Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Combatting Illegal Robocalls Through FCC Numbering Policies	)	WC Docket No. 26-49
	)	
Implementation of TRACED Act Section 6(a) — Knowledge of Customers by Entities with Access to Numbering Resources	)	WC Docket No. 20-67
	)	
Numbering Policies for Modern Communications	)	WC Docket No. 13-97
	)	
Telephone Number Requirements for IP-Enabled Service Providers	)	WC Docket No. 07-243

COMMENTS OF INCOMPAS

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TABLE OF CONTENTS

PAGE

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In the Matter of	)	
	)	
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	)	
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	)	
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	)	
Telephone Number Requirements for IP-Enabled Service Providers	)	WC Docket No. 07-243

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INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communication Commission's ("Commission") *Notice of Proposed Rulemaking* (*"NPRM"* or *"Notice"*) examining telephone numbering policies and how assigned numbers are used by service providers as a means by which to address the ongoing problem of illegal robocalls.[1]

I. INTRODUCTION AND SUMMARY

As explained in the *NPRM*, the Commission has made important progress in combatting illegal robocalls. Nevertheless, as the Commission also acknowledges, there are several important gaps in its robocalling mitigation rules. INCOMPAS supports the Commission's

[1] *See Combatting Illegal Robocalls Through FCC Numbering Policies, Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbeirng Resources, Numbering Policies for Modern Communications, Telephone Number Requirements for IP-Enabled Service Providers,* WC Docket Nos. 26-49, 20-67, 13-97, 07-243, Notice of Proposed Rulemaking, FCC 26-17 (rel. Mar. 27, 2026) (*"NPRM"* or *"Notice"*).

efforts to fill those gaps, but we urge the Commission to adopt new regulations only where the benefits clearly outweigh the costs. It appears that is case with at least one of the proposals in the *NPRM*. Requiring that all providers that receive numbering resources directly from the NANPA and all resellers of telephone numbers file robocall-related certifications will deter those providers from allowing their networks to be used for illegal robocalling. However, the Commission's proposed changes to the numbering resources utilization/forecast ("NRUF") rules are less promising. The proposals to expand the set of entities subject to NRUF reporting requirements and to revise the definition of intermediate numbers are unlikely to yield meaningful benefits for reducing illegal robocalls. NRUF reports cannot be submitted frequently enough to keep up with companies specializing in illegal robocalling and the NRUF reports are not integrated with STIR/SHAKEN. Rather than focus on changing NRUF rules, the Commission should focus on accelerating full adoption of STIR/SHAKEN and addressing the existing limitations of that framework.

Most importantly, the Commission should not adopt a single-level resale limit. Such a rule would harm competition and consumer welfare and likely accelerate number exhaustion while yielding no meaningful benefits. Moreover, the Commission does not have the authority to adopt a single-level restriction.

II. THE COMMISSION SHOULD ADOPT STRONGER CERTIFICATION RULES BUT NOT NEW NRUF RULES AS PART OF A BROADER FRAMEWORK FOR REDUCING ILLEGAL ROBOCALLS

The Commission's robocall rules applicable to service providers fall into two general categories:

- Rules that indirectly address robocalling by giving voice providers the incentive to prevent their end users and other networks from transmitting illegal robocall traffic and by enhancing regulators' and law enforcement officials' ability to identify and initiate enforcement proceedings against those involved in illegal robocalling;

examples of these rules include know-your-customer, due diligence, and certification requirements;[2] and

- Rules that directly address robocalling at the network level as a means of identifying and blocking illegal robocalls; examples of these rules are the requirements that voice providers implement the STIR/SHAKEN caller ID authentication framework in their Internet Protocol networks and rules governing call blocking, tracebacks, mitigation plans, and participation in the Robocall Mitigation Database.[3]

Significant gaps remain in both categories of rules. The Commission rightly points out in the *NRPM* that the current rules seeking to indirectly address robocalling do not establish sufficient accountability for voice providers whose users engage in illegal robocalling and do not establish sufficient transparency as to how telephone numbers are assigned and utilized. But the Commission should also recognize that there are important gaps in the rules that seek to directly address robocalling at the network level. It should focus future proceedings on addressing the latter gaps because only network-level improvements to the STIR/SHAKEN authentication framework and related requirements can address the most significant source of illegal robocalls, namely unlawful call spoofing.

