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June 4, 2020

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementing Section 13(d) of the Pallone–Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act))
) EB Docket No. 20-22
)
)

REPLY COMMENTS OF [52] STATE ATTORNEYS GENERAL

I. Introduction

The undersigned State Attorneys General submit these Reply Comments in support of the public notice issued by the Enforcement Bureau,¹ which amends and adopts its rules inviting any interested consortia that seek to be selected, in accordance with Section 13(d) of the Pallone–Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (“TRACED Act”)², as the single registered consortium that will both serve as a neutral third party to manage the private-led efforts to trace back the origin of suspected unlawful robocalls, and be responsive to the needs of interested parties, including State Attorneys General.³

State Attorneys General have long been leaders in the fight against illegal robocallers and their assault on the American people’s privacy. As a

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¹ See *Implementing Section 13(d) of the Pallone–Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 20-22 (released Mar. 27, 2020) (hereinafter “R&O and FNPRM”).

² Pallone–Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (hereinafter “TRACED Act”).

³ See, e.g., R&O and FNPRM at ¶¶ 15, 16, and 21.

result of the rise of caller ID spoofing, there is limited visibility of the entities and individuals that perpetrate these harassing and unlawful calls. State Attorneys General have prioritized tracking down these bad actors and bringing their illegal activity to light.

II. Traceback is Necessary for Law Enforcement to More Efficiently Identify and Investigate Illegal Robocallers

In late 2017, forty-five State Attorneys General formed the Robocall Technologies Working Group, a bipartisan multistate coalition to investigate the technological solutions that major voice service providers were designing, developing, and implementing in order to choke off these illegal calls at their source.⁴ In 2019, fifty-one State Attorneys General and fifteen voice service providers agreed to a set of Anti-Robocall Principles,⁵ which outline common-sense business practices that voice service providers can implement to minimize these calls, including offering call blocking for free to their customers, analyzing and monitoring their network traffic for patterns consistent with illegal robocalls, and taking action against suspicious callers. One of the foundations of these Principles is a commitment to participate in “traceback” investigations, which is the process of determining the origin or source of a robocall, typically by starting with the receiving party and terminating voice service provider and tracing the call backwards through the path of intermediate providers, ultimately, to the originating voice service provider and the origin of the call.⁶ Without traceback efforts, bad actors can, and will, continue

⁴ The Robocall Technologies Working Group is led by North Carolina*, New Hampshire*, and Indiana*, and currently includes Alabama, Alaska, Arizona*, Arkansas*, California*, Colorado*, Connecticut, District of Columbia*, Delaware, Florida*, Hawaii, Idaho, Illinois*, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts*, Michigan*, Minnesota, Mississippi*, Missouri, Nebraska*, Nevada, New Jersey, New York, North Dakota, Ohio*, Oklahoma, Oregon, Pennsylvania*, Rhode Island, South Carolina, South Dakota, Tennessee, Texas*, Utah, Vermont*, Virginia, West Virginia, and Wisconsin. Executive Committee members are indicated by an asterisk (*).

⁵ Fifty-One State Attorneys General, *Anti-Robocall Principles*, <https://ncdoj.gov/download/141/files/19699/state-ags-providers-antirobocall-principles-feb-2020-with-signatories>.

⁶ Principle #4. Investigate Suspicious Calls and Calling Patterns. *If a provider detects a pattern consistent with illegal robocalls, or if a provider otherwise has reason to suspect illegal robocalling or spoofing is taking place over its network, seek to identify the party that is using its*

to operate in secrecy by hiding behind a misleading or inaccurate caller ID name and number, and by routing calls through numerous providers' networks prior to reaching consumers across this country.

The Executive Committee of the Robocall Technologies Working Group has been prioritizing traceback efforts since 2018, and is eager to work cooperatively with the consortium selected by the Commission to effectively and efficiently engage in cross-carrier traceback investigations to trace illegal robocalling campaigns, and to identify those that are originating such campaigns to law enforcement agencies. The State Attorneys General recognize, in accordance with the TRACED Act and with this R&O and FNPRM, that tracing a call to its source requires immense collaboration and cooperation across the telecommunications industry,⁷ since a single call can—and typically does—pass through the networks of multiple voice service providers before reaching its final destination. To date, we have worked with

network to originate, route, or terminate these calls and take appropriate action. *Taking appropriate action may include, but is not limited to, initiating a traceback investigation, verifying that the originating commercial customer owns or is authorized to use the Caller ID number, determining whether the Caller ID name sent to a receiving party matches the customer's corporate name, trademark, or d/b/a name, terminating the party's ability to originate, route, or terminate calls on its network, and notifying law enforcement authorities.*

....

