

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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	)	
	)	

**REPORT AND ORDER**

**Adopted: October 17, 2012**

**Released: October 17, 2012**

By the Commission: Chairman Genachowski and Commissioners McDowell, Clyburn, Rosenworcel, and Pai issuing separate statements.

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**I. INTRODUCTION**

1. With this order, we implement a feature of the “Middle Class Tax Relief and Job Creation Act of 2012”<sup>1</sup> by establishing a Do-Not-Call registry for telephone numbers used by Public Safety

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<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012) (Tax Relief Act).

Answering Points (PSAPs),<sup>2</sup> and prohibiting the use of automatic dialing equipment to contact those registered numbers for non-emergency purposes. Specifically, we adopt rules necessary for the creation and ongoing management of the registry, including requirements for adding PSAP telephone numbers, granting and tracking access by operators of automatic dialing equipment (OADEs), and protecting the registry from unauthorized disclosure or dissemination of registered PSAP numbers. We also adopt enforcement provisions as required by the Tax Relief Act.

2. Section 6507 of the Tax Relief Act is designed to address concerns about the use of “automatic dialing equipment,”<sup>3</sup> which can generate large numbers of phone calls in a short period of time to PSAPs. Automatic dialing equipment can tie up public safety lines, divert critical responder resources from emergency services, and impede the public’s access to emergency lines. In developing rules to establish the PSAP registry, we rely on the experience gained from the operation of the National Do-Not-Call registry for residential telephone numbers and adopt rules largely consistent with those that have proven effective and efficient for compliance with that successful registry. This approach will minimize the compliance burden for those who are subject to the requirements of both registries and fulfill Congress’s intent to promote public safety in a sensible, cost-effective manner.

## II. BACKGROUND

### A. The Middle Class Tax Relief and Job Creation Act of 2012

3. On February 22, 2012, the President signed into law the “Middle Class Tax Relief and Job Creation Act of 2012.”<sup>4</sup> In relevant part, the Tax Relief Act required the Commission to initiate, within 90 days after enactment, a proceeding to create a specialized Do-Not-Call registry for PSAPs.<sup>5</sup> Below is the text of section 6507 of the Tax Relief Act.

#### SEC. 6507. COMMISSION PROCEEDING ON AUTODIALING.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Commission shall initiate a proceeding to create a specialized Do-Not-Call registry for public safety answering points.

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<sup>2</sup> Section 222(h)(4) of the Communications Act of 1934, as amended (Communications Act), defines a PSAP as “a facility that has been designated to receive emergency calls and route them to emergency service personnel.” 47 U.S.C. § 222(h)(4); *see also* 47 C.F.R. § 64.3000(c).

<sup>3</sup> Tax Relief Act at § 6507(b). The Tax Relief Act also refers to such equipment as “robocall” equipment. *See id.* § 6507(b)(5) (the Commission shall issue rules that “prohibit the use of automatic dialing or ‘robocall’ equipment to establish contact with registered numbers.”). The Commission has used “robocalls” to refer both to calls placed using an automatic telephone dialing system and to prerecorded voice calls. *See Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, para. 1 (2012). As discussed in greater detail below, because section 6507 of the Tax Relief Act makes no reference to prerecorded voice calls, we interpret the term “robocall” in section 6507(b)(5) to have the same meaning as calls made using “automatic dialing equipment.” Therefore, this term includes prerecorded voice calls that are dialed with an autodialer but not those that are manually dialed. *See infra* para. 29.

<sup>4</sup> *See generally* Tax Relief Act.

<sup>5</sup> *Id.* at § 6507(a).

(b) FEATURES OF THE REGISTRY.—The Commission shall issue regulations, after providing the public with notice and an opportunity to comment, that—

(1) permit verified public safety answering point administrators or managers to register 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;

(2) provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry;

(3) provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment;

(4) protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry; and

(5) prohibit the use of automatic dialing or “robocall” equipment to establish contact with registered numbers.

(c) ENFORCEMENT.—The Commission shall—

(1) establish monetary penalties for violations of the protective regulations established pursuant to subsection (b)(4) of not less than \$100,000 per incident nor more than \$1,000,000 per incident;

(2) establish monetary penalties for violations of the prohibition on automatically dialing registered numbers established pursuant to subsection (b)(5) of not less than \$10,000 per call nor more than \$100,000 per call; and

(3) provide for the imposition of fines under paragraphs (1) or (2) that 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.

4. Also relevant, section 6003(a) of the Tax Relief Act provides that “[t]he Commission shall implement and enforce this title as if this title is part of the Communications Act of 1934 (47 U.S.C. § 151 *et seq.*). A violation of this title, or a regulation promulgated under this title, shall be considered to

be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.”<sup>6</sup>

## B. PSAP Notice of Proposed Rulemaking

5. On May 22, 2012, the Commission released a Notice of Proposed Rulemaking initiating a proceeding to create a PSAP Do-Not-Call registry.<sup>7</sup> Consistent with the statutory mandate of section 6507 of the Tax Relief Act, the Commission proposed creating such a registry and sought comment on the most efficient means to implement section 6507’s requirements. Specifically, the Commission proposed that: 1) PSAPs, including secondary PSAPs,<sup>8</sup> be given substantial discretion to designate which numbers to include on the registry;<sup>9</sup> 2) registry access be limited to OADEs;<sup>10</sup> 3) any user of an “automatic telephone dialing system,” as defined in section 227(a)(1) of the Communications Act, to make calls should qualify as an operator of “automatic dialing” or “robocall” equipment for purposes of the Tax Relief Act;<sup>11</sup> 4) OADEs must access the numbers on the PSAP registry and update calling lists no more than 31 days prior to the date any call is made;<sup>12</sup> 5) parties that access the registry be prohibited from selling, renting, leasing, purchasing, or using the PSAP registry, or any part thereof, for any purpose except compliance with our rules prohibiting contact with the registered numbers;<sup>13</sup> 6) OADEs be prohibited from contacting any PSAP number that has been registered on the PSAP registry;<sup>14</sup> and, 7) the Commission amend the rules governing forfeiture proceedings and amounts to incorporate the enforcement provisions contained in section 6507(c) of the Tax Relief Act.<sup>15</sup>

6. The Commission also sought comment on a number of issues relevant to the operation of the PSAP registry including how often PSAPs should verify that the registered numbers should remain on the registry,<sup>16</sup> who is a designated PSAP “administrator or manager” for purposes of adding numbers to the

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<sup>6</sup> See *id.* at § 6003(a). The Tax Relief Act does not indicate whether section 6507 will be codified in the Communications Act. In addition, and relevant throughout this order, there is no published legislative history specific to section 6507.

<sup>7</sup> See *Implementation of the Middle Class Tax Relief and Job Creation Act of 2012, Establishment of a Public Safety Answering Point Do-Not-Call Registry*, CG Docket No. 12-129, Notice of Proposed Rulemaking, 27 FCC Rcd 5652 (2012) (*PSAP Do-Not-Call NPRM*).

<sup>8</sup> A primary PSAP is a PSAP to which 911 calls are routed directly from the 911 Control Office. A secondary PSAP is a PSAP to which 911 calls are transferred from a primary PSAP. See, e.g., *Wireless Telecommunications Bureau Announces Updates and Enhancements to FCC’s Master Public Safety Answering Point (PSAP) Registry*, CC Docket No. 94-102, Public Notice, 19 FCC Rcd 13820 at n.4 (2004).

<sup>9</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5656, para. 9.

<sup>10</sup> *Id.* at 5658, para. 14.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5659, para. 16.

<sup>13</sup> *Id.* at 5659-60, para. 17.

<sup>14</sup> *Id.* at 5660, para. 19.

<sup>15</sup> *Id.* at 5661-64, paras. 22-26.

<sup>16</sup> *Id.* at 5658, para. 13.

registry,<sup>17</sup> whether there are situations when the PSAP may wish to receive autodialed calls<sup>18</sup> and issues relating to the enforcement provisions contained in section 6507(c).<sup>19</sup>

7. We received twelve comments and two replies in response to the *PSAP Do-Not-Call NPRM*.<sup>20</sup> Commenters generally supported the Commission's proposals.<sup>21</sup> Many commenters note that the National Do-Not-Call registry has proven effective and efficient, and ask for consistency between the two registries.<sup>22</sup> A few commenters, however, contend that the protections afforded by a PSAP registry are unnecessary in light of existing calling prohibitions under the Telephone Consumer Protection Act (TCPA), or raise potential security considerations associated with compiling a single list of PSAP numbers.<sup>23</sup>

### C. The Telephone Consumer Protection Act of 1991

8. In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA) to address a growing number of telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and even a risk to public safety.<sup>24</sup> In relevant part, the TCPA prohibits certain categories of automated calls absent an emergency purpose or the prior express consent of the called party.<sup>25</sup> Specifically, this provision prohibits the use of "automatic telephone dialing systems" (autodialers)<sup>26</sup> or artificial or prerecorded voice messages to make non-emergency calls without prior express consent to: emergency telephone lines, patient rooms in health care facilities, telephone numbers assigned to wireless services, and services for which the called party is charged for the call, among other recipients.<sup>27</sup> In the *2003 TCPA Order*, the Commission noted that Congress prohibited the use of such

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<sup>17</sup> *Id.* at 5657, para. 11.

<sup>18</sup> *Id.* at 5661, para. 21.

<sup>19</sup> *Id.* at 5661-64, paras. 22-26.

<sup>20</sup> *See* Appendix C.

<sup>21</sup> *See, e.g.*, APCO Comments at 2; Michigan PSC Comments at 4; NENA Comments at 4-5; Vermont 911 Board Comments at 1-2.

<sup>22</sup> *See, e.g.*, ACA Comments at 4-5; Michigan PSC Comments at 4; Texas 911 Alliance Comments at 3; Vermont 911 Board Comments at 2.

