

September 18, 2020

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
Call Authentication Trust Anchor, WC Docket No. 17-97

Dear Ms. Dortch:

On September 16, 2020, representatives of USTelecom, AT&T, Frontier, Lumen Technologies, and Verizon (“USTelecom Representatives”)¹ met by phone with the following Commission staff: Pam Arluk, Annick Banoun, Matthew Collins, CJ Ferraro, Mason Shefa, and John Visclosky of the Competition Policy Division in the Wireline Competition Bureau (“WCB”); Daniel Kahn of WCB; and Kenneth Carlberg of the Public Safety and Homeland Security Bureau.

During the meeting, we discussed several aspects of the *Draft Second R&O* in the above-referenced proceeding.² In our view, the *Draft Second R&O* represents a substantial step forward in the effort to realize call authentication and to stop illegal robocalls. In particular, we strongly support that the *Draft Second R&O* would establish a robocall mitigation plan certification requirement and database and prohibit downstream providers from accepting traffic directly from a voice service provider that does not appear in that database.³ We believe, however, that the Commission can and should impose the robocall mitigation program requirement more broadly to all voice service providers and all domestic traffic, regardless of whether the traffic is authenticated. We also believe that the Commission can and should impose appropriate certification obligations directly on intermediate providers. But while we agree with the Commission about the importance of extending a robocall mitigation framework internationally, we asked that it seek further comment on the mechanics of that project because the draft rules would risk creating unintended negative consequences such as causing some international roaming traffic to be blocked at international gateways. To that end, the Commission record regarding the complexities associated with restricting intermediate providers from taking traffic from foreign voice service providers is not sufficiently developed and therefore requires further consideration.

¹ A full list of the participating USTelecom Representatives is below.

² See *Call Authentication Trust Anchor*, Second Report and Order (Draft), WC Docket No. 17-97, FCC-CIRC2009-04 (rel. Sept. 9, 2020) (“*Draft Second R&O*”).

³ *Id.* ¶¶ 81-86.

We also discussed certain STIR/SHAKEN implementation issues to ensure that the Commission's requirements are consistent with its goals as well as the intent and express direction of Congress in the TRACED Act. In this regard, while we support the extension of the deadline for caller ID authentication requirements to small voice service providers, we proposed some exceptions to ensure that providers that originate a disproportionate amount of traffic relative to their subscriber base still deploy STIR/SHAKEN in a timely manner. In addition, we discussed the *Draft Second R&O*'s deadline of November 20 for a voice service provider to file an individual undue hardship extension, which we explained was arbitrary, inconsistent with the TRACED Act, and not reasonable in light of the challenges and realities of implementation. We also explained that the Commission should make clear, consistent with the express direction of Congress in the TRACED Act, that all voice service providers may make extension requests based on the inability to purchase or upgrade equipment. In addition, we urged the Commission to confirm that service providers that have implemented STIR/SHAKEN should continue to follow longstanding network management practices that prioritize successfully completing calls. Finally, we expressed our support for the balance the *Draft Second R&O* strikes by allowing intermediate providers to participate in tracebacks rather than authenticate unauthenticated traffic, but suggested several clarifying edits.

We provide more details below and include as an attachment several of our proposed changes to the item and the rules as currently drafted in the *Draft Second R&O*.

I. The Commission Should Expand the Robocall Mitigation Program Requirement.

USTelecom strongly supports the *Draft Second R&O*'s requirement for voice service providers to certify that they have implemented a robocall mitigation program and restriction on intermediate providers accepting traffic from those providers that have not. The Commission should take one step further, however, by requiring voice service providers to implement a robust "appropriate robocall mitigation program," regardless of whether or not such traffic is signed. Extending the robocall mitigation program requirement would ensure that such programs benefit consumers in additional contexts, including when bad actors use legitimate numbers for illegal robocalls.⁴ The Commission also can and should impose this requirement – and the accompanying certification requirement – as soon as possible, rather than waiting until 2021.⁵ The Commission, however, should further develop the record before establishing rules that would prohibit intermediate providers from accepting traffic from foreign voice service providers.

