



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROTECTIVE ORDER FOR ROBOCALL MITIGATION DATABASE COLLECTION

WC Docket No. 17-97

Comments Due: (10 days after the date of publication in the Federal Register)

Reply Comments Due: (15 days after publication in the Federal Register)

On September 29, 2020, in its continuing effort to combat illegal robocalls, the Federal Communications Commission (Commission) adopted a Second Report and Order which, among other things, required all voice service providers to file certifications with the Commission regarding their efforts to stem the origination of illegal robocalls on their networks.¹ The Commission further directed the Wireline Competition Bureau (Bureau) to establish a publicly accessible database in which such certifications would be listed, and to issue a protective order regarding the treatment of any confidential and highly confidential information included in said certifications. Consistent with this direction, the Bureau now provides information and seeks comment on adopting a Protective Order similar to that used by the Bureau in other proceedings,² with modifications appropriate in the context of the Robocall Mitigation Database.

The Commission's rules require voice service providers to certify that their traffic is either signed with STIR/SHAKEN caller ID authentication technology or subject to a robocall mitigation program. Voice service providers that certify that some or all of their traffic is subject to a robocall mitigation program are also required to detail in their certifications the reasonable steps they have taken to avoid originating illegal robocall traffic. In establishing this public database, the Commission stated its goals were to promote transparency and to allow and encourage industry to self-police by making robocall mitigation plans visible to other voice service providers and the public at large.³ A party could, for example, review a robocall mitigation plan to determine whether it wishes to do business with the voice service provider or to report insufficient robocall mitigation efforts to the Commission. At the same time, recognizing the potential sensitivity of this information, the Commission directed the Bureau to adopt a Protective Order governing submission of and access to confidential and highly confidential information

¹ *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, FCC 20-136, at 44-45, para. 82 (Sept. 29, 2020) (*Second STIR/SHAKEN Order*).

² *Protective Order issued in the matter of Applications for HDC Alpha, LLC; HDC Beta, LLC; HDC Gamma, LLC; HDC Delta, LLC; HDC Epsilon, LLC for iVoip Authorization Pursuant to Section 52.15(g)(3) of the Commission's Rules*, WC Docket Nos. 19-313, 19-314, 19-315, 19-316, and 19-317, Protective Order, DA 21-105 (WCB Feb. 1, 2021) (*HDC Protective Order*); *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Protective Order, DA 20-596 (WCB June 5, 2020) (*Access Arbitrage Protective Order*).

³ See *Second STIR/SHAKEN Order* at 42, para. 77.

included with the certifications.⁴ We seek comment below on the procedures for submitting and accessing confidential and highly confidential information submitted in conjunction with this proceeding.

Submission of Information. We propose to adopt in the Protective Order a process for submitting confidential information described in the Public Notice announcing the Robocall Mitigation Database. In that Public Notice, we explained that filers are “able to request that any materials or information submitted to the Commission in their certifications be withheld from public inspection.”⁵ We further explained that, to submit a confidential filing, a voice service provider “must first submit a confidentiality request in WC Docket No 17-97 through the Commission’s Electronic Comment Filing System (ECFS)” and “will then be able to submit redacted (i.e., public) and unredacted (i.e., non-public) copies of its robocall mitigation program description via the Commission’s portal.”⁶ Having considered the issue further, we propose formalizing this approach in the Protective Order. Rather than ask for redacted copies of confidential and highly confidential documents to be filed through the Commission’s Electronic Comment Filing System (ECFS), our proposed Protective Order would direct voice service providers to file a request for confidentiality in ECFS and then submit any redacted copies of documents directly through the portal accompanying the database. This proposed Protective Order would also direct providers to file unredacted copies of confidential and highly confidential documents through the database’s portal, which differs from the typical Protective Order process of submitting these documents to the Secretary’s Office and designated Bureau staff.⁷ We seek comment on these proposals and whether we should modify the process described in the earlier Public Notice.

