

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

In the Matter of)	
)	
Meruelo Radio Holdings, LLC)	File No.: EB-IHD-18-00025908
)	Acct. No.: 201932080011
)	FRN: 0023226582

ORDER

Adopted: August 15, 2019

Released: August 15, 2019

By the Chief, Enforcement Bureau:

1. To preserve and protect the unique purpose of the EAS Tones, the Commission enforces laws prohibiting the use of the tones, or simulations of them, except in actual emergencies, authorized tests of the EAS, or qualified PSAs.¹ The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Meruelo Radio Holdings, LLC (Meruelo), licensee of radio stations KDAY(FM), Redondo Beach, California (KDAY), and KDEY-FM, Ontario, California (KDEY-FM), violated laws governing the Emergency Alert System (EAS) by improperly transmitting Emergency Alert System (EAS) Tones in radio promotional material broadcast on stations KDAY and KDEY-FM, in the absence of any actual emergency, authorized test of the EAS, or qualified public service announcement (PSA).² These laws preserve and protect the ability of authentic EAS Tones to be heeded and perform important functions during actual emergencies, such as gaining the listener’s or viewer’s attention prior to the transmission of potentially life-saving information and conveying specially coded signals to activate critical emergency equipment. To settle this matter, Meruelo admits that KDAY and KDEY-FM aired promotional material that contained EAS Tones, in the absence of an actual emergency, authorized test of the EAS, or qualified PSA. Meruelo also agrees to implement a compliance plan and pay a \$67,000 civil penalty.

2. The EAS is the national public warning system that requires broadcasters, cable television operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers to supply the communications capability to the President of the United States to address the American public during a national emergency.³ Federal, state, and local authorities may also use the EAS to deliver emergency information, such as AMBER alerts and weather information targeted to specific areas.

3. The Commission has repeatedly warned that the use of simulated or actual EAS Tones for non-authorized purposes—such as commercial or entertainment purposes—can lead to dangerous “alert fatigue” whereby the public becomes desensitized to the alerts, questioning whether the alerts are for a real, imminent threat or some other cause.⁴ Moreover, because the EAS Tones include operative data

¹ 47 CFR § 11.45.

² See 47 CFR § 11.45.

³ See FEMA, Fact Sheet: Emergency Alert System (EAS) (2016), https://www.fema.gov/media-library-data/1465326763240-4152791226bbd49cf46aff8cd5f43bb1/Emergency_Alert_System_Fact_Sheet_2016.pdf.

⁴ See, e.g., *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, Wireless Emergency Alerts*, PS Docket Nos. 15-94, 15-91, Report and Order and Further Notice of Proposed Rulemaking, 33 (continued....)

elements, the misuse of simulated or actual EAS Tones may result in false activations of the EAS that can spread false information or lock out legitimate activations of the EAS.⁵ Unauthorized use of the EAS Tones thus presents a substantial threat to public safety.

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 Meruelo's compliance with section 11.45 of the Commission's rules (Rules).⁶

5. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Meruelo's basic qualifications to hold or obtain any Commission license or authorization.⁷

6. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act⁸ and the authority delegated by sections 0.111 and 0.311 of the Rules,⁹ the attached 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 Meruelo related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

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 Otto Padron, President, Meruelo Media, LLC, parent of Meruelo Radio Holdings, LLC, 9550 Firestone Boulevard, Suite 105, Downey, California 90241, and to Meruelo's counsel, F. Scott Pippin, Esq., and Paul Cicelski, Esq., Lerman Senter PLLC, 2001 L Street, NW, Suite 400, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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FCC Rcd 7086, 7091, para. 9 (2018); *Viacom, Inc., ESPN, Inc.*, Forfeiture Order, 30 FCC Rcd 797, 797, para. 1 (2015); *Emergency Alert System: False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited*, Public Notice, 28 FCC Rcd 15438 (EB 2013).

⁵ See 47 CFR § 11.31(a).

⁶ 47 CFR § 11.45.

⁷ 47 CFR § 1.93(b).

⁸ 47 U.S.C. § 154(i).

