

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
ABB Inc. and KEC Acquisition Corporation)	File No.: EB-IHD-19-00029771
)	Acct. No.: 202032080024
Holding Various Licenses in the Wireless Radio)	FRN: 0006362396
Services)	
)	

ORDER

Adopted: June 9, 2020

Released: June 9, 2020

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether ABB Inc. and KEC Acquisition Corporation (collectively, ABB or the Company) violated sections 310(d) and 301 of the Communications Act of 1934, as amended (Act),¹ and sections 1.948, and 1.903 of the Commission’s rules pertaining to unauthorized transfers of control and assignments, and unauthorized operation of a wireless license,² in connection with the Company’s acquisition of four business entities between 2008 and 2012. This settlement also resolves questions regarding the Company’s failure to submit accurate licensee qualification information in the submission of applications for wireless radio licenses in violation of section 308 (b) of the Act and section 1.17 of the Commission’s rules.³ A wireless licensee circumvents the Commission’s ability to determine whether a license transfer is in the public interest, convenience, and necessity when it provides inaccurate qualification information in its license applications or engages in unauthorized transfers of control. To settle this matter, ABB admits that it failed to obtain the Commission’s approval prior to the transfer of licenses associated with its acquisition of four business entities, operated a wireless station after its license expired, and submitted inaccurate licensee qualification information. ABB also agrees to implement a compliance plan and pay a \$250,000 civil penalty.

2. The Commission must be able to rely on the completeness and accuracy of its regulatees’ submissions. Even large organizations whose primary lines of business are not subject to the Commission’s jurisdiction must file complete and accurate wireless license applications. The Company failed to meet its statutory and regulatory obligation to disclose prior felony convictions on the wireless license applications that it filed with the Commission. Its failure to disclose these convictions is particularly troubling, because the violations included transfers of wireless licenses in which the Commission was precluded from performing its statutory duty to review the qualifications of licensees at issue prior to the completion of the transfers. Nevertheless, we believe that a Consent Decree is appropriate based on the totality of the circumstances, including ABB’s corrections of the applicable

¹ 47 U.S.C. §§ 310(d), 301.

² 47 CFR §§ 1.948, 1.903.

³ 47 U.S.C. § 308(b); 47 CFR § 1.17.

wireless application submissions on its own initiative, and ABB's full cooperation with the Bureau's investigation after those corrections.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by adopting the Consent Decree and terminating the referenced investigation regarding ABB's compliance with the Act⁴ and the Commission's rules⁵ pertaining to unauthorized transfers of control and assignments of licenses, unauthorized operations of a wireless station, and the submission of licensee qualification information

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of the Company's basic qualifications to hold or obtain any Commission license or authorization.⁶

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act⁷ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁸ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be served via e-mail to Martin L. Stern, counsel for ABB Inc. and KEC Acquisition Corporation, at Marty.Stern@wbd-us.com, and Kevin M. Durocher, ABB Inc., at kevin.durocher@us.abb.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

⁴ 47 U.S.C. §§ 310(d), 301, 308(b).

⁵ 47 CFR §§ 1.948, 1.903, 1.17.

⁶ See 47 CFR § 1.93(b).

⁷ 47 U.S.C. § 154(i).

⁸ 47 CFR §§ 0.111, 0.311.

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Services) FRN: 0006362396

CONSENT DECREE

1. Both the unauthorized transfer of wireless licenses and the failure to provide accurate licensee qualification information in wireless license applications circumvent the Federal Communications Commission’s (Commission or FCC) ability to determine whether such transfers are in the public interest, convenience, and necessity before the transfers occur. In addition, the unauthorized operation of a wireless station may cause harmful interference with authorized wireless radio operations among other spectrum-enabled communications services. For these reasons, unauthorized transfers and operation of wireless licenses, as well as failures to provide accurate licensee information in wireless applications, are prohibited.

