

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matters of	)	
	)	
Advanced Methods to Target and Eliminate	)	CG Docket No. 17-59
Unlawful Robocalls	)	
	)	
8YY Access Charge Reform	)	WC Docket No. 18-156
	)	
	)	
To: The Commission	)	

**OCTOBER 2018 WRITTEN EX PARTE COMMENTS OF ZipDX LLC**

**Submitted to the Record**

David Frankel  
dfrankel@zipdx.com  
17554 Via Sereno  
Monte Sereno, CA 95030  
Tel: 800-372-6535

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With increasing frequency, the Commission and Industry have identified illegal robocalls as a (if not THE) top priority to be addressed with respect to consumer (dis)satisfaction with the American telecommunications system. The Commission and its staff deserve praise for their ongoing efforts to address this scourge. But the “A” for effort is yet to be matched with an “A” for results. That grade won’t be earned until the robocall monthly volume trend reverses.

The recently completed refresh of the record on this matter shows that all commenters are anxious to see the volume of illegal robocalls alter course and begin to decline. Almost universally, commenting parties are allocating resources to the problem internally and agree that meaningful robocall mitigation requires a multi-pronged solution supported by every stakeholder.

In its Public Notice the FCC asked, among other things, for input regarding traceback. The responses on this subtopic were universally supportive. None of the comments were negative. The general belief is that traceback can be a powerful tool. But to be effective, it must be performed at a scale and with rapidity that matches the scope of the problem, with appropriate reporting to keep it relevant and responsive to the adaptive nature of the robocallers.

All service providers must play a role in illegal robocall mitigation – if you aren’t part of the solution, then you are part of the problem. Experience with Rural Call Completion can inform our approach. Efforts on illegal robocalls can also address 8YY traffic pumping.

There are a set of actions the FCC should immediately take to catalyze the traceback process, allowing it to deliver on its potential to substantially mitigate illegal robocalling. Below we document specific FCC actions that can promote a sustainable, effective traceback effort. Subsequent sections provide additional background and supporting commentary.

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### **I. FCC Actions with Respect to Service Providers**

By now it is universally understood that no call, including an illegal robocall (even from overseas), is delivered to a United States ten-digit telephone number without entering the network through some Originating Provider located in the United States and subject to FCC jurisdiction.

It is also understood that once entering the US network, a call may traverse zero or more Intermediate Providers before arriving at the Terminating Provider, whose role is to deliver the call to the subscriber associated with the dialed number.

The FCC should advise ALL providers as follows:

A. All providers must participate in industry traceback efforts, including:

- 1) Supplying one or more points of contact for such requests
- 2) Responding to requests promptly (ideally within two hours)
- 3) Disclosing information under the CPNI exception codified in 47 U.S. Code § 222 (d)(2), without insisting on a subpoena or other mandate.

- B. When an Originating Provider learns (via traceback or other means) that they are the entry point for (likely) illegal calls, they must work with the call originator(s) to determine the propriety of the calls and must implement an appropriate mitigation strategy. Said strategy includes a know-your-customer process that prevents anonymous or untraceable use of volume calling capability.
- C. Call originators (that is, a customer of an Originating Provider) must not transmit a Caller-ID assigned to another party unless they have explicit permission of that party to do so. An Originating Provider, upon receiving notice that its customer is using numbers without permission, must take effective steps to mitigate the abuse.
- D. Should compliance with these practices become unduly burdensome, the Provider will promptly notify the Commission and include a proposal for alleviating the burden without compromising the effort to mitigate illegal robocalls.
- E. Failure to cooperate with these illegal robocall mitigation efforts will be considered an unreasonable practice under 47 U.S. Code § 201(b). Especially problematic would be a provider that failed to take adequate action after being asked to do so by the Commission or other industry stakeholders.

The Commission need not effectuate this via a formal rulemaking process. We recommend a notification model like that used, for example, in DA 13-1605, Enforcement Advisory No. 2013-6, regarding Rural Call Completion.<sup>1</sup>

We note that most large and some small providers are already cooperating with traceback efforts. Terminating and transit providers can today compel upstream providers to cooperate with

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<sup>1</sup> Available at <https://docs.fcc.gov/public/attachments/DA-13-1605A1.pdf>

traceback by stipulating as much in their intercarrier agreements and tariffs. Those agreements and tariffs already prohibit the sending of illegal traffic, providing a basis for downstream providers to cease carrying calls originated by providers that carelessly allow violations. An FCC Advisory as described above, while not required, would buttress such efforts.