⁹ 47 CFR §§ 0.111, 0.311.

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

In the Matter of)	
)	
Meruelo Radio Holdings, LLC)	File No.: EB-IHD-18-00025908
)	Acct. No.: 201932080011
)	FRN: 0023226582
Licensee of Stations)	
KDAY(FM), Redondo Beach, California and)	Facility ID No.: 10100
KDEY-FM, Ontario, California)	Facility ID No.: 10099
)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Meruelo Radio Holdings, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Meruelo Radio Holdings, LLC violated section 11.45 of the Commission’s rules by improperly transmitting Emergency Alert System tones in radio promotional material. As set forth herein, to resolve this matter, Meruelo agrees to implement a compliance plan and pay a \$67,000 civil penalty.

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.¹
 - (b) “Adopting Order” means an order of the Enforcement 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) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Meruelo is subject by virtue of its business activities, including but not limited to the EAS Laws.
 - (f) “Complaint” means the complaint received by the Bureau on October 26, 2017, along with follow-up correspondence from the complainant received by the Bureau on October 31, 2017, on file in EB-IHD-18-00025908, alleging that Station KDAY misused EAS Tones in promotional material.²
 - (g) “Compliance Officer” means the individual designated in Paragraph 13 of this Consent Decree as the person responsible for administration of the Compliance Plan.

¹ 47 U.S.C. § 151 *et seq.*

² Complaint (Oct. 26, 2017) (on file in EB-IHD-18-00025908) (Complaint I); Complaint (Oct. 31, 2017) (on file in EB-IHD-18-00025908) (Complaint II).

- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 14.
- (i) “Covered Employees” means all employees and agents of Meruelo who perform, or supervise, oversee, or manage the performance of, duties that relate to Meruelo’s responsibilities under the Communications Laws, including the EAS Laws.
- (j) “EAS” means the Emergency Alert System.
- (k) “EAS Laws” means the rules and regulations embodied in Part 11 of the Rules and the published and promulgated orders and decisions of the Commission regarding proper use of EAS Tones.
- (l) “EAS Tones” means any part of the four-part message used to activate an emergency alert, specifically: the Preamble and EAS Header Codes; Audio Attention Signal; message; and, Preamble and EAS End of Message (EOM) Codes, as defined in section 11.31 of the Rules, as well as any simulations thereof.
- (m) “Effective Date” means the date by which both the Bureau and Meruelo have signed the Consent Decree.
- (n) “Investigation” means the investigation (commenced by the Bureau’s April 24, 2018, Letter of Inquiry or LOI³) regarding whether Meruelo violated the EAS Laws.
- (o) “KDAY” means commercial radio Station KDAY(FM), Redondo Beach, California (Facility ID No. 10100), licensed to Meruelo Radio Holdings, LLC.
- (p) “KDEY-FM” means commercial radio station KDEY-FM, Ontario, California (Facility ID No. 10099), licensed to Meruelo Radio Holdings, LLC.
- (q) “Meruelo” means Meruelo Radio Holdings, LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (r) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Meruelo to implement the Compliance Plan.
- (s) “Parties” means Meruelo and the Bureau, each of which is a “Party.”
- (t) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (u) “Stations” means KDAY and KDEY-FM.

II. BACKGROUND

3. Section 11.45(a) of the Rules prohibits the transmission of false or deceptive “EAS codes or Attention Signal[s], or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS; or as specified in [sections] 10.520(d), 11.46, and 11.61 of [the Rules].”⁴ These provisions preserve the ability of authentic EAS tones to perform important functions during actual emergencies, such as gaining the listener’s or viewer’s attention prior to the transmission of potentially life-saving information and conveying specially coded signals to activate critical emergency equipment.

³ Letter of Inquiry from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Meruelo Radio Holdings, LLC (Apr. 24, 2018) (on file in EB-IHD-18-00025908) (LOI).

⁴ 47 CFR § 11.45(a).

