

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Swayzee Telephone Company, Inc. d/b/a Swayzee ) File No.: EB-TCD-22-00034279
Communications Corp., FiberHawk ) NAL/Acct. No.: 202332170004
) FRN: 0002901817
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 12, 2022

Released: December 12, 2022

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$93,000 against Swayzee Telephone Company, Inc. d/b/a Swayzee Communications Corp., FiberHawk (FiberHawk or Company) for apparently failing to provide information on a timely basis about telephone number disconnections to the Reassigned Numbers Database Administrator (Database Administrator), as required by section 64.1200(1)(2) of the Federal Communications Commission’s (Commission or FCC) rules.1

II. BACKGROUND

2. Legal Background. The Telephone Consumer Protection Act (TCPA) and the Commission’s implementing rules impose restrictions on making unwanted calls to consumers.2 The TCPA generally prohibits callers from initiating certain calls, including robocalls, to wireless numbers without the prior express consent of the consumer to whom the wireless phone number is assigned.3 Further, the TCPA generally prohibits callers from initiating certain telemarketing calls, including robocalls, to any number (wireless or residential) without the prior express written consent of the consumer to whom the phone number is assigned.4 In some cases, a party might have obtained consent to call a particular number, but the number has since been disconnected and reassigned to someone else, or simply disconnected without reassignment.

3. To prevent callers from placing calls to reassigned telephone numbers, the Commission established a single, comprehensive Reassigned Number Database (Database) that contains reassigned number information from each provider that obtains North American Numbering Plan (NANP) numbers.5 The Database enables callers to determine whether a number has been permanently disconnected after the date when a caller obtained consent.6 The purpose of the Database is to protect consumers from calls to

1 47 CFR § 64.1200(1)(2).

2 47 U.S.C. § 227(b); 47 CFR § 64.1200(a).

3 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

4 47 U.S.C. § 227(b); 47 CFR § 64.1200(a)(2)-(3).

5 Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Second Report and Order, 33 FCC Rcd 12024, 12024, para 3 (2018) (Reassigned Numbers Database Order).

6 Id. at 12031, para. 18.

which they did not consent, and to help callers avoid making calls to parties from whom they do not have consent. The Database depends on accurate and up-to-date information.<sup>7</sup>

4. All “reporting carriers” must submit information about number disconnections to the Database Administrator on a monthly basis.<sup>8</sup> A “reporting carrier” is “a telecommunications carrier that receives numbering resources from the NANP Administrator (NANPA), a Pooling Administrator or another telecommunications carrier.”<sup>9</sup> This includes providers that indirectly receive their numbering resources from the NANPA, as well as interconnected Voice over Internet Protocol (VoIP) providers that directly obtain numbering resources pursuant to Commission authorization.<sup>10</sup> On the 15th day of each month, section 64.1200(l)(2) requires reporting carriers to report to the Database the most recent date that each NANP telephone number allocated to or ported to the carrier was permanently disconnected.<sup>11</sup>

5. Reporting carriers were required to begin keeping records of permanent disconnections in July 2020, in anticipation of the reporting requirement in section 64.1200(l)(2).<sup>12</sup> The Commission selected SomosGov, Inc. as Database Administrator on December 1, 2020.<sup>13</sup> In February 2021, the Consumer and Governmental Affairs Bureau issued a public notice announcing that reporting carriers were required to begin their monthly reports on April 15, 2021.<sup>14</sup> The public notice also extended the reporting deadline for

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<sup>7</sup> *Id.* at 12032, para. 20.

<sup>8</sup> *Id.* at 12032, para. 21; 12038, para. 39; *see also* 47 CFR § 64.1200(l)(2).

<sup>9</sup> 47 CFR § 52.15(f)(2).

