

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

In the Matter of
Tone Communication Services LLC
File No.: EB-FD-22-00034228
NAL/Acct. No.: 202432200002
FRN: 0028948834

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER INITIATING
REMOVAL PROCEEDING

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I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding (NAL), we propose a penalty of \$14,021,293 against Tone Communication Services LLC (Tone Communication, Tone, or the Company) for apparently willfully and repeatedly violating Federal Communication Commission (FCC or Commission) rules relating to the Affordable Connectivity Program (ACP) and the federal wire fraud statute.¹ The apparent violations for which the Commission proposes forfeiture amounts occurred from March 7, 2022 to the present.²

2. The Emergency Broadband Benefit Program (EBB) was established by the Commission on February 25, 2021³ at the direction of Congress through the Consolidated Appropriations Act of 2021.⁴ The purpose of the program was to facilitate the provision of broadband services and devices to eligible households⁵ so that they could stay connected during the COVID-19 pandemic. Efforts to slow the spread of COVID-19 resulted in the closure of businesses and schools across the country for extended periods, which in turn caused millions of Americans to become newly unemployed or unable to find work. In addition, these closures caused Americans 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, is a barrier to access for many families, and the support provided by EBB was designed to alleviate some of that burden.⁶ By the end of 2021, more than nine million American households had benefited from EBB subsidies for broadband services and connected devices,⁷ including students accessing virtual classrooms, adults working remotely, and people providing and receiving critical healthcare services.⁸

3. Although EBB ended on December 31, 2021, Congress, pursuant to the Infrastructure Investment and Jobs Act (Infrastructure Act),⁹ built upon EBB by appropriating new funding for ACP to

¹ 47 CFR §§ 54.1800-54.1814; 18 U.S.C. § 1343.

² See Tolling Agreements executed by Fraud Division, FCC Enforcement Bureau, and Ephraat Michael, Tone Communication (Mar. 6, 2023 and Apr. 20, 2023) (Tolling Agreements) (on file in Investigation Number EB-FD-22-00034228).

³ 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*).

⁴ Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752), available at <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

⁵ See *infra* para. 7.

⁶ See *Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4613, para. 1.

⁷ See Universal Service Administrative Co., About, Emergency Broadband Benefit Program, Emergency Broadband Benefit Program Enrollments and Claims Tracker, <https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/> (last visited Dec. 4, 2023).

⁸ See Fed. Comm'n's Comm'n, Home, Consumer, Emergency Broadband Benefit, <https://www.fcc.gov/broadbandbenefit> (last visited Dec. 4, 2023).

⁹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act), <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS->

provide discounted broadband service and connected devices to low-income households. To ensure the integrity and effectiveness of EBB, and then ACP, Congress and the Commission authored a regulatory framework which imposed responsibilities and obligations on participating service providers, including requiring service providers to determine a customer's eligibility to participate in these programs prior to enrolling the customer for service.¹⁰ By the end of 2022, more than 15.4 million American households were enrolled in ACP.¹¹

4. From at least July 2022 through June 2023, Tone sought and received ACP funding for subscribers that were improperly enrolled in the program. The Company enrolled these subscribers with fake or false identifying information by either using an address to which the purported subscriber had no connection or repeatedly using the same non-subscriber benefit qualifying person (BQP)¹² to enroll multiple subscribers. As a result of this conduct, Tone apparently violated sections 54.1805, 54.1806(b), 54.1808(e)(3), and 54.1810(i) of the Commission's rules and apparently improperly received millions of dollars of ACP support. Despite these apparent violations, from July 2022 through June 2023, Tone falsely and repeatedly certified in its reimbursement requests¹³ to the FCC and the Universal Service Administrative Company (USAC) that it was in compliance with the Commission's rules; based on these misrepresentations made under penalty of perjury, Tone received funding from ACP. Tone submitted these reimbursement requests via interstate wires in apparent violation of the federal wire fraud statute.

5. The investigation by the Commission's Enforcement Bureau (Bureau) further identified apparent violations of ACP rules governing the transfer of subscriber benefits from one provider to another, in apparent violation of section 54.1810(b)(2).¹⁴ The Bureau also found that Tone apparently willfully and repeatedly made misrepresentations to the Commission in its applications and election notice to participate in EBB and ACP, and to the Bureau in the course of its, investigation, all in violation of section 1.17. Tone also failed to respond fully to two Letters of Inquiry from the Bureau, which are Commission orders. We find that the proposed \$14,021,293 forfeiture penalty reflects the scope, duration, seriousness, and egregiousness of Tone's numerous apparent violations and resulting harm to ACP.

[117hr3684enr.pdf](#); see also *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022) (*Affordable Connectivity Program Order*).

¹⁰ 47 CFR §§ 54.1800-54.1814.

¹¹ See Universal Service Administrative Co., About, Affordable Connectivity Program, ACP Enrollment and Claims Tracker, <https://usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/> (last visited Dec. 4, 2023).

¹² Generally, a benefit qualifying person is the member of the household who meets the requirements to receive ACP benefits. In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant, often times a dependent child. See 47 CFR § 54.1800(j), (l); *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4643-45, paras. 66, 68 and n.222; *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, Public Notice, 37 FCC Rcd 10211 (WCB 2022); Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), <https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud>.

¹³ See 47 CFR §§ 54.1608, 54.1808.

¹⁴ 47 CFR § 54.1810(b)(2) requires participating providers to provide "written notice to the transferred subscriber" within five business days of completing a subscriber transfer in NLAD.

II. BACKGROUND

A. Legal Framework

1. Emergency Broadband Benefit Program

6. The Consolidated Appropriations Act became law on December 27, 2020.¹⁵ 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,¹⁶ to remain available until expended. The Consolidated Appropriations Act directed the Commission to use these funds to establish EBB, under which eligible households could receive a monthly discount on the cost of broadband service and a one-time discount on eligible connected devices during an emergency period relating to the COVID-19 pandemic, and participating service providers could receive a reimbursement for providing these discounts.¹⁷

7. The Consolidated Appropriations Act directed, and our rules provide, that a household would be eligible for the Emergency Broadband Benefit if at least one member of the household: (i) 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); (ii) applied for and been approved to receive benefits under the free and reduced price lunch program or the school breakfast program; (iii) 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; (iv) received a Federal Pell Grant in the current award year; or (v) met the eligibility criteria for a participating service provider's existing low-income or COVID-19 program, subject to approval by the Commission.¹⁸ Additionally, to receive the EBB benefit, the rules make clear that no member of a household could have already been receiving an EBB benefit.¹⁹ The Commission determined that the National Lifeline Eligibility Verifier (National Verifier), which is operated by USAC to verify certain eligibility criteria for household participation in the Commission's Universal Service Lifeline Program, should also be used for EBB.²⁰

8. A participating service provider was required to verify household eligibility in one of three ways under EBB. It could use the National Verifier, it could seek Wireline Competition Bureau (WCB) approval to use an alternative verification process, or it could rely on a school to verify the

¹⁵ Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752), <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (Consolidated Appropriations Act).

¹⁶ *Id.* § 904(i).

¹⁷ *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*, *supra* note 3, at 4613, para. 2. The emergency period ended on November 11, 2023, and the program continues under the ACP.

¹⁸ Consolidated Appropriations Act, § 904(a)(6); 47 CFR § 54.1605(a).

¹⁹ 47 CFR § 54.1605(b).

²⁰ *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4638, para. 54; Consolidated Appropriations Act, §§ 904(a)(6), (b)(2). The National Verifier was used in EBB and is available for use in the successor ACP 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 *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4635, para. 50.

household's eligibility through a household member's participation in the reduced price lunch program or school breakfast program.²¹

9. Providers participating in EBB were required to “implement policies and procedures for ensuring that their Emergency Broadband Benefit Program households [we]re eligible to receive the Emergency Broadband Benefit.”²² In particular,

[a] provider [could] not provide a consumer with service that it represent[ed] to be Emergency Broadband Benefit-supported service or seek reimbursement for such service, unless and until it ha[d]: (1) Confirmed that the household [wa]s an eligible household pursuant to 47 CFR 54.1605; (2) Completed any other necessary enrollment steps, and; (3) Securely retained all information and documentation it receive[d] related to the eligibility determination and enrollment, consistent with 47 CFR 1611.²³

10. Broadband providers were not required to participate in EBB; instead, they could voluntarily choose to participate by filing an election notice, which had to be certified and submitted to USAC, along with supporting documentation to show the provider was qualified to offer broadband services and/or discounted connected devices.²⁴ Eligible Telecommunications Carriers (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.²⁵ Broadband providers had to have been providing broadband services as of December 1, 2020 to participate in EBB.²⁶ 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.²⁷

11. 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 for the connected device, if the charge to the eligible household for that device was more than \$10 but less than \$50.²⁸ A participating provider could receive reimbursement for only one supported device per eligible household.²⁹

12. On May 12, 2021, EBB providers began enrolling consumers in the program.³⁰ 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 EBB and be directed to the FCC list.³¹ Consumers could begin their search on the webpage containing

²¹ 47 CFR § 54.1606(a)(1)-(3); 47 U.S.C. § 1752(b)(2).

²² 47 CFR § 54.1606(b).

²³ *Id.*

²⁴ *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4616, para. 10.

²⁵ 47 CFR § 54.1601(a)-(c).

²⁶ *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4622, para. 22; EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions, at 5 (Mar. 2021).

²⁷ *See* 47 CFR § 54.1601(c).

²⁸ Consolidated Appropriations Act, § 904(b)(5), 135 Stat. 1182; 47 CFR § 54.1603(b).

²⁹ Consolidated Appropriations Act, § 904(b)(5), 135 Stat. 1182; 47 CFR § 54.1603(b).

³⁰ *Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

³¹ *Id.* at 7615.

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 offerings.³²

13. Additional relevant EBB rule provisions included:

a. Definitions for household and economic unit:

A 'household' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An 'economic unit' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.³³

b. "All participating providers in the Emergency Broadband Benefit Program must make available the Emergency Broadband Benefit Program to qualifying low-income consumers."³⁴

c. "If the prospective household shares an address with one or more existing Emergency Broadband Benefit Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule prior to initial enrollment."³⁵

d. Participating providers "must require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier." As part of the registration process, enrollment representatives must include their first and last name, date of birth, last four digits of their social security number, email address, and residential address. Enrollment representatives will then be assigned a unique identifier, which they will use to access the National Lifeline Accountability Database (NLAD), the National Verifier, any eligibility database, and to complete any EBB enrollment or verification forms.³⁶

e. To receive EBB reimbursement, an officer of the participating provider must certify, as part of each request for reimbursement—which typically occurs monthly—that, among other things, (1) the participating provider is in compliance with all EBB rules, (2) the participating provider has obtained valid certification and applications forms for each of the subscribers for whom it is seeking reimbursement, and (3) the provider

³² The Affordable Connectivity Program uses the same format to identify providers participating in that program. *See, e.g.*, Fed. Comm'n's Comm'n, <https://www.fcc.gov/affordable-connectivity-program-providers>; Universal Service Administrative Co., *Companies Near Me*, <https://data.usac.org/publicreports/CompaniesNearMe/Download/Report> (last visited Dec. 1, 2023).

³³ 47 CFR § 54.1600(l).

³⁴ *Id.* § 54.1604(a).

³⁵ *Id.* § 54.1606(c).

³⁶ *Id.* § 54.1607(a)(1)-(4).

has retained all necessary documentation for no less than the six full preceding calendar years.³⁷

2. Affordable Connectivity Program

14. The Infrastructure Act extended EBB's objectives and left much of EBB's basic framework in place but made "changes to the benefit amount, rules regarding plan and subscriber eligibility, and providers' public promotion obligations, among other changes."³⁸ With these new changes, the Infrastructure Act transitioned EBB to ACP. Provisions that carried over from EBB to ACP include, but are not limited to:

- a. Definitions such as "participating provider," "broadband provider," "broadband internet access service," and "household."
- b. The three eligibility verification processes being (1) the National Verifier, (2) an alternative verification process, or (3) relying on a school to verify the household's eligibility based on the household's participation in the free and reduced price lunch program or school breakfast program.³⁹
- c. The process for participating providers to register enrollment representatives with USAC.⁴⁰
- d. A participating provider's officer certifications in connection with the provider's reimbursement requests.⁴¹
- e. The requirement that, in addition to meeting one of the eligibility qualifications, "neither the eligible household nor any member of the household may already be receiving another affordable connectivity benefit from that participating provider or any other participating provider."⁴²
- f. Participating providers shall make available the affordable connectivity benefit to eligible households.⁴³

15. Provisions that changed or were removed in the transition from EBB to ACP include, but are not limited to:

- a. The standard non-tribal monthly broadband benefit decreased from \$50 to \$30.⁴⁴
- b. The eligibility criterion based on a household having experienced a substantial loss of income since February 29, 2020 was removed.

