



July 23, 2012

Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Re: CG Docket No. 12-129

I hereby submit the attached comments on behalf of the Marketing Research Association (MRA) in response to the Notice of Proposed RuleMaking in the Matter of Implementation of the Middle Class Tax Relief and Job Creation Act of 2012: Establishment of a Public Safety Answering Point Do-Not-Call Registry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Fienberg', is written over a light gray background.

Howard Fienberg, PLC
Director of Government Affairs
Marketing Research Association (MRA)

**Before the
Federal Communications Commission (FCC)**

In the Matter of:)	
)	
Implementation of the Middle Class)	
Tax Relief and Job Creation Act of 2012)	CG Docket No. 12-129
)	
Establishment of a Public Safety)	
Answering Point Do-Not-Call Registry)	
)	

COMMENTS OF THE MARKETING RESEARCH ASSOCIATION (MRA)

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1. Introduction

The Federal Communication Commission (FCC) (“the Commission”) has proposed regulations to implement a new do not call registry of emergency service providers' numbers that anyone using an automatic telephone dialing system (“autodialer”) would have to scrub against. This builds upon the existing legal requirements in the Telephone Consumer Protection Act (TCPA), which forbids using any form of automated dialing to call “to any emergency telephone line (including any “911” line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency).”

Section 6507 of the “Middle Class Tax Relief and Job Creation Act of 2012” ([P.L. 112-96](#)), signed into law on February 22, requires “a specialized Do-Not-Call registry for public safety answering points” (PSAPs). PSAPs include “the telephone numbers of all 9–1–1 trunks and other lines used for the provision of emergency services to the public or for communications between public safety agencies.” The Commission estimates that there could be tens of thousands of such telephone numbers.

The Commission released a [Notice of Proposed RuleMaking \(77 FR 37362\)](#) to seek comments on “the most efficient means of establishing a PSAP Do-Not-Call registry, the process for accessing the registry by operators of automatic dialing equipment, safeguards to protect the registry from unauthorized disclosure or dissemination, rules to prohibit the use of automatic dialing equipment to contact numbers on the registry, and the enforcement provisions.”

The Marketing Research Association (MRA), a non-profit national membership association, is the leading and largest association of the survey and opinion research profession.¹ MRA

¹ The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers, whose members range from large multinational corporations and small businesses to academic institutes and non-profit organizations.

promotes, advocates and protects the integrity of the research profession and strives to improve research participation and quality.

MRA files these comments on behalf of the research profession as a whole. Various researchers informed MRA that the proposed PSAP registry could be a significant net positive to the research profession in making it easier to comply with the vagueries of the TCPA. Most of the technical information in these comments comes from the insights of one of the profession's premiere telephone research experts: Linda Piekarski of [Survey Sampling International \(SSI\)](#).

2. Survey and Opinion Researchers and their Autodialers

Survey and opinion research is the scientific process of gathering, measuring and analyzing public opinion and behavior. On behalf of their clients -- including the government (the world's largest purchaser), media, political campaigns, and commercial and non-profit entities -- researchers design studies and collect and analyze data from a small but statistically-balanced sample of the public. Researchers seek to determine the public's opinion regarding products, services, issues, candidates and other topics. Such information is used to develop new products, improve services, and inform policy.

Survey and opinion research is thus sharply distinguished from commercial activities like sales lead generation and the efforts that are the subject of the national telemarketing Do-Not-Call (DNC) Registry. In fact, MRA and other associations expressly prohibit sales or fundraising under the guise of research (referred to as "sugging" and "frugging") and any attempts to influence or alter the attitudes or behavior of research participants as a part of the research process. Quite to the contrary, professional research has as its mission the true and accurate assessment of public sentiment in order to help individuals, companies and organizations design products, services and policies that meet the needs of and appeal to the public.

Automatic telephone dialing systems are an essential tool of survey and opinion research. Almost every telephone research call requires the use of an automated dialing system, in order to reduce both the time it takes to dial a number manually (a significant cost) and the chance of calling the wrong number. Automatic dialing also synchs better with the industry standard "computer-assisted telephone interviewing" (CATI)² software that helps researchers execute and conduct calls with fewer errors and greater efficiency.

3. How do Researchers Comply with the Existing TCPA Emergency Line Restrictions?

"To give the Tax Relief Act meaning beyond what the TCPA requires," according to the Commission, "we believe that the Tax Relief Act should be interpreted as giving PSAP telephone numbers protections against the use of autodialed equipment that are broader ...

² CATI is a method of collecting data in which interviewers use computer technology to assist in administering a survey over the telephone to survey participants.

