



February 10, 2022

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of Ex Parte Presentation, WC Docket No. 17-97, Call Authentication Trust Anchor; CG Docket No. 17-59, Advanced Methods to Target and Eliminate Unlawful Robocalls

Dear Ms. Dortch:

This *ex parte* Notice relates to a meeting held on February 8, 2022 between several national consumer and privacy groups¹ and a several staff members of the Federal Communications Commission² about the need for the Commission to protect telephone subscribers from robocalls that perpetrate criminal frauds. During the meeting, the advocates presented a PowerPoint (which is filed with this *ex parte*).

Summary of Presentation

The thrust of the discussion was to strongly encourage the FCC to adopt a more aggressive regulatory structure that will effectively stop the *billions* of robocalls perpetrating criminal frauds against U.S. telephone subscribers each year. In 2021 over **59 million subscribers** lost almost **\$30 billion** from these calls. The FCC should protect subscribers by creating a system that incentivizes telecommunications providers at multiple points to block scam calls. This could be accomplished by —

1. Requiring all providers to engage in *effective* robocall mitigation.
2. Making effective robocall mitigation a condition for getting on and staying on the Robocall Mitigation Database (and prohibiting all providers from taking calls from upstream providers that are not on the RMD).
3. Making all tracebacks conducted by the Industry Traceback Group (ITG) accessible to the public (at least as to the caller, the originating provider and the next downstream provider in the U.S.).

¹ Attendees from the national consumer and privacy groups were Margot Saunders and Carolyn Carter on behalf of the low-income clients of the **National Consumer Law Center (NCLC)**, Megan Iorio and Chris Frascella of the **Electronic Privacy Information Center (EPIC)**, John Breyault of the **National Consumers League**, George Slover of **Consumer Reports**, Teresa Murray of **U.S. Public Interest Research Group (U.S. PIRG)**, Nick Garcia of **Public Knowledge**, and Santiago Suero of **UnidosUS** (who attended in listening mode only; UnidosUS has not yet developed a position on the issues discussed). Additionally, Ted Hobson (with the Consumer Assistance Program in the Vermont Attorney General's Office) attended but made clear that any views expressed were his personal opinions and not necessarily the opinions of the Vermont Attorney General.

² FCC staff attending included members of the Commission's Bureau of Consumer and Governmental Affairs and the Wireline Competition Bureau: Jonathan Lechter, Kristi Thornton, Jerusha Burnett, Aaron Garza, Karen Schroeder, Kris Monteith, Michele Burroughs, and Zachary Ross.

Scope of the Problem

More than **one billion robocalls attempting criminal fraud** (scam robocalls) are answered by U.S. telephone subscribers **every month** (either in person or by voice mail), representing more than a third of the 4 to 5 billion robocalls answered each month.³ The top 1,000 scam campaigns are responsible for nearly half of these scam calls.⁴ Leading scam robocalls include [vehicle warranty](#),⁵ [Medicare scams](#),⁶ [health insurance scams](#),⁷ and [bill reduction](#).⁸ Other common types of scams are government imposter scams (e.g. [Social Security Administration](#)⁹ and [IRS](#)¹⁰) and [Amazon-related scams](#).¹¹ The robocall blocking company YouMail has thousands of recordings of such fraud campaigns.

The FTC public tableau of frauds reported to government agencies for the first three quarters of 2021 includes 540,327 fraud reports made through a phone call and another 290,551 through texts to cell phones, an increase of 102% from the same period in 2020.¹² Since not all victims make these reports, more accurate statistics of the actual number of robocall frauds are reflected in the extrapolated statistics

³ See *Americans Hit by Just Under 46 Billion Robocalls in 2020, Says YouMail Robocall Index*, PRNewswire (Jan. 26, 2021), <https://www.prnewswire.com/news-releases/americans-hit-by-just-under-46-billion-robocalls-in-2020-says-youmail-robocall-index-301215139.html> (last visited Feb. 10, 2022) (indicating that scams represented 46% of robocalls in 2020).

⁴ YouMail confidential data provided to NCLC. After identifying the top 1,000 scam campaigns in a single week and examining the calls made in January 2022 by only those top campaigns, YouMail's private data indicated that more than **458 million** scam robocalls were made by the top 1,000 scam campaigns in that 30-day period.