³⁷ *Id.* §§ 54.1608(e), 54.1611.

³⁸ *Affordable Connectivity Program Order*, *supra* note 9, at 486, para. 4; *see also* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf>.

³⁹ *See* 47 CFR §§ 54.1606(a)(1)-(3), 54.1806(a)(1)-(3).

⁴⁰ *See id.* §§ 54.1607(a)(1)-(4), 54.1807(a)(1).

⁴¹ *See id.* §§ 54.1608(e), 54.1611, 54.1808(e), 54.1811.

⁴² *See id.* §§ 54.1605(b), 54.1805(b).

⁴³ *See id.* §§ 54.1604(a), 54.1804(a).

⁴⁴ *Compare id.* § 54.1603(a) *with id.* § 54.1800(b).

- c. The eligibility criterion based on income was adjusted from at or below 135% of the Federal Poverty Guidelines to at or below 200% of the Federal Poverty Guidelines.⁴⁵
16. Finally, express provisions that are new to ACP include, but are not limited to:
- a. An additional eligibility criterion based on a consumer's participation in Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).⁴⁶
- b. A participating provider must annually certify, under penalty of perjury, that it has policies in place to comply with all ACP rules and procedures. In addition, the participating provider must acknowledge that it "is liable for violations of the Affordable Connectivity Program rules and that its liability extends to violations by its agents, contractors, and representatives[.]"⁴⁷
- c. USAC shall recertify subscribers' eligibility using the National Verifier where the subscriber's eligibility was initially determined by the National Verifier.⁴⁸
- d. Participating providers are prohibited from offering to enrollment representatives, their direct supervisors, or entities operating on the providers' behalf, any form of compensation that is (1) based on the number of consumers or households that apply for or are enrolled in ACP with the provider, (2) based on revenues the provider received in connection with ACP, including payments for connected devices, (3) based on the provider permitting the retention of cash payments received from a subscriber in connection with a connected device, or (4) characterized as paid in connection with a non-ACP activity that is actually based on ACP applications, enrollments, or revenues.⁴⁹
- e. Participating providers are prohibited from engaging in unjust or unreasonable acts or practices that would undermine the purpose, intent, or integrity of ACP, including violating any ACP rule.⁵⁰
- f. The Commission's rules limit ACP subscribers to one benefit transfer between participating providers per service month.⁵¹ There are four limited exceptions to the rule: (1) the subscriber's benefit was improperly transferred, (2) the subscriber's service provider ceases operations or fails to provide service, (3) the service provider is found to be in violation of ACP rules and the violation impacts the subscriber for whom the exception is sought, and (4) the subscriber changes his/her location to a residential address outside the provider's ACP service area.⁵²

⁴⁵ Compare *id.* § 54.1605(a)(1) with *id.* § 54.1800(j)(2).

⁴⁶ 47 CFR § 54.1800(j)(6). See also *Affordable Connectivity Program Order*, *supra* note 9, at 487, para. 5.

⁴⁷ 47 CFR § 54.1801(f).

⁴⁸ *Id.* § 54.1806(f)(1).

⁴⁹ *Id.* § 54.1807(b)(1)-(4).

⁵⁰ *Id.* § 54.1810(i).

⁵¹ See *id.* § 54.1810(b)(3) ("Participating subscribers can only transfer their affordable connectivity benefit between providers once in a given service month, with the following limited exceptions: (i) The subscriber's benefit was improperly transferred; (ii) The subscriber's service provider ceases operations or fails to provide service; (iii) The subscriber's current service provider is found to be in violation of affordable connectivity program rules, and the violation impacts the subscriber for which the exception is sought; (iv) The subscriber changes its location to a residential address outside of the provider's service area for the Affordable Connectivity Program.").

⁵² *Id.* § 54.1810(b)(3).

17. Service providers use the Affordable Connectivity Claims System (ACCS) to claim subscribers for reimbursement and to certify reimbursement requests. The ACCS is available through USAC's "one portal" system.⁵³ This process is completed entirely online.⁵⁴

18. In order to claim a subscriber, a service provider must download a new filing template to review the list of subscribers eligible for reimbursement. This filing template includes subscriber data from the NLAD subscriber snapshot report, which is taken on the first of the month. A service provider then populates and submits the reimbursement request template with the necessary information (such as the reimbursement amount sought) for each subscriber. Finally, the Company's certifying officer certifies⁵⁵ and transmits the reimbursement request to USAC electronically.⁵⁶

3. Untruthful and Inaccurate Statements

19. 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 adjudicatory matter within the Commission's jurisdiction, from intentionally providing "material factual information that is incorrect or intentionally omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading[.]"⁵⁷ The courts and the Commission have consistently highlighted the importance of Commission authorization applicants 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,"⁵⁸ and is exhibited when an applicant makes an affirmative misrepresentation or fails to disclose relevant facts of "decisional significance."⁵⁹ Proving a violation of section 1.17 requires a showing of evidence that the applicant "inten[ded] to deceive" the Commission.⁶⁰ Intent to deceive is generally found in cases where a false statement is "coupled with proof that the party . . . [knew] of its falsity[.]"⁶¹ or where evidence allows intent to be derived "from a motive" to deceive.⁶²

⁵³ Universal Service Administrative Co., *Affordable Connectivity Program Claims Process Overview* (Apr. 21, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf.

⁵⁴ Tone Communication submitted its reimbursement requests from its place of business in Georgia or Texas to USAC in Washington, D.C./Virginia.

⁵⁵ See *infra* para. 45.

⁵⁶ Universal Service Administrative Co., *Affordable Connectivity Program Claims Process Overview* (Apr. 21, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf.

⁵⁷ See 47 CFR § 1.17(a)(1).

⁵⁸ *Swan Creek Commc'ns, 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)).

⁵⁹ *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478 (1995) (quoting *Swan Creek Communication v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994) and *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981)); see also, 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 an NAL for apparent misrepresentations in an application after the application grant was final).

⁶⁰ See *Century Cellunet of Jackson*, Memorandum Opinion and Order, 6 FCC Rcd 6150 (1991).

⁶¹ *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)).

⁶² *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (1994).

4. Wire Fraud

20. Congress has authorized the Commission to assess a forfeiture penalty for violations of the federal wire fraud statute under Title 18, United States Code, Section 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.”⁶³ 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[.]”⁶⁴ 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[.]⁶⁵

21. A finding that wire fraud under section 1343 has occurred “requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme.”⁶⁶ 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.”⁶⁷ 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.”⁶⁸ The use of mail or interstate wires to effectuate the fraudulent scheme “need not be an essential element of the scheme[;]” instead, it is “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.”⁶⁹ 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.⁷⁰ Use of the Internet, such as by perpetrating a scheme to defraud through online websites, constitutes use of interstate wires for purposes of section 1343.⁷¹

⁶³ 47 U.S.C. § 503(b)(1)(D).

⁶⁴ 47 CFR § 1.80(a)(5).

⁶⁵ 18 U.S.C. § 1343.

⁶⁶ *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).

⁶⁷ *United States v. Brien*, 617 F.2d 299, 307 (1st Cir. 1980) (citations omitted).

⁶⁸ *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).

⁶⁹ *Schmuck v. United States*, 489 U.S. 705, 710-11 (1989) (citations, quotations, and punctuation omitted).

⁷⁰ *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.”).

⁷¹ *See, e.g., United States v. Dinh*, No. 8-20-CV-1794 (KKM-AAS), 2021 WL 5867221 (M.D. Fla. Dec. 10, 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.”); *Kyle Traxler and Cleo Commc’ns*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 8151 (2022) (*Cleo NAL*).

22. A scheme to defraud requires the specific intent to make a misrepresentation or omission that is material to the scheme.⁷² 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.”⁷³ “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.”⁷⁴ Fraudulent intent may be “shown if a representation is made with reckless indifference to its truth or falsity[,]”⁷⁵ as well as a victim’s reliance on the misrepresentations made by the perpetrator.⁷⁶

B. Relevant Entities

1. Tone Communication

23. Tone is a limited liability company formed in the state of Texas on July 30, 2019.⁷⁷ Tone is a telecommunications company that provides internet, tablets, and cellphones to customers through the ACP.⁷⁸ Tone is a reseller of AT&T services.⁷⁹

24. Tone is authorized to offer ACP fixed and mobile broadband service in Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.⁸⁰ Tone stated it was “operating under no other names” besides Tone Communication Services LLC.⁸¹

⁷² *Neder v. United States*, 527 U.S. 1, 25 (1999).

⁷³ *Lemire*, 720 F.2d at 1341.

⁷⁴ *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).

⁷⁵ *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).

⁷⁶ *United States v. Wynn*, 684 F.3d 473 (4th Cir. 2012).

⁷⁷ Letter from Tone Communication Services LLC (Oct. 10, 2022) (on file in Case No. EB-FD-22-00034228) (Tone Letter). Note: While the letter is dated October 10, 2022, the Bureau did not receive it via email until October 16, 2022.

⁷⁸ Tone Communications, *Affordable Connectivity Program Home*, <https://tonecomms.com/> (last visited Dec. 1, 2023).

⁷⁹ Agreement Between Bellsouth Telecommunications, LLC D/B/A AT&T Florida and Tone Communication Services LLC (Apr. 6, 2021). The Commission considers toll resellers to be common carriers for purposes of assessing a forfeiture. *See, e.g., Cardinal Broadband, LLC*, Forfeiture Order, 27 FCC Rcd 7985 (2012); *Cardinal Broadband LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233 (EB 2008); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231 (2008); *Enhanced Communications Group, LLC*, Notice of Apparent Liability for Forfeiture, FCC 23-54, 2023 WL 4587311 (July 13, 2023).

⁸⁰ *See* Fed. Comm’n’s Comm’n, *Affordable Connectivity Program Providers*, <https://www.fcc.gov/affordable-connectivity-program-providers> (last visited Dec. 1, 2023).

⁸¹ *See* Tone Letter, *supra* note 77.

25. Ashar Syed is the owner of Tone Communication.⁸² Both Roselba Bartolini and Ashar Syed have held themselves out in submissions to USAC as CEO;⁸³ prior executives include Suzane Anderson (former President).⁸⁴

26. The bank account Tone Communication has on record with the Commission to receive ACP reimbursement payments is titled in the name of North Forsyth Equity, LLC (North Forsyth Equity).⁸⁵ North Forsyth Equity was organized in the state of Georgia in August 2008 by Ashar Syed.⁸⁶ When asked to characterize Tone's relationship with North Forsyth Equity, Tone told the Bureau that the two entities share the same owner,⁸⁷ Ashar Syed.⁸⁸ Pobish Ashar was previously a registered agent for North Forsyth Equity.⁸⁹ North Forsyth Equity's current address is 2375 Lexington Lane in Cumming, Georgia,⁹⁰ which is also reported to be a prior residence of Ishrat Jahan.⁹¹ Another address that North Forsyth Equity is associated with is 1815 Satellite Boulevard in Duluth, Georgia.⁹²

2. City Communications, Inc.⁹³

27. City Communications, Inc. (City Communications or City) was incorporated in the state of Georgia on February 24, 2014.⁹⁴ City is authorized to participate in ACP in Alabama, California,

⁸² Response to Supplemental Letter of Inquiry from Tone Communication at Supplemental LOI EB-FD-22-00034228, Response to Question 12 (June 1, 2023) (on file in EB-FD-22-00034228) (SLOI Response); Response to first subpoena to Tone Communication from {[REDACTED]} to Fraud Division, FCC Enforcement Bureau (Nov. 7, 2022) (on file in Investigation Number EB-FD-22-00034228) (Tone First Subpoena Response). Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

⁸³ Information on file in Investigation Number EB-FD-22-00034228.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Georgia Corporations Division, State of Georgia, *Secretary of State Business Formation, North Forsyth Equity LLC* (filed Aug. 20, 2008), <https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings>

⁸⁷ SLOI Response at Summary LOI EB-FD-22-00034228.

