



NATIONAL
ASSOCIATION OF
ATTORNEYS GENERAL

PRESIDENT

Ellen F. Rosenblum
Oregon
Attorney General

January 17, 2024

PRESIDENT-ELECT

John Formella
New Hampshire
Attorney General

VICE PRESIDENT

William Tong
Connecticut
Attorney General

IMMEDIATE PAST
PRESIDENT

Dave Yost
Ohio
Attorney General

Brian Kane
Executive Director

1850 M Street NW
12th Floor
Washington, DC 20036
(202) 326-6000
www.naag.org

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

In the Matter of)	
)	
Safeguarding and Securing the)	WC Docket No. 23-320
Open Internet)	

REPLY COMMENTS OF 45 STATE ATTORNEYS GENERAL

The undersigned State Attorneys General (“State AGs”) submit these Reply Comments in response to the public notice issued by the Wireline Competition Bureau.¹ However, State AGs do not submit these Reply Comments in support of, or opposition to, the proposals in the NPRM; rather, we seek only a narrowly drawn clarification from the Federal Communications Commission (“Commission”) that the proposals in this NPRM have no bearing or effect on, or application to, the status of Voice-Over-Internet Protocol (“VoIP”) service providers, some of which play an integral role in the routing of illegal robocalls into and across the country.

In the NPRM, the Commission proposes “to safeguard and secure the open Internet” by reestablishing its authority over broadband Internet

¹ See Notice of Proposed Rulemaking, *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320 (Released Oct. 20, 2023) (“NPRM”).

access service by classifying it as a telecommunications service under Title II of the Communications Act of 1934, as amended.² State AGs recognize that our offices have differing views with respect to the wisdom of net neutrality, which “generally refers to the idea that internet service providers should neither control how consumers lawfully use their networks nor discriminate among the content providers that use their networks.”³ However, as evidenced by our previous filings with the Commission regarding issues concerning robocalls and robotexts in recent years, State AGs are typically unified in our stance against the entities and individuals that have weaponized the U.S. telephone system against U.S. consumers.⁴

² See *NPRM* at ¶¶ 1, 3 & App. B. ¶ 3.

³ See Congressional Research Service, *In Focus: FCC Adopts Proposed Net Neutrality Rule* (Oct. 19, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF12513>.

⁴ See, e.g., Reply Comments of Fifty-One (51) State Attorneys General, *Targeting and Eliminating Unlawful Text Messages*, CG Docket No. 21-402 (filed Dec. 9, 2022), available at <https://www.fcc.gov/ecfs/document/1209491030675/1> (supporting the Commission’s proposals to require mobile wireless providers to block illegal text messages at the network level when those text messages purport to be from invalid, unallocated, or unused numbers, and numbers on a Do-Not-Originate list); Reply Comments of Fifty-One (51) State Attorneys General, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97 (filed Sept. 16, 2022), available at <https://www.fcc.gov/ecfs/document/10916815405552/1> (supporting the Commission’s proposals to extend STIR/SHAKEN call authentication protocols to all U.S. intermediate providers and to expand to all domestic providers the requirement to implement affirmative and effective mitigation practices); Reply Comments of Fifty-One (51) State Attorneys General, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97 (filed Jan. 10, 2022), available at <https://www.fcc.gov/ecfs/document/1011070693769/1> (supporting the Commission’s proposals to require gateway providers to implement STIR/SHAKEN call authentication in order to verify foreign-originated calls that use U.S.-based phone numbers and to require gateway providers to implement robocall mitigation programs); Reply Comments of Fifty-One (51) State Attorneys General, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, *Implementation of TRACED Act Section 6(a)— Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket No. 20-67 (filed Nov. 15, 2021), available at <https://www.fcc.gov/ecfs/document/111567842383/1> (supporting the Commission’s proposals to reduce access to numbering resources by potential perpetrators of illegal robocalls); Reply Comments of Fifty-One (51) State Attorneys General, *Call Authentication Trust Anchor*, WC Docket No. 17-97 (filed Aug. 9, 2021), available at

We submit these Reply Comments for the limited purpose of asking the FCC to clarify that the proposals described in the NPRM do not seek to affect, reclassify, or otherwise impact or alter the treatment of VoIP service providers, as that classification currently stands with the Commission. While there are primarily only passing references to the term “VoIP” in the NPRM, the Commission notes that robocalls “are transmitted via VoIP networks” and seeks comment on the extent to which Title II classification of broadband Internet access service would effectively “grant the Commission oversight to reach a larger class of entities, particularly for messages and calls delivered via broadband networks[.]”⁵ In order to obviate any confusion that may come from a constrained reading of the Commission’s invitation for comment on this statement, State AGs request a clarification that the Commission does not intend for any regulation that arises out of this NPRM to extend the Title II reclassification proposals to include VoIP providers.

