

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

In the Matter of
Kyle Traxler and Cleo Communications
File No.: EB-FD-22-00033355
NAL/Acct. No.: 202232200002

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

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By Commission:

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I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a forfeiture of \$220,210 against Kyle Traxler and Cleo Communications (Cleo or the Company) for apparently willfully and repeatedly engaging in conduct that violated the federal wire fraud statute¹ and the Commission's rules² between on or about May 14, 2021 and on or about August 11, 2021.³ As discussed in detail below, Cleo made apparent misrepresentations to gain Commission authorization to be a participating provider in

¹ 18 U.S.C. § 1343.

² 47 CFR § 1.17.

³ Specifically, Cleo apparently violated the wire fraud statute on or about July 4, 2021, July 11, 2021, July 13, 2021, July 14, 2021, July 26, 2021, August 1, 2021, August 2, 2021, and August 11, 2021. Cleo apparently violated section 1.17 of the Commission's rules on or about May 14, 2021, and May 26, 2021.

the Emergency Broadband Benefit (EBB) Program and then apparently used that authorization to defraud consumers using interstate wires. While Cleo never filed for or received disbursements from the EBB Program, Cleo promised consumers that they would receive EBB Program-discounted broadband services and devices in exchange for online electronic payments to Cleo, but the company never delivered the broadband services or devices. Cleo's schemes to defraud consumers under the pretense of participating in the EBB Program caused severe harm not only in monetary terms to the low-income consumers it preyed upon, but also to the trust and goodwill this or any program needs to achieve its purposes effectively. We find that the proposed \$220,210 forfeiture penalty, the statutory maximum we can impose, reflects the scope, duration, seriousness, and egregiousness of Cleo's apparent violations. We also find that Kyle Traxler and Cleo Communications are, for legal purposes, one and the same entity, and are therefore jointly and severally liable for the proposed penalty.

2. The EBB Program was established by the Federal Communications Commission (Commission or FCC) on February 25, 2021⁴ at the direction of the United States Congress in the Consolidated Appropriations Act, 2021.⁵ The purpose of the program was to facilitate the provision of broadband services and devices to help eligible⁶ households stay connected during the COVID-19 pandemic. Slowing the spread of COVID-19 required the closure of businesses and schools across the country for extended periods of time, which in turn caused millions of Americans to become newly unemployed or unable to find work. In addition, these closures caused people to turn to virtual learning, telemedicine, and telework, which increased every household's need for access to broadband services. The cost of broadband services, however, can be a barrier for many families, and the support provided by the EBB Program was designed to alleviate some of that burden.⁷ The EBB Program ended on December 31, 2021, but its important objectives continue to be served through the Commission's Affordable Connectivity Program (ACP).⁸

3. To help meet its goal of quickly providing assistance to consumers struggling to obtain affordable internet access, Congress directed the Commission to permit broadband service providers that were not eligible telecommunications carriers (ETCs)⁹ to apply for expedited Commission approval to participate in the EBB Program. Cleo applied for and received expedited approval.¹⁰ Cleo never filed for or received disbursements from the EBB Program.¹¹ During the course of Cleo's EBB Program participation, however, numerous consumer complaints were filed against it with the Commission, the

⁴ 47 CFR §§ 54.1600 - 54.1612; *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, 36 FCC Rcd 4612 (2021) (*Emergency Broadband Benefit Program Order*).

⁵ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

⁶ See *infra* para. 9.

⁷ See *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4613, para. 1.

⁸ *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2, WC Docket No. 21-450, -- FCC Rcd -- (Jan. 14, 2022).

⁹ An ETC is a common carrier designated by a state commission or the Commission to provide universal service support in a specific area. See 47 U.S.C. § 214(e); 47 CFR § 54.20. Section 904(f) of the Consolidated Appropriations Act permits the Commission to use its universal service (Part 54) rules for purposes of the Emergency Broadband Benefit. See *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4614, para. 3.

¹⁰ Cleo's authorization to participate in the EBB Program was revoked on December 30, 2021. See *infra*, paras. 26-27. Cleo is not authorized to participate in the ACP.

¹¹ Information on file in Investigation Number EB-FD-22-00033355.

Universal Service Administrative Company (USAC),¹² and the Better Business Bureau. These complaints reported that Cleo failed to provide the connected devices and/or broadband services offered on its website while still holding itself out as a participating provider in the program.¹³ These consumers alleged in their complaints that Cleo solicited and received payments for connected devices or services allegedly supported by the EBB Program, but failed to provide any such device or service. Consumers ordered connected devices, such as laptops and tablets or broadband services, through Cleo online and made payments by credit card, PayPal, or Venmo.¹⁴ All of these financial transactions were electronic, either by credit cards, PayPal, or Venmo. Consumers entered their user account information on Cleo's website to pay for the EBB-discounted services or devices. Over the course of a transaction, the data moved via interstate wires from Cleo's website to the user's account and then on to Cleo's recipient account, going through and being recorded on servers located in various states.¹⁵ These transactions transferred funds electronically without the need to exchange physical cash.¹⁶

4. After an investigation by the Commission's Enforcement Bureau (Bureau),¹⁷ the Commission has determined that Cleo apparently willfully and repeatedly committed wire fraud by misrepresenting to consumers that Cleo would deliver discounted services and devices to them under the EBB Program in exchange for discounted EBB payments. As detailed below, Cleo apparently received money from consumers by causing them to enter into transactions online for these discounted services or devices but apparently never provided any such services or devices. Based on the Bureau's investigation, the Commission has also determined that Cleo apparently willfully and repeatedly engaged in misrepresentations in its application and election notice to participate in the EBB Program.

II. BACKGROUND

A. Legal Framework

i. Emergency Broadband Benefit

5. On December 27, 2020, the Consolidated Appropriations Act became law.¹⁸ Among other Congressional actions intended to provide relief during the COVID-19 pandemic, the Consolidated Appropriations Act established an Emergency Broadband Connectivity Fund of \$3.2 billion in the Treasury of the United States,¹⁹ to remain available until expended. The Consolidated Appropriations Act directed the Commission to use the funds to establish the EBB Program, under which eligible households could receive a monthly discount off the cost of broadband service and a one-time discount on eligible

¹² USAC is an independent, not-for-profit corporation designated as the permanent administrator of the Universal Service Fund by the Commission. See 47 CFR §§ 54.701 *et seq.* On February 3, 2021, the FCC executed an MOU establishing USAC as the administrator of the EBB Program. The MOU is available at https://www.fcc.gov/sites/default/files/fcc_usac_ebbp_mou_02.03.2021.pdf.

¹³ Information on file in Investigation Number EB-FD-22-00033355.

¹⁴ See *infra* para. 17.

¹⁵ Information on file in Investigation Number EB-FD-22-00033355.

¹⁶ See *infra* para. 17.

¹⁷ During the investigation, the Bureau reviewed complaints from consumers and interviewed numerous witnesses.

