

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

In the Matter of)
John M. Burkman)
Jacob Alexander Wohl)
J.M. Burkman & Associates LLC)
File No.: EB-TCD-21-00032652
NAL Act. No.: 202132170001
FRN: 0031299985
FRN: 0031300023
FRN: 0031300064

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 23, 2021

Released: August 24, 2021

By the Commission: Acting Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. The Commission proposes a forfeiture of \$5,134,500 against John M. Burkman ("Burkman"), Jacob Alexander Wohl ("Wohl"), and J.M. Burkman & Associates LLC ("Burkman & Associates" or the "Company"), for apparently making 1,141 unlawful robocalls to wireless numbers without subscribers' prior express consent, absent an emergency purpose, in violation of the Telephone Consumer Protection Act (TCPA), as codified in section 227(b) of the Communications Act of 1934, as amended ("Communications Act" or "Act"), and section 64.1200(a)(1)(iii) of the Commission's rules.

II. BACKGROUND

2. Legal Framework. The TCPA and the Commission's implementing rules prohibit prerecorded voice calls to wireless telephone numbers without subscribers' prior express consent—unless made for an emergency purpose. This prohibition applies regardless of the content of prerecorded messages placed to wireless numbers. Under the TRACED Act, the Commission may issue a Notice of Apparent Liability for Forfeiture for violations of Section 227(b) of the Act without first issuing a citation, and we do so here.

1 John M. Burkman also uses the names Jack Burkman, John Macauley Burkman Jr., and John Burkman.
2 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.
3 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii). See also Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (invalidating the debt collection exception in 47 U.S.C. § 227(b)(1)(A)(iii)). The Commission has granted exemptions to the prior-express-consent requirement, relying on the exemption authority Congress provided in 47 U.S.C. § (b)(2)(C). See, e.g., 47 U.S.C. § 227(b)(2)(C); 47 CFR § 64.1200(a)(9). None of those narrow exemptions is applicable to the apparent facts set forth in this NAL.
4 47 U.S.C. § 227(b)(4); Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274, Sec. 3(a) (2019) (TRACED Act).

3. *Factual Background.* Burkman and Wohl are lobbyists and political consultants based in Arlington, Virginia.⁵ Burkman also owns Burkman & Associates, which is a lobbying firm registered in the state of Virginia. Together, they use the name “Project-1599” for political activities.⁶

4. On September 15, 2020, the Commission was alerted that thousands of prerecorded voice message calls were apparently placed by Burkman and Wohl.⁷ In addition, the Commission received multiple complaints about the calls.⁸ Enforcement Bureau (Bureau) staff traced several complaints to a list of calls from Burkman, Wohl, and Burkman & Associates on August 26, and September 14, 2020.⁹ Bureau staff then contacted those consumers. The recorded messages told potential voters that if they voted by mail, their “personal information will be part of a public database that will be used by police departments to track down old warrants and be used by credit card companies to collect outstanding debts.”¹⁰ The Bureau, in cooperation with the Ohio State Attorney General’s Office, identified two dialing service providers that had placed the suspected illegal robocalls. Subpoena responses from the dialing service providers (a) confirmed the existence of the robocalling campaign and (b) identified Burkman and Wohl as the customers who hired the providers to place the calls.¹¹ The subpoena responses also provided call detail records for every call that the providers placed on behalf of Burkman and Wohl.¹² Bureau staff listened to samples of the calls to determine that they were prerecorded. Those subpoena responses further produced records of email exchanges between Burkman and Wohl and the

⁵ J.M. Burkman and Associates website landing page, <https://burkmanassociates.com> (last visited Apr. 23, 2021) (“Burkman & Associates has been providing registered lobbying services for business, special interest groups and high net worth individuals since 2002.”).

⁶ “Project-1599” is not a legal entity, but rather a branding name used to describe the activities of Burkman, Wohl, and Burkman & Associates. The Commission could not find any records of any legally recognized corporation, partnership, or any other organizational entity bearing the name “Project-1599.” As such, the Commission concludes that “Project-1599” is apparently a moniker for the activities of Wohl and Burkman, as individuals, and the activities of Burkman carried out through his solely controlled company, J.M. Burkman & Associates LLC.