INCOMPAS supports the proposal to require that all providers that receive telephone numbers directly from the NANPA and all resellers of telephone numbers file robocall-related certifications (as well certifications regarding foreign ownership and truthfulness).[4] Under the proposal, these entities would be required to certify that, among other things, they will not use telephone numbers to knowingly transmit, encourage, assist, or facilitate illegal robocalls,

[2] *See, e.g.*, 47 C.F.R. § 64.1200(n)(4), (5).

[3] *See, e.g., id.* at §§ 64.1200(1)-(3), (o), (p), (s); 64.6300-64.6305.

[4] *NPRM*, ¶¶ 15, 17.

spoofing, or fraud.[5] Certification requirements deter companies from acting in conflict with the representations in the certification. It follows that companies, including resellers, newly subject to this certification will be less likely to permit or promote illegal robocalling conduct by end users or other providers. Moreover, as the Commission points out in the *NPRM*, enforcement of the prohibition against illegal robocalling will be more effective if directed at firms that have certified that they will not permit their customers or other carriers to engage in this conduct.[6]

The Commission's proposal to utilize NRUF reports to identify and track the chain of custody of telephone numbers for robocall enforcement is less promising.[7] As the Commission observes in the *NPRM*, the existing NRUF rules and industry practices fail to establish a reliable record as to which provider serves the ultimate end user assigned a particular telephone number.[8] This lack of transparency makes it more difficult for regulators and law enforcement officials to detect illegal robocalling. But it is unlikely that NRUF reports can be modified to address this problem.[9] First, entities engaged in illegal robocalling adjust their practices quickly and can exploit almost any delay in number utilization reporting. Moreover, the costs associated with implementing the proposed changes to NRUF reporting would be significant. Virtually any NRUF reporting regime will entail significant time delays between reports, thus likely rendering them insufficient for identifying robocalls. NRUF reports are also essentially snapshots of a

[5] *Id.,* ¶ 12.

[6] *Id.,* ¶ 14.

[7] *Id.,* ¶ 25.

[8] *Id.,* ¶¶ 29-30.

[9] INCOMPAS members report that the biannual reporting process requires significant resources and that increasing the reporting frequency would be unduly burdensome for small and competitive providers.

provider's numbering resources at a particular point in time that may not always align with other providers, including providers to whom numbers are being resold. Finally, NRUF reporting is not integrated into STIR/SHAKEN, further weakening their utility in addressing illegal robocalls.

Instead of seeking to rely on revised NRUF reporting requirements to address robocalling, INCOMPAS urges the Commission to focus on network-level rules that directly address illegal call spoofing. That can only be accomplished by (1) completing the IP transition in an orderly and pro-competitive manner so that all providers transmit voice in IP format and can therefore implement the STIR/SHAKEN requirements,[10] and (2) addressing weaknesses in the existing STIR/SHAKEN rules, which still allows calls to be originated using any number regardless of the network to which the number was assigned. INCOMPAS looks forward to working with the Commission and other stakeholders to achieve these objectives.[11]

III. THE COMMISSION SHOULD NOT ADOPT A SINGLE-LEVEL RESALE LIMIT

The Commission should not establish a single-level resale limit. Such a restriction would harm competition and consumer welfare and likely accelerate number exhaustion while providing no discernable benefits that would not be provided by implementing the Commission's certification proposal. It would also be unlawful since the Commission does not have the authority to adopt it.

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[10] *See* Comments of INCOMPAS (Jan. 20, 2026) and Reply Comments of INCOMPAS (Feb. 19, 2026), WC Docket Nos. 25-304, 25-208, 17-97.

