

Like NTCA,⁶ other parties addressing the *Third Further Notice* recognize that Commission action is necessary to identify the *subset* of small providers that are likely to be the source of illegal robocalls and require those providers specifically to implement STIR/SHAKEN on an accelerated timeframe.⁷ Commenters recognize as well that care must be taken to *correctly identify* this group of small providers in a surgical and precise manner that does not sweep in innocent actors and compel them to adopt this standard on a timeframe they had neither anticipated nor budgeted for. As it relates to certain of the proposals found in the *Third Further Notice*, commenters agree they are overly inclusive. More specifically, ACA Connects notes, with respect to the “non-mass market test”⁸ that would target providers serving business customers, its “members’ provision of service to such legitimate, well-known customers in no way correlates with the provision of service to bad actors that originate unlawful calls.”⁹ INCOMPAS, for its part, notes that this proposal could “disadvantage small voice service providers whose business plan is to meet the legitimate needs of enterprise customers and whose revenue comes primarily from customers purchasing non-mass market services.”¹⁰ As NTCA stated in its initial comments, a number of its members operate competitive affiliates that similarly serve enterprise users, and there is no indication that these or any other operators that actively serve the enterprise market (and offer this segment of consumers competitive options)

⁶ Comments of NTCA–The Rural Broadband Association, WC Docket No. 17-97 (fil. Jul. 9, 2021) (“NTCA”).

⁷ Comments of USTelecom – The Broadband Association, WC Docket No. 17-97 (fil. Jul. 9, 2021) (“USTelecom”); Comments of ZipDX, LLC WC Docket No. 17-97 (fil. Jul. 9, 2021) (“ZipDX”); Comments of ACA Connects – America’s Communications Association, WC Docket No. 17-97 (fil. Jul. 9, 2021) (“ACA Connects”); Comments of INCOMPAS, WC Docket No. 17-97 (fil. Jul. 9, 2021); Comments of Transaction Network Services, Inc., WC Docket No. 17-97 (fil. Jul. 9, 2021) (“TNS”).

⁸ *Third Further Notice*, ¶¶ 26-29 (seeking comment on whether to accelerate the June 2023 STIR/SHAKEN implementation deadline for voice providers that receive more than half their revenues from customers purchasing non-mass market services).

⁹ ACA Connects, p. 8.

¹⁰ INCOMPAS, p. 5.

are likely to knowingly enable (or turn a blind eye towards) their services being used to generate illegal robocalls.¹¹

As it relates to the “calls-per-line test,”¹² TNS discusses how such a test can be easily evaded by bad actors. More specifically, TNS notes that “bad actors are adept at evading simple numerical thresholds,”¹³ pointing to “‘snowshoe spamming’ by robocallers...that seeks to evade blocking thresholds by spreading their activity over a large number of telephone numbers, so that the volume on any single number does not exceed the detection thresholds.”¹⁴ TNS discusses other practices used by bad actors and concludes that “a numerical threshold is unlikely to be effective at identifying the service providers most at risk of originating unwanted calls.”¹⁵

Moreover, as NTCA noted in initial comments,¹⁶ both tests proposed in the *Third Further Notice* would run afoul of the Paperwork Reduction Act (“PRA”),¹⁷ requiring voice providers to collect information to report to the Commission before the Office of Management and Budget (“OMB”) approves such a collection. More specifically, the *Third Further Notice* proposes an “examination period” of 120 days “prior to the effective date of the Order.”¹⁸ This would, in effect, require voice providers to go back in time to compile and then report to the Commission the number of calls per day for every individual subscriber over the 120-day period (or the percentage of revenue from non-mass market subscribers). Yet, the *Third Further Notice* appears to overlook the need to obtain approval of any data collection it initiates by the OMB.

¹¹ NTCA, pp. 5-6.

¹² *Third Further Notice*, ¶¶ 21-25 (seeking comment on whether to accelerate the June 2023 STIR/SHAKEN implementation deadline for voice providers that originate an unusually high number of calls per day on a single line).

¹³ TNS, p. 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ NTCA, pp. 6-7.