⁵ Id. YouMail estimates over **28 million of these calls** were answered by U.S. telephone subscribers in January 2022; recording at <https://media.youmail.com/mcs/glb/audio/s6diZGlyX3dsemRmYTp0b21jYXQ3NzgyOjE2MTk3OTI2OTI1ODlmlnUiR4.gen.wav>

⁶ Id. YouMail estimates over **5.6 million of these Medicare scam calls** were answered by U.S. telephone subscribers in January 2022: <https://media.youmail.com/mcs/glb/audio/s6diZGlyX2g4dGRmYTp0b21jYXQ2MjYwOjE2MzQzMjc3MjEzMzFYvHyyZF.gen.wav>

⁷ Recording of just one of many health insurance campaign scam calls: <https://media.youmail.com/mcs/glb/audio/s6diZGlyX2duemRmYTp0b21jYXQ3OTUxOjE2NDMzMjQ4ODY3OTVQsfbCbe.gen.wav>

⁸ Recording of just one of many fake bill reduction campaign: <https://media.youmail.com/mcs/glb/audio/s3diZGlyX3QwOGRpcjpodWI0NDY0MTcyOjE1Njc4MDM0NTg3NjNjNjbcQ.N.gen.wav>

⁹ Recording at: <https://media.youmail.com/mcs/glb/audio/s3diZGlyX3QwN2RpcjpodWI2NDE4NzkzOjE1NTMzMjQ4ODY3OTVQsfbCbe.gen.wav>

¹⁰ Courier Video, *Fake IRS Scam Recording*, YouTube (Jul. 2, 2017), <https://www.youtube.com/watch?v=ANm4uBimRXA> (last visited Feb. 10, 2022).

¹¹ Recording at: <https://media.youmail.com/mcs/glb/audio/s6diZGlyX2hqOGRmYTp0b21jYXQ1ODA5OjE2MjYxMjEzMjU4ODlwLIRGr7.gen.wav>

¹² See FTC Consumer Sentinel Network, *Fraud Reports by Contact Method*, Year: 2021 YTD (updated Nov. 23, 2021), available at <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudFacts> (last visited Feb. 10, 2022) (hereafter "FTC Fraud Reports by Contact Method") (indicating 540,327 fraud reports using the phone call contact method and 290,551 using the text contact method from Q1-Q3 2021, as compared with 384,873 phone call for Q1-Q4 2020).

from surveys conducted by Truecaller, an industry service provider: **59.4 million Americans were victims of fraud through robocalls or texts in the 12 months period ending in June 2021.**¹³

FTC figures for losses reported by consumers reveals \$529 million stolen in the first three quarters of 2021,¹⁴ an annual rate of \$705 million—an increase of 64% from 2020. Truecaller’s survey data estimates that U.S. telephone subscribers had **\$29.8 billion stolen through robocall scams in the 12 months before June 2021**, a steep increase from 2020.¹⁵ The FTC’s median amount lost was \$1,250,¹⁶ or \$1,300 if the victim was over age 80.¹⁷

Criminal fraud syndicates gain what these consumers lose, but providers of robocall services and American service providers that handle illegal calls are also making money from these fraudulent robocalls: providers are paid for every answered call. That is the problem. As Commissioner Starks has observed: “*illegal robocalls will continue so long as those initiating and facilitating them can get away with and profit from it.*”¹⁸

But the defrauded American telephone subscribers are not the only losers. The Commission has estimated that each illegal call carries an externalized cost of \$0.10 cents per call.¹⁹ Assuming one billion illegal calls per month, this represents \$100 million every month, or \$1.2 billion every year. These are externalized costs paid by all of us in lost time, aggravation, and emotional expense from the privacy invasion caused by the unwanted and illegal calls. And this is in addition to the losses from the victims of the frauds.

Additionally, illegal calls are causing a significant degradation of the entire U.S. telephone system, as many Americans now do not answer calls from unknown numbers. This increases costs for health care providers, small and large businesses, and their call recipients, who are missing or incurring delays in time-critical communications for fear of answering a robocaller. These unwanted calls are also a prime reason that many landline subscribers are dropping their landline subscriptions.²⁰

Detecting Illegal Robocalls

Tracebacks. Callers that are transmitting illegal calls are automatically notified of that fact whenever they are the recipient of a traceback request from the Industry Traceback Group (ITG, operated by USTelecom),

¹³ See Truecaller Insights 2021 U.S. Spam & Scam Report, Truecaller Blog (June 28, 2021), available at <https://truecaller.blog/2021/06/28/us-spam-scam-report-21/>.