## **II. FCC Actions with Respect to the Industry Traceback Coordinator**

In 2016, the Robocall Strike Force designated USTelecom as the coordinator of the Industry Traceback Group.<sup>2</sup> Given USTelecom's noble role here, the Commission should formally request the following:

- A. Each month, USTelecom should submit to the Commission (and into the public record) a report covering traceback efforts during the previous month. The report should include:
  - 1) The number of traceback requests initiated, completed, in-process and abandoned
  - 2) For the completed requests, the mean, median, minimum and maximum time (in hours) to complete
  - 3) A summary of the reasons for abandonment, including identification of providers that failed to cooperate with the traceback process
  - 4) Any observed trends or impediments or other issues which might be helpful to the Commission, industry stakeholders, and/or the public.
- B. USTelecom should promptly confirm to the Commission that it:
  - 1) Welcomes all providers to participate in the Industry Traceback Group

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<sup>2</sup> Robocall Strike Force Final Report, <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>

- 2) Does not require participants to be USTelecom members and treats all participants equally with respect to traceback regardless of their membership status
- 3) Does not charge a fee for participation
- 4) Handles the provider- and customer-specific information shared in the traceback process confidentially, disclosing it only on a need-to-know basis to employees, contracted entities, Industry Traceback Group participants, as well as the Commission and other law enforcement entities, all solely for the purpose of mitigating illegal robocalls
- 5) Acknowledges the severity of the robocall problem, the need to execute traceback swiftly and securely and on a scale commensurate with the problem, and that it has or will timely acquire the necessary resources to fulfill the traceback mission
- 6) Will notify the Commission promptly if any of the above changes.

Given USTelecom’s longstanding relationship with the Commission and the industry, and its unwavering commitment to addressing the robocall problem and its advocacy for traceback, there is no need for formal rulemaking. The Commission should immediately execute the foregoing via letter agreement and publicize it to industry. The Commission can subsequently undertake a formal process if it wishes to explore other avenues for traceback beyond that offered by USTelecom as the de facto incumbent coordinator.

### **III. Support in the Record for Traceback**

In the recent refresh of the record regarding illegal robocalling, the Commission specifically sought input regarding traceback. The feedback was unequivocally supportive, as shown by the example comments in the following table:

Comment	Source
“Traceback, the process by which the origin of an illegal robocalling campaign is discovered, allows industry and law enforcement to identify and stop the cause of illegal robocalling activities. Once the origin of an illegal campaign is traced, carriers can work to prevent those bad actors from using the carriers’ networks and can refer cases to law enforcement. Coupling industry-level action with enforcement action may prove very productive, as tracebacks often point to a few bad actors.”	17-59, <i>COMMENTS OF CTIA</i> , 24-Sep-2018, p. 17
“The Commission also should take affirmative steps to encourage all carriers to participate fully in traceback initiatives in order to make this method for addressing illegal robocalls as robust as possible. “	17-59, <i>COMMENTS OF COMCAST CORPORATION</i> , 24-Sep-2018, p. 7
“By the same token, requiring cooperation with industry traceback efforts and ‘know-your-customer’ procedures would serve as an important recognition that blocking alone is insufficient to address the scourge of illegal robocalls—cooperation with law enforcement and active customer management are just as important.”	17-59, <i>COMMENTS OF AT&amp;T</i> , 24-Sep-2018, p. 10
“The traceback efforts have not presented a large burden on participating carriers, and the benefits of universal traceback have the potential to be substantial. By incentivizing participation in industry traceback, the FCC can narrow its investigative and enforcement focus to those carriers that are the source of the problem. The Commission should explore options that will bring all carriers to the traceback process so that carriers participating in originating illegal robocalls can no longer avoid scrutiny.”	17-59, <i>COMMENTS OF SPRINT CORPORATION</i> , 8-Oct-2018, p. 3
“In instances where calls are traced to their point of origin, this often enables investigating providers to work with the originating carrier to cease such calls initiated by its customer. Such efforts are also extremely valuable to law enforcement, since carriers’ ability to trace calls through several networks can substantially assist law enforcement personnel in subsequent investigations. [...] The Commission’s clarification on Section 222(d)(2) could also prove useful in encouraging reticent telecommunications providers to more willingly participate in the sharing of CPNI information during investigations into the source of unlawful robocall campaigns.”	17-59, <i>COMMENTS OF THE USTELECOM ASSOCIATION</i> , 24-Sep-2018, p. 9

This pervasive support for traceback indicates that smart people have studied the problem and believe it is a fruitful path forward. Providers that are otherwise struggling with a decision to participate or not should look for guidance to those providers that have already committed to the traceback process.

