

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

In the Matter of)	
)	
Cesar Chavez Foundation)	File Nos.: EB-IHD-16-00023149
)	EB-IHD-16-00023074
)	Acct. No.: 201832080001
)	FRN: 0006911408
Licensee of Noncommercial Educational Stations)	
KNAI-FM, Phoenix, Arizona)	Facility ID No.: 47667
KUFW(FM), Woodlake, California)	Facility ID No.: 21210

ORDER

Adopted: February 1, 2018

Released: February 1, 2018

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve the Commission’s investigation into whether Cesar Chavez Foundation (CCF), licensee of noncommercial educational (NCE) Stations KNAI-FM, Phoenix, Arizona, and KUFW(FM), Woodlake, California, violated the Commission’s underwriting laws by broadcasting announcements that promoted the products, services or businesses of its financial contributors. To settle this matter, CCF admits that it broadcast announcements that violated the Commission’s underwriting laws and agrees to implement a compliance plan and pay a civil penalty of \$115,000. CCF will also observe a one-year moratorium on conducting underwriting on behalf of for-profit entities.

2. NCE broadcasters are licensed to use spectrum that is specifically reserved for them, and they benefit from lower regulatory fees and fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and NCE broadcasters cannot air commercial advertising.¹ These restrictions “protect the public’s use and enjoyment of commercial-free broadcasts” and “provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising.”² NCE broadcasters are licensed to provide noncommercial, locally-oriented programming for their communities, and the Commission acts when necessary to enforce the laws prohibiting NCE-FM stations from airing announcements that promote for-profit advertisers.

3. While an NCE licensee may broadcast underwriting announcements identifying entities that donate to the station by name, such announcements may not promote an entity’s businesses, products, or services.³ In addition, such announcements may not contain comparative or qualitative descriptions; price information (sales or discounts); calls to action; inducements to buy, sell, rent, or lease; and

¹ 47 U.S.C. § 399b(b)(2).

² *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

³ 47 U.S.C. § 399b(a); Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992) (*Enhanced Underwriting Policy*).

excessively detailed “menu listings” of services offered by the entity.⁴ While the Commission has not adopted any quantitative guidelines on underwriting announcements, it has found that the longer the announcement, the more likely it is to contain material that is inconsistent with their “identification only” purpose.⁵ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter.⁶ Consequently, the Commission expects that licensees exercise reasonable “good faith” judgment in this area and affords some latitude to the judgments of licensees who do so.⁷

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding CCF’s compliance with Section 399B of the Communications Act of 1934, as amended (Act),⁸ and Section 73.503(d) of the Commission’s rules (Rules).⁹

5. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether CCF possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act¹⁰ and the authority delegated by Sections 0.111 and 0.311 of the Rules,¹¹ the Consent Decree **IS ADOPTED** and its terms incorporated by reference.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against CCF and/or Stations KNAI-FM, Phoenix, Arizona, and KUFW(FM), Woodlake, California, related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

⁴ *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Hispanic Broadcast System, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2411, 2415, para. 9 (EB 2005), *aff’d with reduced forfeiture*, Forfeiture Order, 20 FCC Rcd 12008 (EB 2005); *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4920-21, paras. 3, 6 (1990) (*Xavier*).

⁵ *Enhanced Underwriting Policy*; *cf. Board of Education of New York (WNYE-TV)*, Letter of Caution, 7 FCC Rcd 6864 (MMB 1992).

⁶ *Xavier*, 5 FCC Rcd at 4921, para. 6 (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 911 (1982) (subsequent history omitted)).

⁷ *Id.*

⁸ 47 U.S.C. § 399b.

⁹ 47 CFR § 73.503(d).

¹⁰ 47 U.S.C. § 154(i).

¹¹ 47 CFR §§ 0.111, 0.311.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Brad C. Deutsch, Esq., and John Crigler, Esq., Attorneys for Cesar Chavez Foundation, Garvey Schubert Barer, 1000 Potomac Street, NW, Suite 200, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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

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Cesar Chavez Foundation)	File Nos.: EB-IHD-16-00023149
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Licensee of Noncommercial Educational Stations)	
KNAI-FM, Phoenix, Arizona)	Facility ID No.: 47667
KUFW(FM), Woodlake, California)	Facility ID No.: 21210

