

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

In the Matter of)	
)	
Discovery, Inc.)	File No.: EB-IHD-18-00026647
)	Acct. No.: 201932080019
)	FRN: 0016208076

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 Discovery, Inc. (Discovery) violated laws governing the Emergency Alert System (EAS) by improperly transmitting or causing the transmission of the Wireless Emergency Alert (WEA) Tones over its Animal Planet channel, during an episode of the program *Lone Star Law, Season 3, Episode 4: Thousand Year Flood (Lone Star Law)*, in the absence of an 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, Discovery admits to transmitting or causing to transmit material on its Animal Planet channel that contained WEA Tones, absent an actual emergency, authorized test of the EAS, or qualified PSA. Discovery also agrees to implement a compliance plan and pay a \$68,000 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

¹ 47 CFR § 11.45.

² See 47 CFR § 11.45; 47 CFR § 10.520(d).

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....)

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 Discovery's compliance with sections 11.45 and 10.520(d) 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 Discovery'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 Discovery 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 Bruce Campbell, Chief Development, Distribution, and Legal Officer, Discovery, Inc., 850 Third Avenue, New York, NY, 10022-7225, and to Discovery's counsel, Tara M. Corvo, Esq. and Alyssa J. Bryant, Esq., Mintz Levin, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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; 10.520(d).

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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)	File No.: EB-IHD-18-00026647
Discovery, Inc.)	Acct. No.: 201932080019
)	FRN: 0016208076

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Discovery, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Discovery, Inc. violated sections 11.45 and 10.520(d) of the Commission's rules by improperly transmitting or causing to be transmitted Wireless Emergency Alert Attention Signals and Emergency Alert System tones over its Animal Planet channel during an episode of the *Lone Star Law, Season 3, Episode 4: Thousand Year Flood* television program absent an actual emergency, authorized EAS test, or qualified public service announcement. As set forth herein, to resolve this matter, Discovery agrees to implement a compliance plan and pay a \$68,000 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 Discovery, Inc. is subject by virtue of its activities as a Commission licensee including, but not limited to, the EAS Laws.
 - (f) "Complaint" means the third-party complaint received by the Bureau on March 15, 2018, on file in EB-IHD-18-00026647, alleging that Discovery misused EAS Tones during an episode of *Lone Star Law, Season 3, Episode 4: Thousand Year Flood* on Discovery's Animal Planet Channel.
 - (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 Individuals” means all employees and third-party agents of Discovery who materially perform, supervise, oversee, or manage duties that relate to Discovery’s compliance with the EAS Laws.
- (j) “Discovery” means Discovery, Inc., and all subsidiaries, predecessors-in-interest, and successors-in-interest that transmit programming on domestic linear networks subject to the EAS Laws.
- (k) “EAS” means the Emergency Alert System.
- (l) “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.
- (m) “EAS Tones” means: (i) 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; and (ii) any part of the WEA Attention Signal, as defined in section 10.520.
- (n) “Effective Date” means the date by which both the Bureau and Discovery have signed the Consent Decree.
- (o) “Investigation” means the Bureau’s investigation in case EB-IHD-18-00026647 regarding Discovery’s compliance with the EAS Laws.
- (p) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Discovery to implement the Compliance Plan.
- (q) “Parties” means Discovery and the Bureau, each of which is a “Party.”
- (r) “Programming” means the program *Lone Star Law, Season 3, Episode 4: Thousand Year Flood* transmitted by Discovery on its Animal Planet channel, which contained actual or simulated EAS Tones.
- (s) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (t) “WEA Attention Signal” means any part of the audio attention signal as defined in section 10.520 of the Rules.

II. BACKGROUND

3. Section 11.45 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 this chapter.”² Likewise, section 10.520(d) prohibits the transmission of the WEA common audio attention signal, or a recording or simulation thereof, in any circumstance other

² 47 CFR § 11.45. Section 10.520(d) provides that “no person may transmit or cause to transmit the WEA common audio attention signal, or a recording or simulation 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.” *Id.* § 10.520(d). 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.

(continued....)

than in an actual National, State or Local Area emergency or authorized test, except as designed and used for Public Service Announcements.”³

4. Discovery is a global media company that provides content worldwide via pay-television, free-to-air, and broadcast television, as well as through various digital distribution platforms, including ad-supported TV Everywhere offerings, subscription-based direct-to-consumer products, digital and mobile-first, social media platforms and over-the-top streaming services.⁴ Its brands include Discovery Channel, TLC, Investigation Discovery, and Animal Planet.⁵

5. The Commission received a Complaint on March 15, 2018, which stated: “[d]uring the 15 March 2018 episode of ‘Lone Star Law’ on the cable channel ‘Animal Planet,’ at 19 minutes into the show, the actual EAS two tone alert signal was sounded at loud volume. There was no current emergency on 15 March 2018 when this alert signal was sounded.”⁶ The Bureau inquired and directed Discovery to respond to the allegations by letter, dated June 21, 2018,⁷ to which Discovery responded on July 23, 2018, and in subsequent supplemental submissions.⁸

6. The Investigation revealed that Discovery’s Animal Planet channel transmitted the program *Lone Star Law*, which included an actual WEA Attention Signal.⁹ Discovery explains that the program segment that included the EAS Tones was a pre-recorded and edited segment that was captured in real-time while Texas Game Wardens were being filmed by cameras during a response to Hurricane Harvey.¹⁰ Discovery states that it transmitted the program over Animal Planet’s programming stream on eight different occasions from January through May 2018.¹¹ None of the transmissions of the program *Lone Star Law* that included the EAS Tones were made in connection with an actual emergency, authorized test of the EAS, or qualified PSA.¹²

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

³ *Id.* § 10.520(d).

