

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

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



**COMMENTS**

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**COMMENTS**

**I. INTRODUCTION AND SUMMARY**

ACA Connects hereby submits comments in response to the Fourth Further Notice of Proposed Rulemaking (“Fourth FNPRM”) that accompanied the Third Report and Order issued by the Federal Communications Commission (“Commission”) in the above-captioned proceeding,<sup>1</sup> which concerns the implementation of various provisions of the TRACED Act.<sup>2</sup> The Third Report and Order adopted, among other measures, a safe harbor from liability for voice service providers that engage in opt-in or opt-out blocking of unwanted calls on the basis of “reasonable analytics” that rely in part (but not solely) on STIR/SHAKEN; and requirements that voice service providers offering call-blocking to their customers provide redress options for callers and other voice

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<sup>1</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, FCC 20-96 (rel. July 17, 2020).

<sup>2</sup> See Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act, Pub. L. No. 116-105, 133 Stat. 3274, 3277 (2019).

providers. The Fourth FNPRM seeks comment on the adoption of further proposals that would expand upon measures adopted in the Third Report and Order.

In these comments, ACA Connects responds to proposals in the Fourth FNPRM as follows:

- *Transparency and Redress.* In the Third Report and Order, the Commission adopted redress requirements for callers that, in its view, “strike an appropriate balance.”<sup>3</sup> The Commission should give time for these requirements to take effect in the marketplace before it considers moving forward with more prescriptive, potentially costly additional requirements. We urge the Commission to take a similarly flexible approach when it comes to transparency and redress options for consumers.
- *Section 7.* The Fourth FNPRM fulfills the Commission’s obligation under Section 7 of the TRACED Act to “initiate a proceeding” to protect subscribers from unauthenticated calls and texts. The Commission should proceed cautiously in conducting this proceeding so as to avoid the adoption of requirements that could conflict with or undermine the Commission’s policies to promote implementation of call authentication in general and STIR/SHAKEN in particular.
- *Network-Level Call Blocking.* We support adoption of the safe harbor proposed in the Fourth FNPRM, which will encourage more robust and effective use of call-blocking to protect consumers from illegal robocalls. We offer this support with the understanding that the safe harbor does not extend to blocking based solely on a lack of caller ID authentication.
- *Traceback.* We do not oppose the Commission’s proposal in the fourth FNPRM to require participation in traceback, though we observe that many smaller providers may be unfamiliar with this process. We thus encourage the Commission to work with ACA Connects and other stakeholders to educate smaller providers about their responsibilities and to adopt an approach to enforcement that encourages participation in traceback rather than penalizes providers for isolated mistakes.

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<sup>3</sup> See Third Report and Order, ¶ 57.

## II. THE COMMISSION SHOULD MAINTAIN THE FLEXIBLE APPROACH ADOPTED IN THE THIRD REPORT AND ORDER WHEN IT COMES TO “TRANSPARENCY AND EFFECTIVE REDRESS” REQUIREMENTS

Section 10 of the TRACED Act directs the Commission to adopt rules ensuring that robocall blocking services “are provided with transparency and effective redress options for both consumers and callers.”<sup>4</sup> In the Third Report and Order, the Commission adopted requirements in furtherance of that directive, including that voice service providers designate “a single point of contact for callers, as well as other voice providers to report blocking errors” and that they “investigate and resolve these blocking disputes in a reasonable amount of time,” all at no charge to the caller or other voice provider.<sup>5</sup> In adopting these requirements, the Commission affirmed that voice providers offering third-party robocall blocking tools can refer callers or other voice providers to the third party to resolve disputes.<sup>6</sup> The Fourth FNPRM seeks comment on the “expan[sion of] redress requirements,” including on the adoption of requirements that a voice provider notify a caller when the provider blocks its call, and that voice providers resolve call-blocking disputes within a set period of time, such as “24 hours or

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<sup>4</sup> See TRACED Act, § 10(b) (internal formatting omitted). These “transparency and effective redress options” must be provided “at no additional line item charge to consumers and no additional charge to callers for resolving complaints related to erroneously blocked calls”. See *id.*

<sup>5</sup> See *Third Report and Order*, ¶¶ 54-55.