<sup>23</sup> *See* InfoCision Comments at 2; Obermeyer Comments at 1.

<sup>24</sup> *See* 47 U.S.C. § 227.

<sup>25</sup> 47 U.S.C. § 227(b)(1)(A).

<sup>26</sup> The TCPA defines "automatic telephone dialing system" as "equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." *Id.* § 227(a)(1). The Commission has emphasized that this definition covers any equipment that has the specified capacity to generate numbers and dial them without human intervention whether or not the numbers called are randomly or sequentially generated or come from calling lists. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 at 14092, para. 133 (2003) (*2003 TCPA Order*).

<sup>27</sup> 47 U.S.C. § 227(b)(1)(A); *see also* 47 C.F.R. § 64.1200(a)(1).

automated equipment for these types of calls because such practices were determined “to threaten public safety and inappropriately shift marketing costs from sellers to consumers.”<sup>28</sup>

9. Citing “widespread consumer dissatisfaction” with ever-increasing numbers of telemarketing calls, in that same order the Commission revised its TCPA rules to establish a National Do-Not-Call registry, which prohibits telemarketers from contacting a residential subscriber whose telephone number appears on the registry, unless the call is subject to a recognized exception.<sup>29</sup> The National Do-Not-Call registry is administered by the Federal Trade Commission (FTC).<sup>30</sup> At the end of fiscal year 2011, more than 209 million telephone numbers were on the National Do-Not-Call registry.<sup>31</sup>

### III. DISCUSSION

10. Section 6507(a) of the Tax Relief Act requires the Commission to initiate a proceeding to create a specialized Do-Not-Call registry for PSAPs, to issue regulations related to operation of the registry, and to establish monetary penalties for violations of those regulations.<sup>32</sup> Consistent with that mandate, we now establish such a registry and adopt rules relating to its structure and ongoing operation. We largely adopt the *PSAP Do-Not-Call NPRM*'s proposals and, to the extent possible, implement section 6507 in a way that is consistent with the requirements that have proven effective for the National Do-Not-Call registry. As a result, many entities subject to the PSAP registry will be able to leverage existing knowledge and solutions already developed for compliance with the National Do-Not-Call registry.

11. We recognize that some operational details remain to be resolved after adoption of this order,<sup>33</sup> including the precise method for PSAPs to add numbers to the registry, when and how the registry can be accessed by OADEs, and the effective date of the rules once the registry becomes operational. As we discussed in the *PSAP Do-Not-Call NPRM*, the Commission is exploring the most efficient way to administer the PSAP registry, including the possibility of working with the FTC to benefit from its experience with the National Do-Not-Call Registry. We direct the Commission's Consumer and Governmental Affairs Bureau to issue a Public Notice, once this work is complete, providing the specific operational details relating to the PSAP registry. We delegate authority to the Consumer and Governmental Affairs Bureau and Office of Managing Director to take the relevant actions necessary to resolve these details and perform any ongoing role in this respect, including an announcement of the effective date of the rules adopted herein. Interested parties will be provided with reasonable notice once these details are resolved. We direct the Consumer and Governmental Affairs

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<sup>28</sup> 2003 *TCPA Order*, 18 FCC Rcd at 14092, para. 133.

<sup>29</sup> *Id.* at 14033, para. 25. Such exemptions include, for example, calls from organizations which the consumer has an established business relationship or has given prior express permission and calls on behalf of tax exempt non-profit organizations. See 47 C.F.R. §§ 64.1200(c)(2), (f)(14).

<sup>30</sup> See, e.g., Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003), *codified at* 15 U.S.C. § 6101.

<sup>31</sup> See *National Do-Not-Call Registry Data Book FY 2011* at 3 <http://ftc.gov/os/2011/11/111130dncdatabook.pdf> (visited Sept. 10, 2012).

<sup>32</sup> Tax Relief Act at § 6507(a).

<sup>33</sup> Throughout this Order we note that the day-to-day administration of the registry may be performed by either Commission staff or an administrator designated by the Consumer and Governmental Affairs Bureau and Office of Managing Director pursuant to the authority delegated herein.

Bureau to set an effective date (*i.e.*, the date by which PSAPs and OADEs must begin complying with the requirements we adopt today) no less than six months after publication of the Public Notice.

12. In recognition that PSAPs may be unfamiliar with these new requirements and that some OADEs do not have experience with the National Do-Not-Call registry, we direct the Consumer and Governmental Affairs and Public Safety and Homeland Security bureaus to work with public safety organizations to ensure that PSAPs are made aware of the opportunity to place numbers on the registry and with OADEs, including schools, charities, and others that might not already be familiar with the National Do-Not-Call registry, to inform them about the new requirements and the consequences of violating them.

#### A. Establishment of a PSAP Do-Not-Call Registry

13. *Numbers and Registration.* Section 6507(b)(1) of the Tax Relief Act requires the Commission to “permit verified public safety answering point administrators or managers to register 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.”<sup>34</sup> At the outset, we must determine which telephone numbers may be placed on the new registry and how registration will occur. The statute does not define “9-1-1 trunks” and “other lines used for the provision of emergency services to the public or for communications between public safety agencies,” nor has the Commission itself defined those terms. In addition, the TCPA already prohibits the use of autodialers to make a non-emergency call to any emergency telephone line without prior express consent, including any autodialed call to 911 lines and emergency lines of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency.<sup>35</sup>

14. Consistent with our proposal in the *PSAP Do-Not-Call NPRM* and based on record support, we conclude that the Tax Relief Act should be interpreted as giving PSAP telephone numbers protection against the use of autodialed equipment beyond that already provided by the TCPA.<sup>36</sup> In this regard, we believe PSAPs are best positioned to determine which of their telephone numbers require such additional protection, and we believe the text of the statute supports this conclusion.<sup>37</sup> As a result we agree with commenters<sup>38</sup> and conclude that PSAPs should be given substantial discretion to designate the numbers to include on the PSAP Do-Not-Call registry so long as such numbers are associated with the provision of emergency services or communications with other public safety agencies. These numbers may include,

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<sup>34</sup> Tax Relief Act at § 6507(b)(1).

<sup>35</sup> 47 U.S.C. § 227(b)(1)(A).

<sup>36</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5656, para. 9.

<sup>37</sup> As we noted in the *PSAP Do-Not-Call NPRM*, the Tax Relief Act itself appears to provide a basis for allowing PSAPs to determine which of their numbers to place in the registry. *Id.* at 5656, para. 9. Section 6507(b)(1) of the Tax Relief Act permits verified PSAPs to “register 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.”

<sup>38</sup> See, e.g., APCO Comments at 2 (strongly supports the proposal to give PSAPs substantial discretion to designate which numbers to include); CALNENA Comments at 1 (PSAPs are best positioned to identify phone numbers to be registered); DMA Comments at 2 (PSAPs are in the best position to know what numbers are used); Michigan PSC Comments 4 (supporting the proposal to give PSAP substantial discretion); NENA Comments at 3 (broad discretion to determine the types of numbers to be placed on the registry is important).

for example, numbers associated with administrative lines that may be used in some cases for overflow emergency calls. One commenter objects to the inclusion of “non-emergency” lines on the registry.<sup>39</sup> We note, however, that section 6507(b)(1) allows for registration of numbers used “for communications between public agencies” and the record confirms that PSAP administrative lines can be used for emergency purposes.<sup>40</sup> In addition, we conclude that secondary PSAPs<sup>41</sup> should also be permitted to place numbers on the registry, because, as the record shows, secondary PSAPs are vulnerable to autodialed calls in the same way as primary PSAPs.<sup>42</sup>

15. Section 6507(b)(1) of the Tax Relief Act states that “verified [PSAP] administrators or managers” will be permitted to add numbers to the registry.<sup>43</sup> In the *PSAP Do-Not-Call NPRM*, we sought comment on the scope of this provision, including what type of verification information the Commission or the administrator should require to ensure that only a properly verified PSAP may add telephone numbers to the registry.<sup>44</sup> Commenters indicate that the variety of PSAP governance models make it difficult to define by rule who qualifies as a PSAP administrator or manager in every jurisdiction.<sup>45</sup> Several commenters ask for flexibility on this point to ensure that every PSAP has the ability to register numbers with minimal burdens.<sup>46</sup> We agree and give PSAPs discretion to determine who should be designated to register numbers subject to the verification procedures discussed below. Based on this record, we believe PSAPs would have little incentive to designate inappropriate personnel as eligible to register numbers, subject to the additional safeguards described below. We believe that allowing PSAPs this discretion is consistent with the text of section 6507 and Congress’ objective in ensuring that only PSAP numbers are allowed on the registry.

16. We therefore conclude that PSAPs may designate a representative who shall be required to file with the Commission or the designated administrator of the registry a certification, under penalty of law, that he/she is authorized and eligible to add numbers to the registry on behalf of that PSAP.<sup>47</sup> As part of that certification, the representative shall provide contact information, including the PSAP name,

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<sup>39</sup> See InfoCision Comments at 2.

<sup>40</sup> See, e.g., APCO Comments at 2 (administrative lines may be used for emergency purposes); CALNENA Comments at 2 (while not all phone lines in a PSAP have the same priority, all must be answered and may be used for an emergency call); NENA Comments at 3 (each call must be answered and the benefits of reducing unwanted calls are significant).

<sup>41</sup> As noted above, a secondary PSAP is a PSAP to which 911 calls are transferred from a primary PSAP.

<sup>42</sup> See, e.g., CALNENA Comments at 1 (secondary PSAPs require equal protections); Michigan PSC Comments at 4 (supporting proposal to allow secondary PSAPs to register numbers); NENA Comments at 3-5 (agreeing that the benefits of the registry should extend to secondary PSAPs).

