

Before the
Federal Communications Commission
Washington, DC 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 AND
FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

I. INTRODUCTION

1. Unlawful prerecorded or artificial voice message calls—robocalls—plague the American public. Such calls are frequently coupled with misleading or inaccurate telephone numbers displayed as caller ID information, an act known as spoofing, and are often intended to facilitate fraudulent or other harmful activities. The Commission has deployed a multi-prong strategy to combat these illegal calls. An important prong of the Commission’s strategy to attack illegal robocalls has been to trace the unlawful robocalls back to their origination, a process known as “traceback.” Notwithstanding these measures, unlawful spoofed robocalls persist.

2. Congress recognized the continued problem and recently enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to further aid the Commission’s efforts. In that Act, Congress acknowledged the beneficial collaboration between the Commission and the private sector on traceback issues and 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.” Today, we amend our rules to establish such a registration process.

1 Among other actions, the Commission has imposed forfeitures for violation of the Truth in Caller ID Act, e.g., Best Insurance Contract, Inc. and Philip Roesel dba Wilmington Insurance Quotes, Forfeiture Order, 33 FCC Rcd 9204 (2018) (Roesel Forfeiture Order); Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc, Forfeiture Order, 33 FCC 4663 (2018) (Abramovich Forfeiture Order), and adopted rules enabling voice service providers to block certain clearly unlawful calls before they reach consumers. Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706 (2017).

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

3 TRACED Act § 13(d)(1), 133 Stat at 3287.

3. The TRACED Act also contemplates that the registered consortium identify voice service providers that “repeatedly originat[e] large-scale unlawful robocall campaigns.”⁴ We seek comment on what rules, if any, we need to guide that process and the obligations we should impose on such providers to end those practices.

II. BACKGROUND

4. Section 227 of the Communications Act of 1934, as amended (the Communications Act), is designed to protect consumers from unlawful robocalls. 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.⁵ 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.⁶ Failure to comply with section 227(e) has resulted in vigorous enforcement action by the Commission.⁷

5. Robocallers that make unlawful calls frequently hide behind spoofed telephone numbers, making it difficult to determine the identity of the real caller. Commission staff has worked with the private sector, led by the USTelecom Industry Traceback Group, on tracebacks to successfully uncover the true identity of callers behind illegal robocalls using spoofed caller ID information.⁸ The Industry Traceback Group is a collaborative group comprised of providers across wireline, wireless, Voice over Internet Protocol (VoIP), and cable services. Commission staff and the Industry Traceback Group have worked to develop an effective traceback process that significantly assists the Commission in both the evolution and continuation of the traceback process. Collaboration with private-led traceback efforts is important to unmask the identities of those entities making the illegal robocalls.⁹

6. The TRACED Act directs the Commission, no later than March 29, 2020, to “issue 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.”¹⁰ The TRACED Act also requires the registered consortium to identify certain voice service providers that “repeatedly originat[e] large-scale unlawful robocall campaigns.”¹¹ The Commission must “require such [a] provider to take action to ensure that such provider does not continue to originate such calls.”¹²

7. We released a Notice of Proposed Rulemaking (*NPRM*) on February 6, 2020, proposing to establish a process to designate a registered consortium as contemplated by section 13(d) of the

⁴ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

⁵ 47 U.S.C. § 227(b)-(d).

⁶ 47 U.S.C. § 227(e).

⁷ *See* 47 U.S.C. § 227(e)(5).

⁸ Traceback is the process whereby a suspected illegal robocall that used a spoofed telephone number is traced to its source. The Commission has received a number of referrals for investigation based on traceback information that the Industry Traceback Group was able to provide. *See* Letter from Rosemary Harold, Chief, FCC Enforcement Bureau and Eric Burger, Chief Technology Officer, to Jonathan Spalter, President and CEO, USTelecom – The Broadband Association (Nov. 6, 2018) (on file in EB-TCD-00027981).

⁹ *Id.* (stating that the information received from the work of the Industry Traceback Group “has resulted in dozens of active investigations [of illegal spoofed robocalls].”).

¹⁰ TRACED Act § 13(d), 133 Stat. at 3287.

¹¹ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

¹² *Id.*

TRACED Act.¹³ ACA International, INCOMPAS, NCTA-The Internet & Television Association (NCTA), USTelecom-The Broadband Association (USTelecom), and ZipDX, LLC (ZipDX) filed comments, and Cloud Communications Alliance (CCA), NCTA, and USTelecom filed reply comments in this proceeding.

III. DISCUSSION

8. We amend our rules to establish a process to register a single consortium under section 13(d) of the TRACED Act.¹⁴ We generally adopt our rules as proposed, with limited modifications to ensure that we satisfy the statutory requirements and to address commenters' concerns.

A. Registration Process

9. We revise our rules to require the Enforcement Bureau (Bureau) to issue, no later than April 28th of each year, an annual public notice seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls. This is consistent with the statute and our proposed rule.¹⁵ The notice will set forth a deadline by which an entity that plans to register as the consortium for private-led traceback efforts must submit in the docket a letter of notice of its intent to conduct private-led traceback efforts and its intent to register as a single consortium.¹⁶

10. *Letter of Intent.* We require an entity that plans to register as the consortium for private-led traceback efforts to submit a Letter of Intent as directed by the Bureau's public notice. Consistent with the statute, we proposed that the Letter of Intent include the name of the entity and a statement of its intent to conduct private-led traceback efforts and its intent to register with the Commission as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.¹⁷ We adopt this proposal.

11. 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,¹⁸ the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic; and
- (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.¹⁹

¹³ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, EB Docket No. 20-22, Notice of Proposed Rulemaking, FCC 20-11, 2020 WL 756000 (2020) (*NPRM*).

¹⁴ TRACED Act § 13(d), 133 Stat. at 3287-88.

¹⁵ TRACED ACT § 13(d)(2), 133 Stat. at 3288; *NPRM*, at *2, para. 6. *See also* USTelecom Comments at 3 (“USTelecom agrees with the Commission's proposal to implement a simple registration process where the Bureau would issue the public notice no later than April 28th of this year and by that date annually . . .”).

¹⁶ *See NPRM* at *2, paras. 6-7; ZipDX Comments at 2.

¹⁷ TRACED Act § 13(d)(1)(D), 133 Stat. at 3288; *NPRM* at *2, para. 7. *See also* USTelecom Comments at 3.

¹⁸ 47 U.S.C. § 222(d)(2).

¹⁹ TRACED Act § 13(d)(1)(A)-(D), 133 Stat. at 3287-88; *NPRM*, at *2-3, para. 8.