<sup>6</sup> See *id.*, ¶ 54, n.125 (“Voice service providers that use third parties to help identify calls for blocking may direct callers to a point of contact at the third party. In such cases, however, the ultimate responsibility to ensure appropriate resolution of disputes falls to the voice service provider. We expect voice service providers to do their due diligence in selecting their third-party services. Should the blocking service fail to appropriately resolve complaints, the voice service provider may lose the protection of the safe harbor.”).

one week.” The Fourth FNPRM also proposes requiring voice providers to provide customers with blocked call lists upon request, at no charge to the customer.<sup>7</sup>

ACA Connects shares the Commission’s view that the redress requirements adopted with respect *to callers* in the Third Report and Order “strike an appropriate balance between the legitimate needs of both callers and voice service providers.”<sup>8</sup> We discourage the Commission from disrupting that balance with the adoption of more prescriptive redress requirements. Additional requirements will create additional costs, which could dampen voice providers’ deployment and continued offering of robust blocking tools. At any rate, having just adopted the Third Report and Order, the Commission has not yet had time to evaluate its effectiveness. The Commission should provide a reasonable opportunity for the requirements of the Third Report and Order to take hold in the marketplace before it considers whether further requirements are necessary.

When it comes to transparency and redress options *for consumers*, the Commission should take a similarly balanced approach. The Commission should affirm that the redress protections established in the Third Report and Order for callers and voice service providers are also available to consumers, as are the safeguards the Commission set forth in the 2019 Declaratory Ruling and codified in the Third Report

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<sup>7</sup> See Fourth FNPRM, para. 104 (“We propose to require terminating voice service providers to provide a list of individually blocked calls that were placed to a particular number at the request of the subscriber to that number.”).

<sup>8</sup> Third Report and Order, ¶ 57; see *also* Letter From Sarah Leggin, CTIA, et al., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 at 4 (filed July 14, 2020).

and Order.<sup>9</sup> Beyond that, the Commission should refrain from codifying an overly rigid mandate to provide any particular mechanism, such as a blocked calls list, but rather should give voice providers flexibility and room to innovate in providing their customers with additional or enhanced redress mechanisms. As is the case with callers, more prescriptive redress requirements with regard to consumers will create additional costs that could reduce incentives to provide free call-blocking tools in the first place. Rather than move forward such requirements, the Commission should take an opportunity to assess the effectiveness of existing requirements and protections, and only then consider whether further rules are necessary to protect consumers and whether the benefits of such rules would outweigh the costs.

That said, should the Commission adopt more prescriptive transparency or redress requirements—for the benefit of callers, consumers, or both—it is critical that the Commission affirm, consistent with the Third Report and Order,<sup>10</sup> that voice providers deploying third-party call blocking technologies can rely appropriately on mechanisms implemented by the third party in fulfilling any such requirements. A major selling point of third-party blocking technologies for smaller providers with limited resources and in-house technical expertise is that providers can offer these technologies to customers without incurring the significant expense of developing and administering a proprietary blocking program. Without continued certainty that they can

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<sup>9</sup> See *Third Report and Order*, appx. A (“Final Rules”) at Section 64.1000(k)(iii); see also *Advanced Methods to Target and Eliminate Unlawful Robocalls et al.*, CG Docket No. 17-59 et al., Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC 19-51, ¶ 33 (clarifying that providers deploying opt-out blocking must disclose sufficient information for the customer to make an informed decision and must terminate the blocking upon customer request).

<sup>10</sup> See *supra* note 6.

rely on their chosen third party to administer its own technology and to perform the associated functions required under Commission rules, ACA Connects members and other smaller voice providers may find it is no longer cost-effective to provide such blocking technologies, or to continue providing them, and their customers will lose the benefit of effective protections from illegal and unwanted robocalls.

### **III. THE COMMISSION SHOULD PROCEED WITH CAUTION IN CONDUCTING THE PROCEEDING REQUIRED UNDER SECTION 7 OF THE TRACED ACT**

As the Fourth FNPRM observes, Section 7 of the TRACED Act directs the Commission to “initiate [within one year] a rulemaking to help protect a subscriber from receiving unwanted calls or text messages from a caller using an unauthenticated number,” e.g., calls that lack STIR/SHAKEN authentication.<sup>11</sup> As part of that proceeding, the Commission shall consider “the best means of ensuring that a subscriber or provider has the ability to block calls from a caller using an unauthenticated North American Numbering Plan number.”<sup>12</sup> By seeking comment on these matters in the Fourth FNPRM, the Commission has fulfilled its mandate to “initiate a rulemaking” as Section 7 requires. The Commission does *not* face a separate statutory deadline to complete the proceeding or adopt final rules.

