

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| 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 |
| |) | |

REPLY COMMENTS OF WEST TELECOM SERVICES, LLC

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EXECUTIVE SUMMARY

West Telecom Services, LLC (“West”) strongly supports achievement of the Commission’s goal of protecting consumers from illegal and nefarious scam robocalls. Almost all commenters in this proceeding agree that these incessant illicit robocalls and the malicious callers behind them must be stopped, and West applauds the Commission’s efforts to facilitate cooperative industry engagement in the implementation of effective solutions that will block illicit robocalls and defeat the bad actors responsible for them. But the record also demonstrates that implementation of the SHAKEN/STIR framework will not be an immediate or complete solution to the problem, as well as that certain providers require additional time to implement it, with West proposing an implementation deadline no earlier than January 1, 2021.

West therefore proposes that the Commission also establish and oversee a certification-based provider registry covering originating, intermediate, and terminating providers who certify their commitment to and compliance with specific requirements. The provider, in return, would receive safe harbor protection from liability for inadvertent instances of over-blocking or transmission of illicit robocalls. In West’s view, this registry requirement and compliance with certification obligations will: promote implementation of effective call blocking protocols; minimize the likelihood that consumers will miss important calls, due to overbroad default opt-out call blocking systems; promote industry cooperation in traceback efforts to identify malicious callers; promote industry cooperation in prompt mitigation of over-blocking situations; ensure that consumers are fully informed of their call blocking options and of the potential risks in terms of missed calls of each option; and prevent discrimination in the implementation of call blocking systems. While the Commission’s existing provider registry established in connection with the rural call completion docket can serve as a model for and be amended and expanded to

implement this additional registry requirement, West also recommends that the Commission convene a workshop, in which stakeholders can air their concerns and suggestions, to assist the Commission's deliberations in establishing the specific registry system.

As proposed by West, originating, intermediate, and terminating providers would register as such and certify their acknowledgment of and compliance with the following obligations:

1. Obligations Applicable to All Providers
 - a. Acknowledge Commission jurisdiction over and regulatory oversight of the provider, regardless of whether the provider is already deemed a common carrier.
 - b. Identify one or more points of contact for purposes of follow-up by other providers to engage in traceback efforts or prompt mitigation of over-blocking situations, and prompt participation in requested traceback and mitigation efforts.
 - c. Timely comply with the SHAKEN/STIR implementation schedule applicable to the provider.
2. Obligations Applicable to Terminating Providers
 - a. Focus default, opt-out call blocking protocols on blocking only illegal or unlawful calls (and not also on undefined "unwanted" calls).
 - b. Implement call blocking programs on a completely non-discriminatory basis including ensuring that programs:
 - i. Do not solely rely on SHAKEN/STIR authentication and verification as dispositive in making blocking decisions, especially pending wide-spread deployment of the SHAKEN/STIR.
 - ii. Do not favor calls originating on the provider's network or those of its affiliates or partners.
 - iii. Employ analytics that are indeed "reasonable," because they consider not only factors characteristic of both illicit and legitimate calls (such as their short duration or transmission in a call round of a burst of calls), but also factors that may negate characterizing calls as illicit (such as the timing of the calls, their predominant use of specific, geographically similar area codes, the absence of consumer complaints).
 - iv. Accord a rebuttable presumption of legitimacy to calls originating on the networks of other registered providers.
 - c. Provide customers with full disclosures of their call blocking program level options and the implications of those program options, so that customers have complete knowledge and understanding of the types of calls at risk of being blocked based on their program choice.
3. Obligations Applicable to Originating and Intermediate Providers
 - a. Decline to carry wholesale traffic originating on networks of unregistered providers.

- b. Implement “Know Your Customer” and other onboarding practices for wholesale customers to ensure that traffic from bad actors is minimized.

Implementation of this approach will promote achievement of the Commission’s goal of protecting consumers from illicit robocalls and scam callers and will facilitate cooperative industry efforts in support of these goals. At the same time, it will provide necessary protections for small providers and for wanted, legitimate calls. Absent establishment of procedural safeguards such as such a certification-based registry, the Commission risks harming consumers and providers through allowing substantial over-blocking and even discriminatory implementation of blocking programs.

West therefore encourages the Commission to continue to promote industry collaboration in eliminating illicit robocalls. This can be implemented by establishing a certification-based registry system and by considering West’s proposals in a workshop that may assist the Commission in effectively and efficiently addressing specific details of and challenges in program implementation.

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REPLY COMMENTS OF WEST TELECOM SERVICES, LLC

West Telecom Services, LLC (“West”)¹ submits these reply comments (“Reply Comments”) in response to the *Declaratory Ruling and Third Further Notice of Proposed Rulemaking* (“*Ruling* and *FNPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The record in this proceeding is clear – illicit robocalls originating from malicious and scam callers are a critical threat to call providers of all sizes and seriously harm and annoy U.S. consumers. There is substantial agreement among commenters participating in this docket

¹ West Telecom Services, LLC (“West”) is a wholly-owned subsidiary of West Corporation, a leading technology enablement company connecting people and businesses around the world. West Corporation is a global provider of communications and network infrastructure services, offering services including unified communications services, safety services, and interactive services like automated notifications, as well as telecom services. Affiliates of West Corporation complete over 4.2 billion consumer-desired messaging voice calls per year, such as school and healthcare notifications.