[11] INCOMPAS appreciates the Commission's review of possible improvements in STIR/SHAKEN in the Know-Your-Upstream-Provider NPRM and is in the process of analyzing those proposals. *See, Call Authentication Trust Anchor, et al*., Further Notice of Proposed Rulemaking, WC Docket No. 17-97, 17-59 (rel. May 21, 2026).

B. Imposing a single-level resale limit on TDM-based telephone service would harm competition and consumer welfare

INCOMPAS supports the transition from TDM-based services to IP-based services for many reasons, including that it is a prerequisite for full implementation of the STIR/SHAKEN caller ID authentication framework. There are circumstances, however, in which government and enterprise customers still value the service characteristics of traditional wireline TDM-based telephone service. For example, some customers prefer traditional TDM service provided via copper loops because it is line-powered and does not require fail-safes like back-up generators or batteries at the customer's location to operate during electrical outages. Most newer communications services, such as most VoIP services, are not line powered and therefore do not provide the same level of reliability as traditional TDM service provided via copper loops. Other customers value wireline TDM-based services because there are no viable alternative wireline-based services available at their locations. Still other customers have significant sunk investments in the customer premises equipment that supports TDM-based services, and they do not want to abandon that equipment and incur the costs associated with switching to a different technology for voice services.

INCOMPAS members have helped these customers transition to IP-based services by offering IP-based voice services that deliver the features of TDM-based telephone services as well as other features that TDM-based services lack. For example, Granite offers the EPIK service, which is a Managed Facilities-based Voice Network (MFVN) service capable of replacing TDM-base services like-for-like. Because it provides dial tone that is equivalent to TDM dial tone, Granite's EPIK service enables end users to utilize their analog devices to receive voice service via a wide range of underlying transmission technologies, softswitch

technology, Ethernet, FSX, and LTE.[12] Customers are increasingly replacing their legacy TDM-based telephone service with EPIK service and services like it.

Nevertheless, the demand for TDM-based telephone service, while declining, remains significant. Persistent demand for TDM-based services is especially pronounced among federal and state government agencies, public safety organizations, and enterprise customers with life-safety infrastructure. Even customers that have subscribed to IP-based TDM replacement services sometimes continue to purchase TDM-based telephone services as a back-up to the IP-based services. It seems likely that a significant number of these customers will continue to purchase TDM-based telephone services until the service is discontinued in the locations where they operate or IP-based services become available.[13]

As the Commission has recognized, incumbent LECs are the only providers of TDM-based telephone service is virtually every rate center in the country.[14] Resellers of incumbent LEC TDM-based telephone service therefore offer the only alternative to the incumbent LEC monopoly service. Several INCOMPAS members provide this service in a manner that delivers

[12] The platform supports loop-start signaling compatibility, survivability during WAN outages, LTE failover capabilities, and operational characteristics required for many MFVN services. In fact, EPIK provides service quality that is superior in several operational categories to AT&T's APB-A service, which AT&T offers as a substitute for TDM-based telephone service, on wide range of service quality measures. *See* Granite EPIK, Network Performance Testing Results, available at https://www.granitenet.com/wp-content/uploads/2025/06/EPIK-FCC-Adequate-Replacement-Test.pdf. For the same reasons, EPIK is superior to typical SIP or wireless voice offerings because it meets the technical requirements for specialty dial-tone based applications, such as fire and safety systems. *See* Granite EPIK, Go Above and Beyond a Basic POTS Replacement, https://www.granitenet.com/solutions/voice-solutions/epik-pots-replacement/.

[13] There continue to be places where IP-based voice services are unavailable, largely because reliable wireline broadband services are unavailable. *See, Reforming the High-Cost Program for All-IP Future, et al.*, WC Docket Nos. 26-96, 10-90, Notice of Proposed Rulemaking, ¶ 18 (rel. May 21, 2026).