The Commission should monitor traceback activity (via the reporting requirements proposed in section II above) to ensure that the industry effort is commensurate with the severity of the problem. Given that illegal robocalls are the most-complained about thing in the Federal Government, there should be, at a minimum, hundreds of call incidents traced back monthly so that illegal campaigns can be identified and eradicated, and a meaningful database built that identifies repeat offenders and focuses enforcement actions on the most egregious violators.

#### **IV. Traceback as a Tool for Mitigation of 8YY Traffic Pumping**

The Commission has a separate active docket (18-156, 8YY Access Charge Reform) in which traffic pumping – typically, automated calls placed to toll-free numbers to accumulate intercarrier compensation which is rebated in part to the call originator – is an element of the debate.

Commenters, including West<sup>3</sup>, O1 Communications<sup>4</sup>, Teliax & Peerless<sup>5</sup>, ITTA<sup>6</sup> and others pledge support for cooperation and tools to stop fraud.

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<sup>3</sup> 18-156 *REPLY COMMENTS OF WEST TELECOM SERVICES, LLC*, 4-Sep-2018, page 11: “West is an active and engaged member of the USTelecom Industry Traceback (“ITB”) Team....”  
[https://ecfsapi.fcc.gov/file/10904965512785/Comments%20of%20West%20Telecom%20Services%2C%20LLC%20-%20WC%2018-156%20-%209-4-18%20\(00127920xC33F1\).pdf](https://ecfsapi.fcc.gov/file/10904965512785/Comments%20of%20West%20Telecom%20Services%2C%20LLC%20-%20WC%2018-156%20-%209-4-18%20(00127920xC33F1).pdf)

<sup>4</sup> 18-156 *REPLY COMMENTS OF O1 COMMUNICATIONS, INC.* 1-Oct-2018, page 5: “[T]he Commission should focus its efforts to eliminate fraud associated with 8YY calls in the proceedings aimed to address unlawful Robocalls.”  
<https://ecfsapi.fcc.gov/file/1002207678070/O1%20Reply%20Comments%20in%208YY%20access%20reform.pdf>

<sup>5</sup> 18-156 *COMMENTS OF TELIAX, INC. AND PEERLESS NETWORK, INC.* 4-Sep-2018, page 21: “And T&P agree that they, the rest of the industry, toll free subscribers, regulatory agencies and law enforcement must work together to reduce and try to eliminate these misuses of toll free service and, even, help bring bad actors to justice under our criminal laws.... Both Peerless’s and Teliax’s wholesale 8YY origination contracts require their partners to comply with FCC rules, not send calls that are robodialed or are fraudulent in nature and to cooperate in investigating ‘bad traffic.’” <https://ecfsapi.fcc.gov/file/109050589622954/Teliax-Peerless%20Comments%20on%208YY%20Access%20Reform%2018-156%20FINAL.pdf>

<sup>6</sup> 18-156 *COMMENTS OF ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS* 4-Sep 2018, page 3: “ITTA supports the Commission’s efforts to eradicate pestilent robocalls and to eliminate abuses of the intercarrier compensation regime.”  
<https://ecfsapi.fcc.gov/file/10905171309092/ITTA%20Comments%20on%208YY%20Access%20Charge%20FNPRM%20As%20Filed%20090418.pdf>



Identifying the source of the pumped traffic is challenging and virtually analogous to the challenges in tracing illegal robocalls to their source. The traceback efforts described herein apply equally to both types of traffic.

This gives further credence to the notion that all providers participate in traceback and that a robust, efficient, scalable process be available to mitigate various kinds of telephone fraud.

## **V. Caller-ID Use Only with Permission**

We have included at I.(C) above the stipulation that call originators may not use a Caller-ID belonging to another party except with the permission of that party. Manipulation of Caller-ID, including misappropriation of others' numbers and the use of (pseudo-)random values has taken the illegal robocalling problem from bad to worse, harming legitimate callers and the general public.

