May 23, 2019

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: 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 Wednesday, May 22, 2019, the undersigned on behalf of NTCA–The Rural Broadband Association ("NTCA")[1] met with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Jessica Rosenworcel, to discuss the above-referenced Federal Communications Commission ("Commission") proceedings.

Specifically, NTCA noted its members' commitment to combatting the scourge of unwanted or illegal robocalls and suggested specific edits to the *Draft Declaratory Ruling*[2] to enable all providers to do so while protecting rural consumers' from "false positives" that may inadvertently limit their ability to place or receive calls. NTCA stated that absent strong and clear "guardrails" to ensure that rural consumers' calls will not be blocked solely based on the lack of caller-ID authentication and that only *unwanted and illegal* calls are blocked by terminating service providers – particularly as the availability of call authentication technology trickles down to small, rural operators – rural consumers could be thrust into a "reverse call completion" scenario that will threaten the concept of universal service and connectivity.

NTCA further urged the Commission to gather a complete record via the *Third Further Notice* in order to examine the ramifications of – in terms of rural consumers' ability to place any calls outside their immediate rural communities – a "safe-harbor" for the blocking of certain calls as well as to examine other steps that the agency can take to enable rural carriers' adoption of call-authentication technology.

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[1] NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA's service provider members are full service rural local exchange carriers ("RLECs") and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

[2] *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97, Draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC-CIRC1906-01 ("*Draft Declaratory Ruling*" or "*Third Further Notice*").

NTCA Members Are Committed to Combating the Scourge of Caller-ID Spoofing and Unwanted Calls.

In the meeting NTCA reiterated at the outset its rural member companies' strong commitment to reduce the incidence of consumers receiving unwanted calls. NTCA members are in particular committed to combatting "spoofers" and other bad actors that annoy and defraud rural consumers.

It should also be noted that NTCA is a founding member of the Secure Telephone Identity Governance Authority ("STI-GA") Board of Directors. The association has committed its time and financial resources to the creation of the STI-GA because of its commitment and that of its members to combat the scourge of caller-ID "spoofing."

The Proposed "Opt-Out" Call Blocking Rule Has the Potential to Confuse and Frustrate Consumers and Is Not Necessary at This Time.

To be sure, consumers all across the nation want and need relief from the scourge of robocalls. At the same time and equally important, consumers should expect their voice provider – as well as the Commission itself – to ensure that the reliability of services, including the ability to call any consumer wherever they live or work, something that has been a standard feature of the telephone network for over a century, is protected at every turn. With the *Draft Declaratory Ruling*, the Commission has the opportunity to both hit back at robocallers and scammers and protect the reliability of the telephone network.

This balance of combatting robocalls and protecting the reliability of the telephone network will be threatened by overly broad or ill-defined "opt-out" or "default" robocall blocking authority. This is a problem that will implicate consumers on both ends of a call. On one side, millions of consumers will potentially never receive calls, possibly without ever knowing they missed these calls they may have wanted, because they never knew calls to them were being blocked. It may only be their friends and relatives (or potential employers) trying to get through who alert them via email that a call was never completed. Such a result is likely to frustrate consumers, as well as undermine goodwill toward providers and the Commission. Those callers on the originating side forced to resort to emailing relatives or friends (or potential employees) because their calls will not complete are likely to be frustrated as well. The reliability that has been the hallmark of the United States telephone network for over a century will be undermined, and that outcome that will be worse if "false positives" ensnare legitimate callers by placing them on blacklists through no fault of their own.

The *Draft Declaratory Ruling* greatly expands the potential and capability for blocking of calls based upon "any reasonable analytics."[3] This is a monumental step in broadening what providers can block considering that, up until now, the only specific declaration with accompanying rules by the Commission with respect to providers' ability to block suspected robocalls has been limited to blocking, at the subscriber's request, calls from invalid,

[3] *Draft Declaratory Ruling*, ¶34.

unallocated or unassigned telephone numbers.[4] In that regard, even granting the authority as set forth in the *Draft Declaratory Ruling* based on the use of "reasonable analytics" and using just an **"opt-in" approach** for now would still represent both a significant new tool for voice service providers and grant them the clarification they need as to their authority to tackle this problem head on for their customers – while making sure customers are aware that there is the potential for legitimate calls to be blocked if the provider's "reasonable analytics" are over-inclusive.

Should the Commission Adopt the Proposed "Opt-Out" Rule Despite the Risk of the Potential for Blocking of Legitimate Calls, Such a Ruling Must Include Sufficient Safeguards to Protect Consumers.

