

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate Unlawful Robocalls)	CG Docket No. 17-59
)	
Call Authentication Trust Anchor)	WC Docket No. 17-97

REPLY COMMENTS OF INCOMPAS

INCOMPAS submits these reply comments in response to the Federal Communications Commission’s (“Commission”) *Seventh Further Notice of Proposed Rulemaking* in CG Docket No. 17-59 and *Fifth Further Notice of Proposed Rulemaking* in WC Docket No. 17-97 on expanding and clarifying call authentication and robocall mitigation requirements to cover other providers in the call path in order to protect American consumers from illegal robocalls.¹

I. INTRODUCTION & SUMMARY

As the Commission considers whether to expand certain robocall mitigation and call authentication requirements to cover other providers in the call path, INCOMPAS urges the Commission to adopt proposals in this proceeding that would provide cross-sector symmetry and fill gaps in the current regulatory framework. At the same time, the Commission must recognize that the threat of illegal robocalls is an industry-wide problem and should avoid placing unnecessary and anticompetitive burdens on certain classes of providers. To that end, in these

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order, *Seventh Further Notice of Proposed Rulemaking* in CG Docket No. 17-59, and *Fifth Further Notice of Proposed Rulemaking* in WC Docket No. 17-97, FCC 22-37 (rel. May 20, 2022) (“*Gateway Provider Order*” and “*Further Notice*”).

reply comments, INCOMPAS urges the Commission to extend its general mitigation standard to all voice service providers without placing a higher burden on VoIP providers and offers comment on why two of its proposed enforcement actions may be ineffective.

II. VOIP PROVIDERS SHOULD NOT FACE A HIGHER BURDEN TO MEET THE COMMISSION'S GENERAL MITIGATION STANDARD

In the *Further Notice*, the Commission proposes to extend a general mitigation standard to voice service providers that have implemented STIR/SHAKEN in the IP portions of their networks to all intermediate providers. This general mitigation standard would require providers to take “reasonable steps” to avoid originating, terminating, carrying, or processing illegal robocall traffic.² INCOMPAS supports the Commission’s proposal to extend the standard and does not object to the Commission’s proposal to require domestic providers to file a mitigation plan detailing the steps and practices they are taking to prevent the origination of fraudulent calls along with a certification in the Robocall Mitigation Database (“RMD”). These requirements, when applied broadly to all sectors of the industry and paired with the flexibility that providers currently enjoy to ensure they do not originate, terminate, process or carry such traffic, should have a positive impact on the Commission’s efforts to mitigate illegal robocall campaigns.

INCOMPAS would also caution the Commission against adopting more prescriptive rules that would threaten the current flexibility that providers have to take measures that meet the needs of their customer to mitigate illegal robocalls or sector-specific requirements that might otherwise undermine regulatory symmetry. Specifically, VoIP providers should not face a higher burden to meet the Commission’s “reasonable steps” standard. To do so “would be anti-competitive and would result in the type of definition-splitting that would make compliance

² See *Further Notice* at para. 188.

difficult if not impossible.”³ As noted above, the new requirements to file a detailed mitigation plan and a certification in the RMD will bring VoIP providers into further alignment with industry, and additional VoIP-specific obligations would likely lead to more industry confusion and regulatory asymmetry. Furthermore, INCOMPAS agrees that “additional requirements for VoIP providers could significantly slow the adoption of IP interconnection and . . . the industry’s adoption of SHAKEN.”⁴ INCOMPAS maintains that the threat of illegal robocalls is an industry issue and impacts every type of provider. As such, the Commission should adopt its proposed changes to the general mitigation standard in a technology and sector-neutral manner and avoid additional obligations for VoIP providers that could negatively impact competition in the market.

III. ENFORCEMENT ACTIONS THAT WOULD REMOVE PROVIDERS FROM THE RMD BASED ON VOLUME OF TRACEBACK REQUESTS AND THAT SUBJECT FOREIGN PROVIDERS TO FCC JURISDICTION MAY BE INEFFECTIVE

In the *Further Notice*, the Commission seeks comment on a number of enforcement actions that the agency could take to hold voice service providers accountable for a failure to comply with its robocall mitigation rules. INCOMPAS generally encourages the Commission to take immediate enforcement action against bad actors originating illegal robocall campaigns. However, while the association takes no position on the agency’s proposal to impose forfeitures for failures to block calls on a per-call basis, INCOMPAS urges the Commission to reject plans to automatically exclude providers from the RMD that receive multiple traceback requests and to

³ Comments of VON Coalition, CG Docket No. 17-59, WC Docket No. 17-97 (filed Aug. 17, 2022), at 5 (questioning how VoIP specific requirements would apply to providers that offer a mix of VoIP and TDM-based services).