<sup>43</sup> Tax Relief Act at § 6507(b)(1).

<sup>44</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5657, para. 11.

<sup>45</sup> See, e.g., NENA Comments at 5-7; Vermont 911 Board Comments at 2; NATOA Reply Comments at 3.

<sup>46</sup> See, e.g., NENA Comments at 6-7; Texas 911 Alliance Comments at 3; Vermont 911 Board Comments at 2; NATOA Reply Comments at 3.

<sup>47</sup> The Public Notice will set out where and how this certification will be made. However, we anticipate this will be an automated process as part of the uploading of numbers onto the registry.



contact person, title, address, telephone number, and email address. The Commission or administrator of the PSAP registry may require a follow-up response from a valid PSAP email address or some other means of confirmation to be specified by the Commission or administrator of the registry. Each verified PSAP shall then be assigned a unique identification number or password which shall be required to be entered every time the PSAP requests that numbers be placed onto the registry.<sup>48</sup> We emphasize that only PSAP numbers submitted by a verified PSAP shall be allowed on the registry and shall remain on the registry until such numbers are removed by the PSAP or it is determined during the statutorily-required verification process that such numbers are no longer eligible for inclusion.

17. *Verification that numbers should remain on the registry.* Section 6507(b)(2) of the Tax Relief Act requires that the Commission “provide a process for verifying, no less frequently than once every 7 years, that registered numbers should continue to appear upon the registry.”<sup>49</sup> In the *PSAP Do-Not-Call NPRM*, we sought comment on how often PSAP numbers change and what verification procedures should be adopted to ensure that only PSAPs request removal of registered numbers.<sup>50</sup> We conclude that, to give PSAPs flexibility and promote accuracy of the registry, PSAPs should be permitted to remove numbers from the registry at any time.<sup>51</sup> This conclusion is consistent with the practice adopted for the National DNC registry<sup>52</sup> and will allow PSAPs to remove numbers that should no longer be included on the list in a timely manner. In order to minimize PSAPs’ compliance burdens while ensuring an accurate registry, we require that PSAPs access and review their registered numbers on an annual basis.<sup>53</sup> No further action need be taken by PSAP representatives if they do not seek removal of any numbers from the registry. Although a few commenters contend that there is no need to require verification more often than every seven years because PSAP numbers rarely change,<sup>54</sup> we believe an annual review better ensures that only authorized numbers remain on the PSAP registry with minimal burden on the PSAPs.<sup>55</sup> To aid PSAPs in this process, we direct the designated administrator of the registry to send an annual notification to each PSAP that has placed numbers on the registry reminding PSAPs of their continuing obligation to verify their registered numbers. PSAP representatives may request removal of numbers by providing the unique identification number or password assigned to the PSAP for purposes of placing numbers onto the registry.

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<sup>48</sup> As noted above, the Consumer and Governmental Affairs Bureau will issue a Public Notice detailing these and other ministerial requirements.

<sup>49</sup> Tax Relief Act at § 6507(b)(2).

<sup>50</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Red at 5658, para. 13.

<sup>51</sup> See, e.g., DMA Comments at 2 (urging on-going list hygiene); InfoCision Comments at 2 (noting that telephone numbers are disconnected or reassigned for other purposes requiring a method to regularly remove registered numbers); NENA Comments at 10 (supporting an “add-change-delete” tool).

<sup>52</sup> We note that numbers can be removed from the National Do-Not-Call Registry by calling a toll-free number. See FTC Q&A The National Do-Not-Call Registry (question 6): <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt107.shtm> (visited Oct. 11, 2012).

<sup>53</sup> The administrator will track access to the registry to ensure that PSAPs access and review their numbers at least once every year.

<sup>54</sup> See, e.g., APCO Comments at 3; NENA Comments at 10.

<sup>55</sup> See, e.g., DMA Comments at 2 (urging an annual certification that the numbers on the registry are correct and in use); InfoCision Comments at 2.

## B. Granting and Tracking Access to the Registry by Operators of Automatic Dialing Equipment

18. Section 6507(b)(3) of the Tax Relief Act requires the Commission to “provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment.”<sup>56</sup> Consistent with this statutory mandate, we find that registry access should be restricted to OADEs for the limited purpose of ensuring compliance with the prohibition on contacting PSAP numbers in the registry.<sup>57</sup> We agree with commenters that the only information that OADEs need to comply with section 6507 is the list of registered telephone numbers.<sup>58</sup> Therefore, no additional PSAP contact information will be provided to the OADE. As discussed in greater detail below, we conclude that any person or entity who uses an “automatic telephone dialing system,” as defined in section 227(a)(1) of the Communications Act, to make calls qualifies as an operator of “automatic dialing” or “robocall” equipment for purposes of the Tax Relief Act.<sup>59</sup>

19. Consistent with the operation of the National Do-Not-Call registry, we require that any OADE that accesses the PSAP registry provide to the Commission or the designated administrator of the registry a certification, 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.<sup>60</sup> Commenters support this conclusion.<sup>61</sup> The first time an OADE accesses the registry, the OADE will be required to establish a profile and provide identifying information about its organization that will include the operator’s name and all alternative names under which the registrant operates, a business address, a contact person, the contact person’s telephone number, the OADE’s email address, and all telephone numbers used to place autodialed calls, including both originating numbers and numbers that are displayed on caller ID (which can be different).<sup>62</sup>

20. We disagree with commenters who contend that the provision of such outbound numbers would be burdensome because they use many such numbers for different purposes including

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<sup>56</sup> Tax Relief Act at § 6507(b)(3).

<sup>57</sup> See, e.g., DMA Comments at 2 (access should be limited to OADEs); NENA Comments at 12 (only OADEs should be permitted to access the registry).

<sup>58</sup> See, e.g., APCO Comments at 8; NATOA Reply Comments at 8. Consistent with the practice for accessing the National DNC registry, we anticipate that OADEs may download the entire PSAP registry or only subsets of that registry such as specific area codes or change lists from prior downloads. These operational details will be included in a subsequent Public Notice. See *supra* para. 11.

<sup>59</sup> See 47 U.S.C. § 227(a)(1).

<sup>60</sup> See FTC TSR Compliance Guide at printed page 57 <http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule#DNCprovisions> (visited Oct. 16, 2012).

<sup>61</sup> See, e.g., APCO Comments at 3; InfoCision Comments at 2; Michigan PSC Comments at 5. No commenter opposed this certification.

<sup>62</sup> This process is slightly different than the National Do-Not-Call registry, which requires a company name and address, contact person, and contact person’s telephone number and email address. See FTC TSR Compliance Guide at printed page 58 <http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule#DNCprovisions> (visited Oct. 16, 2012).

telemarketing on behalf of third parties.<sup>63</sup> We require that OADEs provide such numbers so that if apparently unlawful autodialed calls are placed to PSAP numbers on the registry, the calling party can be readily traced and the potential violation investigated. We expect that OADEs will know which numbers they are using at any given time and should be able to provide a list of such numbers to the Commission in a prescribed searchable format without significant burden. We require that all such contact information be updated within 30 days of the date on which any change occurs. The Commission or administrator will assign every OADE granted access to the PSAP registry a unique identification number or password, which must be submitted each time that database is accessed.<sup>64</sup> The Commission or the administrator will use this unique identifier to grant and track access to the secure database of registered PSAP numbers.<sup>65</sup>

21. In the *PSAP Do-Not-Call NPRM*, the Commission sought comment on how often OADEs should be required to access the registry of PSAP numbers and update their calling lists to avoid calling registered PSAP numbers.<sup>66</sup> The Commission noted that the TCPA rules require telemarketers to “employ a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintain records documenting this process.”<sup>67</sup> The Commission proposed that a similar timeframe and process be required for OADEs to access the numbers on the PSAP registry.<sup>68</sup> We adopt this proposed timeframe for accessing the PSAP registry. In general, commenters addressing this issue support this conclusion during the initial registration phase.<sup>69</sup> The requirement to access and employ a version of the PSAP registry at least once every 31 days will ensure that PSAP numbers added to the registry are protected from autodialed calls in a timely manner while affording OADEs a reasonable opportunity to remove from their calling lists new numbers as they are added to the registry. We anticipate that individual PSAPs initially will compile and submit the numbers to be included on the registry over a period of time. Moreover, PSAPs may, for any number of reasons, need to change their telephone numbers at any given time.<sup>70</sup> Should experience demonstrate that less frequent downloads of the registry would be just as effective because of infrequent changes to the registry, we retain the flexibility to revisit this finding and delegate authority to the Consumer and Governmental Affairs Bureau to modify this requirement as necessary.

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<sup>63</sup> See, e.g., DMA Comments at 2; InfoCision Comments at 3.

<sup>64</sup> This process is similar to the National Do-Not-Call registry’s where a unique account number is assigned to every party who accesses the registry. See TSR Compliance Guide at printed page 62 <http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule#DNCprovisions> (visited Oct. 16, 2012).

<sup>65</sup> See, e.g., Michigan PSC Comments at 5 (supporting a unique identification number used each time the registry is accessed).

<sup>66</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Red at 5659, para. 16.

<sup>67</sup> *Id.* (quoting 47 C.F.R. § 64.1200(c)(2)(i)(D)).

<sup>68</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Red at 5659, para. 16.

<sup>69</sup> See MRA Comments at 6 (access to the PSAP registry at least once a month makes sense in the first year); Michigan PSC Comments at 6 (consistent with the National list, OADEs should be required to update their calling list every month).

<sup>70</sup> See, e.g., InfoCision Comments at 2 (noting that telephone numbers can be reassigned for other purposes or to non-PSAP entities over time requiring periodic updates).

