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

In the Matter of	)	
	)	
Call Authentication Trust Anchor	)	WC Docket No. 17-97
	)	

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

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July 9, 2021

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Third Further Notice of Proposed Rulemaking ("*Third Further Notice*")[2] released by the Federal Communications Commission ("Commission") in the above-captioned TRACED Act[3] 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"[4] and amending, to an earlier date, the June 2023 deadline by which such operators must implement STIR/SHAKEN call authentication technology.[5]

[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.

[5] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, FCC 20-136 (rel. Oct. 1, 2020) ("*Second Caller ID Authentication Report and Order*"), ¶ 40 (adopting a June 2023 implementation deadline for "small" voice service providers, defined as those with 100,000 or fewer voice subscriber lines).

NTCA supports Commission attention towards "bad actor" voice providers that knowingly enable (or turn a blind eye towards) parties using voice service to generate robocalls and "spoofing" caller-ID information. NTCA members' customers have been the victims of the scams that these callers perpetrate, and even where that has not been the case, these end users would welcome relief from the illicit/annoying calls that widespread implementation of STIR/SHAKEN will facilitate. That said, the two proposals found in the *Third Further Notice* to identify small providers most likely to be the source of illegal robocalls are over-inclusive – each presents significant risk of sweeping in innocent voice providers and, contrary to the statutory regime, requiring them to adopt STIR/SHAKEN on an accelerated timeframe they had neither anticipated nor budgeted for. Certain proposals found in the *Third Further Notice* would also run afoul of the Paperwork Reduction Act ("PRA"),[6] requiring voice providers to collect information to report to the Commission before the Office of Management and Budget ("OMB") approves such a collection. Indeed, such data collections would unnecessarily burden hundreds of ultimately innocent providers that would be required to take steps to prove they are not the bad actors sought by the proposed change to the current rule.

In the interest of capturing the concerning parties in a more surgical and precise manner, NTCA offers herein an alternative and less burdensome approach. 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, while retaining the June 2023 deadline for

[6] 44 U.S.C. 3501, *et seq*.

other providers as adopted in the October 2020 *Second Caller ID Authentication Report and Order*.[7]

NTCA further notes herein once again that, absent the ability to obtain IP interconnection on reasonable terms and conditions, neither a June 2023 or 2022 or any other mandated timeframe will enable effective nationwide implementation of STIR/SHAKEN. Instead, smaller rural operators would face an effective mandate to generate "authentication data to nowhere" as such data will fail upon reaching the first "TDM point of interconnection" – many of these still exist under current routing arrangements prevalent in many rural areas where smaller providers must route calls through larger operator networks. Thus, Commission action with respect to encouraging and promoting reasonable and reliable IP interconnection is key to *widespread*, *effective* use of this important standard – indeed, such action is just as important as any interim "intra-network" mandates if the real goal is to authenticate every call on an end-to-end basis.

II. COMMISSION ACTION TO ADDRESS SMALL PROVIDERS MOST LIKELY TO BE THE SOURCE OF ILLEGAL ROBOCALLS MUST NOT SWEEP INNOCENT PROVIDERS INTO UPDATED COMPLIANCE DEADLINES OR SUBJECT THEM TO BURDENSOME REPORTING.

A. The "calls-per-line" and "non-mass market revenue" tests proposed in the *Third Further Notice* pose significant risk of sweeping in innocent actors, requiring the collection of data not heretofore collected by some operators in the normal course of business, and overly burdening every small voice provider regardless of their participation in "robocalling schemes."

The *Third Further Notice* seeks comment on how it can identify small providers "most likely to be the source of illegal robocalls."[8] Among other alternatives, the notice proposes to

[7] *Id*., fn. 5.