¹⁸ Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

¹⁹ *Id.* § 904(i).

connected devices during an emergency period relating to the COVID-19 pandemic, and participating providers could receive a reimbursement for providing such discounts.²⁰

6. The Consolidated Appropriations Act directed that a household would qualify for the EBB Program if at least one member of the household: (1) met the qualifications for participation in the Lifeline program (household income is at or below 135% of the federal poverty guidelines or a household member participated in the Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, Federal Public Housing Assistance, Veterans Pension/Survivors Benefit, or certain Tribal assistance programs); (2) had applied for and been approved to receive benefits under the free and reduced price lunch program; (3) had experienced a substantial loss of income since February 29, 2020 that was documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable; (4) had received a Federal Pell Grant in the current award year; or (5) met the eligibility criteria for a participating provider's existing low-income or COVID-19 program, subject to approval by the Commission.²¹ The Commission determined that the National Verifier, databases operated by USAC to verify certain eligibility criteria for household participation in the Commission's Lifeline Program, should also be used for the EBB Program.²²

7. A participating provider was required to verify household eligibility in one of two ways under the EBB Program. It could use the National Verifier databases, or it could seek Wireline Competition Bureau (WCB) approval for an alternative verification process. If a participating provider sought to use the alternative verification process, it was required to submit information for WCB determination of whether the alternative verification process would be sufficient to avoid waste, fraud, and abuse.²³ Regardless of how a provider sought or received authorization to participate in the EBB Program (as an ETC, as a non-ETC with expedited approval, or as a non-ETC with automatic approval), a provider was to submit and receive WCB approval of its alternative verification process prior to using such a process to enroll consumers in the EBB Program.²⁴ Providers seeking a non-ETC approval from the Commission had to submit requests for approval describing their alternative verification process along with their application to participate in the EBB Program.²⁵

8. The information collected by participating providers in an alternative verification process had to include the beneficiary-applicant's: (1) full name; (2) phone number; (3) date of birth; (4) e-mail address; (5) home and mailing addresses; (6) name and date of birth of the benefit qualifying person if different than applicant; (7) basis for inclusion in the program (e.g., SNAP, SSI, Medicaid, school lunch, Pell Grant; income, provider's existing program, etc.) and documentation supporting verification of eligibility; and (8) certifications from the household that the information included in the application is true. The provider must have described the processes it (or a third party) would use to verify the

²⁰ *Id.* § 904(b)(1). Under section 904, the emergency period “ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. § 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates.” *Id.* § 904(a)(8); see *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4613, para. 2.

²¹ Consolidated Appropriations Act, § 904(a)(6).

²² *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4638, para. 54. Consolidated Appropriations Act, § 904(a)(6). The National Verifier was used in the EBB Program and is available for use in the successor Affordable Connectivity Program to automatically check and confirm a household's eligibility electronically against state and federal eligibility databases, followed by manual review of eligibility documentation for applicants whose eligibility cannot be verified using an automated data source. See *id.* 36 FCC Rcd at 4635, para. 50.

²³ *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4634, para. 62.

²⁴ See Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(2)(B).

²⁵ *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4635, para. 64.

beneficiary-applicant's identity and eligibility, explain why the provider's alternative process would be sufficient to avoid waste, fraud, and abuse, and why it proposed to use an alternative verification process instead of the National Verifier eligibility determinations.²⁶

9. No broadband provider was required to participate in the EBB Program. Instead, broadband providers could choose to participate in the EBB Program by filing an election notice, which must have been completed, certified, and submitted to USAC, along with supporting documentation to show they were qualified to offer broadband services and, if they chose to, discounted connected devices. ETCs needed only to file an election notice with USAC, while non-ETCs were required to apply and receive authorization from WCB before submitting their elections.²⁷ Non-ETC broadband providers had to have been providing broadband services as of December 1, 2020, to participate in the EBB Program; ETC providers had to have been offering broadband services or have been authorized to offer broadband services as of December 1, 2020.²⁸ ETCs and approved non-ETC providers were required to file an election notice with USAC stating, among other things, the jurisdictions in which they would participate in the program.²⁹

10. Participating providers that also supplied an eligible household with a connected device (defined in the Consolidated Appropriations Act as a laptop, desktop computer, or tablet) could receive a single reimbursement of up to \$100.00 for the connected device, if the charge to the eligible household for that device was more than \$10.00 but less than \$50.00.³⁰ A participating provider could receive reimbursement for only one supported device per eligible household.³¹

11. A non-ETC provider's application to participate in the EBB Program was required to include certain information to determine whether the applicant had the legal and technical qualifications to provide broadband services and connected devices. An applicant had to certify, under penalty of perjury, as to its qualifications. Applicants also had to certify under penalty of perjury that the information set forth in their applications was true, accurate, and complete; that they understood and would comply with all related statutory and regulatory obligations; and that they would comply with all terms and conditions and other requirements applicable to using the National Verifier databases and other USAC systems. Non-ETC providers could amend their applications to provide additional information if the Commission identified any deficiencies in their application. Eligibility to participate in the program was based on an applicant's submission of the required information and certifications.³²

12. Non-ETC providers seeking to participate in the EBB Program were informed that they were responsible for submitting an accurate, complete, and timely application and should thoroughly review the program's participating provider requirements, in addition to any subsequent guidance. Applicants were also informed that they should realize that submitting an application (and any amendments thereto) constituted a representation by the certifying individual that he or she is an authorized representative of the applicant, that he or she has read the appropriate instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct.³³ Applicants were further informed that submitting a false certification to the Commission may

²⁶ *Id.* at 4635-4636, para. 66.

²⁷ 47 CFR §54.1601(a).

²⁸ *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4627, para. 34; EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions at 5 (Mar. 2021).

²⁹ *See* 47 CFR § 54.1601(c).

³⁰ *Id.* § 904(b)(5).

³¹ *Id.*

³² *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4630, para. 41.

³³ *Id.* at para. 42.

result in penalties, including monetary forfeitures, license forfeitures, and ineligibility to participate in future Commission auctions or competitions, as well as criminal prosecution and/or liability under the False Claims Act.³⁴

13. On May 12, 2021, EBB Program providers began enrolling consumers in the program.³⁵ Consumers could check for program eligibility and search for participating providers in their states in a number of ways. Consumers could visit the FCC website directly to find a list of EBB providers in their state, use USAC's "Companies Near Me" tool, or visit various state or nonprofit websites advertising the EBB Program and be directed to the FCC list.³⁶ Consumers could begin their search on the webpage containing the list of participating providers and then could click the link to a specific provider and be directed to the provider's website for information on its EBB Program offerings. The Affordable Connectivity Program uses the same format to identify providers participating in that program.³⁷

ii. Wire Fraud Statute

14. Congress has authorized the Commission to assess a forfeiture penalty for violations of the federal wire fraud statute, 18 U.S.C. § 1343. Specifically, section 503(b)(1)(D) of the Communications Act of 1934, as amended (the Act), states that the Commission may propose a forfeiture against a person that the Commission has determined violated "any provision of section . . . 1343 . . . of title 18."³⁸ The Commission's rules further provide that a "forfeiture penalty may be assessed against any person found to have . . . [v]iolated any provision of section . . . 1343 . . . of Title 18, United States Code."³⁹ Section 1343 provides that a violation of the wire fraud statute occurs when a person:

having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice.⁴⁰

15. A finding that wire fraud has occurred "requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme."⁴¹ Moreover, "[t]he essence of a scheme is a plan to deceive persons as to the substantial identity of the things they are to receive in exchange" and "[a] pattern of deceptive conduct may show the existence of a plan, scheme or artifice."⁴² Where one scheme involves several wire communications or mailings, "the law is settled that each mailing [or wire communication] constitutes a violation of the statute."⁴³ The use of mail or interstate wires to effectuate the fraudulent scheme "need not be an essential element of the scheme;" instead, it is

³⁴ *Id.*

³⁵ *Emergency Broadband Benefit Program Launch Date Public Notice*. 36 FCC Rcd 7614 (WCB 2021).

³⁶ *Id.* at 7615; *see, e.g.*, <https://connect-arizona.com/ebb> (last accessed Apr. 20, 2022).

³⁷ *See, e.g.*, <https://www.fcc.gov/affordable-connectivity-program-providers>; <https://data.usac.org/publicreports/CompaniesNearMe/Download/Report> (last accessed May 23, 2022).

³⁸ 47 U.S.C. § 503(b)(1)(D).

³⁹ 47 CFR § 1.80(a)(5).

⁴⁰ 18 U.S.C. § 1343.

⁴¹ *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990); *see also United States v. Pollack*, 534 F.2d 964, 971 (D.C. Cir. 1976).

⁴² *United States v. Brien*, 617 F.2d 299, 307 (1st Cir. 1980) (citations omitted).

⁴³ *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1116 (D.C. Cir. 2009) (citations omitted); *see also United States v. Sum of \$70,990,605*, 4 F.Supp.3d 189, 201 n.9 (D.D.C. 2014).

