

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

In the Matter of)	
)	
Implementing Section 13(d) of the Pallone-Thune)	EB Docket No. 20-22
Telephone Robocall Abuse Criminal Enforcement)	
and Deterrence Act)	
(TRACED Act))	

COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice* on the registration of a single consortium “that conducts private-led efforts to trace back the origin of suspected robocalls” in accordance with section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (“TRACED”) Act.¹ Specifically, INCOMPAS offers comments, pursuant to the *Public Notice*, on USTelecom’s Letter of Intent seeking consideration as the single registered traceback consortium.²

Since 2015, USTelecom’s Industry Traceback Group (“ITG”) has been leading the industry efforts to develop traceback procedures for the sharing of information concerning robocalling abuse schemes. USTelecom should be commended for its leadership in this area and its recognition that industry traceback efforts are more effective by including voice service providers from all segments of the industry. INCOMPAS members have been amongst the

¹ See *Enforcement Bureau Requests Letters of Intent for Traceback Consortium*, EB Docket No. 20-22, Public Notice, DA 20-430 (rel. Apr. 20, 2020) (“*Public Notice*”).

² See Letter of Patrick Halley, Senior Vice President, Policy & Advocacy, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, EB Docket No. 20-22 (filed May 21, 2020) (“USTelecom Letter of Intent”).

ITG’s long-standing members, and we anticipate that more members will engage with the group in its traceback efforts once the ITG is registered as the single industry traceback consortium. The recommendations that INCOMPAS offers below are intended to instill additional confidence that the ITG will be managed in an open and neutral way in accordance with the statutory obligations of the TRACED Act.³

The Commission’s *Report and Order* on the registration process established that an applicant must demonstrate in its Letter of Intent that it can satisfy the TRACED Act’s four statutory requirements for a single consortium, including the requirement that an applicant is a “neutral third-party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls.”⁴ With respect to this neutrality requirement, the Commission adopted a principle of “openness” as an indicator of neutrality and instructed applicants to demonstrate openness “by explaining how it will allow voice service providers to participate in an unbiased, non-discriminatory, and technology-neutral manner.”⁵ Furthermore, applicants can demonstrate openness by providing information “that their internal structural, procedural, and administrative mechanisms, as well as other operational criteria do not result in an overall lack of neutrality.”⁶ In the *Report and Order*, the Commission declined to mandate additional

³ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act of 2019 (“TRACED Act”), S. 151, 116th Cong. (2019) (enacted) at § 13(d)(1)(A).

⁴ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order and Further Notice of Proposed Rulemaking, FCC 20-34, ¶ 11 (rel. Mar. 27, 2020) (“*Report and Order*”) (citing TRACED Act § 13(d)(1)(A)-(D)).

⁵ *Id.* at ¶ 16.

⁶ *Id.* at ¶ 18.

requirements, finding that the statute did not require the Commission “to impose, a single specific structure or administrative methodology to ensure neutrality.”⁷

While INCOMPAS recognizes the Commission’s interest in preserving a certain amount of flexibility in the registration process and selection of a single consortium, that USTelecom’s ITG is the sole applicant should reinforce the need for the Commission to, in this specific instance, put in place additional mechanisms and criteria that will ensure the ITG’s ongoing neutrality. To that end, INCOMPAS recommends that the Commission consider two changes to USTelecom’s operation of the ITG that will promote openness and greater participation in the group’s traceback efforts.

First, consistent with the proposals of Intrado, an ITG Steering Committee Member,⁸ and NCTA,⁹ the ITG should have an independent board of directors composed of representatives from different sectors that govern the management and operations of the group. Intrado proposes that the independent board consist of a majority of individuals that are “not USTelecom members outside of the context of the ITG.” As explained by Intrado:

the activities of the ITG should be driven by a majority of independent voices of relevant knowledge, rather than solely or primarily by USTelecom-member advocates. The ITG consortium should be free to advance priorities that may sometimes differ from those of USTelecom’s members, as the independent governing board deems appropriate. And USTelecom’s advocacy organization must be recognized by regulators,

⁷ *Id.* at ¶ 19.