Access to Information. We seek comment on which parties should and should not ultimately be granted access to the confidential and highly confidential information included by voice service providers in their certifications. We propose only allowing access to limited categories of entities and individuals and only after such entities or individuals complete an appropriate process. We propose that entities or individuals that may seek to obtain access include: federal, state, local, and Tribal governmental entities involved in robocall enforcement; the registered industry traceback consortium;⁸ the STIR/SHAKEN Governance Authority;⁹ and intermediate providers and voice service providers who accept call traffic directly from a voice service provider listed in the database and request to review what actions that provider is taking to combat the origination of illegal robocalls. For this final group, we propose limiting access to the requesting party’s outside counsel and consultants, as well as the employees and support personnel of these outside firms. We propose limiting access to these groups to balance the Commission’s goals of promoting transparency in robocall mitigation efforts and protecting providers’ sensitive information from competitors and bad actors attempting to circumvent these mitigation efforts.¹⁰ We seek comment on this proposed scope of eligible reviewing parties, and whether a broader or narrower group would better balance the goals of promoting transparency and protecting sensitive

⁴ *Second STIR/SHAKEN Order* at 45, para. 83.

⁵ *Wireline Competition Bureau Announces Opening of Robocall Mitigation Database and Provides Filing Instructions and Deadlines*, WC Docket No. 17-97, Public Notice, DA 21-454, at 3 (WCB Apr. 20, 2021) (*Database Public Notice*).

⁶ *Database Public Notice* at 3-4.

⁷ *HDC Protective Order* at 4, para. 5; *Access Arbitrage Protective Order* at 4, para. 5.

⁸ On July 27, 2020, after an application process, the Commission designated the Industry Traceback Group as the registered Traceback Consortium. *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, 35 FCC Rcd 7886 (EB 2020).

⁹ The Governance Authority defines policies and procedures for which entities can acquire “certificates” needed to participate in STIR/SHAKEN. The current Governance Authority is the Secure Telephone Identity Governance Authority (STI-GA). See *Second STIR/SHAKEN Order* at 6, para. 11 & n.37.

¹⁰ *Second STIR/SHAKEN Order* at 44-46, paras. 82-83.

information. We also propose adopting the standard process for obtaining access to confidential and highly confidential information used by the Bureau in other proceedings. This process would require any person other than support personnel seeking access to confidential or highly confidential information pursuant to the Protective Order to sign and date an Acknowledgement of Confidentiality agreeing to be bound by the terms and conditions of the Protective Order, and to file the Acknowledgment with the Commission and deliver a copy to the filing provider.¹¹

Other Protective Order Provisions. Beyond the changes proposed above, we propose adopting the standard provisions found in other Commission Protective Orders. For example, we propose adopting standard provisions governing the designation of information as confidential or highly confidential, challenges to designations, the procedure for objecting to the disclosure of confidential or highly confidential information, and the review of confidential and highly confidential documents.¹² Additionally, we propose adopting similar appendices, including one which contains an Acknowledgement of Confidentiality, and another which details what information and documents can be designated as highly confidential.¹³ We seek comment on whether and how we should modify these provisions or appendices in the context of the Robocall Mitigation Database.

Pursuant to section 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before 10 days after publication of this Public Notice in the Federal Register and reply comments on or before 15 days after publication of this Public Notice in the Federal Register.

Filing Requirements. All filings must refer to **WC Docket No. 17-97**. Comments may be filed using ECFS.¹⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.

¹¹ *HDC Protective Order* at 4-5, para. 7; *Access Arbitrage Protective Order* at 4-5, para. 7.

¹² *HDC Protective Order* (providing an example of a typical Bureau protective order and relevant provisions); *Access Arbitrage Protective Order* (providing another example of a typical Bureau protective order and relevant provisions).

¹³ *HDC Protective Order* at Appendices A and B (providing examples of appendices containing an Acknowledgement of Confidentiality and a list of highly confidential information and documents); *Access Arbitrage Protective Order* at Appendices A and B (providing examples of appendices containing an Acknowledgement of Confidentiality and a list of highly confidential information and documents).

¹⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁵

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418-0530.

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).¹⁷ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Michael Nemcik, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2343 or by email at Michael.Nemcik@fcc.gov.

¹⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

¹⁶ See 47 CFR §§ 1.1200 *et seq.*

¹⁷ *Id.* § 1.1206(b).