The Commission has legal authority to expand the robocall mitigation program certification requirement. As an initial matter, the TRACED Act makes clear that it does not preclude the Commission from adopting a broader robocall mitigation program under its existing

⁴ See Notice of Ex Parte Presentation of USTelecom – The Broadband Association, WC Docket Nos. 17-97 & 20-67, at 1 (filed Sept. 1, 2020) ("USTelecom Sept. 1, 2020 Ex Parte").

⁵ *Contra Draft Second R&O* ¶ 82 n. 317 (deciding to harmonize the requirement to the date the STIR/SHAKEN mandate goes into effect).

statutory authority.⁶ In fact, section 4(b)(5)(C)(i) of the TRACED Act, which requires the robocall mitigation program for providers subject to a call authentication delay, implies that the Commission already has authority to adopt a broader mandate. The provision states that the Commission is to adopt the requirement “pursuant to the authority of the Commission,” *i.e.*, authority the Commission already has.⁷

Indeed, the Commission has ample authority to extend the robocall mitigation program mandate beyond the narrow context contemplated in the *Draft Second R&O*. The Commission can rely on section 251(e) of the Communications Act, as informed by section 6(a) of the TRACED Act, to apply the obligation to originating providers even when they sign traffic under STIR/SHAKEN.⁸ The *First R&O* and the *Draft Second R&O* both cite section 251(e) to adopt measures intended to “help to prevent the fraudulent exploitation of NANP resources by permitting those providers and their subscribers to identify when caller ID information has been spoofed.”⁹ Imposing a robocall mitigation program requirement on authenticated traffic likewise would help to prevent the fraudulent exploitation of NANP resources. After all, bad actors can purport to be legitimate companies in order to use NANP numbers and then make illegal robocalls with those numbers, which amounts to a fraudulent exploitation of NANP resources. Moreover, a robocall mitigation program would help the originating provider determine that its customer is making illegal robocalls – albeit with a legitimate NANP number – and thus better enable the provider to take action to stop that fraudulent exploitation of NANP numbers, if not prevent it in the first instance.¹⁰

In addition, section 201(b) offers the Commission independent authority to adopt the mandate. Section 201(b) states that any “charge, practice, classification, or regulation that is

⁶ See TRACED Act § 4(d) (“Nothing in this section shall preclude the Commission from initiating a rulemaking pursuant to its existing statutory authority.”).

⁷ *Id.* § 4(b)(5)(C); see also *Draft Second R&O* ¶ 93 (finding additional, independent authority for a robocall mitigation program in section 251(e) of the Communications Act).

⁸ Section 6(a) of the TRACED Act directs the Commission to determine how its policies regarding access to number resources “could be modified, including by establishing registration and compliance obligations, and requirements that providers of voice service given access to number resources take sufficient steps to know the identity of the customers of such providers.” TRACED Act § 6(a). Section 251(e) of the Communications Act provides the Commission “authority to set policy with respect to all facets of numbering administration in the United States.” 47 U.S.C. § 251(e).

⁹ *Call Authentication Trust Anchor; Implementation of TRACED Act Section 6(a) – Knowledge of Customers by Entities with Access to Numbering Resources*, First Report and Order, WC Docket Nos. 17-97 & 20-67, FCC 20-42 ¶ 42 (rel. Mar. 31, 2020) (“*First R&O*”); *Draft Second R&O* ¶ 93.

¹⁰ *Cf. Draft Second R&O* ¶ 93 (“requirements will help to prevent the fraudulent exploitation of NANP resources by permitting those providers and their subscribers to identify when caller ID information has been spoofed”). The Truth in Caller ID Act, which authorizes the Commission to prescribe rules to make unlawful the spoofing of caller ID information “in connection with any telecommunications service or IP-enabled voice service ... with the intent to defraud, cause harm, or wrongfully obtain anything of value,” 47 U.S.C. 227(e), may provide additional authority. A broader robocall mitigation requirement is necessary to enable voice service providers to help prevent illegal robocall traffic that nevertheless is authenticated under STIR/SHAKEN and to protect voice service subscribers from scammers and bad actors. *Cf. Draft Second R&O* ¶ 94 (finding “the rules ... are necessary to enable voice service providers to help prevent these unlawful acts and to protect voice service subscribers from scammers and bad actors, and that section 227(e) provides additional independent authority for the rules”).

unjust and unreasonable is declared unlawful,” and authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out” this provision of the Communications Act.¹¹ It would be unjust and unreasonable for any originating common carrier to fail to take appropriate steps – appropriate in the context of that provider’s services and customers – to prevent the origination of illegal robocalls through its network. In turn, the Commission can rely on its ancillary authority under section 4(i) to apply the same obligation to additional originating voice service providers, including VoIP providers.¹² It also can and should use ancillary authority to directly impose the robocall mitigation program certification requirement on intermediate providers.