The Commission therefore has the time it needs to proceed deliberately in carrying out this proceeding, and it should take it. Though it is true that Section 4 of the TRACED Act imposes a one-year deadline on voice providers to implement a particular call authentication technology (i.e., STIR/SHAKEN), this mandate applies only to the IP

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<sup>11</sup> See Fourth FNPRM, ¶ 88; see also TRACED Act, § 7.

<sup>12</sup> See TRACED Act, § 7(b)(2).



portions of networks, and there are proposed deadline extensions for small and rural providers among others.<sup>13</sup> What this means in practice is that, for the foreseeable future, calls originating from “unauthenticated numbers” will include many legitimate, and likely wanted, calls. Hence, any measure taken in the near term “to help protect a subscriber from receiving unwanted calls or text messages from a caller using an unauthenticated number” runs the risk of blocking wanted calls that happen to originate from a provider that is not yet required to implement STIR/SHAKEN or that operates a non-IP network. Section 7 appears to anticipate this concern, as it directs the Commission to take action “consistent with the call authentication frameworks under section 4.”<sup>14</sup>

In light of the above, ACA Connects urges the Commission to proceed cautiously in its Section 7 proceeding. Notably, the Commission has already taken significant steps in implementing other provisions of the TRACED Act that also further the purposes of Section 7. In particular, the Commission’s adoption of safe harbors in the Third Report and Order will promote the more robust and effective use of technologies that block unwanted calls, including unauthenticated ones. In a separate proceeding, the Commission has adopted and proposed rules to facilitate widespread deployment of STIR/SHAKEN in IP networks and an “effective call authentication framework” in non-IP

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<sup>13</sup> See *Call Authentication Trust Anchor*, WC Docket No. 17-97, Report and Order and Further Notice of Proposed Rulemaking, FCC 20-42, ¶ 32 (limiting STIR/SHAKEN implementation mandate to IP portions of voice provider networks); ¶ 78 (proposing one-year extension of STIR/SHAKEN implementation deadline for small voice providers) (“STIR/SHAKEN Order and Further Notice”); see *also* TRACED Act, § 4(b)(1)(B) (directing the Commission, within 18 months of the TRACED Act’s passage, to “require a provider of voice service to take reasonable measures to implement an effective call authentication framework in the non-internet protocol networks of the provider of voice service”).

<sup>14</sup> See TRACED Act, § 7(a).

networks and to ensure, in the meantime, that providers operating under compliance delays have other measures in place to mitigate unlawful robocalls.<sup>15</sup> As that transition unfolds, it would be premature and counterproductive for the Commission to adopt separate requirements under the auspices the Section 7 to facilitate blocking of calls from “unauthenticated number[s]”—a category that today is too broad to be meaningful. The Commission should therefore plan to revisit this proceeding at a later point, when it can assess more clearly what additional measures, if any, are necessary to protect consumers from unwanted unauthenticated calls.<sup>16</sup> As part of that further proceeding, the Commission should seek detailed comment on the costs and operational burdens of any such measures, consistent with the statute.<sup>17</sup>

#### **IV. THE COMMISSION SHOULD ADOPT A WELL-CRAFTED SAFE HARBOR FOR NETWORK-LEVEL CALL BLOCKING**

In the Fourth FNPRM, the Commission proposes enacting a safe harbor for “network-based blocking, which providers would do on behalf of their customers without those customers having to opt in or out.” The safe harbor would apply only if the blocking “is based on reasonable analytics that incorporate caller ID authentication information” and only to the extent the blocking is “specifically designed to block calls

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<sup>15</sup> See *generally* STIR/SHAKEN Order and Further Notice; see also *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket 20-22, Order, DA 20-785 (EB rel. July 27, 2020) (designating a Traceback Consortium to conduct industry-led efforts to trace back illegal robocalls to their source); TRACED Act, § 3 (enhancing the Commission’s powers in bringing enforcement actions against illegal callers).

<sup>16</sup> In no event should the Commission adopt such rules before (1) the deadline for small voice providers to implement STIR/SHAKEN is reached *and* (2) an “effective call authentication framework” is in place for non-IP networks.