[8] *Third Further Notice*, ¶ 7.

require "small"[9] voice providers that originate a significant number of calls per day for any single line on average (the "calls-per-line test")[10] or receive more than half their revenues from customers purchasing non-mass market services (the "non-mass market test")[11] to adopt STIR/SHAKEN on a modified (perhaps, June 2022, timeframe). While the Commission should take steps to address operators enabling illegal robocalls, both of these tests are overly inclusive, posing significant risk of sweeping in innocent providers unnecessarily. Each would also impose burdens on all small voice providers regardless of whether they are likely to be involved in robocalling schemes and, in some cases, require them to provide data to the Commission not collected in the normal course of business.

With respect to the "calls-per-line" test, while seemingly simple on its face as an objective measurement, several flaws are readily apparent. For one, demonstrating that no single line provisioned by an operator exceeds the threshold (500 per day or whatever the standard may be) would impose a considerable burden on NTCA members and similarly situated small providers. Most NTCA members provide non-metered local voice service, and as a result calls-per-line-per-day for individual subscribers are not always generated or maintained, for every call, in the normal course of business. Thus, these providers would need to upgrade switching and other facilities to enable the daily capturing of this measurement. Moreover, because the *Third Further Notice* proposes to utilize an "examination" period of 120 *prior to the adoption of any Order*,[12] all small voice providers would be required to obtain the ability to take this

[9] *Id*., fn. 5.

[10] *Third Further Notice*, ¶¶ 21-25.

[11] *Id*., ¶¶ 26-29.

[12] *Id*., ¶ 37.

measurement with little or indeed no notice. Depending on when an order is adopted, all voice providers may in fact face a requirement to provide the Commission data they neither collected nor have the ability to collect during the relevant time period – the *Third Further Notice* seems not to account for this at all.

In addition, as the *Third Further Notice* itself recognizes, the "calls-per-line" test could capture schools, hospitals, medical offices or other businesses placing legitimate and wanted calls.[13] Moreover, additional categories of entities originating volumes of calls outside the norm but still legal, wanted and consented to under the Telephone Consumer Protection Act ("TCPA")[14] exist – this highlights how this proposal would require the Commission to identify and include within it rules/order an exhaustive list of entities that would potentially be exempt from any examination period/calls-per-line threshold it adopts, placing a greater burden on the Commission itself as its staff would now be in the position of parsing through heaps of data to determine when and where such exemptions for individual enterprises and functions are warranted.

With respect to the "non-mass market revenue" test, while ostensibly aimed at capturing "those providers who target enterprise and other non-consumer customers as a key part of their business"[15]– presumably under the notion that providers targeting this particular market are likely to originate large volumes of robocalls outside the norm – the proposal 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. Even as

[13] *Id*., ¶ 25.

[14] 47 U.S.C. § 227.

[15] *Third Further Notice*, ¶ 26.

many of these entities now offer broadband service to these same customers, these competitive entities oftentimes continue to receive a large percentage of their revenues from customers purchasing "non mass-market" services even as they have expanded into residential (or "mass-market") services. 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. And none of these providers have, to NTCA's knowledge, been the subject of Commission enforcement action. Thus, a number of small voice providers serving the non-mass market space and whose subscribers are operating within the bounds of the TCPA would be swept into this over-inclusive proposal – and even those wishing not to be swept in would be forced to take the unnecessary step of somehow "proving their innocence" without any clear process for doing so spelled out in the *Third Further Notice*.

Beyond the burdens either of these tests would impose on an industrywide basis (and for the Commission itself), implementing either test would run afoul of the PRA. More specifically, as noted above, the *Third Further Notice* proposes an "examination period" of 120 days "prior to the effective date of the Order." 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 Office of Management and Budget ("OMB"). 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.

