

**Before the  
Federal Communications Commission  
Washington, D.C. 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
	)	

**REPORT AND ORDER**

**Adopted: August 25, 2021**

**Released: August 25, 2021**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In December 2019, Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to combat unlawful calls, including calls that unlawfully contain false or misleading caller ID, known as “spoofing.”<sup>1</sup> The TRACED Act required the Commission to issue rules “for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”<sup>2</sup> The TRACED Act also required the Commission to issue an annual public notice seeking applicants to serve as the registered consortium.<sup>3</sup> In this Order, the Enforcement Bureau (Bureau) selects the incumbent, USTelecom’s Industry Traceback Group (Traceback Group), to continue as the registered consortium.

**II. BACKGROUND**

2. Section 227 of the Communications Act of 1934, as amended (the Communications Act), is designed to protect consumers from unlawful robocalls.<sup>4</sup> Sections 227(b), (c), and (d) impose specific requirements on telemarketing and prerecorded voice message calls to give consumers the ability to know who is calling and to control the calls they receive.<sup>5</sup> Section 227(e) prohibits unlawful spoofing—the transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.<sup>6</sup>

3. On March 27, 2020, pursuant to the TRACED Act, the Commission issued rules “to establish a registration process for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”<sup>7</sup> The *Consortium Registration Order* adopted rules to establish an annual process to register a single consortium to conduct the private-led efforts to

<sup>1</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

<sup>2</sup> TRACED Act § 13(d); *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3113, 3115-16 (2020) (*Consortium Registration Order*), paras. 10-14.

<sup>3</sup> TRACED Act, § 13(d)(2).

<sup>4</sup> 47 U.S.C. § 227.

<sup>5</sup> *Id.* § 227(b)-(d).

<sup>6</sup> *Id.* § 227(e).

<sup>7</sup> TRACED Act § 13(d); *Consortium Registration Order*, 35 FCC Rcd at 3114-16, paras. 6, 10-14.

trace back suspected unlawful robocalls.<sup>8</sup> An entity that wishes to serve as the consortium for private-led traceback efforts must submit a Letter of Intent as directed by a public notice.<sup>9</sup> The Letter of Intent must include the name of the entity, a statement of its intent to conduct private-led traceback efforts, and its intent to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.<sup>10</sup> In its Letter of Intent, the entity must satisfy the statutory requirements by:

- (a) demonstrating that the consortium is a neutral third-party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;
- (b) including a copy of the consortium's written best practices, with an explanation thereof, regarding management of its traceback efforts and regarding providers of voice services' participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls;
- (c) certifying that, consistent with section 222(d)(2) of the Communications Act,<sup>11</sup> the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic;
- (d) certifying that the consortium has notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium; and<sup>12</sup>
- (e) certifying that, if selected to be the registered consortium, it will remain in compliance with the requirements set forth in paragraphs (b)(1) through (4) section 64.1203; conduct an annual review to ensure compliance with such requirements; and promptly notify the Commission of any changes that reasonably bear on its certification.<sup>13</sup>

The Bureau evaluates any Letters of Intent based upon these statutory criteria.

4. On July 27, 2020, the Bureau selected the Traceback Group as the single registered consortium to conduct private-led traceback efforts.<sup>14</sup> Established in 2015, the Traceback Group is a private collaborative group comprised of providers across wireline, wireless, Voice over Internet Protocol, and cable services that traces and identifies the source of illegal robocalls.<sup>15</sup>

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<sup>8</sup> See 47 CFR § 64.1203; *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 9.

<sup>9</sup> 47 CFR § 64.1203(b); *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 10; *Enforcement Bureau Requests Letters of Intent to Become the Registered Industry Consortium for Tracebacks*, Public Notice, 36 FCC Rcd 7526 (EB 2021). The deadline to submit Letters of Intent was May 27, 2021. *Id.*

<sup>10</sup> See *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 10. Should entities that are not currently the registered consortium apply for the consortium position, the Bureau will follow the procedures adopted in the *Consortium Registration Order* in making a selection. See *id.* at 3115, paras. 9-14.