“sufficient for the mailing [or the use of the interstate wire] to be incident to an essential part of the scheme or a step in the plot.”⁴⁴ One need not have used the wires themselves in the scheme to defraud; instead, culpability may arise from having caused the wires to be used.⁴⁵ Use of the Internet, such as by perpetrating a scheme to defraud through online websites, constitutes use of interstate wires for purposes of section 1343.⁴⁶

16. A scheme to defraud requires the specific intent to make a misrepresentation or omission that is material to the scheme.⁴⁷ An intent to defraud includes an act undertaken “willfully and with specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one’s self.”⁴⁸ “The requisite intent under the federal mail and wire fraud statutes may be inferred from the totality of the circumstances and need not be proven by direct evidence.”⁴⁹ Fraudulent intent may be “shown if a representation is made with reckless indifference to its truth or falsity,”⁵⁰ as well as a victim’s reliance on the misrepresentations made by the perpetrator.⁵¹

17. PayPal and Venmo are both owned by PayPal Holdings, Inc., and provide a variety of online merchant services and payment systems that, among other things, permit merchants to accept payments through their websites and mobile applications, mobile point of sale transactions, and other digital payment services.⁵² PayPal and Venmo operate internet-based mobile payment services. Consumers can enter PayPal or Venmo user account information on a merchant website to pay for goods or services. Over the course of a transaction, the data moves via interstate wires from the user account to the merchant’s recipient account, going through and recorded on PayPal and Venmo servers located in various states. PayPal and Venmo user accounts are linked to customer bank accounts. A customer’s PayPal or Venmo payment to a merchant also creates an interstate data transfer for the associated banking transactions, accomplished and recorded through PayPal and Venmo servers via interstate wires.⁵³

iii. Untruthful and Inaccurate Statements

18. Section 1.17 of the Commission’s rules prohibits any person, including applicants for Commission authorizations, in any written statement of fact in connection with any investigatory or

⁴⁴ *Schmuck v. United States*, 489 U.S. 705, 710 (1989) (citations, quotations, and punctuation omitted).

⁴⁵ See *Pereira v. United States*, 347 U.S. 1, 8 (1954) (“To constitute a violation of these provisions, it is not necessary to show that petitioners actually mailed or transported anything themselves; it is sufficient if they caused it to be done.”); *United States v. Lemire*, 720 F.2d 1327, 1334, n.6 (D.C. Cir. 1983) (*Lemire*) (“[C]ases construing mail fraud apply to the wire fraud statute as well.”).

⁴⁶ See, e.g., *United States v. Dinh*, 2021 U.S. Dist. LEXIS 236993, -- F.Supp.3d -- (M.D. Fla. 2021) (granting permanent injunction against defendants that defrauded customers by operating online websites that appear to sell goods but did not ship the goods after purchase); *United States v. Collick*, 611 Fed. Appx. 553, 556 (11th Cir. 2015) (“Given that [defendant testified that [he and co-defendant] used the Internet to perpetrate their scheme, his testimony also established that [co-defendant] committed wire fraud.”).

⁴⁷ *Neder v. United States*, 527 U.S. 1, 25 (1999) (*Neder*).

⁴⁸ *Lemire*, 720 F.2d at 1334.

⁴⁹ *United States v. O’Connell*, 172 F.3d 921 (D.C. Cir. 1998); see also *United States v. Alston*, 609 F.2d 531, 538 (D.C. Cir. 1979).

⁵⁰ *United States v. Cusino*, 694 F.2d 185, 187 (9th Cir. 1982); see also *United States v. Kennedy*, 714 F.3d 951, 958 (6th Cir. 2013); *United States v. Jackson*, 524 F.3d 532 (4th Cir. 2008); *United States v. DeRosier*, 501 F.3d 888, 897–98 (8th Cir. 2007).

⁵¹ *United States v. Wynn*, 684 F.3d 473 (4th Cir. 2012).

⁵² See <https://about.pypl.com/who-we-are/history-and-facts/default.aspx> (last accessed Apr. 21, 2022).

⁵³ Information on file in Investigation Number EB-FD-22-00033355.

adjudicatory matter within the Commission’s jurisdiction, from intentionally providing “material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.”⁵⁴

19. The courts and the Commission have consistently highlighted the importance of applicants for Commission authorizations submitting complete and truthful information in their applications. A “lack of candor in an applicant’s dealings with the Commission” constitutes a “serious breach of trust,”⁵⁵ and is exhibited when an applicant makes an affirmative misrepresentation or fails to disclose “relevant facts” of “decisional significance.”⁵⁶ Such a violation requires a showing of evidence that the applicant “inten[ded] to deceive” the Commission.⁵⁷ Intent to deceive is generally found in cases where a false statement is “coupled with proof that the party . . . [knew] of its falsity,”⁵⁸ or where evidence allows intent to be derived from a motive to deceive.⁵⁹

B. Cleo Communications

20. Cleo is a tradename registered to Kyle Traxler in the State of Ohio. The registration was effective on February, 25, 2021, expires February 25, 2026, and is currently active.⁶⁰ Cleo does not appear to be incorporated in any jurisdiction.⁶¹ Subsequent to registering the tradename and obtaining an Ohio business entity number for Cleo, Kyle Traxler filed an application for Cleo with the federal government’s System for Award Management (SAM) to obtain a SAM number as required for the EBB Program provider application.⁶²

21. Kyle Traxler, as CEO of Cleo, applied for authorization for Cleo to participate in the EBB Program on May 14, 2021.⁶³ The application misleadingly claimed that the Company provided broadband services in 54 states and territories as of December 1, 2020.

⁵⁴ See 47 CFR § 1.17(a)(1).

⁵⁵ *Swan Creek, Inc. v. FCC*, 39 F.3d 1217, 1221-22 (D.C. Cir. 1994) (quoting *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986)).

⁵⁶ *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478 (1995) (quoting *Swan Creek*, 102 FCC 2d at 1222, and *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981); and see, e.g., *Acumen Communications*, Order of Revocation, 33 FCC Rcd 4 (EB 2018) (revoking licenses after hearing for, *inter alia*, misrepresentation in application); *Application of Riverside Youth & Rehabilitation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360 (MB 2008) (issuing NAL for apparent misrepresentations in application after application grant was final).

⁵⁷ See *Century Cellunet of Jackson*, Memorandum Opinion and Order, 6 FCC Rcd 6150 (1991).

⁵⁸ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

⁵⁹ *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32 (1994).

⁶⁰ See <https://bizimage.ohiosos.gov/api/image/pdf/202104804584>.

⁶¹ Cleo does not appear to have any connection with Cleo Communications Inc., dba Cleo, a technology integration company. See <https://www.cleo.com>.

⁶² See *Emergency Broadband Benefit Program*, 36 FCC Rcd at 4627, para. 34; Emergency Broadband Benefit Provider Approval & Alternative Eligibility Verification Application Filing Instructions at 5 (Mar. 2021); <https://opengovus.com/sam-entity/CWXAQFXNCN55>.