¹⁴ See FTC Fraud Reports by Contact Method.

¹⁵ See Truecaller Insights, *supra* note 13.

¹⁶ See FTC Fraud Reports by Contact Method (with quarters 1 through 3 of 2021 checked).

¹⁷ *Id.* Percentage Reporting a Fraud Loss and Median Loss by Age, Year: 2020 (updated Nov. 23, 2021), available at <https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/LossesContactMethods> (Age & Fraud Losses tab with 2020 (the most recent year available) checked).

¹⁸ *In re* Call Authentication Trust Anchor, WC Docket No. 17-97 (Sept. 30, 2021) (Statement of Comm’r Geoffrey Starks), available at <https://docs.fcc.gov/public/attachments/FCC-21-105A3.pdf>.

¹⁹ See *In re* Advanced Methods to Target and Eliminate Unlawful Robocalls and Call Authentication Trust Anchor, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59 and WC Docket No. 17-97, FCC 19-51, ¶ 40, June 6, 2019, available at <https://docs.fcc.gov/public/attachments/FCC-19-51A1.pdf>; *In re* Call Authentication Trust Anchor and Implementation of TRACD Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 17-97, 20-67, FCC 20-42, ¶ 47, March 31, 2020, available at <https://docs.fcc.gov/public/attachments/FCC-20-42A1.pdf>.

²⁰ See Samantha Hawkins, *Frontier Communications Sues Mobi Telecom Over Robocalls*, Bloomberg Law (Feb. 9, 2022 12:32 PM), available at: <https://news.bloomberglaw.com/privacy-and-data-security/frontier-communications-sues-mobi-telecom-over-robocalls>.

which provides traceback services of suspicious calls for state and federal law enforcement.²¹ The process of tracing suspicious calls automatically notifies the providers that they have transmitted illegal calls.²² In addition, the ITG routinely sends providers responsible for originating and transmitting the calls at the beginning of the call path notices about the nature of the calls they are transmitting.²³

CDRs. It is not hard for responsible providers to evaluate which robocalls are illegal. Every provider has Call Detail Records (CDRs) for all their calls. (It is through the CDRs that the traceback process is conducted). The CDRs include the duration, source number, and name of the upstream provider for each call. Through the CDRs, providers can distinguish between legal and illegal robocalls. A provider can identify likely illegal calls by examining the percentage of calls answered, the ratio of different Caller-ID information (referred to as Automated Numbering Information, or ANI) to the number of total calls, and the average duration of calls.²⁴

Comparing Legal Robocalls to *Illegal* Robocalls

Legal Robocalls	Illegal Robocalls
Relatively high percentage of calls are answered	Low percentage of calls are answered
Legitimate telemarketer typically uses only a single caller-ID for the entire telemarketing campaign or demographic. (This allows callers to track their calls)	Spoofed caller-IDs, with caller-ID-to-called-number ratios often less than 2 (meaning that each caller-ID is used for 2 or fewer calls)
	Almost all calls are short duration, <ul style="list-style-type: none"> • averaging less than 20 seconds (because the called party hangs up) • 99% or more of calls last less than a minute • Less than 1% of calls last more than 2 minutes

Change the Incentive Structure

Without the cooperation of providers, the criminally fraudulent calls that have invaded the U.S. telecommunications system would never reach American consumers. Providers can easily identify likely illegal calls through simple analytics, yet providers continue to accept these calls and pass them on to telephone subscribers. Suing or prosecuting the callers or the complicit providers one-by-one is an entirely inadequate strategy. As the **12 billion fraudulent robocalls** made last year indicates, the criminals are overwhelming the resources of law enforcement, and winning, yet the actual number of complicit providers is relatively small and they are in the U.S.

²¹ See Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, § 13(d), 133 Stat. 3274 (Dec. 30, 2019), available at <https://www.govtrack.us/congress/bills/116/s151/text>.

