

to-be-established Robocall Mitigation Database intended to aid in enforcement efforts. For the reasons stated herein, INCOMPAS and CCA urge the Commission to grant these petitions and issue a Public Notice seeking additional comment on these provisions.

I. RECONSIDERATION OF THE CENTRAL POINT OF CONTACT REQUIREMENT IS WARRANTED GIVEN THE MANNER IN WHICH VOICE SERVICE PROVIDERS ADDRESS ROBOCALL MITIGATION

The VON Coalition seeks reconsideration of the Order’s prescriptive requirement that voice service providers filing certifications of their efforts to stem illegal robocalls provide the name, title, department, business address, telephone number, and email address of a central point of contact within the company responsible for addressing robocall-mitigation-related issues.⁴ As the VON Coalition and others point out,⁵ requiring contact information for the specific *person* responsible is unnecessary and not indicative of how voice service providers conduct robocall mitigation.

Given the various requirements that have been imposed, including monitoring network traffic, cooperating with the Commission, law enforcement and the industry traceback consortium on traceback requests, complying with the STIR/SHAKEN mandate, and investigating and responding to reports of false positives, many voice service providers now utilize teams of employees to address robocall-related issues rather than a single individual. For large and multinational providers, these teams “are dispersed geographically, positions and locations change frequently, and in the COVID-era, many are working from home.”⁶ Instead of

⁴ See VON Petition at 2.

⁵ See Comments of BT Americas Inc., WC Docket No. 17-97 (filed Jan. 29, 2021), at 6 (“BT Americas Comments”).

⁶ VON Petition at 3.

the identification information required in the *Order* for a central point of contact, the Commission should permit alternative means of contact that will be easier for voice service providers to maintain and are more aligned with the way in which providers are addressing robocall concerns.⁷ Moreover, as noted by ZipDX’s opposition to VON’s petition, numerous providers are using “team” email addresses in the context of the Intermediate Provider Registry for rural call completion-related issues, likely because this is the best and most efficient way for a company to assess a request and direct it to the appropriate team member.⁸ Rather than an individual point of contact, a generic email that is actively monitored by a voice service provider’s robocall mitigation team should be sufficient to meet the Commission’s requirements for the yet-to-be established certification database.

II. PETITIONERS AND SUPPORTERS HAVE RAISED AMPLE EVIDENCE TO RECONSIDER THE FOREIGN PROVIDER PROHIBITION

Both the VON Coalition and CTIA seek reconsideration of the Commission’s decision to prohibit U.S. intermediate and terminating voice service providers from accepting traffic from foreign voice service providers that use NANP numbers that pertain to the United States and that do not appear in the yet-to-be established enforcement database. INCOMPAS and CCA share similar concerns to those of the petitioners and others⁹ that this “Foreign Provider Prohibition,”

⁷ 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, para. 54 (rel. July 17, 2020) (permitting voice service providers to offer alternative electronic means, such as web portals, chat bots, or other electronic means of contact, when designating a single point of contact for callers seeking to report blocking errors).

⁸ See DA 21-12: Opposition of ZipDX LLC re Petition for Partial Reconsideration of VON, WC Docket No. 17-97 (filed Jan. 6, 2021), at 3 (“ZipDX Opposition”).

⁹ BT Americas Comments at 2; see also Letter of Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 17-97 (filed September 23, 2020), at 1 (“USTelecom Ex Parte”) (asking the Commission to seek further

as CTIA refers to it, will result in “a host of implementation issues and is likely to result in unintended consequences that harm international communications” including the blocking of legitimate traffic to U.S. customers.¹⁰

Petitioners and those supporting reconsideration of the Foreign Provider Prohibition have provided ample evidence of implementation issues that were left unaddressed by the Order. In its Petition, CTIA indicates that American mobile wireless consumers will be harmed by the prohibition given the complexity of international mobile routing. According to CTIA, domestic voice service providers maintain “roaming agreements with hundreds of overseas network operators” all of which must be made aware of these new requirements and agree to participate in the database.¹¹ In its comments in support of reconsideration, BT Americas raises significant concerns over a lack of practical guidance on how to use the yet-to-be-developed database, “jurisdictional uncertainties” that might subject foreign voice service providers to U.S. tax or enforcement authority, and how foreign providers can reconcile its obligations to certify with the database with prominent international privacy and data protection requirements (such as the General Data Protection Regulation (GDPR) in the European Union.