2. As part of the Commission’s obligation to prevent such violations, the Enforcement Bureau (Bureau), and ABB Inc. and KEC Acquisition Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether the Company violated sections 310(d) and 301 of the Communications Act of 1934, as amended (Act),¹ and sections 1.948, and 1.903 of the Commission’s rules pertaining to unauthorized transfers of control and assignments, and unauthorized operation of a wireless license,² in connection with the Company’s acquisition of four business entities between 2008 and 2012 (the “Acquired Companies”).³ This settlement also resolves questions regarding the Company’s failure to include accurate licensee qualification information in applications for wireless radio licenses by failing to disclose a felony conviction in violation of section 308(b) of the Act and section 1.17 of the Commission’s rules.⁴

3. As set forth herein, to resolve this matter, ABB agrees to implement a compliance plan and pay a \$250,000 civil penalty. This action will help enable the Commission to fulfill its statutorily prescribed duty to restrict the operation of wireless authorizations to those licensees whose qualifications and use of wireless spectrum have been previously authorized and approved.

¹ 47 U.S.C. §§ 310(d), 301.

² 47 CFR §§ 1.948, 1.903.

³ The transactions consist of ABB Inc.’s acquisition of ABB Motors and Mechanical, Inc. (formerly Baldor Electric Company), Thomas & Betts Corporation, and Tropos Networks, and KEC Acquisition Corporation’s acquisition of Kuhlman Electric Corporation (collectively the “Transactions”).

⁴ 47 U.S.C. § 308(b), 47 CFR § 1.17.

I. DEFINITIONS

4. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “ABB” or “Company” means ABB Inc. and KEC Acquisition Corporation, collectively, their U.S. subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest.⁵
 - (b) “ABB Ltd” is a Swiss multinational corporation, which holds U.S. subsidiaries ABB Inc. and KEC Acquisition Corporation through a U.S. holding company, ABB Holdings Inc.
 - (c) “Acquired Companies” shall mean the companies acquired during ABB Inc.’s acquisition of ABB Motors and Mechanical, Inc. (formerly Baldor Electric Company), Thomas & Betts Corporation, and Tropos Networks, and KEC Acquisition Corporation’s acquisition of Kuhlman Electric Corporation.
 - (d) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (e) “Adopting Order” means an Order of the Enforcement Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (f) “Commission” and “FCC” mean the Federal Communications Commission and 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 ABB is subject by virtue of its business activities, including but not limited to the Wireless Radio Service Rules.
 - (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 21.
 - (i) “Covered Employees” means all employees and agents of the Company who perform, supervise, oversee, or manage the performance of duties that relate to ABB’s responsibilities under the Communications Laws, including sections 310(d), 301 and 308(b) of the Act, and sections 1.948, 1.903 and 1.17 of the Rules.
 - (j) “Effective Date” means the date on which the Bureau and ABB have both signed the Consent Decree.
 - (k) “Enforcement Bureau” or “Bureau” means the Enforcement Bureau of the Federal Communications Commission.

⁵ FCC business radio licenses WQFV841 and WQVJ784 shall be excluded from the requirements of this Consent Decree upon consummation of the transaction contemplated by the application in ULS File No. 0008848161 and the subsequent transaction referenced in that application. In addition, the licenses applied for in ULS File Nos. 0009069874 and 0009073571 shall similarly be excluded from the requirements of this Consent Decree upon issuance and consummation of the transaction contemplated by those applications. Exclusion of any of the foregoing licenses from the requirements of the Consent Decree is based on the condition that the grants and consummation occur within 90 days of the Effective Date of this Agreement.

