

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

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| In the Matter of |) | |
| |) | |
| ABC, Inc. |) | File No.: EB-IHD-18-00027842 |
| |) | NAL/Acct. No.: 201932080016 |
| |) | FRN: 0003453495 |

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 or FCC) has entered into a Consent Decree to resolve its investigation into whether ABC, Inc. (ABC or the Company) violated laws governing the Emergency Alert System (EAS) by improperly transmitting or causing the transmission of the Wireless Emergency Alert (WEA) Tones during the October 3, 2018, episode of *Jimmy Kimmel Live!* 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, ABC admits that it broadcast and transmitted the October 3, 2018, episode of *Jimmy Kimmel Live!* that contained WEA Tones, in the absence of an actual emergency, authorized test of the EAS, or qualified PSA. ABC also agrees to implement a compliance plan and pay a \$395,000 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

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.

for a real, imminent threat or some other cause.⁴ Moreover, because the EAS Tones include operative data 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 ABC's compliance with sections 10.520(d) and 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 ABC'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 ABC 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 John W. Zucker, Deputy Chief Counsel, ABC, Inc., 77 West 66th Street, New York, NY, 10023 and to ABC's counsel, David H. Solomon, Esq., and J. Wade Lindsay, Esq., Wilkinson Barker Knauer, LLP, 1800 M Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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 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 See 47 CFR §§ 10.520(d), 11.45.

⁷ See 47 CFR § 1.93(b).

⁸ 47 U.S.C. §§ 154(i).

⁹ 47 CFR §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and ABC, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether ABC violated sections 10.520(d) and 11.45 of the Commission’s rules by improperly broadcasting and transmitting simulated Emergency Alert System tones during the October 3, 2018 episode of *Jimmy Kimmel Live!* absent an actual emergency, authorized EAS test, or qualified public service announcement. As set forth herein, to resolve this matter, ABC agrees to implement a compliance plan and pay a \$395,000 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) “ABC” or the “Company” means ABC, Inc. and its subsidiaries, predecessors-in-interest, and successors-in-interest that (a) hold FCC authorizations to operate television broadcast stations or (b) that distribute ABC Television Network programming to television stations for their broadcast, all only with respect to television programming broadcast over (a) or (b).
- (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (e) “Commission” and “FCC” mean the Federal Communications Commission and 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 ABC is subject by virtue of its business activities, including, but not limited to, the EAS Laws.
- (g) “Compliance Officer” means the individual designated in Paragraph 13 of this Consent Decree as the person responsible for administration of the Compliance Plan.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 14.

¹ 47 U.S.C. § 151 *et seq.*

- (i) “Covered Employees” means all employees and agents of the Company whose responsibilities include duties, activities, or functions that materially impact ABC’s compliance with the EAS Laws.
- (j) “EAS” means the Emergency Alert System.
- (k) “EAS Laws” means the rules and regulations embodied in parts 10 and 11 of the Rules and the published and promulgated orders and decisions of the Commission regarding proper use of EAS Tones and WEA Tones.
- (l) “EAS Tones” means the EAS codes or Attention Signal contained in 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 recording or simulation thereof.²
- (m) “Effective Date” means the date by which both the Bureau and ABC have signed the Consent Decree.
- (n) “Episode” means the October 3, 2018, episode of *Jimmy Kimmel Live!*.
- (o) “Investigation” means the Bureau’s investigation in case EB-IHD-18-00027842 regarding whether the Episode complied with the EAS Laws.
- (p) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by ABC to implement the Compliance Plan.
- (q) “Parties” means ABC and the Bureau, each of which is a “Party.”
- (r) “PSA” means Public Service Announcement.
- (s) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (t) “WEA” means Wireless Emergency Alert.
- (u) “WEA Tones” means the WEA common audio attention signal as defined in section 10.520 of the Rules or any recording or simulation thereof.