⁷ This information originated from The Lawyers’ Committee For Civil Rights Under Law (Lawyers’ Committee). See Email from David Brody (on file in EB-TCD-20-0031601). The Lawyers’ Committee a nonprofit organization whose principal mission is to, “secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.” Lawyers’ Committee, *Mission*, <https://lawyerscommittee.org/mission> (last visited July 1, 2021).

⁸ See Complaint #4182753; Complaint #4183268 (on File No. EB-TCD-20-00031601).

⁹ 788 wireless calls were made on August 26, 2020, and 353 wireless calls were placed on September 14, 2020, for a total of 1,141 calls to wireless numbers. See Call Detail Records (on file in EB-TCD-20-0031601).

¹⁰ See Call Transcripts (on file No. EB-TCD-20-00031601). The full recording stated: “Hi, this is Tamika Taylor from Project 1599, the civil rights organization founded by Jack Burkman and Jacob Wohl. Mail-in voting sounds great, but did you know that if you vote by mail, your personal information will be part of a public database that will be used by police departments to track down old warrants and be used by credit card companies to collect outstanding debts? The CDC is even pushing to use records for mail-in voting to track people for mandatory vaccines. Don’t be finessed into giving your private information to the man, stay safe and beware of vote by mail.” *Id.* While we provide details of the transcript for purposes of the Background, we reiterate that the content of the calls is not relevant to our determination under the TCPA and the Commission’s rules. See *supra* para. 2; see also *Kenneth Moser dba Marketing Support Systems*, Forfeiture Order, 35 FCC Rcd 13415, 13432, paras. 37-38 (2020) (*Moser Forfeiture Order*) (rejecting assertion, in the illegal spoofing context, that the Commission’s action was based on the content of the prerecorded message”).

¹¹ See { } Subpoena Response, Mar. 5, 2021 (on File No. EB-TCD-20-00031601); { } Subpoena Response to Ohio Attorney General’s Office (on File No. EB-TCD-20-00031601). Material set off by double brackets { [] } is confidential and is redacted from the public version of this document.

¹² See Call Detail Records (on File No. EB-TCD-20-00031601).

dialing service providers. The emails discussed the voice messages, which zip codes to call, pricing, and other matters related to the robocalling campaign.¹³

5. Bureau staff analyzed the call detail records using an industry-standard commercially available software and database of known assigned and ported wireless numbers to determine whether any of the robocalls went to wireless phones.¹⁴ The Bureau determined that 1,141 calls were made to mobile telephones. Bureau staff attempted to contact each of the consumers assigned to the wireless phone numbers to confirm that they were assigned the numbers during the relevant time period, and determine whether the consumer had consented to receive the calls.¹⁵ Although many of the mobile phone customers declined to speak with Bureau staff, the two consumers who were willing to provide information stated that they had not given consent to the calls, and had not heard of Burkman, Wohl, or Burkman & Associates prior to receiving the robocalls.¹⁶ None of the consumers that the Bureau contacted stated that they consented to the calls.

III. DISCUSSION

6. We find that Burkman, Wohl, and Burkman & Associates apparently violated section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Commission's rules by placing 1,141 prerecorded calls to wireless phones without prior consent or an emergency purpose.¹⁷

7. *Burkman, Wohl, and Burkman & Associates apparently made the calls.* The Commission has found that an entity may be the maker of a call if it was "so involved in the placing of a specific telephone call" as to be deemed to have initiated it.¹⁸ We look to the "totality of the facts and circumstances surrounding the placing of a particular call to determine: 1) who took the steps necessary to physically place the call; and 2) whether another person or entity was so involved in placing the call as to be deemed to have initiated it, considering the goals and purposes of the TCPA."¹⁹

8. The evidence supports finding that Burkman, Wohl, and Burkman & Associates made the calls. First, the voice messages identified Burkman and Wohl by name,²⁰ and Burkman's personal wireless phone number was listed as the calling party on the recipients' caller ID.²¹ The Bureau subpoenaed phone records for this number and confirmed that Burkman is assigned this wireless phone number.²² Second, Burkman and Wohl have admitted, under oath, their involvement in the creation and

¹³ See Email Records (on file in EB-TCD-20-0031601).

