

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

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	
)	
Call Authentication Trust Anchor)	WC Docket No. 17-97

**COMMENTS OF THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE ON THIRD FURTHER NOTICE OF
PROPOSED RULEMAKING**

COMMISSIONER KAREN CHARLES PETERSON
Massachusetts Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
Phone (617) 305-3580

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I. INTRODUCTION AND BACKGROUND

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ supports the Federal Communications Commission’s (“FCC”) ongoing efforts to combat unwanted calls² and offers comments on ways in which the FCC can implement its proposals to the benefit of all stakeholders. On June 7, 2019, the FCC released a Declaratory Ruling (“Declaratory Ruling”) and Third Further Notice of Proposed Rulemaking (“NPRM”) intended to continue the FCC’s efforts to combat unwanted calls.³ In so doing, the FCC is adding to several recent steps⁴ it has

¹ The MDTC regulates telecommunications and cable services within Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16.

² We use the term “unwanted call” to refer to calls, initiated either by a human being or by an automated system, that either violate applicable law or are legal but unwanted.

³ *In re Advanced Methods to Target & Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Declaratory Ruling & Third Further Notice of Proposed Rulemaking*, FCC 19-51 (June 7, 2019) (“*Declaratory Ruling*” or “*NPRM*” respectively).

⁴ *See, e.g., In re Advanced Methods to Target & Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Report & Order & Further Notice of Proposed Rulemaking*, 32 FCC Rcd. 9706 (2017) (authorizing providers to block calls purporting to originate from unassigned, unallocated, or invalid numbers and calls purporting to originate from numbers that are valid and in service but that are not used by their subscribers to originate calls); *In re Implementing*

taken to reduce the number of such calls that are initiated and to empower voice service providers, either acting independently or in response to requests from intended call recipients, to identify and/or block such calls.⁵ Specifically, the NPRM proposes to create a “safe harbor” for certain provider call-blocking actions; seeks counsel about ways to protect certain “critical” calls, including 911 calls; prepares to require providers to implement the industry-developed SHAKEN/STIR call authentication system,⁶ should providers fail to voluntarily implement the system by the end of calendar year 2019; and proposes to implement various data collections and analyses to measure the effectiveness of provider call-blocking programs, including those authorized by the Declaratory Ruling.

The MDTC appreciates the opportunities it has had to participate in the FCC’s ongoing efforts to combat unwanted calls. These include supporting⁷ the FCC’s rulemaking that led to the creation of a reassigned numbers database, which has helped protect callers with reassigned numbers from receiving unwanted calls,⁸ supporting the FCC’s rulemaking to implement Section

Section 503 of RAY BAUM’S Act, Rules & Regulations Implementing the Truth in Caller ID Act of 2009, WC Docket No. 11-39, *Notice of Proposed Rulemaking* (implementing statute that extended section 227(e) of the Communications Act to reach spoofing from beyond U.S. borders and spoofing using alternative voice and text messaging services).

⁵ This Comment uses the FCC’s broad definition of blocking, which includes, in addition to stopping calls before they ring, routing calls to voicemail before a ring and other treatments, such as interactive voice response session or voice call screening. *Declaratory Ruling*, ¶ 22 n.47.

⁶ The “Signature-based Handling of Asserted information using toKENS” (SHAKEN) standard and the “Secure Telephone Identity Revisited” (STIR) protocol constitute an industry-developed set of protocols and operational procedures designed to authenticate telephone calls and thus mitigate spoofing and illegal robocalling.

⁷ *In re Advanced Methods to Target & Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Comments of the MDTC on Second Further Notice of Proposed Rulemaking (June 7, 2018).

⁸ *In re Advanced Methods to Target & Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Second Report & Order*, 33 FCC Rcd. 12,024 (2018).

503 of RAY BAUM'S Act,⁹ and serving on both the North American Numbering Council and the FCC Consumer Advisory Committee.

The MDTC also welcomes the ability to comment on the questions contained in this NPRM given the widespread problem of unwanted calls experienced by Massachusetts consumers, the impact of the Declaratory Ruling on consumers, and how the effects of the proposals would differ depending on the specific parameters that the FCC ultimately adopts. Voice telephony remains critical to Massachusetts residents and businesses. It is important, therefore, that the FCC carefully examine the potential impacts of its proposals.

The MDTC receives and responds to many consumer calls. There were 24,513 such calls in 2018. As both a telecom regulator and a consumer-facing agency, the MDTC urges the FCC to take steps that will better ensure providers' and consumers' ability to block unwanted calls, and ensure that consumers are properly notified about blocked calls and given a user-friendly way to block and unblock phone numbers. Although the MDTC supports the Declaratory Ruling's clarification allowing providers to implement opt-out call-blocking programs, the MDTC does so with the understanding that the FCC will ensure that consumers are: (1) adequately informed about these programs before their implementation; (2) given sufficient means to learn which calls the provider has blocked; and (3) allowed to direct providers to both block and unblock telephone numbers of the consumers' choosing.

