

3COM ROBOCALL MITIGATION PLAN

I. Background

The Federal Communications Commission (“FCC” or “Commission”) has adopted rules requiring non-gateway intermediate service providers, like 3Com, to, among other things, file certifications and robocall mitigation plans in the FCC’s Robocall Mitigation Database (“RMD”). 47 CFR § 64.6305(f); *see also Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18 (Mar. 17, 2023) (“*Sixth Caller ID Authentication Report and Order*”).

The FCC requires non-gateway intermediate service providers to certify, by February 26, 2024, in the Commission’s RMD whether they have implemented the STIR/SHAKEN authentication framework, and that all of the calls that they carry or process are subject to a robocall mitigation program consistent with the Commission’s rules.¹ 47 CFR § 64.6305(f). The provider’s mitigation plan shall include “reasonable steps the non-gateway intermediate provider has taken to avoid carrying or processing illegal robocall traffic as part of its robocall mitigation program,” and shall include a commitment to respond within 24 hours to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to carry or process calls.” 47 C.F.R. § 64.6305(f)(2).

Despite imposing a general duty to mitigate “robocalls,” the Commission’s codified rules do not define “robocall.”² The TRACED Act defines “robocall violation” as “a violation of subsection (b) or (e) of section 227 of the Communications Act of 1934.” TRACED Act § 11(d), Pub. L. No. 116-105,

¹ See <https://docs.fcc.gov/public/attachments/DA-24-73A1.pdf> (WCB Jan. 25, 2024 Public Notice).

² The Commission’s TCPA-related regulations pertinent to voice service providers, 47 C.F.R. § 64.1200, use the undefined term “illegal traffic,” 47 C.F.R. § 64.1200((k)-(m)), while its STIR/SHAKEN-related regulations define the FCC’s public-facing Robocall Mitigation Database, but not the “robocalls” that are to be mitigated. 47 C.F.R. § 64.6300. Thus, neither of the regulations that bear directly on the project of robocall mitigation expressly define “robocall.” *Cf. In re Advanced Methods to Target & Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rule Making, 32 FCC Rcd. 9706, 9725 ¶ 56 (Nov. 17, 2017) (declining to define “illegal robocall,” and acknowledging that “the record shows confusion regarding how the proposed definition of ‘illegal robocall’ should apply to the call blocking rules.”); *In re Core Communications, Inc., et al. Tariff F.C.C. No. 3*, WC Docket No. 21-191, Order, 36 FCC Rcd. 9997, 9999 (June 23, 2021) (In a related context, stating that the “Commission defines a robocall as a call made using an automatic telephone dialing system or an artificial or prerecorded voice.”) (citing 47 U.S.C. § 227(b)(1); 47 CFR § 64.1200(a)). 3Com therefore focuses on the two types of unlawful calls—227(b) and 227(e) of the TCPA—that Congress expressly addressed.

133 Stat. 3274 (2019); *id.* at § 13(d)(f)(3) (defining a “suspected unlawful robocall” as a “call that the Commission or a voice service provider reasonably believes was made in violation of subsection (b) or (e) of section 227 of the Communications Act of 1934.” Thus, 3Com’s training and mitigation efforts focus, as they must, on potentially unlawful calls that violate either (a) 47 U.S.C. § 227(b) (governing non-emergency calls initiated with a prerecorded or artificial voice or an automatic telephone dialing system, as that term has been interpreted by the Supreme Court in *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2001)) or (b) 47 U.S.C. 227(e), or the Truth in Caller ID Act, which prohibits people from causing “any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value,” absent an applicable exemption.

The FCC’s rules also contemplate that the non-gateway intermediate provider’s plan should describe “any procedures in place to know its upstream providers and the analytics system(s) it uses to identify and block illegal traffic, including whether it uses any third-party analytics vendor(s) and the name of such vendor(s).” 47 C.F.R. § 64.6305(f)(2)(ii). The Commission has acknowledged, however, that, “we do not currently require [] providers other than gateway providers to engage in ‘know-your-upstream-provider’ procedures, [but] if they have put such procedures in place, they must be documented in their robocall mitigation plan,” and that “we do not specifically require providers to use call analytics.” *Sixth Caller ID Authentication Report and Order* ¶ 40 & n.155-56.

The Commission has explained that a robocall-mitigation program is “sufficient if it includes detailed practices that can reasonably be expected to significantly reduce” the provider’s carriage of illegal robocalls, and the voice service provider complies with the practices described in its plan. *Sixth Caller ID Authentication Report and Order* ¶ 31. This document outlines 3Com’s robocall mitigation plan.