¹⁴ See Interactive Marketing Solutions, *EasyID*, <https://www.ims-dm.com/mvc/page/easyid/> (last visited Dec. 13, 2020). EasyID is Interactive Marketing Solution's software that allows clients to eliminate wireless numbers from calling lists. *Id.* Interactive Marketing Solutions, Inc. is a member of the Direct Marketing Association and describes itself as "the country's largest single-source supplier" of data identifying telephone numbers that have been assigned or ported to wireless devices, "to help businesses comply with state and federal legislation." Interactive Marketing Solution, *Do Not Contact List Solutions*, <https://www.ims-dm.com/mvc/index.php> (last visited May 3, 2020).

¹⁵ See {{ }} Decl., Apr. 26, 2021 (on file No. EB-TCD-20-00031601).

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 227(b); 47 C.F.R. § 64.1200(a)(1)(iii).

¹⁸ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7980, paras. 29-30 (2015).

¹⁹ *Id.* at 7980, para. 30.

²⁰ See Call Transcript (on file in EB-TCD-20-0031601).

²¹ Complaint #4065727 (Aug. 26, 2020).

²² See Burkman's Wireless Number Subpoena Response (on file in EB-TCD-20-0031601).

distribution of the robocalls.²³ Third, both dialing platforms provided service agreements signed by Burkman that listed his residential address and personal cell phone number.²⁴ Fourth, email exchanges between or among Wohl, Burkman and a sales agent for one of the dialing platforms discuss customizing the robocall campaign and pricing.²⁵ In one email, Burkman directed the dialing platform to use his personal cellphone as the number listed on the recordings as a call back number.²⁶ Burkman also provided the dialing platform with a list of eight zip codes that he directed the dialing platform to target with the robocalls.²⁷ Ultimately, Burkman agreed on a price and paid one of the dialing platform using a MasterCard issued in his name.²⁸ Burkman & Associates paid the second dialing platform with a company-issued check.²⁹

9. Thus, looking at the totality of the facts and circumstances surrounding the making of the apparently unlawful robocalls, and considering the goals and purposes of the TCPA, Burkman, Wohl, and Burkman & Associates apparently were integral to the robocalling campaign and were so involved in placing the calls as to be deemed to have initiated them.

10. *The prerecorded messages apparently were made to mobile phones without consumers' consent.* The dialing service providers provided call records that identified both landline and wireless phone calls placed on Burkman and Wohl's behalf.³⁰ The dialing service providers also provided copies of the recordings that they were hired to play with each call. The Commission's analysis shows that Burkman and Wohl placed 1,141 robocalls to wireless phone numbers on August 26 and September 14, 2020.³¹ The Commission's investigation further shows that the consumers assigned to the mobile phone numbers did not consent to the calls. The consumers that the Commission was able to reach confirmed that they were assigned the wireless phone numbers during the relevant time period, and that they did not give permission to Burkman, Wohl, Burkman & Associates, or the dialing platforms to make the robocalls.³² The Commission also received complaints about the calls. In these complaints, consumers expressed outrage at receiving the unsolicited robocalls.³³ These complaints further indicate that

²³ "The Court: My question was whether you, acting alone or with anyone else, prepared that message and caused it to be sent? Mr. Burkman: Oh, yes, your Honor, yes. That is our call, yes, yes." *National Coalition on Black Civic Participation et al v. Wohl et al*, (No. 1:2020cv08668 - Document 53 at 12) (S.D.N.Y. 2020); "The Court: Mr. Wohl, you indicated that you echo all of what Mr. Burkman said. Does that include acknowledgement that you participated in the preparation of the content of the message and its communication to plaintiffs through the entity in California? Mr. Wohl: Yes, Your Honor, as to Mr. Burkman's specific representation, yes, yes." *Id.* at 15.

²⁴ See Service Agreements (on file in EB-TCD-20-0031601).

²⁵ Gravis Subpoena Response, Mar. 5, 2021 (on File No. EB-TCD-20-00031601).

²⁶ See Email Records. Email from jackburkman2016@gmail.com (Sept. 10, 2020 at 1:05 PM) ("Let's launch Monday Sep 14, 2020. heres [sic] the tape we want to go out.") The email address jackburkman2016@gmail.com is the same address that Burkman has used on recent lobbying disclosure filings for J.M Burkman & Associates. See LD-2 Lobbying Disclosure Form for J.M. Burkman & Associates (Apr. 19, 2021) (digitally signed by Jack Burkman) (on file in EB-TCD-20-0031601).

