

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 18, 2023

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By the Chief, Enforcement Bureau:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION.....1
II. BACKGROUND.....2
III. DISCUSSION.....7
A. The Registered Consortium Must Be a Neutral Third Party.....8
B. The Registered Consortium Must Be a Competent Manager .....21
C. The Registered Consortium Must Maintain and Conform to Written Best Practices.....31
D. The Registered Consortium Must Focus on “Fraudulent, Abusive, or Unlawful” Traffic.....37
IV. CONCLUSION .....43
V. PROCEDURAL MATTERS.....44
VI. ORDERING CLAUSES.....46

I. INTRODUCTION

1. Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to combat unlawful robocalls, including calls that unlawfully contain false or misleading caller ID, known as “spoofing.”

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

2 TRACED Act § 13(d)(1); 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, paras. 9-14 (2020) (Consortium Registration Order).

3 TRACED Act, § 13(d)(2).

USTelecom or Traceback Group), to continue as the registered consortium for private-led traceback efforts.

## II. BACKGROUND

2. Section 227 of the Communications Act of 1934, as amended (the Communications Act), is designed to protect consumers from unlawful calls.<sup>4</sup> Sections 227(b), (c), and (d) impose specific requirements on telemarketing calls and calls made using an automatic telephone dialing system or an artificial or prerecorded voice to limit calls consumers have not consented to receive.<sup>5</sup> Section 227(e) prohibits unlawful spoofing—the transmission of “misleading or inaccurate caller identification 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 adopted rules to establish an annual process to register a single consortium to conduct the private-led efforts to trace back suspected unlawful robocalls.<sup>7</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>8</sup> The Letter of Intent must include the name of the entity, a statement of its intent to conduct private-led traceback efforts, and a statement of its intent to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.<sup>9</sup> Under Commission rules,<sup>10</sup> in its Letter of Intent, the entity must also satisfy the following requirements pursuant to the TRACED Act.

**(i) Neutrality.** The entity must demonstrate that it will be a neutral third party by explaining its openness to allowing voice service providers to participate in an unbiased, non-discriminatory, and technology-neutral manner.<sup>11</sup>

**(ii) Competence.** The entity must demonstrate that it will be a “competent manager of the private-led traceback efforts” by explaining its ability “to effectively and efficiently manage a traceback process” that includes “timely and successfully finding the origin of suspected unlawful robocalls.”<sup>12</sup>

**(iii) Best Practices.** The entity must demonstrate that it will maintain and conform its actions to written best practices which explain how the entity will manage traceback efforts and voice service providers’ participation in traceback efforts.<sup>13</sup> The entity must also provide a copy of its written best practices.<sup>14</sup>

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<sup>4</sup> 47 U.S.C. § 227.

<sup>5</sup> *Id.* § 227(b)-(d).

<sup>6</sup> *Id.* § 227(e)(1).

<sup>7</sup> See 47 CFR § 64.1203; *Consortium Registration Order*, *supra* note 2, at 3115-16, paras. 9-14.

<sup>8</sup> 47 CFR § 64.1203(b); *Consortium Registration Order*, *supra* note 2, at 3115, para. 10.

<sup>9</sup> See *Consortium Registration Order*, *supra* note 2, at 3115, para. 10.

<sup>10</sup> 47 CFR § 64.1203(b).

<sup>11</sup> See *Consortium Registration Order*, *supra* note 2, at 3117, para. 16; 47 CFR § 64.1203(b)(1); TRACED Act § 13(d)(1)(A).

<sup>12</sup> *Consortium Registration Order*, *supra* note 2, at 3119, para. 21; see 47 CFR § 64.1203(b)(1); TRACED Act § 13(d)(1)(A).

<sup>13</sup> See 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, *supra* note 2, at 3119-20, paras. 24-25; TRACED Act § 13(d)(1)(B).

<sup>14</sup> See 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, *supra* note 2, at 3115, para. 11.

**(iv) Focus on Fraudulent, Abusive, or Unlawful Traffic.** The entity must certify that, consistent with section 222(d)(2) of the Communications Act, it will focus its private-led traceback efforts on fraudulent, abusive, or unlawful traffic.<sup>15</sup>

The entity must also certify that it has “notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.”<sup>16</sup>

Additionally, under Commission rules, the entity must also certify that, if selected, the entity will “(i) [r]emain in compliance with the requirements of paragraphs (b)(1) through (4) of [section 64.1203]; (ii) [c]onduct an annual review to ensure compliance with [such requirements]; and (iii) [p]romptly notify the Commission of any changes that reasonably bear on its certification.”<sup>17</sup>

4. The Bureau evaluates any Letters of Intent based upon the forgoing statutory and regulatory requirements. “In the event that more than one consortium submits a Letter of Intent, meets the statutory requirements . . . , and fulfills the [Commission’s rules] . . . the Bureau must select only one” based on which consortium “most fully satisfies the statutory requirements and the principles that the Commission has identified.”<sup>18</sup>

5. The Commission delegated to the Bureau the responsibility for selecting, annually, the registered traceback consortium.<sup>19</sup> On July 27, 2020, the Bureau selected the Traceback Group as the registered traceback consortium to conduct private led traceback efforts.<sup>20</sup> In August 2021 and August 2022, the Bureau also selected the incumbent Traceback Group to continue as the registered traceback consortium.<sup>21</sup>

6. The Bureau must publish a public notice every year seeking applicants (via Letters of Intent) to serve as the registered traceback consortium.<sup>22</sup> The incumbent registered traceback consortium is not required to submit an application.<sup>23</sup> The incumbent’s certifications “continue for the duration of each subsequent year unless the registered consortium notifies the Commission otherwise in writing.”<sup>24</sup> On April 24, 2023, the Bureau issued a Public Notice seeking Letters of Intent.<sup>25</sup> On May 24, 2023, iconectiv, LLC (iconectiv) submitted a Letter of Intent and supporting documents seeking to be designated as the registered traceback consortium.<sup>26</sup> While the Traceback Group was not required to

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<sup>15</sup> See 47 CFR § 64.1203(b)(3); *Consortium Registration Order*, *supra* note 2, at 3121, para. 26; TRACED Act § 13(d)(1)(C).

<sup>16</sup> 47 CFR § 64.1203(b)(4); *see Consortium Registration Order*, *supra* note 2, at 3115, para. 11; TRACED Act § 13(d)(1)(D).

<sup>17</sup> 47 CFR § 64.1203(b)(5).

<sup>18</sup> *Consortium Registration Order*, *supra* note 2, at 3121, para 28.

<sup>19</sup> *Id.* at 3116, para. 12.

<sup>20</sup> *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886, 7886-87, para. 3 (EB 2020).

<sup>21</sup> *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 36 FCC Rcd 12782 (EB 2021); *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870 (EB Aug. 22, 2022).

<sup>22</sup> 47 CFR § 64.1203(a).

<sup>23</sup> *Id.* § 64.1203(c).

<sup>24</sup> *Id.*

<sup>25</sup> *Enforcement Bureau Requests Letters of Intent to Become the Registered Industry Consortium for Tracebacks*, EB Docket No. 20-22, Public Notice, DA 23-347 (EB Apr. 24, 2023).