⁴ Comments of Telnyx, CG Docket No. 17-59, WC Docket No. 17-97 (filed Aug. 17, 2022), at 3.

find non-common carrier providers registered in the RMD “to hold a Commission certification such that they are subject to the Commission’s jurisdiction” for reasons mentioned below.

With respect to removing providers from the RMD, the Commission asks whether providers that receive multiple traceback requests should be automatically excluded from the database.⁵ Although this proposal has received some support in the record, including calls to “suspend high-risk providers from the [RMD] if they receive a third traceback request within twelve months,”⁶ this approach inappropriately overlooks the investigatory and information sharing efforts of providers that engage in the traceback process with the Commission, law enforcement, and the Industry Traceback Group (“ITG”) in order to identify bad actors. As recently noted by the ITG, “[a]nalyzing comprehensive traceback data is a complex undertaking that is informed by a variety of factors. . . . [R]elying on discrete, raw traceback data in a vacuum may not be a meaningful indicator of a given provider’s compliance with applicable law.”⁷ In its recent letter to the Commission, the ITG offers multiple examples of how a provider with no foreknowledge of an illegal robocall campaign, may show up in traceback requests. In most of these examples, voice service providers and their partners are the victims of bad actors that have located a “vulnerability in an originating provider’s mechanisms for onboarding individual

⁵ See *Further Notice* at para. 210. In the alternative, the Commission seeks comment on whether it would be appropriate for the Commission to start an enforcement action against such providers. INCOMPAS posits that an enforcement action is only justified in situations in which a voice service provider is complicit in the origination and knowing distribution of an illegal robocall campaign.

⁶ See Comments of Electronic Privacy Information Center and National Consumer Law Center, CG Docket No. 17-59, WC Docket No. 17-97 (filed Aug. 17, 2022) at ii.

⁷ See Letter of Joshua M. Bercu, Executive Director, Industry Traceback Group, to Marlene Dortch, Secretary, FCC, CG Docket No. 17-59, WC Docket No. 17-97 (filed Sep. 1, 2022) at 3-4.

customers” or that are impersonating legitimate providers.⁸ Here, the ITG makes it clear that the number of traceback requests that a provider receives is not indicative of its responsibility for illegal robocall campaigns.⁹ Furthermore, as the capacity of the ITG to detect and investigate illegal robocall campaigns continues to grow, INCOMPAS expects the number of ITG-issued traceback requests to increase. As such, it would be inappropriate for the Commission to consider automatically suspending providers from the RMD based on the volume of traceback requests they receive and their participation in the traceback process. INCOMPAS urges the Commission to reject this proposal.

Additionally, INCOMPAS is concerned that the Commission’s proposal to find that non-common carrier providers registered in the RMD “hold a Commission certification such that they are subject to the Commission’s jurisdiction” may have unintended consequences that impact the effectiveness of the RMD.¹⁰ The *Gateway Provider Order* requires domestic voice service providers to only accept calls carrying U.S. NANP numbers directly from a foreign provider that originates, carries, or processes a call carrying U.S. NANP numbers if that foreign provider is registered in the RMD.¹¹ Foreign providers that fail to register in the RMD are at risk of having their calls blocked by downstream providers. As pointed out by the Cloud Communications Alliance (“CCA”), the Commission’s proposed rule would subject foreign providers to the

⁸ *Id.* at 5.

⁹ *Id.* at 6 (“[R]aw traceback data can be both misleading and harmful. Absent proper context and appropriate investigation, raw traceback data can understate the complicity of purposefully evasive bad actors while at the same time incorrectly stating or overstating the responsibility of a voice provider, including lesser-known small providers.”)

¹⁰ *Further Notice* at para. 212.

¹¹ *See* Comments of Cloud Communications Alliance, CG Docket No. 17-59, WC Docket No. 17-97 (filed Aug. 17, 2022) at 11.

Commission’s general jurisdiction. INCOMPAS concurs with CCA’s assessment that “[i]t is unclear whether the Commission would in fact be able to exercise such extraterritorial jurisdiction” over these providers and shares the Alliance’s concern that this could ultimately lead to a refusal by foreign voice service providers to file in the RMD, which could marginalize the database’s effectiveness.¹² INCOMPAS similarly requests that the Commission exempt foreign service providers if it otherwise seeks to subject domestic non-common carrier providers to the agency’s jurisdiction through the proposal.

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 *Further Notice*.

Respectfully submitted,

INCOMPAS

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¹² *Id.*