²⁷ *Id.*

²⁸ See Credit Card Statement (on file in EB-TCD-20-0031601).

²⁹ See Check Scanned Copy (on file in No. EB-TCD-20-00031601).

³⁰ See Call Detail Records (on file in EB-TCD-20-0031601).

³¹ *Id.*

³² See {{ }} Decl. (on file in No. EB-TCD-20-00031601).

³³ Complaint# 4189140 (on File No. EB-TCD-20-00031601).

Burkman, Wohl, and Burkman & Associates had not obtained prior express consent to place their apparently illegal robocalls.³⁴

11. We therefore conclude that Burkman, Wohl, and Burkman & Associates apparently willfully or repeatedly violated section 227(b)(1)(A)(iii) of the Act and section 64.1200(a)(1)(iii) of the Commission's rules by making 1,141 calls to wireless phone numbers without consumers' prior express consent.

IV. PROPOSED FORFEITURE

12. We propose a forfeiture in the amount of \$5,134,500. We propose a forfeiture of \$4,500 for each apparently unlawful robocall that was placed to a wireless number. The Commission found that Burkman, Wohl, and Burkman & Associates apparently placed 1,141 apparently unlawful prerecorded voice message calls to wireless numbers yielding a total proposed forfeiture of \$5,134,500.

13. 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."³⁵ Section 503(b)(2)(D) authorizes the Commission to assess a forfeiture of up to \$20,731 for each violation.³⁶ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.³⁷

14. In determining the proposed forfeiture amount, we consider prior decisions involving unlawful, unsolicited prerecorded voice message calls.³⁸ The Commission has on multiple occasions used a base forfeiture of \$4,500 for violations of section 227(b).³⁹ We find those cases analogous and propose to follow them here. Although most of the previous decisions involved a smaller number of calls than the

³⁴ If Burkman, Wohl, or Burkman & Associates contend that they previously obtained the called parties' express consent to call their wireless phones, then Burkman, Wohl, and Burkman & Associates bear the burden of proof to show that they obtained such consent. See *Dialing Services LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6200, para. 23 (2017); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 23 FCC Rcd 559, 565, para. 10 (2008) (concluding that "[s]hould a question arise as to whether express consent was provided, the burden will be on [the caller] to show it obtained the necessary prior express consent").

³⁵ 47 U.S.C. § 503(b).

³⁶ See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(9). See also *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 35 FCC Rcd 14879 (EB 2020) (adjusting amounts for inflation).

³⁷ 47 CFR § 1.80(b)(10), Note to paragraph (b)(10).

³⁸ Section 1.80 of the Commission's rules provides base forfeitures for various types of violations, but does not include a base forfeiture for violations of section 227(b) of the Act. See 47 CFR § 1.80(b)(10), Note to paragraph (b)(10).

³⁹ See e.g., *In the Matter of 1 Home Lending Corp.*, Notice of Apparent Liability, 21 FCC Rcd 11852 (2006) (proposing a forfeiture of \$18,000 for four apparent violations of the TCPA (\$4,500 per call)); *In the Matter of 1 Home Lending Corp.*, Forfeiture Order, 24 FCC Rcd 2888 (2009) (imposing proposed forfeiture); *In the Matter of Security First of Alabama*, Notice of Apparent Liability, 26 FCC Rcd 6490 (2011) (proposing a range of \$4500 to \$10,000 per unlawful call, depending on the egregiousness, for a total of \$342,000 for a total of 43 unlawful calls); *In the Matter of Security First of Alabama* Forfeiture Order, 30 FCC Rcd 2377 (2015) (imposing proposed forfeiture); *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd. 23648, 23652 (2004); *Warrior Custom Golf, Inc.*, Order Adopting Consent Decree, 21 FCC Rcd 6461 (2006) (company paid proposed forfeiture). See also, *Travel Club Marketing, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15831, 15835-36 (2011), (recognizing that the Commission had historically imposed a \$4,500 base forfeiture per violation, and proposing an upward adjustment to impose the statutory maximum of \$16,000 per call, for a total forfeiture of \$2,960,000); *Travel Club Marketing, Inc.*, Forfeiture Order, 30 FCC Rcd 8861 (2015) (imposing proposed forfeiture).