⁸⁸ {[REDACTED]} First Subpoena Response.

⁸⁹ Information on file in Investigation Number EB-FD-22-00034228. It appears Pobish Ashar is also known as Pobish Khan and was previously married to Ashar Syed. See *Pobish Ashar v. Ashar Syed*, Civil Action No. 17-1-6780-48, Motion for Contempt (Ga. Super. Ct., Cobb Cnty. Oct. 5, 2017), <https://trellis.law/doc/80975225/> (last visited Sept. 27, 2023) (Pobish Ashar filed for divorce from Ashar Syed on September 5, 2017).

⁹⁰ Georgia Corporations Division, State of Georgia, *Secretary of State 2023 Annual Registration, North Forsyth Equity LLC* (filed Mar. 13, 2023), <https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings>.

⁹¹ Information on file in Investigation Number EB-FD-22-00034228.

⁹² *Id.*

⁹³ In multiple Orders, the Consumer and Governmental Affairs Bureau found that City Communications, Inc. changed a complainant's telecommunications service provider without obtaining authorization and verification from the complainant in violation of section 258 of the Commissions Act of 1934, as amended, which prohibits slamming. *City Communications, Inc.*, Order, 35 FCC Rcd 467 (CGB 2020); *City Communications, Inc.*, Order, 35 FCC Rcd 611 (CGB 2020); *City Communications, Inc.*, Order, 35 FCC Rcd 1858 (CGB 2020); *City Communications, Inc.*, Order, 36 FCC Rcd 13488 (CGB 2021).

⁹⁴ Response to Letter of Inquiry, from City Communications, to Fraud Division, FCC Enforcement Bureau, at Doc. 20, Certificate of Incorporation, Response to Question 41 (Mar. 30, 2023) (on file in EB-FD-22-00034222) (City LOI Response).

Florida, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Pennsylvania, and Tennessee.⁹⁵ It is unclear who presently owns City—documents reviewed by the Bureau reference Ashar Syed, Pobish Ashar, and Faraz Syed (also apparently known as Faraz Mobeen) as owners at different times.⁹⁶ City’s current executives include Pobish Ashar (CEO) and Faraz Mobeen (CEO), while prior executives include Suzane Anderson (Officer)⁹⁷ and Patrick Hardy (Manager).⁹⁸ Faraz Mobeen was President of City from May 2014 to January 2020.⁹⁹

28. One of City’s reported name variations is Cathect Communications.¹⁰⁰ When asked directly what Tone Communication’s relationship is with City Communications, Tone’s response was that it “used” City Communications’ “CSR¹⁰¹ Portal in the past (*sic*).”¹⁰²

29. The bank account City Communications has on record with the Commission to receive ACP payments is owned by Tele Circuit Network Corporation (Tele Circuit).¹⁰³ When asked directly to characterize Tone Communication’s relationship with Tele Circuit, Tone’s response was that it “used Tele Circuit as shipment fulfillment carrier.”¹⁰⁴ Tele Circuit’s annual registration for 2020 in Georgia was submitted by Ashar Syed (Officer).¹⁰⁵ Pobish Ashar has been an authorized signatory on at least one of

⁹⁵ Fed. Commc’ns Comm’n, *Affordable Connectivity Program Providers*, [fcc.gov/affordable-connectivity-program-providers](https://www.fcc.gov/affordable-connectivity-program-providers) (last visited Dec. 1, 2023).

⁹⁶ Response to second subpoena, from { [REDACTED] } Document Production to Fraud Division, FCC Enforcement Bureau (Apr. 24, 2023) (on file in EB-FD-22-00034222) (Second Subpoena Response).

⁹⁷ Information on file in Investigation Number EB-FD-22-00034222.

⁹⁸ Patrick Hardy is listed on City Communications’ bank signature card as a manager of City Communications. Response to first subpoena, from { [REDACTED] } to Fraud Division, FCC Enforcement Bureau (Oct. 28, 2022) (on file in EB-FD-2200034222) (City First Subpoena Response). { [REDACTED] } City First Subpoena Response at Signature Card 4. Patrick Hardy was also the agent identified by Tone Communication as enrolling all 152 subscribers who used the three non-subscriber duplicate BQPs. Response to Letter of Inquiry, from Tone Communication, to FCC Enforcement Bureau, at DOC-03-Master File spreadsheet, Response to Question 15 (Mar. 30, 2023) (on file in EB-FD-22-00034228) (LOI Response).

⁹⁹ Application for Cathect Communications for Michigan Final Application PSC, Case No. U-20830 (filed Apr. 3, 2020). According to Mobeen’s resume, Mobeen stepped down as President of City in January 2020 and became CEO of Cathect then. *Id.* Based on the Bureau’s email exchanges with “fmobeen@citycom.co,” it appears Mobeen is still working at City in some capacity.

¹⁰⁰ Information on file in Investigation Number EB-FD-22-00034222.

¹⁰¹ CSR is an abbreviation for Customer Service Representative.

¹⁰² SLOI Response at Summary LOI EB-FD-22-00034228.

¹⁰³ { [REDACTED] } First Subpoena Response, Second Subpoena Response. The Commission issued an NAL against Tele Circuit Network Corp. in 2018 for slamming and cramming, *i.e.*, changing a consumer’s preferred service provider to itself without the consumer’s authorization and adding unauthorized charges to the consumer’s bill. *Tele Circuit Network Corp.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 4379 (2018). The NAL findings were adopted in a Forfeiture Order against Tele Circuit Network Corp. in 2021 and imposed a forfeiture of \$4,145,000 against Tele Circuit. *Tele Circuit Network Corp.*, Forfeiture Order, 36 FCC Rcd 7664 (2021) (concurring statements issued by then-Acting Chairwoman Jessica Rosenworcel and Commissioner Geoffrey Starks). The Tele Circuit Network Corp. NAL and Forfeiture Order note that Ashar Syed is the President of the company and Syed’s then-wife, Pobish Khan (sometimes referred to as Pobish Ashar) is the company’s CEO.

¹⁰⁴ SLOI Response at Summary LOI EB-FD-22-00034228.

¹⁰⁵ Georgia Corporations Division, State of Georgia, *Secretary of State Annual Registration, Tele Circuit Network Corporation* (filed Jan. 24, 2020), <https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings>.

Tele Circuit's bank accounts¹⁰⁶ and is apparently currently Tele Circuit's Treasurer.¹⁰⁷ A LexisNexis report regarding Tele Circuit includes a section listing connected businesses; this list includes City Communications and North Forsyth Equity, LLC.¹⁰⁸ Tele Circuit's current CEO is Ashar Syed,¹⁰⁹ it lists its business address as 1815 Satellite Boulevard, Suite 504 in Duluth, Georgia.¹¹⁰

3. Cathect Communications Inc.

30. Cathect Communications Inc. (Cathect Communications or Cathect) was created on June 27, 2019 in Texas.¹¹¹ Cathect is authorized to participate in ACP in Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin.¹¹² When asked directly to characterize Tone Communication's relationship with Cathect Communications, Tone responded that it "shared back-office Operations Company (*sic*) in the past[.]"¹¹³

31. Cathect's current executives include Suzane Anderson (Secretary) and Ishrat Jahan (CEO);¹¹⁴ prior executives include Faraz Mobeen (former CEO).¹¹⁵ When Cathect filed its incorporation paperwork in Georgia in 2020, Faraz Mobeen was the Incorporator.¹¹⁶ Cathect lists 2160 Lexington Lane in Cumming, Georgia as its office address,¹¹⁷ which is a two-bedroom house purchased in 2018 by Ishrat Jahan and Ashar Syed.¹¹⁸

C. Relationships Among the Relevant Entities

32. As discussed above, Tone has a relationship with at least two other entities that participate in ACP—City Communications and Cathect Communications¹¹⁹ Tone also has a relationship with Tele Circuit and North Forsyth Equity. For example:

¹⁰⁶ {[REDACTED]} Second Subpoena Response.

¹⁰⁷ Information on file in Investigation Number EB-FD-22-00034222.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ {[REDACTED]} First Subpoena Response.

¹¹¹ Information on file in Investigation Numbers EB-FD-22-00034222 and EB-FD-22-00034228.

¹¹² *Affordable Connectivity Program Providers*, <https://fcc.gov/affordable-connectivity-program-providers> (last visited Dec. 1, 2023).

¹¹³ SLOI Response at Summary LOI EB-FD-22-00034228.

¹¹⁴ Information on file in Investigation Number EB-FD-22-00034228. According to her resume, Suzane Anderson worked as Operations Manager at City Communications in 2018-2019. 12064-2020 – FL PSC application form – Cathect Communications (filed Nov. 16, 2020).

¹¹⁵ Information on file in Investigation Number EB-FD-22-00034228.

¹¹⁶ Attachments to Application Part I – LA – Cathect Communications (filed Apr. 3, 2020) (on file in EB-FD-22-00034228).

¹¹⁷ Application for Cathect Communications for Michigan Final Application PSC, Case No. U-20830 (filed Apr. 3, 2020).

¹¹⁸ Information on file in Investigation Number EB-FD-22-00034228.

¹¹⁹ The Bureau sent an LOI to City Communications, Inc. on September 16, 2022, which was substantially similar to the LOI the Bureau sent to Tone Communication on September 16, 2022.

- Tone’s response to the Bureau’s request for ACP revenue included revenue information for City Communications (as apparently paid to Tele Circuit) and Cathect Communications.¹²⁰
- According to an invoice produced by Tone from Prepaid Wireless Wholesale, the invoice was billed to Tone Communication at P.O. Box 2307, 225 Parkway 557, Woodstock, GA 30188 but the order was to be shipped to City Communications at the same address.¹²¹
- Tone produced an email from the Arizona Corporation Commission that related to an application filed by Cathect Communications.¹²² Tone also produced consent forms where the customer agreed that they were selecting the Company as their “Wireless Broadband Service provider” and later states their “ACP services will be switched to Cathect Communications.”¹²³
- In its 2019 application to transact business in Florida, one of the addresses Tone used as its business address was the address City Communications uses as its business address.¹²⁴
- Tone’s Ephraat Michael wrote in an email that the Company would be paying for a SIM card order “through [the] Cathect account.”¹²⁵
- In responding to separate Letters of Inquiry (LOIs) from the Bureau, both City Communications and Tone produced documents describing their ACP enrollment process. These documents are identical.¹²⁶

33. The Bureau reviewed Tone’s bank records and those for companies the Bureau identified as having some financial, personal, or personnel-related link to Tone.¹²⁷ This review revealed transfers and payments among the various companies, including:

- During the period from May 27, 2022 to April 29, 2023, Tele Circuit transferred approximately \$920,600 to Cathect Communications.
- A \$15,000 check dated December 16, 2021 from Cathect Communications to Tone Communication. This check was signed by Ashar Syed and endorsed by Ashar Syed.
- During the period from October 31, 2022 to December 30, 2022, Tone Communication transferred approximately \$1,015,450 to City Communications.
- During the period from March 8, 2021 to December 30, 2022, Tone Communication transferred approximately \$859,100 to Cathect Communications.
- A \$132,000 check on March 28, 2022 from a Tone Communication account to Tele Circuit.

¹²⁰ See LOI Response at DOC-02 ACP Revenue.

¹²¹ LOI Response at PWW-ToneCommunications062022.

¹²² Letter (sent via email) from Arizonia Corporation, Corporations Divisions, Commissioners, to Suzane Anderson, Cathect Communications (Dec. 16, 2022).

¹²³ SLOI Response at 1683829171599552877, 1683829293106040689.

¹²⁴ LOI Response at Florida SOS. The address is 300 Village Center Drive, Suite 103, Woodstock, GA 30188.

¹²⁵ LOI Response at Communications.

¹²⁶ LOI Response at Doc-04 ACP enrollment Process; City LOI Response at ACP enrollment Process.

¹²⁷ Information on file in Investigation Number EB-FD-22-00034228.

