

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Advanced Methods to Target and Eliminate ) CG Docket No. 17-59  
Unlawful Robocalls )  
 )

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA)<sup>1</sup> submits these comments in response to the *Fourth Further Notice of Proposed Rulemaking* in the above-referenced proceeding.<sup>2</sup>

**INTRODUCTION AND SUMMARY**

NCTA’s members share Congress’s and the Commission’s goal of protecting consumers from the scourge of illegal robocalls. Indeed, as NCTA has previously detailed, NCTA’s members are at the forefront of industry efforts to curtail illegal robocalls, and they have a history of strong leadership regarding Caller ID authentication.<sup>3</sup> NCTA therefore greatly appreciates the Commission’s ongoing efforts to empower industry to combat these calls,

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<sup>1</sup> NCTA is the principal trade association of the cable television industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable television systems serving nearly 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks. Cable service providers have invested more than \$290 billion over the last two decades to deploy and continually upgrade networks and other infrastructure—including building some of the nation’s largest Wi-Fi networks.

<sup>2</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, FCC 20-96, CG Docket No. 17-59 (rel. July 17, 2020) (*Fourth Further Notice*).

<sup>3</sup> Comments of NCTA – The Internet & Television Association, CG Docket No. 17-59, WC Docket No. 17-97, at 1-3 (filed Jan. 29, 2020) (NCTA Staff Report Comments).

including by mandating STIR/SHAKEN implementation and adopting a safe harbor for the unintended or inadvertent blocking of wanted calls under certain conditions.<sup>4</sup>

In the *Fourth Further Notice*, the Commission seeks comment on additional steps it should take to implement the TRACED Act and promote industry efforts to combat illegal robocalls.<sup>5</sup> The Commission should take this opportunity to better arm industry to protect consumers. Specifically, the Commission should (i) expand the call blocking safe harbor to cover network-based blocking and unintended or inadvertent misidentification of the level of trust for a call; (ii) decline to permit blocking based only on the absence of caller ID authentication information and instead encourage the transition to IP; and (iii) ensure that its standards for voice providers help combat robocalls while granting providers the flexibility needed to continue to innovate and respond to their subscribers' needs.

**I. TO MAXIMIZE CALL BLOCKING BENEFITS FOR CONSUMERS, THE COMMISSION SHOULD EXTEND ITS CALL BLOCKING SAFE HARBOR.**

As NCTA and others have explained, comprehensive, reasonable safe harbors are critical to the deployment of meaningful efforts to block unlawful and unwanted calls.<sup>6</sup> The Commission took a laudable first step in July of this year, adopting a safe harbor for blocking based on reasonable analytics incorporating call authentication information, for which the consumer has an opportunity to opt in or out.<sup>7</sup> The Commission now seeks comment on two

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<sup>4</sup> See *Call Authentication Trust Anchor; Implementation of TRACED Act Section 6(a) – Knowledge of Customers by Entities with Access to Numbering Resources*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd. 3241, ¶ 24 (2020) (*Authentication Order and Further Notice*); *Fourth Further Notice* ¶¶ 25-34.

<sup>5</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

<sup>6</sup> See, e.g., Letter from Sarah K. Leggin, Director, Regulatory Affairs, CTIA et al. to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed July 8, 2020) (Association Ex Parte).

<sup>7</sup> See *Fourth Further Notice* ¶¶ 25-34.

extensions to its call blocking safe harbor: first, to cover unintended or inadvertent misidentification of the level of trust for a call;<sup>8</sup> and second, to cover network-based blocking, without consumer opt-in or opt-out.<sup>9</sup> The Commission should adopt both.<sup>10</sup>

The record in this proceeding makes clear that providers face a real risk of liability for calls erroneously, but in good faith, blocked or labeled.<sup>11</sup> As NCTA has previously detailed, without certainty that they will be protected from this liability, providers may be less willing to undertake the expense and risk associated with further development of rigorous call labeling and network-based blocking tools, or they may be overly conservative in their approach to labeling and network-based blocking. In either case, consumers will not reap the benefits of stronger labeling tools and a greater reduction in the number of illegal and unwanted calls.<sup>12</sup>

A safe harbor for network-based blocking designed to block calls that are highly likely to be illegal is particularly important. Individual voice providers receive tens to *hundreds* of millions of such calls each *month*. The Commission should incentivize providers to use all available tools to protect their subscribers from these calls – calls that, as Commission rightly states, “no reasonable consumer would want to receive” and that therefore need not be blocked on an opt-in or opt-out basis.<sup>13</sup>

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<sup>8</sup> See *id.* ¶ 84.

