

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing Section 503 of RAY BAUM’S Act)	WC Docket No. 18-335
)	
Rules and Regulation Implementing the Truth in Caller ID Act of 2009)	WC Docket No. 11-39
)	

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” of “FCC”) *Notice of Proposed Rulemaking* seeking comment on how the Commission should implement recently adopted amendments to the Truth in Caller ID Act as required by Section 503 of RAY BAUM’S Act.¹

I. INTRODUCTION & SUMMARY

INCOMPAS commends Congress and the Commission for introducing new measures in the RAY BAUM’S Act to address the scourge of illegal robocalls and malicious caller ID spoofing. INCOMPAS, the Internet and competitive networks association, represents companies that provide communications services across a variety of technological platforms and to both residential and enterprises customers in rural, urban, and suburban areas across the country. Our companies remain concerned about malicious caller ID spoofing and are proactively taking steps to prevent fraudulent spoofing activity.

¹ *Implementing Section 503 of RAY BAUM’S Act, Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 18-335, 11-39, Notice of Proposed Rulemaking, FCC 19-12 (rel. Feb. 15, 2019) (“NPRM”).

Over the last year, INCOMPAS has joined forces with other representatives from the telecommunications industry to develop the STIR/SHAKEN framework—a set of protocols and operational procedures designed to authenticate telephone calls and mitigate illegal robocalling and spoofing. As a member of the Secure Telephone Identity – Governance Authority (STI-GA), INCOMPAS has worked side-by-side with large incumbent carriers, trade associations, and technology companies to develop and integrate solutions into this management infrastructure that protect competitive interests and ensure all providers of voice and messaging services can access and use the STIR/SHAKEN framework on a level playing field.

Additionally, INCOMPAS member companies are engaged in other industry efforts like USTelecom’s Industry Traceback Group to identify the individuals and groups responsible for this fraudulent activity.² Our members have aggressively pursued traceback as a means to take corrective actions against illegitimate callers and regularly provide information to USTelecom and the Commission. Furthermore, several of our members also participate in the North American Numbering Council, including its Call Authentication Trust Anchor working group, whose recommendations led to the development of the aforementioned STI-GA.

In these reply comments, INCOMPAS urges the Commission to ensure that the implementing requirements for Section 503 of the RAY BAUM’S Act are carefully calibrated to address illicit conduct while simultaneously protecting innovation and competition in the market. We also recommend that the Commission’s definition of “voice services” should exclude one-way calling features as these services do not satisfy the definitional requirements for being

² See e.g., Ex Parte Presentation of West Telecom Services, LLC, WC Dockets No. 18-156, 18-335, 11-39, 17-97, 18-336 (filed Mar. 29, 2019) at 2 (describing the companies “efforts to help enable industry to effectively prevent, detect, and address illicit automated calling”) (“West Telecom Ex Parte”).

“voice services.” There are additional statutory provisions—such as Section 223 of the Communications Act—that would allow the agency to take action, if necessary, without increasing regulations on one-way voice service at this time.

II. COMMISSION ACTION MUST BE CAREFULLY CALIBRATED TO ELIMINATE MALICIOUS SPOOFING WHILE PROTECTING INNOVATION AND COMPETITION.

Despite the previous actions taken by the Commission and by industry to combat this issue, “unlawful spoofing persists” and its impact on consumers and the industry cannot be overstated.³ Consumers are constantly put at risk by bad actors using technology intended to serve important and legitimate purposes both for individuals and businesses.⁴ The rise in fraudulent calls has a deleterious effect on consumer confidence in their communications networks, and companies are spending valuable time and limited resources to respond and resolve the issue—time and resources that could otherwise be used deploying next-generation networks.⁵

³ NPRM at ¶ 1.

⁴ See Comments of Twilio Inc., WC Docket No. 18-335, 11-39 (filed Apr. 3, 2019) at 8 (discussing the reasons for “legitimate” spoofing, including personal protection and business purposes, such as appointment reminders and directing customers to the appropriate customer service number) (“Twilio Comments”).