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Cesar Chavez Foundation (CCF), licensee of Stations KNAI-FM, Phoenix, Arizona, and KUFW(FM), Woodlake, California, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether CCF violated Section 399B of the Communications Act of 1934, as amended (Act), and Section 73.503(d) of the Commission’s rules (Rules) with regard to noncommercial educational (NCE) Stations KNAI-FM, Phoenix, Arizona, and KUFW(FM), Woodlake, California.¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.²
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “CCF” means Cesar Chavez Foundation, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and any or all of its bureaus and offices.
 - (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which each Commission licensee, including CCF, is subject by virtue of its being a Commission licensee, including but not limited to the Underwriting Laws.
 - (g) “Complaints” means, individually or collectively, the third-party submissions received by, or in the possession of, the Bureau and alleging violation of the Underwriting Laws, as described in this Consent Decree at Paragraph 4.
 - (h) “Compliance Manual” means the part of the Underwriting Compliance Plan that explains the Underwriting Laws and sets forth the Operating Procedures that

¹ 47 U.S.C. § 399b; 47 CFR § 73.503(d).

² 47 U.S.C. § 151 *et seq.*

Covered Employees shall follow to help ensure CCF's compliance with the Communications Laws, including the Underwriting Laws, pursuant to Paragraph 12(d).

- (i) "Compliance Officer" means an independent FCC regulatory counsel or other third party with the requisite corporate and organizational authority to serve in this capacity, and if the latter, in consultation with and assisted by outside regulatory counsel.
- (j) "Compliance Reports" shall mean the reports that CCF shall file pursuant to Paragraph 14.
- (k) "Covered Employee" means all employees and agents of CCF who perform, or supervise, oversee, or manage the performance of duties related to CCF's responsibilities under the Communications Laws, including the Underwriting Laws.
- (l) "Effective Date" means the date by which both the Bureau and CCF have signed the Consent Decree.
- (m) "Investigation" means the investigation commenced by the Bureau in EB-IHD-16-00023149 and EB-IHD-16-00023074, regarding whether CCF violated the Underwriting Laws.
- (n) "KNAI" means noncommercial educational station KNAI-FM, Phoenix, Arizona (Facility ID 47667).
- (o) "KUFW" means noncommercial educational station KUFW(FM), Woodlake, California (Facility ID 21210).
- (p) "Operating Procedures" means the standard, internal operating procedures and compliance policies established by CCF to implement the Underwriting Compliance Plan.
- (q) "Parties" means CCF and the Bureau, each of which is a "Party."
- (r) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (s) "Stations" means, individually or collectively, KNAI and/or KUFW.
- (t) "Underwriting Announcement" means any announcement, message, or other program material, broadcast over a noncommercial station licensed to CCF, or by any of its successors, assigns, or transferees, made in exchange for consideration, on behalf of any for-profit entity.
- (u) "Underwriting Compliance Checklist" means the obligation under Paragraph 12(c) that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with relevant past Commission precedent regarding the Underwriting Laws.
- (v) "Underwriting Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 12.
- (w) "Underwriting Compliance Training Program" means the requirements of the Underwriting Compliance Plan as detailed in Paragraph 12(e).

- (x) “Underwriting Laws” means, individually or collectively, Section 399B of the Act, and Section 73.503(d) of the Rules,³ and the decisions and orders of the Commission interpreting these provisions.

II. BACKGROUND

3. The Underwriting Laws define an advertisement as programming material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.⁴ Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.⁵ Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors’ products, services, or businesses.⁶ Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.⁷

4. The Commission received multiple Complaints from the same complainant alleging that CCF violated the Underwriting Laws by airing announcements on the Stations from August 2016 to March 2017, which impermissibly promoted their for-profit underwriters’ products or services and contained qualitative descriptions and comparative language, pricing information, and calls to action.⁸ The Bureau issued multiple letters of inquiry seeking more information about the complained-of programming and CCF’s efforts to comply with the Underwriting Laws.⁹ CCF responded,¹⁰ confirming it

³ 47 U.S.C. § 399b; 47 CFR § 73.503(d).

⁴ 47 U.S.C. § 399b(a).

⁵ 47 U.S.C. § 399b(b)(2).

⁶ Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992).

⁷ *Id.*; see *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990) (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Memorandum Opinion and Order, 90 FCC 2d 895 (1982) (subsequent history omitted)).

⁸ See Letter from Scott Woodworth, Edinger Associates PLLC, Counsel to Gerawan Farming, Inc., and David Hawe, to Investigations and Hearings Division, Enforcement Bureau, FCC (filed Oct. 17, 2016) (on file in EB-IHD-16-00023074); Letter from Scott Woodworth, Edinger Associates PLLC, Counsel to Gerawan Farming, Inc., and David Hawe, to Investigations and Hearings Division, Enforcement Bureau, FCC (filed Oct. 27, 2016) (on file in EB-IHD-16-00023149); Letter from Scott Woodworth, Edinger Associates PLLC, Counsel to Gerawan Farming, Inc., and David Hawe, to Investigations and Hearings Division, Enforcement Bureau, FCC (filed Mar. 23, 2017) (on file in EB-IHD-16-00023149) (Complaints).