<sup>26</sup> Letter of Intent from David Wilson, Vice President of Global Sales, iconectiv, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket 20-22 (filed May 24, 2023) (iconectiv Letter).

submit a new Letter of Intent, USTelecom did submit a Letter supporting its Traceback Group's continued designation as the registered traceback consortium.<sup>27</sup> On June 8, 2023, USTelecom submitted comments<sup>28</sup> and, on June 15, 2023, iconectiv submitted reply comments in response to USTelecom's comments.<sup>29</sup> The Bureau also met with representatives of the Traceback Group on July 18, 2023,<sup>30</sup> and with representatives of iconectiv on July 26, 2023.<sup>31</sup> The Internet & Television Association (NCTA) also submitted comments.<sup>32</sup> Additionally, AT&T Services, Inc., Bandwidth, Inc., Blackfoot Communications, Charter Communications, Comcast Corporation, Consolidated Communications, Intrado Communications, LLC, Lumen Technologies, Inc., Sinch Voice, USCellular, Verizon, and Windstream (collectively, Commenting Providers) submitted joint comments outside of the comment period.<sup>33</sup> ZipDX LLC (ZipDX) filed reply comments.<sup>34</sup> The Commission also received one express comment filed outside of the comment period.<sup>35</sup>

### III. DISCUSSION

7. The Bureau reviewed and assessed iconectiv's submissions as well as USTelecom's submissions since 2020. Both applicants have certified that they notified the Commission of their intent "to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium."<sup>36</sup> Additionally, both applicants have submitted the certification required by section 64.1203(b)(5) of the Commission's rules.<sup>37</sup> After consideration of all statutory and regulatory requirements for the registered traceback consortium along with the input of commenters, we find that the incumbent Traceback Group most fully satisfies the statutory and regulatory requirements.<sup>38</sup> Consequently, the Bureau selects the Traceback Group to remain as the single registered traceback consortium for private-led traceback efforts.<sup>39</sup>

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<sup>27</sup> Letter from Joshua M. Bercu, Vice President of Policy & Advocacy, USTelecom, to Loyaan Egal, Chief, Enforcement Bureau, FCC, EB Docket 20-22 (filed May 24, 2023) (USTelecom Letter).

<sup>28</sup> USTelecom Comments, EB Docket 20-22 (filed June 8, 2023) (USTelecom Comments).

<sup>29</sup> iconectiv, LLC Reply Comments, EB Docket 20-22 (filed June 15, 2023) (iconectiv Reply).

<sup>30</sup> Letter from Joshua M. Bercu, Executive Director, Industry Traceback Group, to Marlene H. Dortch, Secretary, FCC, EB Docket 20-22 (filed July 20, 2023).

<sup>31</sup> Letter from Chris Drake, Senior Vice President, iconectiv, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket 20-22 (filed July 27, 2023).

<sup>32</sup> NCTA – The Internet & Television Association (NCTA) Comments, EB Docket 20-22 (filed June 8, 2023) (NCTA Comments).

<sup>33</sup> Letter from Linda S. Vandeloop, Assistant Vice President, External Affairs/Regulatory, AT&T Services, Inc. *et al.* to Marlene H. Dortch, Secretary, FCC, EB Docket No. 20-22 (filed July 13, 2023) (Joint Provider Comments).

<sup>34</sup> ZipDX LLC Reply Comments, EB Docket 20-22 (filed June 15, 2023) (ZipDX Reply).

<sup>35</sup> Jaret Aucoin, Express Comment, EB Docket 20-22 (filed July 24, 2023).

<sup>36</sup> 47 CFR § 64.1203(b)(4) (requiring such certification); iconectiv Letter, *supra* note 26, at 5; Letter from Patrick R. Halley, Senior Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 20-22, at Appendix A (filed May 21, 2020) (USTelecom Initial Letter of Intent).

<sup>37</sup> 47 CFR § 64.1203(b)(5) (requiring such certification); iconectiv Letter, *supra* note 26, at 5; USTelecom Initial Letter of Intent at 2.

<sup>38</sup> TRACED Act § 13(d)(1)(A)-(D) (requiring neutrality; competent management; written best practices; a focus on fraudulent, abusive, or unlawful traffic; and notice to the Commission of an intent to conduct traceback efforts in advance of registration); 47 CFR § 64.1203(b); *Consortium Registration Order*, *supra* note 2, at 3115, para. 11.

<sup>39</sup> In adherence to section 64.1203(a) of our rules, the Enforcement Bureau will solicit Letters of Intent to register as the Consortium for the following year by April 29, 2024. *See* 47 CFR § 64.1203(a) (requiring the public notice to be issued "no later than April 28 annually"); *id.* § 1.4(I) ("When Commission action is required by statute to be

(continued....)

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

8. Under the TRACED Act and the Commission’s rules, the registered consortium must be “a neutral third party.”<sup>40</sup> The Commission is granted the discretion to determine an applicant’s neutrality.<sup>41</sup> In the *Consortium Registration Order*, the Commission determined that the neutrality of a third party is demonstrated by openness. An applicant may demonstrate openness by showing—at the very least—how it will allow voice service providers to participate in traceback efforts in a manner that is unbiased, non-discriminatory, and technology-neutral.<sup>42</sup> Further, an applicant’s openness should allow for and encourage the broad participation of voice service providers. This is because the collaboration and cooperation of voice service providers is “necessary to fulfill the fundamental purpose of traceback—timely and successfully finding the origin of suspected unlawful robocalls that traverse multiple voice service providers’ networks.”<sup>43</sup> A consortium’s neutrality should ensure that no industry segment is subject to bias within the consortium’s participation structure.<sup>44</sup> “In order to ensure that the registered consortium fulfills the statutory obligation of neutrality, applicants will need to demonstrate in their Letters of Intent that they meet that requirement.”<sup>45</sup> Thus, the Letters of Intent submitted by the applicants should include specific information sufficient to allow the Bureau to evaluate the neutrality of the respective applicant.<sup>46</sup>

9. *USTelecom’s Assertions of Neutrality.* The Traceback Group refers to its structure and composition as evidence of its openness and its ability to be neutral. Its Letter specifically references the Bureau’s prior finding that the “multi-member structure of the Traceback Group, and its widespread industry support, encourages neutrality and openness.”<sup>47</sup> As evidence of its ability to encourage broad participation in the traceback process, the Traceback Group highlights its “long track record of building and sustaining a broad and diverse industry coalition representing every part of the voice provider ecosystem to work together to stop illegal robocalls.”<sup>48</sup> The Traceback Group further explains that “the majority of the members of the [Traceback Group’s] Executive Committee, which oversees the operation and overall direction of the Traceback Group, are not USTelecom members.”<sup>49</sup>

10. *iconectiv’s Assertion of Neutrality.* iconectiv states that it is “a trusted neutral third party” that “serv[es] the telecom industry as the Secure Telephone Identity-Policy Administrator (STI-

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taken by a date that falls on a holiday, such action may be taken by the next business day (unless the statute provides otherwise.”); *id.* § 1.4(e)(1) (defining the term “holiday”). As April 28, 2024 falls on a Sunday, the public notice must be issued no later than April 29, 2024. Our selection in this Order will be effective until that 2024 selection process is complete.