12. We direct the Bureau to review the Letters of Intent and to select the single registered consortium no later than 90 days after the deadline for the submission of Letters of Intent.²⁰ As we proposed,²¹ we will not require the incumbent registered consortium to submit a Letter of Intent after its initial selection as the registered consortium. Instead, the certifications contained in the registered consortium's initial Letter of Intent will continue in effect for each subsequent year the incumbent registered consortium serves unless the incumbent consortium notifies the Commission otherwise in writing on or before the date for the filing of such letters set forth in the annual public notice.²² This approach will allow us to fulfill our statutory mandate while minimizing the burdens of the registration process. In the event of any delays in our annual selection process, the incumbent consortium is authorized to continue its traceback efforts until the effective date of the selection of any new registered consortium.

13. In order to ensure that the incumbent registered consortium continues to perform its duties in compliance with the statute and to address commenters' concerns about Commission oversight, we also add certain requirements to help the Commission verify that the registered consortium continues to comply with the statute. Specifically, in the Letter of Intent, an entity seeking registration must certify that it will (1) remain in compliance throughout the time period that it is the registered consortium; (2) conduct an annual review to ensure its compliance with the statutory requirements; and (3) promptly notify the Commission of any changes that reasonably bear on its certification, including, for example, material changes to its best practices.²³ We reserve the right to revisit these requirements or impose additional commitments if necessary.²⁴

14. *2020 Registration Process.* Because this is a new process, we direct the Bureau to provide an opportunity for public comment on any Letter of Intent in response to the first annual notice.²⁵ We also direct the Bureau to set the filing date for Letters of Intent no sooner than 30 days after the rules are published in the Federal Register. We will not impose additional process requirements,²⁶ but the Bureau shall have appropriate flexibility to determine what, if any, additional processes may be necessary to ensure that it receives sufficient information to select the registered consortium, including providing an opportunity for public comment on any Letters of Intent in future years.

²⁰ *NPRM* at *3, paras. 9, 10. See also USTelecom Comments at 3 (agreeing that it is appropriate for the Bureau to select the single registered consortium); ZipDX Comments at 2 (requesting clarification on the timeline for the Bureau's selection process).

²¹ *NPRM* at *3, para. 10.

²² *Id.*

²³ See INCOMPAS Comments at 7 (suggesting that the Commission should confirm its "intention to continue oversight of the Commission-selected consortium and the reasonableness of and adherence to the consortium's practices and procedures"); *id.* ("[I]f a competing application is submitted, the incumbent registrant will be notified and will be required to submit another application, or, in the alternative, an update describing any changes to the incumbents' operating procedures since its last application if it is interested in continuing as the single traceback consortium.").

²⁴ See INCOMPAS Comments at 4.

²⁵ INCOMPAS Comments at 6; CCA Reply Comments at 3 (concurring with INCOMPAS "that the Commission should provide an opportunity for public comment on the proposed [written best practices].").

²⁶ ZipDX Comments at 2 (requesting that the Commission "clarify that the application letter(s) be filed via ECFS" and "suggest[ing] . . . the Bureau host a meeting open to all, subsequent to the filing of the letter(s) but prior to making a selection, where the applicant(s) can respond to questions and suggestions from the Bureau as well as from other stakeholders, and the applicant(s) can make on-the-spot revisions to their application(s) as informed by the discussion, said discussion to be mediated by the Bureau in its discretion").

B. Selection of the Registered Consortium

15. An entity that seeks to become the registered consortium must sufficiently and meaningfully fulfill the statutory requirements.²⁷ Based on our experience, we expect the traceback process to evolve in response to new unlawful robocalling schemes, new technologies, and the needs of interested parties, such as the Commission, the Department of Justice, state Attorneys General, and other agencies. Accordingly, we wish to encourage, not hinder, a responsive, dynamic traceback process. We must, however, ensure that the registered consortium is accountable for compliance with the statutory requirements. We will set forth a set of principles, rather than prescriptive directives, for the Bureau to use to select the registered consortium and ensure that it complies with section 13(d)(1)(A)-(D) of the TRACED Act. This approach will ensure a reasonable balance between ensuring statutory compliance with the need for a nimble and dynamic traceback process.

16. *First*, the registered consortium must be a neutral third party.²⁸ As we stated in the *NPRM*, “openness is indicative of the level of neutrality we would expect in order to accept a consortium’s registration.”²⁹ We find that a neutral third party, at a minimum, must demonstrate its openness by explaining how it will allow voice service providers to participate in an unbiased, non-discriminatory, and technology-neutral manner.³⁰ Commenters generally recognize that openness is an indicator of neutrality,³¹ and we find that objective criteria of openness will encourage broad voice service provider participation. Broad participation and cooperation are 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.

17. We also agree with USTelecom that, so long as participation criteria are objectively neutral as we describe, the consortium should have flexibility to control participation when appropriate.³² For example, a voice service provider that carries voluminous suspected unlawful robocalls might attempt to join the consortium to gain insight into ways to evade traceback efforts. Allowing such an entity access to the consortium could undermine or even defeat the consortium’s traceback efforts—and defeat Congress’s purpose in enacting the statute. Thus, we interpret the statutory requirement that the consortium be neutral to mean that it must allow voice service providers’ participation in an unbiased, non-discriminatory, and technology-neutral manner, thereby prohibiting bias in favor or against any industry segment. It does not require that the consortium permit indiscriminate participation by any entity, nor prohibit the consortium from denying or restricting participation where there is a valid reason to do so. We encourage any entity that believes that the designated consortium has unfairly discriminated against any entity regarding participation to alert the Bureau promptly of such concerns.

18. 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. 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

²⁷ TRACED Act § 13(d)(1)(A)-(D); *NPRM* at *2-3, para. 8. *See also* USTelecom Comments at 4.

²⁸ TRACED Act § 13(d)(1)(A), 133 Stat. at 3287.

²⁹ *NPRM* at *3, para. 9. Although we raised this point in providing parameters for the Bureau to use in selecting the registered consortium if more than one consortium submitted a Letter of Intent, it specifically addresses the neutrality requirement. *See also* USTelecom – The Broadband Association (USTelecom) Reply Comments at 5.

³⁰ *See* INCOMPAS Comments at 3 (suggesting that the registered consortium be a non-governmental entity, conduct business in an impartial and fair manner, and not be aligned with a particular industry segment).

³¹ USTelecom Comments at 4-5; INCOMPAS Comments at 3; NCTA Comments at 2; USTelecom Reply Comments at 5.

