

JOSHUA H. STEIN  
ATTORNEY GENERAL



TRACY NAYER  
SPECIAL DEPUTY ATTORNEY GENERAL

November 3, 2023

Alex Valencia, Chief Compliance Officer  
Lingo Telecom, LLC  
c/o Stephen Conley and Kevin Rupy  
Wiley Rein LLP  
2050 M Street NW  
Washington, DC 20036

*Sent via certified mail, return receipt requested, and via email to [SConley@wiley.law](mailto:SConley@wiley.law),  
[KRupy@wiley.law](mailto:KRupy@wiley.law)*

**Re: NOTICE from the Anti-Robocall Multistate Litigation Task Force Concerning  
Lingo Telecom, LLC's Continued Involvement in Suspected Illegal Robocall Traffic**

Dear Messrs. Conley and Rupy:

The Anti-Robocall Multistate Litigation Task Force's ("Task Force")<sup>1</sup> ongoing investigation indicates that your client Lingo Telecom, LLC ("Lingo") apparently continues to transmit suspected illegal robocall traffic on behalf of one or more of its customers. Lingo does not appear to have taken sufficient steps since the Task Force issued its Civil Investigative Demand ("CID") to Lingo on August 1, 2022 to identify, investigate, and mitigate suspected illegal call traffic that is accepted onto, and transmitted across, Lingo's network. This Notice is intended to serve as an additional notification to Lingo about the Task Force's continuing concerns regarding its call traffic, and to caution Lingo that it should cease transmitting any illegal traffic immediately.

The Task Force, again, requests that your client take steps to prevent its network from continuing to be a source of apparently illegal robocalls. Transmission of these calls may be violations of the Telemarketing Sales Rule,<sup>2</sup> the Telephone Consumer Protection Act,<sup>3</sup> the Truth in Caller ID Act,<sup>4</sup> as well as state consumer protection statutes. If, after receiving this Notice,

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<sup>1</sup> The Anti-Robocall Multistate Litigation Task Force is a 51-member collective of State Attorneys General, led by the Attorneys General of Indiana, North Carolina, and Ohio, which is focused on actively investigating and pursuing enforcement actions against various entities in the robocall ecosystem that are identified as being responsible for significant volumes of illegal and fraudulent robocall traffic routed into and across the country.

<sup>2</sup> 15 U.S.C. §§ 6101-6108; 16 C.F.R. § 310.7.

<sup>3</sup> 47 U.S.C. § 227; 47 C.F.R. § 64.1200.

<sup>4</sup> 47 U.S.C. § 227(e).

Lingo continues to transmit calls for illegal robocall campaigns, the Task Force may pursue an enforcement action against Lingo and its principal owners and/or operators.

### **Task Force’s Continuing Concerns about Lingo’s Call Traffic**

As part of its investigation into the transmission of illegal robocalls and the providers and entities who originate and/or route them, the Task Force regularly reviews call traffic information provided by several industry sources, including USTelecom’s Industry Traceback Group (“ITG”)<sup>5</sup> and ZipDX LLC (“ZipDX”)<sup>6</sup>. Based on information available to the Task Force, it appears that Lingo continues to transmit calls associated with high-volume illegal and/or suspicious robocall campaigns.

As your client knows, call traffic data from the ITG shows that it issued at least **517 traceback notices** to Lingo since at or before January 2020 for calls it originated, accepted, and/or transmitted onto and across the U.S. telephone network. These notices from the ITG cited recurrent high-volume illegal and/or suspicious robocalling campaigns concerning SSA government imposters, financial impersonations, utilities disconnects, Amazon suspicious charges, student loans, and others, with Lingo identified as serving in various roles in the call path. A majority of the more than 173 traceback notices sent to Lingo since August 2022 were issued *after* the Task Force issued its CID to Lingo.

Information available from ZipDX also indicates that, since the Task Force issued its August 2022 CID through the end of October 2023, Lingo attested to calls for a number of the same high-volume robocalling campaigns for which it received and/or continues to receive traceback notices from the ITG. For instance, ZipDX has currently identified **439 suspicious calls**

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<sup>5</sup> Established in 2015, the ITG is a private collaborative industry group—composed of providers across wireline, wireless, VOIP, and cable services—that traces and identifies the sources of suspected illegal and suspicious robocalls. In December 2019, Congress enacted the Pallone–Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (“TRACED Act”) to combat the scourge of unlawful robocalls. *See* Pub. L. No. 116-105, § 13(d), 133 Stat. 3274 (2019). Following its enactment, the Federal Communications Commission designated the ITG as the official private-led traceback consortium charged with leading the voice communications industry’s efforts to trace the origin of suspected illegal robocalls through various communications networks through tracebacks. *See* 47 C.F.R. § 64.1203.