Should the Commission decide to move forward with a broader "opt out" or "default" call blocking regime as proposed in the *Draft Declaratory Ruling*, several safeguards are necessary to protect consumers. To begin with, the Commission should develop a clear understanding of what it is actually allowing to take place. Simply put, the methodology by which calls are labeled (either by providers or their analytics providers or by third-party "apps") as suspicious, unwanted or illegal is not entirely clear. Granting broad authority to block based on "reasonable analytics" without any baseline against which to judge "reasonableness" presents significant risk without any clear sense of what might bound the provider's conduct and processes.

Thus, providers seeking to *voluntarily* avail themselves of the authority granted by the *Draft Declaratory Ruling* should be required to file, subject to the agency's well-established protective order procedures, an explanation of the "analytics" they will use to determine whether calls are suspicious, unwanted or illegal. This would grant the Commission the ability to judge whether blocking decisions are made for the right reasons and are based on clear, objective criteria applied across the board without regard to the origination point of the call or provider originating the call. It would also allow the Commission to judge whether providers engaging in call blocking have adopted sufficient safeguards to prevent "false positives" that result in the blocking of legitimate calls.

In addition, the Commission should require (*and not merely encourage*) "voice service providers that block calls to establish a means for a caller whose calls are blocked in error to contact the voice service provider in order to remedy the problem."[5] Consumers stuck on a "blacklist" through no fault of their own and unable to make *wanted* calls (wanted by the would-be called party) must have a remedy that does not involve a complaint filed at the Commission – a "remedy" that could take years to resolve. Nor should consumers be forced to turn to their voice provider to intercede on their behalf. Any terminating provider *voluntarily* availing itself of the authority granted by the *Draft Declaratory Ruling* should have an

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[4] *Advanced Methods to Target and Eliminate Unlawful Robocalls, Report and Order and Further Notice of Proposed Rulemaking*, 32 FCC Rcd 9706, 9710, para. 10 (2017) (Call Blocking Report and Order and Further Notice).

[5] *Draft Declaratory Ruling*, ¶ 16.

expedited process in place for consumers (or their provider if the latter chooses to do so for their customers) to have their numbers removed from any blocking list.

Under No Circumstances Should Any Call Be Blocked Based on the Lack of SHAKEN/STIR Authentication Alone.

The Commission should make clear that any call blocking authority it adopts does not allow any provider (on their own, via data analytics partners or via third-party apps) to label a call as suspicious, unwanted or illegal and thus eligible for blocking based merely on the lack of SHAKEN/STIR authentication. In other words, a customer of a provider that has yet to implement SHAKEN/STIR should not have their originated calls blocked on that basis alone.

As an initial matter, there is no basis – nor any record – upon which to judge a call as suspicious, unwanted or illegal based solely on the lack of authentication. For one thing, to argue otherwise would render the *Third Further Notice* moot. Even worse, such an argument for such treatment of unauthenticated calls would represent a serious misunderstanding of SHAKEN/STIR. This technology (which once again NTCA supports as a crucial step forward in restoring trust in voice calls) does not, on its own, identify unwanted or illegal robocalls – it simply indicates to the consumer, when implemented by an originating and terminating provider, that the caller-ID displayed has not been "spoofed." Callers can trust that the calls so authenticated actually did come from the telephone number on the caller-ID display. Calls not authenticated may be unwanted or illegal, or they could just as well be wanted and legal but unauthenticated nonetheless. But the basic lack of authentication, standing alone, tells providers or their analytics partners nothing about the nature of the call itself other than the accuracy of the caller-ID. Additional criteria can, of course, further inform call blocking technologies, and those criteria should also be used to further consider the nature of an unauthenticated call before it is blocked.

By contrast, allowing the blocking of calls based on the lack of authentication alone would seem likely to introduce "reverse call completion" problems for millions of consumers currently utilizing providers that have not yet adopted SHAKEN/STIR. To be sure, widespread adoption of this technology will deal a blow to the effectiveness of caller-ID spoofing. However, as noted in further detail below, rural carriers simply cannot keep pace with the nationwide providers that developed SHAKEN/STIR – with their network configurations and specifications in mind – and that can also drive the vendor community to create solutions. The same goes, of course, for providers of all sizes in urban and rural areas, and while the largest providers may be poised to adopt SHAKEN/STIR in the near future, the standard will not reach critical mass as quickly. Not taking this into account – and allowing calls to be blocked now based on the basic lack of authentication standing alone – will result in numerous customers of small and mid-sized service providers trapped in their small communities without the ability to place a phone call successfully to large portions of this nation.