⁹ Letter of Inquiry from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Maria Barquin, National Programming Director, and Paul Park, General Counsel, Cesar Chavez Foundation (Dec. 2, 2016) (on file in EB-IHD-16-00023074 and EB-IHD-16-00023149 (formerly EB-IHD-16-00022746)); Letter of Inquiry from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Maria Barquin, National Programming Director, and Paul Park, General Counsel, Cesar Chavez Foundation (May 9, 2017) (on file in EB-IHD-16-00023149). The Bureau subsequently sought additional clarificatory information from CCF via e-mail. See E-mail from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Brad Deutsch, Counsel to Cesar Chavez Foundation (Aug. 25, 2017, 18:25 EDT) (on file in EB-IHD-16-00023074 and EB-IHD-16-00023149); E-mail from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Brad Deutsch, Counsel to Cesar Chavez Foundation (Sept. 24, 2017, 12:45 EDT) (on file in EB-IHD-16-00023074 and EB-IHD-16-00023149).

¹⁰ Letter from Brad C. Deutsch and John Crigler, Garvey Schubert Barer, Counsel to Cesar Chavez Foundation, to Marlene H. Dortch, Secretary, FCC (Feb. 3, 2017) (on file in EB-IHD-16-00023074 and EB-IHD-16-00023149 (formerly EB-IHD-16-00022746)); Letter from Brad C. Deutsch and John Crigler, Garvey Schubert Barer, Counsel

(continued....)

broadcast the complained-of Underwriting Announcements over the Stations, without disputing many of the factual assertions contained in the Complaints.¹¹ Thereafter, the Parties agreed to enter into this Consent Decree.

III. TERMS OF AGREEMENT

5. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order without change, addition, deletion, or modification.

6. **Jurisdiction.** CCF agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and dismiss the Complaints. In consideration for the termination of the Investigation and dismissal of the Complaints, CCF agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, any new proceeding, formal or informal, or take any action on its own motion against CCF concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against CCF with respect to CCF's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

9. **Admission of Liability.** CCF admits, in express reliance on the provisions of Paragraph 8 herein, that its actions with respect to the broadcast of the material referenced in Paragraph 4 of this Consent Decree violated the Commission's Underwriting Laws.

10. **Moratorium on Underwriting on Behalf of For-Profit Entities.** For the term of one year from the Effective Date, CCF shall ensure that the Stations, and/or any noncommercial broadcast facility CCF then owns or thereafter acquires, refrain from airing any Underwriting Announcement on behalf of any for-profit entity. Moreover, CCF shall refrain from accepting or entering into any agreement or arrangement with any for-profit entity that contemplates or requires the broadcast of any such material during such period. After the moratorium period expires, any announcements that CCF airs on behalf of for-profit entities shall comply with the Underwriting Laws.

11. **Compliance Officer.** Within fourteen (14) calendar days after the Effective Date, CCF shall designate an independent FCC regulatory counsel or other third party with the requisite corporate and organizational authority and knowledge to serve as a Compliance Officer and to discharge the duties

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to Cesar Chavez Foundation, to Marlene H. Dortch, Secretary, FCC (May 23, 2017) (on file in EB-IHD-16-00023149 (formerly EB-IHD-16-00022746)); E-mail from Brad Deutsch, Garvey Schubert Barer, Counsel to Cesar Chavez Foundation, to Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC (Sept. 1, 2017, 17:07 EDT) (on file in EB-IHD-16-00023074 and EB-IHD-16-00023149); E-mail from Brad Deutsch, Garvey Schubert Barer, Counsel to Cesar Chavez Foundation, to Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC (Oct. 6, 2017, 16:53 EDT) (on file in EB-IHD-16-00023074 and EB-IHD-16-00023149).

¹¹ See *id.*

set forth below. The person designated as Compliance Officer shall be responsible for developing, implementing, and administering the Underwriting Compliance Plan and ensuring that CCF complies with the terms and conditions of the Underwriting Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Underwriting Laws before assuming his/her duties. If the Compliance Officer is not an FCC regulatory counsel, CCF shall consult with outside FCC regulatory counsel regarding CCF's overall compliance with the Underwriting Laws. Such consultations shall occur on a biannual basis, if not more frequently.

