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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Advanced Methods to Target and Eliminate) CG Docket No. 17-59
Unlawful Robocalls)
)
Call Authentication Trust Anchor) WC Docket No. 17-97
)

COMMENTS OF CREDIT UNION NATIONAL ASSOCIATION

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I. Introduction and Summary

The Credit Union National Association (“CUNA”) hereby submits these comments in response to the Third Further Notice of Proposed Rulemaking in the above-captioned proceedings.¹ CUNA fully supports efforts to curtail fraudulent or other illegal calls, including implementation of the SHAKEN/STIR call authentication framework.

For the reasons set forth below, however, the Federal Communication Commission’s proposals for establishing a safe harbor are premature. Key aspects of the SHAKEN/STIR framework critical to ensuring a helpful and positive consumer experience remain under development. If the Commission does adopt a safe harbor for blocking some calls based on SHAKEN/STIR information, CUNA respectfully urges the Commission to couple that authority with a requirement to implement timely and effective mechanisms to reverse the inadvertent

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59, WC Docket No. 17-97, FCC 19-51 at ¶ 38 (rel. June 7, 2019) (“Declaratory Ruling” or “Further Notice”); Consumer and Governmental Affairs Bureau and Wireline Competition Bureau Announce Comment Dates for Call Blocking and Caller ID Authentication Third Further Notice of Proposed Rulemaking, Public Notice, CG Docket No. 17-59, WC Docket No. 17-97, DA 19-597 (June 26, 2019).

blocking or mislabeling of legitimate and often critical communications. Requiring providers to quickly unblock legal calls is necessary because the Commission has no authority to authorize the blocking of legal communications.

CUNA is the largest trade association in the United States serving America's credit unions and the only national association representing the entire credit union movement. With a network of affiliated state credit union associations, CUNA represents nearly 5,500 federal and state credit unions that serve 115 million members collectively. Credit unions are member-owned, democratically run institutions where members play a significant role in governance. This unique relationship between credit unions and their members fosters the need for communication on a host of fronts, including not only messages relating to governance and financial education, but also the type of critical alerts and legally-required informational calls that financial institutions routinely provide to their customers.²

II. The Commission's Proposals for a Safe Harbor Are Premature

The Further Notice proposes a safe harbor for voice service providers that choose to block calls that "fail Caller ID authentication."³ A call would fail authentication where "a malicious actor ha[d] tried to inappropriately spoof another number and attempted to circumvent the protection provided by SHAKEN/STIR."⁴ The Commission assumes that the calls blocked in these circumstances would be "illegitimate."⁵ The Further Notice also seeks comment on whether blocking should be authorized under other circumstances, such as unsigned calls from particular categories of voice providers.⁶

² *In the Matter of Credit Union National Association Petition for Declaratory Ruling and Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278, Petition for Declaratory Ruling (filed September 29, 2017) ("CUNA Petition").

³ Further Notice at ¶ 51.

⁴ Id.

⁵ Id.

⁶ Id. at ¶ 54.

Adoption of any safe harbors based on SHAKEN/STIR information is premature. Although major voice providers such as AT&T, Comcast, and T-Mobile have expended significant time and effort to implement the SHAKEN/STIR protocols and functionalities into their networks, the governance structure overseeing the framework approved by the Commission is not yet fully operational. While demonstrating proof of concept, the current signing and verification of caller ID by these major providers is being undertaken outside of the governance framework approved by the Commission. The governance structure contemplates certificates issued by designated and trusted certification authorities that have yet to be established. Although anticipated industry timelines indicate that the governance structure will be operational by the end of this year, and major carriers anticipate integrating their SHAKEN/STIR capabilities into that structure, the Commission should wait until full implementation and gain experience with the effectiveness of the framework, particularly as additional providers enter the SHAKEN/STIR ecosystem, before proposing any safe harbors.

