

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”)¹ hereby submits these comments in response to the Second Further Notice of Proposed Rulemaking in the above-referenced docket, which proposes the FCC oversee Service Provider Code token revocation decisions by the Secure Telephone Identity Governance Authority (“STI-GA”).² VON recognizes the benefits to all stakeholders from what the Commission refers to as a “limited”³ oversight role to review decisions that would effectively render service providers noncompliant with the Commission’s STIR/SHAKEN rules.⁴

1. An FCC appeal process should include those that rely on delegated certification from token-holders.

An appeal process before the Commission would benefit voice service providers, assuming the process is available to all service providers “rendered noncompliant with [the FCC’s] rules by

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 *Call Authentication Trust Anchor*, Second Further Notice of Proposed Rulemaking, WC Docket No. 17-97, FCC 21-15 (rel. Jan. 14, 2021) (“Second FNPRM”). *See also* STI-Governance Authority, Revocation of STI Service Provider Code Tokens, <https://sti-ga.atis.org/wp-content/uploads/sites/14/2020/09/STI-GA-SPC-token-Revocation-Policy-091520.pdf>.

³ Second FNPRM at 2, para. 3.

⁴ VON has been actively involved in efforts to combat illegal robocalls, has participated in various FCC proceedings implementing the TRACED Act and is a member of the STI-GA board.

the actions of a private entity[.]”⁵ Generally, for a service provider to participate in the STIR/SHAKEN ecosystem, it must obtain a digital certificate that it will use to authenticate calls. This certificate is only available to service providers that have already obtained a token from the STI Policy Administrator, a process which, among other things, requires the service provider to file an FCC Form 499A, have an Operating Company Number, and, when the option becomes available, to submit a certified robocall mitigation plan to the FCC.⁶

Due to these requirements or other factors unique to a company’s business model, some service providers required to participate in the STIR/SHAKEN ecosystem may not obtain their own certificates⁷ and may instead rely on delegated certification from a token-holder. Therefore, revoking a token would not just result in potential injury to the token-holder, but also to any other service provider that relies on the token-holder’s continued authorization. The “necessary due process”⁸ that a Commission-level appeal would provide must therefore be made available to all affected voice service providers, including those who might be harmed from an upstream token revocation (e.g., resulting from the inability to participate in a call authentication system this is not the result of their own actions). These entities should be provided an intervenor, or interested party status, as their participation in the process would provide the FCC with a more complete picture of the ramifications of its decision and enable it to offer explicit, temporary relief from enforcement as the affected service provider seeks another token holder, should that be necessary.

⁵ Second FNPRM at 2, para. 3.

⁶ The STI-GA oversees and manages the operations of the STI Policy Administrator. STI-Governance Authority, STI-GA Operating Procedures at 1 (Sept. 24, 2019), <https://www.atis.org/wp-content/uploads/sites/14/2020/04/STI-GA-Operating-Procedures-Version-1.2.pdf>. See also STI-Governance Authority, STI-GA Policy Decisions Document at 1 (Nov. 18, 2020), <https://sti-ga.atis.org/wp-content/uploads/sites/14/2020/11/201118-STIGA-Board-Policy.pdf>.

⁷ *Call Authentication Trust Anchor*, Second Report and Order, WC Docket No. 17-97, FCC 20-136 at 24-25, paras. 49-50 (rel. Oct. 1, 2020).

⁸ Second FNPRM at 2, para. 3.

2. De novo review by the Commission would not interfere with STI-GA governance and would protect the FCC and the STI-GA from potential legal challenges.

By requiring a showing of administrative exhaust of the STI-GA process, the FCC's proposed appeal process would not interfere with the STI-GA's procedure, and would in fact insulate the FCC and the STI-GA from challenges on separation of powers and Administrative Procedure Act grounds.

Under the FCC's proposal, any potential appellant before the Commission must first exhaust the STI-GA's appeals process. This would resolve a large majority of complaints without Commission action.

For any remaining appellants, a Commission review role is necessary because a revocation decision would "have the effect of placing the voice service provider out of compliance with [the FCC's] rules,"⁹ thereby directly harming the appellant and any service providers relying on that provider for delegated certification. A non-reviewable adjudication by the STI-GA or a Commission-level appeal process that limits the Commission's standard of review to anything more deferential than de novo review would inevitably result in STI-GA decisions receiving precedential treatment, and would turn the STI-GA into a de facto policymaking body in place of the FCC. Binding the Commission and industry participants to STI-GA decisions would give legal effect to decisions and policies that neither the Commission nor any other federal body had a role in implementing or have the authority to modify. This would be inconsistent with the TRACED Act's express mandate for the FCC to require voice service providers to implement call authentication processes.¹⁰ Unchecked sub-delegation to an independent outside party like the

⁹ *Id.* at 6, para. 10.

¹⁰ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 4(b)(1) (2019). *See also* Second FNRPM at 7, para. 16.

STI-GA might therefore raise separation of power concerns.¹¹ Further, perceived policymaking absent a public notice opportunity, or adjudication without the possibility of final agency review could also subject the FCC and the STI-GA to burdensome Administrative Procedure Act challenges.¹² Therefore, the opportunity for a Commission-level appeal after exhausting the STI-GA appeal process would simultaneously protect the STI-GA’s “well-functioning multi-stakeholder”¹³ governance process, and safeguard the FCC’s mandate to implement STIR/SHAKEN.

Finally, the Commission should consider adopting procedures that would increase efficiency and fairness in the FCC appeal process. These could include, for example, requiring the STI-GA to submit complete written materials of final documents there were considered in its decision.¹⁴ The FCC should also have a time limit for deciding token revocation appeals since revocation of a token can substantially impact a provider’s business.

¹¹ *U.S. Telecom Ass’n v. F.C.C.*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (finding that the FCC could not delegate CLEC unbundling determinations to state regulatory authorities without Congressional authorization because “when an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making” and that such outside parties “may pursue goals inconsistent with those of the agency and the underlying statutory scheme.”). *See also id.* at 568. (“[A] federal agency may turn to an outside entity for advice and policy recommendations, provided the agency makes the final decisions itself.”).

¹² 5 U.S.C. §§ 553(b), 704.

¹³ Second FNPRM at 2, para. 3.

¹⁴ These filings should be confidential by default since the STI-GA revocation process is confidential.

CONCLUSION

VON strongly supports the mission and independence of the STI-GA, including its existing robust and procedurally sound review and revocation processes. In consideration of the STI-GA's important role, the serious potential harm from token revocation faced by voice service providers, and the FCC's mandate to implement the TRACED Act, VON supports the FCC's limited oversight of the STI-GA's token revocation decisions, consistent with the positions herein.

Respectfully submitted,

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