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

In the Matter of	)	
	)	File No.: EB-FD-26-00040020
Torch Wireless	)	NAL/Acct. No.: 202632200004
	)	FRN: 0025827320

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 22, 2026 **Released: July 22, 2026**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $100,000 against Torch Wireless (Torch or Company) for apparently violating an order of the Federal Communications Commission (FCC or Commission) by failing to fully and timely respond to a Letter of Inquiry (LOI). The Commission's Enforcement Bureau (Bureau) is investigating Torch for potential violations of the Communications Act of 1934, as amended (Act), and the Commission's rules governing the Lifeline Program. The Commission is committed to preventing waste, fraud, and abuse in the Lifeline Program, a Universal Service Fund (USF) program that supports discounted voice and broadband services to low-income households. Telecommunications service providers, like Torch, that agree to accept Lifeline Program funding must comply with laws, rules and regulations designed to protect the integrity of the USF. Regulated entities subject to investigation, like Torch, must reply promptly and fully to Commission inquiries and provide all responsive information.

2. The Bureau sent Torch an LOI on March 11, 2026, seeking to determine whether Torch's practices complied with Lifeline program rules, including whether Torch received more Lifeline funds than it was entitled to receive. Torch has failed to provide a complete and timely response, taking steps that appear designed to delay or undermine the Bureau's investigation, including but not limited to failing to provide a sworn affidavit or statement under penalty of perjury as required by the LOI. Therefore, we propose a penalty of $100,000 for the apparent failures by Torch to comply with a Commission order.

II. BACKGROUND

A. Legal Framework

3. The Commission's authority to conduct investigations and to compel entities to provide information and documents sought during investigations is well-established.[1] Section 403 of the Act gives the Commission full authority to commence an investigation on its own motion and the "power to make and enforce any order or orders in the case" relating to the inquiry.[2] An LOI issued by the Bureau constitutes a Commission order directing the recipient to provide the specified information and documents, in the manner directed, within the stated response period.[3] The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations.[4] Total failure to respond is not required to find a violation; parties can violate Commission orders by providing incomplete responses to Bureau inquiries, including failure to provide a sworn statement.[5]

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[1] Section 403 of the Act grants the Commission both the authority to institute inquiries and "the power to make and enforce any order or orders" relating to its inquiries into compliance with the Act. 47 U.S.C. § 403. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 4(j) states that "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j). Section 0.111(a)(17) of the Commission's rules delegates this authority to the Bureau. 47 CFR § 0.111(a)(17) (granting the Enforcement Bureau the authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office."). Furthermore, section 416(c) of the Act provides, "[i]t shall be the duty of every person . . . to observe and comply with such orders so long as the same shall remain in effect." 47 U.S.C. § 416(c).

[2] 47 U.S.C. § 403.

[3] *See, e.g.*, *Neon Phone Serv., Inc., Notice of Apparent Liability for Forfeiture*, 32 FCC Rcd *7964,* at 7970, para. 16 (2017) (Neon) ("It is well established that a failure to respond to a Bureau LOI [letter of inquiry] constitutes a violation of a Commission Order."); *Technical Communication Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1019, para. 5 (2013) ("The LOI the Bureau directed to TCN served as a legal order of the Commission to produce the requested documents and information.").

[4] *See ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking,com; and Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020), *aff'd,* Memorandum and Order, 36 FCC Rcd 10688 (2021); *Aura Holdings of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018), *forfeiture order issued*, 34 FCC Rcd 2540 (2019); *Kenai Educational Media, Inc.*, 32 FCC Rcd. 6211, 6218 (2017); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing a $25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599-7600, paras. 23-28 (2002) (*SBC Forfeiture Order*) (forfeiture paid, *see IDT Corporation*, Notice of Apparent Liability for Forfeiture, FCC 08-165, para. 8, n. 34 (2008)); *Cellco Partnership D/B/A Verizon Wireless*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 7799, para. 13 (EB 2022) (*Cellco Partnership NAL*); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014), *recons. denied*, Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015).

