

TELCO CONNECTION ROBOCALL MITIGATION PLAN

I. Background

The Federal Communications Commission (“FCC” or “Commission”) has adopted rules requiring voice service providers, like Telco Connection, to, among other things, file certifications and robocall mitigation plans in the FCC’s Robocall Mitigation Database (“RMD”). 47 CFR § 64.6305; *see also Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18 (Mar. 17, 2023) (“*Sixth Caller ID Authentication Report and Order*”).

The FCC requires that all voice service providers certify, by February 26, 2024, in the Commission’s RMD whether they have implemented the STIR/SHAKEN authentication framework, and that all of the calls that it originates, carries or processes are subject to a robocall mitigation program consistent with the Commission’s rules.¹ The provider’s mitigation plan “shall include reasonable steps to avoid originating illegal robocall traffic and shall include a commitment to respond within 24 hours to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate calls.” 47 C.F.R. § 64.6305(a)(2); *id.* at § 64.6305(c)(2) (parallel rule for non-gateway intermediate providers’ “carrying or processing illegal robocall traffic”).

Despite imposing a general duty to mitigate “robocalls,” the Commission’s codified rules do not define “robocall.”² The TRACED Act defines “robocall violation” as “a violation of subsection (b) or (e) of section 227 of the Communications Act of 1934.” TRACED Act § 11(d), Pub. L. No. 116-105,

¹ See <https://docs.fcc.gov/public/attachments/DA-24-73A1.pdf> (WCB Jan. 25, 2024 Public Notice).

² The Commission’s TCPA-related regulations, 47 C.F.R. § 64.1200, use the undefined term “illegal traffic,” 47 C.F.R. § 64.1200((k)-(m)), while its STIR/SHAKEN-related regulations define the FCC’s public-facing Robocall Mitigation Database, but not the “robocalls” that are to be mitigated. 47 C.F.R. § 64.6300. Thus, neither of the regulations that bear directly on the project of robocall mitigation expressly define “robocall.” *Cf. In re Advanced Methods to Target & Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rule Making, 32 FCC Rcd. 9706, 9725 ¶ 56 (Nov. 17, 2017) (declining to define “illegal robocall,” and acknowledging that “the record shows confusion regarding how the proposed definition of ‘illegal robocall’ should apply to the call blocking rules.”); *In re Core Communications, Inc., et al. Tariff F.C.C. No. 3*, WC Docket No. 21-191, Order, 36 FCC Rcd. 9997, 9999 (June 23, 2021) (In a related context, stating that the “Commission defines a robocall as a call made using an automatic telephone dialing system or an artificial or prerecorded voice.”) (citing 47 U.S.C. § 227(b)(1); 47 CFR § 64.1200(a)). Telco Connection therefore focuses on the two types of unlawful calls—227(b) and 227(e) of the TCPA—that Congress expressly addressed.

133 Stat. 3274 (2019); *id.* at § 13(d)(f)(3) (defining a “suspected unlawful robocall” as a “call that the Commission or a voice service provider reasonably believes was made in violation of subsection (b) or (e) of section 227 of the Communications Act of 1934.”

Thus, Telco Connection’s training and mitigation efforts focus, as they must, on potentially unlawful calls that violate either (a) 47 U.S.C. § 227(b) (governing non-emergency calls initiated with a prerecorded or artificial voice or an automatic telephone dialing system, as that term has been interpreted by the Supreme Court in *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2001)) or (b) 47 U.S.C. 227(e), or the Truth in Caller ID Act, which prohibits people from causing “any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value,” absent an applicable exemption.

The FCC’s rules contemplate that the provider’s plan should describe how it “complies with its obligation to know its customers pursuant to § 64.1200(n)(4) [for originating voice service providers], any procedures in place to know its upstream providers, and the analytics system(s) it uses to identify and block illegal traffic, including whether it uses any third-party analytics vendor(s) and the name(s) of such vendor(s).” 47 C.F.R. § 64.6305(d)(1)(ii); *see also* 47 C.F.R. § 64.6305(f)(2)(ii). The Commission has acknowledged, however, that, “we do not currently require [] providers other than gateway providers to engage in ‘know-your-upstream-provider’ procedures, [but] if they have put such procedures in place, they must be documented in their robocall mitigation plan,” and that “we do not specifically require providers to use call analytics.” *Sixth Caller ID Authentication Report and Order* ¶ 40 & n.155-56.

