

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

In the Matter of)
Air Voice Wireless, LLC)
File No.: EB-FD-22-00033433
CD Acct. No.: 202432200003
FRN: 0019466515

ORDER

Adopted: February 28, 2024

Released: February 28, 2024

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) has entered into a Consent Decree to resolve its investigation into whether Air Voice Wireless, LLC (Air Voice) failed to provide Lifeline services to all qualifying low-income consumers in accord with Commission rules. To settle this matter, Air Voice agrees to pay a \$150,000 civil penalty to the United States Treasury. Air Voice also agrees to implement enhanced compliance measures. This action will help further the Commission’s goal of providing qualified consumers opportunities and security that essential communications service brings, including being able to connect to jobs, family members, and emergency services.

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 Air Voice’s compliance with the Commission’s rules governing the Lifeline, Emergency Broadband Benefit and Affordable Connectivity Programs.

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

4. Accordingly, IT IS ORDERED that, pursuant to the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 CFR §§ 0.111, 0.311, 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 See 47 CFR §§ 54.405, 54.407.

2 See Lifeline and Link Up Reform and Modernization et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6662-66, paras. 11-17 (2012); see also 47 CFR §§ 54.400-54.424.

3 47 CFR §§ 54.400-54.424; 47 U.S.C. §§ 214(e), 254(c).

4 47 CFR §§ 54.1600-54.1612; see also Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752).

5 47 CFR §§ 54.1800-54.1814; see also Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act).

6 See 47 CFR § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested to John T. Nakahata, Esq., HWG, 1919 M Street, Eight Floor, Washington DC 20036 and Lance Steinhart, Law Office of Lance J.M. Steinhart, P.C., 1725 Windward Concourse, Suite 150, Alpharetta, GA 30005.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Air Voice Wireless, LLC (Air Voice), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Air Voice violated sections 54.405 and 54.407 of the Commission’s rules in connection with its failure to provide Lifeline services to all qualifying low-income consumers. To resolve this matter, Air Voice agrees to implement a compliance plan and pay a \$150,000.00 civil penalty.

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “ACP” means the Affordable Connectivity Program established by the Infrastructure Investment and Jobs Act1 and subject to the ACP Rules, and any successor and/or similar program providing broadband benefits established by the Commission.
(b) “ACP Rules” means the Commission’s rules at Title 47, Code of Federal Regulations, sections 54.1800-54.1814, section 1752 of the Infrastructure Investment and Jobs Act, and Commission orders related to the ACP, and as they may be amended and the rules of any successor and/or similar program providing broadband benefits established by the Commission.
(c) “Act” means the Communications Act of 1934, as amended.2
(d) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(e) “Air Voice” or “Company” means Air Voice Wireless, LLC, and its subsidiaries, predecessors-in-interest, and successors-in-interest.
(f) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(g) “CD Acct. No.” means account number 202432200003, associated with payment obligations described in paragraph 19 of this Consent Decree.
(h) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.

1 Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act).

2 47 U.S.C. § 151 et seq.

- (i) “Communications Laws” means collectively, the Act, the Commission’s rules, and the published and promulgated orders and decisions of the Commission to which Air Voice is subject by virtue of its business activities, including but not limited to the Lifeline Rules and ACP Rules.
- (j) “Compliance Obligations” shall mean those obligations undertaken by Air Voice pursuant to paragraphs 13 through 18 of this Consent Decree.
- (k) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraphs 13 through 18.
- (l) “Covered Employees” means all employees and agents of Air Voice who perform, supervise, oversee, manage the performance of, or otherwise conduct any duties that relate to Air Voice’s responsibilities under the Lifeline Rules and ACP Rules.
- (m) “EBB Program” means the Emergency Broadband Benefit Program established by the Consolidated Appropriations Act of 2021³ and subject to the EBB Rules.
- (n) “EBB Rules” means the Commission’s rules at Title 47, Code of Federal Regulations, sections 54.1600-54.1612, section 904 of the Consolidated Appropriations Act of 2021, and Commission orders related to the EBB Program.
- (o) “Effective Date” means the date by which both the Bureau and Air Voice have signed the Consent Decree and the Bureau has released an Adopting Order.
- (p) “ETC” means eligible telecommunications carrier as defined in the Act.
- (q) “Lifeline Compliance Plan” means the Compliance Plan filed by Air Voice Wireless with the Wireline Competition Bureau, the most recent version of which was approved on December 23, 2021, and any approved successor plan.
- (r) “Lifeline Program” or “Lifeline” means the support mechanism commonly referred to as the Lifeline Program or the Low Income Program of the Universal Service Fund as established under 47 U.S.C. §§ 214(e) and 254(c) and that operates under the Lifeline Rules.
- (s) “Lifeline Rules” mean the Commission’s rules at Title 47, Code of Federal Regulations, sections 54.400-54.424, section 254 of the Act, and Commission orders related to the Lifeline Program, as they may be amended.
- (t) “Investigation” means the investigation commenced by the Bureau in FILE No EB-FD-22-00033433 regarding whether Air Voice violated the Lifeline, EBB and ACP Rules.
- (u) “Operating Procedures” means the written internal operating procedures and compliance policies established by Air Voice to implement the Compliance Plan.
- (v) “Parties” means Air Voice and the Bureau, each of which is a “Party.”
- (w) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund (USF) and the universal service programs, including Lifeline, and also administers the ACP.
- (x) “USF” means the federal Universal Service Fund.