<sup>9</sup> See *id.* ¶ 104.

<sup>10</sup> NCTA also urges the Commission to further consider creation of a centralized critical calls list and a corresponding safe harbor. Although NCTA’s members take measures to ensure that calls from PSAPs and government outbound emergency numbers are not blocked, a critical calls list would nonetheless serve as an important backstop to these efforts.

<sup>11</sup> See, e.g., Letter from Patrick Halley, Senior Vice President, Policy & Advocacy, USTelecom – the Broadband Association et al., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97, at 3 (filed Jan. 31, 2020); see also *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9706, ¶ 9 (2017) (making clear that providers may be liable for calls they block erroneously, but in good faith).

<sup>12</sup> See NCTA Staff Report Comments at 3-5; see also Association Ex Parte at 3-4.

<sup>13</sup> *Fourth Further Notice* ¶ 105.

## II. THE COMMISSION SHOULD NOT PERMIT BLOCKING BASED ONLY ON CALLER ID AUTHENTICATION INFORMATION

The Commission should not authorize blocking based “in whole” on the absence of caller ID authentication information, without incorporating this information into reasonable analytics. As explained below, the Commission is correct that blocking based solely on the absence of caller ID authentication information would be both over- and under-inclusive, to the detriment of consumers and legitimate callers.<sup>14</sup>

As the Commission acknowledges, STIR/SHAKEN – currently the only effective caller ID authentication framework – is intended for IP networks and works best when calls travel end-to-end in IP.<sup>15</sup> But, a substantial amount of voice traffic today either originates on or transits a TDM network, rendering the STIR/SHAKEN framework far less effective. Calls that originate on a TDM-based network will not have authentication information passed from the beginning of the call, while calls that originate in IP but must be exchanged in TDM will drop the authentication information. Accordingly, despite the Commission’s mandate that originating and terminating voice service providers implement the STIR/SHAKEN framework in the IP portions of their networks, many calls will continue to lack full authentication.<sup>16</sup> Blocking based solely on the absence of caller ID authentication information therefore runs the risk of capturing calls that are legal and wanted, but unauthenticated. Moreover, because caller ID authentication does not guarantee a caller’s good intentions, such blocking would not, on its own, solve the robocall

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<sup>14</sup> See *id.* ¶ 83.

<sup>15</sup> See *id.* ¶ 27; *Authentication Order and Further Notice* ¶ 7.

<sup>16</sup> See *Authentication Order and Further Notice* ¶ 25 (requiring all originating and terminating voice service providers to implement the STIR/SHAKEN framework in the IP portions of their networks by June 30, 2021).

problem, as it would risk letting through authenticated calls that are nonetheless unwanted or illegal.<sup>17</sup>

Instead, to help ensure that consumers are protected from unwanted or illegal calls or texts from unauthenticated numbers,<sup>18</sup> the Commission should encourage incumbent LECs to finally complete the IP transition. For instance, the Commission should establish an end date for the use of TDM tandems and TDM intermediate providers, after which IP-based traffic exchange would be the default for all voice traffic in the United States, and any provider that is unable to exchange traffic in IP format would be responsible for costs attributable to the conversion of traffic from IP to TDM or vice versa.<sup>19</sup> Completing the industry transition to IP will enable industry-wide STIR/SHAKEN implementation and significantly enhance the voice industry's ability to protect consumers from illegal robocalls.

### **III. THE COMMISSION'S STANDARDS FOR VOICE PROVIDERS SHOULD HELP COMBAT ROBOCALLS WHILE CONTINUING TO GRANT PROVIDERS NEEDED FLEXIBILITY**

The Commission asks whether it should affirmatively require voice providers to (i) respond to traceback requests from the Commission, law enforcement, or the Traceback Consortium; (ii) mitigate bad traffic when notified of that traffic by the Commission; (iii) implement effective measures to prevent new and renewing customers from using their networks to originate illegal calls; (iv) adhere to specific redress practices for erroneous blocking and

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<sup>17</sup> As NCTA has explained, authenticated, and verified calls may still be spam or placed by unscrupulous callers. *See* Comments of NCTA – The Internet & Television Association, CG Docket No. 17-59, WC Docket No. 17-97, at 7-8 (filed July 24, 2019).

<sup>18</sup> *See Fourth Further Notice ¶¶ 88-89* (seeking comments on the TRACED Act's requirement to "initiate a rulemaking 'to help protect a subscriber from receiving unwanted calls or text messages from a caller using an unauthenticated number.'").