- (l) “Event of Default” means the Company’s failure to pay the full amount of the agreed-upon civil penalty by the due date specified herein.
- (m) “Investigation” means the investigation commenced by the Bureau, in File No. EB-IHD-19-00029771, into ABB’s compliance with provisions of the Communications Laws relating to its transfer of station licenses, operation of station equipment and provision of truthful statements in wireless applications submitted to the Commission.
- (n) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by ABB to implement the Compliance Plan.
- (o) “Parties” means ABB and the Bureau, each of which is a “Party.”
- (p) “Remedial Applications and Waiver Requests” means the applications filed by ABB on November 28, 2018, including, Baldor Electric Company, Application for Transfer of Control, ULS License No. 0008442292, Thomas & Betts Corporation, Application for Transfer of Control, ULS License No. 0008439586, Kuhlman Electric Corporation, Application for Transfer of Control, ULS License No. 0008439940, (collectively, with all respective exhibits and attachments).
- (q) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (r) “Transactions” means ABB Inc.’s acquisition of all of the issued and outstanding shares of wireless licensees ABB Motors and Mechanical, Inc. (formerly Baldor Electric Company) in January, 2011, Thomas & Betts Corporation in May 2012, and Tropos Networks in June, 2012, and KEC Acquisition Corporation’s acquisition of wireless licensee Kuhlman Electric Corporation in August 2008, through which those licensees, became direct or indirect, wholly owned subsidiaries of, as applicable, ABB Inc. or KEC Acquisition Corporation.⁶
- (s) “Unauthorized Transfer Laws” means section 310(d), of the Act and section 1.948 of the Rules, pertaining to unauthorized transfers of control and assignments of licenses.⁷
- (t) “Unauthorized Operation Laws” means section 301 of the Act and section 1.903 of the Rules, pertaining to unauthorized operation of wireless transmitters.⁸

⁶ See Letter from Mark J. Palchick, Esq., *et al.*, counsel for ABB Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 28, 2018 (November 28th Letter); *see also*, Baldor Electric Company, Application for Transfer of Control, ULS License No. 0008442292, Attach. 1 (Disclosure of Felony Convictions), Attach. 2 (Description of Proposed Transaction, Public Interest Statement, And Request for Waiver), Attach. 3 (Foreign Ownership) (filed Nov. 28, 2018); Thomas & Betts Corporation, Application for Transfer of Control, ULS License No. 0008439586, Attach. 1, Attach. 2, Attach. 3 (filed Nov. 28, 2018); Kuhlman Electric Corporation, Application for Transfer of Control, ULS License No. 0008439940, Attach. 1, Attach. 2, Attach. 3 (filed Nov. 28, 2018) (collectively, with all respective exhibits and attachments, the “Remedial Applications and Waiver Requests”), <http://appsint.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11230213>.

⁷ 47 U.S.C. § 310(d), 47 CFR § 1.948.

⁸ 47 U.S.C. § 301, 47 CFR § 1.903.

- (u) “Wireless Bureau” means the Wireless Telecommunications Bureau of the Commission.
- (v) “Wireless License Applications” means FCC Forms 601 and 603.
- (w) “Wireless License Application Laws” means provisions of the Act, the Rules, and Commission orders related to Wireless License Applications, including, but not limited to, section 308(b) of the Act and section 1.17 of the Rules.
- (x) “Wireless Radio Services” means those radio services as defined in section 1.907 of the Rules.⁹

II. BACKGROUND

5. Section 310(d) of the Act provides that “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”¹⁰ Section 1.948 of the Rules similarly requires Commission consent prior to a transfer of control or an assignment of a Commission license.¹¹

6. Section 301 of the Act provides, among other things, that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.”¹² Section 1.903 of the Rules similarly requires that “Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section.”¹³

7. In addition, section 308(b) of the Act and section 1.17 of the Rules require that all statements contained in wireless license applications submitted to the Commission must be both truthful and accurate regarding the qualifications of prospective licensees.¹⁴ Certain FCC license application forms, including FCC Forms 601 and 603, inquire whether the applicant has ever been convicted of a felony by any state or federal court.

⁹ 47 CFR § 1.907.

¹⁰ 47 U.S.C. § 310(d).