[14] *See Reducing Barriers to Network Improvements and Service Changes; Accelerating Network Modernization*, Report and Order, WC Docket Nos. 25-209, 25-209, ¶ 77 (rel. Mar. 27, 2026).

significant efficiencies. These providers serve customers that often have hundreds or thousands of locations across dozens of incumbent LEC territories. They do so by purchasing TDM-based telephone services at wholesale from incumbent LECs throughout the country, often entering into wholesale agreements with hundreds of incumbent LECs. They then offer resold TDM-based telephone service to retail and wholesale customers by providing a single source for ordering, provisioning, installation, maintenance and billing. This business model yields powerful efficiencies because the customers of the resold service avoid incurring the large transaction costs associated with establishing separate customer relationships with every incumbent LEC serving their business locations.

Resellers of TDM-based telephone service do not assign telephone numbers to the telephone lines they resell, and they therefore do not obtain numbering resources for the purposes of providing the service. Instead, telephone numbers are assigned upstream by the wholesaler itself or ported to the wholesaler if originally assigned by another service provider.

Among the most significant customers of resold TDM-based telephone service are incumbent LECs that need to serve customers outside of their legacy incumbent LEC territories. This arrangement yields significant efficiencies for the incumbent LEC purchaser. For example, where an incumbent LEC serves a government customer with locations within and outside its incumbent LEC territory and that demands TDM-based telephone service, the incumbent LEC can either enter into separate wholesale relationships with the out-of-region incumbent LECs or purchase from a reseller that has already established those wholesale relationships and offers a single point of contact for the incumbent LEC in out-of-region areas. Understandably, some incumbent LECs choose to purchase from a reseller because doing so obviates the need to incur

the sunk costs associated with establishing separate wholesale relationships with many incumbent LECs.

If a single-level resale limit were established, the efficiencies associated with multi-level resale of TDM-based telephone services would be lost. Incumbent LECs that need to provide TDM-based telephone service to customers outside their legacy incumbent LEC territories would need to choose whether the cease serving those customers or enter into a direct wholesale relationship with each incumbent LEC whose territory covers its customer's location. The latter undertaking would be extremely burdensome and costly, and it is less and less justifiable as TDM-based telephone services are grandfathered and discontinued. In all events, end user customers are likely to be harmed. They would either lose options for TDM-based telephone services, or their service providers would incur higher costs, likely forcing them to increase the prices charged to the customers.

C. Imposing a single-level resale limit on VoIP would harm competition and consumer welfare and likely accelerate number exhaustion

An efficient ecosystem of resale has developed in the provision of VoIP services. Several INCOMPAS members participate in this ecosystem as both wholesalers and resellers. The providers of VoIP service that participate in this ecosystem are smaller than the large incumbent LECs and cable companies and they generally cannot justify the costs associated with obtaining numbers directly from the NANPA in every area in which they offer service. They therefore rely on the availability of those numbers from wholesalers to serve retail and wholesale customers.

Entities that obtain telephone numbers directly from NANPA throughout the country (or large portions of it) and make those numbering resources to providers of VoIP services sit at the center of the resale ecosystem. These companies generally focus on providing wholesale inputs

to companies that offer finished VoIP service. In addition to offering telephone numbers, the wholesale providers frequently offer other wholesale services such as number porting, tandem interconnection services, SIP interconnection, E911 services, CNAM dipping and storage, LIDB, toll-free routing, SMS enablement, and STIR/SHAKEN attestation support. Other entities specialize in providing a subset of these wholesale services, sometimes without also offering telephone numbers at wholesale

The costs associated with providing VoIP service using telephone numbers obtained directly from the NANPA are significant. Providers must incur the one-time costs associated with obtaining authorization from the FCC, notifying states in which the provider plans to operate, and establishing the large number of operational capabilities that are required to operate in this manner.[15] In addition, providers must incur significant incremental costs for each geographic area in which they seek to provide service in this manner. Providers must, among other things, enter into interconnection agreements needed to exchange traffic with other providers in the area, establish the capability to transmit and terminate traffic, establish tandem switching functionality, and establish number porting capabilities in the relevant area. These capabilities and functionalities can be obtained from wholesalers or established directly, but in either case they are costly.