² *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59, WC Docket No. 17-97 (rel. June 7, 2019) (hereinafter, “*Ruling*” and “*FNPRM*”).

uniformly that tackling the illicit robocall problem requires a concerted, robust industry effort.³

While the record of this proceeding reflects differences in approaches to interdiction of illicit robocalling, West believes continuing industry collaboration under Commission auspices can lead to effective solutions to this pressing problem that accommodate the respective interests of most if not all stakeholders.

While West supports implementation of the SHAKEN/STIR framework as a key tool for attacking illicit robocalling, after review of the record in this proceeding, West continues to support extended compliance deadlines for the SHAKEN/STIR⁴ framework implementation, at least for smaller providers. In particular, should the Commission mandate implementation of the framework by at least all IP-based providers, the implementation deadline for smaller providers should be no earlier than January 1, 2021.

West also urges the Commission to establish and oversee a certification-based registry of originating, intermediate, and terminating providers that requires identification of points of contact and commitment to prompt cooperation with other registered providers to minimize and rectify instances of inadvertent over-blocking and engage in traceback efforts when unlawful robocalls are discovered. In order to participate in the registry, and, as applicable to receive “safe harbor” protection when there are instances of inadvertent over-blocking or transport of unlawful calls, providers would also be required to certify their commitment to, and their acknowledgment of FCC jurisdiction over, their compliance with a set of provider obligations,⁵

³ Comments of West Telecom Services, LLC, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*West Comments*”) at 2.

⁴ Signature-based Handling of Asserted information using toKENs (“SHAKEN”) and Secure Telephone Identity Revisited (“STIR”) (referred to collectively as “SHAKEN/STIR”).

⁵ See Comments of Verizon, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*Verizon Comments*”) at 9.

including prompt participation in cooperative remedial efforts and timely implementation of SHAKEN/STIR. These obligations would also include, on the originating and intermediate provider side, implementation of traffic management practices reasonably designed to prevent transmission of unlawful robocalls.⁶ On the terminating provider side, certification would require limiting default, opt-out blocking to illegal and other nefarious calls, implementation of non-discriminatory blocking methodologies, and fully informing consumers of the blocking options available to them and of their respective potential consequences in terms of types of blocked calls. Terminating providers would also certify their commitment to preventing over-blocking and to promptly addressing complaints of occasions of over-blocking. West further recommends that, to refine the registry principles and procedures, and initiate expansion of

⁶ While West does not recommend that the Commission narrowly prescribe these procedures, the procedures could include such approaches as contractual provisions and “Know Your Customer” practices such as dealing only with wholesale customers that have themselves registered, as well as those that have implemented the SHAKEN/STIR framework, and those that have committed to cooperate in traceback efforts. West is also supportive of onboarding procedures and practices for new wholesale customers such as procedures and practices that West itself employs for its provider-customers.

For example, before West initiates service for a new wholesale customer, West requires that the new customer provide detailed traffic-profile information including, for example, the average length of call (“ALOC”), estimated call types (including whether calls will be manually- or computer-generated, and whether the traffic is opt-in or otherwise), projected call volumes, and similar information (“opt-in” traffic referring to, for example, pharmacy customers opting-in to receive notices about prescription availability). Then West compares actual call traffic to characteristics listed within the customer-provided traffic profile, and West is alert and responds to any reports from consumers and from other carriers of suspected fraud calling. If fraud calling is detected, or if the customer’s actual traffic is different from that reflected in the customer-provided traffic profile, then West takes steps ranging from requiring the customer to demonstrate traffic legitimacy and explain the differences to stopping traffic ingress from the customer until the traffic is proven to be legitimate and compliant. West typically limits calls per second (“CPS”) to 1CPS per each 100 sessions of service provisioned. And West continues its post-production traffic analysis to identify failures attributable to use of unallocated telephone numbers and similar behaviors. West’s process is dynamic and evolves in order to address changes in fraud-calling patterns using metrics to identify certain factors – for example, identifying short duration calls with high completion rates to limit the number of false positives targeted for blocking.

cooperative industry initiatives, the Commission convene an industry workshop during which all stakeholders could present their recommendations and concerns.

In sum, widespread deployment of the SHAKEN/STIR framework will take time, and this tool will never provide a complete solution to the pernicious problem of illicit robocalls. West therefore continues to recommend that the Commission promote collaborative industry efforts, facilitated by a certification-based provider registry, that focus on effective, non-discriminatory default, opt-out call blocking limited to illegal calls; minimize over-blocking; and ensure consumers are as informed as possible about their call blocking options and the consequences of their choices.