<sup>11</sup> 47 U.S.C. § 222(d)(2).

<sup>12</sup> TRACED Act § 13(d)(1)(A)-(D); 47 CFR § 64.1203(b)(1)-(4); *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 11.

<sup>13</sup> 47 U.S.C. § 64.1203(b)(5); see also *Consortium Registration Order*, 35 FCC Rcd at 3115, para 13.

<sup>14</sup> *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act*, Report and Order, 35 FCC Rcd 7886, 7886, para. 3 (EB 2020) (*Consortium Selection Order*).

<sup>15</sup> Letter of Intent from Patrick Halley, Senior Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, May 21, 2020 at 2. (Traceback Group Letter of Intent).

5. On April 26, 2021, the Bureau issued a Public Notice seeking any new interested parties to file Letters of Intent.<sup>16</sup> However, the incumbent registered consortium, the Traceback Group, is not required to reapply.<sup>17</sup> On May 27, 2021, ZipDX LLC (ZipDX) submitted a Letter of Intent to be designated as the registered consortium.<sup>18</sup> ZipDX supplemented its Letter of Intent with an *ex parte* filed on August 9, 2021.<sup>19</sup> ZipDX was the only applicant other than the incumbent registered consortium. ZipDX LLC is a single-member LLC, owned and managed by its founder and CEO, David Frankel, that created an integrated audio conferencing solution for executive and recurring business meetings.<sup>20</sup> The Bureau sought comment on ZipDX's submission, as well as the possible continuation of the Traceback Group as the registered consortium.<sup>21</sup> Although the Traceback Group was not required to reapply, it submitted comments stating its desire to remain as the registered consortium.<sup>22</sup>

6. The Bureau received comments from the Industry Trade Association (INCOMPAS),<sup>23</sup> The Internet & Television Association (NCTA)<sup>24</sup> and, The Industry Traceback Group Consortium Members (ITG) in support of retaining the Traceback Group as the registered consortium.<sup>25</sup> The Bureau received comments from Kimberly Kelly<sup>26</sup> and Janice Kimpel,<sup>27</sup> (individuals), and Mutare, Inc.<sup>28</sup> (an independent software developer that has worked with ZipDX), in support of selecting ZipDX as the new registered consortium. No commenter alleged that either applicant is unqualified.

### III. DISCUSSION

7. The Bureau evaluated ZipDX's Letter of Intent as well as the Traceback Group's Letter of Intent submitted in 2020.<sup>29</sup> After thorough consideration of all the statutory requirements—neutrality; competency; inclusion of written best practices; and commitment to focus on fraudulent, abusive, or unlawful traffic— as well as commenters' input, we find that the Traceback Group best meets the criteria

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<sup>16</sup> *Enforcement Bureau Requests Letters of Intent to Become the Registered Industry Consortium for Tracebacks*, Public Notice, 36 FCC Rcd 7526 (EB 2021). The deadline to submit Letters of Intent was May 27, 2021. *Id.*

<sup>17</sup> 47 CFR § 64.1203(c); *Consortium Registration Order*, 35 FCC Rcd at 3116, para. 12 (providing that the certifications contained in the registered consortium's initial Letter of Intent will continue in effect for each subsequent year unless the incumbent consortium notifies the Commission otherwise in writing before the deadline to submit Letters of Intent).

<sup>18</sup> Letter of Intent from David Frankel, CEO, ZipDX LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed May 27, 2021 (ZipDX Letter of Intent).

<sup>19</sup> E-mail from David Frankel, CEO, ZipDX LLC, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, EB Docket No. 20-22 (filed Aug. 9, 2021) (Frankel *Ex Parte*).

<sup>20</sup> *About ZipDX*, ZipDX, <https://www.zipdx.info/about/> (last visited Aug. 13, 2021).