³² USTelecom Comments at 4-5; *see also* ZipDX Comments at 1; NCTA Reply Comments at 2; CCA Reply Comments at 2.

result in an overall lack of neutrality. The Bureau must fully consider and evaluate each Letter of Intent to ensure that it meets the neutrality requirements, consistent with our objective openness principle, as well as the other statutory requirements. The Bureau will select as the registered consortium the entity that best meets these requirements. As we have stated, however, we are willing to entertain public input regarding the consortium's neutrality,³³ and we 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).

19. Both NCTA and INCOMPAS propose that the Commission mandate specific neutrality requirements, such as requiring the registered consortium to establish and maintain an executive committee, or something comparable, comprised of different industry sectors with an equal voice in the management of the consortium,³⁴ or requiring structural separation from any advocacy entity.³⁵ We acknowledge that, in other instances, we have adopted more detailed neutrality criteria, such as in the context of number administration.³⁶ The primary purpose of entities like the North American Numbering Plan Administrator, however, is to oversee resources for the communications industry, which may have competing goals. Here, in contrast, there is a shared goal among the vast majority of participants to curtail unlawful robocalling and spoofing. Although NCTA and INCOMPAS's proposals provide examples of what a consortium could include to demonstrate its openness, we decline to mandate these specific requirements. The statute does not require, and we do not find it necessary to impose, a single, specific structure or administrative methodology to ensure neutrality.³⁷

20. INCOMPAS also suggests that the Industry Traceback Group is the Commission's predetermined registered consortium, and expresses concern about that group's neutrality.³⁸ We acknowledge our experience with the Industry Traceback Group, but the Commission has not reached a determination as to which entity may be selected as the registered consortium. Moreover, the statute contemplates an annual evaluation process by the Bureau to ensure that the registered consortium continues to (or in the case of a new applicant, shall) fulfill the statutory obligation for neutrality.

³³ We also encourage any entity that believes that the designated consortium has unfairly discriminated against any entity regarding participation to alert the Bureau promptly of such concerns.

³⁴ NCTA Comments at 2; NCTA Reply Comments at 1; CCA Reply Comments at 2 (concurring with NCTA's proposal, stating "all segments of the industry [should] have the opportunity to play a meaningful role in the decision-making processes").

³⁵ INCOMPAS Comments at 4 (INCOMPAS assumes that the *NPRM* indicates a preference for the selection of the Industry Trade Group as the registered consortium, and states that neutrality would "require structural independence [by the Industry Trade Group] from USTelecom and willingness by ITG to revisit any practices and procedures adopted while it was affiliated with USTelecom."); *see also* NCTA Comments at 3 ("in the long-term, it may be advisable for the traceback administration entity to be distinct from any industry advocacy organization to ensure that conflicts of interest do not derail the important mission of the group"); CCA Reply Comments at 2.

³⁶ INCOMPAS Comments at 3 ("INCOMPAS encourages the Commission to adopt formal neutrality criteria similar to that which it has established in other proceedings, such as the establishment of the . . . the North American Numbering Plan Administrator ("NANPA")); *see also* to 47 CFR § 52.12(a)(1)(i)-(iii) (listing specific neutrality criteria for the NANPA).

³⁷ USTelecom Reply Comments at 3 (TRACED Act "does not require the Commission to establish any structural requirements for the Consortium's governance"), 5 ("Had Congress intended to specify the exact structure and funding of the traceback consortium, it would have done so.").

³⁸ INCOMPAS Comments at 4 ("The [*NPRM*] signals that 'continued collaboration' with the ITG is 'important' to the Commission's robocall enforcement efforts, seemingly indicating a preference for the selection of the ITG as the single consortium."); and *id.* at 6 ("in light of the fact that only one organization—USTelcom's ITG—has been identified in the record as having traceback experience, the Commission's creation and reliance on this factor [expertise in both managing and improving the traceback process to the benefit of interest parties] may signal the Commission's preference and intention to pre-select and maintain a particular applicant for this role"); *see also* NCTA Comments at 2-3. *See also* CCA Reply Comments at 2-3.

Accordingly, we are open to receiving comments now and in future application cycles to ensure that the registered consortium, throughout its tenure, performs its traceback activities in a fair and neutral manner.³⁹ We note that specific examples have the most probative value.

21. *Second*, the registered consortium must be a competent manager of the private-led efforts to trace back the origin of suspected unlawful robocalls.⁴⁰ We find that a competent manager of the private-led traceback efforts must be able to effectively and efficiently manage a traceback process of suspected unlawful robocalls for the benefit of those who use the traceback information and ultimately, consumers.⁴¹ An effective and efficient traceback process includes timely and successfully finding the origin of suspected unlawful robocalls that traverse multiple voice service providers' networks. Competent management requires that the consortium work cooperatively and collaboratively across the industry and provide prompt and comprehensive information to the Bureau and others who have a legitimate need for, and a legal right to, the information.⁴² The registered consortium also must be aware of and conform to applicable legal requirements, such as requirements regarding confidentiality and legal processes.⁴³

22. Congress specifically afforded the Commission discretion to determine a consortium's competence to manage private-led traceback efforts, "in the judgement of the Commission."⁴⁴ Evidence of expertise and success in managing and improving traceback processes address a consortium's competence, and therefore, is rooted in statutory authority.⁴⁵ 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.

23. We disagree with INCOMPAS's assertion that we are foreclosed from weighting a consortium's expertise and success in managing and improving traceback processes.⁴⁶ Giving weight to expertise and success in managing and improving traceback processes does not foreclose consortia that develop innovative traceback processes, and we encourage all qualified interested entities to apply.⁴⁷

24. *Third*, 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

³⁹ INCOMPAS Comments at 5 (suggesting that "the Commission should reserve the right to receive complaints about the consortium").

⁴⁰ TRACED Act § 13(d)(1)(A), 133 Stat. at 3287.

⁴¹ USTelecom Comments at 5 ("Applicants seeking to be selected as the Consortium can demonstrate such competence by providing evidence to the Commission of their ability to effectively manage and execute private-led traceback efforts.").

⁴² For example, because state Attorneys General have varying degrees of authority to investigate and take action against unlawful robocalls, they would have a legitimate and legal right to this information.

⁴³ For example, some state Attorneys General may be entitled to the information only pursuant to subpoena.

⁴⁴ TRACED Act § 13(d)(1)(A), 133 Stat. at 3287.

⁴⁵ See USTelecom Reply Comments at 8 ("The words 'competent' (used by Congress) and 'expertise' (used by the Commission) are synonymous, and reflect Congress's intent that the selected Consortium have the necessary skills to fulfill its crucial mission.").