The Commission has explained that a robocall-mitigation program is “sufficient if it includes detailed practices that can reasonably be expected to significantly reduce” the provider’s origination or carriage of illegal robocalls, and the voice service provider complies with the practices described in its plan. *Sixth Caller ID Authentication Report and Order* ¶ 31. Telco Connection is dedicated to developing and taking reasonable steps. This document outlines Telco Connection’s robocall mitigation plan.

II. Telco Connection’s Know Your Customer (“KYC”) Standards

Telco Connection is a voice service provider that focuses its business and operations on the business end user and domestic, non-gateway wholesale customer segments of the voice services communications market. As part of its customer-onboarding process, Telco Connection undertakes various commercially reasonable precautions to verify a given customer’s identity as part of entering into a formal written agreement. All prospective customers participate in an in-person or telephonic enrollment process. Telco Connection investigates the prospective customer’s background, such as checking for a company website, the amount of time the business has been open, and other indications of a legal, operating business.

Among other data points collected and, as appropriate, verified, as part of those processes Telco Connection gathers the following customer-identifying facts and circumstances:

- Customer business name,
- state or country of incorporation with proof of good-standing status,
- physical business location,
- contact person(s),
- Company email, phone number, and website domain,
- federal tax ID number, and
- FCC Filer ID and robocall mitigation database entry (for wholesale customers).

Telco Connection's verification practices include confirming a carrier customer's reported status in the FCC's Form 499 Filer database of registered carriers, and the Commission's Robocall Mitigation Database, along with a completed USF exemption certificate. Telco Connection also conducts, as applicable, credit checks and checks references with a prospective customer's other carrier-suppliers and discusses their traffic profile and traceback history with prospective carrier customers. These wholesale carrier customers contractually agree, among other things, to comply with Telco Connection's AUP and the STIR/SHAKEN authentication rules.

III. Telco Connection's Acceptable Use Policy

As part of its customer-onboarding process, all of Telco Connection's customers contractually agree to various terms and conditions, including a commitment to comply with Telco Connection's Acceptable Use Policy (AUP). Among other things, this AUP prohibits:

- Using the Services to engage in any activities that are illegal, abusive, false, fraudulent, deceptive or misleading, or any activity that exploits, harms, or threatens to harm children.
- Engaging in any unsolicited advertising, marketing, or other unlawful activities using the Services, including, without limitation, any activities that violate laws applicable to advertising, electronic communications, and telemarketing, including, but not limited to, Section 5 of the FTC Act (15 U.S.C. § 45), the CAN-SPAM Act (15 U.S.C. §§ 7701-7713), the Telemarketing Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101-6108), the Federal Trade Commission Telemarketing Sales Rule (16 C.F.R. § 310 et seq.), the Telephone Consumer Protection Act (47 U.S.C. §§ 227), the Federal Communications Commission regulations (47 C.F.R. 64.1200 et seq.) and orders implementing the Telephone Consumer Protection Act, and all federal and state Do Not Call and calling-time restriction laws and regulations.
- Using Telco Connection's Services in any way that fails to conform to any applicable industry guidelines and standards, including, without limitation, the

CTIA Messaging Principles and Best Practices, Short Code Registry Best Practices, and Short Code Monitoring Handbook.

- Creating a false identity, forged email address or header, phone number, or otherwise attempting to mislead others as to the identity of the sender or the origin of a message or phone call, including failing to comply with the Truth in Caller ID Act.

Telco Connection's contracts with its customers stipulate that Telco Connection is authorized to suspend and/or terminate all Services in the event of an AUP violation.

IV. Telephone Number Authorization and STIR-SHAKEN Capabilities

Telco Connection has fully implemented the STIR/SKAKEN authentication framework across its entire network, and all calls for which it serves as the originating carrier are compliant with 47 C.F.R. Sec. 64.6301(a)(1)-(2).

In cases where Telco Connection's end users use telephone numbers to which they have subscribed from Telco Connection, Telco Connection has a documented, verified relationship between the originating end user and their telephone number(s) used to originate their calls. In the cases where a Telco Connection end user is using numbers secured from a different service provider, Telco Connection documents the end user's right to use the associated phone number(s) from the unaffiliated provider(s).

For traffic for which Telco Connection serves as an intermediate provider, Telco Connection's network is capable of accepting and accurately transmitting all STIR/SKAKEN-related data it receives in the call path.