II. THE COMMISSION SHOULD EXTEND THE SHAKEN/STIR IMPLEMENTATION DEADLINE, AT LEAST FOR CERTAIN PROVIDERS, AND ESTABLISH AND OVERSEE A CERTIFICATION-BASED REGISTRY OF PROVIDERS AND THEIR POINTS OF CONTACT TO PROMOTE COOPERATIVE RESOLUTION OF BLOCKING CONCERNS.

In its initial Comments, West proposed that if the Commission decides to mandate SHAKEN/STIR implementation, the Commission should not establish a compliance deadline earlier than January 1, 2021.⁷ A significant number of commenters in the record agree that any SHAKEN/STIR implementation deadline, at least for certain smaller providers, should be extended in some manner to account for technical challenges.⁸ Moreover, as multiple commenters pointed out, a successful SHAKEN/STIR framework cannot in itself be a complete

⁷ *West Comments* at 18.

⁸ *See, e.g.*, Comments of Professional Association of Customer Engagement, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*PACE Comments*”) at 8 (suggesting the Commission allow additional time for smaller carriers serving primarily rural and underserved populations that do not have the same resources as the major carriers, recommending an “additional two to three years after full implementation by the major carriers”).

solution to solving illicit robocall problems.⁹ Accordingly, both the Commission and the industry should continue looking to additional and alternative tools to create a more robust landscape of interdiction strategies that can be used in concert, including encouraging provider cooperation to prevent and cure inadvertent over-blocking of lawful calls and establishing a certification-based provider registry. Lastly, any default, opt-out call blocking programs should target only malevolent or illegal calls and be implemented on a non-discriminatory basis, without using as dispositive criteria or gating factors the SHAKEN/STIR framework or blocking criteria that are discriminatory as implemented.

A. The Record Supports Granting Smaller Providers Additional Time to Fully Deploy and Implement the SHAKEN/STIR Framework.

The *FNPRM* expects that smaller providers “will eventually implement the SHAKEN/STIR framework,” but the *FNPRM* also appropriately reflects Commission recognition that smaller providers may need more time to fully transition and deploy the framework within their networks.¹⁰ The record demonstrates the substantial agreement of many providers and industry stakeholders, including some larger providers,¹¹ that any Commission-mandated timeline must accommodate the special requirements of smaller or rural providers that

⁹ See e.g., Comments of USTelecom – The Broadband Association, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*USTelecom Comments*”) at 2 (noting that while SHAKEN/STIR is an important tool in call blocking, “it is not designed – and was never intended – to determine call intent or on stand-alone basis or to be used to automatically keep calls from completing,” and therefore must be used as part of a broader framework).

¹⁰ *FNPRM* at ¶ 56.

¹¹ See, e.g., *Verizon Comments* at 3 (acknowledging that “the regulatory framework should include appropriate exemptions (or extensions from the implementation deadline) for service providers that use [TDM] technology or that otherwise have traffic for which industry-standard techniques for signing calls with STIR/SHAKEN do not exist.”).

are working toward implementation but face challenges in doing so,¹² recognizing that full implementation is no easy task or transition for any provider.¹³ West therefore generally agrees with commenters proposing staggered compliance timeframes for such providers or interim solutions until all providers have had a reasonable amount of time to fully test and deploy the SHAKEN/STIR framework. Specifically, West recommends that, should the Commission establish an implementation deadline, the Commission should not require small providers to demonstrate full compliance before January 1, 2021.

B. The Commission Should Establish and Oversee a Certification-Based Provider Registry to Ensure Compliance with Blocking and Traffic Origination Standards and Promote Industry Cooperation in Preventing and Remediating Over-Blocking, as well as to Facilitate Cooperative Traceback of Illegal and Malevolent Robocalls.

¹² See, e.g., Comments of Transaction Network Services, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*TNS Comments*”) at 15 (supporting a SHAKEN/STIR mandate for IP-enabled networks, but acknowledging “that there are a number of technical and financial impediments to full implementation of SHAKEN/STIR, which will require flexibility by the Commission to overcome,” and that where IP-networks are not in place, the Commission should focus on interim solutions); see *Verizon Comments* at 3 (acknowledging that exemptions from the requirements for some carriers may be appropriate based on certain factors such as network technology and availability and for some smaller rural carriers).

¹³ See, e.g., Comments of NTCA – The Rural Broadband Association, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 9-10 (discussing the network interconnection issues affecting smaller and rural providers when they deploy SHAKEN/STIR and the resulting implementation problems, including dependence on the network decisions of larger providers, lack of vendor solutions, and significant costs involved). NTCA encourages the FCC to consider extended timeframes, stating that “for the Commission to expect a provider with a few thousand customers in rural America to implement SHAKEN/STIR on the same timeframe as a nationwide provider with millions of customers would be to ignore simple reality.” *Id.* at 10. Cf., Comments of Cloud Communications Alliance Comments, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 9 (small, rural providers not the only service providers that may require more time to implement SHAKEN/STIR, as “a broad range of smaller, competing providers will need more time to implement the framework, both because of fewer resources, but also because the framework as currently constituted does not afford them the opportunity to fully participate.”); Comments of TransNexus, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*TransNexus Comments*”) at 5 (outlining issues like network software transitioning and financial disincentives facing smaller rural providers in implementing SHAKEN/STIR).