### C. Protecting the Registry from Unauthorized Disclosure or Dissemination

22. Section 6507(b)(4) of the Tax Relief Act requires the Commission to “protect the list of registered numbers from disclosure or dissemination by parties granted access to the registry.”<sup>71</sup> Consistent with the proposals contained in the *PSAP Do-Not-Call NPRM*<sup>72</sup> and our rules relating to the National Do-Not-Call registry, we adopt a rule that prohibits parties from selling, renting, leasing, purchasing, sharing, or using the PSAP registry, or any part thereof, for any purpose except compliance with this section and any state or Federal law enacted to prevent autodialed calls to telephone numbers in the registry.<sup>73</sup> Commenters support this conclusion.<sup>74</sup> As suggested by commenters, we modify slightly the requirement as proposed in the *PSAP Do-Not-Call NPRM* to also prohibit any “sharing” of the registry to make explicit that such dissemination or disclosure is prohibited for both monetary and non-monetary purposes.<sup>75</sup> As discussed above, we limit access to the registry to OADEs and require that each OADE certify, under penalty of law, that it will access the registry solely to prevent autodialed calls to numbers on the registry.<sup>76</sup> Congress has prescribed substantial monetary penalties for disclosure or dissemination of the registered numbers in violation of section 6507(b)(4) of the Tax Relief Act.<sup>77</sup> In addition, the Commission or the administrator may develop additional safeguards to protect registered numbers. We believe that, taken together, these measures satisfy Congress’ goal of protecting against the unauthorized disclosure or dissemination of the registered PSAP numbers.

23. We note that one commenter opposes distribution of the PSAP numbers due to the potential for abuse and recommends instead that the list of PSAP numbers be consolidated within the existing National Do-Not-Call registry.<sup>78</sup> We note, however, that section 6507(a) requires the Commission to create a “specialized” Do-Not-Call registry for PSAPs.<sup>79</sup> In addition, as some commenters point out, simply adding the PSAP numbers to the National Do-Not-Call list would require entities that are exempt from the National Do-Not-Call rules, such as tax exempt non-profit organizations, to download and remove from their calling lists over 200 million residential telephone numbers on that registry to ensure that they did not contact the relatively few PSAP numbers that would be included on the registry.<sup>80</sup> This would be a significant burden to those entities. We also believe that the safeguards and penalties adopted herein minimize the risk of abuse to the greatest extent possible while still implementing the statutory

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<sup>71</sup> Tax Relief Act at § 6507(b)(4).

<sup>72</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5659-60, para. 17. In the *PSAP Do-Not-Call NPRM*, we also sought comment on whether there were any additional safeguards that we should consider to ensure that parties accessing the registry do not disclose the list of registered numbers.

<sup>73</sup> 47 C.F.R. § 64.1200(c)(2)(i)(E).

<sup>74</sup> See, e.g., APCO Comments at 3; InfoCision Comments at 2; NENA Comments at 11.

<sup>75</sup> See APCO Comments at 3; CALNENA Comments at 2.

<sup>76</sup> See *supra* paras. 18-19.

<sup>77</sup> See *infra* para. 30; see also Tax Relief Act at §§ 6507(c)(1),(2).

<sup>78</sup> See Obermeyer Comments at 1.

<sup>79</sup> Tax Relief Act at § 6507(a).

<sup>80</sup> See, e.g., DMA Comments at 2; InfoCision at 3.

requirements contained in section 6507 of the Tax Relief Act. In addition, and as discussed above, we further limit the potential for such abuse by limiting disclosure of PSAP contact information to only the registered telephone numbers. No additional contact information will be made available.<sup>81</sup>

24. *Limiting registry access to OADEs.* Some OADEs are marketers that make autodialed calls on behalf of other entities, *e.g.*, the sellers of products, goods, or services. Section 6507(b)(3) of the Tax Relief Act requires the Commission to “provide a process for granting and tracking access to the registry by the operators of automatic dialing equipment,” but does not contemplate access by such third parties who are not OADEs. In light of the statute’s goal of protecting registered PSAP numbers, we find that access to the registered numbers should be limited to OADEs that have complied with the authorized process to obtain access to that information. The record reveals no need for parties other than OADEs to have access to registered numbers. We recognize that some third parties may supply the numbers to be called or have an interest in confirming who the OADE is calling on their behalf. The OADE, however, as the party making the autodialed calls, can ensure that any list of numbers provided by third parties is checked against the PSAP registry to avoid contacting any number listed therein without sharing the registered numbers with the third party. Accordingly, only OADEs need to be entrusted with this sensitive information.

#### **D. Prohibiting the Use of Automatic Dialing or “Robocall” Equipment to Contact Registered PSAP Numbers**

25. Section 6507(b)(5) of the Tax Relief Act directs the Commission to issue regulations prohibiting “the use of automatic dialing or ‘robocall’ equipment to establish contact with registered numbers.”<sup>82</sup> In the *PSAP Do-Not-Call NPRM*, we proposed to prohibit OADEs from contacting any registered PSAP number including any such contact by voice or text calls.<sup>83</sup> Consistent with this mandate and based on the record, we prohibit OADEs from contacting any PSAP number on the PSAP Do-Not-Call registry other than for an emergency purpose.<sup>84</sup> Further, we agree with commenters who support our proposal that the prohibition should include the use of an autodialer to make text message calls in addition to voice calls to numbers on the PSAP registry.<sup>85</sup>

26. *Use of autodialers for emergency calls.* In the *PSAP Do-Not-Call NPRM*, we asked whether there are any situations in which PSAPs may wish to receive an autodialed call even for registered numbers.<sup>86</sup> For example, we asked whether Federal and state authorities use autodialers to inform PSAPs of emergency information.<sup>87</sup> We also sought comment on our authority to permit such calls.<sup>88</sup> In

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<sup>81</sup> See *supra* para. 18.

<sup>82</sup> Tax Relief Act at § 6507(b)(5).

<sup>83</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5660-61, paras. 19-21.

<sup>84</sup> As discussed above, OADEs must employ a version of the PSAP registry obtained from the administrator of the registry no more than 31 days prior to the date any autodialed call is made. See *supra* para. 21.

<sup>85</sup> See, *e.g.*, APCO Comments at 3; Michigan PSC Comments at 6; NENA Comments at 15; Vermont 911 Board Comments at 3. *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5660, para. 19.

<sup>86</sup> *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5661, para. 21.

<sup>87</sup> *Id.*

response, commenters confirm that autodialers can be and are used for emergency purposes.<sup>89</sup> Commenters note that government-operated emergency notification systems and specialized personal emergency response services use automated dialing systems to route calls to the appropriate PSAP when a need for public safety services has been verified. These systems are used by government and personal emergency response entities to convey emergency information, for example, the location of an automobile accident.<sup>90</sup> The record confirms that these emergency calls have contributed to significant improvements in public safety as well as in emergency response efforts, and we therefore believe they should be exempted from the prohibition on autodialer-initiated calls to PSAP numbers.<sup>91</sup>

27. We agree with commenters that these emergency calls should not be prohibited under our new rules and note that no commenter opposes this conclusion.<sup>92</sup> Section 6507(b)(5) requires the Commission to establish rules prohibiting autodialed calls to registered PSAP numbers.<sup>93</sup> In contrast to analogous sections of the TCPA, however, the Tax Relief Act does not prohibit such autodialed calls directly.<sup>94</sup> Instead, the Tax Relief Act gives the Commission discretion to define the precise scope of the prohibition. In defining the scope, we are informed by public safety objectives underlying section 6507. In addition, section 6003 of the Tax Relief Act directs the Commission to implement and enforce section 6507 as though it were part of the Communications Act. Therefore, our interpretation is also informed by the principles of the Communications Act, which includes promoting “the safety of life and property through the use of wire and radio communication services.”<sup>95</sup> Moreover, we believe it is consistent with the intent of section 6507 of the Tax Relief Act and in the public interest to recognize an exception for autodialed emergency purpose calls which promote public safety. Stated differently, we believe that banning autodialed emergency calls to PSAPs would be inconsistent with section 6507’s goal of improving PSAPs’ ability to respond to emergencies.

28. For purposes of the PSAP registry, we adopt the existing definition in our rules, as set forth in the TCPA context, and define an “emergency purpose” as a “call made necessary in any situation affecting the health or safety of consumers.”<sup>96</sup> We emphasize the limited nature of this exception and will

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<sup>88</sup> *Id.*

<sup>89</sup> Agero Comments at 1-7 (the Commission should make clear that technologies designed and deployed to bring vital incident information to the attention of first responders must be embraced not deterred); NENA Comments at 15-17 (government-operated emergency notification systems and specialized personal emergency response services which provide valuable public safety benefits that rely on automated dialing equipment should be exempted).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* While APCO did not specifically address an emergency purpose call exception, APCO stated that it was not aware of any situation in which PSAPs may wish to receive autodialed calls. APCO Comments at 4.

<sup>93</sup> Tax Relief Act at § 6507(b)(5).

<sup>94</sup> See 47 U.S.C. § 227(b)(1)(A).

<sup>95</sup> See 47 U.S.C. § 151.

<sup>96</sup> See 47 C.F.R. § 64.1200(f)(4).

be vigilant in monitoring and taking enforcement action against OADEs who attempt to use it for calls that are not for emergency purposes. We note, for example, that there have been reports of technical malfunctions involving devices that are designed to automatically call 911 when a vehicle crash occurs, which have resulted in automated calls being made when no actual emergency existed.<sup>97</sup> As discussed previously, the TCPA specifically prohibits the use of autodialers to contact any emergency telephone line including “911” lines unless the recipient has provided prior express consent or the call is for an emergency purpose.<sup>98</sup> In addition, if such calls are made to a number on the PSAP registry, this would potentially be in violation of our regulations, and subject to citation or penalty as appropriate. The Commission will review any such complaints on a case-by-case basis.