<sup>21</sup> *Enforcement Bureau Requests Comments on the Selection of the Registered Traceback Consortium*, Public Notice, DA 21-715 (EB June 17, 2021).

<sup>22</sup> ITG Consortium Members, July 2021, Comments at 1-3.

<sup>23</sup> INCOMPAS July 2021, Comments at 1-3.

<sup>24</sup> NCTA Comments at 1-3.

<sup>25</sup> See INCOMPAS July 2021, Comments at 1-3; NCTA Comments at 1-3; ITG Consortium Members, July 2021, Comments at 1-3. No entity filed reply comments.

<sup>26</sup> Kimberly Kelly Comments at 1.

<sup>27</sup> Janice Kimpel Comments at 1.

<sup>28</sup> Mutare Inc. Comments at 1.

<sup>29</sup> Traceback Group Letter of Intent.

to serve as the registered traceback consortium.<sup>30</sup> Accordingly, the Bureau selects the Traceback Group to continue as the single registered consortium for private-led traceback efforts. In accordance with the *Consortium Registration Order*, we will solicit Letters of Intent to register as the Consortium for the following year by April 28, 2022.<sup>31</sup> Our selection in this Order will be effective until that 2022 process is complete.

**A. The Registered Consortium Must be a Neutral Third Party**

8. The TRACED Act and our rules require that the registered consortium be “a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls.”<sup>32</sup> In the *Consortium Registration Order*, the Commission found that openness is indicative of neutrality and that a neutral third-party, at a minimum, must demonstrate its openness by explaining how it will allow voice service providers to participate in traceback efforts in an unbiased, non-discriminatory, and technology-neutral manner.<sup>33</sup>

9. The Traceback Group asserts that it demonstrates its neutrality through its commitment to “wide-scale industry participation” and written Practices and Procedures enshrining a non-discriminatory and technology-neutral approach to traceback.<sup>34</sup> The Traceback Group is comprised of providers across wireline, wireless, Voice over Internet Protocol, and cable services.<sup>35</sup> The Traceback Group states that it began with just three members in 2015, and now stands at 40 active members and more than 300 entities cooperating in tracebacks.<sup>36</sup> The Traceback Group states that it allows all voice service providers to participate in the traceback process regardless of whether they are a Traceback Group member.<sup>37</sup> Additionally, the Traceback Group states that any provider that demonstrates its commitment to the Traceback Group Policies and Procedures is welcome to join the Traceback Group regardless of whether it provides financial support.<sup>38</sup> Members that wish to secure a role on the “Steering Committee” may do so by both demonstrating “consistent compliance with the [Traceback Group] Practices and Procedures and provid[ing] a voluntary contribution to cover the costs of the [Traceback Group].”<sup>39</sup> An Executive Committee composed of stakeholders from across the communications industry manages operations of the Traceback Group. Furthermore, the Traceback Group notes that USTelecom established a new corporate entity for the Traceback Group to add further separation and independence from USTelecom.<sup>40</sup>

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<sup>30</sup> TRACED Act § 13(d)(1)(A)-(D) (requiring neutrality; competent management; written best practices; a concerted focus on fraudulent, abusive, or unlawful traffic; and advance notice to the Commission of an intent to conduct traceback efforts); *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 11.

<sup>31</sup> See *Consortium Registration Order*, 35 FCC Rcd at 3115, para. 9.

<sup>32</sup> TRACED Act § 13(d)(1)(A); 47 CFR § 64.1203(b)(1). See also *Consortium Registration Order*, 35 FCC Rcd at 3117, para. 16.

<sup>33</sup> *Consortium Registration Order*, 35 FCC Rcd at 3117, para. 16.

<sup>34</sup> Traceback Group Letter of Intent at 4-5.

<sup>35</sup> Traceback Group Letter of Intent, Appx. B at 17. A list of ITG members is available at <https://www.ustelecom.org/the-ustelecom-industry-rollback-group-itg>.

