

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

In the Matter of)

Nikola Engineering, Inc)
d/b/a Nikola Broadband)

) File No.: EB-IHD-21-00032015
) CD Acct. No.: 202132080032
) FRN: 0018343814
)
)

ORDER

Adopted: August 11, 2021

Released: August 11, 2021

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Nikola Engineering, Inc d/b/a Nikola Broadband (Nikola) violated section 1.2105(c) of the Commission’s rules¹ by engaging in prohibited communications of its bidding and bidding strategies to other Auction 105 participants. To settle this matter: Nikola admits that it violated section 1.2105(c) of the Commission’s rules² by engaging in prohibited communications; will implement a compliance plan; and will pay a \$30,000 civil penalty.

2. 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 Nikola’s compliance with section 1.2105(c) of the Commission’s rules.³

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

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended⁵ and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules,⁶ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

¹ 47 CFR § 1.2105(c).

² 47 CFR § 1.2105(c)(1).

³ 47 CFR § 1.2105(c).

⁴ See 47 CFR § 1.93(b).

⁵ 47 U.S.C. § 154(i).

⁶ 47 CFR §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by email to Robert Zeff, President, Nikola Engineering, Inc d/b/a Nikola Broadband, at rzeff@nikola.com, and to Stephen E. Coran, Esq., counsel to Nikola Engineering, Inc d/b/a Nikola Broadband, Lerman Senter, PLLC, at scoran@lermansenter.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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

In the Matter of
Nikola Engineering, Inc.
d/b/a Nikola Broadband
File No.: EB-IHD-21-00032015
CD Acct. No.: 202132080032
FRN: 0018343814

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Nikola Engineering, Inc d/b/a Nikola Broadband (Nikola), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Nikola violated section 1.2105(c) of the Commission’s rules¹ by engaging in prohibited communications of its bidding and bidding strategies to other Auction 105 participants. To resolve this matter, Nikola agrees to implement a compliance plan and pay a \$30,000 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.²
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, “own” means to own an equity interest (or the equivalent thereof) of more than 10%. See 47 U.S.C. § 153. And “Affiliated” means the relationship between the Affiliates.
(d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(e) “CD Acct No.” means account number 202132080032, associated with payment obligations described in paragraph 18 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 Nikola is subject by virtue of its business activities, including but not limited to the Prohibited Communications Rules.
(h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.
(i) “Covered Employees” means all employees and agents of Nikola who perform,

¹ 47 CFR § 1.2105(c).
² 47 U.S.C. § 151 et seq.

supervise, oversee, or manage the performance of, duties that relate to Nikola's responsibilities under the Communications Laws, including the Prohibited Communications Rules.

- (j) "Effective Date" means the date by which both the Bureau and Nikola have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) "Investigation" means the investigation commenced by the Bureau in File No. EB-IHD-21-00032015 regarding whether Nikola violated the Prohibited Communications Rules.
- (l) "LOI" means the Letter of Inquiry issued by the Bureau to Nikola on March 26, 2021 in EB-IHD-21-00032015 in connection with the Company's compliance with section 1.2105(c) of the Commission's rules,³ by engaging in Prohibited Communications during the course of the 3.5 GHz Auction (Auction 105) and by communicating to other Auction 105 participants that it no longer intended to participate in Auction 105.⁴
- (m) "Nikola" or "Company" means Nikola Engineering, Inc d/b/a Nikola Broadband (Nikola) and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (n) "Operating Procedures" means the standard internal operating procedures and compliance policies established by Nikola to implement the Compliance Plan.
- (o) "Parties" means Nikola and the Bureau, each of which is a "Party."
- (p) "Prohibited Communications" shall mean any Communication prohibited pursuant to section 1.2105(c) of the Commission's rules,⁵ which prohibits an auction applicant "from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support."
- (q) "Prohibited Communications Rules" means section 1.2105(c) of the Commission's rules,⁶ and other provisions of the Act, the Rules, and Commission orders which provides that, subject to specified exceptions, an applicant may not convey certain information to other applicants during the "quiet period" between the deadline for filing a short-form application and the deadline for winning bidders to submit their down payments.⁷ These rules also require applicants to report such potentially Prohibited Communications.⁸

³ 47 CFR § 1.2105(c).

⁴ See *Auction of Priority Access Licenses for the 3550-3650 MHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2140, 2159, para. 58 (2019) (*Auction 105 Procedures Public Notice*).

⁵ See 47 CFR § 1.2105(c).

⁶ See *id.*

⁷ 47 CFR § 1.2105(c)(1).