V. Proactive Network Monitoring

Telco Connection has various monitoring and reporting systems in place to analyze traffic on its network for potentially suspicious traffic patterns that are likely to be associated with illegal robocalls or other potentially unlawful usage. For example, Telco Connection's switch provider and monitoring systems are capable of assessing traffic based on various criteria, including data relating to short-duration calls, answer-seizure ratios, invalid Caller ID ANIs, calls for which the calling and called party numbers are the same, or calls where the calling party's caller ID is associated with a wireless telephone number where that is inconsistent with the calling party's status. Telco Connection also deploys the Somos DNO and FraudCentral.io Roboguard mitigation tools.

If Telco Connection detects a pattern consistent with illegal robocalls, or has reason to suspect illegal robocalling or spoofing is occurring on its network, Telco Connection takes prompt action to identify the party that is using its network to carry these calls and take appropriate action. Once suspected unlawful traffic is discovered, Telco Connection blocks any further traffic from being carried associated with the Media IP address of that suspicious traffic and takes any

further necessary action that it deems appropriate.

VI. Commitment to Timely Traceback Responses and Cooperation

Telco Connection commits to respond fully and in a timely manner, within 24 hours, to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate, carry, or process illegal robocalls. Telco Connection will dedicate sufficient resources to provide timely and complete responses to such requests, and will investigate suspicious activity found by its monitoring systems or reported to it by appropriate parties and take appropriate action.

Supplement Regarding Past Agency Correspondence

Telco Connection received this letter from the FTC:

[https://www.ftc.gov/system/files/ftc_gov/pdf/WL-PointofNoEntry-](https://www.ftc.gov/system/files/ftc_gov/pdf/WL-PointofNoEntry-TelcoCease%26DesistLetterFINAL-JMS.pdf)

[TelcoCease%26DesistLetterFINAL-JMS.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/WL-PointofNoEntry-TelcoCease%26DesistLetterFINAL-JMS.pdf) Telco Connection's Dec. 7, 2023 response to that letter is attached. Other than one follow-up email FTC counsel sent to Telco Connection's counsel on December 8, 2023, generally disagreeing with the proposition that the FTC Act's common-carrier exemption did not preclude their concurrent jurisdiction over the FCC's heavily regulated voice service providers, Telco Connection has received no other correspondence from the FTC regarding this matter. While making no findings of actual or suspected wrongdoing, by letter dated November 27, 2023, the FCC's Kristi Thompson sent Telco Connection a November 27, 2023 letter reminding it of its mitigation obligations. In response, Telco Connection shared its substantive response to the FTC's letter with the FCC, and has not received any follow-up regarding that correspondence.

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December 7, 2023

VIA EMAIL: fdebanate@ftc.gov

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Federal Trade Commission
East Central Region
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114

RE: Telco Connection's Response to Director Steiger's November 28, 2023 Letter

Dear Counsel:

We represent Telco Connection ("Telco") (Federal Communications Commission (FCC) Filer ID 829330)¹ in connection with the Letter noted above. While responding voluntarily to the Letter, Telco expressly preserves all rights, objections, and defenses regarding the matters raised therein. Telco respectfully denies that it violated the Telemarketing Sales Rule (TSR), as the Letter may suggest, or that the FTC has jurisdiction over it for its robocall-mitigation practices, such that there is nothing to certify that it ceased doing that it never did in the first place.

1. Telco is Subject to the FTC Act's Common-Carrier Exemption.

Telco is an FCC-registered voice service provider engaging in common-carrier services. Due to the FCC's current, continuing, and evolving exercise of regulatory authority over carriers like Telco with respect to the very subject matters raised in the Letter,² Telco, as a common carrier voice service provider ("VSP"), is subject to the FTC Act's common-carrier exemption.

Congress has decided that the FCC should set national communications policy about how to balance the competing goals of (a) ensuring a robust, ubiquitous, and seamless communications network where consumers can take for granted that their calls will be

¹ <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829330>; *see also* https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=e4fecb211b41b4109294113d9c4bcb8a&view=sp (Telco Connection FCC Robocall Mitigation Database filing).

² *See* FCC's November 27, 2023 Letter to Telco (<https://docs.fcc.gov/public/attachments/DOC-398678A1.pdf>).