There is also general agreement that while SHAKEN/STIR is a critical tool that can help in eliminating robocalls, implementation of SHAKEN/STIR alone cannot provide a complete solution to the problem. As AT&T noted, experts at the Commission’s July 11, 2019 Robocall Summit “explained that the presence or absence of SHAKEN/STIR verification on its own is neither necessary nor sufficient to indicate that a call should be blocked today.”¹⁴ It is therefore necessary to require cooperative industry efforts as well as SHAKEN/STIR deployment to effectively detect and eliminate illegal and malicious scam calls,¹⁵ as well as to minimize and remediate over-blocking and avoid discrimination in blocking practices.

Specifically, West recommends that the Commission create and oversee a certification-based provider registry,¹⁶ covering originating, intermediate, and terminating providers. Registrants would identify a point of contact for resolving instances of over-blocking and facilitating traceback efforts, and registration would require a certified commitment to participate in cooperative efforts for illicit call traceback and in prevention and remediation of instances of over-blocking.¹⁷ Registered terminating providers complying with their obligations would be

¹⁴ Comments of AT&T, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) (“*AT&T Comments*”) at 6, citing SHAKEN/STIR Robocall Summit, FCC (July 11, 2019), <https://www.fcc.gov/SHAKENSTIRSummit> (“July 11 Summit”).

¹⁵ *West Comments* at 21 (“Cooperative implementation of problem-resolution procedures would also provide experience to help providers refine the analytics used by default blocking programs.”).

¹⁶ The Commission has existing mechanisms in place that could provide as a template for a provider registry, such as the Rural Call Completion provider registry. *See Verizon Comments* at 7. *See also West Comments* at 20, n. 54 (recommending modeling the new registry requirement on the existing Intermediate Provider Registry). *Cf.* Comments of Comcast, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 13 (proposing that access to a critical call database be limited to registered users, as is access to the Reassigned Numbers database; *cf.* *TNS Comments* at 10 (noting FCC oversight of [the Reassigned Numbers and Rural Call Completion provider] registries)).

¹⁷ *West Comments* at 20. *See* Executive Summary, *supra* at iii; Introduction, *supra* at 2 – 3 (both summarizing necessary registrant commitments).

entitled to safe harbor protection for instances of inadvertent over-blocking, and registered originating and intermediate providers in compliance with their obligations would be entitled to a safe harbor with respect to any liability for inadvertent carriage of unlawful robocalls. All providers would be entitled to enlist cooperation of other relevant registrants to remediate problem situations through traceback or remediation of over-blocking.

Registration of certifying providers in a Commission-supervised database would thus provide another effective tool to combat unlawful robocalling while minimizing over-blocking and discriminatory blocking. Other providers have also recommended similar registry procedures. For example, Verizon has proposed registration requirements for originating and terminating providers as a pre-requisite to sending any calls to and from U.S. numbers, enabling the Commission to identify all call providers carrying traffic to consumers in the U.S. and ensuring its jurisdiction over them.¹⁸ West's proposed requirements would also ensure terminating providers limit default, opt-out blocking to targeting unlawful and other malevolent calls, implement their blocking methods in a non-discriminatory manner, and fully inform consumers about their other blocking options. West agrees with Verizon that the "Commission can leverage such a registry both to monitor compliance with the SHAKEN/STIR rules and also to ensure that non-compliant providers' traffic is not accepted onto the US network."¹⁹ A

¹⁸ *Verizon Comments* at 7.

¹⁹ *Verizon Comments* at 6 - 7. Verizon suggests specific requirements for originating and intermediate providers to help track SHAKEN/STIR traffic and unsigned traffic calls, and to identify non-compliant providers in ensuring SHAKEN/STIR deployment. West recommends, however, that with respect to data reporting of levels of traffic with SHAKEN/STIR attestation and verification, any requirement be for carriers "to be required to report" the information to the Commission, rather than requiring reporting on a regular basis, particularly while there is only limited general deployment of the SHAKEN/STIR framework. Further, West suggests that there should be lead time of at least a year following the effective date of reporting rules, in order for providers to implement the necessary compliant data collection and report generation systems. This deadline could be synchronized with any extended SHAKEN/STIR compliance deadlines.

registry would enable the Commission to better facilitate industry efforts to protect consumers from illicit robocalls, especially while smaller providers are working to deploy SHAKEN/STIR and the framework is not yet widely-deployed, and to the extent that SHAKEN/STIR in itself is not a complete solution. Additionally, a requirement that registrations include identified points of contact for each provider will facilitate industry cooperation to interdict illicit robocalling without over-blocking and to track down malicious robocallers.

C. Default, Opt-Out Call-Blocking Programs Should Not be Permitted to Employ Discriminatory Blocking Tactics, Including Reliance on the Lack of SHAKEN/STIR Authentication, as Dispositive Factors in Blocking Decisions.