Given the costs associated with providing service using telephone numbers obtained directly from the NANPA, it is unsurprising that the vast majority of VoIP providers have chosen

[15] These include, among other things, obtaining CLLI codes, configuring switching data in BIRRDS, establish CNAM service, E911 service, directory listings, complete onboarding with NPAC, establishing access to LSMS and SOA, and registering with the Reassigned Numbers Database in the Robocall Mitigation Database.

not to obtain authorization to operate in this manner.[16] Even among VoIP providers authorized to obtain telephone numbers directly from the NANPA, it is common to operate in this manner only in high demand, densely populated markets where it is efficient to incur the incremental costs associated utilizing direct-access numbers while continuing to rely on telephone numbers obtained from wholesalers in low-demand, low-density markets because that is the more efficient mode of operation.

The wholesale provision of telephone numbers in this ecosystem yields significant efficiencies. Because wholesalers of telephone numbers frequently offer telephone numbers and other necessary wholesale services in virtually every geographic area, each VoIP provider is able to assess whether it is more efficient to obtain numbers from such a wholesaler or directly from the NANPA in each geographic area in which they offer service. Thus, each company only needs to incur the costs of utilizing telephone numbers obtained directly from the NANPA where it is efficient to do so. Where it is more efficient to purchase VoIP services at wholesale from another provider that obtains numbers from a wholesaler, that too is possible. Providers that sell VoIP service at wholesale are also able utilize this demand to establish economies of scale and scope. The result is a dynamic and competitive market that ultimately benefits end user customers. Moreover, because providers need only obtain the telephone numbers they need to provide service, telephone numbers are used efficiently.

A single-level resale limit imposed on VoIP providers would undermine these efficiencies. As proposed in the *NPRM*, this restriction would require that a provider rely solely

[16] *See NPRM*, n.41 (stating that only 133 interconnected VoIP providers had sought and received such authorization as of the date of the Commission's 2025 *Third VoIP Direct Access Report and Order* as compared to the 1,860 interconnected VoIP providers in the United States that report having subscribers to the Commission).

on telephone numbers obtained directly from the NANPA when selling to a wholesale customer. Thus, a VoIP provider would be forced to choose between forgoing the scale and scope efficiencies and revenues associated with selling to wholesale customers on the one hand and forgoing the efficiencies associated with obtaining telephone numbers from a wholesaler on the other hand. Providers that choose the latter course would need to incur the extra costs of providing service utilizing telephone numbers directly from the NANPA in the many markets in which it is inefficient to incur those costs. The overall market for VoIP services would be less efficient, costs would be higher, fewer providers would be able to achieve efficiencies of scale and scope, and end user customers would inevitably be harmed.[17]

A single-level resale limit would also likely accelerate number exhaustion by forcing VoIP providers to utilize numbers less efficiently than is currently the case. Providers that decide to continue to sell VoIP service to wholesale customers by utilizing telephone numbers directly from the NANPA would need to obtain separate blocks of numbers in each relevant geographic area rather than simply obtain the telephone numbers needed to serve their customers from a wholesaler. This would result in less efficient use of numbers, and it would likely accelerate number exhaustion.

In addition, the Commission would need to decide how to treat the large volume of telephone numbers already provided to customers via multi-level resale. The most efficient approach would be to grandfather retail customers already served via those arrangements. But this would create a complex compliance and enforcement challenge. Grandfathered telephone

[17] In addition to higher costs, INCOMPAS members suggest that the proposed resale limit could also result in additional operational burdens including customer migration coordination, number portability disruptions, and interconnection reconfiguration.

numbers would need to be distinguishable from non-grandfathered telephone numbers. This might require a further change to NRUF reports or some other regulatory change.