29. *Definitions.* As noted above, the Tax Relief Act does not define “automatic dialing” or “robocall” equipment. We believe, however, that these terms are equivalent to “automatic telephone dialing system” as defined in the TCPA and commonly referred to as “robocalling” equipment.<sup>99</sup> Specifically, the TCPA defines “automatic telephone dialing system” as equipment “which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”<sup>100</sup> The Commission has emphasized that this definition covers any equipment that has the specified capacity to generate numbers and dial them without human intervention whether or not the numbers called actually are randomly or sequentially generated or come from a calling list.<sup>101</sup> As noted, the Commission has used “robocall” to refer both to calls placed using an automatic telephone dialing system and to prerecorded calls without reference to whether such prerecorded calls are made with an autodialer. Because section 6507 of the Tax Relief Act makes no reference to prerecorded calls, however, we interpret the term “robocall” in section 6507(b)(5) to have the same meaning as calls made using “automatic dialing equipment.”<sup>102</sup> Therefore, we adopt the TCPA’s definition of automatic telephone dialing system and the Commission’s relevant interpretations of that term, for purposes of defining “automatic dialing” and “robocall” equipment as used in the Tax Relief Act.<sup>103</sup> Commenters support this finding as a means to provide regulatory consistency in complying with the analogous prohibitions relating to autodialing contained in the both the TCPA and Tax Relief Act.<sup>104</sup>

## E. Enforcement

30. *Monetary penalties.* Section 6507(c) of the Tax Relief Act directs the Commission to establish specific monetary penalties for disclosure or dissemination of registered numbers by parties

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<sup>97</sup> See, e.g., [http://www.paloaltoonline.com/news/show\\_story.php?id=19870](http://www.paloaltoonline.com/news/show_story.php?id=19870).

<sup>98</sup> See 47 U.S.C. § 227(b)(1)(A); see *supra* para. 8.

<sup>99</sup> 47 U.S.C. § 227(a)(1).

<sup>100</sup> *Id.*

<sup>101</sup> See 2003 TCPA Order, 18 FCC Rcd at 14092, para. 133.

<sup>102</sup> See, e.g., *Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, para. 1 (2012).

<sup>103</sup> See, e.g., *id.* at 14091-94, paras. 131-134 (finding that a predictive dialer falls within the TCPA’s definition of automatic telephone dialing equipment).

<sup>104</sup> See, e.g., ACA Comments at 8; Michigan PSC Comments at 6.

granted access to the registry<sup>105</sup> and for the use of automatic dialing or “robocall” equipment to establish contact with registered numbers.<sup>106</sup> For 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.”<sup>107</sup> For use of 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.”<sup>108</sup> Because Congress has specifically prescribed the monetary penalties associated with violations of section 6507 and related regulations, we codify these penalties in our rules. We note that these monetary penalties differ from those under section 503 of the Communications Act and the current section 1.80 of our rules.<sup>109</sup> Therefore, we amend section 1.80 of the Commission’s rules governing forfeiture proceedings and forfeiture amounts to incorporate these prescribed amounts.<sup>110</sup>

31. Section 6507(c)(3) requires the Commission to set amounts within these ranges 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.”<sup>111</sup> In the *PSAP Do-Not-Call NPRM*, we sought comment in determining how these terms should be interpreted and whether any further clarification was required on this point.<sup>112</sup> The few commenters addressing this issue indicate that the Commission’s existing definitions are sufficient and proper without additional clarification.<sup>113</sup> Because the Tax Relief Act does not define these terms, we find it reasonable, to the extent that the Commission has defined such terms in an enforcement context, to use those definitions for purposes of the Tax Relief Act.<sup>114</sup> For example, section 503(b)(1) of the Communications Act authorizes the Commission to impose forfeitures for “willful” violations.<sup>115</sup> Section 312(f)(1) of the Communications Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>116</sup> The legislative history to section 312(f)(1) of the Communications Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>117</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>118</sup> In addition, section 503(b)(2)(E)

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<sup>105</sup> Tax Relief Act at § 6507(c)(1).

<sup>106</sup> *Id.* at § 6507(c) (2).

<sup>107</sup> *Id.* at § 6507(c)(1).

<sup>108</sup> *Id.* at § 6507(c)(2).

<sup>109</sup> See 47 U.S.C. 503(b)(2)(C); 47 C.F.R. § 1.80(b).

<sup>110</sup> 47 C.F.R. § 1.80.

<sup>111</sup> Tax Relief Act at § 6507(c)(3).

<sup>112</sup> See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5663, para. 24.

<sup>113</sup> See CALNENA Comments at 3 (existing definitions are proper and sufficient).

<sup>114</sup> See *id.* No commenter opposes this conclusion.

<sup>115</sup> 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(6).

<sup>116</sup> 47 U.S.C. § 312(f)(1).

<sup>117</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>118</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1992).



of the Communications Act and section 1.80(b)(6) of our rules set forth the factors to be considered when determining the amount of forfeiture penalties.<sup>119</sup> Specifically, these provisions require that the Commission “take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>120</sup> We believe these provisions are broad enough to encompass the factors necessary to distinguish between negligent, grossly negligent, reckless or willful conduct, as used in the Tax Relief Act, without the need for further clarification on this point in our rules. No commenter opposes this interpretation. We will determine the nature of the violation on a case-by-case basis, consistent with Commission precedent.

32. *Process for imposing monetary penalties.* Two sections of the Tax Relief Act address enforcement of the prohibitions against autodialing and disseminating registered numbers. First, section 6003(a) provides generally that “[t]he Commission shall implement and enforce this title as if this title is part of the Communications Act of 1934 (47 U.S.C. 151 *et seq.*). A violation of this title, or a regulation promulgated under this title, shall be considered to be a violation of the Communications Act of 1934, or a regulation promulgated under such Act, respectively.”<sup>121</sup> The second provision, section 6507(c), sets forth minimum and maximum penalties for violations, and instructs the Commission to provide for the imposition of fines that vary based on the degree of culpability, and “depending on whether the violation was a first or subsequent offence.”<sup>122</sup>

33. In the *PSAP Do-Not-Call NPRM*, we sought comment on how the enforcement provisions, including the monetary penalties, of the Tax Relief Act should be implemented consistent with the Communications Act.<sup>123</sup> In particular, we sought comment on the appropriate treatment of first offences given that the Tax Relief Act appears to contemplate penalties for first offences, but section 503(b)(5) of the Communications Act requires the Commission in most instances to issue a citation for a first offence if the violator does not hold or is not an applicant for a Commission license, permit, certification or other authorization, *i.e.*, if the target is not a regulated entity (or “regulatee”).<sup>124</sup> Commenters were divided on whether section 503(b)(5) of the Communications Act requires the Commission to issue a citation to non-regulatee violators under section 6507(c) before it may impose a monetary forfeiture, based generally on policy concerns rather than legal analysis of the statutory language.<sup>125</sup>

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<sup>119</sup> 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(6).

<sup>120</sup> *Id.*

<sup>121</sup> Tax Relief Act at § 6003.

<sup>122</sup> *Id.* at § 6507(c).

<sup>123</sup> *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5662, para. 23.

<sup>124</sup> *Id.*

<sup>125</sup> DMA Comments at 3 (section 503 provides the Commission with authority to issue citations to first time non-licensee offenders); NENA Comments at 18 (the Commission should issue a citation for failure to subscribe to the registry if the failure likely resulted in little or no harm to public safety); ACA Comments at 9 (because non-licensees may not have a reason to suspect the Commission’s rules apply to them, these entities may not have the necessary notice for imposition of a fine); CALNENA Comments at 3 (a first violation should result in the appropriate fine); Vermont 911 Board Comments at 3 (urge strongest possible penalties upon the first violation).

34. As noted above, section 6003 of the Tax Relief Act directs that section 6507 be enforced as if it were part of the Communications Act; *i.e.*, that the enforcement provisions in Title V of the Communications Act should generally be applied in addressing violations of section 6507. Thus, for instance, a notice of apparent liability should be issued before a forfeiture is imposed.<sup>126</sup> In some instances, however, the enforcement requirements of section 6507(c) directly and specifically address enforcement in a way that differs from the provisions of Title V of the Communications Act. For example, as discussed above, section 6507 establishes maximum penalties that differ from those in section 503 of the Act. In those instances, we conclude that Congress' specific mandate in section 6507 controls Title V's more general enforcement provisions.<sup>127</sup> Using this guiding principle of statutory construction, we adopt the specific monetary penalties contained in section 6507(c)(1) and (2), and find that we are not bound by the forfeiture amounts set forth in section 503(b)(2) of the Act in addressing violations governed by sections 6507(c)(1) and (c)(2).

35. We conclude, however, that section 6507(c) is ambiguous on the question of whether the Commission must issue a citation to a non-regulatee violator before it may impose a monetary forfeiture for violation of section 6507.<sup>128</sup> On one hand, section 6003 of the Tax Relief Act indicates that the enforcement provisions in Title V of the Communications Act, which include a citation requirement in some instances, should generally be applied in addressing violations of section 6507. At the same time, though, section 6507 addresses the appropriate monetary penalty for a first offence, which does not appear to contemplate the issuance of a citation. In light of this ambiguity, we look to the legislative history and policies underlying the citation requirement and conclude that the most reasonable construction of these statutory provisions is to interpret section 6507(c)(3)'s "first offence" language to apply only where section 503 of the Communications Act permits a monetary penalty for a first offence (*i.e.*, where the violator is a Commission regulatee). As the Commission previously has concluded, "the legislative history indicates that the initial warning approach of Section 503(b)(5) was included in the amendments to protect those persons who might not reasonably know they were engaging in an activity regulated by the Commission."<sup>129</sup> We note that entities subject to enforcement for violations of the PSAP Do-Not-Call requirements include not only those entities governed by comparable Do-Not-Call requirements under the TCPA (which is also enforced subject to section 503(b)(5)'s citation requirement), but also other entities not subject to those regulations.<sup>130</sup> In the case of violations of the PSAP Do-Not-Call requirements by a non-regulatee, we therefore conclude that the section 503 citation requirement applies. We note, however, that the prior issuance of such a citation can be used as a basis both for imposing a higher penalty for subsequent offences and for imposing a forfeiture for the earlier violation at the same time. We base the latter conclusion on the legislative history of section 503, which indicates

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<sup>126</sup> See, e.g., 47 U.S.C. § 503(b)(4) (notice of apparent liability must be issued before forfeiture can be imposed, with party given an opportunity to show why no forfeiture should be imposed); *id.* § 503(b)(6)(B) (for forfeiture to be imposed, notice of apparent liability must be issued within one year of the violation charged).

