

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	
)	

**COMMENTS OF FIRST ORION, CORP.
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

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TABLE OF CONTENTS

INTRODUCTION	1
I. Mechanisms to Challenge Erroneous Provider-Initiated Blocking Should Be Pro-Consumer and Nimble	2
A. Automatic Notification of Blocking Is Inappropriate	3
B. Call Originators Should Report Erroneous Provider-Initiated Blocking Directly to Providers or an Industry-Supported Database, Not the Commission	3
C. Providers Must Be Given Flexibility In Processing Requests to Cease Provider-Initiated Blocking.....	4
II. The Commission Should Ensure Further Regulatory Action Is Limited to Provider-Initiated Blocking.....	5
A. Imposing Any Rules on Call Identification or Subscriber-Initiated Blocking Services Would Be Outside the Scope of the FNPRM and Inconsistent With Its Deregulatory Purpose.....	5
B. The Commission Should Not Impede Deployment of These Consumer-Friendly Technologies By Adopting Unnecessary Regulations.....	7
III. The Commission Should Work Collaboratively with Industry When Measuring Effectiveness of Provider-Initiated Call Blocking.....	10
CONCLUSION.....	11

INTRODUCTION

First Orion (dba PrivacyStar) provides in-network solutions as well as mobile applications designed to protect consumers from illegal and unwanted calls. For instance, we are proud to partner with T-Mobile USA, Inc. (“T-Mobile”) to power the scam protection it is offering free of charge to all its customers. For those T-Mobile subscribers and millions of other wireless subscribers who use our solutions, we provide important information about billions of inbound calls—information that helps consumers decide how they would like to handle those calls. Our call identification solutions identify suspected fraudulent calls as “Scam Likely,” and potentially unwanted, abusive, or illegal calls as “Nuisance Likely,” “Telemarketer,” “Survey,” or other categories as appropriate, consistent with the Strike Force Report issued by the Robocall Strike Force. Our solutions do not block calls by default, but consumers can choose to block Scam Likely and other calls.

In addition, we recently launched CallTransparency.com, which provides legitimate call originators (companies that make outbound calls) with the opportunity to register pertinent number-related information that prevents their outbound calls from being mislabeled. First Orion’s Number Reputation Service (NRS) also allows call originators to monitor the performance of their outbound calling practices, for example, learning when a third party is potentially using one of the company’s numbers to place illegally spoofed calls or when the call originator is generating a significant numbers of consumer complaints. With these offerings, we have invested in technology to balance the interests of consumers and call originators alike, with a goal of helping consumers trust their phones again.

We commend the Commission’s recent decision to allow providers to block calls, preventing some illegal calls from ever being completed.¹ Provider-initiated call blocking is an important tool for preventing harms associated with illegal calls and complements other tools currently available to consumers, such as call identification and subscriber-initiated call blocking services. As the Commission implements its November Order, the Commission should keep consumer protection paramount.

The Commission should also make clear that any new rules or best practices adopted in response to its FNPRM cover only *provider-initiated* call blocking. Consumer-facing tools such as call identification services (which provide consumers with additional information about calls that ring through) and *subscriber-initiated* call-blocking (meaning any blocking provided pursuant to subscriber request, consent, or opt-in) are outside the scope of the FNPRM. Any action the Commission takes in this proceeding should not impose regulatory obligations on these consumer-friendly practices or otherwise impede their evolution.

I. Mechanisms to Challenge Erroneous Provider-Initiated Blocking Should Be Pro-Consumer and Nimble

We agree with the Commission that when a provider chooses to block calls under circumstances authorized by the November Order, providers must quickly react if they learn that they have blocked a call erroneously.² Providers will block legal calls only extremely rarely

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9706 ¶¶ 9-56 (2017). Throughout, we refer to the Report and Order portion of this document as “the November Order” and the Further Notice of Proposed Rulemaking portion of this document as the “FNPRM.” The circumstances authorized by the November Order are: (1) the subscriber of the originating number requests a block, (2) a call purports to originate from invalid numbers, (3) a call purports to originate from numbers not allocated to any provider, and (3) a call purports to originate from numbers that are allocated but unused. *See generally id.*

² *See* FNPRM ¶ 57.

pursuant to the November Order.³ Nonetheless, First Orion supports a challenge mechanism, so providers can identify and correct these “false positives.” The Commission should give providers the leeway to design and implement their own or industry-wide challenge mechanisms. Indeed, a number of the suggestions that the Commission is considering would make provider-initiated blocking unnecessarily problematic for providers and potentially alert fraudsters to inside intelligence, only making the current situation worse. As discussed in more detail below, the Commission should not adopt these counter-productive measures.