II. BACKGROUND

3. Lifeline is part of the federal Universal Service program and helps qualified consumers have the opportunities and security that essential communications service brings, including being able to

³ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752).

connect to jobs, family members, and emergency services.⁴ Lifeline service is provided by ETCs designated pursuant to the Act.⁵ An ETC may seek and receive reimbursement from the USF for revenues it forgoes in providing the discounted services to eligible consumers in accordance with the Rules. Section 54.403(a) of the Commission's rules specifies that an ETC may receive up to \$9.25 per month in Basic Support for each qualifying low-income consumer receiving Lifeline service meeting the Commission's minimum service standards, and up to an additional \$25 per month in Enhanced Support if the qualifying low-income consumer resides on Tribal lands.⁶

4. The Commission's rules establish explicit requirements that ETCs must meet to receive Lifeline support reimbursements.⁷ Section 54.407(b) of the Commission's rules provides that "[a]n eligible telecommunications carrier may receive Universal Service support reimbursement for each qualifying low-income consumer served."⁸ Section 54.405(a) of the Commission's rules provides that all ETCs must make Lifeline available to all qualified low income consumers.⁹ Section 54.407(d)(1) of the Commission's rules provides that in order to receive universal service support reimbursement, an officer of the subject ETC carrier must certify in each request for reimbursement, that the carrier is in compliance with all Lifeline program rules.¹⁰

5. Air Voice is a limited liability company formed in the State of Michigan on May 7, 1999.¹¹ Air Voice was acquired on December 30, 2021, by Vtel Holdings, LLC, which is wholly and directly owned by Henry Hung Do.¹² The Wireline Competition Bureau approved this transaction.¹³ HTH Communications, LLC, which was founded by Mr. Do, operates and manages Air Voice, along with Mr. Do's other companies receiving ACP support: Cintex Wireless, LLC, and New Phone Wireless, LLC.¹⁴ Air Voice has an FCC approved Lifeline Compliance Plan permitting it to participate in the Lifeline Program, the most recent revision of which was approved by the Wireline Competition Bureau on December 23, 2021.¹⁵ Air Voice originally utilized the d/b/a "Feel Safe Wireless" in the states in which it is designated as an ETC for the purposes of participating in the Lifeline Program (CA, KY, MI,

⁴ See *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC Rcd 6656, 6662-66, paras. 11-17 (2012); see also 47 CFR §§ 54.400–54.422.

⁵ 47 U.S.C. § 254(e) (providing that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support"); see also *id.* § 214(e) (prescribing the method by which carriers are designated as ETCs).

⁶ 47 CFR § 54.403(a).

⁷ *Id.* §§ 54.400–54.422.

⁸ *Id.* § 54.407(b).

⁹ *Id.* § 54.405(a).

¹⁰ *Id.* § 54.407(d)(1).

¹¹ Response to Letter of Inquiry, from Lance J.M. Steinhart, P.C., to Fraud Division, FCC Enforcement Bureau, (March 15, 2022) (on file in EB-FD-22-00033433) (LOI Response).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *The Wireline Competition Bureau Approves the Revised Compliance Plan of Air Voice Wireless*, Public Notice, 36 FCC Rcd 18,169 (WCB 2021). Air Voice is a non-facilities-based carrier and thus would not normally qualify as an ETC that can participate in the Lifeline Program. Section 214(e)(1)(A) of the Act requires that ETCs provide service over their own facilities, but in 2012 the Commission adopted a forbearance approach of that requirement for entities that have an approved Lifeline Compliance Plan. Commission approval of a Lifeline Compliance Plan permitted Air Voice to file for and receive designation as a Lifeline-only ETC in states in which it operated and which grant ETC designation. Such ETC designations in turn permit Air Voice to participate in the Commission's Lifeline Program.

MS, NY, OH, OK, PA, SC, and WI).¹⁶ Beginning in February 2022, the Company began using the d/b/a name “AirTalk Wireless” on a rolling basis upon receipt of required regulatory approvals from the relevant states.¹⁷ In addition to servicing Lifeline subscribers, Air Voice participated in the EBB Program and is a participating provider in the ACP.