⁴⁶ INCOMPAS Comments at 6 ("the weighting of expertise as a factor in evaluating applicants is not a statutory factor, and it is questionable what the Commission's basis of authority would be for considering an approach that heavily weights a factor that was not included by Congress").

⁴⁷ INCOMPAS Comments at 6.

robocalls and regarding providers of voice services' participation in such efforts.⁴⁸ We find that written best practices, at a minimum, would address the consortium's compliance with statutory requirements,⁴⁹ consistent with the principles we set forth in this Order. We also find that the registered consortium's written best practices must establish processes and criteria for determining how providers of voice services will participate in traceback efforts,⁵⁰ and those processes and criteria must be fair and reasonable.⁵¹

25. By their nature, best practices evolve over time to reflect empirical knowledge and practical experience. This is particularly true for technology-dependent activities such as combatting caller ID spoofing. Therefore, we decline to mandate specific best practices⁵² that would necessarily be based on our experience today and might not accurately encompass concerns or reflect best practices that may develop in the future.⁵³ It is incumbent upon a consortium, however, to explain how its written policy demonstrates best practices. For example, written best practices that address the openness of the consortium and the competency of the consortium would likely include a number of commenters' specific suggestions, e.g., provisions governing (a) voice service providers' participation in private-led traceback efforts,⁵⁴ (b) how specific calls are selected for traceback,⁵⁵ (c) traceback information sharing,⁵⁶ (d) consortium governance,⁵⁷ and (e) budget transparency, including voice service provider participation fees or costs.⁵⁸ Our evaluation of consortium proposals will also include a review of such explanations.

26. *Fourth*, consistent with section 222(d)(2),⁵⁹ the registered consortium's private-led traceback of suspected unlawful robocalls must focus on "fraudulent, abusive, or unlawful" traffic.⁶⁰ Commenters offered no specific suggestions for interpreting this particular provision. Based on our experience regarding unlawful robocalls, a traceback process that, at a minimum, considers scope, scale, and harm, should lead to a focus on "fraudulent, abusive, and unlawful" traffic. For example, large scale

⁴⁸ TRACED Act § 13(d)(1)(B); 133 Stat. at 3287; *see also* USTelecom Comments at 6 (TRACED Act specifies that "written best practices must contain information regarding the 'management of such efforts,' ('Traceback Management') as well as the 'providers of voice services' participation' in the Consortium's private-led efforts ('Traceback Participation').").

⁴⁹ TRACED Act § 13(d)(1)(A)-(D); 133 Stat. at 3287-88.

⁵⁰ USTelecom Comments at 6; TRACED Act § 13 (d)(1)(B), 133 Stat. at 3287.

⁵¹ INCOMPAS Comments at 4 ("If the registered consortium is to be chosen by a government agency and will be responsible for working with the FCC on an annual report that identifies which voice service providers elected or refused to participate in private-led efforts to trace back robocalls [citing TRACED Act § 13(b)(2)-(3)], then the consortium must adhere to basic norms of due process, neutrality, and fairness.").

⁵² *But see* NCTA Comments at 3; INCOMPAS Comments at 5; ZipDX Comments at 1; CCA Reply Comments at 4-6.

⁵³ The registered consortium will have an obligation to notify promptly the Commission of any changes that reasonably bear on its certification. This would include significant changes to the entity's best practices. Thus, we will maintain oversight while providing flexibility with respect to written best practices.

⁵⁴ USTelecom Comments at 6-7; CCA Reply Comments at 5-6.

⁵⁵ USTelecom Comments at 6; CCA Reply Comments at 4-5.

⁵⁶ ZipDX Comments at 1.

⁵⁷ *Id.*

⁵⁸ INCOMPAS and NCTA raise this point in their discussion of neutrality. We acknowledge that discriminatory fees could reflect a lack of neutrality. We note that best practices must demonstrate compliance with all statutory requirements. INCOMPAS Comments at 5 ("[T]he Commission must consider whether payment obligations for participation in the traceback consortium are reasonable if they are a federal legal requirement."); NCTA Comments at 3 (proposing that "to the extent there are fees or costs imposed on companies that seek to participate in the traceback process, the traceback administration entity should be required to provide transparency around its

unlawful robocalling and/or unlawful spoofing campaigns may be abusive because they add unauthorized burdens to telecommunications networks and potentially threaten the integrity of the nation's telecommunications infrastructure. A consortium could demonstrate compliance by adopting criteria, consistent with the considerations enumerated here, that govern how calls are selected for traceback.

27. CCA suggests that the definition of suspected unlawful robocalls that trigger a traceback request should be limited to “calls that seek to perpetrate fraud or result in massive unlawful activity, such as mass calling to numbers on the do not call registry.”⁶¹ We find that a written best practice that uses CCA's proposed interpretation of the definition of suspected unlawful robocalls that trigger a traceback request to be too narrow. Suspected unlawful robocalls are defined, for example, to include calls that the Commission or a voice service provider reasonably believes to be unlawful spoofed calls;⁶² not all unlawful spoofed calls seek to perpetrate fraud or result in “massive” unlawful activity.⁶³ Indeed, fraud is only one of three elements in the statute that determines whether the act of spoofing violates the law.⁶⁴

28. In the event that more than one consortium submits a Letter of Intent, meets the statutory requirements of section 13(d)(1)(A)-(D), and fulfills the rules that we adopt today, the Bureau must select only one.⁶⁵ The Bureau should fully evaluate each applicant to determine which most fully satisfies the statutory requirements and the principles that the Commission has identified.

29. ACA International suggests that, if more than one consortium seeks to be the registered consortium, the Bureau should heavily weight “applicants whose members include a representative sampling of lawful legitimate callers and applicants whose procedures and policies seek to minimize the likelihood of false positives that would negatively impact lawful, legitimate calls.”⁶⁶ Other commenters assert that ACA International's comments arise from concerns about voice service providers' call blocking and are better addressed through other FCC proceedings that specifically address the call

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budgeting process”); ZipDX Comments at 1 (suggesting that a Letter of Intent should include a “description of the expected cost to operate the consortium, and source(s) of funds”).

⁵⁹ Section 222 of the Communications Act 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.”

⁶⁰ TRACED Act § 13 (d)(1)(C), 133 Stat. at 3288.

⁶¹ CCA Reply Comments at 4.

⁶² TRACED Act § 13(f); CCA Reply Comments at 4 (“The TRACED Act defines [suspected unlawful robocalls] as calls or texts that the Commission or a voice provider ‘reasonably believes was made in violation’ of . . . unlawfully spoofed calls”).