II. BACKGROUND

3. Section 11.45 of the Rules prohibits the transmission of “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 this chapter.”³ Section 10.520(d) of the Rules prohibits the transmission of “the WEA common audio attention signal, or a recording thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test, except as designed and used for Public Service Announcements (PSAs) by federal, state, local, tribal and territorial entities, and non-governmental organizations in coordination with those entities, to raise public awareness about emergency alerting, provided that the entity presents the PSA in a non-misleading manner, including by explicitly stating that

² See 47 CFR §§ 11.31, 11.45.

³ 47 CFR § 11.45. Section 11.46 provides that “EAS Participants may use the EAS Attention Signal and a simulation of the EAS codes as provided by FEMA in EAS Public Service Announcements (PSAs) (including commercially-sponsored announcements, infomercials, or programs) provided by federal, state, and local government entities, or non-governmental organizations, to raise public awareness about emergency alerting.” *Id.* § 11.46. Section 11.61 provides that “EAS Participants shall conduct tests [of EAS procedures] at regular intervals.” *Id.* § 11.61.

the emergency alerting attention signal is being used in the context of a PSA for the purpose of educating the viewing or listening public about emergency alerting.”⁴

4. ABC is a media and entertainment company that operates a television broadcast network that produces and distributes programming to television broadcast stations nationwide. ABC also is the licensee of eight television broadcast stations,⁵ six of which are located in the top ten U.S. television household markets and collectively reach 21% of the nation’s television households.⁶ As of September 29, 2018, the ABC television network had affiliation agreements with two hundred and forty-two local television stations in addition to the eight stations ABC owns and operates, and estimates that its programming reaches almost all of U.S. television households.⁷ ABC also produces television programs, including 29 primetime series and the late night program *Jimmy Kimmel Live!*, which it distributes “worldwide to television broadcasters, SVOD [subscription video-on-demand] services (including Hulu), and on home entertainment formats.”⁸

5. In October 2018, the Commission received information from multiple sources alleging that ABC had transmitted EAS attention signals, or simulations thereof, during the October 3, 2018 broadcast of the television program *Jimmy Kimmel Live!* absent an actual emergency or authorized EAS test.⁹ The Bureau’s Investigations and Hearings Division issued a letter of inquiry on October 12, 2018,¹⁰ directing the Company to submit, among other things, recordings of the alleged Episode of *Jimmy Kimmel Live!*, and sworn written statements as to whether it had transmitted, or caused the transmission of, the EAS Tones.¹¹ The Company responded to the letter of inquiry on November 30, 2018.¹²

6. The Investigation revealed that ABC incorporated WEA Tones into the October 3, 2018 Episode of *Jimmy Kimmel Live!* as part of a sketch regarding the then-recent nationwide Presidential WEA test.¹³ ABC distributed the Episode for transmission on ABC network-affiliated broadcast stations throughout the country three times—once each to viewers in the respective combined Eastern and Central Daylight, Mountain Daylight and Pacific Daylight time zones.¹⁴ ABC also broadcast the Episode over its eight owned and operated television stations.¹⁵ The record reflects that none of the transmissions of the

⁴ *Id.* at § 10.520(d).

⁵ The Walt Disney Company, Annual Report (Form 10-K) at 4 (Nov. 21, 2018), <https://www.thewaltdisneycompany.com/wp-content/uploads/2019/01/2018-Annual-Report.pdf> (2018 Form 10-K)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See, e.g., Giovanni Russonello, *Jimmy Kimmel Doesn’t Think We Need the New Presidential Alert System*, N.Y. Times (Oct. 4, 2018), <https://www.nytimes.com/2018/10/04/arts/television/jimmy-kimmel-presidential-alert-system.html>.

¹⁰ Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Susan Fox, The Walt Disney Company (Oct. 12, 2018) (on file in EB-IHD-18-00027842) (LOI).

¹¹ *Id.*

¹² Response to Letter of Inquiry, from David H. Solomon, Wilkinson Barker Knauer LLP, Counsel to ABC, to Jennifer Lewis Hershman, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at 2-3 (Nov. 30, 2018) (on file in EB-IHD-18-00027842) (LOI Response).

¹³ See LOI Response at 3.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 2.