⁸ 47 CFR § 1.2105(c)(4).

- (r) “Quiet Period” shall mean the period of time in a Commission Auction between the deadline to file a short-form application and the date that down payments are due from winning bidders. In Auction 105, that period of time spanned from May 7, 2020, to September 17, 2020
- (s) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (t) “WISPA Email” shall mean the email sent from Robert Zeff, President, Nikola Engineering, Inc. d/b/a Nikola Broadband to the WISPA members mailing list on June 24, 2020 at 4:37 p.m.

II. BACKGROUND

3. *Legal Framework.* Section 1.2105(c)(1) of the Commission’s Rules provides that, subject to specified exceptions, an applicant for a Commission auction may not convey certain information to other auction applicants during the “quiet period” which commences on the deadline for filing a short-form application and terminates on the deadline for winning bidders to submit their down payments.⁹ This “Prohibited Communications Rule” applies to any communications by an applicant that conveys, in any manner, the substance of its own, or one another’s, or any applicant’s bids or bidding strategies. Although a statement that an applicant has applied to participate in the auction will not violate the rule, an applicant’s public statement that it intends to stop bidding in an auction or that it does not intend to place bids could give rise to a finding of a section 1.2105 violation.¹⁰

4. As explained in the *Auction 105 Procedures Public Notice*,¹¹ section 1.2105(c)(4) requires any applicant that makes or receives a communication that appears to violate section 1.2105(c) to report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.¹² Each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.¹³

5. *Factual Background.* Auction 105 involved the auction of 22,631 county-based Priority Access Licenses (PALs) in the 3550-3650 MHz portion of the 3.5 GHz band, frequently referred to as the Citizens Broadband Radio Service. The deadline for filing short form applications for Auction 105 was 6:00 p.m. ET on May 7, 2020.¹⁴ Bidding in the auction began on July 23, 2020 and ended on August 25,

⁹ 47 CFR § 1.2105(c)(1). This prohibition applies regardless of whether the applicants seek permits or licenses in the same geographic area or market. See *Updating Part 1 Competitive Bidding Rules et al.*, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RM-11395, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493, 7577, para. 199 (2015); 47 CFR § 1.2105(a)(2)(ix), (c)(1).

¹⁰ *Auction 105 Procedures Public Notice*, 35 FCC Rcd at 2159, para. 58.

¹¹ *Id.* at 2159, para. 60.

¹² 47 CFR § 1.2105(c)(4); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55, paras. 13-17.

¹³ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, WT Docket No. 06-150, *et al.*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007); *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*); see also 47 CFR § 1.65; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

¹⁴ *Auction of Priority Access Licenses for the 3550-3650 MHz Band Rescheduled to Begin July 23, 2020; Auction 105 Short-Form Application Deadline Postponed to May 7, 2020*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2891, para. 2 (2020).

2020.¹⁵ The deadline for winning bidders to submit their required down payments was 6:00 p.m. ET on September 17, 2020.¹⁶

6. Nikola is a privately held S-Corp. The Company was incorporated in May of 1997 in the state of California.¹⁷ Nikola was an applicant in Auction 105.¹⁸ On June 24, 2020, Robert Zeff, president of Nikola, sent an email with the subject line “CBRS fiasco” to the Wireless Internet Service Providers Association (WISPA) members email group stating, “[w]e are backing out of the auction.”¹⁹ A member of the group then replied to the group on the WISPA Email stating, “So even with a PAL you would have been screwed basically.”²⁰ Stephen Coran then replied, PLEASE DO NOT POST ANY FURTHER MESSAGES TO THIS LIST.²¹ This Prohibited Communication was seen and timely reported by at least one other Auction 105 participant. Nikola also timely reported this Prohibited Communication²² as required by section 1.2105(c)(4) of the Commission’s rules.²³

7. On March 19, 2021 the Bureau issued an LOI to Nikola.²⁴ Nikola filed its response to the LOI on April 19, 2021.²⁵ On May 17, 2021, counsel for Nikola provided an opening settlement offer. During the course of this investigation, Nikola demonstrated a limited ability to pay a civil penalty that was not evident in its tax returns. This settlement is a result of those negotiations. Nikola and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

9. **Jurisdiction.** Nikola 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.

¹⁵ *Auction of Priority Access Licenses for the 3550.3650 MHz Band Closes; Winning Bidders Announced*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 9287, para. 1 (OEA/WTB 2020).

¹⁶ *Id.* at 9289-90, para. 10.