¹¹ 47 CFR § 1.948. The assignment or transfer of control of certain Part 90 licenses may be subject to conditional authority upon filing of an assignment or transfer of control application. *See* 47 CFR § 90.159(c).

¹² 47 U.S.C. § 301.

¹³ 47 CFR § 1.903(a).

¹⁴ 47 U.S.C. § 308, 47 CFR § 1.17.

8. The Company is the U.S. subsidiary of ABB Ltd,¹⁵ a Swiss multinational corporation, through a U.S. holding company, ABB Holdings Inc.¹⁶ ABB Ltd is an industrial corporation, publicly traded on the Swedish, Swiss and New York stock exchanges, that is a supplier of equipment, software, systems and engineering services to electric utilities, as well as industrial and commercial clients.¹⁷ ABB Ltd. operates in more than 100 countries with about 147,000 employees.¹⁸

9. Between 2008 and 2012, ABB concluded the Transactions, through which ABB Inc. acquired all of the issued and outstanding shares of FCC license holders ABB Motors and Mechanical, Inc. (formerly Baldor Electric Company), Thomas & Betts Corporation, and Tropos Networks, and KEC Acquisition Corporation acquired all of the issued and outstanding shares of FCC license holder Kuhlman Electric Corporation. As a result of the Transactions, each of these wireless licensees became direct or indirect, wholly owned subsidiaries of, as applicable, ABB Inc. or KEC Acquisition Corporation, resulting in the transfer of control of these licensees to ABB. No applications seeking FCC consent for the Transactions were filed prior to completion of any of the Transactions.

10. On November 28, 2018, ABB filed the Remedial Applications and Waiver Requests seeking post-transaction approval and waiver from the Wireless Bureau.¹⁹ These filings consisted of applications wherein ABB sought Commission consent to the Transactions, on a *nunc pro tunc* basis, for the transfers of control of authorizations for the many wireless radio licenses involved.²⁰ Through disclosures contained in the Remedial Applications and Waiver Requests and the November 28th Letter, ABB revealed the Transactions to the Commission, and that “license-holding subsidiaries were acquired by ABB Inc. and KEC Acquisition Corporation, respectively, without obtaining Commission consent to the associated transfer of control of the acquired entity.”²¹

11. The Wireless Bureau subsequently referred the matter to the Bureau for investigation. Throughout the Bureau’s Investigation, ABB cooperated with the Bureau, and in response to requests from the Bureau, confirmed various information about the Transactions, the Company, and the wireless licenses held by ABB Inc. and the Acquired Companies.

12. In connection with the Bureau’s investigation, ABB confirmed that, in the course of the Transactions, it completed four separate substantial transfers of control,²² concerning twenty-eight

¹⁵ For purposes of this Consent Decree, “ABB Ltd” shall be deemed to refer to the Swiss multinational corporation which holds U.S. subsidiaries ABB Inc. and KEC Acquisition Corporation through its U.S. holding company, ABB Holdings Inc.

¹⁶ November 28th Letter at 1.

¹⁷ *Id.* at 1-2.

¹⁸ ABB Ltd, *About ABB*, <https://new.abb.com/about> (last visited Dec. 3, 2019).

¹⁹ See Remedial Applications and Waiver Requests.

²⁰ See *id.* See also Letter from Mark J. Palchick, Esq., *et al.*, counsel for ABB Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 28, 2018 (November 28th Letter).