In addition to the governance structure, significant aspects of the framework that are vital to ensuring a positive consumer experience are yet to be developed. The framework is currently unable to provide for full attestation of calls using common enterprise calling systems and methodologies. These common enterprise calling platforms could include companies that obtain numbers from different carriers and/or utilize various carriers for transport depending on the least cost provider.⁷ The industry is working toward a solution to enable trusted signatures in these calling scenarios that involve the possible delegation of certificates, but until then, carriers that transport calls from calling centers or multi-line enterprise locations may “be forced to sign

⁷ See STIR Certification Delegation, draft-ietf-stir-cert-delegation-00 (July 9, 2019) at 3-4 (“STIR Cert. Delegation”) available at <https://tools.ietf.org/html/draft-ietf-stir-cert-delegation-00> (last visited July 24, 2019). The draft is a work in progress and will expire on January 9, 2020.

calls with credentials that do not cover the originating number in question.”⁸ According to the IETF working group draft, “that practice [will] be difficult to distinguish from malicious spoofing, and if it becomes widespread, it could erode trust in STIR overall.”⁹

In other words, pending some sort of further development of the SHAKEN/STIR framework, common but complex enterprise calling scenarios could be indistinguishable from the type of malicious spoofing that the Commission believes would justify blocking. The result will be that calls that consumers want, expect, or need that originate from enterprises such as credit unions, particularly those that utilize smaller, competitive providers, may not get through. The Commission should forgo authorizing any blocking until the industry has developed a reasonable and efficacious mechanism to address enterprise calling.

Also unresolved is how SHAKEN/STIR information will be presented to consumers. As noted on the STI-GA website, the industry “is debating the optimum strategy for what to display to the end user” and that “[c]onsumers eventually are expected to see an *as-yet-undetermined* signal that will identify calls that have been verified, a feature intended to help guide decisions about whether to pick up.”¹⁰ It is thus unclear how carriers will inform consumers of the results of the authentication, whether lower levels of attestation will be blocked or adversely labeled and how unsigned calls will be presented. The Further Notice, in fact, seeks comment on whether the Commission should require providers to adopt a “uniform display showing consumers whether a call has been authenticated.”¹¹

⁸ STIR Cert. Delegation at 4. Credentials in this context refer to telephone numbers. See Internet Engineering Task Force, Secure Telephone Identity Credentials: Certificates, RFC8226, at 2-3 (Feb. 2018) available at <https://www.rfc-editor.org/rfc/pdf/rfc8226.txt.pdf> (last visited July 24, 2019).

⁹ STIR Cert Delegation, at 4.

¹⁰ STI-GA FAQ available at <https://www.atis.org/sti-ga/> (last visited July 24, 2019) (emphasis added).

¹¹ Further Notice at ¶ 77.

CUNA would support efforts either by industry or through FCC guidance, to develop a uniform presentation. Different treatment of the same calls will exacerbate the considerable consumer confusion that is likely to occur once this framework becomes more prevalent. Substantial efforts at consumer education will be needed given that an attestation does not necessarily mean a call is legal and that the lack of attestation or any particular level of attestation does not necessarily signify that the call is illegal.

The SHAKEN/STIR framework can be an important tool in combating illegal or fraudulent calls. Given its incipient state, however, proposals to establish safe harbors based on SHAKEN/STIR authentication are premature and could lead to consumer confusion and frustration, undermining the very purpose of the call authentication endeavor. The Commission should ensure that SHAKEN/STIR works as advertised when a substantially larger universe of providers enters the SHAKEN/STIR ecosystem before authorizing blocking or safe harbors.

III. Any Authorized Blocking Must Be Coupled with Strong Measures to Prevent Erroneous Blocking or Mislabeling

A. Call Blocking Entities Must Establish Robust Challenge Mechanisms

The Commission should take this opportunity to fortify the challenge mechanisms it described in the Declaratory Ruling authorizing default call blocking based on analytics.¹² Effective and timely challenge mechanisms must accompany any form of blocking and safe harbor, whether the blocking is based on analytics, white lists, or authentication information provided through the SHAKEN/STIR framework. The record in this proceeding provides ample evidence that legitimate calls currently are being blocked and/or mislabeled and the incidence of

¹² Declaratory Ruling at ¶ 38.

false positives is likely to grow as blocking expands.¹³ The Further Notice thus appropriately seeks comment on ways to prevent or redress erroneously blocked or mislabeled calls.¹⁴