¹⁷ See Response to Letter of Inquiry, from Stephen E. Coran, Counsel to Nikola Engineering, Inc. d/b/a/ Nikola Broadband, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (Apr. 19, 2021) (on file in EB-IHD-21-00032015) (LOI Response).

¹⁸ Application to Participate in Auction 105(3.5 GHz Band), FCC Form 175, Nikola Engineering, Inc. d/b/a/ Nikola Broadband, File No. 0009069244, filed on June 17, 2020 at 7:25 PM.

¹⁹ LOI Response, *supra* note 17, at 4-5. Nikola ultimately decided to continue to participate in Auction 105. Nikola placed bids for PALs in Clallam County, Washington and was the winning bidder for two spectrum blocks in Auction 105. FCC Public Reporting System, *Auction 105 - 3.5 GHz: Auction Data – Bids*, <https://auctiondata.fcc.gov/public/projects/auction105/reports/bids>.

²⁰ See *id.* at 4.

²¹ See *id.* at 4 -5. Mr. Coran is employed by Lerman Senter PLLC and serves as outside regulatory counsel to the WISPA. Mr. Coran is also representing Nikola in this matter.

²² See *id.* at 10.

²³ 47 CFR 1.2105(c)(4).

²⁴ Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Robert Zeff, President, Nikola Engineering, Inc. d/b/a Nikola Broadband (Mar. 19, 2021) (LOI) (on file in EB-IHD-21-00032015).

²⁵ LOI Response, *supra* note 17.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Nikola 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 Nikola concerning the matters that were the subject of the Investigation, or to set for hearing the question of Nikola's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.²⁶

12. **Admission of Liability.** Nikola admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 11 herein, that its actions violated section 1.2105(c) of the Rules²⁷ by engaging in Prohibited Communications as described in paragraph 6.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Nikola 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 Nikola 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 Prohibited Communications Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Nikola 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 Prohibited Communications Rules, Nikola will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Nikola shall establish Operating Procedures that all Covered Employees must follow to help ensure Nikola's compliance with the Prohibited Communications Rules. Nikola's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Prohibited Communications Rules. Nikola shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Prohibited Communications 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 Prohibited Communications Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Nikola's compliance with the Prohibited Communications Rules. Nikola shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Nikola shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Nikola shall establish and implement a Compliance Training Program on compliance with the Prohibited Communications Rules and the Operating Procedures. As part of the Compliance Training Program,

²⁶ See 47 CFR § 1.93(b).

²⁷ 47 CFR § 1.2105(c)(1).

Covered Employees shall be advised of Nikola's obligation to report any noncompliance with the Prohibited Communications Rules under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Nikola shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

15. **Reporting Noncompliance.** Nikola shall report any noncompliance with the Prohibited Communications 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 Nikola 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 Nikola has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, Jeffrey.Gee@fcc.gov, with copies submitted electronically to Pam.Slipakoff@fcc.gov and EnforcementBureauHD@fcc.gov.

16. **Compliance Reports.** Nikola 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 Nikola's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Prohibited Communications Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Nikola, stating that the Compliance Officer has personal knowledge that Nikola: (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.²⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Nikola, 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 Nikola 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 Nikola has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

²⁸ 47 CFR § 1.16.

- (d) All Compliance Reports shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, Jeffrey.Gee@fcc.gov, with copies submitted electronically to Pam.Slipakoff@fcc.gov and EnforcementBureauIHD@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.** Nikola will pay a civil penalty to the United States Treasury in the amount of thirty thousand dollars (\$30,000) within thirty (30) calendar days of the Effective Date. Nikola 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).²⁹ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Nikola shall send electronic notification of payment to Jeffrey.Gee@fcc.gov, Pam.Slipakoff@fcc.gov, and EnforcementBureauIHD@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),³⁰ 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:³¹

- 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).³² 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. IMPORTANT NOTE: 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 with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – 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

²⁹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³⁰ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

³¹ 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.

³² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

verify with that financial institution that the designated account has authorization to accept ACH transactions.

19. **Event of Default.** Nikola agrees that an Event of Default shall occur upon the failure by Nikola to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

20. **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 Nikola.

21. **Waivers.** As of the Effective Date, Nikola 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. Nikola 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 Nikola nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Nikola shall waive any statutory right to a trial *de novo*. Nikola hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³³ relating to the matters addressed in this Consent Decree.

22. **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.

23. **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.

24. **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 Nikola does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

28. **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.

29. **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

³³ See 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.

30. **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

Robert Zeff
President
Nikola Engineering, Inc, d/b/a Nikola Broadband

Date