⁶³ *Id.*

22. WCB requested information from Cleo regarding its application on May 17, 2021.⁶⁴ WCB informed Cleo that the application lacked substantive information necessary for approval, including supporting documentation that as of December 1, 2020, Cleo had been providing broadband internet access service in the jurisdictions in which it sought to participate in the program, and a detailed explanation of its proposed alternate consumer eligibility verification plan with sufficient processes to address fraud, waste and abuse. WCB also noted that applicants should review program provider requirements and procedures and directed Cleo to the FCC website pages containing that information. WCB stated:

Your application is lacking substantive information required for approval. Broadband providers wishing to participate in the EBB Program should review all applicable program requirements and procedures in the Commission's Order (FCC 21-29) and any subsequent guidance for compliance with the EBB Program's requirements. Additional information regarding application requirements can be found here: <https://www.fcc.gov/emergency-broadband-benefitprogram>.⁶⁵

WCB followed up with an e-mail on May 20, 2021. WCB followed up again with an e-mail on May 24 stating the provider had been sent e-mails requesting more information, as described above, on May 17 and May 20, 2021. The May 24, 2021 e-mail advised Cleo it was the final notice to respond, otherwise its “application for the Emergency Broadband Benefit will be denied as it lacks sufficient information for approval.”⁶⁶

23. On May 24 and May 25, 2021, Cleo responded to WCB’s requests for additional information. Cleo produced screen shots of Facebook pages for KYTY Communications, another company purportedly owned and managed by Kyle Traxler and involved in providing telecommunications services—and stated that “Cleo is now part of KYTY.”⁶⁷ Cleo also provided copies of two invoices dated December 29, 2020 and July 15, 2020, labeled Cleo and TB Broadband, with customer-identifying information removed, which Cleo claimed was “due to CPNI and privacy.”⁶⁸ In addition, Cleo submitted a statement saying it had started as TB Broadband but the company name had been changed “when finding out TB Broadband was being confused with BT Broadband.”⁶⁹ Cleo also stated that TB Broadband had been providing high-speed wireless internet from June 2020 to December 2020, when it had approximately 500 customers. Cleo also removed its request to use an alternative to using the National Verifier databases for verification of customer eligibility for the EBB Program, eliminating the need to describe an alternate process sufficient to protect against fraud, waste, and abuse.⁷⁰ WCB ultimately deemed the application for Cleo sufficient for expedited processing and authorized Cleo to participate in the EBB Program as a non-ETC provider on May 25, 2021.⁷¹

24. On May 26, 2021, Kyle Traxler filed Cleo’s election notice with USAC, along with supporting documentation regarding its service offerings, connected device offerings, and invoices. As Cleo’s CEO, he certified on the form, among other things, that he was submitting the form on behalf of

⁶⁴ Information on file in Investigation Number EB-FD-22-00033355, EBB00001498 Cleo Communications Non-ETC Application, application system report. Aug. 26, 2021.

⁶⁵ *Id.*

⁶⁶ E-mail from EBB Provider to ktraxler@cleacommunications.com (May 24, 2021).

⁶⁷ Information on file in Investigation Number EB-FD-22-00033355, EBB00001498 Cleo Communications Non-ETC Application, application system report. Aug. 26, 2021.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

Cleo, that the Company understood and would comply with program rules, and that the data set forth in the election form had been examined and was true, accurate, and complete. The form states in part:

I acknowledge that the participating provider is subject to the Federal Communications Commission's enforcement, fine, or forfeiture authority under the Communications Act. Failure to be in compliance and remain in compliance with the Emergency Broadband Benefit Program rules and orders may result in the denial of funding, cancellation of funding commitments, and the recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Broadband Benefit Program could result in civil or criminal prosecution by law enforcement authorities.

I understand that providing materially false information in this submission will disqualify a provider from participating in the Emergency Broadband Benefit Program. The election form is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Sections 1001,286-287 and 1341 and Title 31, Sections 3729-3730 and 3801-3812).⁷²

25. Based on this election notice, Cleo represented it would provide discounted broadband services and connected devices to eligible consumers qualified for the EBB Program, from May 26, 2021. Cleo never filed for or received disbursements from the EBB Program.⁷³ Within a few months, however, consumers began filing complaints with the FCC Complaint Center and with USAC stating that they had gone to Cleo's online website because it was offering to provide EBB Program-discounted services and devices; that they had sent payments to Cleo through its website for EBB Program-supported services and devices, but never received anything in return.⁷⁴ Cleo's website, listed on its election form, was <http://www.kyty.xyz/>.⁷⁵ The Company also used cleocommunications.com as a website.⁷⁶ Neither website is currently in operation.

26. Upon receiving informal complaints on the Company, the Commission requested Cleo respond. When Cleo failed to adequately respond to the informal consumer complaints filed with the Commission, WCB sent a letter directing Cleo either to withdraw its EBB Program provider election notice and cease to participate in the EBB Program, or to demonstrate why its authorization to participate should not be revoked.⁷⁷ Because Cleo did not receive any disbursements from the EBB Program, WCB did not need to initiate recovery of improper payments from Cleo. The complaints about Cleo's participation in the EBB Program included:

- Consumer complaint against Cleo dated July 26, 2021, alleges, "I got in contact with them, after providing proof of my eligibility I ordered a hotspot router and laptop from them at a discount for ebb. I paid for the items but never received [*sic*] I was told they would arrive in 10 days and now it's been a month. And after I asked where

⁷² Cleo Emergency Broadband Benefit Service Provider Election Form (May 26, 2021).

⁷³ Information on file in Investigation Number EB-FD-22-00033355.

⁷⁴ *Id.*

⁷⁵ Cleo Emergency Broadband Benefit Service Provider Election Form (May 26, 2021).

⁷⁶ Information on file in Investigation Number EB-FD-22-00033355.

⁷⁷ Letter from Kris Anne Monteith, Chief, WCB, to Kyle Traxler, Chief Executive Officer, Cleo Communications (Dec. 16, 2021) (WCB letter).

the items were that I ordered they stopped responding to my e-mails.” (Complaint #4921623).⁷⁸

- A consumer complaint against Cleo dated Aug. 2, 2021, alleges, “I was told to select one of the given devices as a service option, in which I chose a laptop. I purchased the laptop and I contacted the providers with my application ID and order number on July 14th. They e-mailed me confirming that my purchase would be processed after 72 hours and would come soon but it never came in. I’ve sent the company many e-mails regarding my issue but they stopped responding to me.” (Complaint # 4937252).⁷⁹
- Consumer complaint against Cleo dated July 14, 2021, alleges, “They took my payment first without gather (*sic*) any of my information. I found this odd so I opened up a ticket with PayPal. Now they are threatening me with a breach of contract regarding some terms and service that I did not sign and trying to charge me fees.” (Complaint #4901740).⁸⁰
- A consumer complaint against Cleo dated Aug. 10, 2021, alleges, “KYTY Communications DBA Cleo who is a registered EBB Provider in the state of Texas currently has refused to ship my equipment to me and has made an unreasonable expectation of consumers to wait over 2 full weeks until the hardware ships out. Furthermore he is threatening me in writing now for filing a PayPal claim since he is not sending it and still is stating he is claiming the benefit and I’ll never get to use it anywhere.” (Complaint #4954076).⁸¹

27. The WCB letter details the consumer complaints against Cleo received by the Commission, Cleo’s dismissive or non-responses to the Commission regarding these complaints, and, *inter alia*, Cleo’s failure to meet its obligations under section 54.1604 of the Commission’s rules.⁸² The WCB letter further stated that “the Commission takes these allegations very seriously, and regardless of any removal of its status as a participating provider, Cleo may still be subject to enforcement action from the Commission ... arising from Cleo’s actions.”⁸³ Cleo did not respond to WCB’s letter. On December 30, 2021, the WCB Bureau Chief revoked Cleo’s authorization to participate in the EBB Program.⁸⁴

III. The Enforcement Bureau’s Investigation

28. On December 20, 2021, the Bureau issued a subpoena to Kyle Traxler and Cleo, by certified mail to the address provided in Cleo’s application to participate in the EBB Program. The subpoena requested documents regarding, among other things, Cleo’s solicitation and enrollment of customers in the EBB Program, its certification of claims, and any devices requested or sent to individuals

⁷⁸ *Id.* at 1, n.2.

⁷⁹ *Id.* at 1, n.3.

⁸⁰ *Id.*

⁸¹ *Id.* at 1-2, n.3.

⁸² Under the EBB Program rules, participating providers “must make available the Emergency Broadband Benefit Program to qualifying low-income consumers.” 47 CFR § 54.1604.

⁸³ WCB letter at 3.