If the Commission instead decides not to grandfather numbers used to serve customers in multi-resale arrangements, it would force carriers into a burdensome process of unwinding those arrangements. Carriers would need to decide whether they can continue to serve the customers using the numbers at issue while coming into compliance with the single-level resale limit. In the many cases in which this is likely to be infeasible, carriers would need to cease serving the customer to the extent that the customer contract and other operational constraints permit. This is likely to result in significant customer disruption and dissatisfaction.[18]

D. A single-level resale limit would provide no meaningful benefits

a. A single-level resale limit would not yield meaningful benefits beyond those provided by improving the certification requirement

The proposed changes to the Commission's certification requirement, when combined with existing rules, would put voice providers on notice that they must take affirmative steps to prevent end users and other providers from engaging illegal robocalling. As stated, the proposed certification would require that all resellers of telephone numbers certify that, among other things, they will not use telephone numbers to "knowingly transmit, encourage, assist, or facilitate illegal robocalls, spoofing, or fraud."[19] This certification would complement the

[18] In addition, when carriers cease operations, some customers will need to migrate a subset of their locations to a new carrier, thereby forcing them to rely on multiple carriers. This could create operational problems, including the inability to integrate multiple providers into a single software like Microsoft Teams and call-center-specific software.

[19] *NPRM*, ¶¶ 12, 17.

existing due diligence requirements in the Commission's rules under which all voice service providers must do the following:

- "[t]ake affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring that its services are not used to originate illegal traffic;" and

- "[t]ake reasonable and effective steps to ensure that any originating provider or intermediate provider, foreign or domestic, from which it directly receives traffic is not using the provider to carry or process a high volume of illegal traffic onto the U.S. network."[20]

The knowledge that each voice provider acquires in conducting this required due diligence would be attributed to the voice provider, including each reseller, when making its certification under the proposal in the *NRPM*. Thus, when a reseller certifies that it does not use telephone numbers to "knowingly transmit" illegal robocalls, spoofing, or fraud, it would be certifying that its due diligence has not produced evidence of such conduct. This required representation to the Commission would create a powerful deterrent against resellers allowing robocalling.[21]

A single-level resale limit would not meaningfully add to the strength of this regime. The Commission's motivation in proposing the single-level limit is that illegal robocalling is prevalent among customers of resold voice service.[22] But if resellers are required to comply with the certification requirement proposed in the *NRPM*, it is difficult to believe that they would be any more tolerant of illegal robocalling schemes than any other voice provider. It follows that a

[20] 47 C.F.R. § 64.1200(n)(4), (5).

[21] The Commission is also considering adopting more detailed know-your-customer and due diligence requirements. *See Advanced Methods to Target and Eliminate Unlawful Robocalls; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket Nos. 17-59, 02-278 (rel. May 1, 2026).

[22] *NPRM*, ¶¶ 47-48.

single-level limit is unlikely to reduce robocalling beyond the levels yielded by the certification proposal. But even if this is not the case, the Commission should look to reforms other than a resale limit, including possibly changes to the know-your-customer rules, the know-your-upstream-carrier rules, and, more promisingly, full implementation of STIR/SHAKEN to address this concern.

b. A single-level resale limit imposed on TDM-based service is especially unlikely to yield any benefits

Even if there were incremental benefits associated with a single-level resale limit, these would be vanishingly small as applied to resold TDM-based telephone services. To begin with, it is difficult to see how multi-level resale of TDM-based telephone service increases the risk of robocalls. Based on input from INCOMPAS members who resell TDM-based telephone service, incumbent LECs purchase large volumes of that service from carriers utilizing multi-reseller arrangements. It seems likely that incumbent LECs, like other established providers of voice service, are trustworthy stewards of numbering resources and are likely to take appropriate precautions to limit the extent to which their customers engage in illegal robocalling. This is even more so since INCOMPAS's members' experience is that incumbent LECs that purchase at wholesale from resellers of TDM-based telephone service do so for the purpose of serving government customers.

Moreover, muti-level resale of TDM-based telephone service will apply to a smaller and smaller number of lines and will end entirely in the near future. While demand for TDM-based telephone service remains, the overall trend is that demand for the service is diminishing. At the same time, incumbent LECs are in the process of grandfathering and discontinuing the service. The pace and scope of this process vary, but there is little doubt that it will accelerate over time. Thus, even if there were a basis for believing that multi-level resale of TDM service increases

the likelihood of illegal robocall activity, which there is not, the scope of that problem is shrinking as the number of locations in which the service is available declines.