An expanded robocall mitigation program requirement will protect consumers even after full STIR/SHAKEN implementation. A broadly applied robocall mitigation program requirement is critical to restore trust in the telephone network. While the *Draft Second R&O* indicates that its robocall mitigation program requirement “is intended to be an interim approach,”¹³ we explained that such requirement, if applied broadly, will provide benefits independent of call authentication solutions, including before and after full deployment of such solutions. Indeed, one consequence of STIR/SHAKEN implementation is that bad actors may increasingly make illegal robocalls with their own numbers. In contrast with STIR/SHAKEN, a robocall mitigation program can help to prevent that.¹⁴

In addition, we explained that it is critical that intermediate providers also certify that they have implemented a robocall mitigation program, namely by committing to only directly accept calls from and to a U.S. number from U.S. providers in the Commission’s Robocall Mitigation Database. Imposing this obligation directly on intermediate providers ensures that there is a chain of trust from the originating provider to the terminating provider, as intermediate providers would only take traffic from other intermediate providers that have made the certification.

The Commission should develop a more robust record on how best to address foreign-originated traffic using U.S. numbers. To effectively curtail the flow of illegal robocalls, the Commission and other stakeholders correctly intend to extend an appropriate robocall mitigation framework for traffic from U.S. numbers to U.S. numbers that comes into the United States from

¹¹ 47 U.S.C. § 201(b).

¹² *Id.* § 154(i).

¹³ *Draft Second R&O* ¶ 74 (citations omitted).

¹⁴ The *Draft Second R&O* indicates that the Commission “cannot yet know whether requiring voice service providers to expend additional resources on robocall mitigation even after STIR/SHAKEN implementation would be an efficient use of their resources.” *Draft Second R&O* ¶ 74. However, USTelecom generally believes that all providers should have a robocall mitigation program and many, if not most, already have implemented aspects of such a program. Moreover, as contemplated by the *Draft Second R&O*, a robocall requirement generally would be non-prescriptive, *see id.* ¶ 75, and the steps a given provider takes necessarily depend on the nature of the traffic it carries, its knowledge of its customer base, and numerous other factors. *See* Comments of USTelecom – The Broadband Association, CG Docket No. 17-59, at 8 (filed Aug. 31, 2020). Accordingly, the requirement is flexible enough to adapt to the post-STIR/SHAKEN implementation landscape, including by allowing providers to reallocate resources no longer needed for an appropriate robocall mitigation program.

abroad. We therefore support the focus of the Commission in the *Draft Second R&O* on traffic from foreign voice service providers.¹⁵ We explained, however, that it is premature to move forward with a blanket prohibition that restricts intermediate providers from accepting any traffic from foreign voice service providers that are not in the database because that would risk creating substantial disruptions in legitimate international call flows. Indeed, while the Commission can mandate that U.S. providers do not accept calls from providers not in the database, there is little the Commission or U.S.-based providers can do to force foreign providers to certify in the short term, potentially leaving many legitimate calls uncompleted. For example, some foreign wireless service providers that provide roaming services would likely fail to register in a timely manner with the Robocall Mitigation Database, thus creating a substantial risk that U.S. citizens traveling abroad – including military and other government personnel – would be unable to complete calls to the United States. Given these risks, the Commission should defer a decision on foreign-originated traffic using U.S. telephone numbers pending a Further Notice of Proposed Rulemaking in which stakeholders are provided an opportunity to offer comment on proposals for extending its robocall mitigation framework internationally without risking unintended negative consequences for U.S. citizens or government agencies.

II. The Commission Must Ensure that the Extensions and Exceptions to STIR/SHAKEN Requirements Achieve the Agency’s Objectives and Are Consistent with Congressional Direction.