<sup>40</sup> TRACED Act § 13(d)(1)(A); 47 CFR § 64.1203(b)(1); *see also Consortium Registration Order, supra* note 2, at 3117, para. 16.

<sup>41</sup> *See* TRACED Act § 13(d)(1)(A).

<sup>42</sup> *Consortium Registration Order, supra* note 2, at 3117, para. 16.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 3117, para. 17.

<sup>45</sup> *Id.* at 3117, para. 18.

<sup>46</sup> *See Consortium Registration Order, supra* note 2, at 3117-18, para. 18 (“Consistent with the openness principle, consortia should provide information to demonstrate that their internal structural, procedural, and administrative mechanisms, as well as other operational criteria do not result in an overall lack of neutrality.”). The Bureau will “evaluate each such Letter of Intent in light of a consortium’s showings of compliance with the neutrality and other requirements of section 13(d).” *Id.* at 3118, para. 18. Furthermore, generally, an entity that seeks to become the registered consortium must sufficiently and meaningfully fulfill the statutory requirements. *Id.* at 3117, para. 15.

<sup>47</sup> USTelecom Letter, *supra* note 27, at 8.

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

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

PA), the Local Number Portability Administrator (LNPA) for the United States managing the nation's Number Portability Administration Center (NPAC), and operating the TRS Numbering Directory for iTRS services on behalf of the [FCC].<sup>50</sup>

11. iconectiv states that it will be transparent about the traceback process but for security reasons will keep the details of the process to those with a “need to know.”<sup>51</sup> iconectiv would provide traceback details and results to law enforcement through a secure portal.<sup>52</sup> iconectiv states that it “is committed to have traceback operations governed by a group of authoritative public/private/government stakeholders and will not be influenced by any industry entity that could profit from illegal calling.”<sup>53</sup> iconectiv emphasizes that the governing body will police bad actors and, as a neutral third party, iconectiv asserts that it will not “engage in any disciplinary actions or enforcement of any member of the traceback consortium.”<sup>54</sup> Further, iconectiv states that “[b]y using publicly available data sources, robocall campaign evidence and volumes, [it] would be able to help continuously monitor and pursue unlawful campaigns indefinitely without any subjectivity in human analysts deciding when and which campaigns to trace.”<sup>55</sup>

12. *Comments.* USTelecom submitted comments in favor of the Traceback Group that questioned iconectiv's ability to serve as a neutral third-party. USTelecom's comments make three main arguments regarding iconectiv's neutrality: (1) iconectiv declares that it would be a neutral third party but does not demonstrate it;<sup>56</sup> (2) iconectiv has undisclosed potential conflicts of interest that could hamper its ability to remain a neutral third-party;<sup>57</sup> and (3) iconectiv's proposed traceback process requires it to exercise judgment which could involve bias and discrimination in the absence of any defined governance structure, policies, or methods.<sup>58</sup>

13. USTelecom states that iconectiv's Letter of Intent “does not demonstrate that iconectiv would be able to act as a neutral third-party.”<sup>59</sup> USTelecom argues that “[i]nstead, the [Letter of Intent] merely summarily asserts that iconectiv ‘is a neutral third party and will carry out its mandate as the registered consortium in a non-discriminatory manner[.]’”<sup>60</sup> USTelecom states that iconectiv “refers to but provides no detail regarding ‘a group of authoritative public/private/government stakeholders’ that would govern traceback operations”<sup>61</sup> and does not “state who these stakeholders are, how they would be selected, or how decisional authority would be allocated among them.”<sup>62</sup>

14. USTelecom argues that iconectiv's business interests might affect its traceback operations because those interests “could benefit from how it designs and conducts the industry traceback operation.”<sup>63</sup> USTelecom also states that because iconectiv has not provided any information about how

<sup>50</sup> iconectiv Letter, *supra* note 26, at 2.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.*

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 3.

<sup>56</sup> USTelecom Comments, *supra* note 28, at 2.

<sup>57</sup> *Id.* at 9-10.

<sup>58</sup> *Id.* at 10.

<sup>59</sup> *Id.* at 2.

<sup>60</sup> *Id.* at 6 (quoting iconectiv Letter, *supra* note 26, at 5).

<sup>61</sup> *Id.* (quoting iconectiv Letter, *supra* note 26, at 4).

<sup>62</sup> *Id.* at 6-7.

<sup>63</sup> *Id.* at 2.

its traceback operations would be funded, the Bureau and other stakeholders cannot evaluate whether potential conflicts of interest exist.<sup>64</sup> Additionally, USTelecom notes that iconectiv did not disclose in its Letter of Intent that “an affiliate of iconectiv’s minority owner, F.P.-Icon Holdings, L.P. (‘FP-Icon’), acquired an indirect majority interest in four interconnected VoIP providers”<sup>65</sup> despite the fact that the Commission identified this acquisition in another proceeding.<sup>66</sup> USTelecom asserts that iconectiv’s failure “to proactively disclose iconectiv’s ownership and accompanying risks of non-neutrality undermine the company’s unsubstantiated and conclusory statement that it ‘has no relationships . . . that could give a party opportunity to interfere with its neutrality.’”<sup>67</sup> In addition, USTelecom notes that iconectiv’s majority owner is Ericsson, and Ericsson’s acquisition of Vonage, a large VoIP provider, further complicates iconectiv’s assertion of neutrality.<sup>68</sup> USTelecom opines that iconectiv should have disclosed these potential conflicts of interest in its Letter of Intent and described how it would manage the traceback process neutrally in spite of these interests.<sup>69</sup>

15. Furthermore, USTelecom claims that “iconectiv would manage the traceback process in non-neutral fashion by discriminating between ‘good’ and ‘bad’ providers.”<sup>70</sup> USTelecom argues that “[d]etermining ‘good’ and ‘bad’ actors among providers that cooperate with tracebacks is not simple and requires the application of judgment”<sup>71</sup> and “there is no way to review whether or not iconectiv’s proposed approach would amount to the application of bias and discrimination” in the absence of “any defined governance structure, policies, or methods to define ‘good’ and ‘bad.’”<sup>72</sup> USTelecom further argues that iconectiv’s Letter of Intent “appears to contemplate delegating evaluations to the undefined and undeveloped ‘governing body’ so that iconectiv itself ‘will not engage in any disciplinary actions or enforcement of any member of the traceback consortium.’”<sup>73</sup> USTelecom also claims that “the [Letter of Intent] provides no reason to assume that the governing body would act in an unbiased, non-discriminatory, and technologically-neutral manner.”<sup>74</sup>

16. The Commenting Providers submitted comments in support of the Traceback Group’s neutrality. Specifically, the Commenting Providers applaud the Traceback Group’s “creat[ion of] a collaborative environment where a diverse group of voice service providers, most of which are not members of its trade association, have been able to work together productively to combat illicit robocalling.”<sup>75</sup> The Commenting Providers highlight the beneficial growth of the Traceback Group’s coalition, which now includes over 500 voice service providers.<sup>76</sup> The Commenting Providers argue that “[i]t is unlikely that we would see such high levels of participation by industry as well as law enforcement, regulators, and others without USTelecom’s track record and commitment to an unbiased

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<sup>64</sup> *Id.* at 8 (citing iconectiv Letter, *supra* note 26, at 5).

