

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

In the Matter of)
)
Advanced Methods to Target and Eliminate) CG Docket No. 17-59
Unlawful Robocalls)

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Fourth Further Notice of Proposed Rulemaking* seeking comment on further efforts to implement provisions of the TRACED Act,¹ including the consideration of further safe harbors for call blocking and an affirmative obligation for voice service providers under section 201(b) of the Communications Act to manage the threat of illegal robocalls.²

I. INTRODUCTION AND SUMMARY

INCOMPAS commends the Commission for the progress it has made with the *Third Report and Order* towards achieving the goals and objectives of the TRACED Act. INCOMPAS members are fully committed to working with the Commission to eliminate the threat of illegal robocalls. In this reply comment, INCOMPAS focuses on two issues from the *Fourth Further Notice*. First, INCOMPAS highlights opposition in the record to the Commission’s proposal to extend its safe harbor based on reasonable analytics to network-based blocking. Those opposed to this extension are concerned that the

¹ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (“TRACED Act”).

² See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, FCC 20-96 (rel. July 17, 2020) (“*Third Report and Order*” and “*Fourth Further Notice*”).

safe harbor lacks the objective criteria that would ensure that providers availing themselves of the protection do not engage in discriminatory or anticompetitive behavior. INCOMPAS also voices support for a proposal by the Ad Hoc Telecom Users Committee to establish an advisory group to create metrics for carriers' blocking behavior. Second, INCOMPAS urges the Commission to afford providers greater flexibility to implement the proposed affirmative obligations under section 201(b) of the Communications Act to participate in traceback, mitigate bad traffic, and develop measures to keep new customers from originating illegal calls.

II. THE COMMISSION SHOULD NOT EXTEND ITS SAFE HARBOR TO NETWORK-BASED BLOCKING THAT USES A SUBJECTIVE MANAGEMENT STANDARD.

INCOMPAS applauds the Commission for taking decisive action in the *Third Report and Order* to provide voice service providers engaged in authorized robocall blocking programs with sufficient liability protection by adopting safe harbors for call blocking based on reasonable analytics that include caller ID authentication information and blocking of bad-actor providers. In doing so, the Commission was able to meet the statutory requirements of the TRACED Act for establishing a safe harbor “for unintended or inadvertent blocking of calls . . . based, in whole or in part, on information provided by [] call authentication frameworks”³ while providing certainty that call blocking based, in part, on the STIR/SHAKEN framework will not result in liability. INCOMPAS commends the Commission for taking an incremental and measured approach to call blocking as a remedy for illegal robocalls. Now, the Commission proposes in the *Fourth Further Notice* to extend its safe harbor to cover other types of blocking based on caller ID authentication information, including network-based blocking. For the reasons stated below, INCOMPAS opposes this proposal.

³ TRACED Act § 4(c)(1)(B) (codified at 47 U.S.C. § 227b(c)(1)(B)).

Despite the Commission’s adoption of two safe harbors, the *Third Report and Order* devoted considerable analysis to concerns raised by stakeholders, like INCOMPAS, about overbroad call blocking and the potential for widespread blocking to be used for anticompetitive reasons.⁴ The Commission warned that “a broad safe harbor that lacks *objective* criteria could lead to widespread blocking of wanted calls and abuses.”⁵ INCOMPAS agrees and encourages the Commission to apply this analysis to the agency’s consideration of the proposed extension of its safe harbor in the instant proceeding. Here the Commission proposes to extend a safe harbor to cover network-based blocking of calls that are “highly likely to be illegal” provided that the blocking “is managed with sufficient human oversight and network monitoring to ensure that blocking is working as intended.”⁶ INCOMPAS agrees with those stakeholders that have emphasized that the subjective management standard of the proposed safe harbor (one based on “sufficient human oversight and network monitoring”) is “vague” and “unenforceable in practice.”⁷ Given the Commission’s concern about safe harbors that “lack objective criteria,” it should reconsider its approach.

Furthermore, the record in response to the *Fourth Further Notice* indicates that widespread blocking concerns persist among callers and voice service providers⁸ and that, for

⁴ See *Third Report and Order* at para. 50.

⁵ *Id.* (continuing that “[t]he lack of any clear standard would make it extremely difficult to determine whether a particular approach is reasonable”) (emphasis added).

⁶ *Fourth Further Notice* at para. 104.

⁷ See Comments of Twilio, CG Docket No. 17-59 (filed Aug. 31, 2020), at 7 (“Twilio Comments”).