When the Bell System introduced Caller-ID decades ago, the telephone company set the Caller-ID to be the number assigned to the calling party. Over time this constraint has been relaxed, and with providers today offering outbound-only calling services, it is frequently left to the call originator to supply a Caller-ID value of their choosing.

We need to recognize that original implementation as the baseline, and stipulate that the Caller-ID value in any call, whether provided by the call originator or the originating provider, must be assigned to that call originator or must be a number which the originator has explicit permission from the assignee to use. (For forwarded calls, this constraint would apply to the redirecting number.)

We know that medical personnel, women's shelters, law enforcement and others have a legitimate need to "spoof" their Caller-ID – that is, to send calls with a Caller-ID that does not

match the service or location from which the call is originated. Our rule does not impede that. The doctor can use the main listed number associated with his practice; the women's shelter can use a national spousal abuse hotline number (with the hotline operator's permission); law enforcement can use a general administrative number or acquire a new number for this purpose. What they (or any other caller) cannot do is use my number or the called party's number or a random number as their Caller-ID. Originating providers cannot be complicit in such abuse; when made aware that their customer is in violation, they must act to stop it.

## **VI. Analogies to Rural Call Completion**

The Commission has been working for several years to address Rural Call Completion issues. There are numerous technical and administrative similarities between RCC and illegal robocalling.

Most relevant here are the FCC's:

- A) Use of an Enforcement Advisory (referenced above) to alert and engage industry on the problem and set expectations regarding remedies
- B) Notice to the industry of the need to address the issue or face Section 201 enforcement action for unjust and unreasonable practices
- C) Encouragement to industry to use contract provisions to address the problem<sup>7</sup>

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<sup>7</sup> See, for example, *FCC 13-135 REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING* adopted 28-Oct-2013, paragraph 86: "To qualify, a provider must certify on an annual basis either that it uses no intermediate providers, or that all of its contracts with directly connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider (that is, a total of no more than two intermediate providers in the call path) before the call reaches the terminating provider or terminating tandem. The provider must further certify that any nondisclosure agreement with an intermediate provider permits the covered provider to reveal the identity of the directly connected intermediate provider and any additional intermediate provider to the Commission and to the rural carrier(s) whose incoming long-distance calls are affected by intermediate provider performance." <https://docs.fcc.gov/public/attachments/FCC-13-135A1.pdf>

D) Requirement that intermediate providers register with the Commission and include a point of contact for RCC issues<sup>8</sup>

Item (D) is particularly noteworthy for the facts that the RCC “intermediate providers” overlap extensively with the providers that will participate in traceback efforts, and the directive to provide and maintain a point of contact for the respective issue (RCC / traceback).

## **VII. Traceback as a Complement to STIR/SHAKEN**

Industry stakeholders are investing heavily in STIR/SHAKEN. Published reports suggest spending might approach \$100 million or more, and several additional years elapsed, to get to full deployment.<sup>9</sup> Ultimately, this technology will enable immediate identification of the originating provider, without having to go through a somewhat arduous traceback process.

But originating providers will still need to be vigilant about how their customers are originating calls and they’ll need to address problems when they are identified. Those processes developed today as part of traceback efforts will be evolved tomorrow for use in conjunction with STIR/SHAKEN.

Because it is a manual process, traceback must be invoked judiciously. Robocall analytics providers can guide us to the most prolific illegal calling campaigns. Tracing back a handful of

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<sup>8</sup> *FCC 18-120, THIRD REPORT AND ORDER AND ORDER*, adopted 13-Aug-2018, establishing the RCC registry <https://ecfsapi.fcc.gov/file/0815294578623/FCC-18-120A1.pdf>

<sup>9</sup> Most recently, San Jose Mercury News, 15-Oct-2018, “Finally, the big phone companies plan to do something major for us little people, rolling out a \$100 million system that could eventually reduce the flood of unwanted robocalls to a trickle.” <https://www.mercurynews.com/2018/10/15/robocalls-finally-big-phone-carriers-to-take-promising-step-to-reduce-consumer-scurge/>. Previously, the Los Angeles Times, 1-Sep-2017, “Also, SHAKEN/STIR won't be cheap. It could cost hundreds of millions of dollars to roll out across the country, with individual service providers responsible for ponying up tens of millions.” <http://www.latimes.com/business/lazarus/la-fi-lazarus-robocalls-fcc-task-force-20170901-story.html>

call examples (on the order of ten) will lead to the campaign source, where it can be mitigated. If each call example transits an average of 4 hops (originating provider, terminating provider and two intermediate hops), and each hop takes 10 minutes for the provider to investigate, plus some overhead to coordinate (minimized via some simple, already-available tools), we can estimate one man-hour per call example, or ten man-hours per campaign.