4. In the fall of 2017, the Commission received a Complaint alleging that KDAY had broadcast a simulation of the EAS Attention Signal during a promotion.⁵ The complainant provided a recording (Recording) of the promotion,⁶ which includes apparent EAS Tones. The Bureau directed Meruelo Radio Holdings, LLC, licensee of KDAY and KDEY-FM, to respond to the complainant's allegations and Recording⁷ and provide additional information.⁸ Meruelo timely responded⁹ and requested confidential treatment of certain portions of its responses.¹⁰

5. The Recording is part of a longer audio recording (Promo Bed),¹¹ which was used for entertainment purposes as part of KDAY's morning program.¹² Meruelo believes that a former employee created the Promo Bed¹³ and that a portion of it was taken from a publicly available video clip online.¹⁴ The sounds in the Recording were overlaid with and surrounded by voiceovers, music, on-air chatter, and other effects.¹⁵ The Recording includes a pre-produced voiceover with sound effects. The voiceover included the text, "Ninety-[T]hree Five, K-DAY. Hip Hop, back in the day. It's time for Romeo's romantic weather."¹⁶ The sound effects included EAS Tones. Following the sound effects is a pre-produced sample stating that "[t]he National Weather Service has issued"¹⁷

6. KDAY broadcast the Promo Bed 106 times on various dates from September 8, 2017, until November 22, 2017, using a computerized audio playback system in KDAY's main studio.¹⁸ KDEY-FM, which began simulcasting KDAY on October 31, 2017, broadcast the Promo Bed 33 times on various dates from October 31, 2017, until November 22, 2017.¹⁹ The Stations stopped broadcasting the Promo Bed in late November 2017 because of a programming decision Meruelo reached prior to receiving the LOI.²⁰

7. Meruelo did not transmit the Promo Bed as part of an emergency, EAS test, or public service announcement.²¹ Meruelo claims no broadcast of the Promo Bed on KDAY or KDEY-FM activated the EAS equipment at any station or system that monitors KDAY or KDEY-FM.²² After

⁵ See Complaint I, Complaint II.

⁶ See Complaint I.

⁷ LOI.

⁸ E-mail from Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, to F. Scott Pippin, Counsel to Meruelo Radio Holdings, LLC, et al. (June 25, 2018, 9:54 EDT) (Supplemental LOI).

⁹ Response to Letter of Inquiry, from Benjamin Vega, General Counsel, Meruelo Group, LLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 24, 2018) (on file in EB-IHD-18-00025908) (LOI Response); Supplemental LOI; E-mail from Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, to F. Scott Pippin, Counsel to Meruelo Radio Holdings, LLC, et al. (July 5, 2018, 8:32 EDT) (extending response date for Supplemental LOI to July 12, 2018); E-mail from Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, to F. Scott Pippin, Counsel to Meruelo Radio Holdings, LLC, et al. (July 12, 2018, 10:08 EDT) (extending response date for Supplemental LOI to July 17, 2018); Letter from Benjamin Vega, General Counsel, Meruelo Group, LLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (July 17, 2018) (on file in EB-IHD-18-00025908) (Supplemental LOI Response); Confidentiality Request from Meruelo Radio Holdings, LLC, by Paul A. Cicelski, Counsel to Meruelo Radio Holdings, LLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (July 17, 2018) (on file in EB-IHD-18-00025908) (requesting confidential treatment of certain information Meruelo provided in response to the Bureau's Supplemental LOI).

¹⁰ This Order and Consent Decree do not disclose material identified as confidential by Meruelo, so we defer ruling on the request unless and until necessary. See 47 CFR § 0.459(d)(3) (the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to § 0.460 or § 0.461. Such materials will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted). See, e.g., *Radio License Holding CBC, LLC*, Order and Consent Decree, 31 FCC Rcd 3, 8, para. 5 & n.16 (EB 2016).

receiving the LOI, station management held a meeting with relevant management level and other station staff and provided materials for review of FCC rules and regulations, including those governing the transmission of EAS tones.²³ To resolve the Investigation, the Parties now enter this Consent Decree.

III. TERMS OF AGREEMENT

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

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

10. **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.