12. **Underwriting Compliance Plan.** CCF shall, within, ninety (90) calendar days after the Effective Date, develop and implement an Underwriting Compliance Plan designed to ensure its immediate compliance with the Communications Laws and with the terms and conditions of this Consent Decree.

- (a) **Underwriting Compliance Notification.** Within three (3) calendar days of the Effective Date, CCF shall immediately notify and distribute to Covered Employees at the Stations, and at any noncommercial broadcast facilities it then owns, notice of the requirements of Paragraphs 10 and 12. The Notification shall explain the Underwriting Laws that the Covered Employees shall follow.
 - i. CCF shall provide a copy of such Underwriting Compliance Notification to the Enforcement Bureau within seven (7) calendar days from the Effective Date.
 - ii. Every thirty (30) days from the Effective Date, CCF shall review its Underwriting Compliance Notification, and provide any updates or amendments thereto, to all Covered Employees.
 - iii. CCF shall, within seven (7) days of newly acquiring any noncommercial broadcast facility during the period of this agreement, adopt the foregoing procedures outlined in Paragraphs 10 through 12 to those facilities and follow them thereafter.
- (b) **Consultation with Counsel.** If the Compliance Officer is not an FCC regulatory counsel, CCF shall consult with outside FCC regulatory counsel regarding CCF's overall compliance with the Underwriting Laws. Such consultations shall occur on a biannual basis, if not more frequently.
- (c) **Operating Procedures.** Within ninety (90) calendar days of the Effective Date, CCF shall establish Operating Procedures that all Covered Employees must follow to help ensure CCF's compliance with the Communications Laws, including the Underwriting Laws. CCF's Operating Procedures shall include internal procedures and policies specifically designed to ensure that CCF complies with the Underwriting Laws. CCF shall use a multi-level review procedure for underwriting content to be aired on the Stations. The Compliance Officer, or a management-level employee of CCF directly supervised by the Compliance Officer, shall review all scripts of Underwriting Announcements prior to broadcast. CCF shall develop an Underwriting Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with relevant past Commission precedent regarding the Underwriting Laws.
- (d) **Compliance Manual.** Within ninety (90) calendar days of the Effective Date, CCF shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Underwriting Laws and set forth the Operating Procedures that the Covered Employees shall follow to help ensure CCF's compliance with the Communications Laws, including the Underwriting Laws. CCF shall periodically review and revise the Compliance Manual as necessary to ensure

the information set forth therein remains current and accurate. CCF shall distribute any revisions to the Compliance Manual to all Covered Employees within three (3) calendar days of any updated revisions.

- (e) **Underwriting Compliance Training Program.** Within ninety (90) calendar days of the Effective Date, CCF shall establish an Underwriting Compliance Training Program in compliance with the Underwriting Laws and the Operating Procedures that CCF will follow immediately following the Underwriting Compliance Plan as stated in Paragraphs 10 through 14. As part of the Underwriting Compliance Training Program, Covered Employees shall be advised of CCF's obligation to report any noncompliance with the Underwriting Laws under Paragraph 13 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one-hundred twenty (120) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. CCF shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (f) **Compliance Education Program.** Within ninety (90) calendar days of the Effective Date, CCF shall implement and maintain a plan to educate prospective for-profit underwriters about appropriate underwriting content and about how CCF incorporates such underwriting content in the announcements that it prepares for underwriter approval and eventual broadcast over the Station. To that end, CCF shall summarize the Underwriting Laws for each prospective for-profit client before accepting any contract with a prospective for-profit client to air Underwriting Announcements over the Station, and shall prepare the Underwriting Announcement for the underwriter's review. CCF shall not broadcast over any Station any announcement that does not comply with the Underwriting Laws.
- (g) **Cooperation with Enforcement Bureau Review.** Consistent with its obligations under Section 403 of the Act,¹² CCF shall provide a copy of all draft materials that it produces pursuant to Paragraph 12 to the Enforcement Bureau within seventy-five (75) calendar days from the Effective Date.