Thus, NTCA proposes below a simple and surgical change to the *Draft Declaratory Ruling*. Specifically, the Commission should amend (via edits as seen in redline below) the language in paragraph 34 as follows:

> Similarly, a call-blocking program might be designed to block callers engaged in war dialing, unlawful foreign-based spoofing, or one-ring scams and might be designed to incorporate information about the originating provider, such as whether it has been a consistent source of unwanted robocalls and whether it appropriately signs calls (i.e., it is not "signing calls" with an attestation header that has been maliciously altered or inserted) under the SHAKEN/STIR framework. Pursuant to this approach, an indication that a "signed" call has a maliciously altered or inserted attestation header can and should be blocked. However, a call cannot be viewed under the authority we grant in this Declaratory Ruling as not "appropriately" signed simply because the originating provider has not signed the call because they are not a participant in the SHAKEN/STIR framework. That said, a call that is not signed by a provider that is part of the SHAKEN/STIR framework but has neglected to sign the call can be blocked.

To be clear, this language is intended to prevent voice service providers from labeling a call as suspicious, unwanted or illegal and using that label as a reason to block the call *only because that call is not authenticated*. This would only apply to calls originated by providers not participating in the SHAKEN/STIR framework. In other words, a terminating provider that receives calls from a known SHAKEN/STIR participant that has neglected to authenticate a call despite its ability to do so can block that call. In addition, a terminating provider aware that the attestation header has been maliciously altered or inserted would have the ability to block that call.

To the extent that the Commission believes authentication or lack thereof should factor into whether a call is blocked or not, the *Third Further Notice* asks the appropriate questions to enable the agency to make that determination. It is important however that the Commission not prejudge those questions by failing to amend the *Draft Declaratory Ruling* as suggested above. Such a significant step is one that can only be taken after the Commission gathers and reviews a complete record via the *Third Further Notice* in order to examine the ramifications of – in terms of rural consumers' ability to place any calls outside their immediate rural communities – and need for a "safe-harbor" for the blocking of inappropriately authenticated calls as well as to examine other steps that the agency can take to incent rural carriers' adoption of call-authentication technology.

The Commission Should Recognize the Unique Circumstances of Rural Operators as it Moves Forward with the Third Further Notice.

As stated above, NTCA members are committed to combatting robocalls and participating in the SHAKEN/STIR framework. However, these small providers face several hurdles to such participation that could, if addressed properly and in an expedited manner by the Commission, streamline the availability of this valuable technology for millions of rural consumers. Put another way, to the extent the Commission wants smaller operators to participate in this framework, there are several concrete steps that it can take to promote that outcome – and in the absence of such steps, it could take much longer for smaller operators to be part of the solution notwithstanding a strong interest in doing so.

When viewing SHAKEN/STIR from the rural operator perspective, it is important to take account of three economic hurdles to implementation. First, as is typically the case, the vendor community – a key part of SHAKEN/STIR implementation – has not responded yet to the small operator community with ready-to-install solutions. NTCA members have indicated that vendor solutions will not be available in 2019. In addition, more to the issue of cost, initial estimates suggest significant annual financial outlays for rural operators with respect to implementing SHAKEN/STIR – outlays that may be difficult, if not impossible, for many smaller providers to bear and recover from small rural customer bases.

As a second barrier to implementation, the very nature of SHAKEN/STIR as an "end-to-end" IP solution is relevant; a call must be handed off from originating to terminating provider and to any intermediate carriers in the call-path in IP format for certificates to transfer. Yet, as of today, there are no rules to govern the exchange of such traffic. Absent some clear "rules of the road," rural operators in need of IP interconnection agreements to implement SHAKEN/STIR could find themselves at the mercy of larger providers that could shift to these small carriers and their rural customers the costs of transporting voice calls between rural operators' local network edges and distant points of interconnection. As this would be required for all voice calls, these costs could escalate to the point of undermining universal service and the affordability of voice service rates in rural America. Defining clear rules of the road that allow for rural operators to maintain network edges and points of interconnection within the rural areas they serve (as has been the case in all prior forms of interconnection) is therefore critical to promotion and successful implementation of the SHAKEN/STIR framework by smaller rural carriers.

Third, as IP interconnection becomes effectively mandated due to the risk of calls being blocked without participation in the framework, the intercarrier compensation regime that has traditionally governed the exchange of voice traffic would be put at risk, potentially depriving rural carriers of network-cost-recovery revenues at a time when such revenues could be put to work in, among other things, helping rural operators implement SHAKEN/STIR.

These issues are ones that the Commission should examine fully via the *Third Further Notice*. NTCA members are committed to the widespread adoption of SHAKEN/STIR but urge the Commission to take into account these small operators' unique circumstances as it looks for ways to incent critical mass of this important technology.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,
/s/ *Brian Ford*
Brian Ford
Director of Industry Affairs
NTCA-The Rural Broadband Association

cc: Travis Litman