<sup>36</sup> See USTelecom Comments at 2.

<sup>37</sup> Traceback Group Letter of Intent at 5.

<sup>38</sup> Traceback Group Letter of Intent at 3 (“Participation in the [Traceback Group] is open at no cost to any voice service provider that is committed to ending the illegal robocall challenge in compliance with the Policies and Procedures of the [Traceback Group].”); *id.* at 5-6, Appx. B (stating in the Traceback Group’s Policies that both Steering Committee and Affiliate members must “fully comply with the [Traceback Group] Policies and Procedures”).

<sup>39</sup> *Id.* at 5.

<sup>40</sup> USTelecom, July 2021, Comments at 3, n.5.

10. No commenter specifically addressed the Traceback Group's neutrality. We note, however, that although INCOMPAS (and others) raised some concerns last year about the Traceback Group's ability to operate in a neutral manner,<sup>41</sup> those concerns appear to have been addressed.<sup>42</sup> After a year's experience with the Traceback Group serving as the registered consortium, INCOMPAS now urges the Commission to retain the Traceback Group as the registered consortium and raised no concerns about its neutrality.<sup>43</sup>

11. We find that the Traceback Group's multi-member structure ensures neutrality and reflects openness, which the Commission found to be a key aspect of neutrality.<sup>44</sup> The structure takes into account potentially divergent concerns or views of the industry as a whole. We agree with the Traceback Group that its diversity of "voice service providers representing all sectors of the telephone calling ecosystem" demonstrates the group's commitment to fostering broad and unbiased industry participation.<sup>45</sup> Other factors, including creation of an independent corporate entity for the Traceback Group, and the strong support of industry, convince us of the Traceback Group's ability and commitment to operate in a neutral manner.

12. ZipDX states that it would be a neutral third party. ZipDX states that it is "a single-member LLC, owned and managed by its founder and CEO, David Frankel. ZipDX states that it has no relationships with third parties, financial or otherwise, that could give a party opportunity to interfere with this neutrality."<sup>46</sup> According to ZipDX, the company maintains arms-length agreements at market prices with several voice service providers, which do not impact ZipDX's neutrality.<sup>47</sup> ZipDX proposes to adopt the current Traceback Group Policies and Procedures as its own and among other things, proposes to maintain the composition of the Executive Committee and the Steering Committee currently serving the Traceback Group as described below.<sup>48</sup> Additionally, ZipDX states that it will rely on select Committee members' financial support to fund Traceback Group operations.<sup>49</sup> No one commented on ZipDX's neutrality.

13. ZipDX plans to adopt the current ITG Policies and Procedures as its written best practices and proposes to retain the structure and membership of the Executive Committee, the Steering Committee, as well as current ITG members. Both applicants have asserted a commitment to openness. Although ZipDX asserts that its sole ownership ensures that it is "unencumbered by allegiances to any other parties,"<sup>50</sup> there is no evidence to suggest that ITG's multifaceted control creates such allegiances. And in fact, the broad membership of the Traceback Group helps protect against such bias in favor of one industry segment. Thus, we conclude that the ITG will best meet the neutrality principle.

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<sup>41</sup> INCOMPAS June 2020, Comments at 3-4.

<sup>42</sup> *Consortium Selection Order*, 35 FCC at 7890-7893, paras. 11-17.

<sup>43</sup> See INCOMPAS July 2021, Comments at 2 ("Since being designated last July as the registered consortium, the [Traceback Group] has met these requirements and made significant contributions to the Commission's enforcement efforts through the identification of voice service providers that are engaged in illegal robocall campaigns.").

<sup>44</sup> *Consortium Registration Order*, 35 FCC Rcd at 3117-18, paras. 16-18.

<sup>45</sup> Traceback Group Letter of Intent at 6.

<sup>46</sup> ZipDX Letter of Intent at 13.