34. Bank records further show large payments going from Tone Communication's and related companies' accounts to various individuals; the Bureau was unable to determine a clear business purpose for any of these payments:

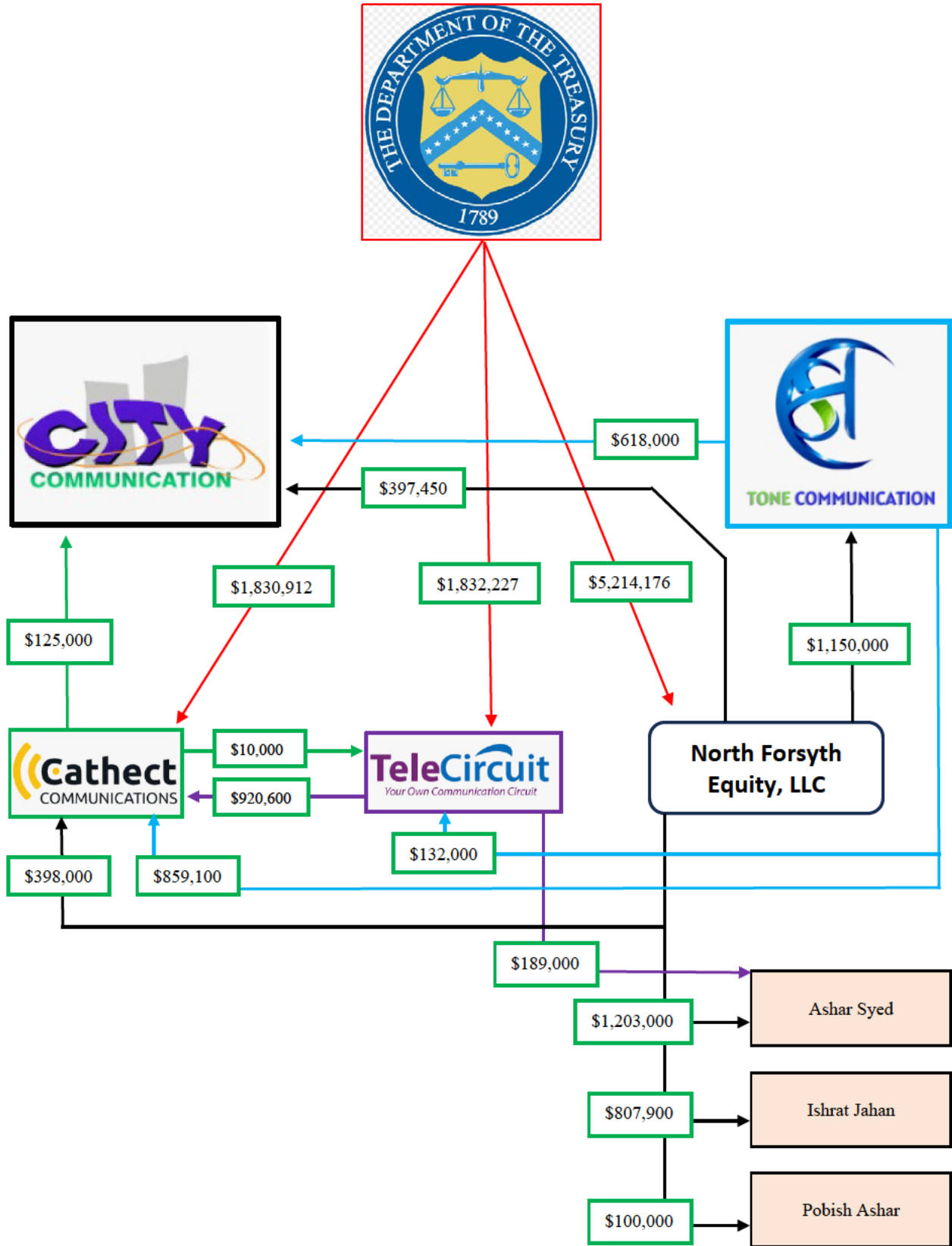
- During the period from July 23, 2021 to March 31, 2023, North Forsyth Equity transferred \$1,203,000 to Ashar Syed. During the period from May 6, 2022 to March 31, 2023, Tele Circuit transferred \$189,000 to Ashar Syed. Additionally from the period from December 16, 2021 to October 8, 2022, Ashar Syed endorsed checks made out to other entities and individuals in amounts that totaled approximately \$297,000. Ashar Syed is the CEO of Tele Circuit and is also affiliated with Tone Communication.¹²⁸
- During the period from September 6, 2022 to March 13, 2023, North Forsyth Equity sent a total of \$807,900 to Ishrat Jahan in a series of transactions; additionally, some of these payments are those noted above where Ashar Syed, not Jahan, endorsed the check. Ishrat Jahan is the CEO of Cathect Communications.¹²⁹
- On February 27, 2023, North Forsyth Equity sent \$100,000 to Pobish Ashar, who is the Secretary of City Communications, CFO of Tele Circuit, and apparent ex-wife of Ashar Syed.¹³⁰

On the next page is a diagram of the cash flows among the relevant entities that reflects transactions detailed in the entities' financial statements from March 2021 to May 2023:

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* Pobish Ashar was also the notary public on affidavits submitted to the Commission by both Tone Communication and City Communications in response to Commission inquiries. *See* Affidavit (Tone submitted by Ashar Syed, CEO of Tone, on June 1, 2023); Affidavit (City submitted by Emma Wilson, Operational Manager of City, on July 13, 2023).



D. Tone Communication's Application History to Participate in EBB and ACP

35. Because Tone Communication is a non-ETC, it had to be approved by WCB to be a provider in EBB.¹³¹ Tone's EBB approval automatically transitioned to ACP.¹³² Tone submitted applications to WCB seeking to be an EBB provider on October 4, 2021, November 22, 2021, and December 30, 2021; WCB approved these applications on October 6, 2021, November 29, 2021, and January 11, 2022, respectively.¹³³ In its second and third applications, Tone added states and territories to the jurisdictions in which the Company sought to be authorized to provide EBB/ACP services. Tone used two different business addresses on its applications: 401 S. Hunting Lodge Lane, Bastrop, TX 78602 and 9925 Haynes Bridge Rd, Suite 200, PMB 210, Alpharetta, GA 30022.¹³⁴ In all three applications, Tone listed its contact email address as info@tonecomms.com.¹³⁵

36. Separate from these three applications,¹³⁶ Tone Communication submitted an EBB election form to USAC on October 13, 2021 to provide fixed and mobile broadband service as well as connected devices. On the form, the Company listed "401 S Hunting Lodge Ln, Bastrop, TX 78602" as the "provider" address and "9925 Haynes Bridge Road, Suite 200, PMB 210, alpharetta, GA 30022 (*sic*)" as the "contact" address. The form lists two email addresses: "info@tonecomms.com" and "antoniob@tonecomms.com."¹³⁷ Tone's election form was approved on November 5, 2021.¹³⁸ In subsequent communications with USAC in December 2021, Tone used the "antoniob@tonecomms.com" email address and the "9925 Haynes Bridge Rd., Suite 200, PMB 210, Alpharetta, GA 30022" mailing address.¹³⁹

37. While Tone Communication applied to participate in EBB, it did not begin participating until the successor program, ACP, was in place, with its enrollment of subscribers beginning in February

¹³¹ 47 CFR § 54.1601(b).

¹³² *Affordable Connectivity Program Order*, *supra* note 9, at 492, para. 14.

¹³³ Tone Communication Application (filed Oct. 4, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Nov. 22, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Dec. 30, 2021) (on file at EB-FD-22-00034228).

¹³⁴ Tone Communication Application (filed Oct. 4, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Nov. 22, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Dec. 30, 2021) (on file at EB-FD-22-00034228).

¹³⁵ Tone Communication Application (filed Oct. 4, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Nov. 22, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Dec. 30, 2021) (on file at EB-FD-22-00034228).

¹³⁶ The application was an application for FCC approval to participate in the program. See USAC, About, Affordable Connectivity Program, Participate in ACP, <https://www.usac.org/about/affordable-connectivity-program/participate-in-acp/> (last visited Dec. 1, 2023). Separately, the EBB election form was an election notice submitted to USAC; submitting an election notice to USAC allowed USAC to register the company to participate in the program and to create the necessary system accesses. *Id.*

¹³⁷ Tone Communication EBB Election Form (Oct. 7, 2021) (on file at EB-FD-22-00034228).

¹³⁸ E-mail from Antonio, antoniob@tonecomms.com, to Abbey T., EBB Election Support, EBBElection@usac.org (Nov. 23, 2021, 12:47 EDT).

¹³⁹ E-mail from Antonio, antoniob@tonecomms.com, to Abbey T., EBB Election Support, EBBElection@usac.org (Dec. 7, 2021, 12:44 EDT).

2022.¹⁴⁰ For service months March 2022 through October 2023, Tone Communication received a total of \$15,656,581.55 in payments.¹⁴¹

III. THE BUREAU'S INVESTIGATION

38. On September 8, 2022, the FCC Office of Inspector General (OIG) issued an advisory warning that participating ACP providers had been enrolling multiple households based on a single BQP even though the Commission's rules prohibit the use of a single BQP to qualify multiple households for ACP support simultaneously.¹⁴² Also on September 8, 2022, in response to concerns that USAC had separately flagged for the Commission, WCB released a public notice detailing immediate action to prevent this type of improper enrollments and reminding providers of their obligation to implement policies and procedures for enrolling ACP households that are eligible to receive the benefit.¹⁴³

39. The Bureau sent an LOI to Tone Communication on September 16, 2022 in connection with potential violations of EBB and ACP rules.¹⁴⁴ The LOI was sent to 401 S. Hunting Lodge Lane, Bastrop, Texas 78602, the address Tone Communication listed in two of its program applications and its election notice, by both certified and regular mail.¹⁴⁵ The LOI sought information and documents related to the Company's participation in EBB and ACP with a focus on information related to subscribers who enrolled in ACP based on the eligibility of a non-subscriber BQP. Tone Communication responded to the LOI on October 16, 2022, January 23, 2023, and March 9, 2023.¹⁴⁶

40. In response to the Bureau's LOI, Tone Communication stated it had received a list of 1,162 ACP customers from USAC whom USAC had de-enrolled from ACP, but Tone did not explain why USAC had de-enrolled those customers and did not provide documents related to the de-enrollment.¹⁴⁷ In addition, Tone was notified by USAC in June 2022, August 2022, and September 2022 that the Company had enrolled subscribers with various BQP problems, including that: (1) Tone was not

¹⁴⁰ Information on file in Investigation Number EB-FD-22-00034228.

¹⁴¹ *Id.*

¹⁴² Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), <https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud>.

¹⁴³ *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, WC Docket No. 21-450, Public Notice, 37 FCC Red 10211 (WCB 2022). The FCC and USAC adopted several safeguards to stop duplicate non-subscriber BQP enrollments: (1) USAC identified and de-enrolled households that enrolled in ACP based on a duplicate BQP and USAC continued to conduct regular program integrity checks to identify enrollments based on a duplicate BQP, (2) USAC modified the National Verifier to prevent multiple households from enrolling in ACP using a duplicate BQP, and (3) USAC instituted a process to hold payments to limit the amount of potentially improper payments disbursed to providers that claim households enrolled with a duplicate BQP. Moreover, USAC reminded service providers participating in ACP to implement policies and procedures that included measures to check for intracompany duplicate subscribers. See USAC, *FCC Announces Additional Program Integrity Measures for ACP Enrollments Based on a Benefit Qualifying Person* (Sept. 14, 2022), <https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/FCC-Announces-Additional-Program-Integrity-Measures-for-BQP-Enrollments.pdf>; USAC, *ACP October Newsletter* (Oct. 28, 2022), <https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-October-Newsletter.pdf>.

¹⁴⁴ Letter of Inquiry from the Fraud Division to Tone Communication (Sept. 16, 2022) (on file in EB-FD-22-00034228) (LOI). The LOI also contained questions related to the Lifeline Program, in which Tone Communication stated it does not participate. See Tone Letter, *supra* note 77.

¹⁴⁵ LOI.

¹⁴⁶ Information on file in Investigation Number EB-FD-22-00034228.

