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

In the Matter of	)	
	)	
Advanced Methods to Target and Eliminate Unlawful Robocalls	)	CG Docket No. 17-59
	)	
	)	
Call Authentication Trust Anchor	)	WC Docket No. 17-97

REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

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NCTA – The Internet & Television Association ("NCTA") submits these reply comments in response to the Third Further Notice of Proposed Rulemaking ("*Third FNPRM*") in the above-captioned dockets.[1]

INTRODUCTION AND SUMMARY

NCTA addressed three critical issues in its opening comments—the need for a flexible approach to voice providers' implementation of SHAKEN/STIR, the importance of a broad safe harbor for providers that use a reasonable analytics program as the basis for blocking robocalls, and the need for a Critical Calls List to ensure that emergency and public safety calls are not inadvertently blocked.[2] As we explain below, there is strong support in the record for each of these positions, and they should be adopted by the Commission.

A flexible implementation process for SHAKEN/STIR and a broad safe harbor for providers that use SHAKEN/STIR in conjunction with a reasonable analytics program are essential for granting voice providers the regulatory certainty needed to deploy meaningful

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1 *See Advanced Methods to Target and Eliminate Unlawful Robocalls*; *Call Authentication Trust Anchor*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC 19-51 (2019) ("*Third FNPRM*").

2 *See* Comments of NCTA – The Internet & Television Association, CG Docket No. 17-59, WC Docket No. 17-97 (filed July 24, 2019) ("NCTA Comments").

efforts to block unlawful and unwanted calls. An approach that focuses on rigid and unreasonable implementation mandates or that relies on a narrow safe harbor, as some parties have recommended,[3] will not produce the desired reduction in such calls. Similarly, the importance of ensuring the continued transmission of public safety and emergency communications militates strongly in favor of the Commission's creation of a Critical Calls List that providers can rely on. The suggestion by some parties that analytics providers can identify these calls and ensure that they are not inadvertently blocked understates the risk of unintentional mistakes by these best efforts services.[4]

NCTA also explained the importance of encouraging small rural telephone companies to participate in SHAKEN/STIR in a manner that does not penalize other companies.[5] In that regard, we strongly oppose suggestions by NTCA – The Rural Broadband Association that the only way rural incumbent local exchange carriers can participate in SHAKEN/STIR is if they are subject to a more favorable set of interconnection and transport rules than all other types of providers.[6] The highly regulatory and inefficient regime that NTCA proposes should be rejected by the Commission because it would unnecessarily micromanage the IP ecosystem, which has

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3 *See, e.g.,* Comments of ACA International, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (filed July 24, 2019) (arguing that any safe harbor adopted "should narrowly apply only to the blocking of calls that fail SHAKEN/STIR—and only after all carriers have fully implemented SHAKEN/STIR") ("ACA International Comments"); Comments of Professional Association for Customer Engagement, 17-59, WC Docket No. 17-97, at 2-3, 8 (filed July 24, 2019) (urging the Commission to limit the safe harbor to calls blocked using a SHAKEN/STIR-based blocking system and with the authorization of the called party, and to mandate SHAKEN/STIR implementation by the end of 2021 for major voice providers) ("PACE Comments"); Comments of Professional Credit Service, CG Docket No. 17-59, WC Docket No. 17-97, at 2 (filed July 24, 2019) (arguing that the safe harbor should not apply "until all carriers have implemented SHAKEN/STIR" and that it "should then be limited to only those calls that fail SHAKEN/STIR").

4 *See, e.g.,* Comments of USTelecom – the Broadband Association, CG Docket No. 17-59, WC Docket No. 17-97, at 10 (filed July 24, 2019) ("USTelecom Comments") ("[V]oice service providers that have implemented SHAKEN/STIR and have deployed call analytics capabilities should be able to prevent fraudulently spoofed emergency calls from being delivered without the need for [a Critical Calls List].").

5 NCTA Comments at 6-7.

6 Comments of NTCA–The Rural Broadband Association, CG Docket No. 17-59, WC Docket No. 17-97, at 6-7 (filed July 24, 2019) ("NTCA Comments").

thrived in the absence of heavy-handed regulation, and would represent an unwarranted windfall to these companies.