11. **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 Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, Meruelo 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 Meruelo 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 to set for hearing the question of Meruelo's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.²⁴

12. **Admission of Liability.** Meruelo admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 11 herein, that the Stations' broadcasts of EAS Tones in the Promo Bed violated the EAS Laws.

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¹¹ LOI Response at 1. Meruelo believes that the Promo Bed contained no additional spoken text other than that heard in the Recording and that the materials in the Recording were followed by a music bed. *Id.* at 5, Response to Question 10.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Id.* at 2; Supplemental LOI Response at 2.

¹⁵ LOI Response at 2-3.

¹⁶ Supplemental LOI Response at 2.

¹⁷ *Id.*

¹⁸ LOI Response at 1-2.

¹⁹ *Id.* at 2.

²⁰ Supplemental LOI Response at 3.

²¹ LOI Response at 2.

²² Supplemental LOI Response at 2.

²³ LOI Response at 4.

²⁴ *See* 47 CFR 1.93(b).

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Meruelo shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Meruelo complies with the terms and conditions of the 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 EAS Laws prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Meruelo agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the EAS Laws, Meruelo will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Meruelo shall establish Operating Procedures that all Covered Employees must follow to help ensure Meruelo's compliance with the EAS Laws. Meruelo's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Meruelo does not broadcast the EAS Tones absent an emergency or authorized EAS test or otherwise in accordance with the EAS Laws. Meruelo shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the EAS Laws regarding broadcast of the EAS Tones.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the EAS Laws and set forth the Operating Procedures that Covered Employees shall follow to help ensure Meruelo's compliance with the EAS Laws. Meruelo shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Meruelo shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Meruelo shall establish and implement a Compliance Training Program on compliance with the EAS Laws and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Meruelo's obligation to report any noncompliance with the EAS Laws under Paragraph 15 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 sixty (60) 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. Meruelo 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.

15. **Reporting Noncompliance.** Meruelo shall report any noncompliance with the EAS Laws and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Meruelo has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Meruelo has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be

submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

16. **Compliance Reports.** Meruelo shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Meruelo's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the EAS Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Meruelo, stating that the Compliance Officer has personal knowledge that Meruelo: (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 15 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.²⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Meruelo, 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 Meruelo has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Meruelo 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, SW, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Civil Penalty.** Meruelo will pay a civil penalty to the United States Treasury in the amount of \$67,000. Such payment shall be made in three (3) installments (each an Installment Payment). The first Installment Payment in the amount of \$22,333.50 is due on or before thirty (30) calendar days after the Effective Date. Thereafter, the second Installment Payment of \$22,333.50 will be due on or before one hundred and twenty (120) calendar days after the first Installment Payment, and the third Installment Payment of \$22,333.00 will be due on or before one hundred and twenty (120) calendar days after the second Installment Payment Date. Meruelo acknowledges and agrees that upon execution of this Consent Decree, the civil penalty and each Installment Payment shall become a "Claim" or "Debt" as

²⁵ 47 CFR § 1.16.

defined in 31 U.S.C. § 3701(b)(1).²⁶ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

19. Meruelo shall send electronic notification of payments to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov on the dates said payments are made. The payments must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²⁷ or by wire transfer. The Commission no longer accepts civil penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the Account – the bill number is the Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the Account – the bill number is the Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

20. **Event of Default.** Meruelo agrees that an Event of Default shall occur upon the failure by Meruelo to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

21. **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

²⁶ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, 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 Meruelo.

22. **Waivers.** As of the Effective Date, Meruelo 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. Meruelo 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 Meruelo nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Meruelo shall waive any statutory right to a trial *de novo*. Meruelo hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁰ relating to the matters addressed in this Consent Decree.

23. **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.

24. **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.

25. **Subsequent Rule or Order.** The Parties agree that if any provision of the 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 Meruelo does not expressly consent) that provision will be superseded by such Rule or Order.

26. **Successors and Assigns.** Meruelo agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

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

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

29. **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.

30. **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.

31. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or 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.

³⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Otto Padron
President
Meruelo Media, LLC, parent of Meruelo Radio Holdings, LLC

Date