II. 3Com’s Know Your Customer (“KYC”) Standards

3Com is a wholesale, intermediate provider that focuses its business and operations on the domestic, wholesale voice services communications market. It has a small handful of these customers. Among other data points collected and, as appropriate, verified, as part of its customer onboarding process, 3Com gathers the following customer-identifying details

- Customer business name, including DBAs,
- state of incorporation,
- physical business location,
- contact person(s), with business phone number, physical headquarters address, and email address(es);
- FCC 499 Filer ID and FRN;
- Robocall Mitigation Database link, indicating STIR/SHAKEN compliance, role in call path, and mitigation plan, as applicable;
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3Com’s verification practices include confirming a carrier customer’s reported status in the

FCC's Form 499 Filer database, and the Commission's Robocall Mitigation Database to ensure it is facially compliant and consistent with the representations made as part of the onboarding process, and the prospective customer has not been delisted by the FCC.

III. 3Com's Acceptable Use Policy

3Com's customers' use of its services are subject to its Acceptable Use Policy (AUP). Among other things, this AUP prohibits:

- Using the Services to engage in any activities that are illegal, abusive, false, fraudulent, deceptive or misleading, or any activity that exploits, harms, or threatens to harm children.
- Engaging in any unsolicited advertising, marketing, or other unlawful activities using the Services, including, without limitation, any activities that violate laws applicable to advertising, electronic communications, and telemarketing, including, but not limited to, Section 5 of the FTC Act (15 U.S.C. § 45), the CAN-SPAM Act (15 U.S.C. §§ 7701-7713), the Telemarketing Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101-6108), the Federal Trade Commission Telemarketing Sales Rule (16 C.F.R. § 310 et seq.), the Telephone Consumer Protection Act (47 U.S.C. §§ 227), the Federal Communications Commission regulations (47 C.F.R. 64.1200 et seq.) and orders implementing the Telephone Consumer Protection Act, and all federal and state Do Not Call and calling-time restriction laws and regulations.
- Creating a false identity, forged email address or header, phone number, or otherwise attempting to mislead others as to the identity of the sender or the origin of a message or phone call, including failing to comply with the Truth in Caller ID Act.

3Com is authorized to suspend and/or terminate all Services in the event of an AUP violation.

IV. Telephone Number Authorization and STIR-SHAKEN Capabilities

3Com is a non-gateway intermediate provider that only contractually agrees to accept traffic that is already STIR/SHAKEN-authenticated before it is handed off to 3Com for carriage, and therefore does not have a STIR/SHAKEN implementation obligation. *See Sixth Caller ID Authentication Report and Order* ¶ 20 ("the first intermediate provider in the call path may completely avoid the need to authenticate calls if it implements contractual provisions with its upstream originating providers stating that it will only accept authenticated traffic").

As noted above, 3Com provides its intermediate voice services solely to other U.S.-based, domestic, FCC-registered originating and intermediate voice service providers. As such, 3Com is not the originating provider capable of authenticating the calling party's relationship with the caller ID ascribed to a call originating by U.S.-based voice service providers. 3Com's network is, however, already capable of accepting and accurately transmitting all STIR/SHAKEN-related data

it receives in the call path.

V. Proactive Network Monitoring and Analytics

3Com is a non-gateway intermediate provider and therefore does not have a direct relationship with a party that may be originating unlawful robocalls. Accordingly, when 3Com suspects it has identified potentially unlawful calling, in addition to taking the steps outlined herein, it may also contact the carrier customer from which it received the traffic at issue to investigate their customer from whom they received the traffic at issue. At the same time, 3Com remains mindful of the Commission's long-standing policy of common carriage and not blocking traffic in a manner that, if prevalent, would threaten the ubiquity and seamlessness of the nation's communications network.

3Com's wholesale customers have each also contractually committed to using robocall-mitigation tools on their networks before any calls ingress to 3Com's network. For example, each customer currently uses either Veriswitch's SmartSwitch or FraudCentral's RoboGuard mitigation tools, in addition to other KYC and mitigation techniques. 3Com also has various monitoring and reporting systems in place to analyze traffic on its network for potentially suspicious traffic patterns that are likely to be associated with illegal robocalls or other potentially unlawful usage. For example, 3Com's monitoring systems assess and, as applicable, flag or automatically block, traffic based on various criteria.

If 3Com detects a pattern consistent with illegal robocalls, or has reason to suspect illegal robocalling or spoofing is occurring on its network, 3Com takes prompt action to identify the party that is using its network to carry these calls and take appropriate action.

VI. Commitment to Timely Traceback Responses and Cooperation

3Com commits to respond fully and in a timely manner, within 24 hours, to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate, carry, or process illegal robocalls. 3Com will dedicate sufficient resources to provide timely and complete responses to such requests, and will investigate suspicious activity found by its monitoring systems or reported to it by appropriate parties and take appropriate action.