⁶³ Harm does not have to occur on a nationwide scale to meet the statutory definition of an unlawful spoofed call. *See Steven Blumenstock*, Forfeiture Order, 32 FCC Rcd 356 (EB 2017) (imposing a forfeiture penalty of \$25,000 against Steven Blumenstock for making 31 intimidating, harassing, and threatening spoofed calls to a solitary victim). *See also Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114, 9122, para. 22 (2011) (“we do agree with the National Network to End Domestic Violence . . . that the term ‘harm’ is a broad concept that encompasses financial, physical, and emotional harm, including stalking, harassment, and the violation of protection and restraining orders.”).

⁶⁴ 47 U.S.C. § 227(e)(1) (“It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging

blocking issue.⁶⁷ We agree that protecting legitimate calls is better addressed through call blocking proceedings rather than the selection of the consortium selected to conduct tracebacks. Our openness principle for demonstrating neutrality focuses on allowing voice service providers to participate but does not exclude a consortium from addressing ACA International's concern.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

30. The TRACED Act also mandates the widespread implementation of STIR/SHAKEN, a technology that enables voice service providers to verify that the caller ID information transmitted with a particular call matches the caller's number, but also contemplates that some voice service providers facing barriers to implementation may be granted a delay of compliance. To keep such providers from becoming new sources of unlawful robocalls, the TRACED Act requires the Commission to take action if the registered consortium "identifies a provider of voice service that is subject to a delay of compliance . . . as repeatedly originating large-scale unlawful robocall campaigns."⁶⁸

31. By what standard should the consortium identify voice service providers that are originating unlawful robocall campaigns, and how should the consortium assess whether a campaign is "large-scale"? What does "unlawful robocall campaigns" mean? The TRACED Act defines "suspected unlawful robocall" as calls that the Commission or a voice service provider reasonably believes to violate sections 227(b) or (e) of the Communications Act.⁶⁹ Is the term "unlawful robocall" in section 4(b)(5)(C) of the TRACED Act narrower than "suspected unlawful robocall," in section 13 of the TRACED Act, and if so, what level of certainty does it require? At what point would a series of unlawful calls become a "campaign"? Does "campaign" suggest a pattern of calls that appear to be coordinated? How should the consortium assess whether a campaign is "large-scale"? Should "large-scale" refer only to call volume, or does it account for other factors such as burden on networks?

32. Once a provider has been identified by the registered consortium, the Commission must "require such [a] provider to take action to ensure that such provider does not continue to originate such calls"⁷⁰ and "make reasonable efforts to minimize the burden of any [such] robocall mitigation . . . , which may include prescribing certain specific robocall mitigation practices for providers of voice service that have repeatedly originated large-scale unlawful robocall campaigns."⁷¹

33. What action or actions should we require of identified providers to ensure they do not continue to originate unlawful robocalls? Should we prescribe specific robocall mitigation practices,⁷²

(Continued from previous page) _____

service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to *defraud, cause harm, or wrongfully obtain anything of value. . .*") (emphasis added).

⁶⁵ TRACED Act § 13(d)(1), 133 Stat. at 3287 ("the Commission shall issue 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") (emphasis added).

⁶⁶ ACA International Comments at 5.

⁶⁷ USTelecom Reply Comment at 9 ("ACA International's valid concerns over false positives are thoroughly addressed elsewhere in the TRACED Act and are more appropriately addressed there," *citing* TRACED Act § 4(c)(1)(C), 133 Stat. at 3280; NCTA Reply Comments at 3 (concerns about overzealous call blocking by voice service providers is not a sufficient reason to adopt ACA International's proposal "since the Traceback Group would not itself engage in call blocking or labeling").

⁶⁸ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

⁶⁹ TRACED Act § 13(f)(3), 133 Stat. at 3288.

⁷⁰ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

⁷¹ TRACED Act § 4(b)(5)(C)(iii), 133 Stat. at 3279.

⁷² *See id.*

and if so, what practices should we prescribe? Should we require an identified provider to submit to close monitoring of its practices? Should we, the registered consortium, or some independent third party monitor these practices? Should we require the identified provider to submit a compliance plan and periodic reports on its efforts to conform to that plan? Should we propose that an identified provider make a point of contact available to the Commission, the consortium, and others and to respond to concerns within a specified period of time, such as 14 days? Should we require an identified provider to implement know-your-customer obligations—and report the contact information for each of its customers to the registered consortium or the Commission? Should we require identified providers to implement internal measures to monitor the traffic transiting their networks to ensure that it is consistent with legitimate voice traffic and to act in response to aberrant patterns?⁷³ What are the benefits and drawbacks of these approaches?

34. Finally, as required by the TRACED Act, how can we ensure that any robocall mitigation requirements are not overly burdensome, but achieve the goal of mitigating robocalls originated by voice service providers identified as originating large-scale unlawful robocall campaigns? Should we prescribe specific robocall mitigation practices for the identified providers?⁷⁴ Do commenters have other suggestions for how we should address voice service providers who are identified as originating unlawful robocall campaigns? We emphasize that we will continue to take enforcement action against perpetrators of unlawful robocall campaigns.

V. PROCEDURAL MATTERS

35. *Effective Date.* The rules adopted in the *Report and Order* of this *Report and Order and Further Notice of Proposed Rulemaking* shall be effective 30 days after publication in the Federal Register.

36. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act, as amended (RFA),⁷⁵ requires a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁷⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any

⁷³ See USTelecom Comments, CG Docket No. 17-59, at 6 (rec. Sept. 24, 2018) (stating that “voice providers can implement a variety of internal measures to monitor the voice traffic transiting their networks to ensure it is consistent with legitimate voice traffic”); Verizon Comments, CG Docket No. 17-59, WC Docket No. 17-97, at 6 (rec. Jan. 29, 2020) (stating that Verizon “has developed a set of ‘best practices’ that define and set measurable objectives for characteristics associated with suspicious robocalling”).

⁷⁴ See TRACED Act § 4(b)(5)(C)(iii), 133 Stat. 3279.

⁷⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷⁶ 5 U.S.C. § 605(b).

⁷⁷ 5 U.S.C. § 601(6).