I. A BROAD SAFE HARBOR IS NECESSARY TO ACHIEVE THE POSITIVE DEVELOPMENTS THE COMMISSION IS SEEKING

The record makes clear that the Commission faces a fundamental choice with respect to a safe harbor. As explained by NCTA and most other voice service providers and their representatives, a broad safe harbor can help ameliorate the risk of liability that otherwise would exist if providers try to protect their customers by blocking calls.[7] Other parties, primarily those that make a significant volume of calls, argue for a very narrow safe harbor as the only way to ensure that legitimate calls are not blocked inadvertently.[8]

As companies that must communicate on a regular basis with millions of customers across the nation, and whose business necessitates that customers receive legal and wanted calls, NCTA's members certainly appreciate the concern raised about blocking legitimate calls. However, that concern does not outweigh the strong public interest in establishing a broad safe harbor for voice providers that block calls based on a reasonable analytics program. While there are a variety of good analytics tools available, and these tools should be even more effective when used in conjunction with the SHAKEN/STIR authentication regime, there will always be a possibility that wanted calls could be blocked inadvertently. If voice providers are not protected from liability for those blocked calls, they may not have sufficient incentive to undertake the expense and risk associated with the development of a rigorous call blocking program, or may be

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[7] *See, e.g.,* NCTA Comments at 8-10; US Telecom Comments at 6-9; Comments of CTIA, CG Docket No. 17-59, WC Docket No. 17-97, at 7-18 (filed July 24, 2019) ("CTIA Comments"); Comments of T-Mobile USA, Inc., CG Docket No. 17-59, WC Docket No. 17-97, at 5-9 (filed July 24, 2019); Comments of Comcast Corporation, CG Docket No. 17-59, WC Docket No. 17-97, at 4-8 (filed July 24, 2019) ("Comcast Comments").

[8] *See supra* n.3.

so conservative in their approach to blocking that customers continue to be plagued by a large number of illegal and unwanted calls.

Rather than adopting a narrow safe harbor to address the risk that legitimate calls could be inadvertently blocked, the better approach is to require that any provider that engages in call blocking also establish a mechanism through which callers (or their providers) can address any erroneous blocking of legitimate calls. As part of this mechanism, providers should designate a point of contact for addressing such concerns.[9] While we do not think any other requirements should be imposed at this nascent stage of SHAKEN/STIR implementation, the Commission should continue to monitor the introduction of call blocking programs based on SHAKEN/STIR and reasonable analytics and consider additional requirements if warranted by experience.

Questions also were raised about the Commission's authority to create a safe harbor of any kind for call blocking.[10] The Commission has the legal authority necessary to adopt a safe harbor pursuant to its plenary authority over telephone numbering under Section 251(e).[11] As the Commission points out in the *Third FNPRM*, callers who illegally spoof Caller ID and/or robocall are misusing telephone numbering resources.[12] The Commission may—and should—exercise its Section 251(e) "authority to set policy with respect to all facets of numbering administration in the United States" to establish a safe harbor for voice providers who take reasonable measures to combat this misuse.[13]

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9 *See* NCTA Comments at 10 (supporting a requirement that, as part of a safe harbor, providers establish a point of contact for legitimate callers to report what they believe to be erroneous blocking and a mechanism for complaints to be resolved).

10 *See* Comments of the Credit Union National Association, CG Docket No. 17-59, WC Docket No. 17-97, at 11 (filed July 24, 2019).

11 47 U.S.C. § 251(e).

12 *See Third FNPRM* ¶ 86.

13 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al.,* Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, ¶ 271 (1996); *see also Advanced*

II. PROPOSED MANDATES ARE NOT PRACTICAL OR NECESSARY AT THIS TIME

One of the biggest questions the Commission must resolve is whether to mandate implementation of SHAKEN/STIR and, if so, by which providers and over what period of time.[14] While NCTA and many other parties explained that there does not appear to be a need to impose a rigid and likely redundant implementation mandate at this time,[15] there were a few parties that supported such an approach. For example, the Consumer Advocates suggest that a variety of mandates should be imposed on voice service providers, including a requirement to implement SHAKEN/STIR by June 2020 and a requirement to "know who is originating the call" to make providers responsible for declining fraudulent traffic.[16]

These requests for mandatory requirements should be rejected. As a threshold matter, it is important to remember that voice service providers are not generating the illegal calls that are plaguing consumers. Nor is this a situation where providers are stubbornly refusing to implement easy, off-the-shelf solutions that would benefit their customers. To the contrary, as NCTA explained, all voice service providers have a strong incentive to implement

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Methods to Target and Eliminate Unlawful Robocalls, Section Notice of Inquiry, 32 FCC Rcd. 6007, ¶ 7 (2017) ("Section 251(e)(1) of the Communications Act of 1934, as amended (the Act), gives the Commission plenary authority over that portion of the North American Numbering Plan (NANP) that pertains to the United States and the Commission has authority to set policy on all facets of numbering administration in the United States."); *Telephone Number Requirements for IP-Enabled Service Providers et al*., Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531, ¶ 22 (2007) ("To the extent that an interconnected VoIP provider provides services that offer its customers NANP telephone numbers, both the interconnected VoIP provider and the telecommunications carrier that secures the numbering resource from the numbering administrator subject themselves to the Commission's plenary authority under section 251(e)(1) with respect to those numbers.").