⁸ See Twilio Comments at 4 (reporting that progress on erroneous blocking and mislabeling is “inconsistent across providers”); see also Comments of the American Bankers Association, *et al.*, CG Docket No. 17-59 (filed Aug. 31, 2020), at 9.

some, “overblocking has proliferated”⁹ since the Commission’s decision to permit voice service providers to engage in call blocking programs in the *Call Blocking Declaratory Ruling*.¹⁰

Additionally, WTA shares INCOMPAS’ concern that network-based blocking sets a troubling precedent for consumers who up to this point, have had the right and opportunity to make decisions to opt out of call blocking if so desired. According to WTA:

In the absence of . . . opt-out rights, call blocking is potentially subject to abuse as governments and/or service providers can over time acquire the ability to determine what is or is not an “unlawful robocall” and to block or not to block certain types of alleged “robocalls” for political or commercial purposes.

Should the Commission extend its safe harbor, INCOMPAS has suggested that the Commission should retain sufficient authority to take action against a voice service provider that uses this liability shield to regularly block legitimate traffic or engage in discriminatory behavior. In addition, INCOMPAS encourages the Commission to give serious consideration to the proposal of Ad Hoc to establish an advisory working group, perhaps through the North American Numbering Council, “to determine clear, appropriate metrics that should apply to carriers’ blocking practices both on a per-call basis and potentially at the network level.”¹¹ With respect to call blocking permitted under the *Call Blocking Declaratory Ruling*, INCOMPAS has

⁹ Comments of the Ad Hoc Telecom Users Committee, CG Docket No. 17-59 (filed Aug. 31, 2020), at 15 (“Ad Hoc Comments”).

¹⁰ See *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4898-4902, paras. 71-82 (2019) (*Call Blocking Declaratory Ruling and Further Notice*) (permitting voice service providers to engage in call blocking program based on any reasonable analytics).

¹¹ Ad Hoc Comments at 16 (arguing that an advisory board could “better determine appropriate standards for flagging those call considered highly likely to be illegal”).

repeatedly asked the Commission to clarify or provide additional information about what factors are “reasonable” for purposes of blocking calls. This proposal would attempt to answer that question for network-based call blocking. INCOMPAS agrees that an advisory group “would create a more level playing field” for callers and voice service providers alike and give voice service providers a better chance of minimizing the number of false positives that would inevitably occur using a subjective management standard.

III. THE COMMISSION SHOULD ADOPT A FLEXIBLE APPROACH TO MEETING THE PROPOSED AFFIRMATIVE OBLIGATIONS UNDER 201(B).

As the Commission continues to aggressively combat the threat of illegal robocalls, the *Fourth Further Notice* proffers several affirmative obligations for voice service providers, including (1) responding to traceback requests from the Commission, law enforcement or the Industry Traceback Group; (2) mitigating illegal traffic upon receiving notification from the Commission; and (3) implementing effective measures to prevent new customers from originating illegal calls. An important feature of the *Third Report and Order* is the Commission’s willingness to permit flexibility as providers adopt robocall mitigation solutions that best fit their networks and technology.¹² INCOMPAS members generally support these obligations, in that most members are engaging in these activities already; however, we urge the Commission to refrain from an overly prescriptive or burdensome approach and to accommodate, to the extent possible, small voice service providers who deal with greater challenges over resources and response timing than their larger counterparts.

¹² See, e.g., *Third Report and Order and Fourth Further Notice* at paras. 29 (giving terminating providers flexibility in how to incorporate caller ID authentication into their analytics) and 59 (allowing flexibility with respect to the production of notification codes for blocked calls).

Specifically, with respect to taking measures to prevent illegal calls from new customers, INCOMPAS urges the Commission to allow voice service providers to develop their own plan for ensuring that either new or renewing customers do not originate illegal calls. INCOMPAS members are actively engaged in efforts to keep illegal traffic off their networks, with most engaging in a combination of intensive network management, active participation in trace back requests, and rigorous onboarding practices. At the same time, competitive voice service providers use a variety of methods to onboard new or renewing customers and a “one-size fits all” approach with restrictive requirements could interfere with certain voice service models and the ability of these providers to compete with traditional voice services for customers. Instead, INCOMPAS agrees with associations like CTIA who urge the Commission “to encourage providers to develop their own approaches to mitigating illegal . . . robocalls and protecting consumers.”¹³

IV. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its reply comments as it examines the issues raised in the *Fourth Further Notice*.

¹³ Comments of CTIA, CG Docket No. 17-59 (filed Aug. 31, 2020), at 15.

Respectfully submitted,

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