USTelecom and its members have been ardent supporters of widespread deployment of the STIR/SHAKEN call authentication framework.¹⁶ To that end, during the meeting, we encouraged the Commission to create exceptions the *Draft Second R&O*’s small provider extension to ensure that voice service providers that originate a disproportionate amount of traffic relative to their subscribers are not eligible. At the same time, we explained that there can be unforeseen challenges in implementing STIR/SHAKEN and therefore emphasized that the Commission must ensure that providers can seek relief from the implementation deadline, as required by the TRACED Act. We also explained the importance of an exception to call authentication requirements in narrow circumstances where call authentication may impede call completion. Finally, we offered some technical edits to effectuate the *Draft Second R&O*’s alternative for intermediate providers that do not authenticate unauthenticated traffic.

Small providers that generate a disproportionate amount of traffic should not be eligible for the two-year extension to deploy STIR/SHAKEN. While we support the extension of the caller ID authentication requirement for small voice service providers,¹⁷ we explained that there should be an exception for providers that originate a disproportionate amount of traffic relative to their subscriber base, namely providers that serve enterprises and other heavy callers through

¹⁵ See, e.g., *Draft Second R&O* ¶ 85.

¹⁶ See, e.g., Reply Comments of USTelecom – The Broadband Association, WC Docket Nos. 17-97 & 20-67, at 11 (filed May 29, 2020).

¹⁷ *Draft Second R&O* ¶ 40.

their IP networks.¹⁸ Given the amount of traffic they originate, those providers should implement STIR/SHAKEN in a timely manner consistent with the goal of ubiquitous call authentication deployment.¹⁹ Moreover, providers serving these types of customers are unlikely to have the same resource constraints the Commission cited in adopting the extension.²⁰ We suggested several triggers that could suggest a provider is targeting enterprise and non-mass market services and therefore should be ineligible for the automatic small provider extension, such as a certain percent of revenue from non-mass-market subscribers including as enterprise users; originating more than a set number of calls per line per day; and/or originating more than a certain threshold of calls per day on average.

The Commission, however, should make clear that a provider that would otherwise be eligible for the extension, but for meeting one or more of these thresholds, nevertheless is entitled to other extensions to STIR/SHAKEN deployment that apply.

*The TRACED Act requires that the Commission consider requests for extensions to authentication requirements on a rolling basis. The Draft Second R&O's November 20 deadline for a provider to file an individual undue hardship extension petition is arbitrary, inconsistent with the TRACED Act, and does not fully account for the challenges and realities of implementation. As the draft item recognizes, the TRACED Act clearly contemplates the Commission assessing burdens and barriers to implementation before the 12 month deadline but also "as appropriate thereafter."*²¹ Yet, the draft item appears to set a single, final deadline of November 20 such that the Commission will not entertain any extension or waiver requests submitted after that.²²

There is good reason to allow extension requests, or waivers, on a rolling basis going forward. STIR/SHAKEN implementation is complex and requires hardware and software changes to many systems and platforms. It also requires reliance on one or more vendors that providers do not control. A provider on track to meet the June 2021 deadline may nevertheless be forced off track – potentially just in part of their network or systems – if there is a problem with just one of those complex aspects of implementation, such as a software bug in just one platform. These issues necessarily are discovered through implementation efforts that are underway and that will continue as the deadline approaches, and therefore a provider has no way of knowing in advance it will have such issues. For that reason, we urged the Commission to make clear that providers can file requests on a rolling basis which demonstrate their specific implementation challenges. This would allow the Commission to entertain requests filed in good

¹⁸ Indeed, some such providers serve voice broadcasters and other callers that often are responsible for illegal robocalls.

¹⁹ *Draft Second R&O* ¶ 46 (declining to grant a longer extension for small providers “[i]n the interest of promoting ubiquitous STIR/SHAKEN implementation).

²⁰ *Id.* ¶ 41 (citing resource constraints and substantial costs for small voice service provider).

²¹ TRACED Act § 4(b)(5)(A).

²² *Draft Second R&O* ¶ 64.

faith based on changed circumstances, and grant narrow, temporary extensions or waivers as required in the context.