II. EXECUTIVE SUMMARY

The MDTC supports the NPRM's proposal to require implementation of SHAKEN/STIR at the end of 2019 if providers have not done so voluntarily. Further, the MDTC urges the FCC to require all providers to cooperate with other providers' efforts to traceback suspect calls, in

⁹ See *In re Implementing Section 503 of RAY BAUM'S Act*, WC Docket No. 18-335, Comments of the Massachusetts Office of Consumer Affairs and Business Regulation and the MDTC (May 31, 2019).

addition to expanding its proposed safe harbor to include calls blocked pursuant to such traceback efforts. The FCC should also require that providers notify consumers of blocked calls in unobtrusive, but timely ways. In addition to such immediate notifications, providers should be required to maintain easily accessible and user-friendly websites that allow consumers to view a list of calls the provider has blocked and through which to request that certain telephone numbers be blocked or unblocked. The FCC should provide some parameters around the “reasonable analytics” the Declaratory Ruling authorizes as the basis for provider opt-out call-blocking programs. Given the substantial benefits that providers gain by reducing the number of unwanted calls, the FCC should prohibit providers from charging customers for the efforts the FCC authorizes in this proceeding. Finally, in order to assist the MDTC with both its consumer and regulatory functions, the MDTC urges the FCC to make the unwanted call information that it acquires available to state commissions.

III. THE FCC SHOULD REQUIRE SHAKEN/STIR IMPLEMENTATION OF ANY PROVIDERS WHO HAVEN’T DONE SO WITHIN 2019

SHAKEN/STIR will help to reduce the number of unwanted calls. Given the extent to which the current volume of such calls has undermined faith in voice telephony, it is appropriate for the FCC to mandate SHAKEN/STIR’s implementation.

IV. THE FCC SHOULD REQUIRE TRACEBACK COOPERATION AND EXPAND ITS PROPOSED SAFE HARBOR

The MDTC understands the benefits of the NPRM’s proposed safe harbor for calls blocked pursuant to SHAKEN/STIR, as discussed both by the FCC and by the providers who requested it.¹⁰ This proposal should not, however, be the FCC’s only tool to ensure that all

¹⁰ NPRM, ¶ 49 n.100 (citing Comments of Comcast Corp., CG Docket No. 17-59, p. 8 (Sept. 24, 2018) (“Comcast Comments”); Comments of AT&T, CG Docket No. 17-59, p. 3 (Sept. 24, 2018) (“AT&T Comments”); Comments of CTIA, CG Docket No. 17-59, pp. 4-7 (Sept. 24, 2018) (“CTIA Comments”); Comments of USTelecom, CG Docket No. 17-59, p. 4 (Sept. 24, 2018) (“USTelecom Comments”)).

providers cooperate with other providers seeking to identify and block unwanted calls.

Providers' traceback efforts have proven their efficacy in reducing unwanted calls, but not all providers conduct such traceback efforts. To be most effective, a provider's traceback efforts often require the cooperation of other providers because most calls traverse multiple providers' networks.¹¹ While many do cooperate, it is clear that many others do not.¹²

Therefore, the FCC should incentivize more providers to conduct traceback efforts by expanding its proposed safe harbor to include calls blocked pursuant to such efforts and should require that providers cooperate with other providers' efforts. Given the broad participation by leading providers in the Alliance for Telecommunications Industry Solution's Service Provider Contract Directory and USTelecom's Industry Traceback Group,¹³ it appears that providers could use these resources to help them meet such a requirement. In addition, given the more limited benefit SHAKEN/STIR will offer consumers receiving calls from or through time-division multiplexing ("TDM") systems, expanding the efficacy of traceback efforts will offer those receiving such calls some additional protection from illegal and/or unwanted calls. The FCC should make such cooperation mandatory for all providers.

V. THE FCC SHOULD REQUIRE PROVIDERS TO NOTIFY THEIR CUSTOMERS OF BLOCKED CALLS AND TO MAINTAIN A WEBSITE LISTING SUCH CALLS AND THROUGH WHICH CUSTOMERS CAN BLOCK OR UNBLOCK NUMBERS

¹¹ See, e.g., Comcast Comments at 7 (quoting the Robocall Strike Force, *Robocall Strike Force Report*, pp. 9-10 (rel. Oct. 26, 2016), available at <https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf>).

¹² See, e.g., Comcast Comments at 8; cf. AT&T Comments at 10 (urging the FCC to require cooperation with traceback efforts as a condition for allowing providers to engage in provider-initiated call blocking).

¹³ See USTelecom Comments at 7. For a complete list of members as of September 24, 2018, see Attachment A attached thereto.

Opt-out call-blocking programs require an extra measure of protection and transparency. The FCC should require that providers who choose to implement call-blocking programs notify, on an opt-out basis, the call recipient in real time that a call has been blocked via text message, pop-up notification, or similar means. In addition, the FCC should require that such providers maintain an easily accessible website or app where customers can securely access the list of blocked calls, including both the originating number and any identifying information the provider has relating to the call or number. In addition, this webpage should allow customers to request that the provider block or unblock a telephone number. Several providers already offer similar services¹⁴ or have the capability to do so¹⁵ and the FCC should make such services mandatory.