To be effective, a challenge mechanism must include a real-time or near real-time notification, such as an intercept message, informing the caller (or its provider) that the call is being blocked. Although the Commission in the Declaratory Ruling “encourage[d] voice service providers that block calls to develop a mechanism for notifying callers that their calls have been blocked,” the Commission should, in this rulemaking, require any provider blocking calls to provide callers with a prompt and clear notification that their calls are being blocked and by whom.¹⁵ The Commission should also make clear that blocking should be lifted immediately upon a showing that the call originates from a provider authorized to use the number. This could be as simple as having a conversation with the calling entity. The challenge mechanism should also include, as the Declaratory Ruling noted, a point of contact to call should erroneous blocking occur. Additionally, the blocking entity should commit to a time frame within which to resolve any dispute regarding blocking. The challenge process should be open, transparent, and fast.

B. Critical Calls Should Include Fraud Alerts and Other Important Financially-Related Messages

The Further Notice seeks comment on requiring any voice service provider that blocks calls to maintain a list of numbers associated with critical calls that “must never be blocked.”

The Commission initially proposes to limit this list to “genuine emergency calls” and to calls that

¹³ See Letter from Mitria Wilson, Credit Union National Association, to Marlene H. Dortch, FCC, CG Docket No. 17-59, WC Docket No. 17-97 at n. 25 (filed May 30, 2019) (citing comments describing extent of erroneous blocking and mislabeling using current analytical tools).

¹⁴ Further Notice at ¶¶ 58, 70.

¹⁵ See e.g., Reply Comments of Sirius XM Radio Inc. *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, at 3 (filed Oct. 9, 2018).

are “signed and pass authentication” under the SHAKEN/STIR framework.¹⁶ It recognizes, however, that other calls are important to consumers, such as fraud alerts.¹⁷

The Commission is correct to recognize the critical nature of calls informing consumers that fraudulent activity may be occurring or may have occurred in the consumer’s, or in the case of credit unions, its members’, financial accounts. The Commission should include not only calls related to fraudulent activity on a critical calls list, but also the same universe of time-sensitive financial information that the Commission has exempted from the Telephone Consumer Protection Act’s prior consent requirement. The Commission exempted these calls from prior consent in light of their obvious pro-consumer benefits.¹⁸ The exempted communications include breach notifications, notices regarding steps to prevent or remedy harm from breaches, and actions needed to arrange for receipt of pending money transfers. The Commission should also consider critical call designation for notifications regarding delinquencies as these notifications can prevent having to report late payments to credit bureaus that, in turn, adversely impact a consumer’s financial standing. CUNA appreciates that including additional categories of calls in the critical calls lists creates further administrative complications, but the importance of ensuring that such calls are not blocked necessitates addressing and resolving complications that may arise.

The Commission also proposes that a number must “pass authentication” in order to be placed on the critical calls lists. CUNA is concerned that using SHAKEN/STIR authentication as a gating mechanism may preclude legitimate, critical calls from being on placed on white lists. Given that significant aspects of the framework remain under development, and that some

¹⁶ Further Notice at ¶ 64.

¹⁷ Id. at ¶ 66.

¹⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8023 ¶¶ 127-133 (July 10, 2015).

smaller providers, particularly those remaining on the TDM-based circuit network, may not be able to participate in the framework for some time, requiring a critical call to “pass authentication” may result in harm to consumers who may not receive important information.

C. Erroneously Blocking Legitimate Calls Imposes Substantial Cost on Consumers

The Further Notice in various places seeks comment on the costs and benefits of blocking calls, but the only costs the Commission appears to envision are network costs that may be incurred by voice service providers.¹⁹ The Further Notice nowhere addresses the costs to consumers, or, in the case of credit unions, their members, in erroneously blocking legitimate calls. Some indication of what those costs might entail was recently provided by the American Airlines Federal Credit Union (“AAFCU”).²⁰ The costs that AAFCU described there occurred due to the chilling effect of possible Telephone Consumer Protection Act (“TCPA”) litigation on the use of efficient communications technologies. Forgoing the use of these technologies for fear of inadvertently running afoul of the TCPA, especially in light of the conflicting court interpretations of what constitutes an automatic telephone dial system, results in laborious manual dialing. The extra time required for manual dialing results in calls either not being made or not being made in a timely manner. Among the costs AAFCU identified were costs when members were not timely being informed of loan delinquencies that could have prevented the loans from being “charged off.”²¹ AAFCU estimated that it “could prevent \$415,000 to \$520,000 in loan charge offs per quarter” if it could timely reach more of its member borrowers using efficient dialing technology. The same estimates could readily apply to members not