<sup>17</sup> See TRACED Act 7(b)(4) (directing the Commission to take into consideration “the availability and cost of providing protection from [unwanted unauthenticated calls and texts]”).

that are highly likely to be illegal and is managed with sufficient human oversight and network monitoring to ensure that blocking is working as intended.”<sup>18</sup>

ACA Connects supports adoption of the proposed safe harbor. We agree with other industry commenters that a robust safe harbor from liability for network-level call-blocking will benefit consumers by enabling providers to block illegal calls in their networks with greater assurance that an inadvertent error will not expose the provider to legal liability.<sup>19</sup> The safe harbor will promote more aggressive blocking of illegal calls, which is the right outcome for consumers—who strongly desire to avoid, and have no interest in receiving, illegal calls. Though there is always some risk of error in any blocking program, the safe harbor proposed in the Fourth FNPRM is carefully tailored to minimize that risk and to impose accountability on providers to implement network-level blocking responsibly.

ACA Connects offers its support for the safe harbor on the understanding that it does not extend to blocking that is performed solely on the basis that a call lacks caller ID authentication. Blocking on that basis would sweep in many calls that are *not* “highly likely to be illegal,” including calls originating from small, rural, and TDM-based providers that have been granted delays under the TRACED Act to implement call authentication technology. Indeed, as the Commission suggests elsewhere in the Fourth FNPRM, such blocking “would be both over and under inclusive.”<sup>20</sup> Like the safe

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<sup>18</sup> See Fourth Further Notice, ¶ 104.

<sup>19</sup> See Letter From Sarah Leggin, CTIA, et al., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 17-59 (filed July 14, 2020). The proposed safe harbor would expand upon Commission rules that permit network-level call blocking in certain discrete situations. See 47 CFR § 64.1200(k).

<sup>20</sup> See Fourth FNPRM, ¶ 83. The Commission seeks comment whether there are “any situations in which blocking based solely on caller ID authentication information would be appropriate, such that [the

harbor for customer-level blocking that was adopted in the Third Report and Order, any network-level blocking safe harbor must acknowledge the current limitations of call authentication and STIR/SHAKEN as tools for identifying illegal calls.<sup>21</sup> A well-crafted safe harbor that takes these limitations into account can empower voice service providers to take more aggressive measures to protect their customers from illegal robocalls without sacrificing the legitimate interests of small and rural providers and their customers.

## **V. THE COMMISSION SHOULD TAKE AN APPROACH TO TRACEBACK THAT ENCOURAGES FULL PARTICIPATION FROM SMALLER PROVIDERS**

The Fourth FNPRM proposes, among other requirements,<sup>22</sup> a mandate that voice providers respond to traceback requests from the Traceback Consortium. ACA Connects does not oppose this proposal, but we observe that the Traceback Consortium and its activities remain unfamiliar to many smaller voice providers that have not had occasion to participate in tracebacks in the past. The Commission should ensure that such providers are given adequate time to comply with any traceback requests they receive. Moreover, the Commission's goal should be to encourage such providers to participate fully in traceback, rather than to punish providers for isolated failures to respond to traceback requests. In some cases, a failure to respond may be

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Commission] should authorize blocking based 'in whole' on caller ID authentication information." ACA Connects discourages the Commission from authorizing such blocking in any circumstances, for the reasons discussed herein.

<sup>21</sup> See Third Report and Order, ¶ 29 ("As many commenters note, authentication is not yet either an ubiquitous or a comprehensive indicator of whether a consumer should answer a call.").

<sup>22</sup> In particular, the Fourth FNPRM "seek[s] comment on affirmatively requiring voice service providers to: (1) respond to traceback requests from the Commission, law enforcement, or the Traceback Consortium; (2) mitigate bad traffic when notified of that traffic by the Commission; and (3) implement effective measures to prevent new and renewing customers from using its network to originate illegal calls." See Fourth FNPRM, ¶ 95.

explained by the fact that the recipient of a traceback request did not understand its significance or was not the appropriate person within the company to receive the request.

Given the potential for miscommunication of this kind, the Commission should not pursue an enforcement action against a provider for failure to participate in traceback until it has first inquired with the provider about the failure and advised it of its obligation to respond to the request. The Commission's enforcement activities should be focused on providers that have demonstrated a pattern of non-compliance with traceback requests and have disregarded follow-up inquiries from the Commission. In addition, we encourage the Commission to work closely with the Traceback Consortium and trade associations such as ACA Connects to educate smaller voice providers about the traceback process and their responsibilities, so that when such providers receive a traceback request for the first time they appreciate its legitimacy.

## VI. CONCLUSION

ACA Connects appreciates the opportunity to participate in this proceeding, and it encourages the Commission to take its comments into consideration.

Respectfully submitted,



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