<sup>127</sup> See, e.g., *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385 (1992), citing *Crawford Fitting Co., v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987).

<sup>128</sup> As noted, commenters were divided on the appropriate approach. See *supra* note 124.

<sup>129</sup> *Cable Television Service – Registration Statements*, Report and Order, 69 FCC 2d 697, 706-07, para. 19 n.13 (1978) (citing S. Rep. No. 95-580, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. at 9 (1977)).

<sup>130</sup> For example, calls on behalf of tax exempt non-profit organizations are not subject to those requirements. See *supra* note 29.

that once an entity has received a citation, “if he or she thereafter engaged in the conduct for which the citation of violation was sent [] a notice of liability [could] be issued. In such an event, forfeiture liability would attach not only for the conduct occurring subsequently *but also for the conduct for which the citation of violation was originally sent.*”<sup>131</sup> Thus, although there may be some instances, such as when the statute of limitations on the first violation has run, where the forfeiture may only be issued as to the subsequent violations, that will not always be the case. In those cases where the statute of limitations has expired, we may nevertheless consider the first offence to support imposition of a higher monetary penalty for subsequent offences by a non-regulatee.<sup>132</sup> As commenters suggest, we believe that this interpretation will provide non-regulatees that may be less familiar with the Commission’s rules with an opportunity to take corrective action before imposition of substantial monetary penalties required under section 6507(c), while still taking first offences into consideration in imposing monetary penalties for subsequent violations.<sup>133</sup>

36. *Safe Harbor.* In the *PSAP Do-Not-Call NPRM*, the Commission sought comment on whether to establish a safe harbor provision for OADEs 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.<sup>134</sup> In so doing, we noted that a similar provision is recognized for calls made to numbers registered on the National DNC registry.<sup>135</sup> Most commenters support adoption of a safe harbor although some believe it should be more restrictive than that applied to the National Do-Not-Call registry due to the public safety implications of contacting PSAP numbers.<sup>136</sup> We note, however, that although the Commission’s rules recognize a safe harbor from the prohibition on contacting residential telephone subscribers listed on the National DNC registry, neither the TCPA nor our rules recognize such a safe harbor for the TCPA’s more analogous restrictions on using autodialers to contact emergency numbers.

37. As a result, we conclude that numbers on the PSAP registry require a higher level of protection from unlawful automated calls than the residential telephone numbers on the National DNC registry. In addition, section 6507(c)(3) of the Tax Relief Act contemplates monetary penalties even for negligent conduct.<sup>137</sup> Therefore, we decline to adopt a safe harbor from our prohibition on using autodialers to contact registered PSAP numbers. As discussed above, OADEs are required to access the registry of PSAP numbers and update their calling lists to delete registered PSAP numbers no later than every 31 days. Therefore, any numbers added to the registry in the 31 day period following such a required update will not be subject to a violation of these rules because they will not be reflected in the OADE’s download of the PSAP registry until the next required update. As a result, OADEs will already

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<sup>131</sup> See S. Rep. No. 95–580 at 9 (emphasis added).

<sup>132</sup> This corrects the *PSAP Do-Not-Call NPRM*’s suggestion that the forfeiture may only be issued as to the subsequent violations. See *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5662, para. 23.

<sup>133</sup> See, e.g., ACA Comments at 9; DMA Comments at 3; InfoCision Comments at 3; MRA Comments at 8.

<sup>134</sup> *PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5664, para. 26 (citing 47 C.F.R. § 64.1200(c)(2)(i)).

<sup>135</sup> *Id.*

<sup>136</sup> See, e.g., ACA Comments at 5-7; DMA Comments at 3; InfoCision Comments at 3; MRA Comments at 8; Texas 911 Alliance Comments at 4.

<sup>137</sup> See Tax Relief Act at § 6507(c)(3).

be afforded a reasonable opportunity each month to access the list and process any new numbers that have been added to the registry prior to being subject to monetary penalties under section 6507.<sup>138</sup>

#### IV. PROCEDURAL MATTERS

##### A. Final Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>139</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA). The analysis is found in Appendix B.

##### B. Paperwork Reduction Analysis

39. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collections contained in this proceeding.

##### C. Materials in Accessible Formats

40. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

#### V. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 227, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 227, 503, and sections 6003 and 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 that this Report and Order IS ADOPTED. The rules containing information collections, which require approval by OMB under the PRA, shall become effective after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective dates.

42. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau and Office of the Managing Director are delegated authority to take actions necessary to resolve any operational or administrative details relating to the Public Safety Answering Point Do-Not-Call registry including an announcement of the effective compliance date once the PSAP Do-Not-Call registry has become operational.

43. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau set an effective date of no less than six months after publication of a Public Notice announcing the date by which interested parties must begin compliance with the requirements adopted herein.

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<sup>138</sup> We note, however, that OADEs remain subject to the TCPA's prohibitions on contacting certain emergency numbers.

<sup>139</sup> 5 U.S.C. § 603.

44. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rules

**The Federal Communications Commission amends Parts 1 and 64 of Title 47 of the Code of Federal Regulations as follows:**

**PART 1 – PRACTICE AND PROCEDURE**

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1. The authority section for Part 1 is revised to read as follows:

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309 and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96.

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**Subpart A – General Rules of Practice and Procedure**

2. Section 1.80 is amended by adding new paragraph (a)(6) and redesignating paragraphs (b)(5) and (6) as paragraphs (b)(7) and (8) and adding new paragraphs (b)(5) and (6) to read as follows:

**§ 1.80 Forfeiture Proceedings.**

(a) \*\*\*

(6) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

(b) \*\*\*

(5) If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$100,000 per incident nor more than \$1,000,000 per incident 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 offense.

(6) If a violator uses automatic or robocall dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for contacting such a telephone number shall be not less than \$10,000 per call nor more than \$100,000 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47

U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620 and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 unless otherwise noted.

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## **Subpart L - Restrictions on Telemarketing and Telephone Solicitation**

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2. Subpart L is amended by adding new section 64.1202 to read as follows

### **§ 64.1202 Public Safety Answering Point Do-Not-Call Registry.**

(a) As used in this section, the following terms are defined as:

(1) *Operators of automatic dialing or robocall equipment.* Any person or entity who uses an automatic telephone dialing system, as defined in section 227(a)(1) of the Communications Act of 1934, as amended, to make telephone calls with such equipment.

(2) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive emergency calls and route them to emergency service personnel pursuant to section 222(h)(4) of the Communications Act of 1934, as amended. As used in this section, this term includes both primary and secondary PSAPs.

(3) *Emergency Purpose.* A call made necessary in any situation affecting the health and safety of any person.

(b) *PSAP Numbers and Registration.* Each PSAP may designate a representative who shall be required to file a certification with the administrator of the PSAP registry, under penalty of law, that they are authorized and eligible to place numbers onto the PSAP Do-Not-Call registry on behalf of that PSAP. The designated PSAP representative shall provide contact information, including the PSAP represented, contact name, title, address, telephone number, and email address. Verified PSAPs shall be permitted to upload to the registry any PSAP telephone numbers associated with the provision of emergency services or communications with other public safety agencies. On an annual basis designated PSAP representatives shall access the registry, review their numbers placed on the registry to ensure that they remain eligible for inclusion on the registry, and remove ineligible numbers.

(c) *Prohibiting the use of Autodialers to Contact Registered PSAP Numbers.* An operator of automatic dialing or robocall equipment is prohibited from using such equipment to contact any telephone number registered on the PSAP Do-Not-Call registry other than for an emergency purpose. This prohibition encompasses both voice and text calls.

(d) *Granting and Tracking Access to the PSAP Registry.* An operator of automatic dialing or robocall equipment may not obtain access or use the PSAP Do-Not-Call registry until it provides to the designated registry administrator contact information that includes the operator's name and all alternative names under which the registrant operates, a business address, a contact person, the contact person's telephone number, the operator's email address, and all outbound telephone numbers used to place autodialed calls, including both actual originating numbers and numbers that are displayed on caller identification services, and thereafter obtains a unique identification number or password from the designated registry administrator. All such contact information provided to the designated registry

administrator must be updated within 30 days of any change to such information. In addition, an operator of automatic dialing equipment must certify when it accesses the registry, under penalty of law, that it is accessing the registry solely to prevent autodialed calls to numbers on the registry.

(e) *Accessing the Registry.* An operator of automatic dialing equipment or robocall equipment shall, to prevent such calls to any telephone number on the registry, access and employ a version of the PSAP Do-Not-Call registry obtained from the registry administrator no more than 31 days prior to the date any call is made, and shall maintain records documenting this process. It shall not be a violation of paragraph (c) of this section to contact a number added to the registry subsequent to the last required access to the registry by operators of automatic dialing or robocall equipment.