⁵ Similarly, other industry sectors also have been affected, and INCOMPAS’ focus on the communications industry should by no means be misunderstood as unsympathetic to the time and resources businesses across the economy are having to spend to address this issue. As testimony on the Hill this week outlined, legitimate businesses have been impacted, and they too are spending their valuable time and resources to resolve issues related to unlawful spoofing that could be used to focus on their core businesses. See Testimony of Dave Summitt, Chief Information Security Officer, H. Lee Moffitt Cancer Center & Research Institute, United States Cong. House. Subcommittee on Communications and Technology. *Legislating to Stop the Onslaught of Annoying Robocalls. Hearings*, Apr. 30, 2019. 116th Cong. 1st sess., available at https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony_Summitt.pdf.

With that in mind, INCOMPAS urges the Commission to carefully calibrate its new implementing requirements to ensure that the rules capture illegitimate activity and instances of fraud without discriminating against legitimate uses and competition.⁶ Competitive providers, like our members, deliver innovative communications services, like connected and interconnected VoIP service, multi-line telephone systems for enterprise customers, and messaging services. These services have a wide range of legitimate use cases that are driven by consumer demands which must be considered both by the Commission and industry as the two aim to cooperatively develop solutions to the problems of illegal robocalls and malicious caller ID spoofing. Among such services are international voice calling services. INCOMPAS has several members that provide legitimate international voice communications services and while international calling adds considerable complexity to fraud and abuse prevention, much like the experience with rural call fraud prevention, it remains critical that the Commission and industry not enable or endorse anti-competitive behaviors in the name of overly-aggressive enforcement against calls originating overseas.

INCOMPAS shares the concerns expressed in the record “that over-inclusive call blocking practices could lead to misidentification and blocking of important consumer messages”⁷ as some of our members have already had legitimate traffic blocked by major U.S. providers. While the Commission should take every possible step to eliminate unlawful and malicious spoofing, it must also ensure that segments of the telecommunications industry are not aggressively using this issue to the detriment of competition. For this reason, INCOMPAS

⁶ INCOMPAS agrees that the Commission should “interpret the statute’s intent requirements strictly so that parties cannot claim that any type of spoofing causes harm.” *See* Twilio Comments at 9.

⁷ West Telecom Ex Parte at 1.

recommends that as the Commission moves forward with the application and enforcement of the statutory provisions at issue in this proceeding, it continues to operate as a “referee in the field” to ensure that providers are not using measures that may be ostensibly intended to reduce and eliminate malicious spoofing but may inherently risk discriminate against competitors and legitimate voice traffic.

III. THE COMMISSION SHOULD EXCLUDE ONE-WAY CALLING FEATURES FROM THE DEFINITION OF VOICE SERVICES.

The Notice asks whether the Commission should interpret the statute’s definition of “voice services” to include one-way VoIP services.⁸ To uphold Congressional intent, the Commission should interpret the definition of “voice services” in the RAY BAUM’S Act to exclude one-way calling features. These calling features enable consumers to either transmit calls to or receive calls from the PSTN, but not both. As explained more fully below, the plain language of the definition of “voice services” in the RAY BAUM’S Act supports excluding one-way calling features from the Act’s requirements because they (1) are not “interconnected” with the public switched telephone network (“PSTN”), and (2) do not “furnish[] voice communications to an end user using resources from the North American Numbering Plan (“NANP”) or any successor” plan.⁹ Their exclusion also is important because doing otherwise would upend careful and deliberate regulatory distinctions that the Commission has developed

⁸ Notice at ¶ 32 (“[S]hould we include within the definition of ‘voice services’ any ‘one-way’ VoIP service that connects with the PSTN and uses telephone numbers that separately enable users to make outbound calls to landline or mobile telephones or to receive inbound calls from landline or mobile telephones? Such services are not “interconnected VoIP” services because they do not permit users to receive calls originating on the PSTN *and* terminate calls to the PSTN. Should we find that section 227(e) as amended, and our proposed implementing rules reach these “one-way” IP-based voice services and any similar IP-based or other technology-based calling capability, whether offered by a service provider, or self-provisioned, as long as they connect with the PSTN and use NANP resources?”).

⁹ RAY BAUM’S Act § 503(a)(2)(C).

over time to ensure that its regulations apply only as intended by Congress or as needed to serve the public interest.