[14] *See Third FNPRM* ¶¶ 71-78.

[15] *See, e.g.*, NCTA Comments at 4-7; CTIA Comments at 17; Comments of the Competitive Carriers Association, CG Docket No. 17-59, WC Docket No. 17-97, at 4-6 (filed July 24, 2019); Comments of ACA Connects – America's Communications Association, CG Docket No. 17-59, WC Docket No. 17-97, at 4-6 (filed July 24, 2019).

[16] Comments of Consumer Reports *et al*., CG Docket No. 17-59, WC Docket No. 17-97, at 3 (filed July 24, 2019) ("Consumer Advocates Comments").

SHAKEN/STIR in a timely manner because illegal robocalls diminish the value of the service that providers sell to consumers.[17] Because that loss of value to our customers is bad for business, service providers have been working for the last few years to address these issues. Starting from a blank slate, voice providers collectively have been responsible for developing the SHAKEN/STIR standards, establishing a governance authority, and selecting a policy administrator to manage the administration of the authentication system.[18]

In addition to these industry efforts, individual companies, who may be at different stages of implementation, also must take steps before they can fully participate in the SHAKEN/STIR regime, including:

- procure/modify software and hardware, as needed, to incorporate SHAKEN/STIR capabilities;
- implement on its own network the capability to sign calls originating from its subscribers;
- implement on its own network the capability to verify calls terminating with its subscribers; and
- conduct lab tests with other providers to ensure compatibility for exchange of authenticated calls, and possibly conduct tests in a production environment as well.

In light of all of these challenges, placing mandates on providers, particularly smaller providers, will not be helpful at this time. Requiring a company to implement SHAKEN/STIR before it is economically and technologically feasible for that company will only lead to ineffective and inefficient actions. Such an approach would compound the potential for consumer confusion that already exists with the SHAKEN/STIR authentication regime.[19] The

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17 *See* NCTA Comments at 4-5.

18 *See Third FNPRM* ¶ 21, n.46; *Secure Telephone Identity Governance Authority*, STI – GOVERNANCE AUTHORITY, https://www.atis.org/sti-ga/ (last accessed Aug. 9, 2019); Marcella Wolfe, *Mitigating Illegal Robocalling Advances with Secure Telephone Identity Governance Authority Board's Selection of iconectiv as Policy Administrator*, ATIS (May 30, 2019), https://sites.atis.org/insights/mitigating-illegal-robocalling-advances-with-secure-telephone-identity-governance-authority-boards-selection-of-iconectiv-as-policy-administrator/.

19 *See* NCTA Comments at 7-8.

better approach is for the Commission to continue monitoring the rollout of SHAKEN/STIR and to reassess the need for a mandate at a later date.

The Commission also should reject the proposals from the Consumer Advocates for a mandatory requirement that providers screen their customers and an affirmative duty to identify and decline all fraudulent traffic.[20] While providers can gather basic information regarding their customers, businesses engaged in illegal robocalling generally will not disclose that aspect of their business when they sign up for service. The detailed vetting that would be needed to make such a determination at the time service is initiated is fundamentally at odds with the way the marketplace works today, and most customers would almost certainly resent being subject to that type of in-depth investigation as a condition of purchasing service.

III. A CRITICAL CALLS LIST AND CORRESPONDING SAFE HARBOR IS NECESSARY AS LONG AS THERE IS POTENTIAL LIABILITY FOR BLOCKING EMERGENCY CALLS

The *Third FNPRM* also raises important questions about whether there should be a Critical Calls List to ensure that emergency and public safety calls are not inadvertently blocked.[21] While there is broad support for establishing such a list, some parties suggest that a list may not be needed because analytics companies already are able to identify outbound calls from these entities.[22]

NCTA does not agree that relying on analytics companies or a Critical Call List alone is sufficient to guard against inadvertently blocking calls from emergency and public safety entities. Each may do a very good job at identifying emergency numbers so that they are not

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20 *See* Consumer Advocates Comments at 3.

21 *See Third FNPRM* ¶¶ 63-68.

22 *See e.g.,* USTelecom Comments at 10 ("[V]oice service providers that have implemented SHAKEN/STIR and have deployed call analytics capabilities should be able to prevent fraudulently spoofed emergency calls from being delivered without the need for [a Critical Calls List].").

blocked, but inevitably mistakes will be made. As long as liability for erroneously blocking emergency calls falls on providers, both the Critical Calls List and a corresponding safe harbor for providers that use the list is necessary.