²² See Complaint for Injunctive Relief and Civil Penalties, and Demand for Jury Trial, North Carolina v. Articul8, LLC and Paul K. Talbot, No. 1:22-cv-00058 at ¶ 42 (M.D.N.C. Jan. 25, 2022) (hereafter “Articul8 Complaint”), available at: https://ncdoj.gov/wp-content/uploads/2022/01/FILED-Complaint_NC-v-Articul8_22-cv-00058-MDNC-2022.pdf.

²³ Each traceback notice sent to every provider in the call path contains a text description of the call, typically explaining what makes it illegal. (“The caller FRAUDULENTLY claims to be a representative of the Social Security Administration, telling the called party that their SSN has been used to deal drugs in Texas. This is a prerecorded or automated voice played to a wireless subscriber.”) In addition, most traceback notices include a link to the recorded message that was captured. North Carolina alleged that ITG notified Articul8 of this illegal traffic 49 times for calls. Articul8 Complaint at ¶¶ 93-94, 98-99.

²⁴ A recently filed case by the North Carolina Attorney General, in an action against provider Articul8, provides a concrete example of how these metrics can be used to determine illegal calls. The complaint alleges that—in a single day—one of Articul8’s downstream providers routed more than 17 million calls more than 70% of which were not answered, that of the 4.4 million calls that were answered the average duration was 11 seconds, and the call-per-ANI ratio was 1.08 meaning nearly each of the more than four million calls seemed to come from a distinct (illegally spoofed) number. Articul8 Complaint at ¶ 65.

But the Commission can change this dynamic. To do so, the Commission should create a regulatory structure that protects subscribers *first*. The interests of providers that are even suspected of transmitting fraudulent robocalls should be subordinated to the need to protect subscribers from these criminal syndicates. Providers of services to the criminals defrauding Americans are no different than people who provide criminals the keys to their victims' homes. They should be treated as such by the Commission.

We urge the Commission to establish a system that requires all providers to engage actively in effective robocall mitigation, to bar providers from the U.S. telecommunications system if they do not, and to place tools for mitigation in the public domain. With these steps, all providers will be incentivized to police the calls they are transmitting—or else they will suffer financially. The Commission should make the following changes:

1. **Mitigation Requirement.** All providers, particularly intermediate providers, should be required to police the calls they transmit and achieve *effective* robocall mitigation. The requirement should be to achieve *results*, not merely to follow a specified set of template steps. Providers should have a duty to refine and improve their mitigation methods continuously in order to counter callers' evasion tactics.
2. **Expanded Requirements for the RMD.**
 - a. All providers, including intermediate providers, that transmit calls to American telephone numbers should be required to be on the Robocall Mitigation Database (RMD) for their calls to be accepted by the next downstream provider.
 - b. Prerequisites to get on and stay on the RMD should be expanded to include:
 - i. Requiring all providers to engage in *effective* robocall mitigation (possibly with a higher burden for VoIPs);
 - ii. Full public disclosure of all persons involved in ownership and in the operation of VoIPs;
 - iii. Excluding any provider with ownership by persons previously found to have violated the rules (to ensure providers cannot simply change their names and re-list).
 - c. Providers should be excluded from the RMD for—
 - i. Appearing in multiple tracebacks for suspicious calls,
 - ii. Continuing to transmit campaigns of illegal calls after notice, or
 - iii. Failing to respond to a traceback request.
3. **Make Tracebacks Public.** The tracebacks conducted by the ITG should be completely public and immediately accessible to the public for at least the caller, the originating or gateway provider within the U.S., and the next downstream provider. Additionally, the ITG should be required to provide a tool that allows easy searching of tracebacks to determine providers who have transmitted suspicious calls in the past. This tool will enable all providers that are interested in ensuring that they are not transmitting suspicious calls to know which providers to avoid. Public access to tracebacks will also enable law enforcement to coordinate their prosecutions more easily against complicit providers, and callers who wish to ensure that their calls are not blocked because of the business practices of their providers to know which providers to avoid.

Conclusion

We urge the Commission to change the rules and protect American telephone subscribers from the billions of fraudulent robocalls that invade the U.S. telecommunications system every year. The changes we recommend are well within the powers of the FCC. Promulgating these changes would make a significant difference in the lives of the nation's telephone subscribers.

So long as American providers can make more money from handling illegal calls than from not handling illegal calls, American providers will continue to transmit illegal calls. It is up to the Commission to change this dynamic.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104). This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Thank you for your consideration.

Sincerely,

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