<sup>10</sup> *Reassigned Numbers Database Order*, 33 FCC Rcd at 12032, para. 20, n.54. *See also* 47 CFR § 52.15(f)(2); 47 CFR § 52.5(i) (stating that for the purposes of the Commission’s Part 52 rules, the term “telecommunications carrier” includes an interconnected VoIP service provider). The *Reassigned Numbers Database Order* permits reporting carriers that indirectly receive numbers to delegate the task of reporting to the provider that receives the numbering resources directly from the NANPA or Pooling Administrator. *Reassigned Numbers Database Order*, 33 FCC Rcd at 12032, para. 21. Certain carriers, however, may still be liable for violations if their delegatee fails to submit timely information on their behalf. *See* 47 U.S.C. § 217 (“[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”). The Commission consistently has held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors. *See Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-21864 (2002); *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1244 (1984). Reporting carriers that have delegated the reporting task must submit documentation of such arrangement in their response to this Notice.

<sup>11</sup> 47 CFR § 64.1200(l)(2). For purposes of this rule, “a NANP telephone number has been permanently disconnected when a subscriber permanently has relinquished the number, or the provider permanently has reversed its assignment of the number to the subscriber such that the number has been disassociated with the subscriber. A NANP telephone number that is ported to another provider is not permanently disconnected.” 47 CFR § 64.1200(l)(3).

<sup>12</sup> Fed. Comm’n Comm’n, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 85 FR 38334 (June 26, 2020); *Consumer and Governmental Affairs Bureau Announces Compliance Date for Reassigned Numbers Database Rules*, CG Docket No. 17-59, Public Notice, 35 FCC Rcd 6738 (CGB July 2, 2020) (*First Compliance Date Public Notice*); *see also* 47 CFR § 64.1200(l)(1). Small providers with 100,000 or fewer domestic retail subscriber lines were required to begin keeping records in January 2021. 47 CFR § 64.1200(l)(4); *First Compliance Date Public Notice*, 35 FCC Rcd at 6738.

<sup>13</sup> Press Release, Fed. Comm’n Comm’n, *FCC Selects SomosGov as Next Telephone Number Administrator and Reassigned Numbers Database Administrator* (Dec. 1, 2020), <https://docs.fcc.gov/public/attachments/DOC-368493A1.pdf>. SomosGov is also currently the North American Number Plan Administrator and Pooling Administrator.

small providers with 100,000 or fewer domestic retail subscriber lines to October 15, 2021.<sup>15</sup> The Database became publicly available on November 1, 2021.<sup>16</sup>

6. *Factual Background.* FiberHawk provides local exchange service (which is a telecommunications service) and is headquartered in Swayzee, Indiana.<sup>17</sup> The Database Administrator attested that the Company obtained numbering resources from NANPA either directly or indirectly.<sup>18</sup> Each month from December 2021 through September 2022, the Database Administrator notified FiberHawk that the Company failed to report permanent disconnects by the 15th day in each of those months as required by 47 CFR § 64.1200(l)(2), and that the Database Administrator would refer the matter to the Commission for further action.<sup>19</sup> The Database Administrator sent referrals to the Commission on January

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<sup>14</sup> See *Consumer and Governmental Affairs Bureau Announces Compliance Date for Remaining Reassigned Numbers Database Rule Regarding Reporting of Disconnect Data*, CG Docket No. 17-59, Public Notice, 36 FCC Rcd 1441, 1441 (CGB Feb. 8, 2021) (*Second Compliance Date Public Notice*); see also 47 CFR § 64.1200(l)(2) (providing that reporting begins on the 15th day of the month following the Consumer and Governmental Affairs Bureau's announcement); *Reassigned Numbers Database Order*, 33 FCC Rcd at 12051, para. 80 (requiring the Commission to publish public notices announcing compliance dates).

<sup>15</sup> *Second Compliance Date Public Notice*, 36 FCC Rcd at 1441-42. The rules provide that small providers are required to comply with the recordkeeping and reporting rules six months after the date announced for large providers. 47 CFR § 64.1200(l)(4).

<sup>16</sup> *Consumer and Governmental Affairs Bureau Announces Interim Usage Charges for the Reassigned Numbers Database*, CG Docket No. 17-59, Public Notice, DA 21-1240 at \*1 (CGB Oct. 1, 2021); Press Release, Fed. Comm'n Comm'n, FCC Announces Launch of Reassigned Numbers Database on November 1, 2021 to Reduce Unwanted Call (Oct. 25, 2021), <https://docs.fcc.gov/public/attachments/DOC-376867A1.pdf>.