<sup>65</sup> *Id.* (citing *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability*, WC Docket Nos. 07-149, 09-109, CC Docket No. 95-116, Memorandum Opinion and Order, 35 FCC Rcd 7106, 7108, para. 7 (WCB 2020)).

<sup>66</sup> *Id.* at 8-9.

<sup>67</sup> *Id.* at 9.

<sup>68</sup> *See id.* at 9.

<sup>69</sup> *Id.* at 9-10.

<sup>70</sup> *Id.* at 10.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 11 (quoting iconectiv Letter, *supra* note 26, at 4).

<sup>74</sup> *Id.*

<sup>75</sup> Joint Provider Comments, *supra* note 33, at 1.

<sup>76</sup> *Id.*

and impartial approach.”<sup>77</sup> The Commenting Providers also argue that iconectiv failed to provide information that would clarify its ability to act neutrally. Specifically, the Commenting Providers find that iconectiv’s Letter of Intent contained “no mention of a funding structure” and did not explain how iconectiv would “recover its operating expenses, especially given its fiduciary duty to maximize profit for its shareholders.”<sup>78</sup> Further, the Commenting Providers expressed concern regarding iconectiv’s failure to identify governing stakeholders, which they stated was inconsistent with the Traceback Group’s policies and procedures.<sup>79</sup> The Commenting Providers argue that “[w]ithout more detailed information . . . it is impossible to evaluate and assess whether or not [iconectiv] is likely to be a more successful alternative.”<sup>80</sup> NCTA also submitted comments in favor of the Traceback Group but did not address the neutrality requirement.

17. *Reply Comments.* iconectiv submitted reply comments in response to USTelecom in order to address “misconceptions raised in [USTelecom’s] comments.”<sup>81</sup> iconectiv states that its satisfaction of neutrality requirements as the LNPA and the iTRS Numbering Administrator demonstrates neutrality sufficient to serve as the Traceback Consortium.<sup>82</sup> In the context of numbering administration, the neutrality safeguards adopted by iconectiv include “a voting trust for all current ownership interests, restrictions on the number of board seats the owners may appoint, a plurality of independent directors, and semi-annual neutrality audits, among others[.]”<sup>83</sup> iconectiv argues that conversely, USTelecom has aligned itself with a “particular telecommunications industry segment.”<sup>84</sup> iconectiv states that the “many vendor-neutral positions that [it] holds for the industry demonstrate that iconectiv is capable of operating in such an open, non-discriminatory, and technology-neutral manner[.]”<sup>85</sup> which it argues satisfies the Commission’s neutrality criterion.<sup>86</sup>

18. Regarding USTelecom’s concern regarding “a group of authoritative public/private/government stakeholders” that have not yet been named, iconectiv explains that “iconectiv intends the future selection of the governance group to be open and transparent, consistent with the Commission’s neutrality requirements.”<sup>87</sup> To bolster its argument, iconectiv points to its experience “operating consortium-led solutions, almost a decade of that with FCC oversight much like the Traceback service today.”<sup>88</sup>

19. ZipDX also submitted reply comments regarding neutrality. ZipDX supports a “more widespread dissemination of traceback findings”<sup>89</sup> and, as a result, questions iconectiv’s intent to make the results of tracebacks available to those with a “need to know.”<sup>90</sup> ZipDX opines that iconectiv’s Letter of Intent failed to provide specificities regarding how the “need to know” determination is made

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<sup>77</sup> *Id.* at 2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> iconectiv Reply, *supra* note 29, at 2.

<sup>82</sup> *Id.* at 3-4.

<sup>83</sup> *Id.* at 4.

<sup>84</sup> *Id.* at 3 (quoting 47 CFR § 52.12(a)(1)).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* (citing *Consortium Registration Order*, *supra* note 2, at 3117, para. 16).

<sup>87</sup> *Id.* at 4.

<sup>88</sup> *Id.* at 5.

<sup>89</sup> ZipDX Reply, *supra* note 34, at 2.

<sup>90</sup> *Id.* at 2.



by the consortium's governing body.<sup>91</sup> Furthermore, ZipDX reiterates its concern for "the financial secrecy that surrounds the traceback operation" currently managed by the Traceback Group and states that "iconectiv does nothing to address this [matter]."<sup>92</sup>

20. *Analysis.* We find that the Traceback Group most fully satisfies the statutory neutrality obligation. Although we acknowledge that iconectiv has served as a valued party in the context of its role as the LNPA and iTRS Numbering Administrator,<sup>93</sup> we find that it did not provide sufficient evidence in its Letter of Intent to enable the Bureau to analyze how specifically it would serve as a neutral consortium and how specifically it would allow for and encourage the broad participation of voice service providers in the traceback context in an unbiased, non-discriminatory, and technology-neutral manner. iconectiv explains its robust role in the telecom industry; however, it does not sufficiently elaborate on how it would leverage its industry contacts to encourage broad participation in traceback. iconectiv attempts to do so in its reply comments, stating that a group of stakeholders will govern the traceback process;<sup>94</sup> however it still does not provide specific information about which entities will comprise the consortium or specifically how the consortium will enable voice service providers to participate in an unbiased, non-discriminatory, and technology-neutral manner. Conversely, the Traceback Group's track record, multi-member structure, and widespread industry support foster openness and encourage broad participation in traceback.<sup>95</sup> The Traceback Group also specifically addresses the contribution of its Executive Committee to neutrality, highlighting the Committee's inclusion of both USTelecom members and non-members.<sup>96</sup> The Commission has not imposed "a single, specific structure or administrative methodology to ensure neutrality."<sup>97</sup> However, we find the Traceback Group's evidence of its neutrality and openness more compelling than the evidence presented by iconectiv.

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

21. The TRACED Act mandates that the registered consortium be "competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls."<sup>98</sup> This requires the consortium to have the capacity to "effectively and efficiently manage a traceback process of suspected unlawful robocalls," which includes "timely and successfully" identifying the origin of suspected illegal robocalls that travel across multiple voice service providers' networks.<sup>99</sup> Competent management also necessitates cooperation and collaboration with industry participants, as well as the prompt exchange of information in response to state and federal enforcement efforts.<sup>100</sup> Further, the consortium must comply with applicable legal requirements including those pertaining to legal procedure and confidentiality.<sup>101</sup> The Commission

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 3.

<sup>93</sup> We note that iconectiv's request for the Wireline Competition Bureau to confirm that iconectiv continues to meet the LNPA neutrality requirements following the acquisition of Vonage Holdings Corp. by subsidiaries of Telefonaktiebolaget LM Ericsson (Ericsson), an 83% owner of iconectiv, remains pending, and nothing in this item should be construed to suggest that matter's resolution. Letter from John Nakahata, Counsel for iconectiv, LLC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket Nos. 95-116 et al. (filed Jan. 17, 2022).

<sup>94</sup> iconectiv Reply, *supra* note 29, at 4.

<sup>95</sup> USTelecom Letter, *supra* note 27, at 8.

