



October 5, 2021

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, D.C., 20554

RE: Call Authentication Trust Anchor, WC Docket No. 17-97

Dear Ms. Dortch:

On Monday, October 4, 2021, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”)¹ met with Daniel Kahn, Wireline Competition Bureau (“WCB”) Associate Bureau Chief; Pamela Arluk, Chief of the WCB’s Competition Policy Division (“CPD”); Matt Collins, Assistant Chief of the CPD; and Jonathan Lechter with the CPD. The parties discussed the Third Further Notice of Proposed Rulemaking (“*Third Further Notice*”)² released by the Federal Communications Commission (the “Commission”) in the above-referenced TRACED Act³ proceeding. The *Third Further Notice* seeks comment on how to identify the “small” (fewer than 100,000 access lines) voice providers that are likely to be the source of “especially large amounts of robocalls” and the possibility of amending, to an earlier date, the June 2023 deadline by which such operators must implement STIR/SHAKEN call authentication technology.⁴

As an initial matter, NTCA conveyed its support for Commission attention towards voice providers that knowingly enable (or turn a blind eye towards) parties using voice service to generate unwanted and illegal robocalls and “spoofing” caller-ID information. For those “bad actors” that are likely to be the sources of large amounts of such robocalls, the Commission should accelerate the compliance timeframe to implement STIR/SHAKEN call authentication technology.

While NTCA expressed support for Commission attention to those voice providers that enable unwanted and illegal robocalls and spoofing of caller-ID information, we expressed concern that certain of the *Third Further Notice* proposals could sweep in innocent providers as well. Indeed, these other small operators that could be unnecessarily swept up are the very ones the TRACED Act clearly directed the Commission to grant additional time in terms of implementing

¹ NTCA represents approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States. In addition to voice and broadband, many NTCA members provide wireless, video, and other advanced services in their communities.

² *Call Authentication Trust Anchor*, WC Docket No. 17-97, Third Further Notice of Proposed Rulemaking, FCC 21-62 (rel. May 21, 2021) (“*Third Further Notice*”).

³ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 4(b)(1)(A), 133 Stat. 3274, 3277 (2019) (“TRACED Act”).

⁴ *Third Further Notice*, ¶ 1.

STIR/SHAKEN protocols.⁵ As the TRACED Act contemplates, and the Commission itself acknowledged in the *Second Report and Order*,⁶ many small providers like those in NTCA’s membership will face substantial hardship in implementing these protocols. Moreover, these providers have budgeted presuming a June 2023 implementation deadline consistent with the law, and acceleration of that date would impose the very hardship the TRACED Act specifically sought to mitigate. Thus, a focus on “bad actors” should be surgical, leaving in place the June 2023 deadline for smaller operators acting in good faith and not allowing their networks to be used for the purposes of generating unwanted and illegal robocalls.

Noting that the proposals in the *Third Further Notice* would prove over-inclusive,⁷ NTCA suggested an alternative to identify more accurately *only* those small providers of concern. Specifically, NTCA proposed that the Commission require *only* those entities *not* falling within the definition of “facilities-based voice provider” (as defined in the Attachment hereto) to adopt STIR/SHAKEN on an earlier timeline. As NTCA noted, facilities-based providers are entities that offer far more than the mere provision of the ability to originate voice calls and at high volumes – rather, these are typically entities that have built networks and facilities designed to offer a host of voice and non-voice services. These entities have both a local presence in the communities they serve (in terms of physical network assets) and serve customers with a physical presence as well. The risk of illegal robocalls being generated by such providers serving “actual customers over actual networks” in these communities would therefore appear relatively low. NTCA further stated that should any facilities-based provider nevertheless serve as an enabler (knowingly or by turning a blind eye to how their services are being used) of illegal robocallers – with the Traceback Consortium serving as a “cop on the beat” to detect such activity – the Commission could adopt the *Third Further Notice* proposal to apply an accelerated implementation deadline to that provider as a penalty.⁸

NTCA emphasized that this proposal finds strong support in the record. In the first instance, the *Third Further Notice* sought comment on such an approach, asking whether providers offering

⁵ TRACED Act § (4)(b)(5)(A)(ii).

⁶ Call Authentication Trust Anchor, WC Docket No. 17-97, Second Report and Order, FCC 20-136 (rel. Oct. 1, 2020) (“*Second Report and Order*”), ¶¶ 40-48.

⁷ In initial comments, NTCA stated that the proposal to sweep into accelerated compliance timeframes those voice providers originating a significant number of calls per day for any single line on average would impose considerable burden on small providers to demonstrate they do not exceed such a threshold. Beyond the time involved in reporting, these providers would also need to upgrade switching and other facilities to enable the daily capturing of this measurement for every single line. Moreover, the “calls-per-line” test could capture schools, hospitals, medical offices or other businesses placing legitimate and wanted calls – and there are additional categories of entities originating volumes of calls that may be significant but still legal, wanted, and consented to under the Telephone Consumer Protection Act. With respect to the proposal that would sweep into a new compliance deadline those that receive more than half their revenues from customers purchasing non-mass market services, this is ostensibly aimed at capturing “those providers who target enterprise and other non-consumer customers as a key part of their business.” *Third Further Notice*, ¶ 26. This proposal is apparently premised on the notion that providers targeting this particular market are more likely to originate large volumes of robocalls, yet it misses the mark in an important respect. Specifically, a number of NTCA members (and other similarly situated voice providers) operate competitive affiliates that primarily serve enterprise markets. There is no indication that these or any other operators that specialize in serving the enterprise market (and offering this segment of consumers a competitive option) are more or less likely to knowingly enable (or turn a blind eye towards) their services being used to generate illegal robocalls.

⁸ *Third Further Notice*, ¶ 33.

Marlene H. Dortch

October 5, 2021

Page 3 of 3

“physical” lines to end-users may be less likely to present concerns here.⁹ In response, parties representing a diverse cross section of the voice service provider industry agreed that facilities-based providers are unlikely to be the source of large volumes of robocalls.¹⁰ In particular, USTelecom stated that “[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.”¹¹

To implement this proposal, NTCA stated that voice providers could certify that their operations fall within the definition of “facilities-based.” Small providers able to execute such a certification would retain the June 2023 implementation as set forth in the *Second Report and Order*. NTCA further noted that the certification could include a reference to the provider’s filing of a FCC Form 477 if such filing specifically indicates the provision of both facilities-based broadband Internet access services and voice telephony service – this could serve as a further indication of the certifying provider’s truly local presence in the offering of voice and broadband services to consumers physically present in those communities.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael Romano

Michael Romano

Senior Vice President – Industry Affairs and
Business Development

NTCA-The Rural Broadband Association

cc: Daniel Kahn
Pamela Arluk
Matt Collins
Jonathan Lechter

Attachment: Proposed definition of “facilities-based” provider.

⁹ *Id.*, ¶ 35.

¹⁰ Comments of ACA Connects – America’s Communications Association, WC Docket No. 17-97 (fil. Jul. 9, 2021), p. 10; Comments of ZipDX, LLC, WC Docket No. 17-97 (fil. Jul. 9, 2021), p. 1; Comments of USTelecom, WC Docket No. 17-97 (fil. Jul. 9, 2021), p. 4.

¹¹ USTelecom, p. 4.

Attachment

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.