

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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

**COMMENTS OF THE ENTERPRISE COMMUNICATIONS ADVOCACY COALITION**

**I. ABOUT ECAC**

The Enterprise Communications Advocacy Coalition (“ECAC”) is a coalition of companies and organizations striving to ensure that lawful communications are not impeded by efforts to combat illegal and “unwanted” robocalls, robotexts, and other forms of communications. ECAC strongly supports the Commission’s efforts to prevent illegal communications of all types so that lawful communications between enterprises and their customers and prospective customers are not inadvertently impeded as well.

ECAC submits these comments in response to the Commission’s Seventh Report and Order, Eighth Further Notice of Proposed Rulemaking, and Third Notice of Inquiry in the above-captioned dockets.<sup>1</sup>

**II. ANALYTICS ENGINES HAVE CREATED PAY-TO-PLAY SYSTEM**

Legal callers suffer harm from the massive influx of illegal calls. The analytics engines correctly point out that consumers now are hesitant to answer their phones when callers are

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<sup>1</sup> Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59; Call Authentication Trust Anchor, WC Docket No. 17-97; Seventh Report and Order in CG Docket CG 17-59 and WC Docket 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket 17- 59, and Third Notice of Inquiry in CG Docket 17-59 (May 18, 2023).

unknown or are labeled as spam. This decline in answer rates impedes the ability of companies to communicate with customers reliably and in a cost-effective manner.

The solution that the carriers and analytics engines have created is to label calls as “Potential Spam” or “Spam Likely” that do not comport with their unshared rules about what calling patterns are “spammy” and what patterns are OK. While well intentioned, neither the Commission nor the analytics engines have given more than lip service to the needs of legal callers.

Spam labeling is often inaccurate. The registration and remediation processes are confusing and often unsuccessful. The analytics engines have created paid solutions to a problem of their own making in the form of reputation monitoring and branded calling. Legal callers have little choice but to pay and play along unless they want their calls labeled erroneously.<sup>2</sup>

### **III. BRANDED CALLING MARKETPLACE IS ANTICOMPETITIVE**

The three major U.S. mobile carriers, their three anointed analytics engine partners, and TransUnion have come together to control the branded calling market and limit the ability of callers to connect with their customers without paying additional fees to the very companies imposing spam labeling. Branded calling is a pay-to-play market as permitted by the major carriers and enacted by analytics engines to make money off their inaccurate spam labeling.

In December 2022, the analytics engines and TransUnion (then known as Neustar) announced a joint partnership to cross-sell branded calling.<sup>3</sup> The analytics engines’ carrier relationships are well known. Verizon and TNS; T-Mobile and First Orion; AT&T and Hiya,

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<sup>2</sup> In our experience, while enterprises lack sufficient notice of call blocking or call labeling needed to form strong conclusions, erroneous call labeling is common but erroneous blocking of legal calls is comparatively rare.

<sup>3</sup> <https://firstorion.com/first-orion-and-hiya-join-neustar-and-tns-to-unify-enterprise-call-vetting-and-authentication-practices-across-largest-mobile-carriers/>

with TransUnion also able to sell branded calling for calls to AT&T customers. The three analytics engines and TransUnion cross-sell to each other but no other company is able to contract directly with any of the major carriers to obtain branding services.

AT&T recently prohibited branded calling resellers except for the closed circle of Hiya and TransUnion, who can resell to TNS and First Orion, who can sell only to direct enterprise callers. Callers wanting to purchase branding on calls to AT&T customers are forced to contract directly with one of these companies. Existing reseller arrangements were canceled and companies that previously provided branded calling as resellers were reduced to merely referral agents. While the carriers are entitled to choose an analytics engine partner and work exclusively through them, antitrust concerns are raised by these companies working with each other to cross-sell to other carriers while maintaining an exclusive market allocation with their carrier partner—all the while increasing the need for their services through aggressive and inaccurate spam labeling.

AT&T's decision to disallow its partners from selling to reseller customers outside of the companies named previously has resulted in AT&T's partners breaching their obligations with resellers, causing massive disruption to the market. This disruption has funneled customers to AT&T's immediate partners, thereby limiting market choice and increasing prices. The only resellers allowed by AT&T (other than Hiya and TransUnion, its immediate partners) are First Orion and TNS—the companies that also have direct relationships with the other major carriers. No other company can offer direct branded calling contracting to all three major carriers.