⁸⁴ Letter from Kris Anne Monteith, Chief, WCB, to Kyle Traxler, Chief Executive Officer, Cleo Communications, 2021 WL 6197272, -- FCC Red -- (WCB Dec. 30, 2021).

in connection with or alleged to be in connection with the EBB Program. The return date on the subpoena was January 20, 2022. To date, the Bureau has not received a response to the subpoena.⁸⁵

29. In the course of its investigation, the Bureau reviewed twenty-eight consumer complaints received by the FCC's Consumer Complaint Center, six complaints received by USAC, and seven complaints received by the Better Business Bureau of Toledo, Ohio, regarding Cleo. The complaints all focused on the same types of allegations. According to the complaints, consumers searched the list of participating EBB Program providers through individual states' Universal Service or EBB Program websites, the FCC website, or USAC's website, and followed links to Cleo's website. The complaints alleged that Cleo accepted payment for EBB Program discounted broadband services or connected devices from these consumers electronically, failed to send the ordered product or provide the requested services, and then failed to provide refunds. All transactions connected to the complaints against Cleo occurred through the Internet.⁸⁶

30. The Bureau also conducted interviews with eight of the consumers who submitted complaints.⁸⁷ The Bureau verified that these consumers ordered services or devices on Cleo's online website after finding that Cleo was a participating EBB Program provider offering discounted services and devices in consumer interviews. The Bureau obtained consumer receipts and documentation of their credit card, PayPal, and Venmo payment transactions for the ordered services and devices. All of these low-income consumers arranged for payment by credit card, PayPal, or Venmo on Cleo's online website, but never received services, devices, or refunds. Detailed below are consumers' articulation of eight instances in which Cleo, under the guise of being a participating program provider, apparently defrauded consumers:

- Consumer A, who resides in Illinois, reported that she ordered a laptop as an EBB Program-discounted connected device from Cleo on August 11, 2021, for \$49.99, arranging payment on the website through a credit card transaction. When her credit card company cancelled the transaction, Consumer A contacted Cleo which told her it had cancelled the transaction. Cleo then invoiced Consumer A via Venmo, and Consumer A paid Cleo through Consumer A's bank account. Consumer A's Venmo payment to Cleo was made on August 16, 2021. After not receiving the laptop, Consumer A attempted to contact Cleo, but did not receive a response. Consumer A attempted to reach out to Cleo via social media (Facebook) and by telephone, but Cleo did not respond and blocked her both on Facebook and telephone.⁸⁸
- Consumers B, who are a husband and wife household and reside in Washington state, ordered an EBB Program-discounted tablet from Cleo's website on August 1, 2021, and paid through PayPal. They also ordered a laptop on August 2, 2021, and arranged payment on Cleo's website, using PayPal. Both payments totaled \$63.00.⁸⁹ They never received a laptop or tablet from Cleo.⁹⁰

⁸⁵ The Bureau has not received a signed certified mail receipt from the delivery of the subpoena. The Bureau has attempted to serve Cleo multiple times, via USPS, via UPS, and via e-mail. The Bureau has confirmation from UPS that the subpoena was delivered. The subpoena was sent to both addresses listed by Cleo on its SAM form.

⁸⁶ Information on file in Investigation Number EB-FD-22-00033355.

⁸⁷ The eight consumers interviewed by the Bureau and identified as consumers A-H are separate from the Consumers identified in the WCB letter.

⁸⁸ Consumer A Interview, Feb. 24, 2022; e-mails from Consumer A to Jodi Schulz, Carla Conover, Michael Zehr (Feb. 24, 2022).

⁸⁹ E-mail from Consumer B to Jodi Schulz (Mar. 1, 2022).

⁹⁰ Consumer B Interview, Mar. 1, 2022.

- Consumer C, who resides in Alabama, ordered an EBB Program-discounted laptop from Cleo’s website on August 1, 2021, for \$49.99, arranging payment via PayPal on the website. She e-mailed Cleo to inquire when it would ship the computer and received the response that there was a 72-hour processing time. After more than 72 hours passed, Consumer C e-mailed Cleo asking for the tracking information. Cleo responded that it required over 72 business hours for processing. Consumer C e-mailed Cleo again but did not receive a response on that e-mail chain. Consumer C started a new e-mail chain asking about the laptop delivery and Cleo responded that there was a nine-business-day processing period. At that point, it was already nine business days past her order date. Consumer C was aware she could still use the EBB Program benefit through another provider, but was not willing to do so after her experience with Cleo.⁹¹
- Consumer D, who resides in Massachusetts, with assistance from his adult son, ordered an EBB Program-discounted tablet from Cleo’s website on July 26, 2021, for \$13.95, arranging payment on the website via PayPal. When he did not receive the tablet or any communication from Cleo, Consumer D found the Cleo e-mail address associated with the PayPal transaction. He sent a message to that e-mail account but received a message that the e-mail account did not exist. Consumer D never received the tablet from Cleo; he was able to cancel the PayPal transaction.⁹²
- Consumer E, who resides in Wisconsin, ordered an EBB Program-discounted laptop from Cleo’s online website on July 14, 2021, for \$49.99, arranging payment with a credit card on the website.⁹³ A few days later, Consumer E contacted Cleo about the status of his order. Consumer E told Bureau staff that Cleo repeatedly told him that it would “take a while” and eventually stopped responding to his e-mails. Consumer E never received the laptop from Cleo Communications.⁹⁴
- Consumer F, who resides in New York, ordered an EBB Program-discounted tablet, laptop, “Wi-Fi box,” and hotspot service from Cleo’s website on July 13, 2021, and arranged payment of \$108.94 on the website through PayPal.⁹⁵ Consumer F told Bureau staff that she e-mailed Cleo when she did not receive the devices she ordered, and that Cleo staff were “rude to her and told her they didn’t have to provide service to her.” She said someone at Cleo told her to “read the fine print.” She exchanged a few e-mails with Cleo until it ultimately stopped responding. Cleo never delivered a tablet, laptop, Wi-fi box, or hotspot service to Consumer F.⁹⁶
- Consumer G, who resides in Arizona, with assistance from her mother, ordered an EBB Program-discounted laptop from Cleo’s website on July 11, 2021, for \$49.99, arranging payment on the website through a credit card transaction.⁹⁷ Consumer G is disabled and receives Social Security Insurance disability. Consumer G stated that

⁹¹ E-mails from Consumer C to Jodi Schulz (Feb. 7, 2022, Feb. 16, 2022).

⁹² Consumer D Interview, Feb. 15, 2022; e-mail from Consumer D to Jodi Schulz, Carla Conover, Michael Zehr (Feb. 15, 2022).

⁹³ Consumer E Interview, February 10, 2022; E-mails from Consumer E to Jodi Schulz (Mar. 6, 2022).

⁹⁴ *Id.*

⁹⁵ E-mail from Kathy Birr, Better Business Bureau, to Jodi Schulz (Feb. 23, 2022); Consumer F Interview, Feb. 28, 2022.

⁹⁶ Consumer F Interview, Feb. 28, 2022; e-mails from Consumer F to Jodi Schulz (Mar. 17, 2022.).

⁹⁷ Consumer G Interview, Feb. 10, 2022.