<sup>96</sup> *Id.*

<sup>97</sup> *Consortium Registration Order*, *supra* note 2, at 3118, para. 19.

<sup>98</sup> TRACED Act § 13(d)(1)(A).

<sup>99</sup> *Consortium Registration Order*, *supra* note 2, at 3119, para. 21.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

is granted the discretion to determine an applicant's competence,<sup>102</sup> and demonstrated expertise and success of the applicant is "particularly relevant" when making this evaluation.<sup>103</sup>

22. *USTelecom's Assertion of Competence.* USTelecom asserts that, by serving as the registered traceback consortium over the past three years, the Traceback Group has demonstrated its ability to competently manage private-led traceback efforts.<sup>104</sup> The Traceback Group has conducted over 10,000 tracebacks and the robocall campaigns associated with these tracebacks represent "billions of illegal calls targeting consumers."<sup>105</sup> Specifically, between January and November 2022, the Traceback Group conducted 2,600 tracebacks.<sup>106</sup> Further, in 2022, nearly 500 domestic and foreign providers have cooperated with tracebacks, 180 of which had not been previously identified in tracebacks.<sup>107</sup> USTelecom represents that the Traceback Group has also worked closely with state and federal enforcement authorities, responding promptly to civil and criminal investigative demands.<sup>108</sup>

23. USTelecom also asserts that the Traceback Group has taken an innovative approach to improving the traceback process. *First*, it states that the Traceback Group has taken several actions to improve its traceback portal and traceback technology.<sup>109</sup> These actions include launching a new platform for law enforcement that will enable authorities to review traceback data and traceback trends, deploying an automatic alert system to notify providers of potential compliance issues, and integrating comment features and a formal dispute mechanism for providers.<sup>110</sup> *Second*, USTelecom represents that the Traceback Group has integrated additional data into its traceback process. For instance, USTelecom explains that the Traceback Group now "collects STIR/SHAKEN information regarding calls the ITG traces back"<sup>111</sup> and "incorporates its [Do Not Originate] Registry to the [Traceback Group] portal."<sup>112</sup> Further, the Traceback Group has increased its number of data partners, sourcing ZipDX's RRAPTOR data, in addition to data from YouMail and Verizon, to "traceback more examples of live fraud and illegal telemarketing calls."<sup>113</sup> The Traceback Group has also engaged a data science team to suggest additional data partners and develop insights that could be used by voice service providers in their due diligence processes.<sup>114</sup> *Third*, USTelecom states that the Traceback Group has increased cybersecurity and data privacy efforts. Specifically, it asserts that the Traceback Group implemented "new privacy and data

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<sup>102</sup> See TRACED Act § 13(d)(1)(A); *Consortium Registration Order*, *supra* note 2, at 3119, para. 22.

<sup>103</sup> *Consortium Registration Order*, *supra* note 2, 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>104</sup> USTelecom Comments, *supra* note 28, at 1-2; *see also* USTelecom Letter, *supra* note 27, at 8.

<sup>105</sup> Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom to Marlene Dortch, Secretary, Federal Communications Commission, EB Docket No. 20-195, at 1 (filed Nov. 21, 2022).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 3.

<sup>108</sup> USTelecom Letter, *supra* note 27, at 4.

<sup>109</sup> *See id.* at 6.

<sup>110</sup> *Id.* at 6-7.

<sup>111</sup> *Id.* at 5.

<sup>112</sup> *Id.* at 6.

<sup>113</sup> *Id.* at 5.

<sup>114</sup> *Id.* at 7.

minimization-focused features to redact old personally identifiable information and call detail record information that is no longer needed.”<sup>115</sup>

24. *iconectiv’s Assertion of Competence.* As evidence of its managerial competence, iconectiv asserts that it has a robust history as a “premiere developer of switching, porting and national software platforms and registries with billions of records created for governments, regulators, and telecoms around the world.”<sup>116</sup> iconectiv references its successful implementation of projects such as the NPAC (as part of its work as the LNPA), the Short Code Registry, and the iTRS Numbering Directory, to show that it has the ability to adhere to deadlines and deliver effective, operational products.<sup>117</sup> iconectiv further asserts that it will contribute a “broad industry perspective, along with deep technological expertise” to the consortium.<sup>118</sup> iconectiv also asserts that it plans to utilize its industry contacts, such as that with YouMail, “disparate data sources,” and “evidence through secure APIs,” to more rapidly identify and minimize robocall campaigns.<sup>119</sup> Additionally, iconectiv generally states, without additional detail, that it “is in a unique position to assist with the goal of automating traceback queries and responses” due to its experience building automated interfaces for various carriers and service providers in the telecom industry.<sup>120</sup> iconectiv did not provide specific details regarding its ability to manage the traceback process or its planned innovations for the traceback process.

25. *Comments.* NCTA filed comments in support of the Traceback Group’s competence, stating that the Traceback Group plays a critical role in combatting illegal robocalls.<sup>121</sup> NCTA further states that the Traceback Group’s work has continued to grow since its initial selection and that “under USTelecom’s leadership, the [Traceback Group] continues to expand the scope of its efforts to combat robocalls.”<sup>122</sup> NCTA also commends the upgrades that the Traceback Group has incorporated into its portal, noting that the Traceback Group portal provides both law enforcement and voice service providers with real-time traceback information needed to make enforcement or business decisions.<sup>123</sup>

26. The Commenting Providers also filed comments supporting the Traceback Group’s competency, asserting that the Traceback Group has continued “to develop and refine tools to increase the efficiency and effectiveness of the traceback process and continues to grow relationships with others fighting illegal robocalls.”<sup>124</sup> The Commenting Providers state that the Traceback Group “has a proven track record of technical expertise, policy expertise, and knowledge of applicable laws and regulations.”<sup>125</sup> The Commenting Providers also note their support of the Traceback Group’s continued dedication to improving the traceback process to fight illegal robocalls.<sup>126</sup> Specifically, the Commenting Providers laud the Traceback Group’s ongoing investments into the traceback process, including “expand[ing] its significant technical expertise, hir[ing] specialized staff, and advanc[ing] industry-specific resources to

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<sup>115</sup> *Id.*

<sup>116</sup> iconectiv Letter, *supra* note 26, at 7.

<sup>117</sup> *Id.* at 7-9.

<sup>118</sup> *Id.* at 9.

<sup>119</sup> *Id.* at 3.

<sup>120</sup> *Id.*

<sup>121</sup> NCTA Comments, *supra* note 32, at 1.

<sup>122</sup> *Id.* at 1.

<sup>123</sup> *Id.* at 2.