<sup>47</sup> *Id.* at 12.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Id.*

<sup>50</sup> Frankel *Ex Parte*.

**B. The Registered Consortium Must Be a Competent Manager**

14. In order to be a “competent manager” of privately led traceback efforts,<sup>51</sup> the entity must be able to effectively and efficiently manage the traceback process of suspected unlawful robocalls for the benefit of those who use the traceback information and, ultimately, consumers.<sup>52</sup> Competent management of the traceback process also includes working collaboratively with industry and responding promptly to state and federal law enforcement efforts.<sup>53</sup> Congress afforded the Commission discretion to determine a consortium’s competence to manage private-led traceback efforts.<sup>54</sup> Evidence of expertise and success in managing and improving traceback processes address a consortium’s competence.<sup>55</sup>

15. As the single registered consortium for the past year, the Traceback Group has competently managed private-led traceback efforts. The Traceback Group has conducted more than 5,000 tracebacks covering hundreds of different types of robocall campaigns that have affected millions of Americans.<sup>56</sup> More than 300 domestic and foreign providers have cooperated with the Traceback Group’s tracebacks, and the Traceback Group has partnered closely with federal and state enforcement officials, providing them with regular reporting and responding to over 100 subpoenas and civil investigative demands.<sup>57</sup> The Traceback Group provided traceback data that supported dozens of federal and state enforcement actions, including Commission investigations.

16. Comments from a variety of different stakeholders commend the Traceback Group’s competency. For example, NCTA states that its members “have had the opportunity to observe USTelecom’s management of the consortium firsthand, which it has done competently and in keeping with statutory requirements and the Commission’s rules.”<sup>58</sup> NCTA members Charter, Comcast and Cox “serve on the [Traceback Group] Executive Committee, and agree that the [Traceback Group]’s continued service as the registered industry traceback consortium is key to the continued success of robocall traceback and enforcement efforts.”<sup>59</sup> According to INCOMPAS, since the Traceback Group’s designation as the registered consortium, the Traceback Group has met the TRACED Act’s four statutory requirements for a single consortium and “made significant contributions to the Commission’s enforcement efforts through the identification of voice service providers that are engaged in illegal robocall campaigns.”<sup>60</sup>

17. ZipDX states that it has been active in traceback efforts for several years.<sup>61</sup> According to ZipDX, it has, among other things, developed and deployed a portal to conduct traceback efforts and made the portal available to the Traceback Group.<sup>62</sup> ZipDX notes that the Commission has stated that it expects the traceback process to evolve, and ZipDX proposed that it has, and will continue, to develop

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<sup>51</sup> TRACED Act § 13(d)(1)(A).

<sup>52</sup> *Consortium Registration Order*, 35 FCC Rcd at 3119, para. 21.

<sup>53</sup> *Id.*

<sup>54</sup> TRACED Act § 13(d)(1)(A).

<sup>55</sup> *Consortium Registration Order*, 35 FCC Rcd at 3119, para. 22 (“As we state in the *NPRM*, it is reasonable to weigh that expertise and success when selecting between or among consortia to ensure that private-led efforts result in effective traceback. We note, however, that while a consortium’s expertise in managing traceback processes is particularly relevant, such experience is not a prerequisite”).

<sup>56</sup> USTelecom, July 2021, Comments at 1.

<sup>57</sup> *Id.*

<sup>58</sup> NCTA Comments at 2.

<sup>59</sup> *Id.*

<sup>60</sup> INCOMPAS July 2021, Comments at 2.

<sup>61</sup> Frankel *Ex Parte*.

