



February 21, 2020

Via ELECTRONIC FILING

Marlene H. Dortch Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation, Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59; Call Authentication Trust Anchor, WC Docket No. 17-97*

Dear Ms. Dortch:

On February 19 and 20, 2020, representatives of CTIA, NCTA – The Internet & Television Association, and USTelecom – The Broadband Association (collectively, the “Associations”) met separately with representatives of the offices of Chairman Ajit Pai, Commissioner Michael O’Rielly, Commissioner Brendan Carr, Commissioner Jessica Rosenworcel, Commissioner Geoffrey Starks, and the Wireline Competition Bureau. A full list of meeting participants is provided in Attachment A.

At the meetings, the Associations discussed the need for a broad safe harbor that promotes voice service providers’ good-faith efforts to combat abusive robocalls. Adopting a broad safe harbor based on reasonable analytics will give voice service providers the clarity and certainty needed to meaningfully advance the Commission’s goal of protecting consumers from the scourge of illegal and unwanted robocalls while protecting legitimate calls. Given the robust record in support of a safe harbor¹ and Congress’ directive in the recently enacted TRACED Act,² the Associations urged the Commission to act swiftly to adopt a broad safe harbor. The proposed safe harbor language presented at the meeting is provided as Attachment B.

¹ See, e.g., Letter from Michael R. Romano & Brian J. Ford, NTCA – The Rural Broadband Association, to Marlene H. Dortch, FCC, CG Docket No. 17-59, WC Docket No. 17-97 (filed Feb. 12, 2020) (supporting the Associations’ proposed safe harbor language with a clarification that reasonable analytics must include more than information provided by call authentication frameworks).

² Pallone-Thune TRACED Act, S. 151, 116th Cong. (2019) (“TRACED Act”).



The Associations' member companies share the Commission's top consumer protection priority to stop illegal and unwanted robocalls. To that end, voice service providers and many other industry stakeholders are deploying a multi-pronged defense against illegal robocalls. This includes enhancing call blocking and labeling solutions, educational outreach to give consumers more control of calls they receive and answer, implementing SHAKEN/STIR to help restore confidence in caller identification information, and establishing Know-Your-Customer practices and tracing-back illegal calls to their source to enable industry, the Commission, and law enforcement to work together to fight illegal robocalls.³ The Commission's 2017 *Call Blocking Order*,⁴ 2019 *Opt-Out Call Blocking Declaratory Ruling*,⁵ and other actions, have given voice service providers more tools to fight illegal robocalls,⁶ but a broad and flexible safe harbor is needed to enable voice service providers to take more aggressive actions to relieve consumers from the torrent of robocalls.

With near unanimous, bi-partisan support, the TRACED Act demonstrates Congress' clear desire for the Commission to adopt a safe harbor as part of the Act's implementation. The Associations highlighted how the TRACED Act recognizes the need to protect voice service providers from liability, and requires the Commission to establish a safe harbor by December 30, 2020.⁷ The TRACED Act

³ See, e.g., David Shepardson, Dian Bartz, *U.S. Files Lawsuits Over Robocall Scams, Cites 'Massive Financial Losses'*, Reuters (Jan. 28, 2020), <https://www.reuters.com/article/us-usa-robocalls-fraud/us-files-lawsuits-over-robocall-scams-cites-massive-financial-losses-idUSKBN1ZR2SM>; FCC Proposes Nearly \$13 Million Fine for Illegal Spoofed Robocalls, FCC (Jan. 30, 2020), <https://docs.fcc.gov/public/attachments/DOC-362195A1.pdf>.

⁴ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (2017) ("2017 Call Blocking Order").

⁵ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd. 4876 (2019) ("2019 Opt-Out Declaratory Ruling").

⁶ See, e.g., CTIA Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 4, 6 (filed Jan. 29, 2020) ("CTIA Robocall Report Comments") ("[T]he wireless industry and its robocall mitigation partners have protected consumers from *tens of billions* of illegal and unwanted robocalls."); NCTA – The Internet and Television Association Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 1-2 (filed Jan. 29, 2020) (describing cable industry efforts to protect consumers from harmful robocalls); USTelecom – The Broadband Association Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 2-3 (filed Jan. 29, 2020) ("USTelecom Robocall Report Comments").