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completed; (b) minimizing regulatory burdens on carriers to promote competition and encourage innovation; and (c) enlisting carriers' help to mitigate unlawful traffic that may be traversing their networks, without converting them into real-time content police. And the FCC is doing just that.

The Letter's suggestion that Telco could be held liable for violating the TSR by assisting others impermissibly invites courts to interfere in Congress's clear allocation of authority to the FCC to set that national policy. Additionally, Congress, in allocating such authority to the FCC, clearly did not intend for the FTC to simultaneously regulate the same carrier practices—that would violate the FTC Act's common-carrier exemption.

The *sine qua non* of the Letter's claim regarding potential violations of the TSR by Telco is that it *carried phone calls*. The TSR's common-carrier exemption precludes such claims against Telco attacking the very activity—carriage *vel non*—that the FCC clearly regulates. *See FTC v. AT&T Mobility LLC*, 883 F.3d 848, 850-53 (9th Cir. 2018). As such, Telco is not subject to the TSR or FTC Act for these carriage activities, per the FTC Act's common-carrier exemption.

“Section 5 of the Federal Trade Commission Act (“FTC Act”) . . . exempts . . . ‘common carriers[.]’” *Id.* at 850 (citing 15 U.S.C. § 45(a)(1), (2)). Section 5 “provides immunity [to a common carrier] from FTC regulation . . . to the extent that a common carrier is engaging in common-carrier services.” *Id.* The “Section 5 exemption” extends to the TSR, such that carriers are not subject to TSR claims premised on their common carrier activities. *See Telemarketing Sales Rule*, 60 Fed. Reg. 43842, 43843 (Aug. 23, 1995) (stating that the TSR does not cover activity beyond the jurisdiction of the FTC Act); *see also The Broadcast Team, Inc. v. FTC*, 429 F. Supp. 2d 1292, 1298-99 (M.D. Fla. 2006).

Whether an entity is a common carrier “under the FTC Act is properly defined by reference to the common law of carriers and not to the Communications Act.” *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 57 (2d Cir. 2006). That is, the FTC and the courts employ the two-part test that existed at common law when the FTC Act was passed. Under this controlling test, an entity's common-carrier status turns on: “(1) whether the carrier ‘holds himself out to serve indifferently all potential users’; and (2) whether the carrier allows ‘customers to transmit intelligence of their own design and choosing.’” *U.S. Telecom Ass'n v. FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002) (quoting *Federal-State Joint Bd. on Universal Serv.*, Declaratory Ruling, 14 FCC Rcd. 3040, 3050 (1999) (“1999 Declaratory Ruling”)).

In determining whether an entity is a common carrier, the FCC and the courts have employed the two-part NARUC test. *See Payton v. Kale Realty, LLC*, 164 F. Supp. 3d 1050, 1056 (N.D. Ill. 2016). Under this test, common carrier status turns on: “(1) whether the carrier ‘holds himself out to serve indifferently all potential users’; and (2) whether the carrier allows ‘customers to transmit intelligence of their own design and choosing.’” *U.S. Telecom Ass'n*, 295 F.3d at 1329 (quoting *1999 Declaratory Ruling*).



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Telco is a common carrier for purposes of the FTC Act's carrier exemption. Telco is an FCC-registered VSP, with public service offerings, who timely participates in the FCC's traceback regime and is recognized on the FCC-designated Policy Administrator's site of authorized service providers who have deployed STIR/SHAKEN for exchanging voice traffic with the nation's other voice carriers. The Letter contains no suggestion (because none exists) that Telco had any role in the content of calls it carries, or that Telco ever altered any of the calls it carries. As explained in Exhibit 1, the accompanying Declaration of Mr. Singer, Telco does not, and cannot, change the form or content of the calls it carries, and thus any caselaw treating those VoIP carriers' services as "information services" are facially inapposite (never mind the radically altered FCC legal landscape since those dated decisions issued).

Thus, Telco qualifies as a common carrier and is immune from any alleged TSR claim. *AT&T Mobility* makes clear that the common-carrier issue is tested against the specific conduct at issue, which here is Telco's provision of its FCC-regulated voice services to other VSPs. 883 F.3d at 860 (citing *McDonnell Douglas Corp v. Gen. Tel. Co. of Cal.*, 594 F.2d 720, 724-25 n.3 (9th Cir. 1979)). Therefore, Telco is entitled to the Section 5 exemption from TSR claims as a matter of law.