⁷⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

additional criteria established by the Small Business Administration (SBA).⁷⁹

37. An Initial Regulatory Flexibility Certification (IRFC) was incorporated in the *NPRM* in this proceeding.⁸⁰ The proceeding was established to fulfill the Commission's statutory obligation under the TRACED Act to no later than March 29, 2020, “issue 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.”⁸¹ The scope of the proposals in the *NPRM* were limited to the creation of a registration with the Commission of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls as required by section 13 of the TRACED Act.⁸² As such the Commission did not anticipate that there would be a significant economic impact on a substantial number of small entities because very few entities would likely apply to serve as the consortium and only a single entity will be chosen. Moreover, the Commission believed that for any entity that has the resources to perform the private-led traceback efforts, both the registration burdens and the economic impact of the proposals in the *NPRM* would be negligible.⁸³

38. In the *Report and Order* of this *Report and Order and Further Notice of Proposed Rulemaking*, the Commission generally adopts the rules as proposed in the *NPRM*, subject to a few modifications to ensure that we satisfy statutory requirements and address concerns raised in comments filed in the proceeding. Based on our experience, the Commission continues to reasonably expect that no more than a few entities, and perhaps only one, will apply to serve as the consortium, and the rules we adopt herein impose minimal registration burdens such that they will have no more than a *de minimis* economic impact on any entity that has the resources to perform the private-led traceback efforts. Accordingly, we make this Final Regulatory Flexibility Certification certifying that the rules adopted in the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

39. *Initial Regulatory Flexibility Analysis.* As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *Further Notice of Proposed Rulemaking (Further Notice)* of this *Report and Order and Further Notice of Proposed Rulemaking*.⁸⁴ The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

40. *Paperwork Reduction Act of 1995 Analysis.* The *Report and Order* in this *Report and Order and Further Notice of Proposed Rulemaking* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, the *Report and Order* in this *Report and Order and Further Notice of Proposed Rulemaking* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4).

41. *Initial Paperwork Reduction Act of 1995 Analysis.* The *Further Notice* in this *Report and Order and Further Notice of Proposed Rulemaking* contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the

⁷⁹ 15 U.S.C. § 632.

⁸⁰ *NPRM* at *3, para. 11.

⁸¹ TRACED Act § 13(d), 133 Stat. at 3287-88.

⁸² *Id.*

⁸³ *NPRM* at *3, para. 11.

⁸⁴ 5 U.S.C. § 603.

general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

42. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the *Report and Order* of this *Report and Order and Further Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

43. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁸⁵ 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* 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 presenter’s written comments, memoranda, or other filing 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* meeting 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 Commission’s 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). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

44. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in Docket No. EB 20-22. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).⁸⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, 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.

- If FCC Headquarters is open to the public, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at

⁸⁵ 47 CFR §§ 1.1200 *et seq.*

⁸⁶ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- 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 445 12th Street, SW, Washington DC 20554.

45. Comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments must also comply with section 1.49 of the Commission's rules⁸⁷ and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the *Further Notice* in order to facilitate our internal review process.

46. *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

47. *Further Information.* For further information about the *Report and Order*, contact Daniel Stepanicich, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-7451 or Daniel.Stepanicich@fcc.gov. For further information about the *Further Notice*, contact Mason Shefa, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2962 or Mason.Shefa@fcc.gov.

VI. ORDERING CLAUSES

48. 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.

49. IT IS FURTHER ORDERED that parts 0 and 64 of the Commission's rules ARE AMENDED as set forth in Appendix A.

50. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this *Report and Order* and the amendments to parts 0 and 64 of the Commission's rules, as set forth in Appendix A, SHALL BE EFFECTIVE 30 days after publication in the *Federal Register*.

51. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

52. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(1), 154(j), 227, and 303(r), and section 4(b)(5)(C)(ii)-(iii) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, that this *Further Notice of Proposed Rulemaking* IS ADOPTED.

⁸⁷ 47 CFR § 1.49.

53. IT IS FURTHER ORDERED, that a copy this *Report and Order* and *Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Certification and the Initial Regulatory Flexibility Analysis, SHALL be sent to the Chief Counsel for Advocacy of the Small Business Administration, and published in the Federal Register.⁸⁸

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁸ See 5 U.S.C. § 605(b).

APPENDIX A
Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 and 64 as follows:

Part 0 -- COMMISSION ORGANIZATION

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

2. Amend § 0.111 by redesignating paragraph (i) as paragraph (j) and adding a new paragraph (i) to read as follows:

§ 0.111 - Functions of the Bureau.

* * * * *

(i) Conduct the annual registration and select a single consortium to conduct private-led efforts to trace back the origin of suspected unlawful robocalls, under section 13(d) of the TRACED Act, 133 Stat. at 3287, and § 64.1203 of this chapter, consistent with FCC No. 20-34.

* * * * *

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 225, 226, 227, 228, 251(e), 254(k), 262, 403(b), (2)(B), (c), 616, 620, 1401-1473, unless otherwise noted. sec. 503, Pub. L. 115-141, 132 Stat. 348.

4. Add § 64.1203 to read as follows:

§ 64.1203 – Consortium registration process.

(a) The Enforcement Bureau shall issue a public notice no later than April 28 annually seeking registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.

(b) Except as provided in paragraph (c) of this section, an entity that seeks to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls must submit a letter and associated documentation in response to the public notice issued pursuant to paragraph (a) of this section. In the letter, the entity must:

(1) Demonstrate that the consortium is a neutral third party competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls;

(2) Include a copy of the consortium's written best practices, with an explanation thereof, regarding the management of its traceback efforts and regarding voice service providers' participation in the consortium's efforts to trace back the origin of suspected unlawful robocalls;

(3) Certify that, consistent with section 222(d)(2) of the Communications Act of 1934, as amended, the consortium's efforts will focus on fraudulent, abusive, or unlawful traffic;

(4) Certify 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

(5) Certify that, if selected to be the registered consortium, it will:

(i) Remain in compliance with the requirements of paragraphs (b)(1) through (4) of this section;

(ii) Conduct an annual review to ensure compliance with the requirements set forth in paragraphs (b)(1) through (4) of this section; and

(iii) Promptly notify the Commission of any changes that reasonably bear on its certification.

(c) The entity selected to be the registered consortium will not be required to file the letter mandated in paragraph (b) of this section in subsequent years after the consortium's initial registration. The registered consortium's initial certifications, required by paragraph (b) of this section, will continue for the duration of each subsequent year unless the registered consortium notifies the Commission otherwise in writing on or before the date for filing letters set forth in the annual public notice issued pursuant to paragraph (a) of this section.

(d) The current registered consortium shall continue its traceback efforts until the effective date of the selection of any new registered consortium.