number of apparently unlawful calls that Burkman and Wohl made, we do not think this is a basis to deviate from the precedent, for several reasons. First, the Commission gave no indication that it would have taken a different approach for larger-scale robocalling schemes. Second, the Commission began imposing \$4,500 per call forfeitures for unlawful robocalls at least as early as 2006. The Commission noted, in 2006, that the maximum allowable forfeiture at that time was \$11,000.⁴⁰ In comparison, the maximum allowable forfeiture is now \$20,731 per unlawful call. Thus, when taking into account inflation, we find that \$4,500 per unlawful call is appropriate notwithstanding the larger volume of calls at issue. Third, the Commission in some instances imposed more than \$4,500 per call for section 227(b) violations.⁴¹ Our proposed forfeiture is thus consistent with precedent, and Burkman, Wohl, and Burkman & Associates had ample notice unlawful calls would be met with serious consequences.

15. Each case is unique, and we must use our discretion in proposing an appropriate penalty to meet the specific circumstances.⁴² The Commission's most recent enforcement actions against unlawful spoofed calls imposed forfeitures of \$1,000 per call, often upwardly adjusted to reflect the egregious circumstances.⁴³ However, those cases all involved violations of the Truth in Caller ID Act, rather than the TCPA. More significantly, those cases involved thousands, millions, or even a billion calls.⁴⁴ While the Truth in Caller ID Act decisions might offer guidance in addressing large-scale robocalling violations in the future, we find that this is not such a case. We find instead that our prior decisions regarding unlawful robocalls offer an appropriate approach in this instance. Thus, we propose a forfeiture of \$5,134,500 (\$4,500 times 1,141 calls) for which we propose to find Burkman, Wohl, and Burkman & Associates jointly and severally liable.

⁴⁰ *Warrior Golf Club Inc.*, Notice of Apparent Liability, 19 FCC Rcd at 23651.

⁴¹ For example, in *Travel Club Marketing*, the Commission imposed a forfeiture of \$16,000 per call, for a total of \$2,960,000 for 185 unlawful calls. *See Travel Club Marketing*, Forfeiture Order, 30 FCC Rcd 8861 (2015). *See also Security First of Alabama*, Notice of Apparent Liability, 26 FCC Rcd 6490 (proposing a range on \$4,500 to \$10,000 per call, which the Commission subsequently imposed); *Warrior Custom Golf*, Notice of Apparent Liability, 19 FCC Rcd at 23652 (proposing \$4,500 for 3 calls and \$10,000 for one call). The company paid the full amount proposed in the Notice of Apparent Liability. *See Warrior Custom Golf*, Order Adopting Consent Decree, 21 FCC Rcd 6461, 6466 (2006). The Commission's decision to impose a per-call forfeiture of more than \$4,500 depended on the specific circumstances of the case. Generally, the higher amount reflected that the calling party persisted in making unlawful calls after repeated requests to stop.

⁴² *See RKO General, Inc. v. FCC*, 670 F.2d 215, 237 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982) (citing *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 463 (D.C. Cir. 1980) ("We have made it clear in earlier cases that 'the choice of remedies and sanctions is a matter wherein the Commission has broad discretion.'")).

⁴³ *See e.g., In the Matter of Adrian Abramovich Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663 (2018) (assessing a \$1,000 fine per violation for a total forfeiture of \$120,000,000.); *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC, et al.*, Forfeiture Order, FCC 21-35, 2021 WL 1056077 (Mar. 18, 2021) (Spiller Forfeiture Order).

⁴⁴ The smallest of those spoofed caller ID cases involved nearly 5,000 calls, and the Commission imposed a forfeiture of \$9,918,000. *In the Matter of Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 729, para. 55 (2021). All of the other spoofing cases ranged from tens of thousands of calls to more than a billion calls. *Moser Forfeiture Order*, 35 FCC Rcd at 13432-33, para. 39 (imposing a \$1,000 base forfeiture to 5,713 spoofed calls and an upward adjustment of 75% for a total forfeiture of \$9,997,750); Spiller Forfeiture Order (assessing the largest forfeiture in FCC history, \$225,000,000 for placing more than one billion spoofed calls).