Human nature being what it is, and with consumers facing competing demands of their time, it is likely that the vast majority of consumers will never opt-out from the default blocking options offered by their providers. To protect consumers from missing important calls as a result of over-blocking, and to enforce the requirement that blocking be implemented in a nondiscriminatory manner,²⁰ the Commission should require, as a condition of registration, that default, opt-out blocking programs focus on unlawful calls and implement blocking in a non-discriminatory manner.

West therefore continues to urge that any provider-initiated opt-out call blocking program not be deemed “reasonable” if it relies on lack of SHAKEN/STIR attestation as a dispositive blocking analytics factor. Similarly, analytics should not be deemed “reasonable” and qualify for safe harbor protection unless they are non-discriminatory as implemented.²¹

SHAKEN/STIR is a complex framework to deploy that requires a significant dedication of resources and is dependent on a combination of varying factors, many of which are out of the

²⁰ *See Ruling* at ¶ 35.

²¹ *West Comments* at 24.

control of smaller providers.²² Several commenters in the record voiced their concerns, describing their challenges in working toward deployment and stressing that rejection of their calls based on attestation failure would be extremely harmful to their customers.²³ It would not be reasonable to penalize carriers that may still be in the testing or early deployment phases of the SHAKEN/STIR framework by blocking their legitimate calls.

Similarly, it would not be reasonable to implement a default, opt-out call blocking program that favors traffic originated on the provider's own network or those of its affiliates or partners, or that implements blocking based on dispositive illicit call identifying factors that are actually characteristic both of legitimate calls and of illicit ones, without also reflecting non-discriminatory factors that could negate a blocking decision.²⁴ As West explained in its initial

²² See, e.g., Comments of WTA – Advocates for Rural Broadband, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 2 (explaining that SHAKEN/STIR adoption delays are due to legitimate barriers, not undue holdups, with nearly all RLECs having to defer framework implementation pending necessary upgrades by larger providers because of interconnection arrangements requiring transmission of voice traffic in TDM format, making it appropriate for the Commission to adopt appropriate safeguards for these providers); see also *TransNexus Comments* at 5 (noting that smaller providers cannot participate in SHAKEN/STIR as easily as larger providers, as their calls transit several interexchange carriers, with SHAKEN/STIR usually failing if any of the network segments are not aligned, a circumstance not controlled by the smaller rural service providers).

²³ See, e.g., Comments of First Orion Corp., CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 4 (urging the Commission not to encourage providers to block calls from their competitors who fail to deploy SHAKEN/STIR or fail to keep certificates up to date); Comments at Ring Central Inc., CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 4-5, (explaining that this kind of blocking discrimination would disadvantage competitive providers, and recommending the Commission establish a competitively neutral mechanism for providers to obtain certification and high attestation outside the SHAKEN/STIR framework).

²⁴ It could, for example, be unreasonable to rely on the presence of multiple virtually simultaneous calls of short duration focusing on numbers with a small number of common area codes unless the “analytics” also reflected “negating factors,” i.e., no pattern of complaints about calls from the originating numbers or identified callers, or high completion rates for short duration calls. An emergency school closing notification calling round, for example, would exhibit the first factors, but it is unlikely to elicit call complaints. West does not, however, recommend that the Commission prescribe the call factors carriers must consider.

comments, and discusses in further detail below, to be deemed reasonable, analytics-based blocking programs must be held to specific standards and be non-discriminatory as implemented.²⁵

III. THE COMMISSION SHOULD PERMIT DEFAULT, OPT-OUT BLOCKING ONLY OF ILLEGAL AND MALEVOLENT CALLS, AND THE FCC SHOULD REQUIRE THAT TERMINATING PROVIDERS GIVE FULL DISCLOSURES TO THEIR CUSTOMERS OF THEIR CALL BLOCKING OPTIONS AND THE IMPLICATIONS OF EACH OF THESE OPTIONS.

The Commission can use registration certification requirements to ensure that consumers are fully informed of their blocking choices and the implications of each blocking option. This will protect the likely majority of consumers that are less proactive from such harmful effects of over-blocking as failing to receive important notifications, while allowing more proactive consumers to participate more actively in management of their incoming traffic.

As West demonstrated in its comments, the Commission must require blocking procedures to distinguish illegal or unlawful calls driven by malicious actors from legitimate calls originating from legitimate providers and call originators, and to apply different blocking procedures to these call categories.²⁶ Commenters in the record agree that the Commission has yet to define “unwanted calls,” and many fear that allowing default blocking of “unwanted” calls on an opt-out basis will inevitably lead to provider and consumer confusion, as well as potential

Implementation of West’s recommendation that default, opt-out call blocking be limited to targeting unlawful and other nefarious calls would not only serve to protect the large number of less proactive consumers from harmful over-blocking, but would also ensure that carriers have the flexibility to deploy and experiment with broader blocking approaches acceptable to the segment of their customer base that, after being fully informed of over-blocking risks, are willing to accept those risks.

²⁵ *West Comments* at 13.