13. **Reporting Noncompliance.** CCF shall report any noncompliance with the Underwriting Laws and with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that CCF has taken or will take to address such noncompliance; (iii) the schedule on which such actions will be taken; and (iv) the steps that CCF has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief,

¹² 47 U.S.C. § 403. *See Ramsey Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 458, 463, para. 13 (EB 2006) (forfeiture paid) (requiring, pursuant to Section 403 of the Act, that licensee submit a report to the Commission describing the steps it has taken to come into compliance with the Act and the Rules); *see also Hilton Worldwide Holdings, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 30 FCC Rcd 12284, 12289, para. 17, n.35 (2015) (noting that Section 403 of the Act grants the Commission both the authority to institute inquiries and "the power to make and enforce any order or orders" relating to its inquiries into compliance with the Act, and that Section 0.111(a)(17) of the rules grants the Enforcement Bureau the authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information . . . in connection with complaints, on its own initiative or upon request of another Bureau or Office") (quoting 47 CFR § 0.111(a)(17)).

Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Matthew L. Conaty at Matthew.Conaty@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov.

14. **Compliance Reports.** CCF shall file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, thirty-six (36) months after the Effective Date, and forty-eight (48) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of CCF's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Underwriting Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent and on behalf of CCF, stating that the Compliance Officer has personal knowledge that CCF: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 13 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹³
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent and on behalf of CCF, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that CCF has taken or will take to address such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that CCF has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Matthew L. Conaty at Matthew.Conaty@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov.

15. **Termination Date.** The requirements set forth in Paragraphs 11 through 14 of this Consent Decree shall expire forty-eight (48) months after the Effective Date.

16. **Civil Penalty.** CCF will pay a civil penalty to the United States Treasury in the amount of one hundred fifteen thousand dollars (\$115,000) within thirty (30) calendar days of the Effective Date. CCF shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Matthew L. Conaty at Matthew.Conaty@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and to Jennifer A. Lewis at Jennifer.lewis@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice)¹⁴ must be submitted. When completing the FCC Form 159, enter the Account Number in block

¹³ See 47 CFR § 1.16.

¹⁴ FCC Form 159 and instructions for completing the form are at <http://www.fcc.gov/Forms/Form159/159.pdf>.

number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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

17. **Underwriting Complaints; Subsequent Investigations.** Pursuant to the limitations set forth under Paragraphs 8 and 25, nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to the Underwriting Laws against CCF or its affiliates for alleged violations of the Act or the Rules or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Licensee with the Act or the Rules.

18. **Event of Default by Nonpayment.** CCF agrees that an Event of Default shall occur upon the failure by CCF to pay the full amount on or before the due date specified in this Consent Decree.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by CCF.

20. **Waivers.** As of the Effective Date, CCF waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. CCF shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither CCF nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and CCF shall waive any statutory right to a trial *de novo*. CCF hereby

agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁵ relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which CCF does not expressly consent) that provision will be superseded by such Rule or Order.

24. **Successors, Assigns, and Transferees.** CCF agrees that the terms of this Consent Decree, with the exception of Paragraph 10, shall be binding on its successors, assigns, and transferees, for the duration of the agreement, unless such successor, assign, or transferee has a compliance record free from any liability found and finally determined under any Warning, Notice of Violation, Admonishment, Notice of Apparent Liability, Forfeiture Order, Consent Decree, or other FCC enforcement action, decision, or settlement, respecting the successor, assignee, or transferee, that was (i) issued and became final during the 36-month period immediately preceding the Effective Date, pursuant to any provision of the Act or Rules, or (ii) issued and became final during the 120-month period immediately preceding the Effective Date, pursuant to the Underwriting Laws (“Exempted Successor”). CCF further agrees as follows:

- (a) that any application seeking Commission consent to the assignment of Station KNAI and/or KUFW to an Exempted Successor shall include a certification or affidavit from CCF which affirms that it, and/or its successor, assignee, or transferee, has satisfied the obligations under Paragraph 12;¹⁶
- (b) in the event CCF consummates an assignment of Station KNAI and/or KUFW to an Exempted Successor within 90 days of the Effective Date, then the Exempted Successor shall assume CCF’s obligations under Paragraph 12;
- (c) that any authority granted to a successor, assignee, or transferee, shall be conditioned upon CCF’s filing a compliance report at the time of sale which details all steps taken to satisfy the obligations under Paragraphs 12 and 24, as well as its certification thereto; and that
- (d) nothing in this Paragraph shall limit the Commission’s rights under Paragraphs 8 and 17, and shall not prevent the Commission from investigating new material evidence that the settlement hereunder was falsely procured by CCF, or new evidence of noncompliance by CCF with the Act or the Rules.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

¹⁵ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.530.

¹⁶ Such certification or affidavit shall include language that CCF has satisfied its obligations under Paragraph 12 “to the best of its knowledge.”

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

29. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Paul S. Park
Secretary
Cesar Chavez Foundation

Date