<sup>62</sup> ZipDX Letter of Intent at 7; Frankel *Ex Parte*.

and implement new tools to improve detection of unlawful calls.<sup>63</sup> For example, according to ZipDX, it has created a publicly-available online database that monitors the FCC's Robocall Mitigation Database and cross-references it to the FCC's 499-A Filer and Federal Registration Number databases.<sup>64</sup> ZipDX also scores filed Robocall Mitigation Plans to assess their effectiveness.<sup>65</sup> ZipDX promises that these new tools will evolve towards expanding the scope and capabilities of traceback.<sup>66</sup>

18. The Commission held that "it is reasonable to weigh [ ] expertise and success when selecting between or among consortia."<sup>67</sup> Although past management of tracebacks is not a prerequisite, it is "particularly relevant."<sup>68</sup> Unlike ZipDX, the Traceback Group has demonstrated its ability to handle a large number of tracebacks, a wide array of complex schemes, and to conduct the tracebacks in a timely and efficient manner. The Traceback Group also has a demonstrated ability to work collaboratively with industry and to respond promptly to state and federal enforcement efforts. ZipDX promises to offer new tools to improve traceback and robocall enforcement effort, but we must weigh ZipDX's commitment to innovate against the Traceback Group's proven track record of working collaboratively with industry and law enforcement.<sup>69</sup> We disagree with ZipDX's assertion that the functionality and pace of tracebacks has "stagnated" under the Traceback Group's watch.<sup>70</sup> Our own experience indicates that the Traceback Group has sufficiently met the traceback needs of law enforcement over the past year. In sum, the Bureau finds that the Traceback Group has made a better demonstration that it will competently manage the traceback process.

### C. The Registered Consortium Must Maintain and Conform to Written Best Practices

19. The registered consortium must maintain, and conform its actions to, written best practices regarding the management of private-led efforts to trace back the origin of suspected unlawful robocalls and regarding voice service providers' participation in such efforts.<sup>71</sup> Written best practices, at a minimum, must address the consortium's compliance with statutory requirements,<sup>72</sup> consistent with the principles the Commission set forth in the Commission's *Consortium Registration Order*.<sup>73</sup> The registered consortium's written best practices must establish processes and criteria for determining how voice service providers will participate in traceback efforts,<sup>74</sup> and those processes and criteria must be fair and reasonable.<sup>75</sup> Best practices evolve over time to reflect empirical knowledge and practical

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<sup>63</sup> Frankel *Ex Parte*.

<sup>64</sup> *Id.*; Legal Calls Only, RMD Explorer, <https://portal.legalcallsonly.org/List/RoboMitigate> (last visited Aug. 12, 2021).

<sup>65</sup> Frankel *Ex Parte*.

<sup>66</sup> *Id.*

<sup>67</sup> *Consortium Registration Order*, 35 FCC Rcd at 3119, para. 22.

<sup>68</sup> *Id.*

<sup>69</sup> *Cf. Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503, 506-08 (D.C. Cir. 1982) (upholding Commission's renewal expectancy standard, in part because there is "no guarantee that a challenger's paper proposals will, in fact, match the incumbent's proven performance").

<sup>70</sup> Frankel *Ex Parte*.

<sup>71</sup> TRACED Act § 13(d)(1)(B); *see also Consortium Registration Order*, 35 FCC Rcd at 3119-20, para. 24.

<sup>72</sup> *Consortium Registration Order*, 35 FCC Rcd at 3119-20, para. 24. *See also* TRACED Act § 13(d)(1)(A)-(D); 47 CFR § 64.1203(b)(2).

<sup>73</sup> *Consortium Registration Order*, 35 FCC Rcd at 3117-22, paras. 15-29 (discussing the Commission's interpretation of section 13(d) of the TRACED Act).

<sup>74</sup> 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, 35 FCC Rcd at 3119-20, para. 24.

<sup>75</sup> *Consortium Registration Order*, 35 FCC Rcd at 3120, para. 24.

experience. This is particularly true for technology-dependent activities such as combatting caller ID spoofing.

