

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

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

PETITION FOR RECONSIDERATION

Pursuant to 47 CFR § 1.429 , The Voice on the Net Coalition (“VON”)¹ hereby files this Petition for Reconsideration of the Commission’s *Second Report and Order* in the above captioned docket.² Specifically, VON requests that the Commission reconsider two discrete provisions: 1) the requirement in Section 64.6305(b)(4) that voice service providers filing certifications provide the name, telephone number and email address of a central point of contact within the company responsible for addressing robocall-mitigation-related issues and 2) the requirement in Section 64.6305(c) that voice service providers not accept calls from foreign voice service providers who have not made filings in the to-be-established Robocall Mitigation Database. The first of these requirements creates a practical problem for service providers; the second violates the Administrative Procedure Act (“APA”) for failing to provide adequate notice that such a requirement might be adopted.

¹ The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP-enabled communications, including interconnected Voice over Internet Protocol (“VoIP”). For more information, see www.von.org.

² *In the Matter of Call Authentication Trust Anchor*, Second Report and Order, WC Docket No. 17-97 (rel. Oct. 1, 2020). The Petition is timely filed as the *Second Report and Order* was published in the Federal Register on November 17, 2020. 85 Fed. Reg 73360 (Nov. 17, 2020); see also 47 CFR § 1.429(d).

Central Point of Contact. In the *Second Report and Order*, the Commission, for the first time, required all voice service providers to file certifications regarding efforts to stem the origination of illegal robocalls on their networks.³ Certifications will be filed via a portal on the Commission's website that the Commission will establish for this purpose.⁴ The Commission also plans to establish a publicly accessible database in which it will list such certifications.⁵

In addition to detailing their robocall mitigation practices, voice service providers were also required to provide specific identification information that includes the name, title, department, business address, telephone number, and email address of a central point of contact within the company responsible for addressing robocall-mitigation-related issues.⁶ This information will be available in the public database, and, according to the Commission, reporting such information presents a minimal burden on voice service providers and will facilitate inter-provider cooperation and enforcement actions should issues arise.⁷

While VON generally supports the concept of the robocall mitigation database, requiring a name, business address, telephone number and a central point of contact ignores that there often is no single point of contact within large voice service provider organizations. Typically, there are teams of individuals that handle robocall-related matters. Moreover, it is invasive of the privacy of voice service provider employees who are not corporate officers to have to submit to public listing in a government database.⁸

³ *Second Report and Order*, at para. 82.

⁴ *Id.* at para. 83.

⁵ *Id.*

⁶ *Id.* at para. 84 and § 64.6305(b)(4). The Commission also requires that the information be updated within 10 business days. *Id.* at para. 85.

⁷ *Id.*

⁸ In its own perverse way, including a telephone number actually invites robocalls and harassment of any individual identified. These and other significant privacy and safety concerns associated with providing such individualized contact information online warrant further consideration.

There is also no public interest basis stated for requiring a physical address to be included in the database. A physical address would not be used for the purpose stated – facilitating inter-provider cooperation. In the modern era, teams are dispersed geographically, positions and locations change frequently, and, in the COVID-era, many are working from home – a practice that will likely become the new normal for many businesses. The requirement of disclosing a physical postal address is inconsistent with modern work methods and common practices of cooperation. A generic e-mail address that is monitored by the voice service provider’s robocall mitigation team should suffice to satisfy the stated purpose insofar as the telecom provider is registered with the Commission. None of these were facts considered by the Commission in developing the requirement; thus, making this issue ripe for reconsideration.

Calls from foreign service providers. In order to combat robocalls originating abroad, the Commission prohibited domestic intermediate providers and terminating voice service providers from accepting traffic from those foreign voice service providers that are not listed in the robocall mitigation database.⁹ It was the Commission’s position that the prohibition would create a strong incentive for such foreign voice service providers to file certifications and comply with a robocall mitigation plan.¹⁰

This new requirement creates a dramatic change in typical method of receiving and transmitting international communications traffic. In doing so, the FCC has failed to comply with even the most basic requirements of the APA for soliciting and considering public comment on

⁹ Id. This is codified in new rule section 64.305(c).