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking (Further Notice)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Further Notice*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The *Further Notice* continues the Commission's efforts to combat illegal spoofed robocalls and fulfill its obligations under the TRACED Act. In the *Further Notice*, the Commission poses questions and issues for commenters to address which will shape the final rules adopted in this proceeding. More specifically, pursuant to its obligations in section 4(b)(5)(C)(ii) of the TRACED Act, the Commission seeks input on standards and on how to guide a consortium's identification of voice service providers that "repeatedly originat[e] large-scale unlawful robocall campaigns."⁴ The Commission also seeks input on what actions we should take once such providers are identified, whether to adopt robocall mitigation practices, what type and whether or not to require compliance plans and whether and what type of reporting obligations should be implemented. Finally, as required by the TRACED Act, the Commission inquires how it can ensure that any robocall mitigation requirements that are adopted are not overly burdensome while simultaneously mitigating robocalls originated by voice service providers identified as originating large-scale unlawful robocall campaigns.⁵

B. Legal Basis

3. The proposed action is authorized under sections 4(i), 4(j), 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(1), 154(j), 227, and 303(r), and section 4(b)(5)(C) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules on which the Notice seeks comment, if adopted.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

⁵ TRACED Act § 4(b)(5)(C)(iii), 133 Stat. at 3279.

⁶ See 5 U.S.C. § 603(b)(3).

⁷ See 5 U.S.C. § 601(6).

Business Act.⁸ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

1. Wireline Carriers

5. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁰ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹¹ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.¹² Of this total, 3,083 operated with fewer than 1,000 employees.¹³ Thus, under this size standard, the majority of firms in this industry can be considered small.

6. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.¹⁴ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁵ U.S. Census Bureau data for 2012 show that 3,117 firms operated for the entire year.¹⁶ Of that total, 3,083 operated with fewer than 1,000 employees.¹⁷ Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

7. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small-business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ See 15 U.S.C. § 632.

¹⁰ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹¹ 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

¹² See U.S. Census Bureau, *2012 Economic Census of the United States, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 NAICS Code 517110,* https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

¹³ *Id.*

¹⁴ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹⁵ See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

¹⁶ See U.S. Census Bureau, *2012 Economic Census of the United States, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 NAICS Code 517110,* https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

¹⁷ *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

category is Wired Telecommunications Carriers.¹⁸ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.¹⁹ U.S. Census Bureau data for 2012 indicates that 3,117 firms operated the entire year.²⁰ Of this total, 3,083 operated with fewer than 1,000 employees.²¹ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, 1,307 Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.²² Of this total, an estimated 1,006 have 1,500 or fewer employees.²³ Thus, using the SBA's size standard, the majority of incumbent LECs can be considered small entities.

8. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small-business size standard specifically for these service providers. The most appropriate NAICS Code category is Wired Telecommunications Carriers.²⁴ Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁵ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.²⁶ Of that number, 3,083 operated with fewer than 1,000 employees.²⁷ Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.²⁸ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.²⁹ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.³⁰ Additionally, 72 carriers have reported that they are Other Local Service Providers.³¹ Of this total, 70 have 1,500 or fewer employees.³² Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access

¹⁸ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹⁹ See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

²⁰ U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 NAICS Code, 517110*. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

²¹ *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

²² See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

²³ *Id.*

²⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁵ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

²⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012 NAICS Code, 517110*. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

²⁷ *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

²⁸ See *Trends in Telephone Service*, at Table 5.3.

²⁹ *Id.*

³⁰ *Id.*

providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

9. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small-business size standard (e.g., a telephone communications business having 1,500 or fewer employees) and “is not dominant in its field of operation.”³³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.³⁴ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers.³⁵ The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.³⁶ U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.³⁷ Of that number, 3,083 operated with fewer than 1,000 employees.³⁸ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.³⁹ Of this total, an estimated 317 have 1,500 or fewer employees.⁴⁰ Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

11. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” As of 2018, there were approximately 50,504,624 cable video subscribers in the United States⁴¹ Accordingly, an operator serving fewer than 505,046 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not

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³¹ *Id.*

³² *Id.*

³³ 5 U.S.C. § 601(3).

³⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

³⁵ See, U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

³⁶ See 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

³⁷ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, NAICS Code 517110*. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

³⁸ *Id.* The largest category provided by the census data is “1000 employees or more” and a more precise estimate for firms with fewer than 1,500 employees is not provided.

³⁹ See *Trends in Telephone Service*, at Table 5.3.

⁴⁰ *Id.*

⁴¹ S&P Global Market Intelligence, U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2018, U.S. Cable MSO Industry Total, <https://platform.marketintelligence.spglobal.com/>.

exceed \$250 million in the aggregate.⁴² Based on available data, we find that all but six incumbent cable operators are small entities under this size standard.⁴³ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁴⁴ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

12. *Cable Companies and Systems (Rate Regulation)*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁴⁵ Industry data indicate that there are 4,600 active cable systems in the United States.⁴⁶ Of this total, all but seven cable operators nationwide are small under the 400,000-subscriber size standard.⁴⁷ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁴⁸ Commission records show 4,600 cable systems nationwide.⁴⁹ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁵⁰ Thus, under this standard as well, we estimate that most cable systems are small entities.

2. Wireless Carriers

13. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁵¹ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵² For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁵³ Of this total, 955 firms had employment of 999 or

⁴² 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

⁴³ S&P Global Market Intelligence, *Top Cable MSOs as of 12/2018*, <https://platform.marketintelligence.spglobal.com/>. The six cable operators all had more than 505,046 basic cable subscribers.

⁴⁴ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR § 76.901(f).

⁴⁵ 47 CFR § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

⁴⁶ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, <https://apps.fcc.gov/coals/> (last visited Oct. 25, 2016).

⁴⁷ S&P Global Market Intelligence, *Top Cable MSOs as of 12/2018*, <https://platform.marketintelligence.spglobal.com/> (Dec 2018).

⁴⁸ 47 CFR § 76.901(c).

⁴⁹ See *supra* note 46.

⁵⁰ See FCC, *Cable Operations and Licensing System (COALS)*, <https://apps.fcc.gov/coals/> (last visited Oct. 25, 2016).

⁵¹ U.S. Census Bureau, *2017 NAICS Definitions*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

fewer employees and 12 had employment of 1000 employees or more.⁵⁴ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

14. The Commission’s own data—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 Cellular licensees that will be affected by our actions today.⁵⁵ The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.⁵⁶ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.⁵⁷ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁵⁸ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.⁵⁹ For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.⁶⁰ Of this total, 299 firms had annual receipts of less than \$25 million.⁶¹ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

3. Resellers

16. *Local Resellers.* The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code

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⁵² 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁵³ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517210*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

⁵⁴ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1000 employees or more.”

⁵⁵ See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

⁵⁶ See *Trends in Telephone Service* at Table 5.3.

⁵⁷ See *id.*

⁵⁸ U.S. Census Bureau, *2017 NAICS Definitions*, “517410 Satellite Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

⁵⁹ 13 CFR § 121.201, NAICS Code 517410.

⁶⁰ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517410.