Finally, the application of a single-level resale limit to TDM-based telephone services will be even further limited by the need for a transition to allow providers and their customers to adjust to the restriction. Carriers that currently serve customers by purchasing TDM-based telephone services under multiple-level resale arrangements generally do so pursuant to long-term contracts with their end user customers. It seems likely that those customers will insist that their contracts are honored until expiration, absent change of law or similar provisions that would dictate a different outcome. These concerns are especially acute for government agency customers. Those entities frequently award contracts for TDM-based telephone services to prime contractors. If the prime contractor is unable to serve some of the locations, the government customer might need to cancel the contract and begin a new RFP and bidding, which usually takes many months or even more than a year.

In all events, carriers and their customer will need time to adjust to the single-level resale limit even if customer contractual commitments are not an obstacle. The carriers will need to decide whether to incur the costs of entering into direct wholesale relationships with the incumbent LECs in the relevant territories. End user customers will need time to assess their service options and, if necessary, replace their existing provider. After this required transition, the number of overall TDM-based telephone lines provided to end user customers will likely be significantly smaller than is the case today given the ongoing reduction in demand and the incumbent LECs' ongoing grandfathering and discontinuance processes.

IV. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO ADOPT A SINGLE-LEVEL RESALE LIMIT

In the *NPRM*, the Commission proposes to rely solely on Section 6(a) of the TRACED Act, codified at 47 U.S.C. § 227b-1(a), as the statutory authority for adopting a single-level resale limit.[23] But that provision does not grant the Commission such authority. Section 227b-1(a) requires that the Commission conduct a proceeding to review and improve "Commission policies" pursuant to the agency's authority found elsewhere in the Communications Act. It is not an independent grant of jurisdiction of any kind, let alone a grant of jurisdiction to nullify provisions in the Communications Act that mandate resale.

Section 227b-1(a) consists of two parts. Section 227b-1(a)(1) states that, not later than 180 days after the enactment of the TRACED Act, the FCC shall initiate a proceeding "to determine how Commission policies regarding access to number resources, including number resources for toll-free and non-toll-free telephone numbers, could be modified . . . to help reduce access to numbers by potential perpetrators of violations of section 227(b)." Section 227(b) in turn establishes restrictions on the use of automatic telephone dialing systems and artificial or prerecorded voices to make calls and on junk faxes.[24] Section 227b-1(a)(1) states that the Commission should consider "establishing registration and compliance obligations" for entities accessing numbering resources and "requirements that providers of voice service given access to number resources take sufficient steps to know the identity of the customers of such providers." Section 227b-1(a)(1) is therefore entirely procedural, and it in no way constitutes an independent grant of jurisdiction to the Commission over any subject matter area.

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[23] *Id.,* ¶¶ 76-77.

[24] *See* 47 U.S.C. § 227(b).

Section 227b-1(a)(2) then states that, "[i]f the Commission determines under paragraph (1) that modifying the policies described in that paragraph could help achieve the goal described in that paragraph, the Commission shall prescribe regulations to implement those policy modifications." Thus, the provision defines the scope of the actions to be taken by the Commission in the required proceeding as "reduc[ing] access to numbers by potential perpetrators of violations of section 227(b)."

The terms of Section 227b-1(a)(2) do not suggest that Congress intended it to expand the Commission's jurisdiction to promote that objective by means other than those already permitted under the Communications Act.[25] That authority could already be found in Section 227(b), which says nothing about resale. It could also already be found in Section 251(e)(1), which predated the TRACED Act and grants the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[26] The Commission's authority under Section 251(e)(1) includes the authority to adopt each of the policies suggested in Section 227b-(a)(1), i.e., registration obligations, compliance obligations, and know your customer obligations.[27]

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[25] The Commission has in the past stated that Section 227b-(a) is an independent grant of jurisdiction to modify the processes and requirements governing direct access to numbers by interconnected VoIP providers, but it provided no support for that conclusion. *See Numbering Policies for Modern Communications, et al*., Second Report and Order, 38 FCC Rcd 8951, ¶ 78 (2023) ("We conclude that section 6(a) of the TRACED Act, in directing us to prescribe regulations implementing policy changes to reduce access to numbers by potential perpetrators of illegal robocalls, provides an independent basis to adopt certain of the rule changes we are making to the direct access process with respect to fighting unlawful robocalls").