<sup>6</sup> ZipDX is a provider of web- and phone-based collaboration services, which also focuses resources on developing and making technology available that is directed at mitigating illegal robocalls and other telephone-based fraud and abuse. ZipDX’s proprietary tool “RRAPTOR” is one such technology, which is an automated robocall surveillance tool that captures call recordings and information for calls largely associated with high-volume suspicious calling campaigns, and identifies the providers who have affixed their SHAKEN signatures to each of the captured calls, indicating that the provider is in the call path and whether those providers have attested to knowing the calling party who made the suspicious call and/or knowing of the calling party’s right to use that calling number to make that suspicious call. *See* ZipDX, What is RRAPTOR?, <https://legalcallsonly.org/what-is-rraptor/> (last visited Oct. 26, 2023).

transmitted by Lingo from 284 unique calling numbers<sup>7</sup> since August 1, 2022, many of which exhibit characteristics indicative of calls that are violations of federal and state laws; over 75% of these calls were made to numbers that have been registered on the National Do Not Call Registry.<sup>8</sup> Additionally, about 34% of these calls were marked with an A-Level STIR/SHAKEN attestation, indicating that Lingo both knows the identities of the calling parties that originated these suspicious calls and knows that those callers have legitimately acquired volumes of numbering resources that are being used to make these calls. Further, over 30% of these calls were signed by Lingo with a C-Level STIR/SHAKEN attestation, indicating that Lingo received the call without a signature. We are concerned that your client’s upstream call source(s) are failing to affix an A- or B-attested signature of their own, and that your client’s acceptance of these calls despite that failure is evidence of Lingo’s culpability for these calls. Given the prolific nature of the calls, the Task Force is concerned about whether Lingo is taking any proactive steps to mitigate this traffic.

Thus, the information available to the Task Force shows that Lingo is still apparently involved in, at a minimum, transmitting call traffic indicative of, and associated with, recurrent high-volume illegal and/or suspicious robocalling campaigns and/or practices, which conduct could subject Lingo to damages, civil penalties, injunctions, and other available relief provided to State Attorneys General under both federal and state laws.

### **Overview of Select Relevant Laws**

#### **Telemarketing Sales Rule (15 U.S.C. §§ 6101–6108; 16 C.F.R. Part 310)**

In 1994, Congress passed the Telemarketing and Consumer Fraud and Abuse Prevention Act which directed the Federal Trade Commission (“FTC”) to prescribe rules prohibiting deceptive telemarketing acts or practices.<sup>9</sup> Pursuant to this directive, the FTC promulgated the Telemarketing Sales Rule (“TSR”). It is a violation of the TSR for voice service providers to provide substantial assistance to customers that the provider “knows or consciously avoids knowing” are engaged in practices that violate TSR provisions against deceptive and abusive telemarketing acts or practices.<sup>10</sup> State Attorneys General have concurrent authority with the FTC

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<sup>7</sup> The use of many unique calling numbers for this volume of called numbers indicates a suspicious pattern in your client’s call traffic of “snowshoeing” or “snowshoe spoofing,” which is a practice often employed by illegal robocallers and telemarketers to circumvent the protections of the STIR/SHAKEN call authentication framework by using significant quantities of unique numbers for caller IDs on a short-term or rotating basis in order to evade behavioral analytics detection, or to bypass or hinder call blocking or call labeling analytics based on the origination numbers. Telephone numbers used for snowshoeing sometimes cannot themselves receive incoming calls, which has the effect of impeding an audit of the legitimacy of these calling numbers.

<sup>8</sup> Most calls captured by RRAPTOR are calls made to phone numbers that have been registered on the National Do Not Call Registry.

<sup>9</sup> 15 U.S.C. § 6102.

<sup>10</sup> 16 C.F.R. § 310.3(b).

to sue to obtain damages, restitution, or other compensation on behalf of their citizens for violations of the TSR.<sup>11</sup>

Telephone Consumer Protection Act (47 U.S.C. § 227; 47 C.F.R. §§ 64.1200 and 64.1604)

Under the Telephone Consumer Protection Act (“TCPA”), the Federal Communications Commission (“FCC”) promulgated rules restricting calls made with automated telephone dialing systems and calls delivering artificial or prerecorded voice messages.<sup>12</sup> Additionally, the TCPA generally prohibits solicitation calls placed to numbers on the National Do Not Call Registry.<sup>13</sup> State Attorneys General are authorized to bring enforcement actions to enjoin violative calls and recover substantial civil penalties for *each violation* of the TCPA.<sup>14</sup> The TCPA exempts from its prohibitions calls made for emergency purposes and certain other calls,<sup>15</sup> including those made with the “prior express consent” of the called party or with “prior express *written* consent” of the called party for telemarketing calls.<sup>16</sup> Note, however, single consents purportedly given by a consumer to large groups of marketers listed on an alternate webpage are insufficient to satisfy this exemption.<sup>17</sup>

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<sup>11</sup> 15 U.S.C. § 6103; 16 C.F.R. § 310.7.