USTelecom is further concerned that "a critical calls list that requires voice service providers to allow the completion of calls from certain numbers could result in an obligation on voice service providers to allow calls to complete that they know are from spoofed numbers."[23] This concern could be addressed by establishing a process by which voice service providers could report their concerns that numbers on the Critical Calls List are being spoofed, with the reports distributed to other providers and investigated by the entity responsible for keeping the list. Such an approach would also address USTelecom's concern with maintaining the security of a Critical Calls List.[24]

As numerous parties agree, the Critical Calls List should be compiled centrally by the Commission or a Commission-designated entity.[25] The Commission should reject suggestions that providers be required to maintain individual lists.[26] For the reasons NCTA detailed, requiring individual lists would be inefficient and increase the risk of erroneous blocking.[27]

IV. THE COMMISSION SHOULD REJECT NTCA'S PROPOSAL REGARDING IP INTERCONNECTION AND TRAFFIC EXCHANGE

As NCTA explained in its comments, because SHAKEN/STIR works best when a call is carried over IP-based networks and interconnection arrangements, one issue of particular

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23 *Id*.

24 *See id.*

25 *See, e.g.,* Consumer Advocates Comments at 9; Comcast Comments at 11; Comments of ACT | The App Association, CG Docket No. 17-59, WC Docket No. 17-97, at 6 (filed July 24, 2019).

26 *See* Comments of First Orion Corp., CG Docket No. 17-59, WC Docket No. 17-97, at 11 (filed July 24, 2019).

27 *See* NCTA Comments at 11.

importance to the Commission is encouraging all providers, including small rural providers, to upgrade to IP-based networks and exchange traffic in IP format.[28] The benefits of implementing SHAKEN/STIR cannot be fully realized until all of these providers are participating in the authentication regime.

Although the Commission has been considering issues surrounding the transition from TDM networks to IP-based networks for many years, NTCA acknowledges that many of its member companies are lagging in this regard, either because they still have not deployed IP-based networks or because they have not entered into IP-based interconnection arrangements.[29] It suggests that the only way these carriers will be able to participate in SHAKEN/STIR is if the Commission adopts rules that shift their costs of transitioning to IP-based networks to competing providers through a "rural transport rule" similar to one NTCA asserts was adopted for TDM-based voice traffic in 2011.[30]

NCTA strongly opposes this proposal. While NTCA characterizes its proposal as "narrow, simple, and straightforward,"[31] in fact it is a radical attempt to get the Commission to micromanage IP-to-IP traffic exchange for the first time, going well beyond the interconnection and traffic exchange provisions that the Commission eliminated in the *Restoring Internet Freedom Order*.[32] The NTCA approach would take the highly regulatory and inefficient rules

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28 *See id.* at 5-7.

29 *See* NTCA Comments at 5.

30 *See id.* at 6-7. The "rural transport rule" for TDM traffic is more limited than NTCA suggests. The Commission ruled that "when [a] CMRS provider's chosen interconnection point is located outside the LEC's service area, we provide that the LEC's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point." *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011), *review denied*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015), at ¶ 999. The Commission expressly declined, however, to adopt a broad "rural transport rule" applicable to TDM traffic generally. *Id.* n.2112.

31 *See* NTCA Comments at 6.

32 *See Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. 311, ¶¶ 165-

for TDM-based exchange of voice traffic and apply them to the exchange of IP-based voice traffic. Such an approach is wholly unwarranted. As the Commission recently explained, "on a modern broadband network, voice telephone service is just one application among many."[33] Given the massive volume of IP-based data traffic that all providers exchange on a completely unregulated basis, there is no justification for taking a different approach for the far smaller amount of IP-based voice traffic that companies exchange. It would also be particularly inappropriate to adopt such an approach in this proceeding—the Commission did not even mention the possibility of imposing invasive regulation of IP interconnection arrangements in the *Third FNPRM* or any other notice in this proceeding, nor has it developed a record that would be remotely sufficient to support such measures.

Rural carriers already have demonstrated that they are fully capable of exchanging IP-based data traffic without the need for an intrusive set of federal rules, and nothing in NTCA's comments demonstrates that these carriers are unable to exchange IP-based voice traffic in the same way. Moreover, given that these rural carriers face competition in most of the areas they serve, a "rural transport rule" that would compensate only incumbent LECs for transport costs, but not competitive providers serving those same rural areas, would be at odds with the principle of competitive neutrality. For all of these reasons, the NTCA proposal should be rejected.

CONCLUSION

To best promote deployment of Caller ID authentication and call blocking technologies, the Commission should continue to support voice provider efforts to combat illegal calls by adopting a broad safe harbor for good faith call blocking practices and establishing a centrally

166 (2018).

[33] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Memorandum Opinion and Order, FCC 19-72, ¶ 50 (rel. Aug. 2, 2019).

compiled and maintained Critical Calls List. The Commission also should refrain from mandating the implementation of SHAKEN/STIR or imposing other mandates at this time, and it should reject NTCA's proposal to shift interconnection and transport costs to its competitors.

Respectfully submitted,

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