²⁶ *Id.* at 7.

over-blocking of important, wanted calls.²⁷

Moving forward, to prevent harm to providers and consumers from over-blocking, the Commission must limit any default opt-out blocking only to calls that are either reasonably presumed to be unlawful or illegal, or otherwise clearly malicious or malevolent, including overseas-originated calls illegally spoofing U.S. numbers to scam U.S. consumers.²⁸ Moreover, any blocking program must provide full and complete disclosures of the types of calls being blocked under each of the providers' blocking program options, so that consumers are fully aware of and understand the implications of these choices.

²⁷ See, e.g., Comments of Competitive Carriers Association, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) ("*CCA Comments*") at 3 (requesting the Commission provide additional clarity on the scope of "unwanted" calls to avoid unintended consequences that could actually harm deployment); Comments of Sprint, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) ("*Sprint Comments*") at 8 (explaining that measuring the effectiveness of robocall solutions is difficult because of the lack of clear definitions and universal agreement on what constitutes "illegal" and "unwanted" calls); *PACE Comments* at 5 (recommending the Commission not use terms that relate to the content of a call (e.g., "wanted," "unwanted," "legal," "illegal," or "presumably illegal"), as SHAKEN/STIR and analytics-based blocking alone cannot distinguish call content); Comments of Numeracle, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 5 (noting that "[t]he Commission has yet to define legal, illegal, wanted, or unwanted despite requests by industry associations and voice service providers.").

²⁸ Terminating providers may, for example, offer consumers the opportunity to elect from five levels of call blocking: 1) traditional carrier blocking (carrier-initiated standard blocking, *applicable to all consumer accounts*, regardless of any other applicable consumer-specific options, that employs network management protocols for removal of non-compliant traffic); 2) default, opt-out carrier blocking (additional protocols implemented by the terminating provider, in addition to the standard blocking described above, absent specific consumer opt-out, and thus likely applicable to the vast majority of consumer accounts, an option that in West's view should target only illegal, unlawful, and otherwise nefarious calls); 3) blocking also of calls determined by the carrier to be "unwanted" based on its proprietary methods (which in West's view should be activated only by customer opt-in election); 4) consumer white list blocking (blocking of any number not included in the customer's phone contact list or other customer-provided list, which necessarily must be initiated by consumer opt-in election); and 5) no blocking (completion of all calls not blocked by network management blocking, which should also be implemented only by consumer opt-in in order to limit transmission of illicit robocalls). Consumers should also be entitled to have an effective means of changing their blocking elections on a rapid turn-around basis.

A. The Commission Should Limit Any Default, Opt-Out Call Blocking to Targeting Calls That Are Reasonably Presumed to be Unlawful, Illegal, or Otherwise Nefarious, or That Originate Internationally from Illegally-Spoofed U.S. Numbers.

If the Commission permits default blocking of what a carrier may unilaterally deem to be *unwanted calls*, as well as default blocking of illegal calls, the Commission risks ignoring the critical needs of both the providers and the recipients of important calls. The record reflects serious concerns from providers and industry entities regarding the consequences of vague blocking programs that will lead to widespread erroneous call blocking.²⁹ Several commenters identify additional factors that can cause these types of calls to be misidentified as spam and therefore inadvertently blocked.³⁰

The Commission should therefore permit default, opt-out blocking only of calls that are either presumed to be illegal or unlawful, including calls that are determined to originate from international callers illegally spoofing U.S. numbers to scam consumers.³¹ As West noted in its initial comments, now that the Commission has declared such international-originated spoofing calls to be illegal, there is no longer a need for default blocking of “unwanted” calls, because

²⁹ See Comments of Twilio, Inc., CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 6 (expressing concern that call blocking programs, like Twilio’s two-factor authentication algorithm, may block legitimate and wanted calls based on low average call duration or similar characteristics).

³⁰ For example, these notification calls are often short in duration, originate from numbers not saved in the recipient’s contact list, and may be a recorded notice of an important message, such as a school closing or appointment reminder. See, e.g., Comments of INCOMPAS, CG Docket No. 17-59, WC Docket No. 17-89 (filed July 24, 2019) at 11 (noting that calls like “school messaging, medical notifications, valid conferencing, and similar important services may fall under the ‘reasonable analytics’ criteria for blocking, [as they are] typically short in duration, done in bursts, and sent to large, local communities.”).

³¹ See Implementing the Anti-Spoofing Provisions of the RAY BAUM’s Act, Second Report and Order, WC Docket Nos. 18-335, 11-39 (rel. Aug. 5, 2019) (“*Anti-Spoofing Second R&O*”).

broader blocking decisions can be left to the consumers.³² What is an “unwanted” call is a subjective determination, and it can vary case-by-case. As such, blocking of “unwanted” calls should be a consumer decision, not a default carrier decision foisted on consumers who have not considered or do not understand the potential consequences of missing important calls. Accordingly, West encourages the Commission to issue these necessary clarifications to avoid future confusion and deployment of overbroad default opt-out blocking programs.

B. Terminating Providers Must Provide Consumers Full Disclosures Describing All Call Blocking Options and Their Respective Implications.