[5] *See, e.g.*, *SBC Forfeiture Order*, *supra* note 4, at 7600, para. 28-29 (affirming and ordering a $100,000 forfeiture penalty for failing to submit a sworn written response); *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13686, paras. 16, 17 (EB 2007) (forfeiture proposed for, inter alia, failure to submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer with personal knowledge of the representation provided in the LOI response, verifying the truth and accuracy of the information submitted), *aff'd*, Forfeiture Order, 23 FCC Rcd 3969, 3972-73, paras. 8, 9 (EB 2008) (failure to file prompt sworn

B. Factual Background

4. Torch is a designated Eligible Telecommunications Carrier in both Wisconsin and Idaho.[6] Torch has a registered contact address in Tennessee.[7] Torch participates in the Lifeline program, with a website focused on offering Lifeline service.[8] Information from the Universal Service Administrative Company (USAC) indicates that USAC has paid a number of reimbursement claims for providing Lifeline services to subscribers associated with Torch.[9]

5. As part of an investigation into Torch's participation in the Lifeline program,[10] the Bureau sent Torch an LOI on March 11, 2026 to learn more about Torch's Lifeline practices and whether Torch is in compliance with the rules governing the Lifeline Program.[11] The LOI sought specific information and documents and included specific directions regarding how to interpret the requests, the format required for a response (including related sworn statements), and a due date for response.[12] The due date, originally April 10, 2026, was later extended to May 15, 2026.[13] The first page of the LOI's cover letter stated, in bold typeface, that "Failure to respond appropriately to this LOI constitutes a violation of the Act and the Commission's rules[,]" and provided a footnote citing extensive authority.[14]

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responses represents misconduct that "inhibits [the Commission's] ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission"); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7600-02, paras. 3, 5, 7 (EB 2008) (holding that a manufacturer of cellular and PCS boosters was apparently liable for violation of a Commission order when it failed to provide complete responses to the Bureau LOIs, including by failing to submit the required sworn statements).

[6] *See* information on file in EB-FD-26-00040020.

[7] *See* CORES registration, available at https://apps.fcc.gov/cores/searchDetail.do?frn=0025827320&csfrToken= (last visited July 21, 2026). The Tennessee Secretary of State's business search indicates that the company is called "Torch Wireless Inc" and indicates that the entity was formed in Wyoming. The Wyoming Secretary of States's business search indicates the company is called "Torch Wireless", which matches the CORES registration and all other formal instances of Torch's name.

[8] *See* https://torchwireless.com/ (last visited July 21, 2026). The website does not contain a section or sub-page dedicated to the history of the company or other information about its service area. It does, however, contain a note at the bottom of the page that "USA Phone (or Torch) and LinkUP Mobile are wholly owned subsidiaries of SurgePays, Inc. Wireless service is brought to you in partnership with LinkUP Mobile."

[9] *See* information on file in EB-FD-26-00040020.

[10] *See id.* Initiation of an investigation does not constitute an accusation of wrongdoing; it merely begins a fact-finding process to enable the Bureau to determine if any wrongdoing potentially occurred.

[11] *See* Letter of Inquiry from Jodi Schulz, Chief, Fraud Division, FCC Enforcement Bureau to Torch Wireless (March 11, 2026) (on file in EB-FD-26-00040020) (LOI).

[12] *See id.* at 1 (due date), 3-9 (requests for information), 9-11 (requests for documents), 11-14 (directions to the recipient regarding how to understand the requests and the format required for a response, including related sworn statements).

[13] *See* E-mail from Andrew Thorn, Attorney Advisor, FCC Enforcement Bureau, to Greg Taylor, Esq., & Neil Ende, Esq., Technology Law Group (April 15, 2026, 12:20 a.m.) (May 15 Deadline E-mail). The due date originally was "thirty (30) calendar days after the date of this [LOI,]" i.e., April 10, 2026. On April 13, 2026, having received neither a confirmation of receipt of the LOI nor any response to the LOI, the Bureau reached out to Torch to learn the status of the response and determine if it had retained legal counsel in this matter with whom the Bureau should coordinate. On April 15, 2026, the Bureau received email notice from counsel (Technology Law Group, LLC) that it had been retained by Torch, and asking the Bureau to forward counsel a copy of the LOI. *See* E-mail from Greg Taylor, Esq., Technology Law Group, to Andrew Thorn, et al., Attorney Advisor, FCC Enforcement Bureau (April 15, 2026, 8:26 a.m.). On the same day, the Bureau emailed Torch's counsel, attaching the LOI and directing Torch to provide the information and documents requested in the LOI 30 calendar days later. *See* May 15 Deadline E-mail. The LOI response due date was thus extended to May 15, 2026.

[14] *See* LOI at 1.