¹⁴⁷ See Tone Letter, *supra* note 77.

allowed to receive reimbursement for devices provided to certain subscribers because other companies had already received reimbursement for devices provided to those subscribers, (2) certain subscribers Tone enrolled or the BQP used to enroll those subscribers matched the records of already existing subscribers in NLAD, and (3) members of Tone subscribers' households were already receiving ACP benefits.¹⁴⁸

41. Subsequently, the Bureau issued a supplemental LOI (SLOI) to Tone Communication on April 20, 2023.¹⁴⁹ The SLOI was sent via email to “ephraatmichael@tonecomms.com,” “info@tonecomms.com,” and “noellewilkinson@tonecomms.com” after the Bureau met with Tone representatives and confirmed the best way to send the SLOI. The SLOI sought information and documents regarding the relationship between Tone and City Communications and other related entities, and information related to transfers of customers. Tone responded to the SLOI on May 19, 2023, May 31, 2023, and June 1, 2023.

A. Subscribers Enrolled Using Duplicate Non-Subscriber BQP Information

42. Based on information obtained from the OIG, from June 24, 2022, through August 7, 2022, Tone Communication submitted 154 enrollments to NLAD for ACP service¹⁵⁰ for subscribers purportedly living in Oklahoma using only three non-subscriber BQPs¹⁵¹—four enrollments used BQP A, 114 enrollments used BQP B, and 36 enrollments used BQP C.¹⁵² In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant—often times a dependent child. Tone repeatedly used the same non-subscriber BQP to enroll multiple subscribers on the same day; for example:

- on July 15, 2022, non-subscriber BQP C was used to enroll six subscribers;
- on July 16, 2022, non-subscriber BQP C was used to enroll seven subscribers and non-subscriber BQP B was used to enroll eight subscribers;
- on July 17, 2022, non-subscriber BQP B was used to enroll 41 subscribers;
- on July 25, 2022, non-subscriber BQP C was used to enroll eight subscribers; and
- on July 31, 2022, non-subscriber BQP B was used to enroll 20 subscribers.¹⁵³

43. Of the 154 enrollments Tone submitted using only three non-subscriber BQPs, the Bureau was only able to verify that two of the subscribers had an address that matched the address listed in the enrollment information.¹⁵⁴ Additionally, the Bureau's analysis showed there were only 39 unique addresses used for the 154 enrollments.¹⁵⁵ In connection with these 154 enrollments, Tone submitted

¹⁴⁸ LOI Response at DOC-10 ACP Notices-USAC.

¹⁴⁹ Supplemental Letter of Inquiry from the Fraud Division to Tone Communication (Apr. 20, 2023) (on file in EB-FD-22-00034228) (SLOI).

¹⁵⁰ There are 152 subscribers connected with these 154 enrollments; two subscribers were enrolled twice in different months.

¹⁵¹ In this NAL, we protect their identities and label the three non-subscriber BQPs as “BQP A,” “BQP B,” and “BQP C.”

¹⁵² Information on file in Investigation Number EB-FD-22-00034228.

¹⁵³ *Id.*

¹⁵⁴ Among other resources, the Bureau used web resources including Google and LexisNexis.

¹⁵⁵ Information on file in Investigation Number EB-FD-22-00034228.

reimbursement requests from July 2022 to December 2022, and received a total of \$23,158.08 in reimbursement from ACP for both monthly service and devices.¹⁵⁶

44. Furthermore, in response to the Bureau's LOI, Tone Communication produced a list of ACP subscribers, which included approximately 11,000 subscriber entries.¹⁵⁷ The ACP subscriber list provided by Tone largely mirrors the information the Bureau obtained from the OIG regarding the duplicate non-subscriber BQPs; the Company's subscriber list shows that prior to August 2022, four subscribers enrolled using non-subscriber BQP A, 113 subscribers enrolled using non-subscriber BQP B, and 35 subscribers enrolled using non-subscriber BQP C.¹⁵⁸ All 152 of these subscribers were enrolled by the same agent, Patrick Hardy.¹⁵⁹ Tone's list of ACP subscribers showed no subscribers enrolled using these four non-subscriber BQPs after August 2022.¹⁶⁰

45. Tone Communication's officers, Roselba Bartolini (CEO) or Ashar Syed (CEO), electronically submitted the Company's reimbursement requests to USAC each month from April 2022 through August 2023.¹⁶¹ In doing so, they certified to the accuracy and truthfulness of the following statements for ACP. Below are relevant portions of the certification:

- I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
- I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;
- The participating provider is in compliance with and satisfied all of the rules set forth in 47 CFR Part 54, Subpart R,¹⁶² the statute, requirements, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;
- The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart R for each of the subscribers for whom it is seeking reimbursement;
- All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of

¹⁵⁶ *Id.*

¹⁵⁷ LOI Response at DOC-03-Master File spreadsheet.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* At this point, the Commission and USAC had introduced safeguards to prevent improper BQP enrollments. *See supra* para. 38.

¹⁶¹ Information on file in Investigation Number EB-FD-22-00034228.

¹⁶² The rules in Subpart R relate to ACP, 47 CFR §§ 54.1800-54.1814.

Inspector General, or any local, state, or Federal agency with jurisdiction over the provider;

- The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;
- The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), or 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812); and
- All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules.¹⁶³

B. Subscribers Enrolled Using Fake or False Addresses

46. The Bureau's investigation identified numerous subscribers apparently enrolled in ACP by Tone Communication using fake or false addresses that have no connection to the subscribers to whom they purport to relate. The Bureau reviewed the 154 enrollments associated with the 3 duplicate non-subscriber BQPs described above and found these subscribers were associated with only 39 unique subscriber addresses.¹⁶⁴ The Bureau was able to identify 150 of the subscribers, confirming that they are real people (meaning the Bureau verified that their name, date of birth, and Social Security number match), the majority of whom live in Oklahoma, but only 2 of the 154 enrollments had an address that matched the address listed in ACP enrollment information.¹⁶⁵ The Bureau's analysis found that 1 of the purported subscribers resides in North Carolina more than 1,100 miles from his/her purported enrollment address in Oklahoma, 2 of the purported subscribers reside in Texas more than 250 miles from their purported enrollment addresses in Oklahoma, and another 59 purported subscribers live more than 150 miles from their purported enrollment addresses in Oklahoma.¹⁶⁶

47. The Bureau also reviewed a sample of 50 subscribers with unique addresses who were not associated with the duplicate non-subscriber BQP issue. Of those 50 subscribers, 8 did not match the address used for enrollment and 3 of those 8 were found to reside more than 20 miles from their purported enrollment addresses.¹⁶⁷

48. The Bureau looked at 100 additional subscribers who are associated with having received a connected device as part of ACP. Of those 100 subscribers, 12 were not associated currently or recently

¹⁶³ Universal Services Administrative Co., Lifeline Claims System Certifications for the Affordable Connectivity Program; Affordable Connectivity Program Claims Process Overview (Apr. 21, 2022). The complete list of ACP certifications is attached as the Appendix.

¹⁶⁴ Information on file in Investigation Number EB-FD-22-00034228.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

with the addresses listed and 6 of those 12 were found to reside more than 5 miles from their purported enrollment addresses.¹⁶⁸

49. To further confirm subscriber information, the Bureau attempted to contact a sample of 15 Tone Communication ACP subscribers by phone for whom Tone submitted claim reimbursement and received funds from ACP. Out of the 15 subscribers, at least half of the numbers had been disconnected or were not in service at the time of the Bureau's calls. The Bureau was able to reach one person who indicated they had never heard of Tone Communication, were not participating in ACP, and received service from another telecommunications provider. Tone claimed this individual as a subscriber in reimbursement requests and received a total of \$489.01 in ACP reimbursement for that subscriber over 13 months.¹⁶⁹ The Bureau spoke with another purported customer of Tone Communication who said they signed up with Tone to participate in ACP and submitted their consent, but that they never received a SIM card or device from Tone as promised, never received service from the Company, and had been unable to get a response when attempting to contact Tone via email. Tone also claimed this individual as a subscriber in reimbursement requests and received \$400 in ACP reimbursement for that subscriber over 10 months.¹⁷⁰

50. The Bureau also attempted to contact approximately 200 purported Tone subscribers via email. While most either did not respond or the emails bounced back stating the email address was invalid, six respondents definitively stated in emails to the Bureau that they were not participating in ACP with Tone Communication:

- Person A stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for eight months and received \$600 from the program.
- Person B stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for 12 months, claimed it provided this subscriber with a connected device, and received \$459.99 from the program.
- Person C stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for five months, claimed it provided this subscriber with a connected device, and received \$249.99 from the program.
- Person D stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for four months and received \$219.01 from the program.
- Person E stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for three months, claimed it provided this subscriber with a connected device, and received \$189.99 from the program.
- Person F stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for five months, claimed it provided this subscriber with a connected device, and received \$249.01 from the program.¹⁷¹

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

C. Tone Communication's Reimbursement Requests

51. Tone Communication submitted or caused to be submitted apparently fake or false information to USAC in its reimbursement requests in order to obtain payments from ACP. The Bureau's investigation found that Tone electronically transmitted certified documents containing fake or false subscriber information by interstate wire to USAC.¹⁷² Once each month, Tone certified to the accuracy of the information contained in its reimbursement requests and transmitted them to USAC electronically via USAC's "one portal" system, ACCS.¹⁷³

52. Specifically, from August 2022 to July 2023, Tone electronically uploaded reimbursement requests to USAC's portal 12 times. With each reimbursement request, Ashar Syed or Roselba Bartolini, CEOs of the Company, certified to the accuracy and truthfulness of the information contained in the requests.¹⁷⁴ By transmitting these reimbursement requests containing fake or false subscriber information electronically via the internet, Tone used interstate wires.¹⁷⁵

D. Inaccurate Company Address and Contact Information

53. The Bureau had difficulty serving the LOI on Tone Communication. Tone repeatedly used "401 S. Hunting Lodge Lane, Bastrop, TX 78602" as its business address when submitting required program forms to the Commission. When the Bureau attempted to serve the LOI, it was mailed first class and certified mail to 401 S. Hunting Lodge Lane on September 16, 2022. On October 6, 2022, the Bureau mailed the LOI to Tone's alternate address, "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta GA, 30022," which was sometimes listed on Tone's program forms. The Bureau also emailed the LOI to "info@tonecomms.com" and "antonio@tonecomms.com," email addresses provided in Tone's applications, on October 6, 2022.¹⁷⁶

54. On October 11, 2022, the first class mailing sent to "401 S. Hunting Lodge Lane, Bastrop, TX 78602" was returned to the Bureau with a notation "unable to forward for review."¹⁷⁷ The Bureau received one certified signed green card from the "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta GA, 30022" address. The card was signed by "Victor."¹⁷⁸ The Bureau has not identified any Tone Communication employee or associate using the name "Victor."

55. Because of the difficulty in serving the LOI and the lack of communication from Tone Communication in response to the mailings, the Bureau engaged a process server to serve the LOI. The process server was unable to serve the LOI at the "401 S. Hunting Lodge Lane, Bastrop, TX 78602" address because Tone was not located there. The process server reported the following to the Bureau:

I s/w Denise, Caucasian female in her 60's (*sic*) and she told me that she has lived her (*sic*) for 3 years now but that defendant was here along with

¹⁷² Information on file in Investigation Number EB-FD-22-00034228. *See also 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."); *Cleo NAL*, *supra* note 71.

¹⁷³ Information on file in Investigation Number EB-FD-22-00034228.

¹⁷⁴ Tone Communication certified its reimbursement requests on August 3, 2022, September 2, 2022, October 7, 2022, November 3, 2022, December 5, 2022, January 4, 2023, February 2, 2023, March 2, 2023, April 4, 2023, May 3, 2023, June 2, 2023, and July 2, 2023. Information on file in Investigation Number EB-FD-22-00034228.

¹⁷⁵ *See, e.g., United States v. Dinh*, No. 8-20-CV-1794 (KKM-AAS), 2021 WL 5867221 (M.D. Fla. Dec. 10, 2021).

¹⁷⁶ Information on file in Investigation Number EB-FD-22-00034228.

¹⁷⁷ Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 12, 2022, 7:27 EDT).

