

May 30, 2019

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commissions
445 12th Street, S.W.
Washington, D.C. 20554

Re: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59; Call Authentication Trust Anchor, WC Docket No. 17-97

Dear Ms. Dortch:

On Tuesday, May 28, 2019, Angie Kronenberg and the undersigned counsel from INCOMPAS met separately with Zenji Nakazawa, Public Safety and Consumer Protection Advisor to Chairman Pai, and Jerusha Burnett of the Consumer and Governmental Affairs Bureau; Arielle Roth, Legal Advisor to Commissioner O’Rielly; and Patrick Webre, Mark Stone, Kurt Schroeder, Jerusha Burnett, Kristi Thornton (via teleconference), and Karen Schroeder (via teleconference) of the Consumer and Governmental Affairs Bureau to discuss the public draft of the Commission’s *Declaratory Ruling and Third Further Notice of Proposed Rulemaking* in the above-referenced proceedings.¹

On Thursday, May 30, 2019, Angie Kronenberg and the undersigned counsel from INCOMPAS met with Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Rosenworcel to discuss the public draft of the Commission’s *Declaratory Ruling and Third Further Notice of Proposed Rulamking* in the above-referenced proceedings.

INCOMPAS, the internet and competitive networks association, represents members that provide communications services across a variety of technological platforms and to a variety of customers, including residential, enterprise, and anchor institutions in rural, suburban, and urban areas. The association also represents technology companies that provide solutions and products integrated into the nation’s voice service networks. INCOMPAS reiterated its commitment to working with the Commission to eliminate illegal robocalls and described its participation on the Secure Telephone Identity – Governance Authority (“STI-GA”) Board of Directors. As the STI-GA representative for national competitive local exchange carriers (“CLECs”), INCOMPAS has dedicated time and financial resources to ensuring that all technologies and communications

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97, Draft Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC-CIRC1906-01 (“*Draft Declaratory Ruling*” or “*Third Further Notice*”).

business models can achieve the highest levels of attestation under this industry-led effort to implement the SHAKEN/STIR call authentication framework.

In the *Draft Declaratory Ruling*, the Commission proposes to allow voice service providers to offer call-blocking programs to their customers through an opt-out process. This proposal would represent a significant expansion of the authority of providers to block suspected robocalls,² and INCOMPAS expressed its concerns that embracing unknown and untested call blocking features as a default treatment amounts to an overcorrection that will actually further undermine consumer confidence in the value and seamless ubiquity of voice communications. INCOMPAS noted that blocking in a highly complex communications environment carries a high risk of unintended consequences, such as inadvertent blocking of wanted calls, or worse, discriminatory and anticompetitive behavior by large providers who use these programs to block calls originated by competitive providers in the name of consumer protection. INCOMPAS urged the Commission to explicitly state in the final item that call blocking may not be implemented in a manner that results in discriminatory or anticompetitive behavior. Specifically, INCOMPAS proposed additional language (attached hereto) that would insist that the analytics for call blocking programs be applied in a non-discriminatory, competitively neutral manner with a transparent process for prospectively correcting blocking of wanted calls.

The *Draft Declaratory Ruling* indicates that opt-out call blocking programs may be based on “any reasonable analytics designed to identify unwanted calls.”³ INCOMPAS encouraged the Commission to include greater specificity and clarification in the Draft Declaratory Ruling on not only what kind of analytics are illustratively “reasonable,” but also what is “unreasonable.” INCOMPAS suggested that the item could declare that one unreasonable analytics methodology would be for a carrier to favor its own (or affiliated) services, ensuring the service is not blocked because the carrier “reasonably knows” that calls it originates are not illegal, while blocking those of other carriers on the basis of “reasonable analytics” applied only to calls using other carriers’ services. INCOMPAS also recommended that the Commission establish a notification and review procedure to allow for transparency and review of call blocking decisions and behaviors. This would allow industry to understand more about the nature of the traffic being exchanged and quickly address concerns over call blocking.

On the issue of creating a safe harbor, INCOMPAS contended that it would be premature to permit such a protective measure until such time as SHAKEN/STIR is fully implemented and

² Permitting voice service providers to offer consumers call blocking through an opt-out process represents a significant expansion of the Commission’s call blocking policies. In the *Call Blocking Report and Order*, the Commission gave providers the opportunity to block illegal robocalls “in certain, well-defined circumstances” including phone numbers on a Do-Not Originate list, and calls from phone numbers that are invalid, unallocated, and in some instances, unused). See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (rel. Nov. 17, 2017).

