September 8, 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 Tuesday, September 7, 2021, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association ("NTCA")[1] met with Ramesh Nagarajan, Acting Wireline Legal Advisor to Jessica Rosenworcel, Acting Chairwoman of the Federal Communications Commission ("Commission"). The parties discussed the Third Further Notice of Proposed Rulemaking ("*Third Further Notice*")[2] released by the Commission in the above-referenced 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" and 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. Thus, 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.

NTCA noted therefore that its concern with the *Third Further Notice* proposals to identify the operators of concern here is one of "scope" – the proposal to target such operators is overly inclusive, potentially sweeping in innocent providers that are not the source of these unwanted and illegal robocalls. Even worse, these other small operators are the very ones the TRACED Act purposely 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 has acknowledged, many small providers like those in NTCA's membership will face substantial hardship in implementing these protocols. 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.

In response to the *Third Further Notice*, NTCA specifically addressed both 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 (the "calls-per-line test")[6] and those that receive more than half their revenues from customers purchasing non-mass market services (the "non-mass market test").[7] As to the former, NTCA noted that the use of this test 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. Thus, the Commission would have to identify and include within its rules an exhaustive list of entities that would potentially be exempt from any calls-per-line threshold it adopts, placing a greater burden on the Commission itself.

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"[8] – presumably under the notion that providers targeting this particular market are more likely to originate large volumes of robocalls – 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. 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.

In light of these shortcomings in the proposals in *Third Further Notice* proposals, NTCA suggested an alternative that would allow the Commission to identify more accurately *only* those small providers likely to be the sources of large amounts of unwanted and illegal robocalls. Indeed, the *Third Further Notice* sought comment on such an approach, asking whether providers offering "physical" lines to end-users may be less likely to be the concerning parties here.[9] NTCA specifically supported such an approach, proposing in initial comments that the Commission should require <u>*only*</u> those entities <u>*not*</u> falling within the definition of "facilities-based voice provider" (as defined in the Attachment hereto) to adopt STIR/SHAKEN on an earlier timeline.

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[5] TRACED Act § (4)(b)(5)(A)(ii).
[6] *Third Further Notice*, ¶¶ 21-25.
[7] *Id*., ¶¶ 26-29.
[8] *Id*., ¶ 26.
[9] The *Third Further Notice* sought comment on such a method of identifying the troubling parties are issue here, asking "are providers that offer voice service over physical lines to end-user customers less likely to engage in illegal robocalling and if so, should they retain the two-year extension?" *Id*.

As NTCA noted in initial comments, facilities-based providers 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 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 appear relatively low.

NTCA then emphasized that this proposal finds strong support in the record. As NTCA noted in its reply comments, 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] By contrast, commenters likewise highlighted the overly-inclusive nature of the "calls-per-line" and "non-mass market revenue" tests.[12] Moreover, as to the former, one data analytics provider discusses how this test could be easily evaded by bad actors.[13] In short, the *Third Further Notice* proposals are both overly inclusive and potentially ineffective in any case.

NTCA concluded by recommending that the Commission require voice providers to certify that they fit within the definition of "facilities-based" voice providers and thus should remain subject to the June 2023 deadline for STIR/SHAKEN implementation.

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: Ramesh Nagarajan

Attachment: Proposed definition of "facilities-based" provider

[10] Comments of ACA Connects – America's Communications Association ("ACA Connects"), 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.
[11] Comments of USTelecom, WC Docket No. 17-97 (fil. Jul. 9, 2021), p. 4.
[12] ACA Connects, p. 9 (stating that its "members' provision of service to such legitimate [non-mass market], well-known customers in no way correlates with the provision of service to bad actors that originate unlawful calls."); Comments of INCOMPAS, WC Docket No. 17-97 (fil. Jul. 9, 2021), p. 5 (stating that the non-mass market 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.").
[13] Comments of Transaction Network Services, Inc., WC Docket No. 17-97 (fil. Jul. 9, 2021), p. 6.

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, ~~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.