20. When the Bureau originally reviewed the Traceback Group Policies and Procedures, submitted in 2020, the Bureau found that the Policies and Procedures fulfilled the requirement to present fair and reasonable best practices.<sup>76</sup> In the Bureau's experience, the Traceback Group has a proven track record of technical expertise, an understanding of policy, and knowledge of applicable laws and regulations. Its traceback process covers traceback initiation and tracking, the consortium's communications with voice service providers, "problem zone" messages, and non-cooperative service provider messages.<sup>77</sup> The Traceback Group's best practices also provide guidance to voice service providers regarding implementation of dedicated points of contact, ongoing coordination, prompt responses (including for mitigation of traffic and investigation of upstream sources), referral to enforcement authorities, identification of voice service providers, transmission of voice traffic, and privacy of call traceback information.<sup>78</sup> In addition, the Traceback Group has demonstrated a proven track record of frequent communication with state and federal law enforcement<sup>79</sup> that is further reflected in its best practices.<sup>80</sup> In determining which acts or omissions satisfy Traceback Group's best practices, the consortium must adhere to the principles enumerated in the Consortium Registration Order, which were promulgated to "encourage, not hinder, a responsive, dynamic traceback process" designed to provide both clarity and flexibility as business models adapt, new technology develops, and networks update over time.<sup>81</sup> The Traceback Group states that its Policies and Procedures are routinely reviewed and updated as necessary to ensure that they adequately address applicable legal and policy considerations, as well as accurately describe the Traceback Group's operations.<sup>82</sup>

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<sup>76</sup> See *Consortium Selection Order*, 35 FCC Rcd at 7893-98, paras 20-28.

<sup>77</sup> See USTelecom Letter of Intent, Appx. B, at 17. The Traceback Group's Policies and Procedures define voice service providers that enter the "problem zone" as those that originate or are the U.S. point of entry for suspicious traffic. Voice service providers that enter the problem zone "will be notified by USTelecom's Traceback team that they are in danger of being labeled a Non-Cooperative Voice Service Provider unless action is taken to halt the flow of the Suspicious Traffic. Such providers shall be notified of their status and provided with access to reference materials with information on potential mitigation steps that can be taken to stop illegal calling activity and avoid a non-cooperative designation going forward." *Id.*, Appx. B at 7.

<sup>78</sup> *Id.* at 8-11, Appx. B.

<sup>79</sup> See *id.* at 11 ("USTelecom's effective management of the [Traceback Group] has been acknowledged in multiple federal and state enforcement actions, including those executed by the Federal Trade Commission ("FTC"), the Department of Justice ("DOJ") and the Ohio Attorney General. . . . [For example,] the FCC and FTC jointly sent letters to several voice service providers facilitating COVID-19-related scam robocalls originating overseas stating that they must cut off these calls or face serious consequences. The Commissions also wrote to USTelecom, on behalf of the [Traceback Group], expressing gratitude for the [Traceback Group]'s prompt response to identify and mitigate fraudulent robocalls that are taking advantage of the COVID-19 pandemic. They stated that 'the work of the USTelecom Traceback Group is essential to combatting the deluge of unlawful robocalls and protecting consumers and is particularly vital in swiftly identifying scammers who attempt to defraud consumers during the COVID-19 disease outbreak.' Much of the information on which all of the above actions relied came as a direct result of [Traceback Group] tracebacks.").

<sup>80</sup> See *id.* at 9, Appx. B ("In instances where a voice service provider is determined to be a Non-Cooperative Voice Service Provider, relevant information may be forwarded to appropriate federal and state enforcement authorities, including, but not limited to, the Federal Communications Commission, the Federal Trade Commission, the Department of Justice, and state Attorneys General. Cooperative Voice Service Providers may provide such information to enforcement agencies directly or through coordination with USTelecom.").

<sup>81</sup> See *Consortium Registration Order*, 35 FCC Rcd at 3117, para. 15 (discussing the Commission's goal of ensuring both dynamic and nimble processes as well as statutory compliance).

<sup>82</sup> See Traceback Group Comments at 3.