We also suggested a clarification regarding the *Draft Second R&O*'s determination that a separate extension for equipment availability is unnecessary for all carriers. We specifically proposed that in a footnote at the end of that discussion, the Commission clarify that the determination does not preclude a provider from seeking a provider-specific extension based on equipment availability issues that arise in the future. The *Draft Second R&O* suggests that only small providers will have equipment availability issues,²³ but that is both baseless and ignores Congressional express direction in the TRACED Act to assess the burdens or barriers to implementation based on the inability to purchase or upgrade equipment – entirely separate and apart from those considerations applicable for small providers.²⁴ This assessment must also be made “as appropriate,” rather than with a set, arbitrary deadline, under the TRACED Act.

Voice service providers at times will need flexibility to ensure calls are completed. We also urged the Commission to confirm that service providers that have implemented STIR/SHAKEN should continue to follow longstanding network management practices that prioritize successfully completing calls. While paragraph 151 correctly emphasizes the importance of ubiquitous deployment of caller ID authentication,²⁵ there can be temporary periods of time when call authentication may impede call completion, such as periods of network congestion that create bandwidth capacity limitations or where maintenance activity on a platform temporarily renders authentication impossible. The Commission should acknowledge these well-established network management practices by codifying an exception from the authentication mandate that is consistent with the exception for intermediate providers to pass authentication information already in the draft item.²⁶ Specifically, the rules should make clear that a voice service provider may decline to authenticate caller identification information where necessary for technical reasons to ensure that calls are completed.

Participating in tracebacks is a reasonable alternative to authenticating unauthenticated traffic for intermediate providers. The *Draft Second R&O* strikes an appropriate balance by allowing intermediate providers to participate in traceback requests rather than authenticate unauthenticated traffic, including with C-level attestations.²⁷ During our meeting, we suggested two clarifications for the *Draft Second R&O*'s approach. First, the *Draft Second R&O* would

²³ *Id.* ¶ 56 (concluding that the “extension for small voice service providers adequately addresses challenges with regard to obtaining necessary equipment and that a separate or additional extension is unnecessary”).

²⁴ Compare TRACED Act § 4(b)(5)(A)(i)(II) (Commission shall assess any burdens or barriers to implementation including for small providers of voice service and those in rural areas) *with id.* § 4(b)(5)(A)(i)(III) (Commission shall assess any burdens or barriers to implementation including the inability to purchase or upgrade equipment to support the call authentication frameworks, or lack of availability of such equipment).

²⁵ *Draft Second R&O* ¶ 151.

²⁶ *Cf. id.* ¶ 130 (allowing an intermediate provider to strip the Identity header for technical reasons where necessary to complete the call).

²⁷ See USTelecom Sept. 1, 2020 Ex Parte at 2 (opposing a mandate for intermediate providers to authenticate unauthenticated calls with a “C” attestation).

require intermediate providers to “register[] with the industry traceback consortium”²⁸ to take advantage of the alternative. We explained, however, that the Industry Traceback Group, the industry traceback consortium designated by the Commission,²⁹ does not currently have that type of registration. We suggested instead that Commission instead requires that an intermediate provider “cooperatively participates” in the industry traceback consortium to take advantage of the alternative.

Second, the *Draft Second R&O* would require the provider to “respond[] fully and in a timely manner to all traceback requests it receives from the Commission, law enforcement, and the industry traceback consortium regarding calls for which it acts as an intermediate provider.”³⁰ Providers of course should cooperate fully with the Commission and law enforcement in response to traceback requests. We explained, however, that the current language could create confusion about whether the requirement is intended to supersede any applicable requirements for legal process. We therefore suggested that the Commission include a footnote clarifying that providers should respond pursuant to applicable legal process. We also recommended that the Commission encourage law enforcement agencies to make traceback requests to the ITG in the first instance, as that is the most efficient path to the information they seek in the vast majority of cases.

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²⁸ *Draft Second R&O* ¶ 140.

²⁹ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED Act)*, EB Docket No. 20-22, DA 20-785 (rel. July 27, 2020).

³⁰ *Draft Second R&O* ¶ 140.

Ms. Marlene Dortch
September 18, 2020
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Please contact the undersigned if you have any questions.

Sincerely,

/s Joshua M. Bercu/

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Attachment