Excluding one-way calling features from the definition of “voice services” would not undermine the purpose of the RAY BAUM’S Act or exacerbate the challenges created by the transmission of misleading or inaccurate caller ID information. To the contrary, many providers of one-way calling features are supportive of efforts to eliminate the use of misleading caller ID information for fraudulent purposes and are committed to working closely with the Commission to achieve this objective.¹⁰

One-way calling services do not satisfy the definitional requirements for being “voice services.” The RAY BAUM’S Act expanded the scope of section 227(e)(1) of the Communications Act, which prohibits the transmission of misleading or inaccurate caller ID information, by applying that prohibition to a voice service and text messaging service.¹¹ “Voice services,” in turn, is defined in relevant part as

any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan or any successor to the North American Numbering Plan adopted by the Commission under section 251(e)(1).¹²

¹⁰ Using one-way calling features to transmit fraudulent calls also would violate the terms of service of many one-way calling feature providers, who have an incentive to cooperate with enforcement authorities to eliminate bad actors from their service platforms.

¹¹ RAY BAUM’S Act § 503(a)(2)(C).

¹² *Id.*

As explained herein, one-way calling features do not meet this definition because they are not “interconnected” with the PSTN, and because they are not furnished “using resources from the [NANP] or any successor” to it.¹³

A. One-Way Calling Features are not “Interconnected.”

For decades, the Commission consistently has defined the term “interconnected” to mean capable of transmitting calls to *and* receiving calls from the PSTN. As far back as the Commission’s seminal *Local Competition Order* (released in 1996), which established the framework for interconnection that unleashed local competition in the telecommunications sector, the Commission explained that the statutory term “interconnection” refers to “the physical linking of two networks for the mutual exchange of traffic.”¹⁴ This mutual exchange of traffic by definition requires carriers to both transmit traffic to and receive traffic from the PSTN, a capability that one-way calling features cannot—and are not designed to—achieve. Over the years, the Commission has repeatedly made this point clear, including, for example, in proceedings to address telecommunication carrier accounting safeguards,¹⁵ its myriad reviews of applications by Regional Bell Operating Companies to enter the market for interLATA

¹³ *Id.*

¹⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 *et al.*, Report and Order, 11 FCC Rcd 15499, 15514, para. 26 (1996).

¹⁵ *See, e.g., Amendments to Uniform System of Accounts for Interconnection*, CC Docket No. 97-212 *et al.*, Notice of Proposed Rulemaking, 12 FCC Rcd 16577, 16852, para. 7 & n.19 (1997) (explaining an interconnection requirement, and noting that interconnection “refers to the physical linking of two networks for the mutual exchange of traffic”).

services,¹⁶ and in proceedings seeking to reform the regime for access charges and other forms of intercarrier compensation.¹⁷

This inability to interconnect with the PSTN is a key characteristic that has distinguished one-way calling features from other services. For instance, in the definition of interconnected VoIP service in Section 9.3 of the Commission’s rules, which was promulgated in 2005, the Commission was careful to specify that VoIP service is interconnected only if it *both* “[p]ermits users generally to receive calls that originate on the public switched telephone network *and* to terminate calls to the public switched telephone network.”¹⁸ Similarly, in the more recent *Rural Call Completion Order*, the Commission was careful to distinguish one-way calling features from interconnected VoIP, noting that one service is interconnected while the other is not.¹⁹

Over the years, the Commission has consistently and deliberately made clear not only that an “interconnected” service requires the ability to *both* transmit calls to *and* receive calls from the PSTN, but also that because one-way calling features do not provide that ability they cannot be said to be “interconnected.” This is important because if the Commission now were to reverse course and find one-way calling features to be interconnected, that could potentially

¹⁶ See, e.g., *Application of Verizon New York Inc. et al. for Authorization to Provide In-Region, Interlata Services in Connecticut*, CC Docket No. 01-100, 16 FCC Rcd 16831, 16839, para.17 (2001) (quoting the *Local Competition Order* for the definition of interconnection).

¹⁷ See, e.g., *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4741, para. 128 (2005) (explaining that interconnection means “the linking of two networks for the mutual exchange of traffic,” and citing the *Local Competition Order*).

¹⁸ 47 C.F.R. § 9.3 (emphasis added).