PSAPs may be best positioned to determine which of their telephone numbers require such additional protections, and we believe we have the statutory leeway to allow them to do so... As a result, we propose that PSAPs should be given substantial discretion to designate which numbers to include on the PSAP Do-Not-Call registry so long as they are associated with the provision of emergency services or communications with other public safety agencies. This designation could include, for example, administrative lines that may be used in some cases for overflow emergency calls. In addition, we propose that secondary PSAPs should also be permitted to place numbers on the registry.”

Therefore, the Commission asked what sources of information autodialer users “currently use to comply with the TCPA's existing prohibitions on the use of autodialers to call emergency numbers.”

While it can be difficult to completely scrub calling lists of cell phone numbers, avoiding these kind of emergency and hospital lines can be more taxing. Although prefixes used by cell phone providers are publicly known, and the NeuStar service can provide researchers with most landline numbers that have been “ported” to cell phone lines, no such databases exist for emergency and hospital lines.

According to Linda Piekarski, PSAP numbers are generally excluded from a sampling frame that is based on directory-listed residential telephone numbers. However, if or when such numbers fall in 1000-blocks or 100-blocks that contain directory-listed residential landline telephone numbers, random digit dialing (RDD) methods³ could include such numbers unless they have been identified by having a listing in a Yellow Pages or similar business list directory.

The manner in which healthcare facilities obtain and manage their telephone numbers poses the biggest challenge to researchers’ compliance. To the extent a facility obtains patient room telephone numbers from a telephone company’s bank of available numbers rather than assigning them within the same exchange or block of numbers used by the facility, these numbers can be generated from a list-assisted RDD telephone sampling frame.

In most cases, we assume that any emergency numbers identified during the survey research process would be added to the research company’s or organization’s internal do not contact lists.

As the Commission states in footnote 18 of the NPRM, relating to the availability of commercial databases that include PSAPs already, “The Commission is not persuaded that any such databases would include all numbers covered by the prohibition at 47 U.S.C. § 227(b)(1)(A), or that such databases are sufficiently accurate.”

Because there is currently nowhere near a perfect source or method, MRA supports the proposed establishment of a PSAP registry.

³ RDD, a method common in telephone survey research, uses a selection of telephone numbers where the digits in the numbers are picked by chance--often by a computer. The method allows listed, unlisted, and new numbers the chance to be called.

4. How Often Should Users Be Required to Access the Registry and Scrub Their Lists?

The Commission notes that telemarketers currently must access the national telemarketing DNC Registry, “no more than 31 days prior to the date any call is made.”

MRA suggests a slow ramp-down in required frequency of access.

Since it may take some time for all the PSAPs to get properly compiled, requiring users to access the PSAP registry at least once a month makes sense in the first year of the registry’s existence. However, after the initial launch of the registry, the required frequency should progressively diminish, since it seems unlikely that there would be significant increases in PSAP numbers or that they will change all that often (unlike cell phone numbers ported from residential landlines).

5. How Will Telephone Sample Providers or Research Clients be Treated by These Regulations?

The Commission does attempt to tackle how to treat “vendors” making autodialer calls on behalf of other entities (expressing uncertainty that third parties on whose behalf autodialer calls are made should have access to the Registry). Unfortunately, the terms are too vague for a profession that may be more complex than what the Commission is used to dealing with in telemarketing.

In the research field, autodialers can be linked to:

1. Providers of telephone research samples (lists);
2. A calling center or facility that uses an autodialer to call on behalf of their own end client;
3. A calling center or facility that uses an autodialer to call on behalf of another researcher who is conducting a study commissioned by another end client; or
4. An end client who commissioned a call center or facility to conduct a study on their behalf.

Since the research marketplace is dynamic, these four roles can intertwine. Therefore, the Commission needs to carefully craft its definitions of “vendor” and “third party” to ensure that, depending on the research design, any of the four may access and subscribe to the PSAP registry as appropriate.

6. Registry Structure

The Commission asked if the new PSAP registry should be administered similarly to the Federal Trade Commission’s existing DNC Registry for telemarketing. “Many telemarketers, including those that operate automatic dialing equipment, are familiar with the use of the

National Do-Not-Call registry. As a result, would the use of a similar system minimize compliance burdens on operators of automatic dialing equipment?”

While such a set-up might appeal to telemarketers, MRA must remind the Commission that the new registry will impact a much broader swath of autodialer users, like survey and opinion researchers, who have never been subject to the telemarketing DNC Registry.