<sup>17</sup> Swayzee Telephone Company, Inc., 801948, FCC Form 499 (Apr. 1, 2022), <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=801948>.

<sup>18</sup> Declaration of Reassigned Numbers Database Administrator at 1 (Mar. 17, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (Apr. 18, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (May 18, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (June 22, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (July 22, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (Aug. 22, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (Sept. 19, 2022) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (Sept. 27, 2022) (covering Jan. 5, 2022 referral) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (Sept. 27, 2022) (covering Jan. 19, 2022 referral) (on file in EB-TCD-22-00034279); Declaration of Reassigned Numbers Database Administrator at 1 (Sept. 27, 2022) (covering Feb. 22, 2022 referral) (on file in EB-TCD-22-00034279) (collectively, Database Administrator Declarations).

<sup>19</sup> Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Dec. 16, 2021) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Jan. 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Feb. 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Mar. 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Apr. 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (May 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (June 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (July 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Aug. 16, 2022) (on file in EB-TCD-22-00034279); Notice from Database Administrator to Swayzee Telephone Company, Inc. at 1 (Sept. 16, 2022) (on file in EB-TCD-22-00034279) (collectively, Database Administrator Notices of Noncompliance). The Database Administrator sent each Notice of Noncompliance to the email address that

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5, 2022; January 19, 2022; February 22, 2022; March 17, 2022; April 18, 2022; May 18, 2022; June 22, 2022; July 22, 2022; August 22, 2022; and September 19, 2022.<sup>20</sup>

7. In each notice of noncompliance to FiberHawk, the Database Administrator emphasized that section 64.1200(l)(2) requires timely submission of permanent number disconnections each month, and that the Company could face “a significant monetary penalty” for its failure to provide the required data.<sup>21</sup> The notices of noncompliance contained a boldface caption, “Immediate Action Required,” and provided explicit instructions by which the Company could submit data for the missed months.<sup>22</sup> FiberHawk has not filed any data pertaining to the ten missed months or responded in any way to the Notices of Noncompliance.

### III. DISCUSSION

8. *Apparent Violations.* We find that FiberHawk apparently willfully and repeatedly violated section 64.1200(l)(2) of the Commission’s rules by failing to file reassigned numbering information to the Database. All “reporting carriers” must submit number disconnections to the Database by the 15th of each month.<sup>23</sup> The Company is a “reporting carrier” because it is a telecommunications carrier that obtained numbering resources from the NANPA.<sup>24</sup> The Company apparently did not file any number disconnections to the Database from December 2021 through September 2022. FiberHawk thus

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\_\_\_\_\_ Swayzee Telephone Company, Inc. d/b/a Swayzee Communications Corp., FiberHawk provided when it registered with the Database.

<sup>20</sup> Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Jan. 5, 2022 15:53 EST) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Jan. 19, 2022 15:51 EST) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Feb. 22, 2022 15:24 EST) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Mar. 17, 2022 9:29 EDT) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Apr. 18, 2022 18:13 EDT) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (May 18, 2022 10:02 EDT) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (June 22, 2022 9:38 EDT) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (July 22, 2022 17:34 EDT) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Aug. 22, 2022 12:25 EDT) (on file in EB-TCD-22-00034279); Email from Beth Sprague, Director—Reassigned Numbers Database, Database Administrator, to Rebecca Maccaroni, Reassigned Numbers Database Program Manager, Consumer and Governmental Affairs Bureau, FCC (Sept. 19, 2022 18:11 EDT) (on file in EB-TCD-22-00034279) (collectively, Database Administrator Referrals).

<sup>21</sup> Database Administrator Notices of Noncompliance at 1.

<sup>22</sup> *Id.* See also *infra* para 12.

<sup>23</sup> 47 CFR § 64.1200(l)(2).