If we pursue 250 widespread illegal campaigns in the next twelve months, that will consume 2,500 man-hours and, at \$100/hour fully burdened, cost the industry 250,000 dollars – a fraction of one percent of the STIR/SHAKEN “budget” suggested by the press. Enforcement actions could recover that amount and more, but we doubt those funds would be rebated to industry.

Traceback is actionable now and should be pursued at the level indicated here. We’ll kill off the most offensive illegal campaigns and establish a deterrent to future robocallers.

### **VIII. All Telecommunications Providers Must Play a Role**

The fight against illegal robocalls has proven challenging but it is not intractable. The FCC’s Enforcement Bureau has done great work, often with industry help, tracking and citing numerous egregious violators. More resources in the Enforcement Bureau, as well as enforcers in other government agencies, would be welcome. But a scaled-up government enforcement effort is only one element.

Originating Providers are the gatekeepers of the US phone network. No call enters without their say-so. All Providers must play a role in mitigating the illegal robocall scourge. Some providers, by their nature, are unlikely entry points for illegal calls. But a provider that offers and/or promotes dialer decks, voice broadcasting, call center services, predictive dialing,

wholesale termination, or similar services need to take steps to minimize the likelihood that their platform will be the entry point for illegal traffic.

Defenses can be technical and/or administrative. Few customers need the ability to: initiate many new calls per second; spoof any caller-ID; or have large numbers of concurrent connections. Providers can impose limits via configuration settings in each customer trunk. Those customers that require loosened constraints can be fenced with contractual limitations and audits. Every provider should have an Acceptable Use Policy that prohibits illegal and abusive calls, and that authorizes the provider to take any necessary steps to stop abuse, including termination of service and sharing the identity of problematic customers with the rest of the industry and with government enforcers. Providers should be particularly cautious with anonymous and overseas customers. Each provider can tailor its approach to its own business and the nature of its customers.

No provider wants to be responsible for policing all its customers' traffic on a call-by-call basis. It would be neither practical or appropriate for a provider to listen in on its customers' calls, and even if they did, they wouldn't always be able to determine legality. Thus, general limits and policies will be the first line of defense. But when a provider has been made aware of problematic calls, it is obligated to step up its engagement with the originating customer and take appropriate, targeted action. Nothing further may be warranted if the provider's investigation reveals that the calls are in fact legal. On the other hand, illegal calls must be stopped, with or without the cooperation of the customer.

An entity that holds itself out as a telecommunications provider enjoys a level of immunity from liability under the TCPA and related statutes applicable to end-user customers. But with that privilege must come a responsibility, as described herein. Failing to effectively mitigate

illegal calls and failing to cooperate with industry and enforcers toward that goal is an unjust and unreasonable practice as a provider. If the entity abdicates its responsibility as a provider, then it reverts to customer status. The entity loses its immunity for calls placed via its platform and is then open to applicable criminal, civil and right-of-private-action penalties. Effectively, participating in traceback and having an effective illegal robocall mitigation plan (including “know your customer” elements) becomes a provider safe harbor.

## **IX. Conclusions**

There is extensive support in the record for industry-wide, expeditious, scaled effort to trace back illegal robocalls to their source and engage Originating Providers in their mitigation. Sections I and II above provide explicit language to serve as initial formal guidance which can then be evolved as the process matures, more is learned about the nature of the beast, and the robocallers adapt.

Each day that passes, tens of millions of illegal robocalls are placed. The Commission needs to urgently engage all providers in a vigorous, proactive war. Traceback is a low-cost, high-value immediately-deployable approach that complements the other countermeasures in our arsenal.

Respectfully submitted,

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/s/ David Frankel

dfrankel@zipdx.com

Tel: 800-372-6535