⁸ *See* Ex Parte Letter of Carolyn A. Mahoney, Counsel to Intrado Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 18-156, 17-97, CG Docket No. 17-59, EB Docket No. 20-22 (filed May 13, 2020), at 1-2 (“Intrado Ex Parte Letter”).

⁹ *See* Comments of NCTA—The Internet & Television Association, EB Docket No. 20-22 (filed Feb. 24, 2020), at 2 (recommending that the single traceback consortium “establish and maintain an executive committee or comparable forum in which representatives of different sectors of the industry are given an equal voice in the management of the consortium”).

policy makers, and other agencies as separate from the ITG, even though some USTelecom resources are shared among its advocacy organization and the ITG.

The ITG already has an Executive Committee that “provides direction to USTelecom to ensure that the governance and operation of the ITG are conducted in an unbiased, non-discriminatory and neutral manner that prohibits bias in favor of, or against any industry segment.”¹⁰

Furthermore, according to the Letter of Intent, six of the 13 members of the Committee are not members of USTelecom,¹¹ meaning that it should be relatively simple for USTelecom to make adjustments to the composition of the Executive Committee by adding more Executive Committee members that are not USTelecom members to accommodate Intrado’s proposal to have the ITG’s activities conducted by a majority of independent voices. INCOMPAS supports this proposed change to the administrative mechanisms of the ITG as it would provide the consortium and its members with structural independence from USTelecom, particularly, if as noted above, the Executive Committee members wish to pursue priorities that do not have the support of USTelecom’s advocacy organization. Additionally, this would promote greater transparency into the decision-making process of the organization, particularly for those members of the ITG that are not also members of USTelecom and ensure that the ITG is a neutral body as intended by Congress.

Second, the ITG should clarify the contribution obligations of membership and provide transparency into its budgeting process. USTelecom should be commended for making membership in the ITG available to “any voice provider . . . regardless of whether they provide

¹⁰ USTelecom Letter of Intent at 8.

¹¹ *Id.*

financial support.”¹² The ITG is more likely to encourage membership and voice service providers’ participation in the group’s traceback efforts by maintaining this policy. And while USTelecom’s Letter of Intent is clear that Affiliate Membership is open to providers that do not make a financial contribution, incongruities exist between the letter and the ITG’s Practices and Procedures on the contribution requirements for ITG Steering Committee Members, an important membership category that assumes more of the decision-making and implementation responsibilities for the ITG and industry tracebacks. Most prominently, the letter indicates that “a voluntary contribution to cover the costs of the ITG” is necessary for an Affiliate Member to become a Steering Committee Member,¹³ a requirement that is missing from the Steering Committee Member description in the ITG Practices and Procedures.¹⁴ Additionally, the Letter of Intent is vague as to the role of each membership category in contributing to the development of the ITG’s policies and practices.

INCOMPAS represents voice service providers that already serve at all levels of the ITG as well as others with an interest in joining the ITG at the Steering Committee Member level. As previously noted in our comments, these voice service providers have had participation fees determined by the ITG without having significant input or transparency into how the contribution was developed.¹⁵ Furthermore, it was unclear to these service providers how they might be able to influence the work of the ITG and development of industry traceback standards. INCOMPAS suggests that the Commission seek further clarification from USTelecom on the

¹² *Id.* at 6.

¹³ *Id.* at 5.

¹⁴ *Id.* at Appendix B, 5-6 (describing the five criteria of ITG Steering Committee Members).

¹⁵ *See* Comments of INCOMPAS, EB Docket No. 20-22 (filed Feb. 24, 2020), at 5.

ITG's contribution structure as well as the level of decision-making available to each membership category, and require USTelecom to incorporate this clarifying language into the ITG's Practices and Procedures. Further openness from USTelecom in these areas would further demonstrate how the ITG will serve consumers and the industry as a neutral third party.

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its comments as it further examines USTelecom's Letter of Intent to serve as the single industry traceback consortium.

Respectfully submitted,

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