A. Automatic Notification of Blocking Is Inappropriate

The Commission should not require “providers [to] send an intercept message to callers to notify them of the block.”⁴ Because the Commission has authorized provider-initiated blocks only in limited circumstances where a call is highly likely to be illegal, illegal spoofers, not legitimate call originators, would be the primary recipients of such an automatic signal. Furthermore, such signal will enable illegal spoofers to quickly learn that they have been caught and to move on to other numbers. In other words, automatic notification will undermine the effectiveness of provider-initiated blocking, while being expensive and technologically difficult to implement and providing little value to legitimate call originators.

B. Call Originators Should Report Erroneous Provider-Initiated Blocking Directly to Providers or an Industry-Supported Database, Not the Commission

Call originators should report erroneous provider-initiated blocking directly to providers or to an industry-supported database. It is unnecessary for the Commission to adopt any sort of resolution process where the call originators report suspected incidents of erroneous provider-

³ See Statement of Chairman Ajit Pai, 32 FCC Rcd. at 9755.

⁴ FNPRM ¶ 57.

initiated blocking.⁵ Having call originators liaise directly with providers and their partners will best ensure efficient problem solving in the rare instances where a provider blocks a legal call.

C. Providers Must Be Given Flexibility In Processing Requests to Cease Provider-Initiated Blocking

First Orion agrees with the Commission that providers should “cease blocking calls as soon as is practicable upon a credible claim by the caller that its calls are being blocked in error.”⁶ The Commission should not, however, mandate specific time periods or specific standards for judging whether a claim is credible.

The FCC should not develop a static definition of what constitutes a credible request to cease provider-initiated blocking.⁷ Providers choosing to block need time to implement a significant number of blocks before assessing how to best evaluate requests to lift such blocks. Moreover, illegal spoofers constantly change tactics. Providers may need to shift how they evaluate “unblock” requests in response to evolving practices. The Commission is not in the best position to make such changes quickly.

Nor should the Commission give providers a specific time limit on evaluating a claim’s credibility before deciding whether to implement or reject an unblock request. As illegal spoofers’ tactics change, so too may the time it takes to verify an unblock request.

After determining that an “unblock” request is credible, providers should be allowed to unblock the number within a reasonable period of time, without specific Commission mandates. Customer satisfaction issues, as well as regulatory and commercial concerns, provide sufficient incentives for provider attention to remediating any erroneous blocking.

⁵ See FNPRM ¶ 57.

⁶ *Id.* ¶ 58.

⁷ *Id.*

II. The Commission Should Ensure Further Regulatory Action Is Limited to Provider-Initiated Blocking

The Commission should ensure that any regulatory mandates it imposes in this proceeding only cover *provider-initiated* call blocking in the narrow circumstances authorized in the November Order. Other solutions, including call identification (such as First Orion’s Scam Likely designation) and subscriber requests to block certain categories of calls, are appropriately outside of the scope of the FNPRM. These solutions offer relief to consumers that is more widespread than carrier-initiated blocking, while allowing consumers to retain control over how to handle incoming calls. The Commission should encourage investment and innovation in this comparatively new and still-developing sector, in both the landline and wireless contexts.

A. Imposing Any Rules on Call Identification or Subscriber-Initiated Blocking Services Would Be Outside the Scope of the FNPRM and Inconsistent With Its Deregulatory Purpose

As the Commission is aware, call identification, known in the industry as “tagging” or “labeling,” is not the same as call *blocking*. The Commission has long held that *provider-initiated* call blocking is generally an unjust and unreasonable practice under Section 201(b) of the Communications Act, with certain exceptions.⁸ This call completion principle is what necessitated the Commission’s November Order. Because the Commission generally prohibits provider-initiated blocking, providers needed an exemption from that general rule before blocking calls from unassigned numbers or numbers on a do-not-originate list without first obtaining subscriber consent.⁹ The Commission then appropriately issued its FNPRM to ensure

⁸ November Order ¶ 8.

⁹ See 32 FCC Rcd. at 9726 ¶ 60.

that it correctly tailors its new exception from the call completion rules. In other words, the FNPRM asks how the Commission should *deregulate* provider-initiated blocking.¹⁰

In stark contrast, imposing a challenge mechanism requirement or a reporting requirement on call identification or subscriber-initiated blocking would involve imposing entirely new requirements on services that the Commission has previously declined to regulate. The Commission has always treated these services as entirely consistent with the Communications Act in general and the Commission's call completion mandate in particular.