<sup>24</sup> Database Administrator Declarations at 1; see 47 CFR § 52.15(f)(2).

failed to submit information that was due by December 15, 2021, January 15, 2022, February 15, 2022, March 15, 2022; April 15, 2022; May 15, 2022; June 15, 2022; July 15, 2022; August 15, 2022; and September 15, 2022.<sup>25</sup> Accordingly, we conclude that FiberHawk has apparently violated section 64.1200(l)(2) of the Commission's rules on multiple occasions.

9. *Proposed Forfeiture.* Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]”<sup>26</sup> Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against FiberHawk of up to \$220,313 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,202,123 for a single act or failure to act in the case of a continuing violation.<sup>27</sup> In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>28</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>29</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>30</sup> Taking these factors into account, we propose a \$93,000 forfeiture against FiberHawk for its willful and repeated failure to file number disconnection data for a period of ten months, December 2021 through September 2022, in violation of section 64.1200(l)(2) of the Commission's rules.

10. Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>31</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>32</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>33</sup> All entities subject to Commission jurisdiction are responsible for knowing and abiding by the Commission's rules, and unawareness, inadvertence, or error do not preclude finding that a violation was

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<sup>25</sup> Database Administrator Referrals. If the Company has delegated reporting of number disconnection information to another entity, then it should provide copies of any contracts describing such delegation in its response to this Notice of Apparent Liability.

<sup>26</sup> 47 U.S.C. § 503(b).

<sup>27</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 21-1631 (EB 2021); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 87 Fed. Reg. 396 (Jan. 5, 2022) (setting January 5, 2022, as the effective date for the increases).

<sup>28</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>29</sup> 47 CFR § 1.80(b)(10), Note to paragraph (b)(10).

<sup>30</sup> *Id.*

<sup>31</sup> 47 U.S.C. § 312(f)(1).

<sup>32</sup> H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . .”).

<sup>33</sup> *Custom Teleconnect, Inc.*, Forfeiture Order, DA 21-1482, para. 6, n.19 (EB 2021); *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (*Southern Cal. Broad.*).

willful.<sup>34</sup> Here, prior to effectuation of the rule, both the Commission and Database Administrator took steps to ensure that information regarding section 64.1200(1)(2) filing obligations was readily available to reporting carriers.<sup>35</sup> FiberHawk registered with the Database Administrator prior to December 15, 2021, which evidences that the Company was aware that it is subject to these requirements and substantiates that its failure to file disconnection data in December 2021 and over the next nine months was willful. Moreover, the Company's failure to file the required information *after* notification from the Database Administrator each month is further evidence of its willful violation of the Commission's rules.<sup>36</sup> We also find that the Company's filing violations were repeated given that the Company apparently failed to file information from December 2021 through September 2022.

11. Section 1.80(b) of the Commission's rules sets a base forfeiture of \$3,000 for failure to file required forms or information.<sup>37</sup> We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.<sup>38</sup> Depending upon the nature of the information required by the form, we have imposed a higher base forfeiture, or upwardly adjusted the forfeiture for

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<sup>34</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17099, para. 22 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); *Etelix.com USA, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-779, para. 25 (EB July 20, 2022) ("Carriers that hold Commission authorizations are expected to understand and comply with the requirements and obligations associated with the authorizations they are granted."); *Telnexus, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-227, para. 5 (EB Mar. 9, 2022) ("All entities subject to Commission jurisdiction are responsible for knowing and abiding by the Commission's rules."). It is well settled that ignorance of a rule does not excuse a violation. *See, e.g., Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (*Abramovich Forfeiture Order*) ("[O]ne may not 'claim ignorance of the law as a defense'" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern Cal. Broad.*, 6 FCC Rcd 4387, para 3 (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); *see also Unipoint Tech. Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1640, para. 21 (2014) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight."); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal citations omitted); *KTGF License Corporation*, Forfeiture Order, 30 FCC Rcd. 7333, 7335, para 8, (MB 2015) ("As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the Commission's rules are willful violations. Licensees are expected to be aware of and comply with all Commission rules, and the Licensee's failure here to abide by the rules represented a conscious and deliberate omission.") (internal citations omitted); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088, para 5 (1992) ("The fact that a licensee's violation occurred through inadvertence does not prevent it from being willful.").