³ *Draft Declaratory Ruling* at ¶ 33.

sufficiently tested to ensure that all communications platforms can achieve full attestation on the framework. Furthermore, the Commission should reject any requests to create a safe harbor from liability for the call blocking programs described in the *Draft Declaratory Ruling*. The broad use of a safe harbor for default blocking would bring significant anticompetitive risks and reduce the incentive of voice service providers to improve call-blocking programs.

Part of our members' concern with the application of a safe harbor is that SHAKEN/STIR solutions are not yet generally available by vendors or to the marketplace, and it remains to be seen whether the framework can be implemented in a uniform manner so that calls receive similar treatment across the industry. A non-uniform implementation would increase the difficulty for service providers building a system to accommodate varying iterations of the framework and raise the possibility of consumer confusion about call authentication when their calls receive different levels of attestation or are blocked. INCOMPAS asserted that major carriers are already considering additional algorithmic modeling to their implementation of SHAKEN/STIR that could degrade the level of attestation that some competitive providers are capable of achieving. Before a safe harbor is created as addressed in the *Third Further Notice*, INCOMPAS urged the FCC to commission an independent study of the effects of call blocking and authentication and to establish an expedited complaint or appeals process that would ensure that remedies are in place for cases of "false positives."

INCOMPAS commended the Commission for seeking comment on protections and remedies for callers whose calls are erroneously blocked. INCOMPAS urged the Commission to require voice service providers that participate in call blocking programs to provide a readily discoverable mechanism for challenging blocked calls and instances of "false positives." Additionally, carriers employing default call blocking should be required to notify and provide to affected originators an opportunity to cure instances of blocked calls or otherwise demonstrate the legitimacy of legal calls that they originate, and ensure the completion of such calls on an ongoing basis.

INCOMPAS also stated its preference that the Commission maintain an oversight role and serve as a "referee on the field" to ensure that no provider is blocking lawful traffic under the auspices of addressing the problem of illegal robocalls. To that end, the Commission should play an active role in monitoring the "reasonableness" of the analytics that carriers use in their call blocking programs. Carriers should submit the analytics to be used in their call-blocking programs via the Commission's protective order procedures for review before activating default call blocking to ensure that the criteria for calls is applied uniformly to all providers and in a manner that would avoid anticompetitive behavior.

On the topic of rural call completion, INCOMPAS expressed its members' concerns that call-blocking programs could jeopardize the progress that Congress and the Commission have made. The providers serving rural communities are likely to be the last to adopt SHAKEN/STIR solutions, making it more likely that calls originating from and terminating to these areas will have lower levels of attestation (which consumers are likely to reject). Finally, INCOMPAS

expressed its concern that valid conferencing, school messaging, and similar important services may fall under the “reasonable” analytics criteria proposed by the Commission in the *Draft Declaratory Ruling* and therefore could be blocked, even though valued by consumers. Several of our members provide these services and are concerned that since these calls are typically short in duration, done in bursts, and sent to large communities, they are likely to be flagged. These robocalls and robotexts are sent with parental permission, and in most cases, it is critical that these communications are permitted to get through. Several school districts that are customers of our members have had these calls blocked within the last two years using current blocking tools, and the Commission’s proposal to allow default call blocking could impact even more of these calls if not included in the Commission’s Critical Calls List.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

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APPENDIX

INCOMPAS proposes the following edits (in red) to the Commission's *Draft Declaratory Ruling* and *Third Further Notice* on eliminating illegal robocalls:

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34. In line with the record, we note several examples of call-blocking programs that may be effective and would be based on reasonable analytics designed to identify unwanted calls. For example, a call-blocking program might block calls based on large bursts of calls in a short timeframe; low average call duration; low call completion ratios; invalid numbers placing a large volume of calls; common Caller ID Name (CNAM) values across voice service providers; a large volume of complaints related to a suspect line; sequential dialing patterns; neighbor spoofing patterns; patterns that indicate TCPA or other contract violations; correlation of network data with data from regulators, consumers, and other carriers; and comparison of dialed numbers to the National Do Not Call Registry. Similarly, a call-blocking program might be designed to block callers engaged in war dialing, unlawful foreign-based spoofing, or one-ring scams and might be designed to incorporate information about the originating provider, such as whether it has been a consistent source of unwanted robocalls and whether it appropriately signs calls under the SHAKEN/STIR framework. Although we suggest these as examples of potentially effective opt-out call-blocking programs, this list is not exhaustive. To be reasonable, however, such analytics must be applied in a non-discriminatory, competitively neutral manner with a transparent process for prospectively correcting blocking of wanted calls.