Limiting default, opt-out blocking to illegal calls does not mean, however, that carriers may not offer more aggressive blocking options or use knowledge gained through experimenting with them to refine blocking protocols. Rather, carriers should be required to provide consumers with full disclosures of the blocking options available to them, enforced by the certification obligation for registration. Disclosures should provide sufficient information for consumers to gain a complete understanding of the implications of their blocking choices and to make elections among them. The Commission should require, not just encourage, providers to convey to their customers what types of calls are being targeted by each option and, importantly, what types of calls are at risk of being inadvertently blocked by each option.³³

If providers adequately disclose this information to customers before any blocking option election is made, then consumers, not carriers, will be responsible for initiating blocking of the types of calls they individually deem as unwanted, and for determining the types of calls they are prepared and willing to risk missing. Less proactive consumers will be protected from

³² See *West Comments* at 4.

³³ See *West Comments* at 16; *FNPRM* at ¶ 33.

unexpected over-blocking, while other consumers can align their unique call priorities with individually-chosen carrier blocking levels.

With the availability of informed consumer blocking elections of non-default options, it is unnecessary for the Commission to give its regulatory blessing to potentially overly-broad default call blocking approaches that risk the vast majority of consumers missing many important calls they expect, and their call originators (serving customers such as schools and medical services) expect them, to receive. Requiring providers to give full disclosures about all blocking options, while limiting default, opt-out blocking to targeting illicit calls, appropriately balances the interest in implementing aggressive approaches to blocking of illicit calls against the risks of missing important calls to consumers who may be unable or unwilling to choose among the options offered by their providers.

IV. IN ORDER TO MINIMIZE THE POTENTIAL HARMS RESULTING FROM OVER-BLOCKING AND FROM BLOCKING UTILIZING PRACTICES THAT ARE DISCRIMINATORY IN IMPLEMENTATION, THE COMMISSION SHOULD DENY CARTE BLANCHE SAFE HARBOR PROTECTION TO DEFAULT, OPT-OUT CALL BLOCKING THAT DOES NOT CONFORM TO REGISTRY COMPLIANCE CERTIFICATION REQUIREMENTS.

Several commenters in the record, specifically larger providers, ask the Commission to grant them carte blanche safe harbor protection if they deploy aggressive call blocking solutions *of any type and in any way the providers unilaterally choose*. They argue that these strategies will more effectively prevent scam callers from reaching consumers. However, giving carte blanche to deployment of default, opt-out blocking programs with no requirement that they meet fundamental standards of reasonableness or commitments to non-discrimination leaves consumers with a high risk of blocked legitimate wanted calls, and carte blanche immunity opens the door to use of blocking for competitive advantage. Potential harm is magnified in the

absence of clear mechanisms to quickly and effectively remedy issues of over-blocking.

Requiring appropriate certifications as a condition for provider registration can be an effective mechanism for minimizing these potential adverse consequences.³⁴

For example, AT&T urges the Commission to adopt a broad safe harbor that encourages aggressive provider blocking with incentives to adopt the SHAKEN/STIR framework, and supports blocking based on SHAKEN/STIR attestation. The Commission, however, should reject AT&T's approach, particularly if applied to default, opt-out blocking, as likely to lead to over-blocking and the harm resulting from it, because carriers lack a regulatory incentive to prevent over-blocking. West applauds the goal to implement strong provider blocking programs, but until the implementation timeline issues and challenges are resolved in working toward universal SHAKEN/STIR, it is critical to incorporate interim approaches that do not harm smaller providers and their customers. Service providers already have strong incentives in place to deploy SHAKEN/STIR and other robocall combatting solutions, including the need to keep up with market forces and consumer demand.³⁵ These forces will continue to drive evolution in the framework and push providers to certify to their customers that they are in line with the industry and can offer the same robust call blocking mechanisms as larger providers.³⁶ However, interim

³⁴ *West Comments* at 21.

³⁵ *See, e.g.*, Comments of T-Mobile USA, Inc., CG Docket No. 17-59, WC Docket No. 17-97 (filed July 24, 2019) at 12 (explaining that “[v]oice service providers that offer a robust set of robocall blocking tools to consumers already have every market incentive to communicate this to customers and potential customers. If voice providers’ solutions are ineffective – consumers know and complain.”).

³⁶ West is committed to deploying SHAKEN/STIR to provide its customers with successful call attestation and ensure they are protected from scam callers, but West continues to support affording some providers an extended SHAKEN/STIR implementation period, at least until 2021. Reasonably extending the timeframe, with other measures such as the registry requirements in place to ensure vigorous cooperative industry efforts to attack illicit robocalling,

protections are necessary to better enable small providers to meet these demands until the framework is universally deployed.

