickly learn of reassignments, e.g., via a comprehensive reassigned numbers database.² It is for this reason that a solution to the reassigned number issue has received bipartisan support in Congress.

At the outset, NCHER would like to point out the disservice that the Commission's Declaratory Ruling and Order released on July 10, 2015 (the "Ruling") has caused to industry and consumers. In the student loan context, the Ruling restricts the ability of student loan servicers and collectors to have live conversations with student and parent borrowers, many of whom are struggling and are delinquent or in default on their student loans. When Congress passed Section 301 of the Bipartisan Budget Act of 2015, it intended to provide relief from the Ruling's restriction in the context of collecting debt owed to or guaranteed by the federal government. However, the Commission's Report and Order released on August 11, 2016, which imposes a three-call-attempt-per-thirty-day period limit in the collection of federal debt, and one-call-attempt limit on calls to reassigned numbers where the caller has no knowledge that the number has been reassigned, is so restrictive as to completely thwart the intent of Congress. The Ruling should be revised and the Report and Order should be reconsidered.

As NCHER has informed the Commission in the past, student loan borrowers benefit from live contact with the servicers and collectors of their loans. Over 90 percent of all student loans are made under the federal student loan programs, which are unique in the consumer credit world because they allow students and parents to borrow large sums of money without showing credit-worthiness or an ability to repay their financial obligations. Equally unique are the many program features designed to address individual circumstances and help distressed borrowers faced with loan collection. For example, payments on federal student loans can be deferred for borrowers who return to school, are unemployed, or are otherwise experiencing a financial hardship. Once in repayment, borrowers have a large number of options to repay their loans, including fixed payments based on a 10- to 30-year repayment period, graduated payments that increase over time, and many different plans that base payments on a borrower's current income. While eligibility requirements differ for each income-driven repayment ("IDR") plan, a borrower's monthly payment can be as low as zero and the borrower can have his or her balances that remain after a period (varying from 10 to 25 years) forgiven. Unfortunately, many borrowers fall into delinquency and default without accessing these increasingly complex options. Also important, if a borrower defaults on a federal student loan, the federal loan rehabilitation program allows him or her to "rehabilitate" that loan by making nine voluntary "reasonable and affordable" monthly payments over a 10-month period, where payments can be as low as \$5 per month. Successful rehabilitation removes a loan from "default" status and erases the record of default from the borrower's credit report. Individuals who rehabilitate their loans also regain all of their rights under the federal financial assistance programs, including eligibility for new loans and grants if they go back to school.

² NCHER notes that the only interest group that may oppose the establishment of a reassigned numbers database as a solution would be the trial bar who are filing large, overbroad, and abusive class action lawsuits.

Many of the borrowers who are eligible for these programs are unaware of the important options available to them and successfully access these programs only if they can be reached by their loan servicer and collector and engage in two-way conversations. This is where phone conversations are extremely critical. It frequently takes a number of call attempts to actually reach and have a live conversation with a called party. However, due to the Commission's Ruling and the Order, many student loan organizations refrain from using modern technology to place calls. The one-call limit on attempting to call reassigned numbers poses a major problem because student loan participants face significant liability once they attempt a second call even though they have no knowledge that the borrower has changed his or her number.

As noted in the NOI, over 100,000 numbers are recycled by wireless carriers every day. It is counter-intuitive to believe that a loan servicer or collector has any interest in communicating with individuals who have no connection to the debtor when the purpose of the call is to service the debt. The caller wishes to avoid making a wrong-party call as much as the wrong-party called wishes to avoid receiving it, but has no way to reliably determine whether a number has been reassigned.

The Commission's rules allow only one-call attempt to a reassigned number where the caller reasonably believes the number belongs to the called party, but which, in fact, belongs to another party due to the reassignment of the number. Because few consumers inform servicers and collectors that they have a new number and because there is no existing database of reassigned numbers, callers currently need to rely on information they learn when calling the party assigned to the reassigned number. Since it can take numerous call attempts to create a live contact, the one-call exemption is essentially meaningless. For this reason, NCHER strongly supports action by the Commission to establish a mechanism for voice service providers to report reassignments and for callers to access that information. We also believe that there should be a safe harbor from liability for callers that use this mechanism.

NCHER'S COMMENTS ON SPECIFIC REQUESTS

NCHER thanks the Commission for the opportunity to respond to the NOI on reassigned numbers. Our organization provides the following responses to a number of the specific requests for comment:

- 1) The NOI asks whether reporting requirements should apply to all voice service providers, or just to wireless providers. We recommend that any requirement apply to all providers (i.e. wireless, Voice Over Internet Protocol, and wireline providers). The goal in this case should be to assist callers in connecting with the right party, and the best way to do so is to ensure that the coverage is comprehensive.
- 2) In the NOI, the Commission suggests four reporting alternatives under which callers would have access to lists of reassigned numbers. We would prefer either of the first two, where the Commission or reassigned number data aggregators would maintain lists

of reassigned numbers and voice service providers would be required to report to them when a number is reassigned. The third alternative, under which providers would be required to operate queryable databases, could prove unworkable if the number of voice providers is overly large, which we assume to be the case. We also have reservations about the fourth alternative, under which providers would make reassigned number data reports available to the public. Regardless of the alternative chosen, and as recommended above, callers using the reporting mechanism should be protected from liability attributable to such use.

- 3) The NOI asks when voice service providers should be required to report reassigned numbers. In our view, the reporting should be made as early as possible and occur before the number has been reassigned to another consumer, i.e. after the number has been disconnected. However, temporary disconnections should not be reported. Reassignment of toll-free numbers would be unnecessary, as consumers generally do not have such numbers.
- 4) In the NOI, the Commission asks whether voice service providers should be compensated for reporting reassigned number information, and about the measures that would be necessary to ensure that fees charged to callers do not undermine the ability of callers to access the reassigned number information. At this time, we are not prepared to express a view on the first question, though the answer is sure to affect the level of fees that might be charged callers. In any case, we would expect that there will be some charge to callers but, whatever the charge, it would need to be reasonable if the desired outcomes are to be achieved.
- 5) The NOI asks how frequently voice service providers should be required to update the reassigned number information they report. The NOI correctly points out that the longer the delay in updating the information, the greater the likelihood that a caller, even after checking the reassigned number information, will call a number that has been reassigned (or that has been disconnected). We suggest that daily updates be required.
- 6) The NOI requests comment on the format that voice service providers should use to report reassigned number information. At this stage of the initiative, we would defer answering such a question, but, in any case, the content provided must be sufficient to identify the numbers that have been reassigned. We do believe the date that a number is disconnected should be provided.
- 7) The NOI asks who would be eligible to have access to the reassigned number information. We believe that it would be difficult to define such qualifications that would be generally applicable. However, a use limitation would be appropriate – the information should be used solely for number verification and should not be sold.

In summary, NCHER believes that the Commission's initiative on reassigned numbers has great potential to facilitate communication with intended parties and prevent distracting calls to

unintended parties. We encourage the Commission to move forward with the initiative, and stand ready to be of assistance in this effort. Please contact me if you have questions or need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "J P Bergeron". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James P. Bergeron
President
National Council of Higher Education Resources
1100 Connecticut Avenue, NW, Suite 1200
Washington, DC 20036
(202) 822-2106
jbergeron@ncher.us