⁴ Discovery Communications, Inc., Form 10-K (filed Feb. 28, 2018) at 4, available at <https://ir.corporate.discovery.com/static-files/cf7153f0-24da-40b2-8297-b45585a0ee53> (*Discovery 2017 Annual Report*).

⁵ *Id.*

⁶ *See* Complaint No. 2307277, dated March 15, 2018 (on file in EB-IHD-18-00026647) (Complaint).

⁷ *See* Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Discovery, Inc., dated June 21, 2018 (on file in EB-IHD-18-00026647) (LOI).

⁸ *See* Response to Letter of Inquiry, from Tara M. Corvo, Esq. and Alyssia J. Bryant, Esq., Counsel to Discovery, to Marlene H. Dortch, Secretary, FCC (July 23, 2018) (on file in EB-IHD-18-00026647) (LOI Response); Confidentiality Request from Tara M. Corvo, Esq. and Alyssia J. Bryant, Esq., Counsel to Discovery to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 23, 2018 (on file in EB-IHD-18-00026647) and Supplemental Confidentiality Request from Tara M. Corvo, Esq. and Alyssia J. Bryant, Esq., Counsel to Discovery to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 15, 2019 (on file in EB-IHD-18-00026647) (requesting confidential treatment of certain information Discovery provided in response to the Bureau’s LOI).

⁹ *See* LOI Response at 9-10.

¹⁰ *See id.*

¹¹ *See id.* at 8.

¹² *See id.* at 9-10.

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.** Discovery 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 its Investigation and dismiss the Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, Discovery 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 Discovery 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 use 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 Discovery's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

12. **Admission of Liability.** Discovery admits solely 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 its actions described in Paragraphs 5 and 6 of this Consent Decree violated the EAS Laws.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Discovery 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 Discovery 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, Discovery agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a companywide Compliance Plan designed to ensure Discovery's future compliance with the EAS Laws and with the terms and conditions of this Consent Decree. With respect to the EAS Laws, Discovery will implement, at a minimum, the following procedures:

- (a) **Operating Procedures for Compliance with the EAS Laws.** Within ninety (90) calendar days after the Effective Date, Discovery shall establish Operating Procedures that all Covered Individuals must follow to help ensure Discovery's compliance with the EAS Laws. Discovery's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Discovery does not transmit the EAS Tones absent an emergency or authorized EAS test. The Operating Procedures shall describe the steps that a Covered Individual must follow to ensure compliance with the EAS Laws regarding broadcast of the EAS Tones.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, Discovery shall develop and distribute a Compliance Manual to all Covered Individuals. The Compliance Manual shall explain the EAS Laws and set forth the

Operating Procedures that Covered Individuals shall follow to help ensure Discovery's compliance with the EAS Laws. Discovery shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Discovery shall distribute any revisions to the Compliance Manual promptly to all Covered Individuals.

- (c) **Compliance Training Program.** Discovery 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 Individuals shall be advised of the 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 Individuals shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that: (i) any person who becomes a Covered Individual 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 Individual; and (ii) any Covered Individual who is on leave during the applicable training period shall be trained within thirty (30) calendar days after the date such person returns from leave. Discovery shall conduct 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.** Discovery shall report any instance of noncompliance with either the EAS Laws or 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 Discovery has taken or will take to address such noncompliance; (iii) the schedule on which such actions will be taken; and (iv) the steps that Discovery 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, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov.

16. **Compliance Reports.** Discovery shall file compliance reports with the Commission one hundred 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 Discovery'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 Discovery, stating that such officer has personal knowledge (obtained directly or through others) that Discovery: (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.¹³

- (c) If the Compliance Officer cannot provide the requisite certification, then such officer, as an agent of and on behalf of Discovery, 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 Discovery 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 Discovery 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, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@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.** Discovery will pay a civil penalty to the United States Treasury in the amount of \$68,000 within forty-five (45) calendar days of the Effective Date. Discovery shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov on the date said payment is 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),¹⁴ 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:¹⁵

- 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).¹⁶ 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

¹³ 47 CFR § 1.16.

¹⁴ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹⁵ 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.

¹⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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, Discovery 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. Discovery 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 Discovery nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Discovery shall waive any statutory right to a trial *de novo*. Discovery hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁷ 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 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 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 Discovery does not expressly consent), that provision will be superseded by such Rule or Order.

23. **Successors and Assigns.** Discovery 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

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

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

Alexa Verveer
Group Senior Vice President
Public Policy & Corporate/Government Affairs
Discovery, Inc.

Date