Principle #6. Require Traceback Cooperation in Contracts. For all new and renegotiated contracts governing the transport of voice calls, *use best efforts to require cooperation in traceback investigations by identifying the upstream provider from which the suspected illegal robocall entered its network or by identifying its own customer if the call originated in its network.*

Principle #7. Cooperate in Traceback Investigations. To allow for timely and comprehensive law enforcement efforts against illegal robocallers, *dedicate sufficient resources to provide prompt and complete responses to traceback requests from law enforcement and from USTelecom's Industry Traceback Group. Identify a single point of contact in charge of responding to these traceback requests, and respond to traceback requests as soon as possible.*

See id. (emphases added).

⁷ See TRACED Act § 13(d), 133 Stat. at 3287; R&O and FNPRM at ¶¶ 2, 5, and 21 (recognizing that “[c]ollaboration with private-led traceback efforts is important to unmask the identities of those entities making the illegal robocalls,” and that, for the selected registered consortium to be a “competent manager of the private-led efforts to trace back the origin of suspected unlawful robocalls,” such consortium must “work cooperatively and collaboratively across the industry”).

USTelecom's Industry Traceback Group, which has provided State Attorneys General with the results of its cross-carrier traceback investigations.

Recently, in January 2020, State Attorneys General met with federal law enforcement partners, several major voice service providers, as well as USTelecom, to discuss important considerations for the traceback process, including: (1) criteria to be taken into account when prioritizing illegal robocalling campaigns for traceback investigations; (2) modifications to the logistics of the traceback process that would aid law enforcement investigative efforts; (3) incorporating consumer complaint data from the offices of State Attorneys General into traceback investigations in order to help identify the perpetrators of the illegal robocall campaigns directly affecting our constituents; and (4) streamlining processes for document production to law enforcement pursuant to subpoenas and civil investigative demands.⁸

III. Traceback also Exposes those that Assist and Facilitate Illegal Robocallers

Not only do traceback investigations help to identify entities and individuals conducting illegal robocalling campaigns, but these investigations also shed light on members of the telecommunications ecosystem that are assisting robocallers in their efforts to scam consumers. Some voice service providers refuse to cooperate with efforts to trace illegal calls to their source. Others may cooperate with traceback requests, but are repeatedly deemed to be either a provider originating illegal robocall campaigns, or a provider that is the U.S. point of entry for illegal robocalling campaigns that originate overseas. However, if a voice service provider knows, or consciously avoids knowing, that the millions of robocalls it traffics across its network to the American people are illegal calls, that provider is violating laws that prohibit providing

⁸ See, e.g., National Association of Attorneys General, *52 Attorneys General Join Effort to Expand Illegal Robocall Response*, <https://www.naag.org/naag/media/naag-news/52-attorneys-general-join-effort-to-expand-illegal-robocall-response.php> (May 4, 2020, 2:00 p.m. ET).

substantial assistance or support to one engaged in deceptive and abusive telemarketing acts or practices.⁹

In some cases, both state and federal law enforcement agencies have sent letters to such voice service providers in an effort to notify them of the law, and to encourage them to take immediate action to cut off these calls from originating on, or passing through, their networks. Additionally, the Attorney General for the State of Ohio, with the FTC, recently sued Globex Telecom, Inc., a VoIP service provider, for allegedly violating the Telemarketing Sales Rule by assisting and facilitating telemarketers that it knew or consciously avoided knowing were making misrepresentations to consumers about goods or services offered or sold using unlawful, prerecorded messages.¹⁰ The U.S. Department of Justice also brought civil actions against VoIP providers and individuals for engaging in wire fraud and conspiracy to commit wire fraud by transmitting millions of fraudulent robocalling scam calls to recipients in the United States, which included government imposter scams, tech support scams, and loan scams, and resulted in consumers losing money.¹¹ In that case, the Court granted an injunction to prohibit the defendants from engaging in any call termination services or carrying any VoIP calls terminating in the United States based on its consideration of evidence of defendants' "reckless indifference" to the fraud they were enabling, which evidence included the civil investigative demands that defendants were issued by the Attorneys General for the States of Missouri and Indiana regarding investigations of illegal telemarketing calls that were being routing through the

⁹ See 15 U.S.C. §§ 6101–6108; 16 C.F.R. § 310.3(b).