Episode were made in connection with an actual emergency, authorized test of the WEA, or qualified PSA.¹⁶ ABC explains that the WEA Tones were improperly included in the Episode because a “misunderstanding that the use of the tone was permissible” occurred¹⁷ ABC represents that after the October 3, 2018, broadcast, the Company took steps to remove the portion of the Episode containing the WEA Tones from its website and other online streaming sites, and decided not to rebroadcast the Episode.¹⁸

7. To resolve the Investigation, the Parties now enter into this Consent Decree to ensure ABC’s future compliance with the EAS Laws.

III. TERMS OF AGREEMENT

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

9. **Jurisdiction.** The Company 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 the Adopting Order and 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 with respect to the broadcast of the Episode. In consideration for the termination of the Investigation, and to avoid further expenditure of resources, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this 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 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 the Company’s basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

12. **Admission of Liability.** ABC admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions herein, that its broadcast of WEA Tones during the Episode violated the Commission’s EAS Laws.

13. **Compliance Officer.** Within thirty (30) calendar days of the Effective Date, the Company shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as 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 the Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 10.

Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have knowledge of the EAS Laws prior to assuming his or her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the EAS Laws and with the terms and conditions of this Consent Decree.¹⁹ With respect to the EAS Laws, including with regard to the unauthorized broadcast of the EAS Tones, the Company will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days of the Effective Date, the Company shall establish Operating Procedures that all Covered Employees must follow to help ensure the Company's compliance with the EAS Laws. ABC's Operating Procedures shall include internal procedures and policies specifically designed to ensure that ABC does not broadcast or transmit the EAS Tones or WEA Tones absent an emergency or authorized EAS or WEA test. The Company 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 and WEA Tones.
- (b) **Compliance Manual.** Within one hundred and fifty (150) calendar days of the Effective Date, the Company shall develop and distribute (e.g., by requiring it to be downloaded) 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 ABC's compliance with the EAS Laws. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Within ninety (90) calendar days of the Effective Date, the Company 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 the Company'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 one hundred and fifty (150) calendar days after the Effective Date, except that: (i) any person who becomes a Covered Employee at any time after the initial Compliance Training Program is conducted shall be trained within sixty (60) calendar days after the date such person becomes a Covered Employee; and (ii) any Covered Employee who is on leave during the applicable training period shall be trained within sixty (60) calendar days after the date such person returns from leave. The Company shall repeat the 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.** The Company shall report any instance of noncompliance with the EAS Laws or any instance of material noncompliance 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 such instance of noncompliance; (ii) the steps that the Company has taken or will take to address such noncompliance; (iii) the schedule on which such actions

¹⁹ The Parties understand and agree that the Compliance Plan in Paragraph 14 and associated Compliance Reports in Paragraph 16 will apply only to entities owned, controlled, or managed by ABC.

will be taken; and (iv) the steps that the Company 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.Gee@fcc.gov, Christopher.Sova@fcc.gov, and Megan.Henry@fcc.gov.

16. **Compliance Reports.** ABC shall file Compliance Reports with the Bureau one hundred and twenty (120) 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 the Company'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 the Company, stating that the Compliance Officer has personal knowledge (obtained directly or through others) that the Company: (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 material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 15 of this Consent Decree. Each Compliance Report shall also include the percentage of Covered Employees who were trained during the period covered by the Compliance Report.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules²⁰ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that the Company has taken or will take to address such noncompliance, including the schedule on which such proposed action will be taken; and (iii) the steps that the Company 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 Megan Henry at Megan.Henry@fcc.gov.

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

18. **Civil Penalty.** ABC will pay a total civil penalty to the United States Treasury in the amount of \$395,000 within thirty (30) calendar days of the Effective Date. The Company shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, and Megan Henry at Megan.Henry@fcc.gov on the date said payment is

²⁰ 47 CFR § 1.16.

made. The payment 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),²¹ 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:²²

- 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).²³ 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.

19. **Waivers.** As of the Effective Date, ABC 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. The Company 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 Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

20. **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

²¹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²² 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.

²³ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

21. **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.

22. **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 the Company does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

26. **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.

27. **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.

28. **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.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

John W. Zucker
Deputy Chief Counsel
ABC, Inc.

Date