⁶¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of \$35 million or less.

category for local resellers.⁶² The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁶³ Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.⁶⁴ U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.⁶⁵ Of that number, all operated with fewer than 1,000 employees.⁶⁶ Thus, under this category and the associated small-business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁶⁷ Of these, an estimated 211 have 1,500 or fewer employees.⁶⁸ Consequently, the Commission estimates that the majority of Local Resellers are small entities.

17. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁶⁹ The SBA has developed a small-business size standard for the category of Telecommunications Resellers.⁷⁰ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷¹ U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.⁷² Of that number, 1,341 operated with fewer than 1,000 employees.⁷³ Thus, under this category and the associated small-business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁷⁴ Of this total, an estimated 857

⁶²U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

⁶³ *Id.*

⁶⁴ 13 CFR § 121.201, NAICS Code 517911.

⁶⁵ See U.S. Census Bureau, *2012 Economic Census of the United States, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, NAICS Code 517911,* https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911.

⁶⁶ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

⁶⁷ See *Trends in Telephone Service*, at Table 5.3.

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

⁷⁰ 13 CFR § 121.201 NAICS Code 517911.

⁷¹ *Id.*

⁷² See U.S. Census Bureau, *2012 Economic Census of the United States, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, NAICS Code 517911,* https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911.

⁷³ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

⁷⁴ *Trends in Telephone Service*, at Table 5.3.

have 1,500 or fewer employees.⁷⁵ Consequently, the Commission estimates that the majority of toll resellers are small entities.

18. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers.⁷⁶ This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁷⁷ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁷⁸ U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.⁷⁹ Of that number, all operated with fewer than 1,000 employees.⁸⁰ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁸¹ All 193 carriers have 1,500 or fewer employees.⁸² Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by these rules.

19. *Telecommunications Resellers.* The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.⁸³ The SBA has developed a small business size standard for the category of Telecommunications Resellers.⁸⁴ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁸⁵ U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services

⁷⁵ *Id.*

⁷⁶ U.S. Census Bureau, *2017 NAICS Definition, “517911 Telecommunications Resellers,”* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

⁷⁷ *Id.*

⁷⁸ 13 CFR § 121.201, NAICS Code 517911.

⁷⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, NAICS Code 517911*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911.

⁸⁰ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1000 employees or more.”

⁸¹ See *Trends in Telephone Service*, at tbl. 5.3.

⁸² *Id.*

⁸³ U.S. Census Bureau, *2017 NAICS Definition, “517911 Telecommunications Resellers,”* <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search>.

⁸⁴ 13 CFR § 121.201, NAICS Code 517911.

⁸⁵ *Id.*

during that year.⁸⁶ Of that number, 1,341 operated with fewer than 1,000 employees.⁸⁷ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

4. Other Entities

20. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁸⁸ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.⁸⁹ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁹⁰ The SBA has developed a small-business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$35 million or less.⁹¹ For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.⁹² Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49,999,999.⁹³ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

21. New or additional reporting, recordkeeping and/or other compliance obligations for small entities and other providers may result from the rules the Commission ultimately adopts in this proceeding. The TRACED Act mandates widespread implementation of STIR/SHAKEN, a technology that enables voice service providers to verify that the caller ID information transmitted with a particular call matches the caller’s number, but also contemplates that some voice service providers facing barriers to implementation may be granted a delay of compliance. The TRACED Act requires the Commission to take action if the registered consortium identifies a provider of voice service that is subject to a delay of compliance as repeatedly originating large-scale unlawful robocall campaigns.⁹⁴ Once a provider is so identified, the Commission must “require such [a] provider to take action to ensure that such provider does not continue to originate such calls”⁹⁵ and “make reasonable efforts to minimize the burden of any

⁸⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, NAICS Code 517911*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517911.

⁸⁷ *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with “1000 employees or more.”

⁸⁸ See U.S. Census Bureau, *2017 NAICS Definitions*, “517919 All Other Telecommunications,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ See 13 CFR § 121.201, NAICS Code 517919.

⁹² U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS Code 517919*, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

⁹³ *Id.*

⁹⁴ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

⁹⁵ TRACED Act § 4(b)(5)(C)(ii), 133 Stat. at 3279.

robocall mitigation. . . which may include prescribing certain specific robocall mitigation practices for providers of voice service that have repeatedly originated large-scale unlawful robocall campaigns.”⁹⁶ One of the potential practices we raise and seek comment on in the *Further Notice* to fulfill these obligations would require voice service providers that the registered consortium identifies as originating large-scale unlawful robocall campaigns to submit a compliance plan and file periodic reports on its efforts to conform to that plan to ensure that these providers do not continue to originate such calls.⁹⁷ Another potential practice would require identified voice service providers to implement know-your-customer obligations and report the contact information for each of its customers to the registered consortium or the Commission.⁹⁸ The *Further Notice* also seeks comment on adopting a requirement for identified providers to implement internal measures to monitor the traffic transiting their networks to ensure that it is consistent with legitimate voice traffic and to act in response to aberrant patterns.

22. If the Commission were to move forward with these potential requirements, certain voice service providers would have new reporting, recordkeeping, and compliance requirements. At this time however, the Commission cannot quantify the cost of compliance with these potential rule changes and compliance obligations for small entities and is not currently in a position to determine whether small entities will need to hire attorneys, engineers, consultants, or other professionals in order to comply. We expect the information we receive in comments including any cost and benefit analyses, to help the Commission identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result from the matters raised in the *Further Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.⁹⁹

24. Pursuant to the requirements of the TRACED Act, the Commission is obligated to minimize burdens for small entities and other voice service providers associated with any robocall mitigation processes and procedures the Commission adopts. In the *Further Notice* we raise questions on the approach the Commission should take to address robocall mitigation such as should we prescribe specific robocall mitigation practices, and if so, what practices should we prescribe? Should we require the identified provider to submit a compliance plan and periodic reports on its efforts to conform to that plan? Should we propose that an identified provider make a point of contact available to the Commission, the consortium, and others and to respond to concerns within a specified period of time, such as 14 days? We seek comment on these matters, including the benefits and drawbacks of our approach. We also seek comment on how identified voice service providers will be impacted and welcome proposals on how to lessen that impact. In reaching our final conclusions and promulgating rules in this proceeding, the Commission expects to more fully consider the economic impact and any alternatives for small entities, as identified in comments filed in response to the *Further Notice*.

⁹⁶ TRACED Act § 4(b)(5)(C)(iii), 133 Stat. at 3279.

⁹⁷ See *supra* paras. 31-34.

⁹⁸ See *supra* paras. 31-34.

⁹⁹ 5 U.S.C. § 603(c)(1)-(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

25. None.