<sup>124</sup> Joint Provider Comments, *supra* note 33, at 1.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

automate and improve the process . . . and is continually enhancing its processes.”<sup>127</sup> The Commenting Providers also find that iconectiv’s Letter of Intent “provides very little information from which to evaluate how [iconectiv] would operate and provide value.”<sup>128</sup> The Commenting Providers further asserted that the Traceback Group “remains best positioned to adapt to a challenging and often-changing call-tracing environment, where illegal robocallers continuously adapt tactics, gain sophistication, and annoy and prey upon unsuspecting consumers.”<sup>129</sup>

27. USTelecom also highlighted concerns over the lack of detail regarding competency in iconectiv’s Letter of Intent. USTelecom argues that iconectiv’s Letter of Intent is “far too cursory to demonstrate, as required, that iconectiv would be a competent traceback manager.”<sup>130</sup> USTelecom argues that iconectiv’s Letter of Intent does not satisfy the statutory requirement because it “fails to identify whether or how iconectiv will exercise necessary legal oversight”<sup>131</sup> and does not provide any evidence to support iconectiv’s claim that it has “demonstrated competence in the execution of traceback.”<sup>132</sup> Specifically, USTelecom states that “iconectiv indicates it would meet this requirement, but it does not state how.”<sup>133</sup> Further, USTelecom expresses concern that iconectiv would “pursue a scale and method of traceback operations”<sup>134</sup> for which “it would not be possible to provide a legal review of each campaign to determine the lawfulness of the traceback.”<sup>135</sup> While recognizing the importance of innovation, USTelecom also notes that iconectiv’s suggestion that it would rely on automation, without further detail, “raises the risk of inconsistency with Section 222 [of the Communications Act] and, in turn, the risk of undermining the proven and successful traceback process.”<sup>136</sup>

28. *Reply Comments.* iconectiv submitted reply comments in response to USTelecom’s comments regarding iconectiv’s competency.<sup>137</sup> iconectiv contends that it “has an impeccable reputation and is recognized in the telecommunications industry as a trusted, neutral steward of data.”<sup>138</sup> iconectiv asserts that it has had extensive experience with “international, federal, state and local regulation and laws pertaining to data collection, data access, and data storage.”<sup>139</sup> iconectiv states that it is well-versed in data protection regulations, including those relevant to performing tracebacks, which “focus on the protection of and access to customer proprietary network information (‘CPNI’) and rules as to when CPNI can be shared.”<sup>140</sup> iconectiv also addresses USTelecom’s “baseless” argument that its desire to automate the traceback operation would render iconectiv an incompetent manager.<sup>141</sup> iconectiv argues

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 2.

<sup>129</sup> *Id.*

<sup>130</sup> USTelecom Comments, *supra* note 28, at 11.

<sup>131</sup> *Id.* at 11.

<sup>132</sup> *Id.* at 13 (quoting *iconectiv Letter*, *supra* note 26, at 5).

<sup>133</sup> *Id.* at 12.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> iconectiv Reply, *supra* note 29, at 5.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 5-6.

<sup>140</sup> *Id.* at 6.

<sup>141</sup> *Id.*

that it's Letter of Intent does not propose full reliance on automated traceback operations.<sup>142</sup> iconectiv states instead that it will not preclude manual processes, but that increasing automation would allow it to both innovate traceback operations and reduce operating costs.<sup>143</sup>

29. ZipDX filed reply comments in support of the Traceback Group.<sup>144</sup> ZipDX argues that iconectiv failed to provide specificity regarding how it would implement automation into the traceback process.<sup>145</sup> ZipDX questioned the value of iconectiv's representation of conducting a larger number of tracebacks.<sup>146</sup> Further, ZipDX noted that iconectiv failed to explain how its "global presence" would benefit the traceback process and fight against robocalls.<sup>147</sup> ZipDX also supported the Traceback Group's use of STIR/SHAKEN data, finding that it allows the Traceback Group to more effectively determine the originating point of problematic calls.<sup>148</sup> ZipDX notes that iconectiv made the case that it was in the STI-PA, but did not state that it would tie STIR/SHAKEN data into the traceback process.<sup>149</sup> With regard to iconectiv's proposal to make traceback analysis available on a "need to know" basis, ZipDX notes that iconectiv is not clear on how that determination will be made, and thus it is not clear "how that would be a change from the status quo."<sup>150</sup> Overall, ZipDX states that it "iconectiv's submission does not rise to the necessary level."<sup>151</sup>

30. *Analysis.* We find that the Traceback Group most fully satisfies the statutory competency requirement. We also find that iconectiv's Letter of Intent and subsequent reply comments do not provide adequately specific details for the Bureau to fully evaluate iconectiv's competency. Although iconectiv asserts that it "has demonstrated competence in the execution of traceback, both technically and administratively,"<sup>152</sup> the Letter of Intent lacks support for that assertion. Despite iconectiv's assertions that it has knowledge of legal regulations governing tracebacks, it does not specifically state the measures it will engage to apply that knowledge to the traceback process. Additionally, while iconectiv describes its experience as an administrator within other industry-led and Commission-led groups, that is insufficient, by itself, to demonstrate that it is competent to manage the traceback process; iconectiv does not sufficiently explain, for example, how its experience managing numbering resources is transferable to the experience of managing a private-led traceback consortium. iconectiv provided insufficient detail regarding its development of any operational traceback processes. For example, iconectiv's Letter of Intent states that iconectiv would seek to implement innovative changes, including automation,<sup>153</sup> however, it does not detail how exactly the automation would work and the level of oversight that iconectiv would maintain over the process. Based on the evidence submitted in the record, the Commission is unable to fully evaluate iconectiv's assertion that it would act as a competent manager of the traceback consortium. The Traceback Group has demonstrated consistent cooperation with the industry and law enforcement to effectively and efficiently process and facilitate traceback requests. The

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<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 6-7.

<sup>144</sup> ZipDX Reply, *supra* note 34, at 1.

<sup>145</sup> *Id.* at 1.

<sup>146</sup> *Id.* at 1-2.

<sup>147</sup> *Id.* at 2.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* ("It is not clear to us how that would be a change from the status quo. If it would be a change, we do not know if for better or worse.")

<sup>151</sup> *Id.* at 3.

<sup>152</sup> iconectiv Letter, *supra* note 26, at 5.

<sup>153</sup> iconectiv Letter, *supra* note 26, at 3.

Commission's observations of the Traceback Group's processes and the input of Commenters demonstrate that the Traceback Group has the requisite legal knowledge, management competence, and resources to conduct timely and accurate tracebacks, including large scale requests. USTelecom provided specific examples in its Letter highlighting recent upgrades to its law enforcement portal and traceback process generally.<sup>154</sup> USTelecom also provided explicit details regarding the role of automatic alerts for providers in its traceback process.<sup>155</sup> Accordingly, we find that the Traceback Group best meets the statutory requirement of being competent to manage the private-led traceback process.

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

31. 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.<sup>156</sup> Written best practices, at a minimum, must address the consortium's compliance with statutory requirements,<sup>157</sup> consistent with the principles the Commission set forth in the Commission's *Consortium Registration Order*.<sup>158</sup> The registered consortium's written best practices must establish processes and criteria for management of its traceback efforts and determining how voice service providers will participate in traceback efforts,<sup>159</sup> and those processes and criteria must be fair and reasonable.<sup>160</sup> Best practices evolve over time to reflect empirical knowledge and practical experience, as with technology-dependent activities such as combatting caller ID spoofing.<sup>161</sup>

32. *USTelecom's Written Best Practices.* USTelecom refers to the Traceback Group's Policies and Procedures, which it updates regularly, as evidence of its maintenance of and conformity to written best practices.<sup>162</sup> USTelecom further asserts that the Traceback Group "updates its Policies and Procedures as necessary to ensure that they adequately address applicable legal and policy considerations and accurately describe the [Traceback Group's] operations."<sup>163</sup>

33. *iconectiv's Written Best Practices.* iconectiv did not present its own written best practices for the traceback process. iconectiv states that it will adopt as its initial best practices the Traceback Group's Policies and Procedures and will attempt to build upon them while adapting as the robocalling landscape evolves.<sup>164</sup> iconectiv attached the Traceback Group's Policies and Procedures to its Letter of Intent.