Recognizing that the intention of the Commission was to create a “strong incentive” for foreign service providers to participate in U.S. robocall mitigation efforts, INCOMPAS and CCA remain concerned about the potential jurisdictional repercussions of the Commission’s Foreign Provider Prohibition. While the Commission does not require foreign voice service providers

comment on the “complexities associated with restricting intermediate providers from taking traffic from foreign voice service providers”).

¹⁰ BT Americas Comments at 2.

¹¹ CTIA Petition at 4.

to register, the draconian outcome of blocked calls renders the Commission’s action far from voluntary. As noted above, BT Americas asserts that the Commission failed to consider whether the act of registering might create a sufficient nexus to expose foreign providers to U.S taxes, as well as USF requirements, or the Commission’s authority in other regulatory matters.¹² Here the Commission is effectively extending U.S. enforcement powers over foreign carriers by requiring foreign carriers who wish to participate in U.S. traffic exchange to register in the database, which triggers compliance with U.S. law enforcement and industry traceback requests, and empowering the Commission to review and approve or reject a foreign carrier’s robocall mitigation plans. However, as noted by the VON Coalition, the Commission fails to include any analysis of its authority to do so or the implications that this decision might have on providers or international telecommunications commitments.¹³ Given these concerns, INCOMPAS and CCA encourage the Commission to seek additional comment on these jurisdictional issues and their impact on foreign carriers.

Additionally, prior to the adoption of the item, USTelecom was concerned enough about the “complexities” associated with the Foreign Provider Prohibition and how legitimate calls may be blocked that it submitted a series of questions that would help the Commission further develop the record on this issue.¹⁴ Having dismissed these efforts to caution the Commission, the agency must now consider the concrete evidence of technical problems and the high likelihood of blocking of legitimate calls associated with the Foreign Provider Prohibition that the VON

¹² See BT Americas Comments at 4.

¹³ See VON Coalition Petition at 4.

¹⁴ USTelecom Ex Parte at n. 4.

Coalition, CTIA, and BT Americas have entered into the record. With the compliance deadline imminent and solutions to these issues elusive, the Commission should modify this rule in accordance with its assertions in the *Second Report and Order* that it would reassess in light of further developments in the record.¹⁵

Finally, as the Commission considers these issues, it should also clarify, for the purposes of identifying foreign service providers that must register with the database, what it means to “use” NANP resources that pertain to the U.S. Under what circumstances is the Foreign Provider Prohibition triggered: if U.S. numbers are presented as the calling number, if a carrier procures numbers directly from the NANPA or other carriers with direct access to NANPA numbers resources, or if a call is handed off for termination to a PSTN number? INCOMPAS and CCA urge the Commission to seek further comment and to develop the record on these issues.

A. There Are Many Legitimate Use Cases for Utilizing NANP Number Foreign Originated Calls

As noted by the Petitions and the supportive comments of BT Americas, there are many legitimate reasons that a foreign-originated call would use a NANP number as the call back number.¹⁶ The Commission has acknowledged this as well having previously rejected proposals to block all foreign originated calls using U.S. numbers for fear that legitimate calls would be

¹⁵ See *Second Report and Order* at para. 94 (suggesting the Commission may consider modifications to the rule if voice service providers can provide the agency with concrete evidence of technical problems or likely blocking of legitimate calls through the Foreign Provider Prohibition).

¹⁶ CTIA Petition at 2 (noting risk of harmful consequences for international roaming); BT Americas Comments at 3 (noting that legitimate calls from foreign customer centers for US companies using US numbers could be blocked.)

blocked.¹⁷ The Commission cited as an example of the legitimate use of NANP numbers by foreign providers a “U.S.-based user of a service [who] may be traveling in Europe but uses their service to make Wi-Fi-based calls (and have their U.S. caller ID shown.)”¹⁸

As another example, many U.S. companies that offer around-the-clock customer support establish contact centers or virtual offices in foreign countries to take advantage of different time zones or other efficiencies. Thus, a customer call to a U.S. company may be answered by a representative located in England, Europe or Asia. If that call is disconnected, the representative will seek to call the customer back, and use a U.S. number in the caller ID to help ensure the call is answered. The caller will be expecting a call back from a U.S. number, not a foreign number. These and many other legitimate calls using U.S. numbers may well be inadvertently blocked by the Commission’s Foreign Provider Prohibition.