2. The Carriers Identified by Telco in the Relevant Tracebacks are not Active Telco Customers.

The 32 calls identified in the Letter were handed off to Telco by four different FCC-registered carrier-customers, Jikatel, VaultTel, iconglobal services ("iconglobal"), and MASH. None are still Telco customers. Telco has not carried any traffic for them since their suspensions.

Telco ceased carrying traffic from Jikatel and VaultTel in September 2021 and March 2022, respectively.

Telco recently suspended iconglobal (RMD0001611)³ and MASH (RMD0002346, RMD0001613).⁴ November 16, 2022 was the last time Telco received an iconglobal-related traceback. For the two iconglobal-related tracebacks identified in the Letter, iconglobal timely informed Telco that it either had undertaken reasonable mitigation efforts or was in communication with the Industry Traceback Group ("ITG") regarding the traceback. Thus, iconglobal, at all relevant times, represented to Telco that it was, at the very least, in compliance

³https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robotcall_mitigation_database&sys_id=a96795891bd07810003c43f1f54bcb5a&view=sp (iconglobal FCC Robocall Mitigation Database filing).

⁴https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robotcall_mitigation_database&sys_id=39718a551b7874107ccf20ecac4bcb98&view=sp;
https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robotcall_mitigation_database&sys_id=378235491bd83810822320efe54bcbf8&view=sp (MASH FCC Robocall Mitigation Database filings).



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with the FCC's applicable VSP regulations, if not exceeding them, and working directly with the ITG to address the issues raised in the tracebacks.

Similarly, for the MASH-related tracebacks identified in the letter, MASH was always responsive to Telco's inquiries. Specifically, MASH timely communicated to Telco that it either had undertaken reasonable mitigation efforts or was responding to the ITG, which sometimes included providing evidence of an identified call's lawfulness. Thus, MASH, at all relevant times, represented to Telco that it was, at the very least, in compliance with the FCC's applicable VSP regulations, if not exceeding them. Nevertheless, out of an abundance of caution for its own business in light of the current regulatory and enforcement climate (notwithstanding the regrettable lack of Due Process and transparency), Telco has terminated service to iconglobal and MASH.

In summary, Telco respectfully disagrees that it has ever violated the TSR, or that it is even subject to such claims in the first place in light of the FTC Act's common-carrier exemption for its FCC-regulated mitigation practices, which have in all material respects complied with the FCC's evolving mitigation rules for intermediate providers like Telco. Again, in the interest of avoiding further risk with these carrier customers, Telco has ceased carrying traffic for iconglobal and MASH. And, again, Telco had already ceased carrying traffic for Jikatel and VaultTel long ago.

Please do not hesitate to let me know if your Office would like to discuss this matter further. Telco reserves all rights.

Sincerely,



Joseph P. Bowser



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EXHIBIT 1

DECLARATION OF DAVID SINGER

I, David Singer, pursuant to 28 U.S.C. § 1746, declare and affirm under penalty of perjury as follows:

1. My name is David Singer. I am over 21 years of age, and competent to testify to the matters I state below.

2. I am the President of Telco Connection (“Telco”) and have been primarily responsible for overseeing the engineering and maintenance of the voice services network at Telco.

3. Telco’s network is an all-IP network, such that the calls Telco handles are always carried in IP format, and only IP format.

4. Telco’s network does not have, and has never had, the capability to convert calls from IP format into any other format.

5. Telco does not have, and has never had, the capability to convert calls from IP format to TDM format, or vice versa.

6. Telco has never converted a call from IP format to TDM format, or vice versa.

7. Telco has never contracted with any third party to convert any calls for it from IP to TDM format, or vice versa.

8. Telco’s network is engineered to exchange traffic with its customers and interconnected carriers in IP format only.

9. If another carrier has ever converted any calls that traversed Telco’s network in IP format into a different format, any such conversion has been without Telco’s knowledge or participation.

10. We would need to rebuild our network to make that possible, and have no reason to do that.

11. Similarly, we are not capable of changing the content of customers' phone calls; we receive data packets from our carrier customers and deliver them to the next carrier in the call flow, again, always and only in IP format.

12. In short, Telco does not, and cannot, change the content or format of any of the calls it carries. Any statement to the contrary is false and not based in fact.

I swear and affirm under penalty of perjury that the foregoing statements are true and correct and based on my personal knowledge.

Dated: 12/06/2023

David Singer
David Singer