21. ZipDX commits to following the best practices that the Traceback Group adopted.<sup>83</sup> No commenters expressed concerns about either the Traceback Group or ZipDX following these best practices. Thus, we find that both the Traceback Group and ZipDX would maintain and conform with written best practices.

**D. The Registered Consortium Must Focus on “Fraudulent, Abusive, or Unlawful” Traffic**

22. The TRACED Act mandates that the registered consortium’s traceback efforts focus on “fraudulent, abusive, or unlawful” traffic.<sup>84</sup> The effort must be consistent with section 222 of the Communications Act, which governs the privacy of customer information. Section 222(d)(2) allows telecommunications carriers to use, disclose, or permit access to customer proprietary network information “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services[.]”<sup>85</sup> No commenter raised concerns about either applicant’s ability to satisfy this requirement.

23. The Traceback Group maintains a comprehensive sourcing policy, consistent with section 222(d)(2) and any private-led efforts to trace back the origin of suspected unlawful robocalls conducted by the Traceback Group focus on “fraudulent, abusive, or unlawful” traffic. The Traceback Group Policies and Procedures include detailed information regarding sourcing of suspected illegal robocalls for traceback to adhere to section 222(d)(2). The Traceback Group only shares a traceback request if: (1) a credible and verifiable source is providing information regarding the Traceback Candidate; (2) the nature of the traffic associated with any traceback is deemed by Traceback Group staff to be fraudulent, abusive, or unlawful; and, (3) initiation of the traceback warrants utilization of Traceback Group resources.<sup>86</sup>

24. ZipDX would also focus on fraudulent, abusive, or unlawful traffic as described in the Traceback Group’s Policies and Procedures.<sup>87</sup> ZipDX notes that its “history with traceback has always maintained this focus.”<sup>88</sup> Thus, we determine that both the Traceback Group and ZipDX have demonstrated that they will focus on preventing “fraudulent, abusive, or unlawful” traffic.

**IV. CONCLUSION**

25. We conclude that the Traceback Group best meets the statutory requirements of the TRACED Act to be the registered consortium for industry led tracebacks of suspected illegal robocalls. Over the past year, the Traceback Group has demonstrated its neutrality and competence as the registered consortium. Furthermore, commenters expressed concern that replacing the Traceback Group could be disruptive to ongoing robocall enforcement efforts.<sup>89</sup> After reviewing both applicants’ filings and experience, and considering each of the statutory factors and the comments, we determine that the Traceback Group is the stronger candidate. Thus, we select the Traceback Group to continue as the registered consortium.

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<sup>83</sup> ZipDX Letter of Intent at 13.

<sup>84</sup> TRACED Act § 13(d)(1)(C) (stating the effort must be consistent with section 222(d)(2) of the Communications Act, which governs the privacy of customer information). Section 222(d)(2) allows telecommunications carriers to use, disclose, or permit access to customer proprietary network information “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services[.]” 47 U.S.C. § 222(d)(2).

<sup>85</sup> 47 U.S.C. 222(d)(2).

<sup>86</sup> USTelecom Letter of Intent, Appx. B at 17.

<sup>87</sup> ZipDX Letter of Intent at 13.

<sup>88</sup> *Id.*

<sup>89</sup> INCOMPAS July 2021, Comments at 2; Traceback Group Consortium Members Comments at 2. *Cf. Central Florida, supra*, 683 F.2d at 507 (broadcast renewal expectancy premised in part on concern about “haphazard restructuring” of the industry).

**V. PROCEDURAL MATTERS**

26. *People with Disabilities.* To request material in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

27. *Further Information.* For further information about the *Report and Order*, contact Monica Echevarria, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-1334 or [Monica.Echevarria@fcc.gov](mailto:Monica.Echevarria@fcc.gov).

**VI. ORDERING CLAUSES**

28. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i) and 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, this *Report and Order* **IS ADOPTED**.

29. **IT IS FURTHER ORDERED** that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this *Report and Order* **SHALL BE EFFECTIVE** immediately upon release.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau