

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
BLU Products, Inc.) File No.: EB-SED-18-00027959
) Acct. No.: 202032100005
) FRN: 0019890946
)

ORDER

Adopted: April 2, 2020

Released: April 2, 2020

By the Chief, Enforcement Bureau:

1. To protect the public from exposure to potentially harmful radio frequency radiation, the Federal Communications Commission (Commission or FCC) established requirements setting forth specific absorption rate limits for certain radio frequency devices. As a matter of public health and safety, radio frequency devices must meet the specific absorption rate limits before the devices may be marketed to or used by the general public. These devices must also comply with the Commission’s equipment authorization rules prior to marketing because the devices could cause harmful interference to authorized communications if they do not conform to these rules.

2. The Enforcement Bureau (Bureau) of the Commission has therefore entered into a Consent Decree to resolve its investigation into whether BLU Products, Inc. (BLU Products or Company) marketed a mobile phone, model GRAND MAX, that exceeded the Commission’s specific absorption rate limit, and failed to comply with the labeling, user manual, and permissive change requirements of the equipment authorization rules. To settle this matter, BLU Products admits that it violated the Commission’s rules, will implement a compliance plan, and will pay a \$130,000 civil penalty.

3. 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 BLU Products’ compliance with the specific absorption rate limit and labeling, user manual, and permissive change requirements, as provided under section 302(b) of the Communications Act of 1934, as amended (Act),¹ and sections 2.803, 2.1043, 2.1093, 15.19, and 15.21 of the Commission’s rules.²

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of BLU Products’ basic qualifications to hold or obtain any Commission license or authorization.³

5. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Act⁴ and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules,⁵ the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

¹ 47 U.S.C. § 302a(b).

² 47 CFR § 2.803, 2.1043, 2.1093, 15.19, 15.21.

³ See id. § 1.93(b).

⁴ 47 U.S.C. § 154(i).

⁵ 47 CFR §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by e-mail to Mr. Michael Ohevzion, Chief Operating Officer, BLU Products, Inc., c/o Egozi & Bennett, P.A, and to Mr. Bernard L. Egozi, Esq., Counsel to BLU Products, Inc., Egozi & Bennett, P.A.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (Commission or FCC) and BLU Products, Inc. (BLU Products or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether BLU Products violated section 302(b) of the Communications Act of 1934, as amended (Act)1 and sections 2.803(b)(1), 2.1043(b)(2), 2.1093(d)(2), 15.19(a)(3), and 15.21 of the Commission’s rules.2 The noted violations are in connection with BLU Products’ marketing of a mobile phone, model GRAND MAX, that failed to comply with the Commission’s specific absorption rate limit and labeling and user manual disclosure requirements, as well as the Company’s failure to obtain the requisite Commission approval for Class II permissive changes it made to the device. As set forth herein, to resolve this matter, BLU Products admits that it violated the Commission’s rules, will implement a compliance plan, and will pay a \$130,000 civil penalty. This action demonstrates the Commission’s commitment to protecting the public through enforcement of the Commission’s equipment authorization rules and the radio frequency exposure limits.

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.3
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “BLU Products” or “Company” means BLU Products, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
(d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(e) “CD Acct No.” means account number 202032100005, associated with payment obligations described in paragraph 20 of this Consent Decree.
(f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
(g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which BLU Products is

1 47 U.S.C. § 302a(b).

2 47 CFR §§ 2.803(b)(1), 2.1043(b)(2), 2.1093(d)(2), 15.19(a)(3), 15.21.

3 47 U.S.C. § 151 et seq.

subject by virtue of its business activities, including but not limited to the Specific Absorption Rate (SAR) Limit and Equipment Marketing Rules.

- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.
- (i) “Covered Employees” means all employees and agents of BLU Products who perform, or supervise, oversee, or manage the performance of, duties that relate to BLU Products’ responsibilities under the Communications Laws, including the SAR Limit and Equipment Marketing Rules.
- (j) “Effective Date” means the date by which both the Bureau and BLU Products have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “Equipment Marketing Rules” means section 302(b) of the Act;⁴ sections 2.803, 2.1043, 15.19, and 15.21 of the Rules;⁵ and other provisions of the Act, the Rules and Commission orders related to the authorization of radio frequency devices and the marketing of such devices.
- (l) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-18-00027959 regarding whether BLU Products violated the SAR Limit and Equipment Marketing Rules.⁶
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by BLU Products to implement the Compliance Plan.
- (n) “Parties” means BLU Products and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Specific Absorption Rate Limit” or “SAR Limit” means section 2.1093 of the Rules, and other provisions of the Rules and Commission orders related to the Commission’s specific absorption rate limit for certain portable devices.⁷

II. BACKGROUND

3. Specific absorption rate limits are in place to ensure that the public is appropriately protected from the potential adverse effects from radio frequency exposure. Under section 2.1093(d)(2) of the Rules, the Commission set a specific absorption rate limit of 1.6 W/kg, averaged over any 1 gram

⁴ *Id.* § 302a(b).

⁵ 47 CFR §§ 2.803, 2.1043, 15.19, 15.21.

⁶ *See, e.g.*, Letter of Inquiry from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Samuel Ohev-Zion, President, BLU Products, Inc. (Nov. 7, 2018) (Letter of Inquiry); Supplemental Letter of Inquiry from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Samuel Ohev-Zion, President, BLU Products, Inc. and Roy E. Nelson, Esq., Egozi & Bennet, P.A. (Mar. 12, 2019) (both on file in EB-SED-18-00027959).

⁷ 47 CFR §§ 1.1310(c); 2.1093(d)(2) (2019); *see id.* 47 CFR §§ 1.1310(c); 2.1093(d)(1); *see also Proposed Changes in the Commission’s Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies; Targeted Changes to the Commission’s Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, ET Docket Nos. 03-137, 13-84, 19-226, Resolution of Notice of Inquiry, Second Report and Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 19-126 (Dec. 4, 2019) (*RF Exposure Order*) (amending some of the radiofrequency exposure rules but maintaining the same SAR limit for certain portable devices).

of tissue, for certain portable devices.⁸ Before being marketed⁹ or used, such devices, like the GRAND MAX mobile phone, must be tested for compliance with the localized Specific Absorption Rate Limit.¹⁰

4. Pursuant to section 302(b) of the Act¹¹ and section 2.803 of the Rules,¹² radio frequency devices must be properly authorized, identified, labeled and comply with the applicable technical standards prior to marketing in the United States. Intentional radiators,¹³ such as the device at issue here, must be authorized pursuant to the Commission's certification procedures,¹⁴ and comply with the user manual disclosure and labeling requirements set forth in sections 15.21 and 15.19(a)(3) of the Rules, respectively.¹⁵ Additionally, section 2.1043 of the Rules defines three classes of permissive changes that may be made to certified equipment without requiring a new application for and grant of certification.¹⁶ Pursuant to section 2.1043(b)(2) of the Rules, a device that has undergone a Class II permissive change may not be marketed prior to acknowledgement by the Commission that the change is acceptable.¹⁷

5. BLU Products is a Florida-based corporation that designs and sells mobile devices, including the GRAND MAX phone model.¹⁸ Testing performed by the Office of Engineering and Technology (OET) Laboratory on two samples of the GRAND MAX mobile phone purchased through an online retailer found that both phones were noncompliant with the Commission's SAR Limit. Specifically, the OET Laboratory found peak-spatial average specific absorption rate values of 1.73 W/kg and 2.02 W/kg for both phones, which exceed the 1.6 W/kg SAR Limit.¹⁹

6. OET subsequently referred this matter to the Bureau for enforcement action. On November 7, 2018, the Bureau's Spectrum Enforcement Division (SED) issued a Letter of Inquiry to BLU Products, which directed the Company to submit a sworn written response to questions about its marketing of the GRAND MAX mobile phone.²⁰ BLU Products responded, in part, on December 28,

⁸ *See id.* § 2.1093(b)-(d)(2) (“[A] portable device is defined as a transmitting device designed to be used so that the radiating structure(s) of the device is/are within 20 centimeters of the body of the user.”).

⁹ “Market,” “Marketed” or “Marketing” includes the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” *See id.* § 2.803(a).

¹⁰ *See id.* § 2.1093(d)(2). Specific absorption rate is a measure of the rate of energy absorption due to exposure to a radio frequency transmitting source. *See id.* § 2.1093(d).

¹¹ 47 U.S.C. § 302a(b).

¹² 47 CFR § 2.803.

¹³ An intentional radiator is a “device that intentionally generates and emits radio frequency energy by radiation or induction.” *Id.* § 15.3(o).

¹⁴ *See id.* §§ 2.803(b)(1), 15.201(b); *see also id.* §§ 2.1031-1060.

¹⁵ 47 CFR §§ 15.21, 15.19(a)(3).

¹⁶ *Id.* § 2.1043.

¹⁷ *Id.* § 2.1043(b)(2). A Class II permissive change “includes those modifications which degrade the performance characteristics as reported to the Commission at the time of initial certification.” *Id.*

¹⁸ *See* <https://bluproducts.com/about-us/> (last visited on Nov. 13, 2019); *see also* Response to Letter of Inquiry, from Roy E. Nelson, Esq., Counsel to BLU Products, Inc., to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau, at 1, Response to Question 1 (Dec. 28, 2018) (on file in EB-SED-18-00027959) (Letter of Inquiry Response). BLU Products is the grantee of the certification for the GRAND MAX mobile phone. *See* Office of Engineering & Technology's Laboratory Division Equipment Authorization System, FCC Identifier: YHLBLUGRANDMAX, <https://www.fcc.gov/oet/ea/fccid>.