¹⁷ 44 U.S.C. 3501, *et seq.*

¹⁸ *Third Further Notice*, ¶ 37.

As the Commission would seek approval *after* an Order is adopted but for a time *before* that, it would in effect be putting the “data-collection-cart before the OMB-approval-of-the-collection horse” – in other words, nothing in the PRA permits the Commission to require providers to collect information to then be submitted to the agency before such a data collection is deemed by OMB to be within the bounds of the PRA. Thus, both the “non-mass market” and “calls-per-line” tests would run afoul of the PRA *and* be ineffective in targeting bad actors, resulting in little more than a burden on innocent providers.

In the interest of capturing the concerning bad actors – and doing so in a more targeted manner – NTCA offered in initial comments an alternative, less burdensome approach. This approach would carve out “facilities-based” providers from any accelerated implementation schedule – and, importantly, it is consistent with the views expressed by other commenters. As USTelecom states, “[t]racebacks seldom conclude that a facilities-based provider, whether a large one or small one such as a rural local exchange carrier or rural wireless provider, originated the robocall.”¹⁹ In addition, as ZipDX states, “the Commission’s challenge is to maintain the target on those enabling the unlawful calls without putting further burdens on those that are not. By and large, the former group is not facilities based; they receive call initiations in SIP format over the public internet.”²⁰ ACA Connects agrees with this approach as well, stating that, it would appear that voice providers targeted by the Commission recently for facilitating illegal robocalls tend not to be local, facilities-based providers.”²¹

In summary, the record demonstrates that the two proposals found in the *Third Further Notice* to identify small providers most likely to be the source of illegal robocalls are over-

¹⁹ USTelecom, p. 4.

²⁰ ZipDX, p. 1.

²¹ ACA Connects, p. 10.

inclusive – each presents significant risk of sweeping in innocent voice providers and requiring them to adopt STIR/SHAKEN on an accelerated timeframe they had neither anticipated nor budgeted for. And each, as commenters note, would be ineffective and, in the case of the “calls-per-line” test, would be easily evaded. By contrast, a more targeted and effective way of capturing the parties that prompted these proposals can be found in the record – specifically, the Commission should require operators that are not “facilities-based” voice providers (as specifically defined for the purposes of the instant proceeding in Appendix A attached hereto) to adopt STIR/SHAKEN on a more accelerated timeframe. The June 2023 deadline for other providers as adopted in the October 2020 *Second Caller ID Authentication Report and Order* should be retained. To the extent any facilities-based provider nevertheless serves as an enabler (knowingly or by turning a blind eye to how its services are being used) of illegal robocallers – and the Traceback Consortium offers an effective means of detecting them – the agency could adopt the *Third Further Notice* proposal to apply an accelerated implementation deadline to such operators as a penalty.²²

Respectfully Submitted



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²² *Third Further Notice*, ¶ 33.

Appendix A

Proposed definition of “facilities-based”

47 C.F.R § 1.7001 (a)(2), redlined as follows:

(2) *Facilities-based provider.* For the purposes of this rule, An entity is a *facilities-based provider* of a voice service if it supplies such service to an end-user that has its own separate premises for receipt of such voice service and is not collocated with the provider or an affiliate of the provider using facilities that satisfy any of the following criteria:

(i) Physical facilities that the entity owns, ~~and~~ that terminate at the end-user premises, and that are used to originate and/or terminate voice service;

(ii) Facilities that the entity has obtained the right to use from other entities, that terminate at the end-user premises, and that are used to originate and/or terminate voice service such as dark fiber or satellite transponder capacity as part of its own network, or has obtained;

(iii) Unbundled network element (UNE) loops, special access lines, or other leased facilities that the entity uses to complete terminations to the end-user premises and that are used to originate and/or terminate voice service;

(iv) Wireless spectrum for which the entity holds a license or that the entity manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement used with a mobile base station owned or leased and to originate and/or terminate voice service at the end-user premises; pursuant to subpart X of this Part (§§ 1.9001–1.9080); or

(v) Unlicensed spectrum used by the entity to originate and/or terminate voice service at the end-user premises.