<sup>35</sup> *First Compliance Date Public Notice; Second Compliance Date Public Notice; Consumer and Governmental Affairs Bureau Announces Technical Specifications for Reassigned Numbers Database Reporting*, CG Docket No. 17-59, Public Notice, DA 21-67, 2021 WL 228008 (CGB Jan. 15, 2021); *Your Role as a Resp Org in The All-New Reassigned Numbers Database (RND)* (July 13, 2021), <https://www.somos.com/insights/your-role-resp-org-all-new-reassigned-numbers-database-rnd>.

<sup>36</sup> Database Administrator Notices of Noncompliance at 1.

<sup>37</sup> 47 CFR § 1.80(b).

<sup>38</sup> *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17098–99, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

repeated failures to file.<sup>39</sup> For example, in cases involving failure to file the FCC Form 477, we have assessed a \$3,000 base forfeiture and a \$7,000 upward adjustment to account for repeated violations.<sup>40</sup> The Commission uses the FCC Form 477, which must be filed semiannually, to assess the state of broadband deployment and subscription in communities nationwide and craft policies to increase broadband availability.<sup>41</sup> We have also imposed a \$50,000 penalty for a company's failure to file timely Quarterly and Annual Worksheets (FCC Form 499-Q and 499-A).<sup>42</sup> The Commission uses information on these forms to calculate required contributions to the Universal Service Fund, the Telecommunications Relay Services support mechanism, and the cost recovery mechanisms for numbering administration and local number portability.<sup>43</sup>

12. The Commission may also upwardly adjust the forfeiture in cases where a violation has been intentional.<sup>44</sup> For example, when the Commission or an entity acting on its behalf has previously informed a company that its action has violated the rules, and the company has continued to take that action, the Commission has found that an upward adjustment is appropriate.<sup>45</sup> As discussed above, FiberHawk repeatedly failed to submit required filings to the Database despite being reminded each month of its obligation to submit permanent disconnection information and of the means by which it could provide this required information. The Database Administrator emailed notices of noncompliance to FiberHawk on the 16th day of each missed month, one day after each filing deadline. These prompt notifications afforded the Company an opportunity to address its delinquency quickly by submitting a "fix file" with the required monthly disconnection data. FiberHawk did not avail itself of that opportunity a single time from December 2021 through September 2022. Instead, FiberHawk failed to take responsive action despite the monthly notices from the Database Administrator.<sup>46</sup>

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<sup>39</sup> See *Unipoint Tech., Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751, 12753, para. 5 (2012) (*Unipoint Notice of Apparent Liability*), forfeiture issued, Forfeiture Order, 29 FCC Rcd 1633 (2014); see also *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 846-47, para. 17 (2009) (*ADMA Notice of Apparent Liability*), forfeiture issued, Forfeiture Order, 26 FCC Rcd 4152 (2011); *Peace Communications, LLC*, Notice of Apparent Liability for Forfeiture, DA 21-875, para. 15 (EB 2021); *Your Town Online, Inc. d/b/a/ Willits Online*, Notice of Apparent Liability, 36 FCC Rcd 4409, 4412, para. 12 (EB 2021) (*Your Town Online Notice of Apparent Liability*).

<sup>40</sup> See, e.g., *Your Town Online Notice of Apparent Liability*, 36 FCC Rcd at 4412, para. 12; *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196, 2201, para. 18 (EB 2015), canceled by order 30 FCC Rcd 10597 (EB 2015). The Commission has proposed the statutory maximum forfeiture amount in a Form 477 case that involved multiple failures to file as well as filing inaccurate information for the forms that the company did file. *Barrier Communications Corporation d/b/a BarrierFree*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186, 10199, para. 42 (2020) (*BarrierFree Notice of Apparent Liability*).

<sup>41</sup> *Your Town Online Notice of Apparent Liability*, 36 FCC Rcd at 4409, para. 2; *BarrierFree Notice of Apparent Liability*, 35 FCC Rcd at 10186, para. 1.