¹⁹ *See* 47 CFR § 2.1093(d)(2); *RF Exposure Order* at 8, para. 14 (“[The Commission’s] existing exposure limits are set with a large safety margin, well below the threshold for unacceptable rises in human tissue temperature.”).

²⁰ *See supra* note 6.

2018.²¹ SED issued a Supplemental Letter of Inquiry on March 12, 2019,²² to which BLU Products responded on March 27, 2019, with subsequent responses on May 28, 2019, May 29, 2019, and June 11, 2019.²³ The Bureau and BLU Products entered into Tolling Agreements to toll the statute of limitations.²⁴

7. The Investigation revealed that BLU Products violated the SAR Limit and Equipment Marketing Rules by marketing the GRAND MAX mobile phone, which failed to comply with the Commission's specific absorption rate limit, and failed to comply with labeling and user manual disclosure requirements.²⁵ BLU Products also failed to obtain the requisite Commission approval for Class II permissive changes it made to the device, when it made software changes to the GRAND MAX phone between May 4 and May 12, 2018.

8. After BLU Products became aware that the GRAND MAX mobile phone exceeded the specific absorption rate limit, the Company began taking measures to implement a solution.²⁶ BLU Products indicated that between May 4 and May 12, 2018, the Company implemented an "over-the-air update that was programmed to correct the issue to 100% of the devices."²⁷ BLU Products also stated that it "confirmed, through the Google OTA portal, that 98% of all devices sold were updated to the corrected version."²⁸ BLU Products reported that the remaining 2% of devices sold did not receive the update because the devices were not connected to the Internet, are no longer operational, or had undergone software modifications rendering it unable to download the update.²⁹ BLU Products discontinued marketing the GRAND MAX on August 13, 2018.³⁰

9. After settlement discussions, the Bureau and BLU Products agree to the following terms and conditions of settlement and hereby enter into this Consent Decree as provided herein.

²¹ See *supra* note 18.

²² See *supra* note 6. The Bureau also sent supplemental inquiries. E-mail from Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau, to Bernard L. Egozi, Esq., Counsel to BLU Products, Inc. (May 13, 2019, 11:16 EDT); E-mail from Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau, to Bernard L. Egozi, Esq., Counsel to BLU Products, Inc. (May 30, 2019, 11:56 EDT) (all on file in EB-SED-18-00027959).

²³ See Response to Supplemental Letter of Inquiry, from Bernard L. Egozi, Esq., Counsel to BLU Products, Inc., to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 27, 2019) (Supplemental Letter of Inquiry Response); E-mail from Bernard L. Egozi, Counsel to BLU Products, Inc., to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (May 28, 2019, 18:11 EDT); E-mail from Bernard L. Egozi, Counsel to BLU Products, Inc., to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (May 29, 2019, 13:50 EDT) (May 29 Supplemental Response); E-mail from Bernard L. Egozi, Counsel to BLU Products, Inc., to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (June 11, 2019, 15:39 EDT) (June 11 Supplemental Response) (all on file in EB-SED-18-00027959).

²⁴ See *e.g.*, Tolling Agreement Extension, File No. EB-SED-18-00027959, executed by and between Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Michael Ohev-Zion, Chief Operating Officer, BLU Products, Inc. (Aug. 15, 2019) (on file in EB-SED-18-00027959).

²⁵ See Letter of Inquiry Response at 3-4, Responses to Questions 11 and 12; Supplemental Letter of Inquiry Response at 2, Response to Question 12a, Exhibit Label GRAND MAX, Response to Question 14.

²⁶ See Supplemental Letter of Inquiry Response at 3, Response to Question 18.

²⁷ See *id.* at 3, Response to Question 16.

²⁸ *Id.*

²⁹ See June 11 Supplemental Response. BLU Products also indicated that any phone that was not previously connected to the Internet will receive the update once the phone has been connected to the Internet. See E-mail from Bernard L. Egozi, Counsel to BLU Products, Inc., to Kathy Harvey, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 26, 2020, 11:36 EST) (on file in EB-SED-18-00027959).

³⁰ See Letter of Inquiry Response, Exhibit GRAND MAX Summary, Response to Request Number 7.

III. TERMS OF AGREEMENT

10. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

11. **Jurisdiction.** BLU Products 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.

12. **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.