¹⁷⁸ Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 18, 2022, 7:15 EDT).

the company, and that she still receives junk mail for Tone Communications. Denise also told me she is renting this property from defendant and Denise believes defendant currently lives in the vicinity of Hwy 21 where it meets Hwy 812.¹⁷⁹

Despite the process server reporting that 401 S. Hunting Lodge Lane is not Tone's place of business, Tone's letterhead in its response to the Bureau's LOI listed its address as "401 S. Hunting Lodge Lane, Bastrop, Texas 78602."¹⁸⁰

56. Similarly, the process server was unable to serve the LOI at the "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta GA, 30022" address. Regarding this attempt, the process server reported that the "Location is a Pak Mail store. Per staff the box 210 has been closed for quite sometime now."¹⁸¹ While attempts to serve Tone at a physical business address were unsuccessful, the Commission's service of the LOI was accomplished via email.¹⁸²

57. In January 2023, emails sent to the addresses Tone Communication provided, "info@tonecomms.com" and "antoniob@tonecomms.com," began bouncing back when the Bureau attempted to email Tone personnel. The message received when the email bounced back was that the user's email box was full.¹⁸³ Despite the email bounce back messages, Tone personnel sometimes, though inconsistently, continued to answer these emails from the Bureau.

E. Tone Communication's Failure to Send Transfer Notices

58. Tone Communication performed at least 34,574 transfers of subscribers from other providers to its ACP service.¹⁸⁴ The Commission's rules require participating providers to "provide written notice to the transferred subscriber" within five days of completing a subscriber transfer in NLAD.¹⁸⁵ The written notice must include the name of the transfer-in provider to which the subscriber's ACP benefit was transferred, the date the transfer was initiated, and an explanation of the dispute process if the subscriber believes the transfer was improper.¹⁸⁶

59. The Bureau's SLOI requested "all notices to consumers of transfer of benefits issued pursuant to Commission rule 47 CFR § 54.1810(b)(2) and proof of delivery for each such notice."¹⁸⁷ The Bureau followed up numerous times with Tone personnel regarding providing the requested transfer notices. The Company failed to provide to the Bureau any written notice it purportedly sent to subscribers after transferring them to its service or any evidence that the Company has a policy or procedure in place to do so.

¹⁷⁹ Email from Sparre Process Serving, to Fraud Division, FCC Enforcement Bureau (Oct. 13, 2022, 23:01 EDT).

¹⁸⁰ Tone Letter, *supra* note 77. Additionally, in its LOI response, Tone listed its location and corporate headquarters as "410 Hunting Lodge L.N., Bastrop, TX 78602."

¹⁸¹ Email from Sparre Process Serving, to Fraud Division, FCC Enforcement Bureau (Oct. 17, 2022, 17:38 EDT).

¹⁸² Email from Antonio, antoniob@tonecomms.com to Fraud Division, FCC Enforcement Bureau, and info@tonecomms.com (Oct. 16, 2022, 4:36 EDT).

¹⁸³ Information on file in Investigation Number EB-FD-22-00034228.

¹⁸⁴ *Id.*

¹⁸⁵ 47 CFR § 54.1810(b)(2).

¹⁸⁶ *Id.*

¹⁸⁷ SLOI, *supra* note 149.

IV. DISCUSSION

60. We find that Tone Communication apparently willfully and repeatedly violated numerous Commission rules and the wire fraud statute, including: (i) by repeatedly using the same non-subscriber BQP to enroll multiple subscribers;¹⁸⁸ (ii) by enrolling subscribers using fake or false addresses;¹⁸⁹ (iii) by failing to implement policies and procedures to prevent the improper enrollment of hundreds of subscribers;¹⁹⁰ (iv) when the Company's certifying officers, Ashar Syed and Roselba Bartolini, falsely certified that the Company was in compliance with ACP rules when it submitted reimbursement requests to USAC;¹⁹¹ (v) for transmitting via interstate wires, certified reimbursement requests containing fake or false information;¹⁹² (vi) by failing to provide written notice to a transfer-in subscriber within five business days of the completed transfer in NLAD;¹⁹³ (vii) by Tone Communication's continuous use of false addresses;¹⁹⁴ and (viii) for failing to respond wholly and completely to the Bureau's two LOIs.¹⁹⁵

A. Tone Communication Enrolled Ineligible Subscribers Using the Same Non-Subscriber BQPs and Fake or False Addresses

61. A non-subscriber BQP may only be used once to qualify a household to receive ACP benefits. By repeatedly using the same three non-subscriber BQPs to support a total of 154 ACP enrollments, Tone Communication apparently violated Commission rules because that non-subscriber BQP member of a household had already been used to authorize a different household to receive ACP benefits. This occurred in 2022 before the Commission and USAC adopted additional safeguards. Tone's own subscriber spreadsheet that it produced to the Bureau showed the repeated use of these same non-subscriber BQPs to enroll multiple purported customers, indicating that Tone was well aware of the improper enrollments.

62. Tone Communication's own subscriber list showed that Tone enrolled 29 persons using an address in Tulsa, Oklahoma, and another 40 persons using a different address in Tulsa; both residences are single-family homes that someone working for Tone could not reasonably believe could house 69 eligible households between them.¹⁹⁶ Tone's own records showed the Company enrolled dozens of subscribers on a single day using the same non-subscriber BQP.¹⁹⁷ This enrollment practice was then repeated multiple times. As discussed above, on July 15, 2022, non-subscriber BQP C was used to enroll six subscribers; on July 16, 2022, non-subscriber BQP C was used to enroll seven subscribers and non-subscriber BQP B was used to enroll eight subscribers; on July 17, 2022, non-subscriber BQP B was used to enroll 41 subscribers; on July 25, 2022, non-subscriber BQP C was used to enroll eight subscribers; and on July 31, 2022, non-subscriber BQP B was used to enroll 20 subscribers.¹⁹⁸ By enrolling numerous people in ACP who lived at the same address or numerous people using the same non-subscriber BQP, Tone apparently took advantage

¹⁸⁸ 47 CFR §§ 54.1605, 54.1805.

¹⁸⁹ *Id.* §§ 54.1606, 54.1806, 54.1810(i).

¹⁹⁰ *Id.* §§ 54.1606(b), 54.1806(b).

¹⁹¹ *Id.* §§ 54.1808(e)(3), 54.1810(i).

¹⁹² 18 U.S.C. § 1343.

¹⁹³ 47 CFR § 54.1810(b)(2).

¹⁹⁴ *Id.* § 1.17.

¹⁹⁵ 47 U.S.C. § 503(b)(1)(B).

¹⁹⁶ LOI Response at DOC-03 ACP Master File.

¹⁹⁷ *Id.*

¹⁹⁸ Information on file in Investigation Number EB-FD-22-00034228.

of the program by either failing to verify that a member of a subscribing person's household was not already being claimed by another household that was receiving program benefits or by committing outright fraud in order to increase the Company's profits.

63. Of the eight people described above whom the Bureau reached via telephone or email that Tone claimed to provide ACP service to and for whom Tone received more than \$2,800 from the program, all denied having actually enrolled with or received any service from the Company. By claiming it had enrolled these people in ACP, Tone Communication took advantage of low-income consumers who apparently qualified for the ACP benefit and abused the ACP enrollment process so that it could increase its revenue. Tone's actions prevented those funds from being used instead to make broadband service more affordable for low-income Americans. Therefore, we find Tone Communication apparently willfully and repeatedly violated sections 54.1805 and 54.1806 of the Commission's rules.¹⁹⁹

B. Tone Communication Committed Wire Fraud

64. The Bureau's investigation found that Tone Communication electronically submitted reimbursement requests containing fake or false information by interstate wire to USAC. These submissions were in furtherance of a scheme to defraud that resulted in the Commission (the Office of the Managing Director, responsible for ACP payments) disbursing funds from the U.S. Treasury to which Tone was not entitled. Tone submitted 12 such reimbursement requests apparently containing fake or false information from July 2022 through June 2023.

65. 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."²⁰⁰ In order to be deemed a "scheme to defraud," the misrepresentation or omission must be material to the scheme.²⁰¹ In other words, the 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.²⁰² Tone Communication developed a scheme in which agents enrolled subscribers into ACP using fake or false information or improper duplicate BQP information. Tone certified the accuracy of the subscriber information in connection with its claims that it provided internet service and/or devices to the subscribers. These actions were apparently taken in furtherance of Tone's scheme to obtain payments from the Commission for customers improperly enrolled in ACP.

66. Tone's own subscriber list largely matched the subscriber list provided to the Bureau by the OIG in connection with the OIG September 8, 2022 advisory, which identified repeated use of only three non-subscriber BQPs to support 154 enrollments.²⁰³ Thus, the Company apparently was aware that multiple enrollments used the same non-subscriber BQPs, which ACP rules prohibit, but claimed reimbursement for these subscribers anyway.²⁰⁴ Between June 24, 2022 and August 7, 2022, Tone

¹⁹⁹ 47 CFR §§ 54.1805, 54.1806.

²⁰⁰ *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).

²⁰¹ *See United States v. Daniel*, 329 F.3d 480, 485-89 (6th Cir. 2003).

²⁰² *See id.*

²⁰³ LOI Response at DOC-03 ACP Master File.

²⁰⁴ *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 make a material misrepresentation or 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.").

submitted 154 enrollments in Oklahoma using only 3 non-subscriber BQPs and certified reimbursement requests for these customers using interstate wires.²⁰⁵ In addition to enrolling persons using the same non-subscriber BQPs, Tone enrolled persons using fake or false addresses and certified reimbursement requests for these purported customers.²⁰⁶

67. To violate the federal wire fraud statute, the wrongdoer must use “wire, radio or television communication” to further the fraudulent scheme.²⁰⁷ Tone Communication used interstate wires when transmitting its false certified reimbursement requests via the ACCS to USAC.²⁰⁸ The investigation determined that on at least 12 occasions, from July 2022 through June 2023, Tone Communication certified reimbursement requests based on false subscriber information and submitted this information to USAC via interstate wires.²⁰⁹

68. We find that Tone Communication apparently knowingly, willfully, and with reckless indifference to the truth violated the wire fraud statute when it falsely certified compliance with program rules in each of its reimbursement requests in July 2022 through June 2023, which, as discussed above, included numerous subscribers enrolled in 2022 for whom the Company had not properly determined ACP eligibility, and in at least some cases as determined by the Bureau, for subscribers who were not receiving any service from the Company.²¹⁰ Therefore, pursuant to section 503(b)(1)(D), the Commission finds that Tone Communication apparently violated the wire fraud statute.

C. Tone Communication Certified False Reimbursement Requests

69. Section 54.1808(e)(3) requires an officer of the participating provider to certify, under penalty of perjury, as part of each request for reimbursement, that the “participating provider is in compliance with and satisfied all requirements in the statute, rules, and orders governing the Affordable Connectivity Program reimbursement[.]”²¹¹ Section 54.1810(i) prohibits participating providers from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of ACP; violating any ACP rule is an unjust an unreasonable practice.²¹²

70. As discussed above, Tone Communication apparently violated Commission rules in connection with repeatedly using the same non-subscriber BQPs to enroll subscribers in ACP and also using fake or false addresses to enroll subscribers in ACP. The Bureau confirmed that certain persons claimed by Tone as ACP subscribers were never Tone customers, had never signed up for ACP through Tone, and had never received service in connection with the purported enrollment. In one example, Tone submitted for and received \$240 in ACP payments for an individual that had no knowledge of the Company whatsoever. The Bureau also received confirmation via email that for at least six purported customers, Tone submitted repeatedly for reimbursement for these six customers that either never participated in ACP or were never Tone customers.

²⁰⁵ Information on file in Investigation Number EB-FD-22-00034228.

²⁰⁶ *Id.*

²⁰⁷ *United States v. Gray*, 96 F.3d 769, 771 n.4 (5th Cir. 1996).

²⁰⁸ Information on file in Investigation Number EB-FD-22-00034228.

²⁰⁹ Tone Communication’s places of business (Georgia or Texas) would have required it to submit its reimbursement requests to USAC in Washington, D.C./Virginia using interstate wires.

²¹⁰ Information on file in Investigation Number EB-FD-22-00034228.

²¹¹ 47 CFR § 54.1808(e)(3).

²¹² *Id.* § 54.1810(i)(1) & (i)(2)(vii).