¹⁹ Further Notice at ¶ 70 (“What costs would be imposed on voice service providers implementing these [erroneous blocking] protections?”); *id.* at ¶ 81 (noting the call blocking would lower network costs by eliminating unwanted traffic but seeking comment on “upfront and recurring costs to implement SHAKEN/STIR.”)

²⁰ Letter from Gail Enda, American Airlines Federal Credit Union, to Marlene H. Dortch, FCC, CG Docket Nos. 02-278, 18-152 (filed May 17, 2019) (“AAFCU ex parte”).

²¹ AAFCU ex parte at 3.

receiving delinquency notices because they were being erroneously blocked or mislabeled as spam or unauthenticated.

The consumer cost described by the AAFCU is just one type of cost by a single credit union that serves approximately 300,000 of the roughly 115 million members of credit unions, and involves only one type of critical communication. To obtain a more realistic picture of blocking costs and benefits, the Commission should make some effort to assess the costs of erroneous call blocking on consumers, not just network costs of voice service providers in establishing challenge mechanisms.

In the same vein, the Commission should preclude voice service providers from charging those that invoke a challenge mechanism, just as it has indicated its strong preference that consumers not be assessed fees for call blocking programs. This is particularly important for credit unions, many of which are small businesses with 5 or fewer full time employees and more than one quarter have assets under \$10 million.

D. Efforts to Measure Effectiveness Should Include the Extent of Erroneous Blocking

CUNA supports the Commission's suggestion to create a mechanism to provide information regarding the effectiveness of voice providers' "robocall solutions."²² The Commission should ensure, however, that effectiveness involves an assessment of the extent of erroneous blocking or mislabeling of calls. The Commission has already authorized a substantial expansion of call blocking authority in the Declaratory Ruling and done so without any rigorous examination of the extent or impact of erroneous call blocking. It may be prudent for the Commission to await the results of these studies, which are to include assessments of "false

²² Further Notice at ¶ 83.

positives” and use of intercept messages, before further expanding call blocking authority and safe harbors.²³

IV. The Commission Has No Authority to Authorize Blocking of Legal Calls

The establishment of robust mechanisms to ensure that lawful calls are not blocked is paramount because the Commission has no authority to authorize the blocking of legal communications. The Commission has made this point on numerous occasions.²⁴ The first and foremost obligation imposed under Title II of the Communications Act is for telecommunications carriers to “establish physical connections with other carriers” and “establish through routes” to ensure that calls are completed.²⁵ CUNA acknowledges and appreciates that the prevalence of “robocalls” is itself disrupting the networks as consumers become ever more reluctant to accept calls from unknown numbers. The Commission, however, lacks any delegated Congressional authority to authorize call providers to engage in activities that invariably will result in the blocking of legitimate calls.

The Further Notice identifies several provisions in Title II of the Communications Act which it suggests provides authority for the actions it proposes to take. It cites sections 201(b) and 202(a), the Truth In Caller ID Act, and section 251(e).²⁶ None of those provisions, nor any other provision of the Communications Act, provide authority for the Commission to authorize the blocking of legitimate calls. As the Further Notice states with respect to sections 201(b) and 202(a), those provisions have “formed the basis for the Commission’s traditional prohibitions on

²³ Id. at ¶¶ 87-90.

²⁴ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposal Rulemaking, 32 FCC Rcd 9706, ¶ 8 (2017) (citing Commission orders); *Connect America Fund*, Report and Order, 26 FCC Rcd 17663, 17903, ¶ 734 (2011) (“The Commission has a long standing prohibition on call blocking”); *Establishing Just and Reasonable Rates for Local Exchange Carriers – Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, ¶ 6 (2007) (“Call Blocking Order”) (“Commission precedent provides that no carriers . . . may block, choke, reduce or restrict traffic in any way.”).