¹⁹ See *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16167 (2013) (“The Commission has described one-way VoIP services as allowing users to receive calls from, or place calls to, the PSTN, but not both.”).

upend years of careful and deliberate regulatory distinctions that were created to ensure that one-way calling features (and other features and services) are subject only to regulations that are necessary for them to operate in the public interest.

This Commission’s operating principle has been to apply regulations only as necessary to protect the public interest, and that the application of such regulations should involve a balancing test between the need for such regulations and the burdens they impose. Any determination that one-way calling features somehow are interconnected could call into question the bevy of precedent indicating that they are not, disrupting the careful balance the Commission has drawn over the years regarding the services and features that merit regulation, and those that do not. It also would ignore the common statutory understanding that interconnectedness constitutes a two-way exchange of traffic.

B. One-Way Calling Features Do Not Use Resources from the NANP to Furnish Voice Communications.

The definition of “voice services” also requires the service to “furnish[] voice communications to an end user using resources from the [NANP] or any successor to the [NANP].”²⁰ One-way calling features do not meet this aspect of the definition, either.

As a general matter, one-way outbound calling features to the PSTN—which tend to be provisioned through software applications that rely on internet-based transmissions—do not involve assigned telephone numbers. Rather, in the outbound calling context, voice calls originate from the application, travel over the internet to a partner provider, and are then routed through the PSTN to their intended recipient. Because these types of outbound calling features are one-way in nature, they do not require a telephone number to function. More specifically, in

²⁰ RAY BAUM’S Act § 503(a)(2)(C).

furnishing the service, they do not use NANP resources. Some outbound calling features allow the user to insert a verified telephone number into the CLI field by the user; but, critically, this telephone number is not required—and is not commonly used—to provision the feature and permit the outbound-only voice call to be placed. Indeed, the entity inputting the CLI information—the user—is not engaged in furnishing a voice communications service.

In light of these facts, it is clear that one-way calling features generally, and outbound-only calling features specifically, are not a “service . . . that furnishes voice communications to an end user using the resources of the [NANP] or any successor to the NANP.”²¹ The features themselves do not furnish voice communications using telephone numbers. To the extent telephone numbers are present, it is because they have been added by the user and are not a part of “furnishing” the service.

Had Congress sought to apply the requirements of the RAY BAUM’S Act to one-way calling features, it either would have defined “voice services” differently, or it would have included an additional category of features or services to which the Act’s requirements should apply. Congress did the former when it included “transmission’s from [one] telephone facsimile machine” to another in the definition of “voice services,” and it did the latter when it applied the Act’s requirements to “text messaging service,” a category of service with its own statutory definition.²² Congress did neither with respect to one-way calling features, making it clear that they fall outside of the statute’s requirements.

²¹ *Id.*

²² *Id.*

C. The Commission Has Additional Statutory Authority Should One-Way Calling Features Be Used For Illicit Caller ID Spoofing.

In addition, the Commission has at its disposal an array of statutory provisions—including Section 223 of the Communications Act²³—that enable it to take such action without increasing regulations unnecessarily on this service category. If a one-way calling feature were to be used inappropriately to harass or defraud a consumer, the Commission could look to Section 223 of the Communications Act to take action against the bad actor. While some provisions in Section 223 may be limited to telecommunications devices, others apply more broadly. For example, the Commission is authorized to take action when a person “makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to abuse, threaten, or harass any specific person”;²⁴ when a person “makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number”;²⁵ or when a person “makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any specific person.”²⁶ Using these tools would allow the Commission to target bad actors, including those fraudsters who use outbound-only PSTN calling services, without including outbound-only calling services within a definition that is bound to expand its scope of application over time.

²³ 47 U.S.C. § 223.

²⁴ 47 U.S.C. § 223(a)(1)(C) (use of a false identity via spoofed caller ID with the intent to harm would appropriately be considered failure to disclose one’s identity with the requisite intent).

²⁵ 47 U.S.C. § 223(a)(1)(D).

²⁶ 47 U.S.C. § 223(a)(1)(D).

IV. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its reply comments, as it considers the issues raised in the *Notice of Proposed Rulemaking*.

Respectfully submitted,

INCOMPAS

/s/ Christopher L. Shipley

Christopher L. Shipley
INCOMPAS
2025 M Street NW
Suite 800
Washington, D.C. 20036
(202) 872-5746

May 3, 2019