

May 6, 2025

VIA ECFS

Ms. 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,

INCOMPAS and its members share the Commission's goal of eliminating illegal robocalls and restoring consumer confidence in voice services. The Commission has taken an incremental and methodical approach across dozens of rulemakings to address this important issue and, as a result, has created an evolving regulatory framework aimed at offering voice service providers the tools and flexibility they need to prevent bad actors from originating illegal robocalls and removing them when they do gain access to providers' networks.

Against this backdrop, INCOMPAS submits this letter to express concern regarding the impact that the agency's Notice of Apparent Liability for Forfeiture against Telnyx ("Telnyx NAL") may have on the ability of voice service providers to develop and implement a flexible and effective set of Know Your Customer ("KYC") measures.¹ The Telnyx NAL's proposed fine for alleged violations related to robocalls made on its network contradicts the Commission's established KYC guidelines and raises concerns that the agency's action amounts to regulation by enforcement in violation of the Administrative Procedures Act ("APA") and recent Executive Orders issued by the new Administration. By penalizing Telnyx for what appears to be a single, isolated incident that the company promptly addressed,² the Commission risks subjecting voice service providers to a strict liability standard, compelling the adoption of KYC measures that

¹ *Telnyx LLC*, File No. EB-TCD-24-00037170, Notice of Apparent Liability For Forfeiture, FCC 25-10 (rel. Feb 4, 2025).

² See Letter of Marc S. Martin, *et al.*, Counsel for Telnyx, NAL/Acct. No. 202432170009, iii, 8 (filed Feb. 27, 2025), available at [https://us-central-1.telnyxcloudstorage.com/media-assets/Telnyx%20Response%20to%20Notice%20of%20Apparent%20Liability%20and%20Exhibits%20\(2.27.2025\).pdf](https://us-central-1.telnyxcloudstorage.com/media-assets/Telnyx%20Response%20to%20Notice%20of%20Apparent%20Liability%20and%20Exhibits%20(2.27.2025).pdf). Telnyx insists that it "met or exceeded the requirements of the Commission's Effective Measures rules," asserts that it promptly blocked the fraudulent calls within hours of detection, and that there was no evidence of recurring illegal activity.

may be ineffective for a particular provider, and chilling providers self-reporting for fear of punitive consequences.

The FCC has long emphasized that telecommunications providers are not required to achieve perfection in preventing illegal robocalls.³ Instead, providers are expected to implement “affirmative, effective” KYC measures and exercise due diligence to help ensure its services are not used to originate illegal traffic.⁴ In requiring voice service providers to adopt measures to prevent new and renewing customers from using their network to originate calls, the Commission indicated that providers would have the “flexibility to determine what works best on their networks” and declined to adopt specific, defined steps.⁵ The Commission affirmed this approach in a 2023 *Report and Order* that declined to further clarify the existing requirement finding that an “outcomes-based standard is most appropriate” and that flexibility would allow providers to “adapt to changing calling patterns.”⁶

Providers have undertaken their KYC efforts under this framework, however, the Telnyx NAL's imposition of a substantial fine appears to disregard the Commission's approach to KYC and recognition of the historical challenges providers face in preventing all instances of illegal robocalls. Contrary to the Commission's well-reasoned, flexible approach to satisfying the “affirmative, effective” KYC obligation, the Telnyx NAL includes a list of “enhanced” measures derived from a consent decree “that may contribute to satisfying the KYC obligation.”⁷ INCOMPAS submits that the Commission's reliance on these measures is problematic not only because they were introduced and applied after the alleged Telnyx violation, but their inclusion amounts to an effort to regulate by enforcement proceedings in violation of the APA and due process.

INCOMPAS concurs with the assessment of the Voice on the Net Coalition (“VON Coalition”) and the Cloud Communications Alliance (“CCA”) who argue that the *Lingo Consent Decree* measures must be subject to the public notice and comment rulemaking process before they can serve as KYC guidance to the industry.⁸ Should the Commission seek to hold providers

³ See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221, para 36 (2020).

⁴ *Id.*

⁵ *Id.*

⁶ See *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Seventh Report and Order in CG Docket No. 17-59 and WC Docket No. 17-97, *et al.*, FCC 23-37, para. 53 (rel. May 19, 2023).

⁷ Telnyx NAL at para. 11 (citing to *Lingo Telecom, LLC*, Order, File No.: EB-TCD-24-00036425, Consent Decree, Attachment 1, Operating Procedures (rel. August 21, 2024) (“*Lingo Consent Decree*”).