The LOI's "Filing Requirements" section included instructions for a sworn affidavit or declaration under penalty of perjury that is to accompany the response to the LOI, and delivery requirements for electronic materials, to be "produced in a format that allows the Commission to access and use [them] . . . ."[15]

6. On Friday, May 15, 2026, at 6:36 p.m.,[16] counsel for Torch sent the Bureau an email (LOI Response E-mail),[17] to which Torch attached a timely-filed PDF document styled as a narrative response (LOI Response) to the LOI's requests for information.[18] The LOI Response contained numerous objections that appeared to expressly limit the ability of the Bureau to rely on the PDF's contents,[19] and did not contain the required affidavit or declaration under penalty of perjury.[20] The LOI Response E-mail indicated that a link to a third-party file-share website would be provided in a separate email, through which the requested documents would be available for download, and requested confirmation of receipt (which the Bureau timely provided).[21] Torch did not provide a link at the time the LOI Response was provided or at any time thereafter.

7. On Monday, May 18, 2026, at 10:37 a.m. the Bureau sent an email to Torch's counsel.[22] The Bureau advised counsel it had not received the Company's file share link and: (1) instructed counsel to use a Bureau-approved file-share interface offered by the Bureau at no cost to Torch (or its counsel), which was set up by a specified Bureau IT specialist that same day; (2) sent the access link to the online file-share interface; (3) instructed counsel to upload the documents to the Bureau-approved file-share interface by noon the following day; and (4) requested counsel send a confirmation email once complete.[23] Counsel for Torch did not respond on May 18, 2026. Nor did counsel for Torch upload anything to the specified online file-share interface by noon the following day (May 19, 2026) or otherwise provide any timely confirmation email or request for further extension.

8. The next communication from counsel for Torch was on Monday, June 1, 2026, at 4:05 p.m., stating only that counsel was unable to get into the Bureau's offered file-sharing interface to upload, and seeking options.[24] Counsel for Torch confirmed later the same day that they had previously been able

[15] *See id.* at 11.

[16] All times recited in this NAL are in Eastern time.

[17] *See* E-mail from Neil S. Ende, Managing Partner, Technology Law Group, to Jodi Schulz, et al., Chief, Fraud Division, FCC Enforcement Bureau (May 15, 2026, 6:36 p.m.) (LOI Response E-mail).

[18] *See* Response to Letter of Inquiry, from Neil S. Ende, Esq., & Greg L. Taylor, Esq., Technology Law Group, Counsel for Torch Wireless, to Jodi Schulz, et al., Chief, Fraud Division, FCC Enforcement Bureau (May 15, 2026) (on file in EB-FD-26-00040020) (LOI Response). While Torch claimed that certain information requested by the Bureau was confidential, *see id.* at 3, Torch did not submit a proper request for confidentiality.

[19] Torch's "general objections" section began, "Nothing herein shall be construed as an admission by Torch Wireless regarding the competence, admissibility, or relevance of any fact, answer, or document, or as an admission of the truth or accuracy of any characterization or document of any kind sought by the Requests." *See id.* at 2.

[20] *See generally id.*

[21] *See* LOI Response E-mail.

[22] *See* E-mail from Aaron P. Gershbock, Investigative Counsel, Fraud Division, FCC Enforcement Bureau, to Neil S. Ende, et al., Managing Partner, Technology Law Group (May 18, 2026, 10:37 a.m.) (Fraud Division limited receipt E-mail).

[23] *See id.*

[24] *See* E-mail from Neil S. Ende, Managing Partner, Technology Law Group to Aaron P. Gershbock, et al., Investigative Counsel, Fraud Division, FCC Enforcement Bureau (June 1, 2026, 4:32 p.m.) (Ende response E-mail 1).

to access the Bureau's offered file-sharing interface, but were now having password troubles.[25] On June 1, 2026, at 4:35 p.m., the Bureau put counsel for Torch back in touch with the Bureau's IT specialist to provide further assistance.[26]

9. On June 3, 2026, at 9:20 a.m., the Bureau sent counsel for Torch an email directing Torch to upload the missing materials to the Bureau's specified file-share interface by close of business on June 9, 2026.[27] To date, Torch has not provided any supporting documentation responsive to the LOI.[28]

III. DISCUSSION

A. Torch Apparently Willfully and Repeatedly Violated a Commission Order by Failing to Respond to the LOI

10. We find that Torch apparently willfully and repeatedly violated a Commission order by failing to respond to the Bureau's LOI. It failed to upload any requested documents and failed to provide a sworn affidavit or statement under penalty of perjury as required by the LOI. In addition, its sole narrative response expressly limited the ability of the Bureau to rely on its contents. For the apparent violations at issue here, the Bureau proposes a total forfeiture of $100,000 under section 503(b)(1)(B) of the Act.[29]

