

March 10, 2024

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**RE: Advanced Methods to Target and Eliminate Unlawful Robocalls – CG**  
**Docket No. 17-59**

Dear Ms. Dortch:

The Cloud Communications Alliance and the Voice on the Net Coalition (collectively the “Voice Provider Trade Associations” or “VPTAs”) hereby submit this letter in response to the Eighth Report and Order in the above-referenced proceeding.<sup>1</sup> Specifically, the VPTAs remain concerned with the unresolved issue of the establishment of an \$11,000 base forfeiture for a voice service provider that fails “to comply with the requirement to take 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.”<sup>2</sup> This issue took on greater significance with the recent release of a Notice of Apparent Liability for Forfeiture, which proposed to fine Telnyx LLC almost \$4.5 million for allegedly violating know your customer (“KYC”) requirements (calculated on a per-call basis in contravention of the Commission’s prior proposals)<sup>3</sup> even though the Commission had repeatedly assured voice providers that they would have “flexibility” in creating “affirmative, effective” KYC measures and that the Commission did “not expect perfection” in the effectiveness of those KYC measures.<sup>4</sup> Recognizing that flexibility is necessary, the Commission later declined to provide further guidance on the meaning of “affirmative, effective measures” so as to not “giv[e] the ‘playbook’ to bad actor callers.”<sup>5</sup>

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<sup>1</sup> Eighth Report and Order in CG Docket No. 17-59, FCC 25-15 (rel. Feb 28, 2025).

<sup>2</sup> *Id.* at para. 8.

<sup>3</sup> Compare Notice of Apparent Liability For Forfeiture, File No. EB-TCD-24-00037170 (rel. Feb 4, 2025) (“Telnyx NAL”), with Eighth Report and Order in CG Docket No. 17-59, FCC-CIRC2409-02, para. 31 (circulated Sep. 5, 2024) (“Draft Eighth Order”). (“This forfeiture applies on a per-customer, rather than per-call, basis.”) The Draft Eighth Order also provided that “each day that the customer remains a customer while affirmative and effective measures to prevent the origination of illegal traffic are *not* in place is a continuing violation.” *Id.* According to Telnyx, it identified the subject traffic and shut the customer down in less than one day. Under the draft’s forfeiture language, Telnyx’s base forfeiture would have been \$11,000 not \$4.5 million.

<sup>4</sup> Fourth Report and Order in CG Docket No. 17-59, FCC 20-187 (Dec. 30, 2020).

<sup>5</sup> Seventh Report and Order in CG Docket No. 17-59, FCC 23-37 (May 19, 2023).

Thus, the expectation was that voice providers would, in fact, have flexibility to adopt “affirmative, effective measures,” which is belied by the Commission’s apparent imposition of strict liability in the Telnyx NAL.<sup>6</sup>

Both the U.S. Constitution and the Administrative Procedure Act (“APA”) require the Commission to issue guidance, subject to notice and comment rulemaking, before imposing high civil forfeitures.<sup>7</sup> To do otherwise would violate due process and conflict with recent Supreme Court precedent.<sup>8</sup>

As the Commission considers whether to adopt the base forfeiture, it is critical that the Commission make clear that a forfeiture should only be imposed when a voice service provider has actual knowledge of illegal traffic or intended to allow the traffic onto its network.<sup>9</sup> The VPTAs submit that even providers acting in good faith could be subject to substantial forfeitures, as is now readily apparent, because it is unclear what standards the Commission will apply to determine whether a provider took “affirmative, effective measures” to prevent its customers from originating illegal calls, including KYC requirements and due diligence.<sup>10</sup> The rule simply states the obligation.