V. WE PROPOSE TO HOLD BURKMAN, WOHL, AND BURKMAN & ASSOCIATES, INDIVIDUALLY AND COLLECTIVELY LIABLE FOR THE PROPOSED FORFEITURE.

16. We propose to hold Burkman, Wohl, and Burkman & Associates individually and collectively liable for making the apparently illegal calls. The evidence shows that all three were jointly and severally involved in making the robocalls at issue.

17. We propose to hold Burkman personally liable for the apparently illegal robocalls. Burkman used his personal credit card to pay for most of the robocalls.⁴⁵ Burkman stated in sworn testimony before a court that he prepared the messages and caused them to be sent.⁴⁶ Email exchanges with the dialing services providers further reflect that Burkman had a key role in deciding the content of the messages and the area codes to which the calls would be sent.⁴⁷ Burkman's personal wireless phone number was listed as the calling party on the recipients' caller ID. The recorded messages also identified Burkman and Wohl by name.

18. We propose to hold Wohl personally liable for the apparently illegal robocalls. Wohl publicly claims to be a co-founder of "Project-1599," which is the moniker given to the robocalling campaign.⁴⁸ There is evidence that Wohl also played a key role in determining who would receive the robocalls.⁴⁹ Wohl testified in court that he participated in the preparation of the content of the message and its transmission to the called parties.⁵⁰ And, as noted, the recorded messages also identified Burkman and Wohl by name.⁵¹ The record thus indicates that Wohl actively developed and participated in making the robocalls.

19. We propose to hold Burkman & Associates liable for the apparently illegal robocalls. Burkman & Associates paid for the dialing services that placed the robocalls. The Company made at least one of the payments to the dialing service providers.⁵² In fact, there does not appear to be a distinction between Burkman & Associates and Burkman. Burkman used funds from the Burkman & Associates bank account to pay for personal expenses.⁵³ Accordingly, we find that Burkman & Associates is apparently jointly and severally liable, along with Burkman and Wohl, for the proposed forfeiture of \$5,134,500.

20. We find that evidence also supports piercing the corporate veil, to the extent it is necessary to find Burkman personally liable. Under federal common law, piercing the corporate veil is appropriate under an alter-ego theory where, as here, (1) there is a unity of interest and ownership such that "the personalities and assets of the corporation and the individuals are indistinct[.]" and (2)

⁴⁵ See Payment Invoice (on file in No. EB-TCD-20-00031601).

⁴⁶ See Preliminary Examination at 65, *People of the State of Michigan v. John Macauley Burkman* (No. 20-060911), (2020).

⁴⁷ See Email Records (on file in EB-TCD-20-0031601).

⁴⁸ The recordings themselves refer to Project-1599 as "the civil rights organization founded by Jack Burkman and Jacob Wohl." See Robocall Audio File (on file in No. EB-TCD-20-00031601).

⁴⁹ See Preliminary Examination at 60, *People of the State of Michigan v. John Macauley Burkman* (No. 20-060911), (36th Dist. Oct. 29, 2020).

⁵⁰ See *id.*

⁵¹ See Call Transcripts.

⁵² See Check Scanned Copy (on file in No. EB-TCD-20-00031601).

⁵³ See Bank Records (on file in No. EB-TCD-20-00031601) (apparently using Burkman & Associates business accounts to pay for pet supplies, luxury spa treatments, and for Burkman's personal criminal defense attorneys)

“adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.”⁵⁴

21. Here, the firm’s headquarters are the same as Burkman’s residence, and Burkman is the sole officer, shareholder, and registered agent for the firm.⁵⁵ Burkman appears to exercise complete control over Burkman and Associates, and publicly represents that he is the founder of Burkman and Associates.⁵⁶ Additionally, given Burkman’s apparent total control over the Company and his role in the robocall campaign at issue in this case, we find that allowing Burkman to use the Company as a shield from liability would promote injustice and allow him to evade his legal obligations.⁵⁷

VI. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act⁵⁸ and section 1.80(b) of the Commission’s rules,⁵⁹ John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman and Associates are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five million one hundred thirty-four thousand five hundred dollars (\$5,134,500), for willful and repeated violations of section 227(b)(1)(A)(iii) of the Act⁶⁰ and Section 64.1200(a)(1)(iii) of the Commission’s rules.⁶¹

23. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s rules,⁶² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, that Project-1599 **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 26 below.