11. Section 503(b)(1)(B) of the Act, in part, provides that a person who willfully or repeatedly fails to comply with a Commission rule or order shall be liable for a forfeiture penalty.[30] A Commission LOI is an "order" under section 503(b)(1)(B).[31] Accordingly, recipients that fail to respond or fail to provide a complete response to a Commission LOI may be subject to a monetary forfeiture penalty.[32] Indeed, the public interest implications of failing to respond are significant. The Commission has delegated authority to the Bureau to request information, and the failure to respond or provide a

[25] *See* E-mail from Neil S. Ende, Managing Partner, Technology Law Group to Aaron P. Gershbock, et al., Investigative Counsel, Fraud Division, FCC Enforcement Bureau (June 1, 2026, 4:32 p.m.) (Ende response E-mail 2).

[26] *See* information on file in EB-FD-26-00040020. The Bureau's IT specialist reached out the next morning (June 2, 2026), and thereafter began making every effort to assist counsel for Torch. *See id.*

[27] *See* E-mail from Jodi Schulz, Chief, Fraud Division, FCC Enforcement Bureau, to Neil S. Ende, et al., Managing Partner, Technology Law Group (June 3, 2026, 9:20 a.m.) (June 9 Deadline E-mail). Counsel for Torch responded, thus confirming receipt, and promised to continue efforts to work with the Burau's IT specialist "in a timely manner and in good faith." *See* E-mail from Neil S. Ende, Managing Partner, Technology Law Group to Jodi Schulz, et al., Chief, Fraud Division, FCC Enforcement Bureau (June 3, 2026, 12:12 p.m.). Counsel for Torch did not appear to have resolved his IT concerns when he ceased responding to the Bureau's IT specialist later that same day (June 3, 2026). *See* information on file in EB-FD-26-00040020.

[28] *Compare and contrast* LOI at 9-11 (requiring documents) with LOI Response at 5-10, 15, 18, 23, 25, 27, 28 (referencing exhibits provided, that were not included in the LOI Response). Per a footnote, the LOI Response specified that all exhibits were being uploaded to counsel's chosen third-party file-share website. *See* LOI Response at 5 n.3.

[29] 47 U.S.C. § 503(b)(1)(B).

[30] 47 U.S.C. § 503(b)(1)(B).

[31] *See, e.g.*, *Neon*, 32 FCC Rcd at 7970, para. 16 (2017) ("It is well established that a failure to respond to a Bureau LOI [letter of inquiry] constitutes a violation of a Commission Order."); *Technical Communication Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1019, para. 5 (2013) ("The LOI the Bureau directed to TCN served as a legal order of the Commission to produce the requested documents and information.").

[32] *See supra* para. 3.

complete response hinders the Bureau's ability to investigate and identify rule violations and waste, fraud and abuse in federal programs like the Lifeline Program.[33]

12. The Bureau issued the LOI to Torch on March 11, 2026, and provided an extension to May 15, 2026, thereby ensuring that Torch had adequate time to respond.[34] Nevertheless, Torch only provided a narrative response with objections designed to prevent reliance on its contents.[35] Torch also failed to provide a sworn affidavit or statement under penalty of perjury as required by the LOI, which the Commission has previously made clear is a significant omission.[36] Further, despite repeated efforts by the Bureau over several weeks to assist Torch in uploading its claimed responsive documents to an approved file-sharing website, no documents were ever produced.

13. Taken together, the conduct by Torch appears to be a willful, repeated evasion of Commission requirements. Torch's failure to provide the information required about its participation in the Lifeline Program has impeded the Bureau's ability to investigate whether Torch's practices comply with statutes, rules and regulations governing the Lifeline Program. Accordingly, we find that Torch apparently willfully and repeatedly violated a Commission order by failing to respond to the LOI with required documents and by not providing a sworn affidavit or statement under penalty of perjury.

B. Proposed Forfeiture

14. Section 503(b)(1)(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[.]"[37] Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against Torch, a common carrier,[38] of up to $251,322 for each day of a continuing violation and up to a statutory maximum of $2,513,215 for a single act or failure to act.[39] 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."[40] 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.[41] 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.[42] The Commission or staff also may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of

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[33] *See supra* para. 3.

[34] *See supra* note 13.

[35] *See* LOI Response at 2-4.