13. **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. In consideration for the termination of the Investigation, BLU Products 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 any new proceeding on its own motion against BLU Products concerning the matters that were the subject of the Investigation, or to set for hearing the question of BLU Products' basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.³¹

14. **Admission of Liability.** BLU Products admits solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 13 herein, that its actions described in paragraph 7, herein, violated the SAR Limit and Equipment Marketing Rules.

15. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, BLU Products 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 BLU Products 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 SAR Limit and Equipment Marketing Rules prior to assuming his/her duties.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, BLU Products 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 SAR Limit and Equipment Marketing Rules, BLU Products will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, BLU Products shall establish Operating Procedures that all Covered Employees must follow to help ensure BLU Products' compliance with the SAR Limit and Equipment Marketing Rules. BLU Products' Operating Procedures shall include internal procedures and policies specifically designed to ensure that all radio frequency devices to be used and marketed by BLU Products are properly authorized and compliant with the applicable technical and administrative standards and requirements prior to use or initiation of marketing.³² BLU Products shall also develop a Compliance Checklist that describes the steps that a Covered Employee

³¹ See 47 CFR § 1.93(b).

³² See *supra* note 9.

must follow to ensure compliance with the SAR Limit and Equipment Marketing Rules.

- (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 SAR Limit and Equipment Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure BLU Products' compliance with the SAR Limit and Equipment Marketing Rules. BLU Products shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. BLU Products shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program**. BLU Products shall establish and implement a Compliance Training Program in compliance with the SAR Limit and Equipment Market Rules, and Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of BLU Products' obligation to report any noncompliance with the SAR Limit and Equipment Marketing Rules under paragraph 17 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. BLU Products shall repeat compliance training on an annual basis and as reasonably required, 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.
- (d) **Contact consumers who purchased noncompliant devices**. BLU Products shall attempt to contact consumers of GRAND MAX mobile phones that have not received the update to remedy the SAR Limit violations. Specifically, the Company shall contact retailers of the GRAND MAX mobile phone to request the contact information for consumers whose GRAND MAX mobile phones did not receive the update to remedy the SAR Limit violations. If contact information is available for those consumers, the Company shall then contact each consumer about the SAR issue concerning the GRAND MAX mobile phone. The Company shall provide those consumers with the opportunity to return the defective phones for a full refund of the original purchase price or provide a remedy to bring the defective phones into compliance with the SAR Limit.

17. **Reporting Noncompliance**. BLU Products shall report any noncompliance with the SAR Limit and Equipment Marketing Rules, 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 BLU Products 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 BLU Products has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at EB-SED-Response@fcc.gov, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov.

18. **Compliance Reports**. BLU Products 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 BLU Products' efforts during the relevant period to comply with the terms and conditions of this Consent Decree, including the Company's obligation to contact consumers who purchased noncompliant devices, as well as the SAR Limit and Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of BLU Products, stating that the Compliance Officer has personal knowledge that BLU Products: (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 17 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.³³
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of BLU Products, 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 BLU Products 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 BLU Products 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 electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at EB-SED-Response@fcc.gov, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Civil Penalty.** BLU Products will pay a civil penalty to the United States Treasury in the amount of one hundred thirty thousand dollars (\$130,000). Such payment shall be made in four (4) installments (each, an Installment Payment).

- The first Installment Payment in the amount of thirty-two thousand five hundred dollars (\$32,500) is due within thirty (30) calendar days of the Effective Date.
- The second Installment Payment in the amount of thirty-two thousand five hundred dollars (\$32,500) is due within twelve (12) months of the Effective Date.
- The third Installment Payment in the amount of thirty-two thousand five hundred dollars (\$32,500) is due within twenty-four (24) months of the Effective Date.
- The fourth Installment Payment in the amount of thirty-two thousand five hundred dollars (\$32,500) is due within thirty-six (36) months of the Effective Date.

BLU Products acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. §

³³ 47 CFR § 1.16.

3701(b)(1).³⁴ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

BLU Products shall send electronic notification of payment to Kathy Harvey at Kathy.Harvey@fcc.gov and to the Spectrum Enforcement Division at EB-SED-Response@fcc.gov on the date said payment is made. Payment of the Civil Penalty 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),³⁵ 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.³⁶

- 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).³⁷ 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 CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using 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 CD Acct. No. – the bill number is the Acct. No. 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.

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

22. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, 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

³⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³⁵ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁶ 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.

³⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 BLU Products.

23. **Waivers.** As of the Effective Date, BLU Products 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. BLU Products 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 BLU Products nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and BLU Products shall waive any statutory right to a trial *de novo*. BLU Products hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁸ relating to the matters addressed in this Consent Decree.

24. **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.

25. **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.

26. **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 BLU Products does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

30. **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.

31. **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.

³⁸ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

32. **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

Michael Ohevzion
Chief Operating Officer
BLU Products, Inc.

Date