<https://www.fcc.gov/ecfs/document/10809277104737/1> (supporting the Commission’s proposal to shorten the deadline by which certain small voice service providers must implement the STIR/SHAKEN caller identification authentication framework); Reply Comments of Fifty-Two (52) State Attorneys General, *Implementing Section 13(d) of the Pallone–Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22 (filed June 4, 2020), available at <https://www.fcc.gov/ecfs/document/106040750323297/1> (supporting the public notice issued by the Commission’s Enforcement Bureau adopting its rules seeking applications for a single registered consortium that will both serve as a neutral third party to manage the private-led efforts to trace back the origin of suspected unlawful robocalls, and be responsive to the needs of interested parties, including State Attorneys General); Reply Comments of Fifty-One (51) State Attorneys General, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, *Call Authentication Trust Anchor*, WC Docket No. 17-97 (filed Aug. 23, 2019), available at <https://www.fcc.gov/ecfs/document/10823070609609/1> (supporting the Commission’s proposals to require voice service providers to implement the STIR/SHAKEN Caller ID authentication framework and its declaratory ruling that resolved the uncertainty about whether and when voice service providers may implement free, default, opt-out call-blocking programs).

⁵ See NPRM at ¶ 45.

State AGs, like the Federal Trade Commission (“FTC”) and the U.S. Department of Justice, rely on the FTC’s Telemarketing Sales Rule (“TSR”)⁶ to prosecute enforcement actions against entities and individuals that “assist and facilitate”—or provide substantial assistance or support to—sellers or telemarketers while knowing, or consciously avoiding knowing, that the sellers or telemarketers are violating the TSR by engaging in deceptive and/or abusive telemarketing acts or practices.⁷ Because a Title II reclassification for VoIP providers could significantly undermine State AGs’ authority under this reliable and comprehensive law enforcement tool, we ask for this clarification from the Commission.

⁶ 16 C.F.R. Part 310.

⁷ See, e.g., *United States v. Hello Hello Miami, LLC, et al.*, No. 1:23-cv-22553 (S.D. Fla. 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2223041-hello-hello-miami-llc-us-v>; *United States v. XCast Labs, Inc.*, No. 2:23-cv-03646 (C.D. Cal. 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/222-3097-xcast-labs-inc-us-v>; *United States v. Stratics Network, Inc., et al.*, No. 3:23-cv-00313 (S.D. Cal. 2023), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/2023189-stratics-networks>; *United States v. VOIP Terminator, Inc., et al.*, No. 6:22-cv-00798 (M.D. Fla. 2022), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923189-voip-terminator-inc-us-v>; *FTC v. Alcazar Networks Inc., et al.*, No. 6:20-cv-02200 (M.D. Fla. 2020), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923259-alcazar-networks-inc>; *FTC et al. v. Educare Ctr. Servs., Inc., et al.*, No. 3:19-cv-00196 (W.D. Tex. 2019), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/192-3033-educare-centre-services-inc>; *FTC v. Christiano, et al.*, No. 8:18-cv-00936 (C.D. Cal. 2018), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3124-x180032-james-christiano-et-al-netdotsolutions-inc>; *State of Arizona, et al. v. Michael Lansky, dba Avid Telecom, et al.*, No. 4:23-cv-00233 (D. Ariz. 2023); *State of Florida v. Smartbiz Telecom LLC*, No. 1:22-cv-23945 (S.D. Fla. 2022), available at <https://www.myfloridalegal.com/files/pdf/page/DE8589ADA8B9DB738525890F0055D5DA/Web+Link.pdf>; *State of Ohio v. Aaron Michael Jones, et al.*, No. 2:22-cv-2700 (S.D. Ohio 2022), available at <https://www.ohioattorneygeneral.gov/Media/News-Releases/July-2022/Yost-Files-Suit-Alleging-Massive-Robocall-Scheme-F>; *State of Vermont v. Bohnett, et al.* No. 5:22-cv-00069 (D. Vt. 2022), available at <https://ago.vermont.gov/sites/ago/files/wp-content/uploads/2022/03/TCA-VOIP-Complaint.pdf>; *State of North Carolina v. Articul8 LLC, et al.*, No. 1:22-cv-00058 (M.D.N.C. 2022), available at https://ncdoj.gov/wp-content/uploads/2022/01/FILED-Complaint_NC-v-Articul8_22-cv-00058-MDNC-2022.pdf; *State of Indiana v Startel Communications LLC, et al.*, No. 3:21-cv-00150 (S.D. Ind. 2021); *State of Texas, et al., v Rising Eagle Capital Group, LLC, et al.*, No. 4:20-cv-02021 (S.D. Tex. 2020).

