

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Call Authentication Trust Anchor*, WC Docket No. 17-97; *Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket No. 20-67.

The Pallone-Thune TRACED Act gives the Commission clear additional authority and responsibility to combat the menace of *illegal* robocalls, and I will faithfully implement its provisions, including the directive to require all voice service providers to implement the STIR/SHAKEN framework in the IP portions of their networks no later than 18 months after the date of the Act's enactment. In the past, I have expressed reservations over FCC proposals to issue technology mandates or intervene in the administration of this private sector-developed protocol. As the TRACED Act is now the law of the land, I support today's requirements.

Nonetheless, today's item seems to unnecessarily obscure the role of the TRACED Act, suggesting that Congress is not the rightful author of the STIR/SHAKEN mandate, and that the Commission would have had the authority to issue this Report and Order in the absence of Congress' directive. The reason we are clearly authorized to take this action, however, is because Congress has required it.

While I will always follow the will of Congress, I do have concerns over some parts of the item, particularly the section analyzing the costs and benefits of the STIR/SHAKEN mandate. Specifically, the originally circulated draft seemed to underestimate the costs of implementing and operating the protocol and appeared to exclude significant cost categories. I was therefore appreciative of parties' efforts to supplement the record and encourage a more comprehensive and realistic analysis, which affirmed my concerns that, for some providers, up-front costs could exceed tens of millions of dollars. While I am hopeful that benefits will ultimately exceed costs, it is obvious that this undertaking will add costs to providers, and ultimately their customers.

Speaking of the cost of implementation, we should clarify that prohibiting a line item for caller ID authentication in no way means that the costs won't be passed through to customers; it just means that in many cases, carriers will ultimately build the costs of implementation into their rates, and, in the case of rate-of-return carriers, potentially seek recovery of those costs from the Universal Service Fund, and in turn, USF ratepayers. Therefore, we shouldn't tout this prohibition to suggest that there won't be rate increases or that the mandate will accrue "at no cost to consumers." A billing line item prohibition does not prohibit cost recovery, despite whatever narrative is suggested by some on Capitol Hill or within the Commission, but rather, simply buries the true cost of the service.

On a more positive note, I appreciate that the TRACED Act explicitly anticipates the potential hardship of implementing call authentication for certain providers, including small and rural carriers, and those that rely on legacy technology and switching facilities. Even to the extent that relief is granted to these entities, however, some have raised the possibility of a reverse rural call completion problem for carriers that are unable to implement call authentication—a problem that I have some sympathy toward and one the Commission likely will need to address going forward.

Indeed, while we don't specifically address the issue of improper call blocking and labeling today, I likewise sympathize with the view expressed by commenters in the docket that we need to ensure partial implementation of the STIR/SHAKEN framework doesn't lead to legitimate calls being blocked or mislabeled. To the extent this issue is addressed in a future item, I trust affected entities will have full opportunity to sufficiently comment as the Commission establishes a call blocking or labeling safe harbor for providers. At its heart, the TRACED Act is about targeting and eliminating *illegal* calls, not restricting legal and legitimate ones, and we need to make sure that our implementation of the legislation stays true to this purpose, through meaningful and expeditious redress mechanisms for such callers and providers.

Speaking of protecting legitimate callers, in the aftermath of adopting today’s item and the multitude of other anti-robocall actions on the Commission’s checklist, I hope we will finally have the will to respond to the D.C. Circuit’s set-asides in *ACA International v. FCC*<sup>1</sup> and clarify the TCPA’s “automatic telephone dialing system” provision. As long as the harmful and backwards *Marks v. Crunch San Diego* decision still stands,<sup>2</sup> any efforts to enact blocking and labeling redress mechanisms for legitimate callers will be for naught if unscrupulous class action plaintiffs are able to flock to the 9<sup>th</sup> Circuit to serve legitimate businesses with abusive and frivolous TCPA lawsuits. Especially now that the 7<sup>th</sup> and 11<sup>th</sup> Circuits have explicitly rejected the approach in *Marks*,<sup>3</sup> allowing the confusion and uncertainty to linger any longer is tremendously unfair to those legitimate companies trying to do the right thing. And, to the extent that the Commission isn’t prepared to do this just yet, we must act on the over fifty petitions pending before the Commission for TCPA clarification and relief. Either way, the Commission must stop allowing legitimate callers to be unfairly punished by statutory misinterpretation and frivolous litigation.

Fundamentally, a main purpose behind the TRACED Act is to restore the integrity of our telephone networks and the ability of consumers to receive beneficial and necessary information over the phone. I look forward to seeing how our actions today further that goal, and whether voice telephony will ultimately re-emerge as our preeminent and preferred form of communication. And, perhaps the future is not so bleak: with the steep rise of voice calls due to the current COVID-19 pandemic, it may turn out that voice telephony wasn’t killed off by illegal robocalling but has just been on hiatus. In the months ahead, we’ll likely find out.

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<sup>1</sup> *ACA Int’l v. FCC*, 885 F.3D 687 (D.C. Cir. 2018).

<sup>2</sup> *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9<sup>th</sup> Cir. 2018).

<sup>3</sup> *Gadelhak v. AT&T Services*, No. 19-1738 (7<sup>th</sup> Cir. 2020); *Glasser v. Hilton Grand Vacations Co.*, No. 18-14499 (11<sup>th</sup> Cir. 2020).