More troubling and confounding is that, in the Telnyx NAL, the Commission cites to the Lingo Consent Decree as precedent for specific KYC measures the Commission appears to endorse.<sup>11</sup> However, these measures cannot serve as KYC guidance to the industry unless and until they are subject to notice and comment rulemaking. Imposing these requirements on any voice provider not subject to the Lingo Consent Decree violates the APA and Constitutional due process. In addition, these obligations, which the Commission called “enhanced,” lack the flexibility to allow providers to apply appropriate KYC vetting processes for different services and classes of customers and will stifle technological innovation. While Lingo may have agreed to adopt these measures, they should not be forced on other voice service providers in violation of the APA.

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<sup>6</sup> In adopting the “affirmative effective measures”, the Commission made clear that it did “not expect perfection; particularly clever bad actors may, for a time evade detection. In these cases, a voice service provider could exercise contractual remedies or take additional mitigation steps. If the voice service provider takes these steps and does not originate a significant amount of illegal traffic, *it satisfies the rules we adopt today.*” Fourth Report and Order at para. 36 (emphasis added). The Commission does not appear to have followed this guidance in the Telnyx NAL.

<sup>7</sup> See, e.g., *Calumet Shreveport Refin., LLC v. EPA*, 86 F.4th 1121, 1134-1137 (5th Cir. 2023) (finding that an agency’s adjudications based on applying new and different standards of conduct were illegally retroactive).

<sup>8</sup> Cf. *SEC v. Jarkey*, 603 U.S. 109 (2024) (holding that administrative agencies cannot impose civil forfeitures absent constitutionally required due process).

<sup>9</sup> The Commission should also reaffirm its language in the Draft Eighth Report and Order that the maximum forfeiture would not exceed the maximum forfeiture that its rules impose on non-common carriers, even if the provider is a common carrier.

<sup>10</sup> See 47 CFR § 64.1200(n)(4).

<sup>11</sup> Telnyx NAL, para. 2, fn. 5; citing Lingo Telecom, LLC, Order, File No.: EB-TCD-24-00036425, Consent Decree, Attachment 1, Operating Procedures (rel. August 21, 2024).

Equally concerning is that even if a provider voluntarily complied with every KYC obligation in the Lingo Consent Decree, it may not be immune from Commission enforcement. In the Lingo Consent Decree, the Commission warned:

The following provisions are not a comprehensive robocall mitigation plan and are designed to supplement, rather than replace, existing caller ID authentication and robocall mitigation measures Lingo Telecom currently has in place or may implement in the future. Compliance with these measures is not a defense to future violations of state or federal law or Commission Rules.<sup>12</sup>

Service providers are left with limited guidance of how to comply with the Commission's rules unless they strive for the "perfection," which the Commission claims not to require.

For these reasons, the Commission should not attempt to enforce KYC requirements unless and until it a) provides adequate notice of the conduct that may be penalized,<sup>13</sup> b) gives regulated entities the opportunity of notice and a hearing before imposing significant financial penalties,<sup>14</sup> and c) adopts language clarifying how the Commission will enforce the "affirmative, effective measures" rule, as it proposed to do in the Draft Eighth Order.<sup>15</sup>

Ultimately, the Commission should not mandate specific KYC processes given the differences among voice service providers and their customers, but the Commission can provide more information than "we will know it when we see it" before proposing substantial fines on providers who otherwise thought they were in compliance.

Please contact the undersigned if you have any questions.

Respectfully submitted,

Glenn S. Richards  
Counsel to the Voice on the Net Coalition

Joseph Marion, President  
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<sup>12</sup> *Id.*; see also Telnyx NAL, para. 11 (providing "[m]easures that may contribute to satisfying the KYC obligation).

<sup>13</sup> See *Ohio et. al., v. Environmental Protection Agency*, 603 U.S. 279 (2024) (agency decision must be reasonably explained, and the agency must offer an explanation for its action including a rational connection between the facts found and the choice made and cannot simply ignore an important aspect of the problem.)

<sup>14</sup> See *Jarkey* (holding that the Seventh Amendment entitled the defendant to a jury trial in a securities fraud proceeding seeking civil penalties in the form of monetary relief before the Securities and Exchange Commission).

<sup>15</sup> See Draft Eighth Order, paras. 31-33.