[36] *See id.* at 4 (specifically objecting to the "Affidavit Requirement" as beyond the scope of the Commission's authority in the context of an LOI). *But see SBC Forfeiture Order*, *supra* note 4, at 7591, para. 5 (reciting and rejecting similar arguments), 7592-95, paras. 6-12 (explaining the Commission's authority).

[37] 47 U.S.C. § 503(b)(1)(B).

[38] Information on file in EB-FD-26-00040020 (noting that the Company is an Eligible Telecommunications Carrier in two jurisdictions).

[39] *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 25-5, 40 FCC Rcd 25 (EB 2025); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 90 Fed. Reg. 3710 (Jan. 15, 2025) (setting January 15, 2025 as the effective date for the increases).

[40] 47 U.S.C. § 503(b)(2)(E).

[41] 47 CFR § 1.80(b)(11), Table 1 to paragraph (b)(11).

[42] *Id.*, Tbl. 3 to paragraph (b)(11).

overall compliance, or an inability to pay.[43] The forfeiture guidelines listed in section 1.80 of the Commission's rules specifically "are intended as a guide for frequently recurring violations" and not "a complete or exhaustive list of violations."[44]

15. Section 1.80(b) of the Commission's rules sets a base forfeiture of $4,000 for a party's failure to respond to Commission communications[45] for each violation or each day of a continuing violation.[46] We have discretion, however, to depart from these guidelines, considering the particular facts of each individual case.[47]

16. While Section 1.80 of the Rules specifies a base forfeiture of $4,000 for a party's failure to respond to Commission communications or each day of a continuing violation,[48] the Commission and Bureau have upwardly adjusted this forfeiture in individual cases based on one or more of the upward adjustment factors—including $25,000 or more in cases involving a target's failure to respond to Bureau LOIs.[49] In addition, while Section 1.80 of the Rules specifies a base forfeiture of $3,000 for a party's failure to file required information,[50] the Commission has upwardly adjusted this forfeiture to $100,000

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[43] 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10).

[44] *See Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (*1997 Forfeiture Guidelines*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[45] 47 CFR § 1.80, Table 1 to Paragraph (b)(11).

[46] *Id*. § 1.80(b).

[47] *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, 17098-99, para. 22 (1997) (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") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[48] 47 CFR § 1.80.

[49] *GPSPS, Inc.,* Forfeiture Order, 30 FCC Rcd 7814, para. 2 (2015) (affirming the forfeiture proposed in the Notice of Apparent Liability for Forfeiture) (*GPSPS Forfeiture Order*); *GPSPS, Inc.,* Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2533, para. 28 (2015) (proposing a $25,000 forfeiture for failure to respond to an LOI) (forfeiture paid) (*GPSPS NAL)*; *Net One International, Net One, LLC, Farrahtel International, LLC,* Forfeiture Order, 29 FCC Rcd 264, para. 1 (EB 2014) (assessing the monetary forfeiture proposed in the Notice of Apparent Liability for Forfeiture) (*Net One Forfeiture Order*); *Net One International, Net One, LLC, Farrahtel International, LLC,* Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16493, 16496, para. 8 (EB 2011) (proposing a $25,000 forfeiture for failure to respond to an LOI) (*Net One NAL*). After Net One chose to not pay the Net One NAL, the Department of Justice sought to enforce the order and ultimately secured a default judgement entered by the Middle District Court of Florida in case 6:18-cv-01346, docket no. 30 (March 17, 2021). *See also* Quadrant Holdings LLC, Q Link Wireless LLC, and Hello Mobile LLC, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 9304, 9308-9309, paras. 14-17 (EB 2022) (*Q-Link NAL*) (assessing a $100,000 penalty for failure to respond, where the misconduct was intentional, egregious, and Q Link had a high ability to pay). More recent NALs, in matters still pending forfeiture orders, payment, and/or court-enforcement of an FCC-issued forfeiture order, propose higher penalties for failure to respond to an LOI consistent with the forfeiture amount in the Q-Link NAL. *See Tone Commc'n Servs.*, Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding, 39 FCC Rcd 843, 876 (2024) (proposing $100K per failure to respond in a case involving a common carrier); *City Commc'n, Inc.*, Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding, 39 FCC Rcd 801, 834 (2024) (same); *Eken Group Limited*, Notice of Apparent Liability for Forfeiture, 39 FCC Rcd 12990, 13011, para. 53 & n. 123, 13011-13012 (2024) (collecting authorities supporting that failure to respond to a Commission order is a continuing violation until cured, then then proposing $4,000 per day for each of 151 days, and finally reducing that $604,000 figure down to the statutory maximum for non-common carriers).