VI. THE FCC SHOULD PROHIBIT PROVIDERS FROM CHARGING THEIR CUSTOMERS FOR CALL-BLOCKING PROGRAMS OR CALL-BLOCKING ACTIONS AS AUTHORIZED BY THE FCC IN THIS PROCEEDING

The Declaratory Ruling detailed the benefits to providers of reducing the volume of unwanted calls that their customers receive, including increased customer loyalty and reduced call volume on their networks.¹⁶ Providers' implementation of SHAKEN/STIR may also allow them to discontinue some of their existing opt-in call-blocking programs, some of which are currently offered free of charge, thereby further reducing providers' existing costs.¹⁷ For these reasons, the FCC should require that call-blocking programs be free to consumers.

¹⁴ See, e.g., USTelecom Comments at 2-3 (noting that Verizon already offers this option for free to its customers).

¹⁵ See AT&T Comments at 4-6.

¹⁶ Declaratory Ruling, ¶ 39.

¹⁷ Reply Comments of the USTelecom Association, CG Docket No. 17-59, p. 2 (Aug. 20, 2017).

VII. THE FCC SHOULD SPECIFICALLY PROHIBIT SOME POTENTIAL GROUNDS FOR PROVIDER CALL-BLOCKING

Although the MDTC understands the FCC’s desire to allow providers flexibility to tailor the data analytics methods they use to identify potentially unwanted calls, there are some call-blocking criteria that the FCC should prohibit. Given that the Declaratory Ruling authorizes opt-out call-blocking programs, some consumers will not be aware of or understand such programs. It is important, therefore, for the FCC to protect consumers by ensuring that providers do not base decisions to block calls on anti-competitive or discriminatory grounds. At a minimum, the FCC should clarify that call-blocking data analytics will not be “reasonable” if used by providers to make blocking decisions based on whether a caller compensated the provider for not blocking their calls. Similarly, call-blocking decisions should not be based on whether the provider would gain a competitive advantage by blocking or not blocking a call. Finally, the FCC should make clear that call-blocking decisions based on irrelevant characteristics or opinions of the caller, the content of the call, or the call recipient are prohibited.

VIII. THE FCC SHOULD ALLOW STATE COMMISSIONS TO REVIEW LISTS OF “CRITICAL CALLS” PRIOR TO ISSUANCE AND SHOULD INCLUDE CONSUMER ASSISTANCE NUMBERS ON THAT LIST

The MDTC supports the FCC’s attention to ensure that providers do not accidentally block “critical calls.”¹⁸ The NPRM recognizes, however, that compiling a list of “critical calls” is both location-specific and subjective.¹⁹ The MDTC suggests that the FCC offer state commissions the chance to review any such proposed lists of “critical calls” within their jurisdictions prior to adoption. State commissions are best positioned to know whether such lists

¹⁸ NPRM, ¶ 63.

¹⁹ See *id.*, ¶¶ 65-66.

are complete and adequately represent the interest of their constituencies. In addition, the MDTC urges the FCC to ensure that the telephone numbers of public agencies, such as the MDTC, or non-profit consumer advocates be placed on any such Do Not Block lists. The MDTC's Consumer Division, for example, frequently calls consumers to discuss the status of their complaints and must be able to connect without its calls being blocked.

IX. THE FCC SHOULD MAKE ANY UNWANTED CALL DATA IT COLLECTS AVAILABLE TO STATE COMMISSIONS

The MDTC supports the FCC's decision to collect relevant data to allow the FCC to analyze how call-blocking programs are functioning, determine whether these programs are reducing the volume of unwanted calls, and avoiding the blocking of calls that are wanted.²⁰ The MDTC voted for the Consumer Advisory Committee's recommendation on this issue, which was subsequently adopted by the FCC.²¹ Unwanted call data specific to Massachusetts would assist the Commonwealth in monitoring this activity and the MDTC in responding to consumer call complaints. The MDTC requests that the FCC share with each state commission the specific call-blocking and unwanted call data.

X. CONCLUSION

The MDTC supports the FCC's continuing efforts to reduce the volume of unwanted calls. Furthermore, the MDTC urges the FCC to take actions contemplated in the NPRM that will further clarify the obligations of providers as they implement call-blocking programs. These actions include steps to educate and empower consumers about such programs without placing additional burdens on consumers already overwhelmed by unwanted calls. By requiring

²⁰ See *id.*, ¶¶ 87-89 (adopting the recommendation of the Consumer Advisory Committee ("CAC")).

²¹ See *id.*, ¶ 88. The MDTC looks forward to continuing to battle the unwanted-call epidemic on CAC 10.

providers to participate in traceback efforts and by implementing SHAKEN/STIR by the end of this calendar year should providers fail to do so voluntarily, the FCC will maximize providers' efforts to relieve consumers from the unwanted call burden. Finally, the MDTC hopes to maximize its ability to participate in this effort and anticipates that by working together, public and private stakeholders can empower consumers to protect themselves and strengthen a telephone system overwhelmingly burdened by unwanted calls.

Respectfully submitted,

COMMISSIONER KAREN CHARLES PETERSON

By: /s/ Mark A. Merante
Mark A. Merante
Counsel
Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

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