To be clear, NTCA members are committed to adopting STIR/SHAKEN in a reasonable time frame. NTCA was a founding member of the Secure Telephone Identity Governance Authority Board of Directors and serves on that body as part of its rural carrier members' commitment to ensuring the STIR/SHAKEN framework can be adopted by as many providers as possible and in a manner that ensures its integrity. NTCA also serves on the ATIS Non-IP Call Authentication Task Force as part of its commitment to finding a solution for TDM operators. Even as the commitment remains, so do the barriers that small, rural operators face to implementing this technology (including the persistent IP interconnection barrier that may moot the effective implementation of STIR/SHAKEN, as discussed in Section III, *infra*). The overall cost of implementation is significant for small providers operating in challenging to serve rural areas of the nation. Various other complicated and expensive regulatory mandates,[16] their ongoing work to push fiber deeper into their broadband networks, supply chain concerns,[17] and the impacts of the Covid-19 pandemic all contribute to other strains and demands on financial resources. Plans have been made by smaller operators for STIR/SHAKEN implementation costs to be absorbed in 2023 on the basis of the *Second Caller ID Authentication Report and Order*. Sweeping NTCA members and similarly situated operators into the *Third Further Notice*

[16] *Connect America Fund*, WC Docket No. 10-90, Order, DA 18-710 (rel. July 6, 2018) (establishing the framework for under high-cost universal service support recipients measure the speed and latency performance for supported locations).

[17] Comments of NTCA-The Rural Broadband Association, WT Docket No. 21-195 (fil. Jun. 10, 2021), p. 2 ("NTCA members report widespread delays in obtaining communications equipment of all kinds, which extends not only to electronics (such as routers, optical network terminals, and customer premises equipment ("CPE")) but also fiber.").

proposal would unnecessarily upend budgets at a time when resources are stretched as far as possible – and as noted above, unnecessarily so when an alternative approach as proposed herein would more precisely target those giving rise to the concern while avoiding the imposition of data gathering and reporting burdens across the industry.

B. The Commission could more precisely identify those operators likely to be the source of large volumes of illegal robocalls by leveraging the definition of "facilities-based" provider as proposed herein.

As a more precise way of targeting operators likely the source of illegal robocalls, and to avoid the overly-inclusive and burdensome approaches discussed above, the "small" provider June 2023 STIR/SHAKEN implementation deadline as set forth in the *Second Caller ID Authentication Report and Order* should be reserved for "facilities-based" voice providers (as defined in Appendix A, attached). This approach – along with provisions to retain the 2023 deadline for operators that may not come within the definition but may nonetheless not present a risk of being enablers of prolific robocallers – would be a more precise way of targeting where the concerns arise and accelerating implementation of STIR/SHAKEN by those most likely to enable generation of such robocalls.

As it relates to operators that present a risk of enabling prolific robocallers, a ZipDX filing on this issue is instructive, pointing to "the cottage industry of small VoIP providers that make their living by accepting payments to put these calls onto the US Public Telephone Network."[18] Offering services such as "'SIP Termination' or 'SIP Trunking' or 'Dialer Deck' or 'Call Center Termination'" these services allow "a customer to pay to have their calls sent to the destination ("terminated") in exchange for a fee paid to the provider. In some but not all cases,

[18] *Ex parte* letter, ZipDX LLC, WC Docket No. 17-97 (fil. May 5, 2021) ("ZipDX"), p. 1.

the customer can use any Caller-ID value of their choosing, even changing it for every call placed."[19] Illegal robocalls are also enabled, as the Commission itself has recognized, via "widely available Voice over Internet Protocol (VoIP) software allows malicious callers to make spoofed calls with minimal experience and cost."[20] Ultimately, ZipDX's assessment of the "non-mass market" and "calls-per-day" tests is accurate in stating that "there are numerous references to 'subscribers' and 'lines' in the draft FNPRM (and in earlier Orders). These terms are not meaningful in the context of the services sold by providers that enable illegal robocalling."[21]

A more direct approach here is warranted to avoid ambiguity and the imposition of overly-inclusive reporting mandates that likely run afoul of the PRA. Specifically, "facilities-based" providers as defined in Appendix A hereto should *not* be subject to an accelerated timeframe for STIR/SHAKEN implementation, while those that fail to meet this definition should be presumed subject to the updated implementation deadline (with the ability to overcome that presumption as described below). Facilities-based providers as proposed herein are entities that offer far more than the mere provision of the ability to originate voice calls and at high volumes; these are entities that have built networks and facilities designed to offer potential subscribers a host of voice and non-voice services. These entities, as captured by this definition, have both a local presence in the community they serve (in terms of physical network assets) and serve customers with a physical presence as well. The risk of illegal robocalls being

[19] *Id*., p. 5.

