

**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)

To: The Commission

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (the “VON”)¹ respectfully files these comments in response to the Commission’s Notice of Proposed Rulemaking and Notice of Inquiry (“NPRM/NOI”) in the above-captioned proceedings.² VON supports the Commission’s efforts to eliminate illegal robocalls.³ However, those efforts need to be balanced with the practicalities of the marketplace, the recognition that no single solution will stop all illegal robocalls, and the reality that the bad actors can easily react to avoid detection once solutions have been implemented. Thus, VON cautions that any adopted solutions 1) must work in the long term; 2) not block legal calls; 3) not cost more to implement than they will yield in benefits to consumers; and 4) maintain competitive neutrality among voice service providers and technologies.

¹ The VON Coalition is the leading advocacy organization for the Internet communications industry, working with legislators, regulators, and other policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information see www.von.org.

² *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59, FCC 17-24 (rel. March 23, 2017); *see also*. 82 Fed. Reg. 22625, rel. May 17, 2017 (establishing a comment deadline of July 3, 2017).

³ VON members are working with the Federal Trade Commission (“FTC”) and international, federal, and state law enforcement bodies to reduce robocalls, including pursuing enforcement actions against U.S. entities and fraudsters throughout the world.

General concerns with call blocking solutions. Call blocking is an extreme response, particularly when blocking standards are not settled and have not been tested for the potential of inadvertent consequences, including with new technologies. The Commission has long held, and acknowledges in this proceeding, that call blocking is a violation of the Communications Act, even when done to combat unlawful behavior.⁴ Ultimately, the reliability of the nation’s communications networks, and the public’s perception of such reliability, must remain the critical consideration for any policy decisions made to stop illegal robocalls. A cautious and deliberate approach, while it may take more time, will ensure that the operation of the public switched telephone network (“PSTN”) is not diminished.

Moreover, this is not solely a Commission problem. The Commission is only one component in the fight against illegal robocalls. This effort must also include the FTC, international regulators, coordination between law enforcement in the US and abroad, technological solutions and consumer education. Extreme measures – including overly-zealous call blocking requirements -- should not be necessary with proper engagement on multiple fronts.

Finally, robocallers are smart. Once voice service providers begin blocking specified telephone numbers or types of telephone numbers, robocallers will move to a different block of telephone numbers. Most voice service providers offer per call blocking, which individual subscribers to block calls from specified numbers. This option prevents rampant blocking of legal robocalls, including those that may have been subject to a handful of customers complaints, but that are otherwise lawful calls.

⁴ NPRM/NOI at fn. 31.

Specific concerns with proposed call blocking solutions. As an initial matter, VON supports the FCC’s definition of an illegal robocall⁵ and the concept that voice service providers may block certain calls to protect subscribers from illegal robocalls.⁶ That said, it’s concerning that the Commission also states that blocking a call from a spoofed number does not violate Sections 201 and 202 of the Communications Act.⁷ Spoofed calls are not per se illegal. Section 227(e) of the Communications Act requires intent to render unlawful the act of spoofing caller ID (“with the intent to defraud, cause harm, or wrongfully obtain anything of value”).⁸ Further, the Commission acknowledges that there may be valid reasons for spoofing caller ID that do not involve fraudulent intent.⁹ Accordingly, to state broadly that “blocking a call from a spoofed number is not, by definition, an unjust or unreasonable practice” is overly broad and inconsistent with both the Communications Act and Commission policy. Thus, blocking legitimate spoofed calls should remain an unreasonable practice; and the Commission must be more precise as it determines which calls may be legally blocked.

VON also supports the Commission’s proposal to make clear that voice service providers may block calls from a number if the subscriber to that number requests such blocking in order

⁵ An “illegal robocall” is one that violates the requirements of the Telephone Consumer Protection Act of 1991 (“TCPA”), the related FCC regulations implementing the TCPA, or the Telemarketing Sales Rule, as well as any call made for the purpose of defrauding a consumer, as prohibited under federal and state laws and regulations, including the federal Truth in Caller ID Act. *Id.* at para. 13

⁶ *Id.* at para. 11.

⁷ *Id.* at para. 12.

⁸ 47 U.S. Code § 227(e).