24. Project-1599 shall send electronic notification of payment to Lisa Williford, Enforcement Bureau, Federal Communications Commission, at Lisa.Williford@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit

⁵⁴ *N.L.R.B. v. West Dixie Enterprises, Inc.*, 190 F.3d 1191, 1194 (11th Cir. 1999) (quoting *White Oak Coal Co.*, 318 N.L.R.B. 732, 735 (1995), *enfd.*, 81 F.3d 150 (4th Cir. 1996)).

⁵⁵ J.M. Burkman & Associates, LLC, Articles of Organization, Virginia State Corporations Commission (Sept. 20, 2002) (listing Burkman as the Registered Agent) (on file in No. EB-TCD-20-00031601). Factors that show a unity of interest include: “(1) the nature of the corporate ownership and control; (2) whether the corporation has maintained adequate records; (3) whether the corporation has maintained corporate formalities; (4) whether there is a commingling of funds; (5) whether there is a diversion of the corporation’s funds to personal uses; and (6) whether the corporation and its individual shareholders use the same office or business location.” *Flynn v. Thibodeaux Masonry, Inc.*, 311 F.Supp.2d 30, 41 (D.D.C. 2004) (citing *Labadie Coal Co. v. Black*, 672 F.2d 92, 97-99 (D.C. Cir. 1982)). It is not necessary that all of these factors be present.

⁵⁶ Burkman & Associates, <https://burkmanassociates.com/> (last visited June 8, 2021).

⁵⁷ *Telseven, LCC, Patrick Hines*, Forfeiture Order, 31 FCC Rcd 1629, 1635 (2016); *see also United States Through Small Business Admin. v. Pena*, 731 F.2d 8, 12 (D.C. Cir. 1984) (“Where the statutory purpose could be easily frustrated through the use of separate corporate entities a regulatory commission is entitled to look through corporate entities and treat the separate entities as one for purposes of regulation.”) (quoting *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 738 & n.10 (D.C. Cir. 1974)); *General Tel. Co. of Southwest v. United States*, 449 F.2d 846, 855 (5th Cir. 1971).

⁵⁸ 47 U.S.C. § 503(b).

⁵⁹ 47 CFR § 1.80(b).

⁶⁰ 47 U.S.C. § 227(b)(1)(A)(iii).

⁶¹ 47 CFR § 64.1200(a)(1)(iii).

⁶² 47 CFR § 1.80.

from a bank account using the Commission's Fee Filer (the Commission's online payment system),⁶³ or by wire transfer. 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:⁶⁴

- 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 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 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).⁶⁵ 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 the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then 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 Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and 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.

25. 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, DC 20554.⁶⁶ 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.

26. 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.⁶⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, ATTN: Enforcement Bureau –Telecommunications Consumers Division and must include the

⁶³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

⁶⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁶⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁶⁶ See 47 CFR § 1.1914.

⁶⁷ 47 CFR §§ 1.16, 1.80(g)(3).

NAL/Account Number referenced in the caption. The statement must also be e-mailed to Lisa Zaina at Lisa.Zaina@fcc.gov and Raul Rojo at Raul.Rojo@fcc.gov.

27. 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.⁶⁸ 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.⁶⁹

28. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture together with the Reviewed Call Detail Records shall be sent by first class mail and certified mail, return receipt requested, to John M. Burkman and Jacob Alexander Wohl at {
}], and J.M. Burkman and Associates LLC at {

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁸ 47 U.S.C. § 503(b)(2)(E).

⁶⁹ 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, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

**STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of John M. Burkman, Jacob Alexander Wohl, and J.M. Burkman & Associates LLC*,
Notice of Apparent Liability for Forfeiture, File No. EB-TCD-21-00032652.

Across the board, the FCC is stepping up its efforts to combat illegal robocalls. Today, we propose a fine of more than \$5 million for robocalls made by a group of individuals that clearly violate the Telephone Consumer Protection Act. I appreciate the unanimous support of my colleagues in this effort. I also appreciate the work of the Ohio Attorney General's Office for their work with us to gather evidence and build a case. This kind of collaboration is vitally important in our work to combat illegal robocalls and I look forward to future collaboration like this with other law enforcement partners nationwide.