²⁵ 47 U.S.C. § 201(a).

²⁶ Further Notice at ¶¶ 84-86.

call blocking.”²⁷ The Further Notice does not spell out any theory for how those same provisions, previously used to ensure call completion, can be turned on their head and provide authority to block legal calls. At any rate, because the Commission has not classified voice over IP as a telecommunications service, sections 201(b) and 202(a) cannot form the basis for authority to adopt a safe harbor for blocking VoIP originated calls.

The Truth in Caller ID Act, 47 U.S.C § 227(e), provides authority to address spoofing done with harmful intent,²⁸ but confers no authority on providers to block lawful calls, including lawfully spoofed calls such as the insertion of a call back number different than the calling number. Section 251(e) provides the Commission with exclusive jurisdiction over numbers used in the United States. Whatever authority 251(e) confers to address unlawful use of numbers, including potentially to mandate SHAKEN/STIR,²⁹ it provides no authority to block lawful calls where the caller is authorized to use the number.

As CUNA previously explained, contrary to the glaring absence of authority to block legal calls, Congress has established a specific framework in the TCPA to identify the types of calls that the Commission may lawfully address. Unlike the colloquial term “robocall” that has become a general term used for any kind of annoying, unwanted or illegal call, the TCPA and the Commission’s regulations include specific legal definitions of prohibited automated communications. These definitions generally preclude prerecorded or artificial voice calls to residential telephone lines and automated or prerecorded or artificial voice calls to cell phones.³⁰ The TCPA and the Commission’s regulations also expressly exclude the following two general

²⁷ Id. at ¶ 84.

²⁸ Section 227(e)(1) bars spoofing with the “intent to defraud, cause harm, or wrongfully obtain anything of value.”

²⁹ Further Notice at ¶ 86 (citing 251(e) as authority to mandate SHAKEN/STIR because bad actors use numbering resources for unlawful spoofing.)

³⁰ See 47 U.S.C. § 227(b)(1)(B); 227(b)(1)(A)(iii).

categories of calls from these prohibitions:

- (1) calls made to a residential landline from a caller with prior express consent or with an existing business relationship for informational purposes;³¹ and
- (2) automated calls made to a cell phone with the prior express consent of the called party.³²

Authorizing blocking of calls that pass muster under the TCPA nullifies Congress's efforts to delineate when calls are illegal and when they are lawful. The authentication enabled by SHAKEN/STIR has no ability to distinguish between lawful or unlawful calls. As described above, even the modest sounding proposal to permit blocking of calls where Caller ID has been maliciously inserted risks blocking many legitimate calls originating from enterprises using complex calling platforms.

In the absence of any authority to block lawful calls, the Commission must make every effort to ensure that any safe harbor for inadvertently blocking lawful calls is coupled with a timely and robust mechanism that enables calling parties and their network providers to promptly reverse such blocking.

V. CONCLUSION

CUNA supports the goal of eliminating illegal automated calls. We also support the implementation of the SHAKEN/STIR framework as a means to help achieve that goal. To ensure that calls placed by legitimate businesses are not blocked, however, we urge the Commission to delay implementing call blocking by Voice Service Providers of calls based on the SHAKEN/STIR framework until it is fully implemented. Once the framework has been implemented, the Commission should permit providers to block only calls that are not

³¹ See 47 U.S.C. § 227(b)(1)(B), 47 C.F.R. § 64.1200(A)(3)(iii) (excluding calls “made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing.”).

³² See 47 U.S.C. § 227(b)(1)(A)(iii). Emergency calls are also excluded. *Id.*

authenticated or, if authenticated, those calls that the provider has determined, with a high degree of certainty, are illegal calls. Moreover, any blocking must be accompanied by a robust, effective and timely challenge mechanism.

Finally, CUNA urges the Commission to expand its proposed Critical Calls List to include numbers from which financial institutions place fraud alerts, data breach notifications, remediation messages, and mortgage servicing calls required by Federal or State law. We also recommend that the Commission, in assessing the effectiveness of voice service providers' solutions to the problem of illegal automated calls, measure and report annually on the number of calls that voice service providers have blocked erroneously.

Respectfully submitted,

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