[50] 47 CFR § 1.80.

based on the upward adjustment factors in a case involving failure to provide a sworn statement.[51] In each case, the orders have emphasized the impact on the Commission's ability to carry out its duties as a result of the failures.[52]

17. The Bureau proposes a forfeiture for failing to respond timely, adequately, and completely to the Bureau's LOI, specifically for Torch's narrative response that expressly limited the ability of the Bureau to rely on its contents and Torch's failure to upload documents responsive to the LOI.[53] The Bureau also proposes to impose a second forfeiture for Torch's failure to include sworn affidavits or declarations.[54] In addition, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment is warranted because the apparent violations were intentional and the misconduct was egregious. Torch's apparently willful, repeated decisions appear calculated to delay and interfere with the Bureau's investigation and caused the Bureau to expend additional resources. Torch's delays and withholding of documentation have hindered the Bureau's ability to complete its investigation. Torch's actions therefore appear intentional and egregious,[55] leading the Bureau to propose an upward adjustment from $4,000 for a party's failure to respond to Commission communications to $50,000, and from $3,000 for a party's failure to file required information to $50,000.[56] Accordingly, we propose a total forfeiture of $100,000.

18. Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of $100,000 for which Torch is apparently liable.[57] The egregiousness and intentional nature of Torch's misconduct, considered in conjunction with the deterrent effect of the proposed forfeiture, dictate that Torch be held liable for an amount significantly higher than the base forfeiture set for the relevant conduct.[58]

IV. CONCLUSION

19. We have determined that Torch apparently willfully and repeatedly violated an agency order. As such, Torch is apparently liable for a forfeiture of $100,000.

[51] *See SBC Forfeiture Order*, *supra* note 4, at 7600, para. 28-29 (affirming and ordering a $100,000 forfeiture penalty for failing to submit a sworn written response).

[52] *See Cellco Partnership NAL, supra* note 4, at 7806-7807, para 25.

[53] *See, e.g., Q-Link NAL, supra* note 49, at 9308-9309, paras. 14-17.

[54] *See supra* note 5.

[55] *See supra* notes 39, 42, and 53.

[56] This amount is in the middle of the range of prior forfeitures the Bureau proposed to address the failure of an entity to respond properly to an LOI. *See supra* note 49. This amount is less than the $100,000 sometimes sought for failure to include sworn affidavits or declarations. *See supra* note 5. In *SBC*, the Commission based its upward forfeiture to $100,000 on the conduct being intentional, egregious, and SBC's ability to pay. *See SBC Forfeiture Order*, *supra* note 4, 17 FCC Rcd at 7600, para. 28. While Torch's behavior is egregious and intentional, the Bureau presently has no evidence that Torch would not be deterred by a forfeiture of this amount in light of Torch's ability to pay, and thus does not anticipate the need to upward adjust as much to ensure the desired deterrent effect.

[57] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[58] *See Q-Link NAL, supra* note 49, at 9309, para. 17.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Torch Wireless is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred thousand dollars ($100,000) for violating a Commission order issued under sections 4(i), (j), and 403 of the Act.

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Torch Wireless **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 paragraph 24 below.

22. In order for Torch Wireless to pay the proposed forfeiture, Torch Wireless shall notify frauddivision@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Torch Wireless shall send electronic notification of payment to frauddivision@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[59]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[60] or printed CORES form[61] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).[62] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using 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 NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 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.

[59] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

[60] FCC Form 159 is accessible at https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159.

[61] Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at https://apps.fcc.gov/cores/userLogin.do.

[62] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.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 NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 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.

23. 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.[63] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. 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.[64] 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 – Fraud Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to frauddivision@fcc.gov.

25. 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.[65] 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 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.[66]

[63] *See* 47 CFR § 1.1914.

[64] *Id.* §§ 1.16, 1.80(g)(3).

[65] 47 U.S.C. § 503(b)(2)(E).

[66] *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, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

26. **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 counsel for Torch, Technology Law Group, 5335 Wisconsin Avenue, NW, Suite 440, Washington, DC 20015. A courtesy copy will be sent to counsel for Torch Wireless via email at nende@tlgdc.com and gtaylor@tlgdc.com.

FEDERAL COMMUNICATIONS COMMISSION

Patrick Webre
Chief
Enforcement Bureau