With call identification (such as the Scam Likely designation), a provider does not initially block a call. Rather, the call rings through to the call recipient, and either the provider or a third-party application provides the call recipient with additional information that allows the call recipient to determine whether to answer. If the call recipient does not answer the call, the caller will typically have the opportunity to leave a message, an option unavailable to a blocked caller.

The Commission has never considered calls that ring through to the called party to implicate its call completion rules.¹¹ Instead, when calculating call completion rates, the Commission considers calls that ring through, but are unanswered, as completed.¹²

¹⁰ See FNPRM ¶¶ 57-58.

¹¹ See, e.g., *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd. 2692 (1987) (addressing instances where a carrier prevented calls from ringing through); *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 ¶ 24 (2001).

¹² See, e.g., *Rural Call Completion*, 32 FCC Rcd. 4980 ¶ 6 (2017) (“The call completion rate is the rate of call attempts to assigned numbers that are completed and is calculated as follows: Call Completion Rate = (Answered Calls + Busy Call Attempts + *Ring No Answer Attempts*) / (Total Call Attempts — Call Attempts to Unassigned Numbers).” (emphasis added)).

Moreover, the Commission has expressly held that subscriber-requested blocks are exempt from the call completion rules, explaining:

[T]here is no legal barrier to stop carriers and providers of interconnected and one-way VoIP services from implementing call-blocking technology and offering consumers the choice, through an informed opt-in process, to use such technology to block individual calls or categories of incoming calls that may be part of a mass unsolicited calling event. As such, we find that telephone carriers may legally block calls or categories of calls at a consumer's request if available technology identifies incoming calls as originating from a source that the technology, which the consumer has selected to provide this service, has identified. . . . [S]ervices that allow consumers to designate categories of incoming calls (not just individual telephone numbers) to be blocked, such as a “telemarketer” category, also constitute consumer choice within their right to block calls.¹³

Put another way, call identification services do not implicate the Commission’s call completion rules, because “tagged” or “labeled” calls are still *completed*. Subscriber-initiated call blocking does not implicate the Commission’s call completion rules because the rules only prevent providers from blocking calls on the providers’ own accord. Thus, unlike with provider-initiated blocking, imposing challenge mechanism or reporting requirements would not be deregulatory; it would amount to the regulation of previously unregulated technologies. Imposing such regulation would be outside of the scope of the FNPRM and have a questionable legal basis.

B. The Commission Should Not Impede Deployment of These Consumer-Friendly Technologies By Adopting Unnecessary Regulations

Good policy requires focus on consumer education and clearing regulatory hurdles that impede the rollout of robust call identification solutions for all consumers, including landline subscribers—not imposing new regulatory requirements on these services.

¹³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd. 7961 ¶¶ 154, 157 (2015) (“TCPA Order”).

Sadly, the scourge of illegal calls is not going away. Phone-based scams have existed almost since the invention of the telephone, and these scams will continue to evolve with new “tricks.” Recently, we have seen a surge in “neighbor spoofing,” which uses the area code and exchange of the called party to entice the called party to answer the call from what seems like a familiar number. Soon we will see a surge in some other form of social engineering that harms consumers and contributes to consumers’ distrust of the phone system.

Because scammers’ practices are not static, no fixed, mandated mechanism will stop their calls for long. And while implementation of STIR/SHAKEN will help, these frameworks are far from silver bullets that will prevent all illegally spoofed calls.¹⁴ Deep data and robust analytics power First Orion’s call identification solutions, making us capable of quickly adapting to fraudsters’ changing behavior.

While call identification services present a very good solution for protecting consumers, they admittedly will not operate with an error rate of absolute zero. First Orion continually improves its analytics, prides itself on its accuracy, and competes with other services on its ability to accurately identify calls. Nonetheless, sometimes First Orion is unable to identify a scam call. Indeed, the vast majority of our feedback is from consumers telling us that we missed a call that was a scam. Notwithstanding, with any solution that attempts to stop fraud, there can be errors. Our experience with 2.3 billion calls is that it is exceptionally rare for our solution to identify a legitimate call as Scam Likely, and in those rare cases, our solution offers easy remediation, as described below. It is important not to let the perfect be the enemy of the very, very good when protecting consumers from illegal and unwanted calls. As the Commission

¹⁴ See, e.g., Comments of CTIA at 18 (filed June 30, 2017).

previously recognized, “the fact that current . . . technology is not perfect does not prevent telephone carriers from being able to offer it to their customers.”¹⁵

Moreover, First Orion works with call originators and consumers, to actively engage both groups and use the information gathered to improve call identification accuracy. Consumers who use our mobile applications may (and many do) provide feedback about whether calls are mislabeled. T-Mobile customers can also provide feedback about First Orion’s call management service through the T-Mobile website. Additionally, First Orion actively solicits feedback from call originators to reduce false positives.