34. *Comments.* The comments lauded the Traceback Group's procedures and underscored the fact that iconectiv provided only the Traceback Group's procedures, with the intent to temporarily

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<sup>154</sup> USTelecom Letter, *supra* note 27, at 6-7.

<sup>155</sup> *Id.*

<sup>156</sup> See TRACED Act § 13(d)(1)(B); *Consortium Registration Order*, *supra* note 2, at 3119-20, para. 24; *see also* 47 CFR § 64.1203(b)(2).

<sup>157</sup> *Consortium Registration Order*, *supra* note 2, at 3120, para. 24; *see also* TRACED Act § 13(d)(1)(A)-(D); 47 CFR § 64.1203(b)(2).

<sup>158</sup> *Consortium Registration Order*, *supra* note 2, at 3117-22, paras. 15-29 (discussing the Commission's interpretation of section 13(d) of the TRACED Act).

<sup>159</sup> 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, *supra* note 2, at 3120, para. 24.

<sup>160</sup> *Consortium Registration Order*, *supra* note 2, at 3120, para. 24.

<sup>161</sup> *Call Authentication Trust Anchor, Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241 (2020).

<sup>162</sup> USTelecom Letter, *supra* note 27, at 8-9.

<sup>163</sup> *Id.*

<sup>164</sup> iconectiv Letter, *supra* note 26, at 5.

follow them. NCTA states that the Traceback Group “plays a critical role in developing and maintaining the robust traceback processes needed to effectively combat illegal robocalls. As the Commission has acknowledged, the Traceback Group’s tracebacks ‘have accelerated the investigation process[.]’”<sup>165</sup> Likewise, the Commenting Providers find that “the industry traceback process managed by [the Traceback Group] continues to perform admirably.”<sup>166</sup> The Commenting Providers question iconectiv’s adherence to the ITG Policies and Procedures, which iconectiv proposed to adopt.<sup>167</sup> The Commenting Providers specifically point to the lack of transparency regarding the selection of iconectiv’s group of governing stakeholders, noting that the lack of transparency “seems to deviate from the ITG Policies and Procedures” and questioning “[w]hat other deviations are proposed?”<sup>168</sup> USTelecom similarly states that the Traceback Group “conforms its actions to written best practices that it devised based on its stakeholder-driven process.”<sup>169</sup> USTelecom further argues that iconectiv’s Letter of Intent “provides almost no concrete information about how iconectiv would conduct its operations as the registered consortium, failing to provide adequate information for interested stakeholders and, in turn, the Bureau to consider whether iconectiv meets the requirements for selection.”<sup>170</sup> USTelecom adds that iconectiv “indicates that it will rely on the Traceback Group’s best practices on an interim basis, but it does not include best practices that reflect iconectiv’s intended operations after that interim period. Without this information, stakeholders and the Bureau cannot know how iconectiv hopes to operate.”<sup>171</sup>

35. *Reply Comments.* iconectiv represents that it “has been contributing to best practices and threat mitigation for many years as part of the GSMA Fraud and Security Group and the Communications Fraud Control Association.”<sup>172</sup> iconectiv also states that although it would utilize the Traceback Group’s policies and procedures initially, the best practices “would continue to evolve.”<sup>173</sup> iconectiv states that it “has a demonstrable and proven track record of implementing best practices for industry-led and consortium-based solutions.”<sup>174</sup> iconectiv further asserts that due to its “roles as the LNPA on behalf of the NAPM with oversight from the FCC, as well as the Short Code Registry Administrator on behalf of CTIA,” it has experience with transitioning services from an incumbent provider.<sup>175</sup> iconectiv states that it did not present any new best practices because it would be “inappropriate for iconectiv to suggest specific changes to the existing best practices at this time without the collaboration and involvement of key stakeholders, such as the Commission and Traceback Group Steering Committee members.”<sup>176</sup> To “reinforce [its] commitment to industry best practices,” iconectiv makes several “key declarations,” briefly describing its project management, operation and administration, and system security and data protection skills and priorities.<sup>177</sup>

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<sup>165</sup> NCTA Comments, *supra* note 32, at 1 (internal citations omitted).

<sup>166</sup> Joint Provider Comments, *supra* note 33, at 2.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> USTelecom Comments, *supra* note 28, at 2.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> iconectiv Reply, *supra* note 29, at 2.

<sup>173</sup> *Id.* at 7.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 8.

<sup>177</sup> *Id.* at 8-9.

36. *Analysis.* We find that the Traceback Group’s maintenance of and conformance to its best practices—which have proven to accelerate the traceback process—most fully satisfies the statutory requirement. The Traceback Group has a proven track record of maintaining and conforming to its best practices. The Traceback Group has demonstrated its commitment to regularly reviewing and revising its Policies and Procedures in order to address and incorporate legal and policy changes.<sup>178</sup> iconectiv’s Letter of Intent did not offer any of its own practices for us to consider beyond its initial adoption of the Traceback Group’s procedures.<sup>179</sup> iconectiv states that it intends to “build on what is working, while adapting as the robocalling landscape evolves.”<sup>180</sup> In its reply comments, iconectiv explains that the “fact that best practices would continue to evolve is unremarkable” and that it would be inappropriate to offer changes to the Traceback Group’s best practices until iconectiv has spoken with stakeholders.<sup>181</sup> However, with only the Traceback Group’s best practices to consider, there is some uncertainty as to whether iconectiv will satisfy the statutory requirement of maintaining and conforming to written best practices.

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

37. Consistent with section 222(d)(2) of the Communications Act, the registered consortium’s traceback efforts must focus on “fraudulent, abusive, or unlawful” traffic.<sup>182</sup> Telecommunications carriers may 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>183</sup> A traceback process that at the very least considers scope, scale, and harm should lead to a focus on fraudulent, abusive, or unlawful traffic.<sup>184</sup>

38. *USTelecom’s Commitment to Focus on Fraudulent, Abusive, or Unlawful Traffic.* The Traceback Group asserts that it is committed to focusing on fraudulent, abusive, or unlawful traffic.<sup>185</sup> Specifically, the Traceback Group, in its filings, states that it assures that private led efforts to trace calls are consistent with section 222 of the Communications Act.<sup>186</sup> Additionally, the Traceback Group asserts that it prevents privacy infringements by ensuring that it only shares traceback data that satisfies three criteria: (1) a credible source provided the data; (2) the nature of the traffic is deemed to be fraudulent, abusive, or unlawful after analysis by Traceback Group staff; and (3) the initiation of the traceback warrants use of the Traceback Group’s resources.<sup>187</sup> Further, the Traceback Group asserts that it “judiciously review[s] both traceback requests and acquired call examples to ensure that all traffic traced back meets the criteria [of fraudulent, abusive, or unlawful traffic]” in addition to implementing a formal dispute mechanism for providers to challenge the designation of the traceback as fraudulent, abusive, or

<sup>178</sup> USTelecom Letter, *supra* note 27, at 8-9.