Cleo responded with excuses when Consumer G requested an update on her order. Cleo's responses to Consumer G stated that there was a delay in receiving inventory that affected her order, and that there was no tracking number recorded in the delivery system yet.⁹⁸ Cleo delayed shipping the laptop and never provided a tracking number for the order. After Consumer G requested a refund, Cleo stopped communicating with her. Cleo never delivered a laptop or refund to Consumer G.⁹⁹

- Consumer H, who resides in Colorado, ordered an EBB Program-discounted laptop from Cleo's website on July 4, 2021, and arranged payment on the website for \$49.99 through a credit card. The laptop was scheduled to arrive by July 21 but there was no follow-up e-mail with tracking or confirmation information. Consumer H never received a laptop from Cleo, but was able to stop payment on his credit card.¹⁰⁰

31. The eight consumers interviewed by the Bureau and other consumers who filed complaints with the FCC's Consumer Complaint Center all stated that Cleo did not deliver the EBB Program-supported services or devices they ordered, and the company refused to issue refunds. Some consumers stated in their complaints that Cleo claimed it would sue them when they asked for a refund.¹⁰¹ As examples, on August 2, 2021, when a customer e-mailed requesting a refund, Cleo responded, "[y]our wish to hide behind PayPal instead of contacting us. We will not be issuing you a refund. We will not be allowing you to use your benefits as we have claimed them. And you will be taken to Court. Cleo Care."¹⁰² On August 10, 2021, when another customer requested a refund, Cleo responded, "Refund denied. Please see the terms of service that outline your rights and our obligations and rights that will be imposed. Also your EBB has been claimed. You will not use our credit anywhere else and you will be issued an invoice and to collections. Cleo Collections."¹⁰³ Cleo continued in a later e-mail with that customer by saying, "[n]ext time read before you order. As we will now no longer communicate. Any further e-mails will result in harassment charges in Ohio. Cleo Legal."¹⁰⁴ On August 12, 2021, Cleo stated to another customer, "[w]e are not ignoring you, nor are we charging you. You have requested a refund and refunds are not given and was informed of this and someone would decide of (*sic*) one would be issued or not. Please see- kyty.xyz/terms.html. Is what was sent to the FCC. With documents that you are and have not been ignored that your claims state [*sic*]. Cleo Legal Affairs."¹⁰⁵

32. As described above, consumers told the FCC's Consumer Complaint Center that Cleo cited its "Terms of Service" as a reason not to provide the ordered equipment or not to issue refunds. Cleo's "Terms of Service" read as follows:

Cleo Communications operates a PREPAID Service. All services are sold as in (*sic*) and without warranty. Under NO circumstances does Cleo Communications represent any warranty nor provide a refund of any kind for services that are offered ... Cleo Communications does NOT nor will ever imply or agree upon a refund, credits nor any other refunds of service and monies to be returned to you. All refunds and credits are up to Cleo at its sole discretion and therefore, charge backs to us via any customer bank is breach of contract at any time and is subject to further legal

⁹⁸ E-mail from Consumer G to Carla Conover (Feb. 10, 2022).

⁹⁹ Consumer G Interview, Feb. 10, 2022.

¹⁰⁰ E-mails from Consumer H to Jodi Schulz (Feb. 8, 2022 and Mar. 17, 2022).

¹⁰¹ Complaint Numbers 4953448, 4954076, 4955207, 4901740.

¹⁰² Complaint Number 4953448.

¹⁰³ Complaint Number 4954076.

¹⁰⁴ Complaint Number 4954076.

¹⁰⁵ Complaint Number 4955207.

action up to but not limited to small claims court actions for breach of contract in the amount of what is disputed, any and all legal fees, court fees, attorney fees, filing fees, interest at 9.9%, and a contract breach fee in the amount of \$300.00.¹⁰⁶

33. On July 14, 2021, a consumer similarly requested a refund for a laptop they ordered from Cleo. They paid \$49.99 using their credit card through PayPal. The customer then researched Cleo and tried to cancel their order. After an e-mail exchange in which Cleo refused to cancel their order and provide a refund, Cleo sent the individual a \$362.67 invoice through PayPal for: “terms of service breach ... admin cost for preparing invoice,” and 9.9% interest.¹⁰⁷

34. Following WCB’s grant of authorization to participate in the EBB Program, Cleo filed its election notice with USAC and provided the two invoices it had submitted to WCB and three additional redacted invoices, as well as documents it claimed described its service and device offerings. Cleo also provided an IRS Employer Identification Number (EIN) as required to process its election to participate in the program.¹⁰⁸

35. Although Cleo stated in its application for authorization that it was providing and had provided broadband services in 54 states and territories as of December 1, 2020, the Bureau’s investigation did not find evidence to support these statements. All of the complaints regarding Cleo submitted to the Commission claim that Cleo failed to provide ordered services or and devices.¹⁰⁹ No consumer has ever filed any complaint with the Commission based on quality, outage or other issues with any service or device provided by Cleo, and none of the eight consumers interviewed mentioned this issue.¹¹⁰ The Bureau found no evidence of any activity associated with the IRS EIN Cleo supplied in its filings in any public resource or law enforcement database,¹¹¹ as would be expected for a company providing broadband services or operating a business of any kind. The Bureau sent a subpoena to one of Cleo’s self-identified business addresses, and it was returned with the notation “company unknown.”¹¹² The only evidence of Cleo’s existence appears to be associated with its participation in the EBB Program.

IV. DISCUSSION

A. Cleo Communications Apparently Committed Multiple Wire Fraud Violations

36. The Enforcement Bureau investigation found that Cleo apparently sold consumers EBB Program-discounted devices through Cleo’s website, and these consumers paid Cleo via PayPal, Venmo,

¹⁰⁶ See <http://www.kyty.xyz/terms.html> (screenshot printed by CGB on Aug. 24, 2021); Complaint Numbers 4954076, 4955207.

¹⁰⁷ Complaint Number 4901740.

¹⁰⁸ Information on file in Investigation Number EB-FD-22-00033355, Cleo EBB Service Provider Election Form (May 26, 2021); Six complaints were also filed with the Commission against Cleo Communications’ predecessor, TB Broadband for activity from August through November 2020. Three complaints stated the company had provided internet service for a brief period in but continued to charge them for service it was not providing. The other three complaints stated that, as with Cleo Communications, customers were charged for services and equipment they never received. Information on file in Investigation Number EB-FD-22-00033355.

¹⁰⁹ Information on file in Investigation Number EB-FD-22-00033355.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

or credit cards.¹¹³ Cleo received and accepted these payments through interstate wire transactions,¹¹⁴ but none of the eight consumers the Bureau interviewed ever received the services or devices they ordered. Of these eight consumers, none received a refund from Cleo when the consumer requested it after Cleo's failure to provide the agreed to devices and services. None of the eight consumers the Bureau interviewed lived in the State of Ohio, where Cleo was allegedly headquartered, and thus their transactions required the use of interstate wires.¹¹⁵

37. Cleo filed for authorization to be a provider in the EBB Program, which was created to supply discounted services and devices to consumers seeking to meet their urgent needs during the pandemic. As described above, consumers relied on Cleo's representations that it would deliver broadband services and devices. Those representations apparently were false and harmed those consumers who relied on Cleo for services or devices that were never delivered and for which they never received refunds from Cleo.

38. Cleo apparently existed for the sole purpose of taking financial advantage of customers under the disguise of being a legitimate EBB Program provider. Cleo Communications has had no business activity outside of the EBB Program and no other business purpose. On February 25, 2021, Kyle Traxler registered Cleo as a tradename in Ohio, obtained Ohio business entity and SAM numbers to use in filing an application, and then filed an election notice with WCB to be a participating provider in the EBB Program.¹¹⁶ After receiving authorization to participate in the EBB Program and advertising that participation on its website, Cleo apparently never enrolled consumers in the EBB Program or delivered the discounted broadband services or devices for which Cleo received payment from consumers who believed Cleo's online website representations.¹¹⁷

39. Cleo received payment for the services and equipment it did not deliver from consumers via PayPal, Venmo, and credit cards through Cleo's website using interstate wires. PayPal and Venmo provide a variety of online merchant services and payment systems that, among other things, permit merchants to accept payments through their websites and applications, mobile point of sale transactions, and other digital payment services.¹¹⁸ In five of the consumer transactions identified above,¹¹⁹ Cleo apparently used PayPal and Venmo services to accept electronic payments from consumers based on the false promise that Cleo would be providing EBB Program-discounted services or devices.

40. A finding that wire fraud has occurred "requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme."¹²⁰ In order to be deemed a "scheme to defraud", the misrepresentation or omission must be material to the scheme. In other words, the

¹¹³ See *supra* para. 30.

¹¹⁴ Consumers can enter PayPal or Venmo user account information on a merchant website to pay for goods or services. The data moves via interstate wires from the user account to the merchant's recipient account, going through and being recorded on PayPal and Venmo servers located in various states. PayPal and Venmo user accounts are linked to customer bank accounts, so that a customer's PayPal or Venmo payment to a merchant also creates an interstate data transfer for the associated banking transactions, accomplished and recorded through PayPal and Venmo servers via interstate wires. See information from PayPal, Inc., on file in Investigation number EB-FD-22-00033355.