¹⁰ See *FTC v. Educare Ctr. Servs., Inc.*, No. 3:19-cv-00196 (W.D. Tex. Am. Compl. filed Dec. 3, 2019); see also *United States v. Dish Network L.L.C.*, 954 F.3d 970, 976 (7th Cir. 2020) ("A principal that learns of illegal behavior committed by its agents, chooses to do nothing, and continues to receive the gains, is liable for the agent's acts.").

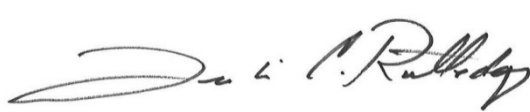
¹¹ See *United States v. Palumbo*, No. 1:20-cv-00473, slip op. at 1–6 (E.D.N.Y. filed Mar. 24, 2020).

defendants’ networks, as well as defendants’ receipt of, and response to, traceback investigation notifications.¹²

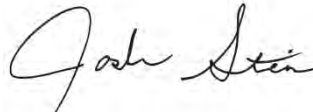
IV. Conclusion

State Attorneys General are unwavering in their commitment to combat illegal robocalls by pursuing the scammers perpetuating the illegal calls, as well as those in the industry that facilitate this traffic and, ultimately, make these calls possible. We applaud the Commission’s diligent work to select a single neutral consortium that will manage the effort to trace back the origin of suspected unlawful robocalls in order to identify and expose wrongdoers. We look forward to continuing our law enforcement efforts in cooperation with the Commission’s selected registered consortium.

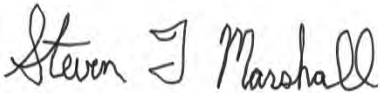
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¹² See *id.* at 9, 12–13, and 17–18 (determining that, “[w]hether by design or not, the telecommunications ‘intermediary’ industry is set up perfectly to allow fraudulent operators to rotate telephone numbers endlessly and blame other parties for the fraudulent call traffic they carry”).



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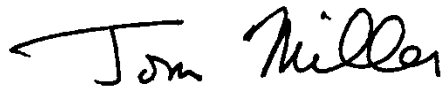
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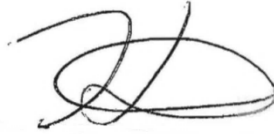
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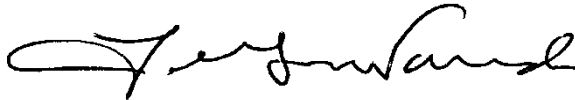
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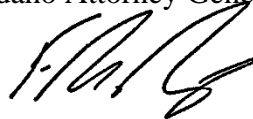
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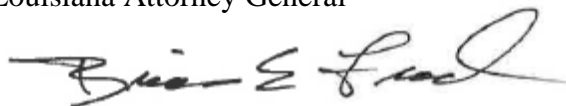
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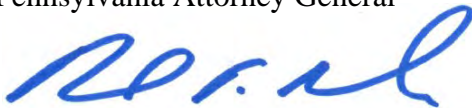
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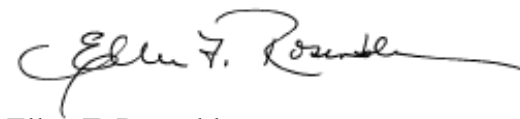
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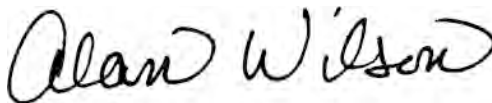
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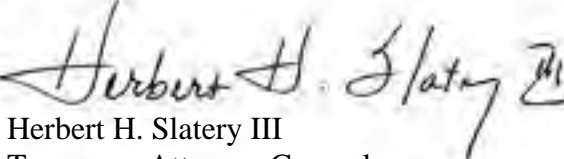
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