¹⁰ Id.

this new requirement.¹¹ As a result, adoption and enforcement of this rule is likely to cause more harm to the public interest than the injuries (potential illegal robocalls) they were designed to prevent.

This action will limit those foreign carriers who can terminate calls into the United States. The FCC has not conducted an analysis to determine whether this type of restriction is consistent with the U.S. World Trade Organization (WTO) or other international telecommunications commitments.¹² This action will also invite retaliatory efforts by foreign countries, potentially restricting the ability of U.S. carriers to terminate calls on behalf of their U.S. customers to foreign points. The FCC has not considered this potential harm or how that would be consistent with the goals in Section 1 of the Communications Act.

The FCC provides no practical guidance as to how this new rule would be managed. Traffic is exchanged in real-time, thus there is no time for a manual check of an FCC database to determine whether a foreign carrier has registered; there is also no guidance on how often the database must be checked, or any consideration of whether a single foreign carrier, or all of its corporate subsidiaries will be required to register. Moreover, the FCC has not established a plan or cost recovery mechanisms for checking information in the database. The new requirement constitutes a substantial change in the fundamental framework for transmitting telecommunications traffic with potentially profound effects on U.S. individuals and businesses, as well as foreign carriers. Yet, these potential harms, considerations of how they might be mitigated, and practical guidance for implementation have not been addressed because the

¹¹ *Time Warner Cable Inc. v. F.C.C.*, 729 F.3d 137, 169 (D.C. Cir. 2013) (quoting *National Black Media Coalition v. F.C.C.*, 791 F.2d 1016, 1022 (2d Cir. 1986)) (interpreting the APA to require that “the final rule the agency adopts must be a ‘logical outgrowth of the rule proposed.’”).

¹² See, e.g., WTO Basic Telecommunications Services Agreement, incorporated into General Agreement on Trade Services (GATS) by the Fourth Protocol to the GATS, April 30, 1996.

Commission did not comply with APA requirements to solicit comment on this extraordinary change.¹³

Rejection of international traffic might also put U.S. service providers in breach of existing international termination agreements, or by not completing calls, in violation of basic requirements of the Communications Act, including prohibitions on unreasonable practices or unreasonable discrimination.¹⁴ Under the FCC's proposal, traffic may be rejected even if it is not harmful and the carrier has no history of ever having delivered illegal robocall traffic. This is a bludgeon approach to an effort requiring a more surgical undertaking.

The TRACED Act has not been adopted in any country other than the U.S., thus all foreign carriers will need to register with the FCC and agree to a robocall mitigation plan, including compliance with U.S. traceback processes, for U.S. residents and businesses to receive traffic from international destinations. The privacy and data protection regimes in other countries or regions (including the GDPR) governing foreign carriers (who in some cases may be subsidiaries and affiliates of U.S. carriers) may prevent or restrict the type of data transfer currently required by U.S. traceback efforts. The FCC has failed to consider how this conflict of laws may negatively affect the ability of U.S. residents and businesses to engage in international communications.

Rather than trying to solve the problem of illegal robocall calls from abroad with a haphazard rule that will be difficult, if not impossible, to comply with or enforce, the Commission should release a new Public Notice seeking additional comments on the proposal. This will allow for a more thoughtful vetting of an otherwise very complicated issue.

¹³ 5 U.S.C. § 553(b)(3); *see e.g., Nuvio Corp. v. F.C.C.*, 473 F.3d 302, 310 (D.C. Cir. 2006) (quoting *Action for Children's Television v. F.C.C.*, 564 F.2d 458, 470 (D.C. Cir. 1977)) (although the notice "need not specify every precise proposal," the APA requires that notice "be sufficient to fairly apprise interested parties of the issues involved . . .").

¹⁴ 47 U.S.C. §§ 201, 202.

CONCLUSION

For the reasons stated herein, the Commission should grant this Petition for Reconsideration.

Respectfully submitted,

VOICE ON THE NET COALITION

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