¹¹⁵ Interviews with Consumers A-H.

¹¹⁶ See *supra* paras. 20, 21, 24.

¹¹⁷ See *supra* paras. 26-33.

¹¹⁸ See <https://about.pypl.com/who-we-are/history-and-facts/default.aspx> (last accessed Apr. 21, 2022).

¹¹⁹ Consumers A, B, C, D, and F.

¹²⁰ *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990); see also *United States v. Pollack*, 534 F.2d 964, 971 (D.C. Cir. 1976).

wrongdoer must have intended the misrepresentation or omission to induce the victim to part with property or influence the victim to undertake an action that he or she would not have otherwise undertaken were it not for the misrepresentation.¹²¹ As described above, Bureau staff interviewed eight consumers who reported that they relied on Cleo's misrepresentation that it would provide discounted services or connected devices as a participating provider through the EBB Program in exchange for payment from the consumer. In these eight transactions, the consumers paid for but did not receive the devices Cleo promised to deliver.¹²² Cleo created a website, applied for authorization and elected to be a participating EBB Program provider, advertised EBB Program-discounted services and devices on the Cleo website, e-mailed customers regarding services and devices Cleo had promised to deliver, and accepted electronic payment for the services and devices that were neither delivered nor intended to be delivered.

41. To violate the federal wire fraud statute, the wrongdoer must use "wire, radio, or television communication" to further the fraudulent scheme.¹²³ Here, Cleo used the interstate wires to file its election notice with WCB to be an EBB Program participating provider and to be listed on FCC and USAC websites, to advertise EBB Program-discounted services and devices on its online website, and to accept online payments for those services and devices through credit cards, PayPal, and Venmo transactions. Each of these actions were apparently taken in furtherance of its fraudulent scheme to obtain payments from customers without providing any of the agreed to equipment and services.

42. Although a number of the consumers who had been victimized by Cleo's fraudulent conduct were able to acquire EBB Program benefits through another provider in short order, this was not the case for all of Cleo's victims. One of the deceived consumers interviewed by the Bureau was not aware that they could still obtain their EBB Program benefits through an alternative provider.¹²⁴ Documents filed with the FCC Complaint Center show that Cleo apparently affirmatively misrepresented to many consumers that it had claimed their EBB Program benefits and the consumers were no longer able to apply for them through other providers.¹²⁵ One consumer told Bureau staff that she was aware she could still use her program benefits with another provider, but after her experience with Cleo, she would not do so.¹²⁶ Because of Cleo's actions, this consumer was not able to obtain EBB Program services as the program intended.

43. We do not know the total extent of the harm caused by Cleo's actions—how many consumers may have been victims of its fraud but did not file complaints with the Commission, or how many consumers chose to forgo applying for the EBB Program or its successor, the Affordable Connectivity Program, due to their experience with Cleo or due to hearing about other consumers' experiences with Cleo. We reasonably assume other such victims exist. The harm that Cleo caused by these apparent wire fraud violations goes far beyond financial harm to the low-income consumers Cleo and Kyle Traxler preyed upon; Cleo's conduct erodes the trust that is necessary for the EBB Program and its successor, the Affordable Connectivity Program, to achieve their purposes.

¹²¹ See *United States v. Daniel*, 329 F.3d 480 (6th Cir. 2003).

¹²² *Neder* at 25; See *United States v. Daniel*, 329 F.3d 480, 487 (6th Cir. 2003) ("To convict a defendant of wire fraud the government must prove specific intent, which means not only that a defendant must knowingly omit a material fact, but also that the misrepresentation or omission must have the purpose of inducing the victim of the fraud to part with property or undertake some action that he would not otherwise do absent the misrepresentation or omission.").

¹²³ *United States v. Gray*, 96 F.3d 769, 775-76 (5th Cir. 1996).

¹²⁴ See *supra* para. 30 (Consumer E).

¹²⁵ See *supra* para. 30.

¹²⁶ See *supra* para. 30 (Consumer C).

B. Cleo Communications' Untruthful and Inaccurate Statements

44. Although Cleo stated in its application for authorization that it had provided broadband services in 54 states and territories through December 1, 2020, the Bureau's investigation did not find evidence to support these statements. All of the complaints regarding Cleo reported to the Commission claim that Cleo failed to provide ordered services and devices.¹²⁷ The Bureau did not find any activity associated with the IRS EIN Cleo supplied in its WCB filings in any public resource or law enforcement database. The IRS EIN was also only provided once.¹²⁸ The Bureau sent a subpoena to one of Cleo's self-identified business addresses, and it was returned to sender with a notation of "company unknown."¹²⁹ The only evidence of the existence of Cleo appears to be associated with its fraudulent participation in the EBB Program.

45. Rule 1.17 requires applicants for Commission authorization to provide fully truthful and accurate statements and ensure that any material factual written statements are correct and not misleading.¹³⁰ To qualify to be an EBB Program provider, a non-ETC company had to have been providing broadband services as of December 1, 2020, and to certify so to the Commission.¹³¹

46. As discussed above, Cleo filed an application with the Commission to participate as an EBB Program provider with supporting documentation on May 14, 2021, and May 25, 2021, and filed an election notice with WCB on May 26, 2021. In both filings, Cleo stated it was providing broadband services in 54 states and territories as of December 1, 2020. Cleo certified on its application to the Commission that all the material statements made in the application, attachments, and supporting documents were "true, complete, correct and made in good faith."¹³² They were not. Cleo certified on its election notice that its filing was "true, accurate and complete."¹³³ They were not. The Commission's investigation did not discover any evidence to support a claim that Cleo was providing broadband services as of December 1, 2020. A non-ETC provider was not allowed in the EBB Program unless they had been providing broadband services as of December 1, 2020.¹³⁴ Cleo's statements that it had been providing broadband services in 54 states and territories as of December 1, 2020, were apparently intentional misrepresentations of material facts made to the Commission to gain authorization to participate in the EBB Program.

47. The primary focus of Rule 1.17 in its current form is to "enhance the effectiveness of investigatory and adjudicatory proceedings."¹³⁵ Cleo's apparent omissions and misrepresentations have harmed the effectiveness of both the adjudication of its authorization and the Bureau's investigation into its conduct. To date, Cleo has not cured its misrepresentations and lack of candor by revising or

¹²⁷ Information on file in Investigation Number EB-FD-22-00033355.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 47 CFR § 1.17.

¹³¹ *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4627, para. 34; *Emergency Broadband Benefit Program Provider Approval & Alternative Eligibility Verification Application Filing Instructions* at 5 (Mar. 2021).

¹³² Information on file in Investigation Number EB-FD-22-00033355.

¹³³ Cleo Communications Emergency Broadband Benefit Program Service Provider Election Form (May 26, 2021).

¹³⁴ *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4627, para. 34; *Emergency Broadband Benefit Program Provider Approval & Alternative Eligibility Verification Application Filing Instructions* at 5 (Mar. 2021).

¹³⁵ *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4022, para. 16 (2003).

withdrawing its application or election notice. Both of these submissions appear to be misrepresentations to the Commission in continuing violation of section 1.17 of the Commission's rules.¹³⁶

C. Joint and Several Liability of Kyle Traxler

48. Based upon the facts and circumstances of this case, Cleo Communications and Kyle Traxler appear, for legal purposes, to be one and the same. Consequently, to the extent they have any separate legal identity, we find it appropriate that they should be jointly and severally liable for the proposed forfeiture penalty.

49. The Commission may hold an entity or individual liable for the acts or omissions of a different, related entity: (i) where there is a common identity of officers, directors, or owners; (ii) where there is common control between the entities; and (iii) when it is necessary to preserve the integrity of the Act and to prevent the entities from defeating the purpose of statutory provisions.¹³⁷ Where these legal elements are satisfied, as a practical matter, the Commission has held an individual liable for the acts of a separate, corporate entity where the named individual possesses significant operational control of the entity, and his or her actions have furthered the allegedly unlawful conduct.