Because the ostensible analytics engine competitors have joined together to control access, there is no competitive market pricing. They have furthermore mutually agreed to exclude other resellers not just for calls to AT&T but to all major carrier networks and divide up

the market based on their direct carrier relationships. This monopoly power is heightened by the application of spam labels that nobody can remove other than those doing the labeling and charging for removal.

While we concede that branded calling is an ostensibly optional service, thinly veiled attempts to sell branded calling as a solution to erroneous call labeling or blocking have forced enterprises to consider purchasing branded calling in order to continue their daily operations. The Commission should be wary of allowing this group to increase its hold on the industry by requiring the purchase of their blocking services. The conflict of interest is clear—the same companies that do spam labeling are the ones that are charging to overcome it. These companies have ensured this conflict of interest and inflated prices for enterprises by excluding potential competitive offerings from companies that are not also in the labeling and blocking business with a direct carrier relationship. Several members of ECAC who are industry leaders on Know Your Customers policies and procedures were among those whose branded calling contracts through a reseller were terminated on orders from AT&T. It is noted by ECAC members affected that no communication or reason for termination by AT&T of verified branded calling resellers was provided. This demonstrates the power and control the carriers through collaboration with their AEs have on the delivery of authenticated caller information to consumers.

The analytics engines are careful to say that purchasing branded calling is not guaranteed to override spam labeling, nor should it. While the analytics engines do not guarantee that paying for branded call display overrides spam labeling, the KYC policies in place to purchase branded calling in the first place purport to provide the very information the analytics engines need to confirm that the caller is not making illegal calls. If the free number registration process the analytics engines promised the Commission they would provide does not provide sufficient

information to the analytics engines, the answer should not be to monetize a secondary method of validation in a subversion of their representations to the Commission.

#### **IV. UNWANTED IS UNDEFINED**

Industry stakeholders have never defined “unwanted.” Nor could we as it differs by each individual call recipient. Many companies have a “Contact Me” link on their website or request a phone number and consent in other ways from prospective customers. These requests trigger an outbound sales call to that prospective customer. The analytics engines often label robust telemarketing efforts as spam regardless of consent. How do the analytics engines claim to know if a customer provided consent or not? Not all telemarketing is unwanted spam, but companies making lawful marketing calls to prospective customers are lumped together with fraudsters and companies that do not obtain lawful consent to make phone calls. If the analytics engines cannot tell the difference, they have no business labeling them all with pejorative spam labels when some are legal and wanted and others are not.

#### **V. ANALYTICS ENGINES HAVE IMPOSED CONFLICTING BEST PRACTICES REQUIREMENTS WITHOUT JUSTIFICATION**

The analytics engines have all published “best practices” to avoid their spam labeling. They are careful to avoid sharing too much information as these are public resources equally available to legal callers and illegal callers. This practice begs the question of why a legal caller has to follow calling practices imposed by a company it did not choose to partner with and that has no regulatory oversight as to the standards it imposes under penalty of a spam label.

One analytics engine has informed callers that more than 500 calls per number is likely to trigger a spam rating. If a company needs to make 5,000 calls to its customers, why should an analytics engines label them as “Potential Spam” or “Spam Likely” if they are all sent with the

same number rather than distributed across 100 numbers with 50 calls per number? These so-called best practices encourage legal callers to engage in the same number rotation schemes used by illegal callers to avoid negative labels.

TNS tells callers to “segment[] the use of toll-free numbers by purpose or subject.” If the caller has multiple call purposes on the same number and does not wait 60 days between uses, TNS warns that a spam tag is likely: “When reassigning a number to another purpose best practice dictates that you wait 60-days before redeploying those numbers.”<sup>4</sup>

First Orion cautions callers to “[s]lowly warm up new numbers”:

Numbers that haven’t been used for a long time and that suddenly have thousands of calls per day might look suspicious to the systems that monitor use. Remember that if you look like a scammer, the systems might treat you like one.<sup>5</sup>

Hiya has chosen a narrow time window for companies to contact their customers under penalty of a spam label for not complying:

Limit the window of time for contact: While legally a company may be allowed to contact individuals up to a year after having a previous engagement with them, many individuals begin reporting the number as spam much sooner than that. Respect the individual’s wishes to not be contacted and consider limiting call campaigns to within 90 days of the last engagement.<sup>6</sup>

Compliance with these calling practices does not affect the legality or “wantedness” of the call, but failure to comply can have a dramatic impact on spam labeling. Neither Congress nor the FCC empowered analytics engines to dictate to legal callers what practices they should follow to avoid disruptive and defamatory inaccurate spam labeling. And what should callers do when the “best practices” vary by terminating carrier and associated analytics engines? Are we

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<sup>4</sup> How Can Call Originators Get Customers to Answer the Phone?, TNS publication.

<sup>5</sup> <https://firstorion.com/call-centers-how-to-prevent-scam-likely/>

<sup>6</sup> 10 TIPS TO IMPROVE YOUR REPUTATION AND GET YOUR BUSINESS CALLS ANSWERED, available at <https://work.hiya.com/reputation-guide-ebook>.

expecting call originators to determine the terminating carrier for each customer they intend to contact and then deploy different call practices based on the terminating carrier's analytics engine partner's preferences? Call originators do not have direct access to look up the carrier assignment of phone numbers and paid services purporting to do so are often costly and unreliable. The varying extralegal "best practices" and guidelines only highlight their subjectivity as constructions of companies with opinions rather than objective reflections of consumer needs. AT&T subscribers do not have meaningfully different desires about what communications they want to receive when compared to Verizon or T-Mobile subscribers. Callers making legal calls merely want their legal calls to go through without incorrect labeling. The FCC's regulatory void has left the analytics engines as the unregulated sole arbiter of which calls can make it through to the recipient unscathed.

## **VI. THE COMMISSION SHOULD COLLECT DATA TO SEE THE SCOPE OF THE PROBLEM**

The Commission has delegated regulatory oversight to the analytics engines without any clear knowledge of what they are doing. We recommend the Commission collect data on blocking and labeling so that the decision on whether and how to regulate can be made in an informed manner.

The Commission should inquire about:

- How many numbers are labeled? How many calls are labeled? What percentage of each?
- How many phone numbers and callers have registered their numbers with the analytics engines? What percentage of the labeled calls and numbers have been registered compared to those that did not register?
- Have callers making illegal calls registered their numbers? Have illegal callers attempted to remediate? How frequently is this occurring?

- What percentage of remediation requests are granted? Does the remediation success rate vary by how the request is received and from whom?
- Is KYC or other information used to group numbers and link them with a caller, or does each number stand on its own in the algorithm?
- Is STIR/SHAKEN information factored into call ratings? How? Does the rating algorithm differentiate between signed calls and unsigned calls from the same number?
- Are telemarketing calls inherently spam? Are debt collection calls inherently spam?
- How do the analytics engines purport to know whether a caller has consent from the call recipient?
- When labeling calls, how is complaint data factored in? Is it solely the number of complaints per number, or is the call volume factored into this analysis? In other words, the number of complaints is the numerator. Does the analytics algorithm look at the volume denominator to determine if, for example, 10 complaints are distributed across 100 calls or across one million calls?
- What is the process for labeling number blocks just issued by NANPA to a service provider? What are the grounds for removing those labels when the numbers go into active service? Do you know when they go into active service?
- Are there limits on call volume per number to avoid a spam label?
- What are the prices for branded calling at both the retail and wholesale level?

## **VII. CALLERS WANT IMMEDIATE FEEDBACK ON BLOCKING AND LABELING**

The Commission has imposed KYC requirements, but there is no benefit currently to callers who undergo this scrutiny. There is no way for the originating carrier to signal downstream that this caller has been vetted and verified and that its calls should not be labeled as



spam absent evidence of spoofing or clear illegality. Trust should flow both ways. The analytics engines say “trust us” when they make spam labels, but they give no trust to legal callers. We propose that callers whose identity is verified and transmitted to the call recipient should not be labeled as spam, and if they are labeled, receive a notification akin to the call blocking notifications that the Commission has required.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stuart Discount". The signature is fluid and cursive, with a large initial "S" and "D".

Stuart Discount  
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