<sup>179</sup> iconectiv Letter, *supra* note 26, at 5.

<sup>180</sup> *Id.*

<sup>181</sup> iconectiv Reply, *supra* note 29, at 7, 8.

<sup>182</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>183</sup> 47 U.S.C. § 222(d)(2).

<sup>184</sup> TRACED Act § 13(d)(1)(C).

<sup>185</sup> USTelecom Letter, *supra* note 27, at 9.

<sup>186</sup> USTelecom Initial Letter of Intent, *supra* note 36, at 2.

<sup>187</sup> *Id.* at 9.



unlawful.<sup>188</sup> The Traceback *Group*, also represents that it has also expanded its traceback efforts to address the “ever-growing range of illegal activity,” while still remaining “committed to stopping high-volume illegal robocalls.”<sup>189</sup>

39. *iconectiv’s Commitment to Focus on Fraudulent, Abusive, or Unlawful Traffic.* iconectiv states that it would focus on fraudulent, abusive, or unlawful traffic as described in the Traceback Group’s Policies and Procedures.<sup>190</sup> Additionally, iconectiv asserts that its “history with traceback has always maintained this focus.”<sup>191</sup>

40. *Comments.* USTelecom asserts that iconectiv’s Letter of Intent does not state whether requested tracebacks will be evaluated for involvement with fraud, abuse, or unlawful traffic.<sup>192</sup> While USTelecom acknowledges that iconectiv indicated it would meet requirements to protect customers and carriers from fraudulent, abusive, and unlawful calls, it argues that iconectiv does not specify how it would do so.<sup>193</sup> USTelecom further states that iconectiv’s commitment to automation could hamper its ability to evaluate the tracebacks.<sup>194</sup> Additionally, USTelecom questioned iconectiv’s commitment to accepting traceback requests from multiple sources, stating that this could lead to iconectiv conducting indiscriminate tracebacks without proper evaluation.<sup>195</sup> The Commenting Providers and NCTA did not comment on the applicants’ focus on fraudulent, abusive, or unlawful traffic.

41. *Reply Comments.* iconectiv responded to USTelecom’s comments, arguing that USTelecom’s assertions are inaccurate.<sup>196</sup> iconectiv states that it has extensive experience with data protection regulations which would prevent infringement on privacy<sup>197</sup> and contends that it is “well-versed in . . . rules as to when CPNI can be shared to protect both customers and service providers from fraudulent, abusive, or unlawful calls.”<sup>198</sup> iconectiv further responds that it will conduct all proper legal reviews to ensure traceback requests focus on fraudulent, abusive, or unlawful traffic.<sup>199</sup> iconectiv represents that it has an in-house legal staff which would assist with traceback request reviews, and it would engage outside counsel when required.<sup>200</sup> iconectiv further contends that the entire traceback process would not be automated, only the traceback query and response processes and the interface for carriers and providers, thus allowing it to effectively evaluate each request.<sup>201</sup> iconectiv additionally highlights that it “has been partnering with the industry to mitigate fraud for over a decade with its fraud protection products covering Wangiri one-ring scams and International Revenue Share Fraud,[] in addition to other threats.”<sup>202</sup>

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<sup>188</sup> USTelecom Letter, *supra* note 27, at 9 & n.33.

<sup>189</sup> *Id.* at 4.

<sup>190</sup> iconectiv Letter, *supra* note 26, at 5.

<sup>191</sup> *Id.*

<sup>192</sup> USTelecom Comments, *supra* note 28, at 13.

<sup>193</sup> *Id.* at 11-12.

<sup>194</sup> *Id.* at 13.

<sup>195</sup> *Id.* at 13-14.

<sup>196</sup> iconectiv Reply, *supra* note 29, at 9.

<sup>197</sup> *Id.* at 6.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 9.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 6-7.

<sup>202</sup> iconectiv Reply, *supra* note 29, at 2 (internal citations omitted).

42. *Analysis.* We find that the Traceback Group’s submission most fully satisfies the statutory requirement to focus on fraudulent, abusive, or unlawful robocall traffic. We find that iconectiv’s Letter of Intent only asserts iconectiv’s focus on fraudulent, abusive, or unlawful traffic without providing details regarding how iconectiv would incorporate these evaluations into its traceback process. iconectiv asserts that it has knowledge of legal regulations regarding section 222 of the Communications Act, which contains exceptions allowing telecommunications carriers to disclose CPNI “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>203</sup> However, iconectiv did not provide specifics regarding how it would deploy this knowledge or implement it into the traceback screening process to protect the privacy interests of telecommunications users. Additionally, iconectiv states that the automation it highlighted in its Letter of Intent would not encompass all tasks of the traceback process, thus, allowing for effective evaluation.<sup>204</sup> However, iconectiv fails to breakdown in requisite detail which tasks are manual and which are automated, preventing the Bureau from fully evaluating whether iconectiv would be able to properly focus on only fraudulent, abusive, or unlawful traffic. Additionally, we find that the Traceback Group has a proven track record of focusing its activities on targeting fraudulent, abusive or unlawful traffic, particularly when such traffic is egregious or voluminous. USTelecom, in its Letter, explained the Traceback Group’s focus on evaluating incoming traceback requests and call examples to ensure they are properly designated as fraudulent, abusive, or unlawful and also its implementation of dispute mechanisms to question these designations.<sup>205</sup> Specifically, the Traceback Group relies on its three step sourcing policy to ensure proper designation.<sup>206</sup> Further, we find that the Traceback Group has detailed procedures and policies in place to ensure that it acts in accordance with section 222 of the Communications Act.<sup>207</sup>

#### IV. CONCLUSION

43. We determine that the incumbent Traceback Group most fully satisfies the statutory requirements of the TRACED Act and the Commission rules. We determine that iconectiv’s Letter of Intent and subsequent reply comments provide insufficient support for its compliance with the statutory and regulatory requirements. After considering each of the statutory factors as well as our regulatory requirements, and assessing both applicants’ filings, their experience, and the comments submitted in regard to their candidacy, we select the incumbent Traceback Group to continue as the registered traceback consortium.

#### V. PROCEDURAL MATTERS

44. *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).

45. *Further Information.* For further information about the *Report and Order*, contact Caitlin Barbas, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-2985 or [Caitlin.Barbas@fcc.gov](mailto:Caitlin.Barbas@fcc.gov).

#### VI. ORDERING CLAUSES

46. 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

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<sup>203</sup> 47 U.S.C. § 222(d)(2).

<sup>204</sup> *Id.* at 6-7.

<sup>205</sup> USTelecom Letter, *supra* note 27, at 9 & n.33.

<sup>206</sup> USTelecom Initial Letter of Intent, *supra* note 36, at 2, 9.

<sup>207</sup> *Id.*

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Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, 3287-88, this *Report and Order* **IS ADOPTED**.

47. **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

Loyaan A. Egal  
Chief  
Enforcement Bureau