B. The Widespread Use of Foreign Intermediate Providers Renders the Rule Unworkable

The wide-spread use of foreign intermediate providers, which the Commission did not appear to consider, renders the Foreign Provider Prohibition unworkable in many instances.¹⁹ As noted, the rule requires domestic terminating providers and intermediate providers to block traffic received “directly” from a “foreign voice service provider” that uses NANP numbers

¹⁷ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9721, ¶ 43 (2017) (“We agree with commenters that internationally originated calls may have lawful reasons to use a NANP number.”)

¹⁸ *Id.* at 9721, ¶ 43 (quoting Comments of the Voice on the Net Coalition, CG Docket No. 17-59, at 6 (filed June 30, 2017)).

¹⁹ As CTIA notes, reconsideration is appropriate where the rule’s approach is “unworkable.” CTIA Petition at 9.

unless it has registered in the yet-to-be-established robocall mitigation database.²⁰ The Commission defines a “foreign voice service provider” as an entity that has “the ability to originate voice service.” In short, the rule bars U.S. providers from accepting traffic directly from a foreign provider that originates calls.

Just as is the case for domestic voice service providers, however, foreign originating providers seldom hand off calls directly to a U.S. gateway or terminating provider. Instead, as noted in CTIA’s petition, they often use one or more foreign intermediate carriers to transport their calls and it is these intermediate carriers that hand the call off “directly” to U.S. carriers.²¹ The U.S. carrier will only know to check the registry for the name of the intermediate carrier from which it directly received the call. It likely will not know which “foreign voice service provider” originated the call. Thus, even if the originating foreign voice service provider registered, its calls may be blocked unless the intermediate provider that handed the call off directly to a domestic gateway also happens to register.

The widespread use of foreign intermediate providers creates enormous implementation problems because foreign intermediate providers, just like domestic intermediate carriers, are not subject to the registration requirement. Domestic intermediate providers will be in the robocall mitigation database only because the Commission will automatically transfer them from the rural call completion database.²² As the Commission states, “[b]ecause intermediate providers that do not originate any traffic are not subject to our notification requirements, they will not otherwise

²⁰ 47 C.F.R § 64.6305(c).

²¹ See CTIA Petition at 4-5 (noting that there are “a number of hand-offs for a call on its way back to a US consumer”).

²² *Second Report and Order* at n. 340.

be in the database.” The Commission thus would not anticipate foreign intermediate providers to be in the robocall mitigation database. Perhaps foreign intermediate providers will attempt to register in the mitigation robocall database, but they then will be undertaking an obligation not imposed on their domestic counterparts. This potentially discriminatory treatment may aggravate the legitimate concerns regarding compliance with international reciprocal obligations and potential retaliation.²³

ZipDX, the only party to oppose the Petitions, confirms the concerns noted above. ZipDX notes that numerous intermediate providers may carry calls to the U.S. because foreign voice service providers, just like domestic providers, commonly utilize Least Cost Routing.²⁴ ZipDX’s Pollyannaish view that things will work out or that companies should now undertake a risk analysis in the context of waiver filings misunderstands the APA’s requirements for rational rulemaking.²⁵ The APA requires that cost-benefit analysis and risk assessment be undertaken during the rulemaking process and thus inform an agency’s decision, not after the rule has been promulgated. The APA does not countenance a shoot first ask questions later form of rulemaking.

As demonstrated in the record and discussed above, there are a number of legal and factual issues with the new requirement that the FCC has not addressed that counsel reconsideration of the requirement.

²³ See VON Petition at 4; BT Americas Comments at 4-5.

²⁴ ZipDX Opposition at 4-6 (describing scenarios where U.S. carriers reject calls from unregistered intermediate providers).

²⁵ *Id.* at 5 (“The system should self-correct, as long as SOME foreign providers register.”) As noted above, however, intermediate providers are not subject to the registration requirement.

III. CONCLUSION

For the aforementioned reasons, INCOMPAS and CCA urge the Commission to grant the petitions for reconsideration of the VON Coalition and CTIA and issue a Public Notice or Further Notice of Proposed Rulemaking seeking additional comment on the Foreign Provider Prohibition.

Respectfully submitted,

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February 8, 2020