<sup>19</sup> *See also* Comments of NCTA – The Internet & Television Association, WC Docket Nos. 17-97, 20-67, at 9-12 (filed May 15, 2020) (encouraging the Commission to ensure that it is creating appropriate incentives for TDM-based providers to complete the transition to an IP-based environment and that it is not penalizing the IP-based providers that must continue to exchange traffic with TDM networks as it implements the TRACED Act).

labeling; and (v) for terminating providers, provide a list of individually blocked calls that were placed to a particular number at the request of the subscriber to that number.<sup>20</sup> NCTA agrees that standards addressing traceback and specific instances of bad traffic may help prevent unscrupulous callers from inflicting further harm. The Commission should not, however, adopt the proposed standards governing voice providers' redress practices and subscriber relationships, as they are unnecessary.

*Traceback.* The Commission should adopt its proposal to require all voice providers to respond to traceback requests from the Commission, law enforcement, or the Traceback Group. Traceback is a critical element of the overall strategy for protecting consumers from unwanted and illegal robocalls and requiring all providers to respond to requests would help maximize traceback's effectiveness without imposing a meaningful burden on providers.

*Mitigating Bad Traffic.* NCTA agrees that the Commission should require all providers to take effective steps to mitigate bad traffic when notified of that traffic by the Commission.<sup>21</sup> To minimize administrative burdens and the possibility of duplicative notice, any such notice should come from the Commission alone – not through other entities such as law enforcement. The Commission should also leave the specific steps taken up to voice providers. Voice providers are developing and deploying a variety of tools to fight illegal and unwanted robocalls, including analytics programs and STIR/SHAKEN call authentication, and they have every incentive to incorporate Commission information regarding illegal traffic into their practices in a way that is effective.

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<sup>20</sup> *Fourth Further Notice* ¶¶ 95, 111.

<sup>21</sup> *See id.* ¶ 98.

*Effective Measures to Prevent Illegal Calls from New Customers.* The Commission should not require providers to take “effective measures” to prevent new and renewing customers from using their networks to originate illegal calls. First, the vast majority of voice subscribers use their service lawfully – most subscribers are the *victims* of illegal robocalls, not the perpetrators. Second, any such mandate would be premature. STIR/SHAKEN implementation – which will greatly aid the industry’s efforts to traceback the sources of illegal robocalls – is still in progress. In addition, the NANC Call Authentication Trust Anchor Working Group is currently working on recommendations concerning the TRACED Act’s mandate that the Commission issue best practices providers may use in implementing call authentication frameworks to ensure that calling parties are accurately identified. The Commission should allow for completion of STIR/SHAKEN implementation and the voluntary best practices and evaluate their success before considering whether additional mandates are necessary.<sup>22</sup>

*Blocked Calls Lists.* The Commission should not impose overly burdensome requirements in connection with any provision of a list of individually blocked calls placed to a particular number at the request of a subscriber. As an initial matter, the Commission should carefully consider whether consumers would find such a list useful – for instance, information on calls blocked because they were identified as one-ring scams would likely be of little practical value to consumers. Providers also have every incentive to communicate effectively with their subscribers about their services. The Commission should therefore allow providers to determine

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<sup>22</sup> NCTA supports the voluntary use of know your customer processes, and some NCTA members have also endorsed the use of know your customer processes as one of the principles in an agreement with State Attorneys General. *See Anti-Robocall Principles*, <https://oag.ca.gov/system/files/attachments/press-docs/State%20AGs%20Providers%20AntiRobocall%20Principles-With%20Signatories.pdf> (last accessed May 29, 2020).

what types of call blocking information would be meaningful to their subscribers and how best to communicate it.

*Redress Requirements.* The Commission asks whether to require voice providers to adhere to specific standards aimed at addressing calls erroneously blocked or labeled – for instance, requiring notification within a set time period for blocked calls and mandating a timeline for response in the event of a dispute.<sup>23</sup> The Commission should not adopt any such requirements. Voice providers have strong incentives to ensure that their subscribers receive and are accurately informed about legal and wanted calls that are placed to them, and providers – including NCTA’s members – work diligently to address possible errors. Prescriptive requirements are therefore unnecessary. The Commission should instead continue to grant providers flexibility to structure their redress mechanisms in a way that takes into account the particular call blocking and labeling services they offer and their subscribers’ preferences and needs.

## CONCLUSION

NCTA’s members look forward to continuing to work with the Commission to combat illegal robocalls. To arm the industry with even more tools to protect consumers, the Commission should take action as described above.

Respectfully submitted,

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<sup>23</sup> See *Fourth Further Notice* ¶¶ 107-109 (seeking comment on requiring, among other things, immediate notification or notification within a set time period for blocked calls, responses to disputes within a specific amount of time, and redress and transparency standards for mislabeled calls).