

SMS Gateway LLC. ROBOCALL MITIGATION PLAN

Background

The Federal Communications Commission (“FCC” or “Commission”) has adopted rules requiring voice service providers, like SMS Gateway LLC. (“SMS Gateway”), to, among other things, file certifications and robocall mitigation plans in the FCC’s Robocall Mitigation Database (“RMD”). 47 CFR § 64.6305; *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 that all voice service providers 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 it originates, carries or processes are subject to a robocall mitigation program consistent with the Commission’s rules.¹

¹ See <https://docs.fcc.gov/public/attachments/DA-24-73A1.pdf> (WCB Jan. 25, 2024 Public Notice). The provider’s mitigation plan “shall include reasonable steps to avoid originating illegal robocall traffic 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 originate calls.” 47 C.F.R. § 64.6305(a)(2); *id.* at § 64.6305(c)(2) (parallel rule for non-gateway intermediate providers’ “caFrying or processing illegal robocall traffic”).

Despite imposing a general duty to mitigate “robocalls,” the Commission’s codified rules do not define “robocall.”²

² The Commission’s TCPA-related regulations, 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)). SMS Gateway therefore focuses on the two types of unlawful calls—227(b) and 227(e) of the TCPA—that Congress expressly addressed. 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, 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, SMS Gateway’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 (2011)) 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 contemplate that the provider’s plan should describe how it “complies with its obligation to know its customers pursuant to § 64.1200(n)(4) [for originating voice service providers], 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(s) of such vendor(s).” 47 C.F.R. § 64.6305(d)(1)(ii); *see also* 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 origination or 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. SMS Gateway is dedicated to developing and taking reasonable steps. This document outlines SMS Gateway’s robocall mitigation plan.

- **SMS Gateway’s Know Your Customer (“KYC”) Standards**

SMS Gateway is a voice service provider that focuses its business and operations on the domestic, non-gateway wholesale customer segments of the voice services communications market and, to a far lesser extent, end user voice service. As part of its customer-onboarding process, SMS Gateway undertakes various commercially reasonable precautions to verify a given customer's identity as part of entering into a formal written agreement. All prospective customers participate in an in-person or telephonic enrollment process. SMS Gateway investigates the prospective customer's background, such as checking for a company website, the amount of time the business has been open, and other indications of a legal, operating business. 3

Among other data points collected and, as appropriate, verified, as part of those processes SMS Gateway gathers the following customer-identifying facts and circumstances:

- Customer business name,
- state or country of incorporation with proof of good-standing status,
- physical business location,
- contact person(s),
- Company email, phone number, and website domain,
- federal tax ID number, and
- FCC Filer ID and robocall mitigation database entry (for wholesale customers).

SMS Gateway's verification practices include confirming a carrier customer's reported status in the FCC's Form 499 Filer database of registered carriers, and the Commission's Robocall Mitigation Database, along with a completed USF exemption certificate. SMS Gateway also conducts, as applicable, credit checks and checks references with a prospective customer's other carrier-suppliers and discusses their traffic profile and traceback history with prospective carrier customers. These wholesale carrier customers contractually agree, among other things, to comply with SMS Gateway's AUP and the STIR/SHAKEN authentication rules.

- **SMS Gateway's Acceptable Use Policy**

As part of its customer-onboarding process, all of SMS Gateway's customers contractually agree to various terms and conditions, including a commitment to comply with SMS Gateway's 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.
- Using SMS Gateway's Services in any way that fails to conform to any applicable industry guidelines and standards, including, without limitation, the CTIA Messaging Principles and Best Practices, Short Code Registry Best Practices, and Short Code Monitoring Handbook.
- 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.

SMS Gateway's contracts with its customers stipulate that SMS Gateway is authorized to suspend and/or terminate all Services in the event of an AUP violation.

- **Telephone Number Authorization and STIR-SHAKEN Capabilities**

SMS Gateway has fully implemented the STIR/SHAKEN authentication framework across its entire network, and all calls for which it serves as the originating carrier are compliant with 47 C.F.R. Sec. 64.6301(a)(1)-(2).

In cases where SMS Gateway's end users use telephone numbers to which they have subscribed from SMS Gateway, SMS Gateway has a documented, verified relationship between the originating end user and their telephone number(s) used to originate their calls. In the cases where an SMS Gateway end user is using numbers secured from a different service

provider, SMS Gateway documents the end user's right to use the associated phone number(s) from the unaffiliated provider(s).

For traffic for which SMS Gateway serves as an intermediate provider, SMS Gateway's network is capable of accepting and accurately transmitting all STIR/SHAKEN-related data it receives in the call path.

- **Proactive Network Monitoring**

SMS Gateway 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, SMS Gateway's switch provider and monitoring systems are capable of assessing traffic based on various criteria, including data relating to short-duration calls, answer-seizure ratios, invalid Caller ID ANIs, calls for which the calling and called party numbers are the same, or calls where the calling party's caller ID is associated with a wireless telephone number where that is inconsistent with the calling party's status. SMS Gateway also deploys the Somos DNO and FraudCentral.io Roboguard mitigation tools.

With respect to its non-gateway intermediate provider services, SMS Gateway does not have a direct relationship with a party that may be originating unlawful robocalls. Accordingly, if it 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, SMS Gateway remains mindful of the Commission's long-standing policy of common carriage⁵

and not blocking traffic in a manner that, if prevalent, would threaten the ubiquity and seamlessness of the nation's communications network.

If SMS Gateway detects a pattern consistent with illegal robocalls, or has reason to suspect illegal robocalling or spoofing is occurring on its network, SMS Gateway takes prompt action to identify the party that is using its network to carry these calls and take appropriate action. Once suspected unlawful traffic is discovered, SMS Gateway blocks any further traffic from being carried associated with the Media IP address of that suspicious traffic and takes any further necessary action that it deems appropriate.

- **Commitment to Timely Traceback Responses and Cooperation**

SMS Gateway 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. SMS Gateway 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.