<sup>42</sup> See, e.g., *Unipoint Notice of Apparent Liability*, 27 FCC Rcd at 12761, para. 20, forfeiture issued, Forfeiture Order, 29 FCC Rcd 1633 (2014).

<sup>43</sup> *Id.* at 12753, para. 4.

<sup>44</sup> 47 CFR § 1.80(b)(10), tbl. 3; see *Presidential Who's Who dba Presidential Who's Who, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8989, 8992-95, paras. 9-13 (2011) (proposing an upward adjustment for deliberate misconduct), forfeiture issued, Forfeiture Order, 29 FCC Rcd 3451 (2014).

<sup>45</sup> See, e.g., *Cumulus Radio LLC; Radio License Holding CBC, LLC; Cumulus Licensing LLC; and Radio License Holdings LLC*, Forfeiture Order, FCC 21-19, paras. 18 & 20 (2021); *The Street Map Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8318, 8321-22, paras. 10-11 (2011); *Phonejammer.com*, Notice of Apparent Liability, 25 FCC Rcd 3827, 3833, para. 13 (EB 2010).

<sup>46</sup> See *supra* para. 7.



13. We propose a \$3,000 base forfeiture for FiberHawk's initial failure to file the required information about reassigned numbers in December 2021. For each of the nine subsequent months in which FiberHawk failed to file the required information about reassigned numbers, we propose an upward adjustment of \$7,000, for a proposed forfeiture of \$10,000 for each subsequent violation. Each of these subsequent violations was apparently intentional, as the Company received a warning from the Database Administrator each month that it missed the filing deadline. Despite these warnings, the Company continually failed to file any monthly disconnection information, either by the deadline or afterward. This behavior indicates repeated and intentional noncompliance with and disregard for section 64.1200(l)(2) of the rules. Accordingly, we propose a \$93,000 forfeiture against FiberHawk (applying a \$3,000 base penalty for its initial failure to file monthly number disconnection data in December 2021, and an upwardly-adjusted \$10,000 penalty for each of the nine subsequent months that it did not file). We find that the proposed forfeiture reflects the importance of the information, and takes into account the frequency of the filing obligations and FiberHawk's apparent repeated and intentional failure to meet those obligations. We note that if the Company fails to file the required data in the future in a timely manner, we may impose a larger per-violation forfeiture to account for continued noncompliance.<sup>47</sup>

14. The Database is a critical component in TCPA implementation. Callers face significant liability—both to government authorities and to private litigants—under the Telephone Consumer Protection Act for making calls to certain numbers without consent.<sup>48</sup> The Database provides a valuable tool to allow callers to avoid potential liability by determining whether a number has been discontinued. The Database depends on accurate and current information. FiberHawk's apparent failure to file timely information undermines the integrity of the Database and harms both callers and consumers. Every failure to file disconnection information makes the Database less reliable, and repeated failures to file compound the unreliability of the Database, which further harms consumers. FiberHawk's failure to submit any information to the Database Administrator over a period of ten months has diminished the accuracy and utility of the Database to provide callers with a tool by which they may avoid making unlawful and unwanted calls. Therefore, in light of that serious harm and the totality of the circumstances in this case, we propose to adjust the base forfeiture upward for each subsequent, intentional violation following direct warnings from the Database Administrator.<sup>49</sup>

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<sup>47</sup> The Commission has proposed significantly higher forfeitures (\$50,000 per violation) in cases involving failure to file Forms 499-Q and 499-A. See *ADMA Notice of Apparent Liability*, 24 FCC Rcd at 846-47, para. 17; *Globcom, Inc. d/b/a Globcom Global Communications, Notice of Apparent Liability*, 18 FCC Rcd 19893, 19905, paras. 31-32 (2003), *forfeiture issued*, Forfeiture Order, 21 FCC Rcd 4710 (2006).

<sup>48</sup> 47 U.S.C. § 227(b).