⁸ See Letter of Glenn S. Richards, Counsel to the Voice on the Net Coalition, and Joseph Marion, President, Cloud Communications Alliance, CG Docket No. 17-59, 2 (filed Mar. 10. 2025)

accountable to these same measures, INCOMPAS contends that the Commission should initiate a new rulemaking proceeding that seeks public comment and allows industry to explore whether the measures offer the flexibility the Commission provided to stop illegal robocallers when first initiating KYC rules. The imposition of a substantial fine without clear, standardized guidelines for compliance may create uncertainty among providers regarding their obligations. The absence of defined rules leaves room for inconsistent enforcement actions, undermining the collaborative efforts necessary to address the evolving threat of illegal robocalls.

INCOMPAS is also concerned that the Commission's enforcement action disregards the new Administration's reinstatement of its 2019 Executive Order on *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication*.⁹ The Executive Order is intended to ensure that industry has advanced notice of the obligations for which they will be held accountable, and the Telnix NAL ignores the critical tenets of this order, specifically the prohibition of regulation by enforcement, unfair surprise, and a lack of transparency in federal agency enforcement proceedings. The inclusion of the *Lingo Consent Decree*'s enhanced KYC measures, which as noted above were not adopted as part of a formal rulemaking process, in the NAL constitutes an unfair surprise under the Executive Order and opens any provider that was not in rigorous compliance with these measures up to FCC enforcement proceedings.¹⁰

The Commission's actions could also have an unintended chilling effect on the telecommunications industry's willingness to cooperate with the agency in combating illegal robocalls. Providers may be less inclined to share information or collaborate on traceback efforts if they fear punitive repercussions for isolated incidents. This could hinder the effectiveness of industry-wide initiatives aimed at identifying and eliminating bad actors from the network.

Finally, the U.S. Court of Appeals for the Fifth Circuit's recent decision to vacate a \$57 million fine levied by the Commission in an enforcement proceeding against AT&T raises significant questions about the FCC's ability to impose fines through in-house agency

(*cont.*) ("VON Coalition-CCA Letter") ("Imposing these requirements on any voice service provider not subject to the *Lingo Consent Decree* violates the APA and Constitutional due process. . . . While Lingo may have agreed to adopt these measures, they should not be forced on other voice service providers in violation of the APA.")

⁹ See *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication*, Exec. Order No. 13892 (Oct. 15, 2019) reinstated by *Initial Rescissions of Harmful Executive Orders and Actions*, Exec. Order No. 14148 (Jan. 20, 2025).

¹⁰ The Commission warns in the *Lingo Consent Decree* that "[c]ompliance with these measures is not a defense to future violations of state or federal law or Commission Rules." See *Lingo Consent Decree* at Attachment 1, Operating Procedures. As the VON Coalition and CCA assert in their letter, this leaves service providers "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." VON Coalition-CCA Letter at 3.

adjudications.¹¹ The Fifth Circuit’s reliance in the AT&T case on the Supreme Court decision in *SEC v. Jarkesy* suggests that the Commission’s in-house enforcement process, in some instances, is inconsistent with a company’s due process right to a trial by jury under the Seventh Amendment.¹² Relatedly, several prominent industry trade associations recently filed a Petition for Rulemaking seeking reform of the agency’s enforcement rules, arguing that the *SEC v. Jarkesy* decision “renders the Commission’s current enforcement process unconstitutional.”¹³ Until the Commission has determined how it can impose civil penalties in a manner that satisfies constitutionally required due process, INCOMPAS respectfully recommends that the Commission curtail its forfeiture proceedings or seek behavioral remedies.

In conclusion, the proposed fine appears to conflict with the Commission’s established KYC guidelines, appears to impose per se liability, raises significant issues with respect to Constitutional and administrative law, and threatens to impede industry efforts to combat illegal robocalls. A more balanced approach, characterized by clear guidelines and collaborative engagement with providers, would better serve the interests of consumers and the telecommunications industry as it takes further action to mitigate illegal robocalls.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

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¹¹ AT&T, Inc. v. FCC, No. 24-60223, 2025 WL 1135280, *9 (5th Cir. Apr. 17, 2025).

¹² See Telnyx NAL (Statement of Commissioner Nathan Simington, dissenting) (indicating that the Supreme Court’s decision in *Jarkesy* “prevents me from voting, at this time, to approve *this* or *any* item purporting to impose a fine”) (emphasis added).

¹³ See Petition for Rulemaking of CTIA—The Wireless Association, et al., filed in RM-____, 2 (filed May 1, 2025) (seeking initiation of a rulemaking on “Ensuring Fair Notice, Consistency, and Government Accountability in FCC Enforcement”). The Petition for Rulemaking seeks to incorporate due process practices in accordance with the *Jarkesy* decision and seeks to codify a prohibition against using the enforcement process to adopt new interpretations or requirements.