

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of Lingo Telecom, LLC*, File No. EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

This matter touches on the hot-button issue of deepfakes in elections, but fundamentally it's about FCC oversight of STIR/SHAKEN. The TRACED Act, now five years old, phased in STIR/SHAKEN requirements over time in an attempt to protect Americans from robocalls by making call authentication more reliable. In this matter, call authentication and caller ID were undeniably spoofed. So, why a statement at all, and why not a straightforward approval?

Let's recap the facts. Lingo transmitted deepfaked robocalls with spoofed caller IDs across the telephone network. Lingo was provided with these calls by Life Corp. and Voice Broadcasting Corp., which were engaged by Kramer. Lingo signed these calls with A-level attestations, indicating that Lingo took responsibility for originating the call onto the voice network; that Lingo has a direct authenticated relationship with the customer, and could identify the customer; and had established a verified association with the telephone number used for the call. I'm going to focus on the third prong. The spoofed caller ID showed that the call came from a prominent New Hampshire Democratic Party member, and no one disputes that Life Corp. had no right to use that caller ID.

Lingo states in its defense that it relied on Life Corp.'s contractual statements about numbers and permissions in what the Enforcement Bureau notes was a one-page form with no diligence backing it up. This might not be the most sympathetic defense, but it isn't an unreasonable one, because the FCC has never required a higher standard. This is why the FCC has to have recourse to vague statements like "reasonable KYC [know your customer] protocols," and needs to make a novel finding that a "generic, blanket, check-the-box 'agreement,'" is insufficient, in order to find liability. All voice providers nationwide are surely taking note of the FCC's actions today, but it's not actually clear what their obligations now are. Must they immediately implement KYC and, if so, to what standard? If their current client contracts are inadequate, must they require that all clients sign new ones and, if so, what should the new contracts say? If they fail to do so, ought they to expect to be fined \$1,000 per call?

These are completely open questions because the FCC has never engaged in a rulemaking on this matter, delegating it instead to an industry group and to industry standards. The problem for our action today is that Lingo probably complied with industry standards. We might deplore the laxity of these standards, but Lingo might well respond that they were in line with actions that had been repeatedly blessed by the FCC. And today, by using an enforcement mechanism to declare new standards (however vague,) we are engaged in a back-door rulemaking through enforcement.

I decline to say that the FCC can never do this, because some situations are so urgent or egregious that we have to have the option. But every time we do, the next step should be to start a rulemaking immediately, and the step after that should be to ask how we allowed the situation to devolve such that we needed to use what ought to be an emergency power. As such, I concur with the majority while noting that the FCC must immediately act to establish clear standards within which the industry can operate.