(f) *Restrictions on Disclosing or Dissemination of the PSAP Registry.* No person or entity, including an operator of automatic dialing equipment or robocall equipment, may sell, rent, lease, purchase, share, or use the PSAP Do-Not-Call registry, or any part thereof, for any purpose except to comply with this section and any such state or Federal law enacted to prevent autodialed calls to telephone numbers in the PSAP registry.



## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*PSAP Do-Not-Call NPRM*) released by the Commission on May 22, 2012. The Commission sought written public comments on the proposals contained in the *PSAP Do-Not-Call NPRM*, including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>2</sup>

**A. Need for, and Objectives of, the Order**

2. The “Middle Class Tax Relief and Job Creation Act of 2012” requires the Commission to establish a registry that allows PSAPs to register telephone numbers on a Do-Not-Call list and prohibits the use of automatic dialing or “robocall” equipment to contact those numbers.<sup>3</sup> This requirement is designed to address concerns about the use of autodialers, which can generate large numbers of phone calls, tie up public safety lines, and divert critical responder resources away from emergency services. This Report and Order adopts rules to implement this statutory requirement as set forth in section 6507 of Tax Relief Act.

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

3. No comments were raised directly in response to the IRFA. Some commenters, however, raised issues concerning the impact of the proposed rules on small entities.

4. **PSAPs.** Commenters representing public safety and PSAPs request that the Commission design flexible requirements to minimize compliance burdens on such entities when compiling and submitting numbers onto the PSAP registry.<sup>4</sup> The Commission has complied with this request by formulating flexible requirements which allow the PSAP to designate a person of their own choosing to submit numbers onto the registry.<sup>5</sup> This designated representative will be required to provide certain basic contact information and be subject to verification by the Commission or the administrator of the registry.<sup>6</sup> We believe this requirement imposes minimal burdens while taking measures to ensure that only verified PSAP numbers are downloaded onto the PSAP registry. In addition, some commenters

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 604.

<sup>3</sup> See Tax Relief Act at § 6507.

<sup>4</sup> See, e.g., APCO Comments at 2; Michigan PSC Comments at 4; NENA Comments at 3; Vermont 911 Board Comments at 2.

<sup>5</sup> See *supra* paras. 15-16.

<sup>6</sup> See *supra* para. 16.

request that PSAPs only be required to access and verify the numbers contained on the registry each seven years.<sup>7</sup> However, we believe that it is necessary for a more frequent review to occur to ensure the ongoing accuracy of the registry. Therefore, we require that this review take place on an annual basis. To aid PSAPs in the process, they will be sent an annual reminder.

5. Autodialer Operators. Several commenters suggest that the Commission formulate its rules relating to the PSAP registry along the same lines as those applicable to the National Do-Not-Call registry. These commenters note that such regulatory consistency will build upon existing knowledge and systems designed for compliance with the National DNC registry and, therefore, result in minimizing burdens that would result if such rules differ. To the extent possible, we have followed the existing National DNC model and adopted requirements that are consistent with those requirements. A few commenters suggested that the Commission require a citation before issuing a monetary fine for violations of section 6507 by non-regulatees and/or adopt a safe harbor to protect against inadvertent violations. These commenters suggest that many entities subject to the rules contained herein may not be as familiar as Commission regulatees which necessitate some form of protection from substantial monetary penalties. We adopt this statutory interpretation as it relates to the provision of a citation to non-regulatees. As discussed at length in the Order, the statutory requirements are ambiguous on this issue.<sup>8</sup> However, we believe the most reasonable statutory construction is to require citations for first offences by non-regulatees and take such first offences into consideration when determining monetary penalties for subsequent violations.

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

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.<sup>9</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>10</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>11</sup> Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the Small Business Administration (SBA).<sup>12</sup>

7. In general, our rules prohibiting the use of automatic dialing equipment to contact numbers on the PSAP Do-Not-Call registry apply to a wide range of entities. The rules, in particular, would apply to

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<sup>7</sup> See, e.g., APCO Comments at 3; NENA Comments at 10.

<sup>8</sup> See *supra* para. 35.

<sup>9</sup> 5 U.S.C. § 603(b)(3).

<sup>10</sup> 5 U.S.C. § 601(6).

<sup>11</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>12</sup> 15 U.S.C. § 632.

all operators of automatic dialing equipment.<sup>13</sup> Therefore, we expect that the requirements adopted 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, however, is not readily feasible.<sup>14</sup> Below, we have described some current data that are helpful in describing the number of small entities that might be affected by our action.

8. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.<sup>15</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>16</sup> Nationwide, as of 2007, there were approximately 1.6 million small organizations.<sup>17</sup>

9. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the rules adopted herein.<sup>18</sup> As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.<sup>19</sup> Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>20</sup> Nationwide, as of 2007, there were approximately 1,621,315 small organizations.<sup>21</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>22</sup> Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.<sup>23</sup> We estimate that, of this total, as many as 88,761 entities may qualify

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<sup>13</sup> See Tax Relief Act at § 6507(b).

<sup>14</sup> See generally *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830, App. C at para. 16 (concluding that determining the precise number of entities to which rules on autodialers apply is not currently feasible) (2012).

<sup>15</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

<sup>16</sup> 5 U.S.C. § 601(4).

<sup>17</sup> INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

<sup>18</sup> See 5 U.S.C. § 601(3)–(6).

<sup>19</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Aug. 31, 2012).

<sup>20</sup> 5 U.S.C. § 601(4).

<sup>21</sup> INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

<sup>22</sup> 5 U.S.C. § 601(5).

<sup>23</sup> U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2011*, Table 427 (2007).

as “small governmental jurisdictions.”<sup>24</sup> Thus, we estimate that most governmental jurisdictions are small.

10. *Telemarketing Bureaus and Other Contact Centers.* According to the Census Bureau, this economic census category “comprises establishments primarily engaged in operating call centers that initiate or receive communications for others-via telephone, facsimile, email, or other communication modes-for purposes such as (1) promoting clients’ products or services, (2) taking orders for clients, (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client’s products or services.”<sup>25</sup> The SBA has developed a small business size standard for this category, which is: all such entities having \$7 million or less in annual receipts.<sup>26</sup> According to Census Bureau data for 2007, there were 2,100 firms in this category that operated for the entire year.<sup>27</sup> Of this total, 1,885 firms had annual sales of under \$5 million, and an additional 145 had sales of \$5 million to \$9,999,999. Thus, the majority of firms in this category can be considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

11. The Tax Relief Act requires the Commission to establish a Do-Not-Call registry for PSAPs.<sup>28</sup> The Act specifies that PSAPs will be permitted to register telephone numbers on this registry.<sup>29</sup> This allows PSAPs or their designated representatives to review their current telephone numbers and then provide those numbers to the administrator of the registry for inclusion on the PSAP Do-Not-Call registry. This will necessitate some administrative functions such as designating a representative to provide contact information on behalf of the PSAP and to obtain a unique number or password used to

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<sup>24</sup> The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011 – U.S. Census Bureau, *available at* <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

<sup>25</sup> U.S. Census Bureau, 2007 NAICS Definitions, “561422 Telemarketing Bureaus and Other Contact Centers”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561422&search=2007>.

<sup>26</sup> 13 C.F.R. § 121.201, NAICS code 561422.

<sup>27</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Administrative and Support and Waste Management and Remediation Services; Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007,” NAICS code 561422 (2007); [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_56SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table).

<sup>28</sup> *See generally* Tax Relief Act at § 6507.

<sup>29</sup> Tax Relief Act at § 6507(b)(1).

upload numbers onto the registry. In addition, the PSAP must develop a process to verify on an annual basis that the registered numbers should continue to appear on the registry.<sup>30</sup> This will require PSAPs to check and verify at least once a year which numbers should continue to be included on the registry.

12. The Tax Relief Act also prohibits the use of automatic dialing or “robocall” equipment to contact numbers listed on the Do-Not-Call registry.<sup>31</sup> As a result, operators of automatic dialing equipment will be required to check the registry and update their calling systems no later than each 31 days to ensure that they do not contact any telephone number listed on the PSAP Do-Not-Call registry. In order to access the registry, operators of automatic dialing equipment will be required to provide contact information and certify that they will not use the telephone numbers for any purpose other than compliance with this Act. In addition, OADEs will need to develop a process to ensure that the list of registered numbers obtained from the PSAP Do-Not-Call registry is not disclosed or disseminated for any purpose other than compliance with this Act. Such a process may entail training personnel, recording access to such information in a secure manner, and updating automatic dialing systems to ensure that such equipment is not used to contact numbers on the PSAP registry.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

13. In the *PSAP NPRM*, we sought comment generally on how to implement the specific provisions of the Tax Relief Act in a cost-effective manner that minimizes the potential burdens on PSAPs and any operator of automatic dialing equipment subject to our rules.<sup>32</sup> We noted, for example, that the FTC’s National Do-Not-Call list has been operational for nearly a decade. Many operators of automatic dialing equipment subject to our rules are familiar with the rules adopted for compliance with the TCPAs analogous prohibitions on use the autodialers and the National Do-Not Call registry. Therefore, we have adopted similar requirements herein to reduce compliance burdens and confusion.<sup>33</sup> For example, we have adopted the TCPA’s definition of an autodialer and “emergency purpose” for use in this context of the PSAP registry.<sup>34</sup> In addition, we have adopted the same requirement that callers update and scrub any numbers listed on the PSAP registry no later than every 31 days; the same time frame which is required for the National Do-Not-Call registry.<sup>35</sup> As part of the process to access the PSAP registry, we have required OADEs to provide certain information including all telephone numbers used to place autodialed calls.<sup>36</sup> A few commenters indicated that the provision of this information might be burdensome. We concluded, however, that this information is necessary to trace the calling party in investigating any potential violation of our rules. In addition, we provide substantial flexibility to PSAPs to determine which numbers they wish to upload onto the registry.<sup>37</sup> We require PSAPs to check the

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<sup>30</sup> *Id.* at § 6507(b)(2).