AT&T's proposed safe harbor is described as exempting from liability a provider that inadvertently blocked a call but had a good-faith reason to believe it was an illegal robocall, if the provider had and followed procedures that were reasonably likely to confirm that the blocking was limited to illegal robocalls, and if the provider had a process in place to unblock in an inadvertent blocking event.³⁷ However, giving safe harbor protection to any provider merely having a "good-faith reason to believe the call was an illegal robocall event" is an open invitation to over-blocking with impunity, especially when applied to default, opt-out blocking, because there are no standards to inform the "good faith belief" or check potentially anti-competitive implementation impulses.³⁸

Granting a free pass for implementing any blocking protocol unilaterally determined by a provider to be based on "reasonable" analytics not only can lead to inadvertent over-blocking, but also can immunize blocking schemes that intentionally give a competitive advantage to the provider. Under such a no-standards based regime, providers have no restraints on their freedom to block calls their self-chosen "analytics" flag as suspicious. But, for example, if the analytics do not block calls that are attested and verified under SHAKEN/STIR before it is widely deployed, while blocking unattested and unverified calls, the result may be over-blocking, and

will push providers to implement SHAKEN/STIR quickly while affording necessary compliance adjustments. *See West Comments* at 19 - 20.

³⁷ *See AT&T Comments* at 12.

³⁸ *Id.*

even over-blocking with discriminatory intent.³⁹ Similarly, an “objective” metric that allows transmission of calls originating on the provider’s network and those of its affiliates and partners, while blocking those originating on other networks, can lead to over-blocking, and even to over-blocking reflecting a discriminatory intent. Thus, immunizing unrestricted deployment of protocols without standards to limit a determination of their “reasonableness” may lead to over-blocking, and such discriminatory over-blocking.

It is therefore essential that safe harbor protection for blocking protocols be conditioned on conformance to basic standards.⁴⁰ West agrees that providers need to maintain a necessary level of flexibility in their blocking analytics to allow protocols successfully and quickly to evolve with the shifting landscape of illegal calls. However, enabling providers to use “good faith efforts” to default block calls without being subject to any specific standards or liability risks over-blocking and anti-competitive conduct.

As a preliminary matter, pending widespread deployment of SHAKEN/STIR, as a best practice, providers should refrain from blocking calls originated by registered providers, who have affirmed they are subject to Commission jurisdiction and are committed to cooperative participation in traceback efforts.

V. THE COMMISSION SHOULD ADOPT WEST’S PROPOSALS, WHICH PROMOTE INDUSTRY COOPERATIVE EFFORTS TO INTERDICT NEFARIOUS ROBOCALLS WHILE MINIMIZING OVER-BLOCKING AND DISCRIMINATORY BLOCKING.

³⁹ As noted above, however, giving a rebuttable presumption of legitimacy to calls originating on networks of registered providers, who have certified their commitment to appropriate traffic management approaches and collaborative traceback efforts, may minimize over-blocking.

⁴⁰ West does not recommend that the Commission mandate that protocols reflect any specific standards, but rather West recommends that the “reasonableness” of a blocking approach, both on its face and as implemented, be demonstrable in the context of basic guidelines and standards. A workshop session may facilitate achievement of a consensus approach to such guidelines.

Commenters in this proceeding are cognizant of and actively participate in the ongoing industry interdiction efforts and support furthering these goals using cooperative strategies.⁴¹ West therefore continues to support industry cooperation efforts,⁴² facilitated by requiring provider registration in a certification-based Commission system. The required certifications help ensure that carriers can flexibly deploy blocking systems while minimizing the harms of over-blocking, potential discrimination in blocking, and unrealized consumer expectations. The required commitments to cooperative traceback and over-blocking prevention and remediation, facilitated by identification of points of contact, will promote cooperative industry efforts to create a multi-faceted approach to rooting out robocalling scammers while ensuring important calls get through.

Moving forward, West proposes that the Commission begin to workshop alternative call blocking proposals, not limited to SHAKEN/STIR implementation, engaging the industry in review of practical implementation scenarios to help identify and address implementation issues. The workshop could not only cover certification requirements and registry procedures, but also could address such concerns as appropriate consumer disclosures and how to most effectively communicate the implications of call blocking programs in a way that is easily accessible and understandable to the consumer. Such a workshop could also inform any Commission decisions as to timelines for SHAKEN/ STIR deployment by providing a forum to discuss the status of

⁴¹ See, e.g., *Verizon Comments* at 12 - 13 (encouraging “the Commission and the industry to work together to address the risk that bad actors will increasingly spoof critical numbers.” Additionally, stressing that “tracing back and prosecuting actors that engage in such malicious spoofing should be a high priority, and [that] Verizon stands ready with other members of the USTelecom Traceback Group to prioritize traceback of any such calls.”).

⁴² West continues to support engagement and involvement with the Industry Traceback Group and other industry efforts, as do several other commenters in this proceeding. See, e.g., *Comments of CTIA*, CG Docket No. 17-59, WC Docket 17-97 (filed July 24, 2019) at 6; *Sprint Comments* at 5; *Verizon Comments* at 5.

current deployment activities and concerns. Achieving the end goal of eliminating illicit robocalls will continue to be an evolving challenge, and the industry will require both flexibility and a willingness to work collaboratively across all fronts to address this challenge effectively. A workshop will facilitate such cooperation.

VI. CONCLUSION

For the reasons discussed above, West respectfully requests that the Commission adopt its recommendations to ensure that carriers can engage in robust call blocking that is effective against illicit robocalling without causing over-blocking of legitimate calls and its serious adverse consequences.

Respectfully submitted,

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