71. Each and every time Tone Communication submitted an ACP reimbursement request, the certifications by the certifying officers, Roselba Bartolini and Ashar Syed, under penalty of perjury, included that they were unaware of any fake or false information in the reimbursement requests and that the company was in compliance with all ACP rules. It is apparent from the Bureau's investigation that this was not true. Contrary to its certifications of compliance, Tone Communication had enrolled purported customers using duplicate non-subscriber BQPs and fake or false addresses and failed to retain required documents such as transfer notices

72. With each monthly reimbursement request in July 2022 through June 2023 submitted by the certifying officer under penalty of perjury but containing duplicate non-subscriber BQP enrollments or fake or false addresses, Tone Communication apparently violated section 54.1808(e)(3) of the Commission's rules.²¹³ By willfully and repeatedly apparently violating the Commission's rules designed to safeguard ACP, Tone Communication's actions undermined the purpose, intent, and integrity of the program in apparent violation of section 1810(i) of the Commission's rules because the purpose and intent of ACP is to only provide support to persons who are eligible.²¹⁴

D. Tone Communication's Untruthful, Inaccurate, and Incomplete Statements in Submissions to the Commission

73. Section 1.17 of the Commission's rules 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.²¹⁵ As discussed above, Tone Communication applied to the Commission to participate in EBB, and subsequently participated in ACP, and submitted an election notice to USAC. In these filings, Tone regularly used two addresses—"401 S. Hunting Lodge Lane, Bastrop, TX 78602" and "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta, GA 30022." Based on the Bureau's attempts to contact Tone and reports received from the process server engaged to serve the Bureau's LOI, Tone apparently does not do business at either address. Tone Communication certified repeatedly on its applications to the Commission for participation in EBB and ACP that all the material statements made in the applications, attachments, and supporting documents were "true, complete, correct, and made in good faith."²¹⁶ They apparently were not. Tone certified on its election notice that its filing was "true, accurate and complete."²¹⁷ It apparently was not. In addition to providing false addresses in its applications and election notice, the Company continued to use these false addresses in its communications with the Bureau throughout the investigation.²¹⁸

74. The primary focus of section 1.17 in its current form is to "enhance the effectiveness of investigatory and adjudicatory proceedings."²¹⁹ Tone Communication's omissions and misrepresentations have harmed the effectiveness of both the adjudication of its authorization and the Bureau's investigation into its conduct. Tone's misrepresentations made it more difficult to reach it and to serve the Bureau's LOI. To date, Tone has not cured its misrepresentations and lack of candor by

²¹³ *Id.* § 54.1808(e)(3).

²¹⁴ *Id.* § 54.1810(i).

²¹⁵ *Id.* § 1.17.

²¹⁶ EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions, at 19 (Mar. 2021) (on file at EB-FD-22-00034228).

²¹⁷ Tone Communication EBB Election Form (Oct. 7, 2021) (on file at EB-FD-22-00034228).

²¹⁸ Tone Letter, *supra* note 77.

²¹⁹ *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).

revising or withdrawing its applications or election notice to correct its address. All of these submissions appear to be misrepresentations to the Commission in apparent violation of section 1.17 of the Commission's rules.²²⁰

75. It is long settled that a Commission licensee's failure to respond to an LOI from the Bureau violates a Commission order.²²¹ Such violations might not always entail a party's total failure to respond; numerous decisions recognize that parties may violate Commission orders by providing, as here, incomplete responses to Bureau inquiries.²²² Here, the Company's LOI and SLOI responses were woefully incomplete because they failed to include, among other things, all communications among employees or contractors, the criteria used to verify subscribers' eligibility for ACP, and written notices provided to subscribers after completion of service transfers.

76. A participating provider must implement "policies and procedures for ensuring that their Affordable Connectivity Program households are eligible to receive the affordable connectivity benefit."²²³ Despite multiple requests from the Bureau, the Company produced no relevant policies or procedures that it has in place to ensure it enrolls only eligible households in ACP. Additionally, given the flagrant nature of repeated use of the same non-subscriber BQP and enrollment of subscribers using fake or false addresses, it is apparent that Tone does not have sufficient policies and procedures in place to prevent this type of abuse by employees and agents responsible for enrolling subscribers in the program.

²²⁰ 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, 37 FCC Rcd 5393, 5402-03, para. 22 (2022); *Cleo NAL*, *supra* note 71.

²²¹ See 47 U.S.C. § 503(b)(1)(B); see also *ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking.com*; and *Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a \$25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a \$300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Commc'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a \$25,000 forfeiture for failure to provide a complete response to an LOI); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing a \$25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing a \$100,000 penalty for failing to submit a sworn written response).

²²² See, e.g., *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13686, paras. 16, 17 (EB 2007) (forfeiture proposed for, inter alia, failure to submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer with personal knowledge of the representation provided in the LOI response, verifying the truth and accuracy of the information submitted), *aff'd*, Forfeiture Order, 23 FCC Rcd 3969, 3972-73, paras. 8, 9 (EB 2008) (failure to file prompt sworn responses represents misconduct that "inhibits [the Commission's] ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission"); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7600-02, paras. 3, 5, 7 (EB 2008) (holding that a manufacturer of cellular and PCS boosters was apparently liable for violation of a Commission order when it failed to provide complete responses to Bureau LOIs, including by failing to submit the required sworn statements).

²²³ 47 CFR § 54.1806(b).

77. Participating providers must “provide written notice to the transferred subscriber” within five days of completing a subscriber transfer in NLAD.²²⁴ Despite numerous emails and phone calls with Tone staff to follow up on the LOI requests for information and documents regarding subscriber transfers and required notices, Tone produced no evidence showing the Company had any policy or procedure in place to send written notices to transfer-in subscribers and no evidence showing any such written notices were ever sent to transfer-in subscribers. Thus, Tone Communication failed to provide the written notices to subscribers after transferring them to its service for ACP.

78. The Bureau attempted to contact Tone Communication by email numerous times to discuss these and other documents requested by the LOIs; often, the Bureau’s emails would receive a bounce back that the email was undeliverable. The Bureau also held several conference calls with Tone personnel and explained, in detail, what was missing from their LOI responses. Tone was given more time to supplement their document productions but additional responses and documents productions were still incomplete, and sometimes incomprehensible. Despite repeated requests for missing and incomplete items, Tone failed to provide most of the items asked for in the LOIs.

79. Throughout the duration of this investigation, the Bureau has yet to receive all the information that it requested through its LOIs and Tone has yet to correct its inaccurate business addresses. We therefore find that Tone Communication has failed to respond to two Commission orders in apparent violation of section 503(b)(1)(B) of the Act²²⁵ and made misrepresentation in violation of section 1.17 of the Commission’s rules.²²⁶

V. PROPOSED FORFEITURE²²⁷

80. The “Commission is permitted to impose forfeiture penalties to enforce compliance” with program rules.²²⁸ 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[.]”²²⁹ Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Tone Communication of up to \$244,958 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,449,575 for a single act or failure to act.²³⁰ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³¹ In addition, the Commission has established forfeiture guidelines that establish base forfeiture amounts for certain violations and identify criteria that

²²⁴ *Id.* § 54.1810(b)(2).

²²⁵ 47 U.S.C. § 503(b)(1)(B).

²²⁶ 47 CFR § 1.17

²²⁷ The statute of limitations period for the Commission to impose a forfeiture penalty for violations of the Act and the Commission rules discussed herein is one year from the date of the violation. *Id.* § 503(b)(6). In this case, Tone Communication agreed to toll the statute of limitations period such that violations remain viable if they occurred on or after March 7, 2022.

²²⁸ *Affordable Connectivity Program Order*, *supra* note 9, at 558, para. 154.

²²⁹ 47 U.S.C. § 503(b).

²³⁰ *See id.* § 503(b)(2)(B); 47 CFR § 1.80(b)(2). *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA-23-1198 (EB Dec. 22, 2023); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024 as the effective date for the increases). Tone is a toll reseller, *see supra* para. 23.

²³¹ 47 U.S.C. § 503(b)(2)(E).

we consider when determining the appropriate penalty in any given case.²³² Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.²³³

81. The Commission's forfeiture guidelines do not establish a base forfeiture for violations of EBB and ACP rules. We have therefore looked to the base forfeitures proposed in analogous cases for guidance. For example, in both the American Broadband NAL²³⁴ and Total Call Mobile NAL,²³⁵ the Commission proposed a per subscriber penalty, which is relevant here because although both cases involve the Commission's Lifeline Program, each matter also involved enrolling apparently ineligible subscribers. In addition, we have looked to the Commission's recent Q Link Wireless LLC NAL,²³⁶ which involved apparent violations of EBB rules and included a proposed forfeiture amount of treble the loss to the program.

82. We find that Tone Communication apparently willfully and repeatedly violated multiple Commission rules and the federal wire fraud statute: (i) by repeatedly using the same non-subscriber BQP to enroll multiple subscribers;²³⁷ (ii) by enrolling subscribers using fake or false addresses;²³⁸ (iii) by falsely certifying that the Company was in compliance with ACP rules when it submitted reimbursement requests to USAC;²³⁹ (iv) by transmitting via interstate wires, certified reimbursement requests containing fraudulent information;²⁴⁰ (v) by its continuous use of false business addresses;²⁴¹ and (vi) by failing to respond fully to the Bureau's two LOIs.²⁴² As further described below, we propose a total forfeiture penalty of \$14,021,293 for these apparent violations.

A. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Rules by Improperly Enrolling Subscribers in ACP

83. Tone Communication repeatedly used the same non-subscriber BQP to enroll multiple households in 2022 and received payment from the program for these apparently improper enrollments. EBB and ACP rules allow a household to receive only one monthly service benefit.²⁴³ A non-subscriber BQP may only be used to qualify one household. Tone received funds to which it was not entitled and prevented those funds from benefitting qualified ACP subscribers.

84. Tone Communication received payments from ACP in connection with at least 174 improper enrollments that involved duplicate non-subscriber BQPs and/or fake or false addresses. The

²³² 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11).

²³³ *Id.*

²³⁴ *Am. Broadband & Telecomms. Co.; Jeffrey S. Ansted*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 10308 (2018) (*Am. Broadband NAL*).

²³⁵ *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 4191 (2016) (*Total Call Mobile NAL*).

²³⁶ *Q Link Wireless LLC*, Notice of Apparent Liability for Forfeiture and Order, FCC 23-2, 2023 WL 345342 (Jan. 17, 2023) (*Q Link NAL*).

²³⁷ 47 CFR § 54.1805.

²³⁸ *Id.* §§ 54.1806, 54.1810(i).

²³⁹ *Id.* §§ 54.1808(e)(3), 54.1810(i).

²⁴⁰ 18 U.S.C. § 1343.

²⁴¹ 47 CFR § 1.17.

²⁴² 18 U.S.C. § 503(b)(1)(B).

²⁴³ 47 CFR §§ 54.1605 and 54.1805.

Commission proposes a base forfeiture of \$5,000 for each of the 174 apparently improper enrollments²⁴⁴ in violation of sections 54.1805 and 54.1806 of the Commission's rules for a total base forfeiture amount of \$870,000.²⁴⁵

85. Through 12 monthly reimbursement requests submitted from July 2022 through June 2023, Tone Communications requested and received \$8,794,129.97 from ACP in connection with improperly enrolled subscribers. Each of these 12 reimbursement requests certified that Tone was in compliance with the Commission's ACP rules. It was not. Each of these reimbursement requests made false representations and included false certifications to USAC, and on the basis of these apparently false representations and false certifications, the U.S. Treasury paid Tone millions of dollars in connection with its ACP participation. That funding represents a substantial loss to ACP. In light of the egregiousness of Tone's conduct, we propose an upward adjustment of \$9,811,797 to the base forfeiture. This is calculated as treble the loss to the Treasury from Tone's three highest payment months in the program,²⁴⁶ which totaled \$3,270,599.²⁴⁷ We therefore propose a total forfeiture of \$10,681,797 for Tone's apparent violation of the Commission's ACP rules in connection with its enrollment of customers.

B. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of the Federal Wire Fraud Statute

86. In accordance with section 503(b)(1)(D) of the Act, the Commission may assess a base forfeiture of \$5,000 for each wire fraud violation. In light of the egregiousness of Tone's conduct in using duplicate non-subscriber BQPs and fake or false address information in furtherance of its scheme to defraud via Tone's reimbursement requests that contained apparent false representations and false certifications, a substantial upward adjustment to the wire fraud base forfeiture is warranted. Therefore, we propose an upward adjustment to the statutory maximum of \$244,958²⁴⁸ for each of Tone's 12 apparent wire fraud violations, for a forfeiture amount of \$2,939,496.

C. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Rules through Repeated Inaccurate and Untruthful Statements

87. The Company made false statements to the Bureau during this investigation. Specifically, Tone Communication repeatedly falsely reported its business addresses. The Bureau's investigation found no evidence to support the Company's claim that either address was accurate. We propose a forfeiture of \$100,000 for each of the two false addresses Tone Communications used.²⁴⁹ Accordingly, the total proposed forfeiture amount for the Company's apparent violations of section 1.17 of the Commission's rules is \$200,000.

²⁴⁴ See, e.g., *Am. Broadband NAL*, *supra* note 234; *Total Call Mobile, Inc. NAL*, *supra* note 235.

²⁴⁵ 47 CFR §§ 54.1805, 54.1806

²⁴⁶ *Q Link NAL*, *supra* note 236.

²⁴⁷ Within the statute of limitations, service months April 2023, May 2023, and June 2023 were Tone's highest payment months.

²⁴⁸ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2).

²⁴⁹ See *Cleo NAL*, *supra* note 71.

D. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Orders

88. Tone failed to respond fully to two LOIs, which are Commission orders.²⁵⁰ We propose a forfeiture of \$100,000 for each of the two LOIs to which Tone did not fully respond and apparently violated Commission orders for a forfeiture amount of \$200,000.²⁵¹

E. Total Proposed Forfeiture

89. Therefore, we propose a total forfeiture penalty of \$14,021,293 related to these apparent violations: \$10,681,797 for Tone's apparent violations related to improper enrollments of ACP subscribers (\$870,000 base forfeiture plus a \$9,811,797 upward adjustment), \$2,939,496 for Tone's 12 apparent wire fraud violations, \$200,000 for repeated use of false businesses addresses, and \$200,000 for apparent violations of two Commission orders related to Tone's failure to respond fully to the Bureau's LOIs.²⁵²

VI. CONCLUSION

90. We have determined that Tone Communication apparently willfully and repeatedly violated the Commission's ACP rules, section 1.17 of the Commission's rules, two Commission orders, and the federal wire fraud statute. As such, Tone Communication is apparently liable for a forfeiture of \$14,021,293.

VII. ORDER INITATING REMOVAL PROCEEDING

91. This NAL finds Tone Communication apparently liable for significant and egregious misconduct in the ACP. Tone's apparently improper enrollments of subscribers and claims for reimbursement for those subscribers resulted in serious harm to the program and undermined the intent of the ACP to provide critical broadband service to eligible consumers.

92. Section 54.1801(e)(2)(ii) of the Commission's ACP rules permits removal of a participating provider from the ACP for, among other reasons, based on "[v]iolations of program rules of the Affordable Connectivity Program [or] the EBB Program . . . [or] for committing any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the

²⁵⁰ See 47 U.S.C. § 503(b)(1)(B); see also, e.g., *ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking.com*; and *Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a \$25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a \$300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Comm'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a \$25,000 forfeiture for failure to provide a complete response to an LOI); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing \$25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing a \$100,000 penalty for failing to submit a sworn written response).

²⁵¹ 47 U.S.C. § 503(b)(1)(B).

²⁵² 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.

Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program participants, including without limitation fraudulent enrollments.”²⁵³ The Enforcement Bureau and/or the Wireline Competition Bureau may initiate a removal proceeding “[i]f the Commission develops information from Commission-led or sponsored investigations . . . or from other credible sources that yields credible allegations of misconduct.”²⁵⁴ Based on the findings in the Bureau’s investigation, as described in this NAL, the Commission finds that it has substantial evidence showing Tone violated ACP rules and took actions indicating a lack of business integrity and business honesty that seriously and directly affects the company’s responsibilities under the ACP and that harms prospective and existing program participants.

93. Specifically, as described in this NAL, the Bureau’s investigation has developed evidence that Tone enrolled subscribers with fake or false identifying information, conduct that apparently violated ACP rules (including but not limited to 47 CFR §§ 54.1805, 54.1806(b), 54.1808(e)(3), and 54.1810(i)). As also described in this NAL, the Bureau’s investigation has developed evidence that Tone misrepresented that it was in compliance with the Commission’s rules. As a result, Tone improperly received more than \$15.6 million from the ACP, as described in the NAL. Fraudulent enrollments and misrepresentations, and resulting improper reimbursement, seriously and directly affect Tone’s responsibilities under the ACP and undermine the ACP’s integrity, and harm or threaten to harm program participants. Accordingly, the evidence warrants removal for violation of ACP rules, and for lack of business integrity and honesty. The Commission is therefore **ORDERING** the initiation of a proceeding to remove Tone Communication from the ACP.

94. This NAL and Order, a copy of which is being sent to Tone Communication by email, serves as immediate notice that the Commission is commencing removal proceedings against Tone Communication under section 54.1801(e)(2)(iii) of the Commission’s rules. As provided in section 54.1801(e)(2)(iii), the Commission has delegated to the Chief of the Wireline Competition Bureau and/or the Chief of the Enforcement Bureau authority to complete removal proceedings in accordance with that section. This Order shall serve as notice to Tone that, as a result of the findings in the Bureau’s investigation as described in this NAL and summarized in the paragraph above, the Wireline Competition Bureau and/or the Enforcement Bureau will take interim measures as provided in section 54.1801(e)(2)(iii)(B), including removal of Tone from the Commission’s list of providers and from the Administrator’s Companies Near Me tool; suspension of Tone’s ability to enroll or transfer in new subscribers; and an interim funding hold during the pendency of the removal proceeding. Such actions may be taken under section 54.1801(e)(2)(iii)(B) where “based upon adequate evidence of willful misconduct that would warrant removal under paragraph (e)(2)(ii)” and where “necessary to protect the public interest.”

95. Tone Communication **SHALL RESPOND** in writing to this **ORDER INITIATING REMOVAL PROCEEDING** within thirty (30) calendar days with any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that Tone should not be removed from the ACP.²⁵⁵ Within thirty (30) calendar days of receiving Tone’s response, the Wireline Competition Bureau and/or the Enforcement Bureau will make a determination and issue an order providing detailed explanation for the determination.²⁵⁶ If the Wireline Competition Bureau and/or Enforcement Bureau determines that a preponderance of the evidence fails to demonstrate that there has been conduct warranting removal, then any interim measures taken under section 54.1801(e)(2)(iii)(B) will be discontinued immediately.²⁵⁷ If the Wireline Competition

²⁵³ 47 CFR § 54.1801(e)(2)(ii)(A)-(B).

²⁵⁴ *Id.* § 54.1801(e)(2); *Affordable Connectivity Program Order*, *supra* note 9 at 113, para. 242.

²⁵⁵ 47 CFR § 54.1801(e)(2)(iii)(C).

²⁵⁶ *Id.* § 54.1801(e)(2)(iii)(D).

²⁵⁷ *Id.*

Bureau and/or Enforcement Bureau determines by a preponderance of the evidence that there has been conduct warranting removal, Tone's authorization to participate in the ACP will be revoked, and Tone shall be immediately removed from the program.²⁵⁸ Failure to respond to this Order or to provide evidence in a timely manner will result in a finding against Tone, removal from the program, and revocation of Tone's authorization to participate in the ACP.²⁵⁹ Responses to this Order shall be sent by email to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov of the Enforcement Bureau and Jessica.Campbell@fcc.gov of the Wireline Competition Bureau and filed in WC Docket No. 21-450.

VIII. ORDERING CLAUSES

96. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Tone Communication Services LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Fourteen Million Twenty One Thousand Two Hundred Ninety Three Dollars (\$14,021,293) for willful and repeated violations of section 904 of the Consolidated Appropriations Act, 47 U.S.C. § 1752; sections 1.17, 54.1805, 54.1806, 54.1806(b), 54.1808(e)(3), 54.1810(b)(2), and 54.1810(i) of the Commission's rules; Title 18, United States Code, section 1343; and the Affordable Connectivity Program Report and Order and associated rules.²⁶⁰

97. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Tone Communication Services LLC **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 100 below.

98. In order for Tone Communication Services LLC to pay the proposed forfeiture, Tone Communication Services LLC shall notify Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission, of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Tone Communication Services LLC shall send electronic notification of payment to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission, on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁶¹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned

²⁵⁸ *Id.*

²⁵⁹ *Id.* § 54.1801(e)(2)(iii)(C).

²⁶⁰ *Affordable Connectivity Program, supra* note 9.

²⁶¹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

above and the letters “FORF”. In addition, a completed Form 159²⁶² or printed CORES form²⁶³ must be faxed to the Federal Communications Commission at 202-418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁶⁴ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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

99. 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. 20554.²⁶⁵ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by email, ARINQUIRIES@fcc.gov.

100. 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.²⁶⁶ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554,

²⁶² FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁶³ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

²⁶⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁶⁵ See 47 CFR § 1.1914.

²⁶⁶ *Id.* §§ 1.16, 1.80(g)(3).

ATTN: Enforcement Bureau – Fraud Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission.

101. 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.²⁶⁷ 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.²⁶⁸

102. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding shall be sent by first class mail and certified mail, return receipt requested, to Roselba Bartolini, CEO, Tone Communication Services LLC, 401 S. Hunting Lodge Lane, Bastrop, TX 78602, 410 Hunting Lodge Ln, Bastrop, TX 78602, and 9925 Haynes Bridge Rd, Suite 200, PMB 210, Alpharetta, GA 30022, and by email to info@tonecomms.com and antoniob@tonecomms.com.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁶⁷ 47 U.S.C. § 503(b)(2)(E).

²⁶⁸ 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).

APPENDIX**Service Provider Reimbursement Request ACP Certifications**

- 1) I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
- 2) I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;
- 3) The participating provider is in compliance with and satisfied all of the rules set forth in 47 CFR Part 54, Subpart R, the statute, requirements, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;
- 4) The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart R for each of the subscribers for whom it is seeking reimbursement;
- 5) The amount for which the participating provider is seeking reimbursement from the Affordable Connectivity Fund is not more than the amount charged to the eligible household and the discount has already been passed through to the household;
- 6) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit has not been and will not be charged for the amount the provider is seeking for reimbursement;
- 7) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit 1) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract; 2) was not, after the date of the enactment of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Investment and Jobs Act, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and 3) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers;
- 8) Each eligible household that is receiving a supported service offering that does not require the participating provider to assess and collect a monthly fee from the household has used the supported service, as usage is defined by 47 CFR § 54.407(c)(2), at least once during the service month being claimed;
- 9) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider and paid more than \$10.00 but less than \$50.00 for such connected device, and that no such household had already received a reimbursable connected device from the

participating provider or any other participating provider when the connected device was distributed to the household;

- 10) If seeking reimbursement for a connected device, the connected device meets the Commission's requirements, the representations regarding the devices made on the provider's website and promotional materials are true and accurate, that the reimbursement claim amount reflects the market value of the connected device less the amount charged to and paid by the eligible household, and the connected device has been delivered to the household;
- 11) If seeking reimbursement for a connected device, the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement and submitted the required information;
- 12) For each household whose eligibility was verified using an alternative verification process, such verification process was designed to avoid waste, fraud, and abuse;
- 13) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the provider;
- 14) The provider has not offered, promised, received, or paid kickbacks, as defined by 41 U.S.C. § 8701, in connection with the Affordable Connectivity Program;
- 15) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;
- 16) The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), or 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812);
- 17) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal or state program;
- 18) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by 47 CFR § 54.10;

- 19) For each ACP claim, the provider certifies it did not require enrollment in the ACP as a condition for enrolling in Lifeline or some other purpose, or imply such a condition existed. Evidence that a household claimed for ACP reimbursement was enrolled without the household's consent or as a requirement of receiving Lifeline service may lead to denial of support claims, as well as other penalties and referral to law enforcement;
- 20) All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules; and
- 21) The provider used the National Lifeline Accountability Database as a tool for enrollment, reimbursement calculations, and duplicate checks in all states, territories, and the District of Columbia, and checked their records in accordance with § 54.1806(a)(4).