[26] 47 U.S.C. § 251(b)(1) ("The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States").

[27] *See*, *e.g.*, *Advanced Methods to Target & Eliminate Unlawful Robocalls*, 35 FCC Rcd 15221, ¶ 37 (2020) (explaining that Section 251(e)(1) grants the Commission the authority to adopt rules

Even if Section 227b-(a) were an independent grant of jurisdiction to adopt policies for "reduc[ing] access to numbers by potential perpetrators of violations of section 227(b)," it does not grant the Commission the authority to restrict resale. Section 251(b)(1) of the Communications Act states that "[e]ach local exchange carrier has . . . [t]he duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services."[28] In addition, as the Commission acknowledges, it has long interpreted Section 201, passed in 1934, as prohibiting common carriers from limiting resale of their services.[29] The provisions of the TRACED Act must be interpreted in a manner consistent with these pre-existing resale mandates in the Communications Act in which it was codified, and it must be assumed that Congress did not intent to nullify those specific resale mandates absent a clear intention to do so.[30] Neither Section 227(b) nor Section 227b-1(a) nor any other provision

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to prevent the fraudulent abuse of telephone numbers, regardless of whether the voice service provider is a common carrier; the rules adopted included know-your-customer rules).

[28] 47 U.S.C. § 251(b)(1) (The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction").

[29] *NPRM*, ¶ 50, n.111.

[30] *See*, *e.g.*, *National Cable & Telecomms. Ass'n v. Brand X Internet Services*, 545 U.S. 967, 992-993 (2005) (explaining that the 1996 amendments to the Communications Act should be interpreted "against the background of" FCC decisions prior to 1996); *AT&T Corp. v. Iowa Utils Bd.*, 525 U.S. 366, 377-378 (1999) (explaining that the 1996 Amendments must be interpreted in a manner that is consistent with pre-existing provisions of the Act); *see id*. at 380 (rejecting an interpretation that would "nullify" provisions of the Communications Act). *See also* William N. Eskridge, Jr. & Phillip P. Frickey, *Legislation: Statutes and the Creation of Public Policy* 646 (1988) ("The key to the whole act approach is, therefore, that all provisions and other features of the enactment must be given force, and provisions must be interpreted so as not to derogate from the force of other provisions and features of the whole statute.")

of the TRACED Act contains any evidence of such intent. Accordingly, those provisions cannot grant authority to the Commission to establish a single level resale limit applicable to telephone service classified as telecommunications service or common carrier service and subject to Sections 251(b)(1) and 201, including TDM-based telephone service.

Section 227b-(a) also does not grant the Commission the authority to restrict the resale of VoIP services. Neither Section 227(b) nor Section 227b-1(a) contains any indication that Congress intended to grant the Commission greater authority to restrict the resale of voice services like VoIP that are not classified as telecommunications services or common carrier services than voice services that are so classified. Nor could the Commission rely on its ancillary jurisdiction. That jurisdiction can only be exercised where "'reasonably ancillary to the effective performance of the Commission's various responsibilities.'"[31] As explained, the Commission's responsibility to limit robocalls does not include the authority to limit resale. Accordingly, limiting the resale of VoIP is not reasonably ancillary to the Commission's authority to limit robocalls.

V. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its comments as it examines the issues raised in the *NPRM*.

[31] *See American Library Ass'n v. FCC*, 406 F.3d 689, 693 (D.C. Cir. 2005) (quoting *United States v. Southwestern Cable Co*., 392 U.S. 157, 178 (1968).

Respectfully submitted,

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