<sup>12</sup> 47 U.S.C. §§ 227(b)(1)(A)(iii), (b)(1)(B); 47 C.F.R. § 64.1200(a)(2)–(3).

<sup>13</sup> 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2).

<sup>14</sup> 47 U.S.C. § 227(e)(5)–(6).

<sup>15</sup> 47 U.S.C. §§ 227(b)(1)(A)–(B), (b)(2)(B); 47 C.F.R. §§ 64.1200(a)(1), (a)(3), (a)(9).

<sup>16</sup> 47 U.S.C. §§ 227(b)(1)(A)–(B); 47 C.F.R. §§ 64.1200(a)(1)–(3), (f)(9).

<sup>17</sup> For example, in November 2022, the FCC issued an order requiring all voice service providers to block calls from provider Urth Access, LLC. In response to allegations concerning the transmission of illegal robocalls, Urth Access claimed to have obtained express consent for each of the calls. However, that consent stemmed from websites where consumers purportedly agreed to receive robocalls from over 5,000 “marketing partners” listed on a separate site. The FCC found this type of agreement insufficient to constitute express consent. *See FCC Orders Voice Service Providers to Block Student Loan Robocalls*, <https://www.fcc.gov/document/fcc-orders-voice-service-providers-block-student-loan-robocalls> (Order); *FCC Issues Robocall Cease-and-Desist Letter to Urth Access*, <https://www.fcc.gov/document/fcc-issues-robocall-cease-and-desist-letter-urth-access> (Cease-and-Desist Letter). Additionally, in March 2023, the FCC issued a Notice of Proposed Rulemaking expressing its intent to expressly ban the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent. *See Report and Order and Further Notice of Proposed Rulemaking, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (Mar. 17, 2023), <https://www.fcc.gov/document/fcc-adopts-its-first-rules-focused-scam-texting-0>. We note also that this interpretation is consistent with the FTC’s interpretation of the express consent requirement of the TSR. *See Federal Register*, Vol. 73 No. 169, 2008 at 51182, <https://www.govinfo.gov/content/pkg/FR-2008-08-29/pdf/E8-20253.pdf>; (Consumer’s agreement with a seller to receive calls delivering prerecorded messages is nontransferable); *FTC, Complying with the Telemarketing Sales Rule, The Written Agreement*

## Truth in Caller ID Act (47 U.S.C. § 227(e))

Under the federal Truth in Caller ID Act, it is generally unlawful for a person to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”<sup>18</sup> State Attorneys General have the authority to bring enforcement actions for violations of the Truth in Caller ID Act and its prohibition against illegal caller identification spoofing.<sup>19</sup> Such violative conduct can lead to assessments of civil penalties of up to \$10,000 for each violation, or three times that amount for each day of continuing violations.<sup>20</sup> Note that any penalties for violations of the Truth in Caller ID Act are in addition to those assessed for any other penalties provided for by the TCPA.<sup>21</sup>

## General Note regarding State Laws

In addition to their authority to enforce the above federal statutes, State Attorneys General are empowered to enforce their respective state laws regulating various aspects of the initiation and transmission of illegal robocall and telemarketing call traffic across the U.S. telephone network. Voice service providers transmitting calls into and throughout the states are obligated to familiarize themselves with, and abide by, all applicable state laws.

## **Requested Action in Response to this Notice**

We request that your client review this Notice in detail and carefully scrutinize and actively investigate any suspected illegal call traffic that is, and has been, accepted and transmitted by and through Lingo’s network in order to ensure that its business is following all applicable federal and state laws and regulations, including those referenced above. If further investigation shows that your client continues to assist its customers by initiating and/or transmitting call traffic not dissimilar from the traffic highlighted in this Notice, the Task Force may decide to pursue an enforcement action against your client and its principal owners and operators. Additionally, this Notice *does not* waive or otherwise preclude the Task Force from bringing an enforcement action related to conduct preceding the date of this Notice, including conduct that resulted in violations related to the call traffic referenced in this Notice.

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*Requirement* (<https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#writtenagreement>).

<sup>18</sup> 47 U.S.C. § 227(e); 47 C.F.R. § 64.1604.

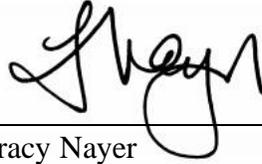
<sup>19</sup> 47 U.S.C. § 227(e)(6).

<sup>20</sup> 47 U.S.C. §§ 227(e)(5)(A), (e)(6)(A).

<sup>21</sup> *Id.*

The Task Force remains steadfast in its resolve to meaningfully curb illegal robocall traffic. Please direct any inquiries regarding this Notice to my attention at [tnayer@ncdoj.gov](mailto:tnayer@ncdoj.gov). Your client's anticipated cooperation is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Nayer", is positioned above a horizontal line.

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Tracy Nayer  
Special Deputy Attorney General  
Consumer Protection Division  
North Carolina Department of Justice