50. In the present matter, Cleo appears to be solely owned and operated by one individual, Kyle Traxler. The Bureau's investigation discovered no evidence of any other individual involved with Cleo ownership or management. All database searches conducted by the Bureau associate Cleo solely with a Kyle Traxler.¹³⁸

51. Kyle Traxler claimed to be the CEO and sole proprietor of Cleo, registered Cleo as a tradename in the State of Ohio, registered for the company's SAM number, and filed the application for

¹³⁶ See, e.g., *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892 (2015); *Purple Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5491, 5506, n.87 (2014); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15933, para. 20 (2007); see also, *Truphone, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 22-20, -- FCC Rcd ---, --, para. 22 (Apr. 21, 2022).

¹³⁷ See *Telseven, LLC, Patrick Hines*, Forfeiture Order, 31 FCC Rcd 1629, 1631, para. 8 (2016). The Commission and the courts have long stated that “[w]here the statutory purpose could ... be easily frustrated through the use of separate ... entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purpose of regulation.” *Improving Pub. Safety Commc'ns in the 800 MHz Band*, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887–88 (2010) (citing *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 854 (5th Cir. 1971)); see also *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 739 (D.C. Cir. 1974) (finding that the Commission correctly treated the individual and the corporation he controlled as the same entity and granted only one license and that “substantial evidence supports the Commission's decision to pierce Capital's corporate veil in order to carry out the statutory mandate ‘to provide a fair, efficient, and equitable distribution of radio service.’”). The courts have also looked through the corporate form in analogous situations, such as cases involving: the parent and subsidiaries where an entity was created to circumvent agency liability, *Transcontinental Gas Pipe Line Corp. v. FERC*, 998 F.2d 1313, 1321–22 (5th Cir. 1993) (finding that FERC correctly looked behind corporate forms and treated the parent and subsidiaries as a single entity where the parent pipeline set up subsidiaries to sell gas at prices at which the parent could not legally sell); two corporations that were controlled by one family, *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950) (concluding that although two newspapers were separate corporations, with separate editorial staffs, and located in communities over fifty miles apart, the Commission correctly denied applications of both corporations when the record showed that one family owned all of the stock in both corporations, the owners took active part in the control and policy formulation of the newspapers, and the true applicant in each case was the same group of individuals); and several corporations that were used to operate one business, *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (“The fact that several corporations are used in carrying on the business does not relieve them of their several statutory obligations more than it relieves them of the taxes severally laid upon them.”).

¹³⁸ Information on file in Investigation Number EB-FD-22-00033355.

EBB Program provider authorization and election notice for Cleo.¹³⁹ No other name has ever appeared on Cleo's EBB Program broadband provider application and application notice.¹⁴⁰ The e-mail address WCB, CGB, and EB used to communicate with Cleo was "ktraxler@cleocommunications.com."¹⁴¹

52. The Bureau found no evidence Cleo was incorporated, formed as a limited liability company, general partnership or any other formal structure. Cleo is registered only as a tradename in the State of Ohio.¹⁴² There does not appear to be a Cleo Board of Directors or officers of Cleo other than Kyle Traxler, who has styled himself as CEO of Cleo. Kyle Traxler is apparently the only individual involved with Cleo. Outside of its participation in the EBB Program, the Company does not have any business operations.

V. PROPOSED FORFEITURE

53. The Commission finds that Cleo and Kyle Traxler apparently willfully and repeatedly, and with reckless indifference to the truth, violated the federal wire fraud statute, 18 U.S.C. § 1343, at least eight times during the applicable statute of limitations period. Specifically, Cleo used its website to offer discounted broadband services or devices to at least eight customers under the pretext of participating in the Commission's EBB Program, caused those consumers to make payments on its website through credit cards, PayPal, or Venmo, and never delivered the agreed to services or devices. Cleo took money from these consumers but provided nothing in return. These apparent schemes to defraud resulted in consumers not receiving services or devices ordered, not receiving benefits to which they were entitled under the EBB Program, and led to confusion and mistrust in the EBB and Affordable Connectivity Programs.

54. The Commission also finds Cleo apparently made untruthful and inaccurate statements to the Commission in its application and its election notice to participate in the EBB Program. Specifically, Cleo falsely stated and certified that it had been providing broadband services in 54 states and territories as of December 1, 2020. The Bureau's investigation found no evidence to support that repeated claim.

55. In this case, we calculate the proposed forfeiture to account for the egregiousness of the harm caused by Cleo and to serve as both a punishment and a deterrent to future wrongdoing. Under the Commission's rules, the base forfeiture is \$5,000 for each violation of the wire fraud statute, 18 U.S.C. § 1343, pursuant to section 503(b)(1)(D) of the Act.¹⁴³ In light of the egregiousness of Cleo's conduct in using the EBB Program to commit wire fraud, we propose an upward adjustment to the statutory maximum, which is \$22,021 per violation, or \$176,168 in total.¹⁴⁴ Under the Commission's rules, the base forfeiture for violations involving lack of candor and misrepresentation is the statutory maximum 22,021 per violation.¹⁴⁵ Therefore, the proposed total forfeiture for Cleo's apparent lack of candor and misrepresentation in its uncured application and uncured election notice to participate in the EBB Program is \$44,042.

¹³⁹ Non-ETC Application, application system report. Aug. 26, 2021; Cleo Emergency Broadband Benefit Service Provider Election Form.

¹⁴⁰ Information on file in Investigation Number EB-FD-22-00033355.

¹⁴¹ *Id.*

¹⁴² See <https://bizimage.ohiosos.gov/api/image/pdf/202104804584>.

¹⁴³ See 47 CFR § 1.80, Section I (Base Amounts for Section 503 Forfeitures).

¹⁴⁴ *Id.* § 1.80(b)(9).

¹⁴⁵ *Id.* n.(1) to Table 1.

VI. CONCLUSION

56. We have determined that Cleo and Kyle Traxler apparently willfully and repeatedly violated section 1343 of Title 18 of the United States Code and section 1.17 of the Commission's rules. Cleo and Kyle Traxler are therefore apparently liable for a total forfeiture penalty of \$220,210.

VII. ORDERING CLAUSES

57. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules, Cleo and Kyle Traxler are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$220,210 for willful and repeated violations of section 1343 of Title 18 of the United States Code and section 1.17 of the Commission's rules.

58. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Cleo and Kyle Traxler **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 61 below.

59. Cleo and Kyle Traxler shall send electronic notification of payment to Rakesh Patel at Rakesh.Patel@fcc.gov, to Jodi Schulz at Jodi.Schulz@fcc.gov, and to Carla Conover at Carla.Conover@fcc.gov, Enforcement Bureau, Federal Communications Commission, 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).¹⁴⁶ 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:¹⁴⁷

- 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.¹⁴⁸ 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).¹⁴⁹ 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 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 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

¹⁴⁶ Payments made using CORES do not require the submission of an FCC Form 159.

¹⁴⁷ For questions regarding payment procedures, please contact the Support Hotline by phone at 1-877-480-3201 (option #1).

¹⁴⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁴⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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/userLogin>. 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.

60. 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. 20554.¹⁵⁰ 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.

61. 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. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 9050 Junction Drive, Annapolis Junction, MD 20701, ATTN: Enforcement Bureau, Federal Communications Commission and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be e-mailed to Rakesh.Patel@fcc.gov, Jodi.Schulz@fcc.gov, and Carla.Conover@fcc.gov.

62. 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. 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 declining, reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.

63. **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 Kyle Traxler, CEO, Cleo Communications, 1215 Crystal Glen Blvd, Unit E, Findlay, OH 45840 and Kyle Traxler, CEO, Cleo Communications, 740 County Road 212, Lot 110, Fremont, OH 43420-8408.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵⁰ See 47 CFR § 1.1914.