²¹ *Id.* at 1-2. According to ABB, the Company also put in place a compliance program, which included designation of an FCC compliance officer, as well as the development and adoption of a Compliance Manual and Operating Procedures, a copy of which was submitted to the Commission together with the November 28th Letter. *Id.*

²² A substantial transfer of control is, *inter alia*, a transaction whereby controlling interest in the licensee shifts to a party whose qualifications have not yet been ascertained by the Commission. See *Questions and Answers Regarding Private Wireless Licensees’ Obligations Under Section 310(d) of the Communications Act of 1934*, Fact Sheet (Sept. 19, 2000), 2000 WL 1340584, at *2. By contrast, a pro forma transaction involves a non-substantial

wireless radio licenses without first obtaining prior Commission consent.²³ The twenty-eight wireless radio licenses included twenty-four Industrial/Business Pool Conventional licenses, one Industrial/Business Pool Trunked license,²⁴ one Aircraft license,²⁵ one Aeronautical and Fixed license,²⁶ and one Mobile/Fixed Broadband license.²⁷ Additionally, ABB acknowledged that it operated a wireless station after the expiration of its license.²⁸

13. Finally, ABB confirmed in its November 28th Letter that it had failed to disclose the ABB Inc. felony conviction in applications filed with the Commission, where required by the respective application form, and thereby failed to provide truthful licensee qualification information in those wireless license applications.²⁹ Specifically, in its November 28th Letter, ABB disclosed that on September 29, 2010, ABB Inc. pled guilty to two counts of violating the Foreign Corrupt Practices Act³⁰ for the attributed actions of its business unit known as ABB Network Management.³¹ In that felony proceeding and conviction, ABB incurred penalties in excess of \$19,000,000.³²

14. To resolve the Bureau's Investigation, the Parties enter into this Consent Decree in order to conserve resources and to ensure ABB's future compliance with all applicable Communications Laws.

III. TERMS OF AGREEMENT

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

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

change in ownership of the license or the licensee entity where the controlling interest is not acquired or lost. *See id.* at *3.

²³ November 28th Letter at 1-2; Remedial Applications and Waiver Requests.

²⁴ *See* 47 CFR § 90.35; November 28th Letter, Exhibit A at 1-3.

²⁵ *See* 47 CFR § 87.18; November 28th Letter, Exhibit A at 1-3.

²⁶ *See* 47 CFR § 87.5; November 28th Letter, Exhibit A at 1-3.

²⁷ *See* 47 CFR § 90.1307; November 28th Letter, Exhibit A at 1-3.

²⁸ *See* November 28th Letter at 2, Exhibit A at 2.; 47 U.S.C. § 301, 47 CFR § 1.903.

²⁹ *See id.*; 47 U.S.C. § 308(b), 47 CFR § 1.17. According to ABB, ABB Inc. discovered the violation on its own, and its agreement with U. S Department of Justice (DOJ) was the result of the voluntary disclosure made by ABB Ltd and ABB Inc. to DOJ. ABB contends that the plea agreement was reached with DOJ due to ABB's "extraordinary cooperation" and its own "extensive investigation" in connection with the matter. *See* Plea Agreement at 2, 5, 12, 13.

³⁰ 18 U.S.C. § 371 *et seq.*

³¹ *See* November 28th Letter, Attachment B-1, Disclosure of Felony Convictions Attachment at 1; Remedial Applications and Waiver Requests, Attachment 1 at 1.

³² *See United States v. ABB Inc.*, Plea Agreement, Criminal No.: 4:10-CR-0064 (S.D. Tex. Sept. 29, 2010) ("Plea Agreement"); Press Release, U.S. Dep't of Justice, *ABB Ltd and Two Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Will Pay \$19 Million in Criminal Penalties* (Sept. 29, 2010), <https://www.justice.gov/opa/pr/abb-ltd-and-two-subsidiaries-resolve-foreign-corrupt-practices-act-investigation-and-will-pay>.

Consent Decree.

17. **Effective Date.** 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.

18. **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, the Company 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 the Company concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Company with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.³³

19. **Admission of Liability.** ABB admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 18 herein, that its actions described in Paragraphs 9 through 13 of this Consent Decree violated the Unauthorized Transfer Laws, the Unauthorized Operations Laws and section 308 of the Act and section 1.17 of the Rules.

20. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, to the extent it has not already done so under its current compliance procedures, the Company shall designate a 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 the Company 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 Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws prior to assuming his or her duties.

21. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company, within sixty (60) calendar days after the Effective Date, to the extent it has not already done so, shall develop and implement the measures described below, if not already in place, to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws, including with regard to transfers of control and assignments of wireless licenses as the result of corporate acquisitions or asset transfers, the Company will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** (1) Within sixty (60) calendar days after the Effective Date, the Company, to the extent it has not already done so, shall establish Operating Procedures that all Covered Employees shall follow to help ensure the

³³ See 47 CFR § 1.93(b).

Company's compliance with the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Unauthorized Transfer Laws, the Unauthorized Operation Laws and the Wireless License Application Laws, when filing applications in the future. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws; (2) No application for assignment or transfer of control of an Commission permit, license, or authorization or amendment thereto shall be submitted to or filed with the Commission by any Covered Employee unless it is: (a) first reviewed and approved by the Company's legal counsel; and (b) accompanied by a certification from the Compliance Officer that duly notes such review and approval and affirms that the application or amendment is accurate and complete and otherwise in compliance with the Communications Laws— such 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.

- (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 Communications Laws that apply to the Company, including the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws, and shall set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws, including procedures required as a result of corporate acquisitions or asset transfers. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Within the earlier of one hundred twenty (120) calendar days after the termination of the COVID-19 national emergency declared by the President,³⁴ or one hundred eighty (180) calendar days from the Effective Date, the Company shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application 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 Communications Laws, including the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws, under Paragraph 22 of this Consent Decree, and shall be

³⁴ See *Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, Issued Mar. 13, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

22. **Reporting Noncompliance.** The Company shall report any noncompliance with the Communications Laws, the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws, and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to address such noncompliance; (iii) the schedule on which such remedial actions 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 & 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 Gary Oshinsky at Gary.Oshinsky@fcc.gov.

23. **Compliance Reports.** The Company 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 the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree, the Communications Laws, and the Unauthorized Transfer Laws, the Unauthorized Operation Laws, and the Wireless License Application Laws, including with regard to transfers of control and assignments of wireless licenses as the result of corporate acquisitions or asset transfers. 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 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 noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 22 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.³⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance

³⁵ 47 CFR § 1.16.

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 noncompliance; (ii) the steps that the Company has taken or will take to address such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that 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 & 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 Gary Oshinsky at Gary.Oshinsky@fcc.gov.

24. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 19 through 22 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

25. **Civil Penalty.** The Company shall pay a total civil penalty to the United States Treasury in the amount of two hundred and fifty thousand dollars (\$250,000) within thirty (30) calendar days after the Effective Date. The Company acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).³⁶ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. The Company shall send electronic notification of payment to Jeffrey.Gee@fcc.gov, Kenneth.Scheibel@fcc.gov, and Gary.Oshinsky@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),³⁷ 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:³⁸

- 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).³⁹ 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

³⁶ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³⁷ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

³⁸ 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.

³⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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. 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.

26. **Event of Default.** The Company agrees that an Event of Default shall occur upon its failure to pay the full amount as described in Paragraph 25 by the due date specified in this Consent Decree.

27. **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 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 the Company.

28. **Waivers.** As of the Effective Date, the Company 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 the 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 they may otherwise have under the Equal Access to Justice Act⁴⁰ relating to the matters addressed in this Consent Decree.

29. **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.

30. **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.

⁴⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

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

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

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

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

35. **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.

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

37. **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

David Onuscheck
General Counsel and Sr. Vice President
ABB Inc., for itself and its subsidiaries

Date

Michael Gray
Chief Financial Officer, North America
ABB Inc., for itself and its subsidiaries

Date

Yoann Barbosa
Regional Finance Director
KEC Acquisition Corp., for itself and its
subsidiaries

Date

Jerry W. Clark
Director
KEC Acquisition Corp., for itself and its
subsidiaries

Date