As proposed by Linda Piekarski, MRA instead suggests that the Commission follow the model implemented for autodialer users that need to scrub their lists of ported cell phone numbers -- NeuStar's Intermodal Ported TN Identification Service -- rather than the telemarketing DNC Registry. The scope of the NeuStar list and the PSAP registry, the restrictions involved, are similar.

7. The Cost to Access the Registry and the Impact on Small Businesses

Part of the attraction of the NeuStar ported cell phone number list is a fee structure that may be reasonable for a wider variety of businesses and business sizes than the DNC Registry.

The Commission admits that the proposed rules, “would apply to a wide range of entities... therefore, we expect that the proposals in this proceeding could have a significant economic impact on a substantial number of small entities. Determining the precise number of small entities that would be subject to the requirements proposed in this NPRM, however, is not readily feasible.” In fact, the only real attempt the Commission makes to consider the impact of the rules is to account for the 2,100 firms the Census Bureau counts as telemarketing bureaus and other contact centers, which do not generally include survey and opinion research operations.

The most recent figures from the Census Bureau indicate 5,823 survey research companies employing 117,822 in the U.S. A majority of those companies are small businesses. While the new PSAP registry would not impact all of them, since not all researchers do survey and opinion research by phone, it also underestimates the impact of the registry by not counting non-profit or academic survey research organizations. It also does not account for the significant number of non-research companies that maintain sizeable in-house survey research departments.

8. Restrictions on Accessing or Using the Registry

MRA strongly agrees with the Commission's proposal that, “any entity that accesses the PSAP registry certify, under penalty of law, that it is accessing the registry solely to determine whether any telephone numbers to which it intends to place autodialed calls are listed on such registry for the purpose of complying with section 6507 of the Tax Relief Act.³⁵ We propose to prohibit use of the registry by operators of automatic dialing equipment for any other purpose.” These rules align well with those for the telemarketing DNC Registry and for NeuStar's ported cell phone number list.

9. Enforcement and Penalties for Violations

Interestingly, the Commission has identified a disconnect between the new law's outline of enforcement and penalties and the Commission's traditional mode.⁴ As the Commission notes, the agency would normally, "issue a citation to any violator that does not hold or is not an applicant for a Commission license, permit, certification or other authorization." That would mean that most survey researchers who violate the regulations for the first time would receive a citation, instead of immediately being subject to steep penalties. "Only if the non-licensee violator subsequently engages in conduct described in the citation may the Commission propose a forfeiture, and the forfeiture may only be issued as to the subsequent violations."

MRA advocates that the Commission apply this model of 'citation first' to the PSAP registry in order to protect researchers against accidents, errors and unintended actions.

MRA also strongly supports a "safe harbor" floated by the Commission "for operators of automatic dialing equipment who can demonstrate that any prohibited call to or disclosure of the registered numbers is the result of an error despite routine business practices designed to ensure compliance." MRA believes that this fits with the law's focus on fining negligent or grossly negligent conduct.

The Commission notes that, "such a provision is recognized for calls made to numbers registered on the National Do-Not-Call registry where the caller can demonstrate that it has: (1) established written procedures to comply with the Do-Not-Call rules; (2) trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the Do-Not-Call rules; (3) maintained and recorded a list of telephone numbers that it may not contact; and (4) used a process to prevent telephone solicitations to any telephone number on any list established pursuant to the Do-Not-Call rules, employing a version of the registry obtained from the administrator no more than 31 days prior to the date any call is made, and maintains records documenting this process."

10. Conclusion

As noted within, compliance with the existing TCPA restrictions on using autodialers calling emergency lines is challenging and unreliable. A PSAP registry could help prevent

⁴ "In the case of violations of section 6507(b)(4) of the Tax Relief Act (disclosure or dissemination of registered numbers), section 6507(c)(1) requires the Commission to establish monetary penalties that are "not less than \$100,000 per incident nor more than \$1,000,000 per incident."⁵² In the case of violations of section 6507(b)(5) (using automatic dialing equipment to contact numbers on the registry), section 6507(c)(2) requires the Commission to establish monetary penalties that are "not less than \$10,000 per call nor more than \$100,000 per call."⁵³ The Tax Relief Act specifies that these penalties vary depending "upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offence." " It is unclear if "per call" means "every call made to a number on the PSAP registry or entire calling campaigns."

researchers from inadvertently calling emergency lines with their autodialers and violating the law, so MRA supports the proposed registry.

MRA looks forward to working with the Commission to implement a functional, efficient and affordable PSAP registry that will adequately protect emergency telephone lines while allowing telephone survey and opinion research to prosper.