<sup>49</sup> See *Travel Club Marketing, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15831, 15835-37, paras. 12-15 (2011) (applying a \$4,500 base forfeiture for prerecorded advertising message violations and upwardly adjusting to the per-violation statutory maximum based on number of violations, intentionality, and deception), *forfeiture issued*, Forfeiture Order, 30 FCC Rcd 8861 (2015); *Scott Malcolm*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2476, 2481-82, paras. 11-12 (2014) (applying a \$4,500 base forfeiture for junk fax violation and upwardly adjusting to the per-violation statutory maximum based on number of violations, intentionality, and egregiousness), *forfeiture issued*, Forfeiture Order, 31 FCC Rcd 1652 (2016), *recons. denied*, 33 FCC Rcd 2410 (2018); *Fax.com, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15927, 15937-42, paras. 18-26 (2002) (applying a \$4,500 base forfeiture for junk fax violations and upwardly adjusting to the per-violation statutory maximum based on intentionality and “pervasive and egregious pattern of deception”), *forfeiture issued*, Forfeiture Order, 19 FCC Rcd 748 (2004); *Dynasty Mortgage, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 4921, 4933-34, paras. 32-33 (2005) (establishing a \$10,000 base forfeiture for National Do-Not-Call violations and upwardly adjusting to the per-violation statutory maximum based on misinformation and “wholly inadequate” procedures for preventing unlawful telemarketing), *forfeiture issued*, Forfeiture Order, 22 FCC Rcd 9453 (2007).



15. The Company apparently failed to file required information on December 15, 2021; January 15, 2022; February 15, 2022; March 15, 2022; April 15, 2022; May 15, 2022; June 15, 2022; July 15, 2022; August 15, 2022; and September 15, 2022. Accordingly, we propose a base forfeiture of \$3,000 for the first violation and a \$10,000 forfeiture for each of the nine subsequent violations, resulting in a total forfeiture of \$93,000 against FiberHawk.

#### IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>50</sup> and section 1.80 of the Commission's rules,<sup>51</sup> Swayzee Telephone Company, Inc. d/b/a Swayzee Communications Corp., FiberHawk is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ninety-three thousand dollars (\$93,000) for willful and repeated violations of section 64.1200(1)(2) of the Commission's rules<sup>52</sup> and the *Reassigned Numbers Database Order*.<sup>53</sup>

17. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>54</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Swayzee Telephone Company, Inc. d/b/a Swayzee Communications Corp., FiberHawk Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 20-21 below.

18. Swayzee Telephone Company, Inc. d/b/a Swayzee Communications Corp., FiberHawk shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal Communications Commission, at [lisa.ford@fcc.gov](mailto:lisa.ford@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission's Registration System (the Commission's FRN Management and Financial system).<sup>55</sup> The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>56</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or emailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated.<sup>57</sup> Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>58</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>50</sup> 47 U.S.C. § 503(b).

<sup>51</sup> 47 CFR § 1.80.

<sup>52</sup> 47 CFR § 64.1200(1)(2).

<sup>53</sup> *Reassigned Numbers Database Order*, 33 FCC Rcd 12024.

<sup>54</sup> 47 CFR § 1.80.

<sup>55</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>56</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by email at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>57</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>58</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

19. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>59</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by email, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

20. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.<sup>60</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Mary Romano at [mary.romano@fcc.gov](mailto:mary.romano@fcc.gov). If the petitioner claims that it has delegated reporting of number disconnection information to another entity, it must submit copies of any contracts describing the delegation with its written statement.

21. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>61</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we

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<sup>59</sup> See 47 CFR § 1.1914.

<sup>60</sup> 47 CFR §§ 1.16, 1.80(g)(3).

<sup>61</sup> 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>62</sup>

22. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Tim Miles, President, Swayzee Telephone Company, Inc. d/b/a Swayzee Communications Corp., FiberHawk, 214 S. Washington St., P.O. Box 97, Swayzee, Indiana 46986-0097.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Chief  
Enforcement Bureau

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<sup>62</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich Forfeiture Order*, 33 FCC Rcd 4663, 4678-79, paras. 44-45; *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).