To that end, First Orion launched www.CallTransparency.com, an easy-to-use online portal that legitimate call originators can use to identify themselves and the numbers they use. At this portal, call originators sign up and provide their phone numbers with an industry code, reason for the call, and a preferred caller ID name. First Orion then authenticates the originator and its numbers. With authenticated call originator’s information for a registered number, First Orion will no longer tag legitimate calls from the number as Scam Likely.¹⁶

First Orion also takes other common-sense measures to ensure quick resolution of errors. For example, First Orion routinely buys relevant ad terms related to “Scam Likely” so consumers and call originators who may have no other context for call tagging and blocking can reach important information addressing their questions or concerns with just a few clicks.

¹⁵ TCPA Order ¶ 160 (alterations and quotation omitted).

¹⁶ Note that First Orion does continue to use analytics to identify illegitimate calls originating from a registered number, including when a third party has spoofed the registered number for fraudulent purposes. Where First Orion identifies misuse of a registered number, it may still tag such a call as Scam Likely.

III. The Commission Should Work Collaboratively with Industry When Measuring Effectiveness of Provider-Initiated Call Blocking

First Orion is a data-analytics-driven company that focuses on consumer protection. As such, we are happy to work with the Commission as it continues to assess potential policy decisions quantitatively and provide the Commission with appropriate data. However, requiring providers to submit standardized reports to the Commission—and in particular, any form of frequent or onerous standardized reporting—may discourage providers from offering call identification solutions to their subscribers.

However, as First Orion’s product line demonstrates, provider-initiated blocking is only one tool in the arsenal for fighting illegal and unwanted calls and will prevent only a small slice of scam calls.¹⁷ Looking to FCC Consumer Complaint Data or other forms of consumer complaint data is likely to provide little insight into the effectiveness of provider-initiated call blocking as compared to these other tools. Instead, the Commission should encourage providers to also voluntarily adopt other solutions for preventing illegal and unwanted calls, such as call identification-based solutions.

While First Orion voluntarily takes efforts to engage with call originators and provide helpful information to the Commission, it (and its competitors) should not be required to do so by regulation. Such a requirement would discourage continued investment in the sophisticated and evolving analytics that are necessary to implement effective call identification services. Instead, the Commission should allow this nascent consumer-oriented industry to develop on its own. Where industry best practices or potential industry-wide solutions (such as www.CallTransparency.com) emerge, the Commission should feel free to encourage companies

¹⁷ Cf. Statement of Commissioner Mignon L. Clyburn, 32 FCC Rcd. at 9756.

to voluntarily share information and enhance industry practices. But the Commission should not mandate particular processes, especially not in response to the instant FNPRM with its focus on provider-initiated blocking.

Last, it is too soon for high-level reporting on misidentified calls to be particularly meaningful in either the provider-initiated call-blocking or call identification contexts. For example, the false positive rates for a call identification service may increase either because the company's algorithm is deteriorating or because companies make it easier to report mistakes. Furthermore, with the substantial increase in spoofing technologies, reporting accurate false-positives consistently is essentially impossible. Illegal spoofers commonly switch from number to number; at one particular time of the day, a given number may be associated with fraud, while later in the day it may not be.

CONCLUSION

By allowing providers to block a very limited class of calls, the Commission has wisely established a light-touch regulatory regime with the potential for real consumer benefits. Providers can now block calls, without informing the subscriber, in certain instances where the call is virtually known to be illegal. Providers and consumers can also couple provider-initiated blocking with other tools that help consumers better decide how to customize their handling of incoming calls. The Commission should avoid undercutting its current pro-consumer approach by adopting unnecessary and likely counter-productive regulations. The Commission's rules should continue to differentiate between blocking and call identification, and not impose anti-consumer restraints on identification or on subscriber-initiated tagging and/or blocking.

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