⁹ See “Spoofing and Caller ID” at <https://www.fcc.gov/consumers/guides/spoofing-and-caller-id> (last visited June 16, 2017) (“In some cases, spoofing can be permitted by courts for people who have legitimate reasons to hide their information, such as law enforcement agencies working on cases, victims of domestic abuse or doctors who wish to discuss private medical matters.”).

to prevent its phone number from being spoofed.¹⁰ This proposal legitimately keeps the consumer in control of its own phone number but there are concerns. Specifically, industry must develop a way to manage this restriction so that it does not negatively impact a subsequent subscriber to that number or interfere with number portability. In addition, if this proposal requires a joint, industry-shared database, it will need to be determined which voice service providers receive access to the database, who pays for the database and who will be responsible for correcting errors.¹¹ Moreover, will voice service providers who do not block these calls be subject to FCC enforcement or civil lawsuits?¹²

The Commission also seeks comment on authorizing providers to block calls from three categories of numbers: (1) invalid numbers, (2) valid numbers that are not allocated to a voice service provider,¹³ and (3) valid numbers that are allocated but not assigned to a subscriber.¹⁴ VON does not object to permitting blocking from invalid numbers or valid numbers that are not allocated to a voice service provider.¹⁵ However, the FCC should refrain from allowing providers to block calls from numbers that have been allocated to a provider but are not assigned

¹⁰ NPRM/NOI at para. 14.

¹¹ Related to this proposal, the Commission should clarify the lawfulness of information sharing since not all voice service providers (e.g., providers of non-interconnected VoIP) are subject to the CPNI rules. *Id.* at para. 15. Also, note that some voice service providers may be subject to consent decrees (with FCC enforcement bureau, FTC, etc.) with limitations on handling of personally identifiable information; and they should be accounted for as well.

¹² The Commission should consider delaying the effectiveness of any rules adopted in this proceeding that raise technical questions requiring further deliberation by the Robocall Strike Force or a newly established industry working group (open to, and including, all stakeholders) formed to resolve these questions.

¹³ VON notes that voice service providers may incur costs if the block table gets too large and the provider has to pay for expanded capacity.

¹⁴ *Id.* at paras. 16-23.

¹⁵ The Commission should recognize that there may be delays implementing certain of the blocking capabilities as smaller voice service providers may get monthly updates from the local exchange routing guide; while larger providers get real-time feeds.

to a subscriber because it currently is technically infeasible to determine if an assigned number is in use or may have been assigned to a subscriber such as a VoIP provider rather than directly to end users.¹⁶ There simply is no database that supplies this information across providers in a timely fashion.¹⁷ Adoption of this requirement also runs a high risk that a new voice service customer cannot complete calls because his or her number is still classified as unassigned.¹⁸

Moreover, certain voice service providers may use “proxy” numbers that may not meet a standard definition of “assigned.” Such proxy numbers are dynamically assigned rather than assigned to a specific subscriber. The use of “proxy” numbers allows service providers to recycle numbers more quickly, thus reducing the numbering resources required and slowing number exhaust. Without the use of proxy numbers, when a number is no longer being used it would need to be returned to the provider and then cooled for 90 days. In addition, the use of proxy numbers for 911 callback numbers is important for the deployment of next-generation 911; so blocking these calls could be detrimental to emergency services.

International calls. The Commission seeks comment on whether an internationally originated call from a NANP number should be subject to these rules, whereas calls with

¹⁶ Specifically, the real time sharing of subscriber active data between providers is currently not possible. Mobile subscribers are best positioned with home location register (“HLR”) number lookup type services but do not share this information with non-roaming partners. Wireline and VoIP subscribers don't use HLR type services.

¹⁷ The Commission asks whether the Number Portability Administration Center (“NPAC”) could provide such information. NPRM/NOI at para. 22. VON suggests that the NPAC is only partially accurate for SMS; NetNumber would be the more accurate source of monitoring user assignment of SMS-enabled numbers.