⁷ *TRACED Act* § 4(c)(1)(A) ("[T]he Commission shall, not later than 1 year after the date of the enactment of this Act, promulgate rules . . . establishing a safe harbor for a provider of voice service from liability for unintended or inadvertent blocking of calls or for the unintended or inadvertent misidentification of the level of trust for individual calls based, *in whole or in part*, on information provided by the call authentication frameworks under subsection (b).") (emphasis added).



supports a broad and flexible safe harbor from liability, as does the robust record before the Commission. Congress requires the Commission to establish a safe harbor, but notably does not require the Commission to adopt specific language. Congress allows the Commission to consider basing the safe harbor “in whole or in part” on SHAKEN/STIR, recognizing that SHAKEN/STIR is just one element that may inform call-blocking decisions. In other words, the Commission has discretion to conclude that SHAKEN/STIR may not be a sufficient, or even necessary, basis upon which to determine how to treat an illegal or unwanted call. That discretion is further evidenced in Congress’ statement that “nothing in this section shall preclude the Commission from initiating a rulemaking pursuant to its existing statutory authority.”⁸ Indeed, the Commission can create a broad safe harbor under its existing authority, while also leveraging the considerations posed in the TRACED Act. The Associations urged the Commission to swiftly establish a broad safe harbor as part of the Commission’s ongoing efforts to implement the TRACED Act.

Further, the Associations explained that a broad and flexible safe harbor is needed because voice service providers face the risk of liability for good-faith efforts to block suspected illegal and unwanted robocalls. While the Commission gave voice service providers authority to block calls and consumers increasingly support their provider blocking calls on their behalf,⁹ providers hesitate to deploy robust call blocking solutions for fear of liability.¹⁰ As the record before the Commission makes clear, “[t]he carriers are rightly concerned about their potential liability for blocking legitimate calls.”¹¹ Authority to block illegitimate calls is distinct from liability protection for when good-faith actions result in the inadvertent blocking of legitimate calls.¹² Providers need *both* to unleash all resources against bad actors and to protect consumers. Consistent with the TRACED Act, the Commission should protect

⁸ *TRACED Act* § 4(d).

⁹ See, e.g., CTIA Robocall Report Comments at 18 (reporting “significant growth in support for call blocking by voice service providers without an opt-in, as well as confirmation that consumers increasingly endorse giving providers broader discretion to make call-blocking decisions on consumers’ behalf”).

¹⁰ Today, some providers use call labeling to give consumers more information about the call as an alternative to blocking suspected illegal or unwanted robocalls.

¹¹ See Letter from Michele A. Shuster, Counsel, Professional Association for Customer Engagement, to Marlene H. Dortch, Secretary, Federal Communications Commission, CG Docket No. 17-59, at 2-3 (filed May 29, 2019).

¹² Even though the Commission has attempted to “remove regulatory roadblocks and give industry the flexibility to block illegal calls,” the Commission made clear in its *2017 Call Blocking Order* that providers can still face liability when they, inadvertently, block legitimate calls. See *2017 Call Blocking Order* ¶ 9; *2019 Opt-out Declaratory Ruling* ¶ 37.



providers from liability for their reasonable efforts to fight robocalls.¹³

While the Commission’s 2017 *Call Blocking Order*, 2019 *Opt-Out Call Blocking Declaratory Ruling*, and other actions have given voice service providers more tools to fight illegal robocalls, the Associations discussed how a broad safe harbor will further encourage voice service providers to use sophisticated, reasonable analytics—which may include SHAKEN/STIR data—especially as SHAKEN/STIR continues to be implemented and the robocall mitigation ecosystem continues to evolve. Congress recognized that SHAKEN/STIR is not the only information providers should use to identify illegal or unwanted robocalls by using the term “in whole or in part” in directing the Commission to adopt a safe harbor. The safe harbor should extend to all reasonable blocking, labeling, and trust identification measures because they are often used together to assess calls and give consumers as much information as possible. The safe harbor should also be flexible and technology-neutral in order to encourage providers to use a variety of network level and opt-in or opt-out consumer tools to fight robocalls.¹⁴ All of these efforts are necessary defenses for consumers in the multi-pronged effort to end illegal and unwanted robocalls.