To be clear, State AGs find no ambiguity in our reading of the NPRM, or regarding the status of VoIP providers generally. However, as the Commission recognizes, there are VoIP providers in the robocall ecosystem contributing to the proliferation of illegal robocalls being routed across the U.S. telephone network that may attempt to use this NPRM to bolster their claims that VoIP providers should be—or are—definitively recognized by the Commission as telecommunications services under Title II and, thus, that they should be shielded from enforcement actions brought against them under the TSR. State AGs believe that a clarifying statement from the Commission that the proposals at issue in the NPRM do not implicate VoIP providers will reinforce that this NPRM does not in any way affect or alter the FTC’s—and derivatively the State AGs’—ability to continue to effectively use the TSR to prosecute enforcement actions against VoIP providers.

Accordingly, while we reiterate that the undersigned State AGs do not submit these Reply Comments in support of, or opposition to, the proposals in the NPRM, we ask the Commission to unambiguously clarify that the proposals therein do not affirmatively seek to affect VoIP providers. Such a clarification will allow State AGs to continue to combat illegal robocalls by using the tools provided by both the Commission and the FTC to prosecute VoIP providers, particularly those who seek to circumvent accountability and liability by trying to hide in any shadows that may fall between the TCPA and the TSR.

The five co-sponsors of this letter—the Attorneys General of **Indiana, Michigan, North Carolina, Ohio and Pennsylvania**—are joined by the undersigned attorneys general across the United States and its territories.

RESPECTFULLY SUBMITTED BY 45 STATE ATTORNEYS GENERAL



Todd Rokita
Indiana Attorney General



Dana Nessel
Michigan Attorney General



Josh Stein
North Carolina Attorney General



Dave Yost
Ohio Attorney General



Michelle Henry
Pennsylvania Attorney General



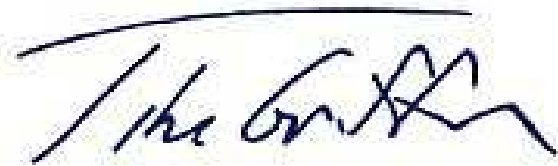
Steve Marshall
Alabama Attorney General



Treg R. Taylor
Alaska Attorney General



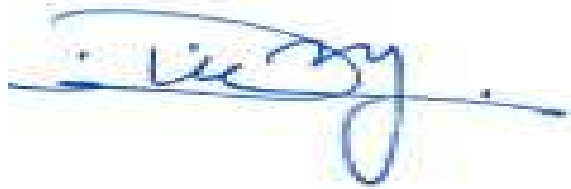
Kris Mayes
Arizona Attorney General



Tim Griffin
Arkansas Attorney General



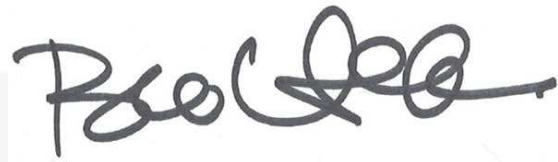
Phil Weiser
Colorado Attorney General



William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



Brian Schwalb
District of Columbia Attorney General



Ashley Moody
Florida Attorney General



Christopher M. Carr
Georgia Attorney General



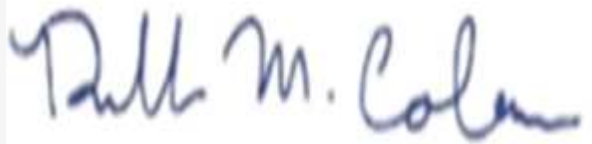
Anne E. Lopez
Hawaii Attorney General



Kwame Raoul
Illinois Attorney General



Kris Kobach
Kansas Attorney General



Russell Coleman
Kentucky Attorney General



Aaron M. Frey
Maine Attorney General



Anthony G. Brown
Maryland Attorney General



Andrea Joy Campbell
Massachusetts Attorney General



Keith Ellison
Minnesota Attorney General



Lynn Fitch
Mississippi Attorney General



Andrew Bailey
Missouri Attorney General



Austin Knudsen
Montana Attorney General



Mike Hilgers
Nebraska Attorney General



Aaron D. Ford
Nevada Attorney General



John M. Formella
New Hampshire Attorney General



Matthew J. Platkin
New Jersey Attorney General



Letitia James
New York Attorney General



Drew H. Wrigley
North Dakota Attorney General



Gentner Drummond
Oklahoma Attorney General

Ellen F. Rosenblum
Oregon Attorney General

Peter F. Neronha
Rhode Island Attorney General

Alan Wilson
South Carolina Attorney General

Marty Jackley
South Dakota Attorney General

Jonathan Skrmetti
Tennessee Attorney General

Sean D. Reyes
Utah Attorney General

Charity Clark
Vermont Attorney General

Jason S. Miyares
Virginia Attorney General

Robert W. Ferguson
Washington Attorney General

Patrick Morrisey
West Virginia Attorney General

Joshua L. Kaul
Wisconsin Attorney General

Bridget Hill
Wyoming Attorney General