¹⁸ If the Commission adopts this proposal, it should also adopt a definition of “unassigned” that minimizes the likelihood of blocking of lawful calls. In addition, “subscriber” should be defined to include entities (e.g., VoIP providers) -- not just individuals -- that are assigned numbers by another voice service provider. Not doing so would jeopardize the viability of all VoIP providers since almost all of their calls could otherwise be identified as robocalls and blocked.

international numbers would not be covered.¹⁹ VON recommends that internationally originated calls purportedly originated from a NANP number should not be subject to these rules. Many providers route their IP-based calls abroad before they terminate in the US. These calls are lawful and not made with the intent to defraud. For instance, a US-based user of a service may be traveling in Europe but uses their service to make Wi-Fi-based calls (and have their US caller ID shown). These calls should not bear the risk of getting blocked.²⁰

Safe harbor. The Commission asks whether to adopt a safe harbor to give voice service providers certainty that they will not be found in violation of the call completion and other Commission rules when they block calls based upon an application of objective standards.²¹ VON is concerned that safe harbors are going to excuse blocking of some legitimate calls and, may lead to an increase in the number of legitimate blocked calls. Moreover, safe harbors should not be permitted for volumetric practices (at least not for volumetric filters absent other filtering measures).²² However, if safe harbors are adopted, they should apply to all voice service providers, including non-interconnected VoIP providers. The Commission should maintain competitive neutrality among voice service providers and technologies. Moreover, while safe harbors may relieve voice service providers of liability from Commission enforcement

¹⁹ NPRM/NOI at para. 24.

²⁰ VON agrees with the Strike Force that providers can block illegal calls without violating the call completion rules and such blocked calls should not be counted for purposes of calculating a providers' call completion rate. NPRM/NOI at para. 26. However, not all voice service providers can identify the blocking source and may not be capable of excluding such calls from reporting.

²¹ NPRM/NOI at para. 28.

²² The Commission and industry should instead build methods, practices, and objective standards that err on the side of completion of lawful calls and in compliance with call completion rules. Safe harbors disincentivize efforts to avoid blocking of legitimate calls.

proceedings, it may not shield voice service providers from civil liability.²³

SHAKEN. The FCC seeks comment on whether the framework established by ATIS and the SIP Forum, known as signature-based handling of asserted information using tokens (or “SHAKEN”), once widely adopted, should allow voice service providers to block calls for which the Caller ID has not been authenticated.²⁴ VON believes that SHAKEN holds promise but it is not yet ready for industry-wide implementation or approval. As an initial matter, unauthenticated Caller ID alone should not be sufficient grounds to block a call; but should be used in combination with other methods. In addition, there are still outstanding questions whether the framework and standards will work equally well with VoIP calls and traditional wireline calls. Specifically, not all VoIP callers have telephone numbers *and* the calling/originating network does not always own the number. Many legitimate calls are not originated on the PSTN and, accordingly, do not originate from a telephone number. For example, outward-bound one-way calling applications permit calls to be made to PSTN telephone numbers but do not allocate telephone numbers to the calling party. Any arrangement for, or approval of, a trusted identity framework must ensure that technologies that do not assign telephone numbers to callers will not be vulnerable to Commission-approved blocking by other voice service providers.

In scenarios where a subscriber owns a number on a remote (other) network, SHAKEN currently does not allow for presenting the remote calling line ID on a home-network-originated call (*e.g.*, a SkypeOut customer might have a valid mobile telephone number but SHAKEN wouldn’t allow use of that for caller ID on SkypeOut). It’s also not clear how international calls from countries not adopting SHAKEN will be treated on the U.S. network, nor is it clear

²³ The Commission should also provide all voice service providers a confidential white list of all public safety answering point telephone numbers that should never be blocked.

²⁴ NPRM/NOI at para. 32.

whether the customers of voice providers not participating in SHAKEN will be able to complete outgoing calls. Thus, there remains work to be done before the SHAKEN framework is adopted or used as a basis for affording safe harbor protection.

Traceback. The FCC seeks comment on whether information obtained through traceback efforts can and should be used to identify future calls that are illegal to a reasonably high degree of certainty.²⁵ Traceback is complicated by the fact that you cannot always identify the originating carriers; intermediate carriers may insert headers, which would require a hop by hop analysis. For international calls, calling line identification (“CLI”) may be blocked, except for calls originating within the carrier’s network. Moreover, most CLI is not authenticated; nor can it be authenticated at this time. The best mechanism for enforcement would be from the originating carriers of illegal robocalls, who are in the best position to do their own fraud prevention.

²⁵ NPRM/NOI at paras. 30, 33.

CONCLUSION

The VON Coalition supports the Commission's proposals to eliminate illegal robocalls, consistent with the discussion above.

Respectfully submitted,

VOICE ON THE NET COALITION

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