[20] *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket 20-22, Report and Order and Further Notice of Proposed Rulemaking, FCC 20-42 (rel. Mar. 31, 2020), p. 4.

[21] ZipDX, p. 5.

generated by such providers serving "actual customers over actual networks" in these communities would appear relatively low. Moreover, 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 – and here the Commission has the Traceback Consortium as its "cop on the beat" to catch them – the Commission could adopt the *Third Further Notice* proposal to apply an accelerated implementation deadline to them as a penalty.

Finally, the Commission should also include a provision to allow providers that fail to meet this definition to nonetheless seek to retain the June 2023 deadline set forth in the *Second Caller ID Authentication Report and Order* by demonstrating they could comply with the Commission's "calls-per-line" test. By limiting the application of this test to those seeking to overcome a presumption that they should be required to implement STIR/SHAKEN sooner, the Commission could more precisely target these data collection and reporting requirements to potential bad actors and thereby mitigate the PRA implications discussed above.

III. TO ACHIEVE EFFECTIVE IMPLEMENTATION OF AUTHENTICATION ON A NATIONWIDE BASIS, THE COMMISSION STILL NEEDS TO ADDRESS IP INTERCONNECTION – THE GENERATION OF "AUTHENTICATION DATA TO NOWHERE" WILL LEAVE CONSUMERS UNPROTECTED NO MATTER WHEN STIR/SHAKEN IS MANDATED ON INDIVIDUAL NETWORKS.

While the Commission considers how to promote more widespread adoption of STIR/SHAKEN among the "small" provider community – a worthy goal that NTCA members share for reasons discussed in Section II. A, *supra* – more thought should be given to how to ensure *such implementation actually works in a way that benefits consumers*. In particular, the benefits of this standard can only be realized if end-to-end IP connectivity exists between every provider in a call path – caller-ID authentication information is lost if an originating carrier generates it yet the call is routed over any non-IP facility at any point in its call path. Even as

most NTCA members (93 percent according to survey data[22]) are IP-enabled and thus ultimately will have the capability within their own networks to generate call authentication data, in many cases NTCA's members subtend tandem switching facilities owned by upstream carriers that are TDM. NTCA members typically report an inability to obtain IP interconnection at these points – meaning that, for most of these operators, implementation of STIR/SHAKEN will produce no effective benefit, as any call authentication information they generate will die at their network edge. And, even when providers purport to make alternative arrangements for IP interconnection available, it appears that these come at increased cost to the small rural provider – with any "efficiency" obtained through IP interconnection being realized and gained specifically by the provider offering such interconnection, essentially transferring any costs of transport to the smaller rural provider and putting at risk the goal of ensuring affordable voice services in rural areas.

With this in mind, it makes little sense to mandate that smaller rural operators generate "authentication data to nowhere." For STIR/SHAKEN to achieve nationwide implementation and thus mean something for consumers, interconnection between voice providers in IP must be widespread. Basic "rules of the road" are needed that simply preserve existing meet points (or at least relative financial transport responsibilities to get to and from meet points as they evolve) as a "default" in any transition to IP interconnection in the absence of mutually agreed upon changes. Commission action in this regard would promote a transition to IP interconnection and in turn promote the effective implementation of STIR/SHAKEN not just within networks but across all networks, as Congress contemplated.

[22] *Broadband/Internet Availability Survey Report*, NTCA–The Rural Broadband Association, Dec. 2019, p. 9 available at: https://www.ntca.org/sites/default/files/documents/2019-12/2019%20Broadband %20Survey %20Report.pdf.

IV. CONCLUSION

For the reasons discussed above, the Commission should retain the June 2023 STIR/SHAKEN implementation deadline for small providers falling within the definition of "facilities-based" voice provider as defined in Appendix A attached hereto.

Respectfully Submitted

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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, ~~A~~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.