The Associations then explained that the use of reasonable analytics will help minimize the risks that legitimate calls are inadvertently blocked. The Associations and their member companies recognize that providers must have reasonable procedures in place to help ensure that calls blocked, labeled, or identified are limited to illegal or unwanted robocalls and not emergency public safety calls. As part of a safe harbor, legitimate call originators and consumers should also have the ability to notify voice service providers when issues do arise, and providers should have procedures to address reported incidents of unintentional or inadvertent blocking, mislabeling, or misidentification of calls. Today, many voice service providers and their partners have points of contact in place to address reported issues regarding legitimate calls, and the Associations expect that providers will continue to develop these and other resources to help calling parties and consumers alike.

Congress called on the Commission to act quickly to implement the TRACED Act, and establishing a broad safe harbor from liability for blocking, labeling, or identifying calls based on reasonable analytics would fulfill Congress’ intent. A broad safe harbor is also strongly supported by the record and, more importantly, will enable voice service providers to help consumers and call originators regain confidence in their voice services.

¹³ *TRACED Act* § 4(c)(1)(B). The TRACED Act supports adopting a safe harbor from liability from any enforcement action or adjudicative proceeding, including any civil action.

¹⁴ See, e.g., CTIA Robocall Report Comments at 5-7; Attachment 1; USTelecom Robocall Report Comments at 4.



Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS and provided to the Commission participants. Please do not hesitate to contact the undersigned.

Sincerely,

/s/ Patrick Halley

Patrick Halley

Senior Vice President, Policy & Advocacy, USTelecom – The Broadband Association

/s/ Matthew Gerst

Matthew Gerst

Vice President, Regulatory Affairs, CTIA

/s/ Steve Morris

Steve Morris

Vice President & Deputy General Counsel, NCTA – The Internet & Television Association

CC: Zenji Nakazawa
Nirali Patel
Arielle Roth
Joseph Calascione
Travis Litman
Dianne Holland
Daniel Kahn
Thomas Garrity
John Bat



ATTACHMENT A

February 19, 2020 Meeting Attendees

Office of Commissioner Jessica Rosenworcel

Travis Litman

USTelecom

Patrick Halley
Farhan Chughtai

NCTA

Radhika Bhat

CTIA

Scott Bergmann
Sarah Leggin

Office of Commissioner Geoffrey Starks

Dianne Holland

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Steve Morris
Radhika Bhat

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Matt Gerst
Sarah Leggin

February 20, 2020 Meeting Attendees

Office of Chairman Ajit Pai

Zenji Nakazawa
Nirali Patel

Wireline Competition Bureau

Daniel Kahn

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Patrick Halley
Farhan Chughtai

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Matt Gerst
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Arielle Roth

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ATTACHMENT B

In re: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59; Call Authentication Trust Anchor, WC Docket No. 17-97

Safe Harbor

A voice service provider that unintentionally or inadvertently blocked, mislabeled, or misidentified the level of trust for a call shall be deemed to be in compliance with the Communications Act of 1934, as amended, and the Commission's rules, and shall not be liable in any enforcement action or adjudicative proceeding, including any civil action, if, at the time the provider blocked or mislabeled the call or misidentified the call's level of trust:

- i. The blocking, labeling, or identification was initiated by the provider at the network level or was pursuant to tools offered to consumers on an opt-in or opt-out basis and was in connection with an event that the provider had a good-faith reason to believe was an illegal or unwanted robocall event because the provider took one or more reasonable action(s) including, but not limited to, the following:
 - A. Performed research on the phone number to reasonably determine the call was highly likely to be an illegal robocall;
 - B. Implemented reasonable procedures to block calls in a manner consistent with the Commission's rules; or
 - C. Utilized reasonable analytics, which may include information provided by call authentication frameworks.
- ii. The provider had procedures in place for blocking, labeling, or identification that were reasonably likely to confirm that calls blocked, labeled, or identified were limited to illegal or unwanted robocalls and the provider followed these procedures;
- iii. The provider had procedures in place to address reported incidents of unintentional or inadvertent blocking, mislabeling, or misidentification of such calls; and
- iv. The provider made reasonable efforts to avoid blocking, mislabeling, or misidentifying emergency public safety calls.