<sup>31</sup> *Id.* at § 6507(b)(5).

<sup>32</sup> *See PSAP Do-Not-Call NPRM*, 27 FCC Rcd at 5653, para. 2.

<sup>33</sup> *See supra* paras. 19, 21, 22, and 29.

<sup>34</sup> *See supra* para. 29.

<sup>35</sup> *See supra* para. 21.

<sup>36</sup> *See supra* para. 19.

<sup>37</sup> *See supra* paras. 14-16.

registry on an annual basis to ensure that the numbers they have registered should remain on that registry.<sup>38</sup> A few commenters suggested an alternative approach which would have required PSAPs to check the registry once only every seven years.<sup>39</sup> We concluded, however, that an annual review better ensures the accuracy of the database while imposing minimal burdens on the PSAP.

14. **REPORT TO CONGRESS:** The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>40</sup> In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>41</sup>

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<sup>38</sup> See *supra* para. 17.

<sup>39</sup> See APCO Comments at 3; NENA Comments at 10.

<sup>40</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>41</sup> See 5 U.S.C. § 604(b).

## APPENDIX C

## List of Commenters

The following parties have filed comments in response to the May 22, 2012 NPRM (CG Docket 12-129):

<u>Commenter</u>	<u>Abbreviation</u>
ACA International	ACA
Agero, Inc.	Agero*
Association of Public Safety Communications Officials	APCO
California Chapter of the National Emergency Number Assoc.	CALNENA
Direct Marketing Association	DMA
InfoCision	InfoCision
Marketing Research Association	MRA
Michigan Public Service Commission	Michigan PSC
<b>National Association of Telecommunications Officer And Advisors</b>	<b>NATOA</b>
National Emergency Number Association	NENA
Mark Obermeyer	Obermeyer
Texas 9-1-1 Alliance et al.	Texas 911 Alliance
Vermont Enhanced 9-1-1 Board	Vermont 911 Board

\* filing both comments and reply comment (bold - reply comments only).

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

***Re: 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, CG Docket No. 12-129***

We all know robocalls can be seriously irritating. But the fact is there are times when robocalls go far beyond just being a nuisance. They become life-threatening.

Some robocallers tie up phone lines at emergency response centers, meaning that 9-1-1 callers get busy signals. In emergency situations, minutes – even seconds—matter. Robocalls to emergency response centers put lives at risk and are beyond unacceptable. This order would bring this appalling practice to a stop.

With this action, we implement an important feature of the Middle Class Tax Relief and Job Creation Act of 2012 by establishing a specialized Do-Not-Call registry for telephone numbers used by Public Safety Answering Points (PSAPs) to provide emergency services.

We empower PSAPs to decide which of their lines are critical for emergency response and allow them to add these numbers to a registry modeled on the successful National Do-Not-Call registry that protects more than 200 million residential numbers from unwanted telemarketing calls.

To send a clear signal to robocallers that we take this threat seriously and will not tolerate these calls, we are implementing the large penalty amounts that Congress established.

Now that our rules are in place, we will begin the next phase: setting up the registry, and getting the word out, both to emergency service providers and to users of robocallers.

Today's order is another step in the Commission's important work to help strengthen and modernize our emergency response system, which includes our work on NG911 and emergency alerts.

Thank you to my fellow Commissioners and to the Commission staff for their hard work to date and going forward. I also want to thank the public safety community for their partnership in this effort as well as Congresswoman Eshoo and Congressman Shimkus for their leadership on this important issue.



**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

***Re: 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, CG Docket No. 12-129***

We can all agree that autodialed calls and robocalls are annoying. But, when they flood phone lines used for emergency calls, they are no longer just annoying – they can become life-threatening. Congress recognized this problem when it directed the Commission to create a Do-Not-Call registry for public safety answering points (PSAPs), the collection centers for emergency calls, and I am pleased that we are faithfully implementing this legislation.

Today we establish that new registry for PSAPs to list their emergency numbers and shield them from autodialing and robocalls. Many aspects of this new registry will follow similar procedures already established for the current National Do-Not-Call registry. This time-tested structure will likely make implementation easier for both the public safety community as well as the operators of the automatic dialing equipment. We also adopt strict enforcement rules, which should serve as an effective deterrent.

I thank the leaders of both the House Energy and Commerce Committee and the Senate Commerce Committee and, in particular, Congressman Shimkus, Congresswoman Eshoo and Senators Klobuchar and Burr, for their leadership on 911 issues and in crafting the underlying emergency registry legislation. I also thank the Chairman, his staff, and the Consumer Bureau staff for their careful attention to this report and order.

Today's actions will make the jobs of America's first responders a little bit easier and will hopefully and literally save lives.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

***Re: 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, CG Docket No. 12-129***

Today's Order fulfills Congress' goal of ensuring that robocalls are not tying up the telephone lines citizens use to reach 911 operators. This is a critical, public safety item that I am pleased to support.

For the very first time all autodialers will be required to check the Do-Not-Call registry for telephone numbers that are used by Public Safety Answering Points and are subjected to stiff penalties if they either automatically dial or disclose those numbers. Given that many users of autodialer equipment have never been subjected to other Do-Not-Call requirements, it is very important that they are informed about these new obligations. I want to thank the Chairman's office and the staff for already putting in motion plans to educate these users, which include area schools and well-known charities that these new requirements have been instituted pursuant to law, and must be followed once the registry is operational. I encourage the Consumer and Governmental Affairs Bureau to reach out to our sister agencies like the Department of Education and the Federal Trade Commission and national organizations, such as the National School Boards Association, that can help spread the word about the new requirements.

Thank you CGB for such great work on this proceeding.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

***Re: 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, CG Docket No. 12-129***

Nearly a decade ago, the Federal Communications Commission was at the forefront of developing the first national Do-Not-Call list. It has been an out-and-out success. Consumers have signed up more than 209 million phone numbers. That means millions of Americans get a reprieve from the ring and buzz of commercial solicitation; a break from unrelenting robocalls; and an opportunity for an uninterrupted dinner hour. It is a small way to bring a little bit more civility and a little bit more privacy to our always-on, connected lives.

Today we build on this success by creating a unique Do-Not-Call list that prevents unwanted calls to our nation's 911 centers. When 911 operators have to deal with unwanted autodialed calls and solicitations, they do more than invade privacy—they pose a risk to public safety.

After all, unwanted calls to public safety answering points can prevent emergency calls from being answered. They can prevent crime victims from reaching the police. They can prevent stroke and heart attack victims from receiving timely medical assistance. We fix this today—by putting in place a special registry for public safety answering points, by prohibiting robocalls to these locations, and by establishing enhanced penalties for violations.

This is not just the right thing to do—it is also the law. In the Middle Class Tax Relief and Job Creation Act, Congress directed the Commission to develop this unique Do-Not-Call registry for public safety answering points. For this we should thank the leadership of the Congressional Next Generation 911 Caucus—Senator Amy Klobuchar, Senator Richard Burr, Representative John Shimkus, and Representative Anna Eshoo—for being such champions for public safety.

Finally, I want to thank my colleagues for agreeing to clarify that true emergency calls from automated services such as home security and automobile safety systems will reach our nation's 911 centers. This makes common sense. These services can help facilitate public safety. But if they fail and go beyond making real emergency calls, they can swamp public safety answering points with unwanted automated calls. Such calls are not necessary and can distract first responders from their jobs. Representative Eshoo has been a leader in fighting this problem and I thank her for her efforts that have led to this result today.

Thank you also to the Consumer and Governmental Affairs Bureau for their terrific work on this important item.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

***Re: 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, CG Docket No. 12-129***

This is the first item presented by the Consumer and Governmental Affairs Bureau (CGB) that I have had the privilege of voting at an open meeting. So I wanted to start by recognizing the critical work that is done by the Bureau and by thanking CGB staff for all of their efforts.

It goes without saying that all of the Commission's policies and programs should benefit American consumers. By interacting with our most important customers, the Bureau helps us stay true to that mission. Bureau staff educate consumers on a wide range of issues. They receive and resolve consumer complaints. They work tirelessly on making communications services accessible to Americans with disabilities. They coordinate with our partners in state, local, and tribal governments. And they do much, much more. Indeed, most of the American people's direct contact with the Commission comes through CGB, and CGB is proactive and positive in carrying out its responsibilities.

In all of its work, the Bureau is ably led by Kris Monteith. I had the privilege of working with Kris when she was Chief of the Enforcement Bureau. I saw firsthand the care, skill, and dedication she brought to that job. So it comes as no surprise to see that CGB is thriving under her leadership.

Turning to the specific matter before us, I am pleased to support this item. When Americans call 911, it is vital that they reach emergency personnel quickly. Indeed, it is often a matter of life and death. Public safety lines therefore can't be tied up with non-emergency calls, and those who staff Public Safety Answering Points (PSAPs) can't be diverted by such calls. "Call Me Maybe" may work for a catchy summer song, but for a PSAP, it just doesn't cut it.

Congress sought to address this problem by requiring the FCC to establish a Do-Not-Call registry for telephone numbers used by PSAPs and to prohibit the use of automatic dialing equipment to contact registered numbers. Today's item implements this statutory mandate in a sensible manner. It provides effective protection for public safety while at the same time minimizing the compliance burdens on those who operate automatic dialing equipment.

I am pleased that the Commission has acted swiftly to adopt this item. We released our Notice of Proposed Rulemaking less than five months ago and are issuing rules less than eight months after enactment of the statute. Given this track record, I am confident that CGB will soon issue a Public Notice providing specific operational details related to the PSAP Do-Not-Call Registry.

Finally, I would like to thank the Bureau staff who prepared today's item. Your excellent work makes us all proud.