6. Prior to its acquisition by Vtel Holdings and Mr. Do, from May 12, 2021, through at least December 9, 2021, Air Voice did not make Lifeline services available to all qualified consumers.¹⁸ May 12, 2021, was the date on which providers could begin enrolling consumers in the Commission’s EBB Program, which permitted qualifying consumers to obtain discounts on broadband services and providers to claim the amount of the discount, up to \$50.00, for each qualifying EBB subscriber (or up to \$75 for EBB subscribers on qualifying Tribal lands).¹⁹ In establishing the EBB Program and in a May 11, 2021 Enforcement Advisory, the Commission made clear that Lifeline providers could not suggest that enrollment in the provider’s EBB Program was necessary for obtaining or retaining the Lifeline discount.²⁰ Nevertheless, from May 12, 2021, to at least December 9, 2021, Air Voice used a web-based enrollment system developed by CGM, Inc. that would not permit a qualifying consumer to enroll and obtain Air Voice Lifeline services unless the consumer also consented to use their EBB Program benefit with Air Voice.²¹ The former owner of the Company submitted monthly Lifeline reimbursements requests falsely certifying the Company was in compliance with all Lifeline rules for the months of May to December 2021.²² This conduct violates section 54.405 of the Commission’s rules, requiring ETCs to provide Lifeline services to all qualifying low-income consumers, and section 54.407 of the Commission’s rules, requiring Lifeline providers, as a condition for receiving Lifeline support, to certify on each request for reimbursement that they are in compliance with all Lifeline Rules.

7. On December 30, 2021, Air Voice ownership was transferred to, and it began to be operated by, HTH Communications.²³ On December 31, 2021, the EBB Program ended and the ACP began accepting enrollments.²⁴ Air Voice continued as a participating provider in the ACP.²⁵ Sometime in February 2022, Air Voice began to use an in-house-developed, web-based enrollment program for Lifeline and ACP. For at least some time period between mid-February and late March 2022, when the issue was discovered by in-house personnel reviewing the program, the in-house developed enrollment program required consumers seeking only Lifeline services to initial consent to enroll or transfer their

¹⁶ LOI Response, *supra*, note 11.

¹⁷ *Id.*

¹⁸ Information on file in Investigation EB-FD-22-00033433.

¹⁹ *See Emergency Broadband Benefit Program Launch Date*, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

²⁰ *See FCC Enforcement Advisory: Broadband Providers Participating in the Emergency Broadband Benefit Program Must Obtain Informed Subscriber Consent to Enroll And Require a Co-Pay for Connected Devices*, Public Notice, 16 FCC Rcd 8324 (EB 2021) (“To avoid misleading consumers, providers must avoid practices or marketing that may confuse consumers about the EBB Program, including but, not limited to: Not clearly distinguishing the process of signing up for EBB services from the process of signing up for, renewing, upgrading, or modifying other telecom services, including Lifeline services [and/or s]uggesting or implying that signing up for EBB services is required for obtaining or continuing other services, including Lifeline services.”).

²¹ Information on file in Investigation EB-FD-22-00033433.

²² *Id.*

²³ LOI Response, *supra*, note 11.

²⁴ *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, para. 5 (2022) (*Affordable Connectivity Program Order*).

²⁵ LOI Response, *supra*, note 11.

ACP benefits to Air Voice.²⁶ A consumer that did not initial their consent to enroll or transfer their ACP benefits to Air Voice could not complete Air Voice Lifeline enrollment during that period. Air Voice personnel stated that the consumers who chose the Lifeline-only enrollment did not have their ACP benefits transferred to Air Voice despite initialing their consent to do so.²⁷ The Bureau was unable to confirm this because the Company did not retain system logs for its in-house-developed enrollment system or other documentation of Lifeline-only ACP consents during the relevant period.²⁸ The Company nevertheless submitted a Lifeline reimbursement request certifying the Company was in compliance with all Lifeline rules for the month of March 2022. This conduct violates section 54.405 of the Commission's rules, requiring ETCs to provide Lifeline services to all qualifying low-income consumers, and section 54.407 of the Commission's rules, requiring Lifeline providers, as a condition for receiving Lifeline support, to certify on each request for reimbursement that they are in compliance with all Lifeline Rules.²⁹

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.** Air Voice agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Air Voice 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 Air Voice concerning the matters that were the subject of the Investigation, or to set for hearing the question of Air Voice'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.³⁰

12. **Admissions.** Air Voice 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 paragraphs 6 and 7 contain a true and accurate description of the facts underlying the Investigation.

13. **Compliance Officer.** Within fifteen (15) calendar days after the Effective Date, Air Voice 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. Within ten (10) calendar days of that designation, Air Voice will notify the Enforcement Bureau of the name of the individual so

²⁶ 47 CFR § 54.1810(a)(3) (“[an ACP] participating provider shall not link enrollment in the Affordable Connectivity Program to some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program, including but not limited to: ... (ii) Suggesting or implying that signing up for ACP-supported services and devices is required for obtaining or continuing other services, including Lifeline-supported services.”).

²⁷ Information on file in Investigation EB-FD-22-00033433.

²⁸ We note such a failure to retain documentation may violate the Commission's ACP rules. 47 CFR § 54.1811 (“[an ACP] participating provider shall maintain records to document compliance with all Commission requirements governing the Affordable Connectivity Program.”).

²⁹ Information on file in Investigation EB-FD-22-00033433.

³⁰ See 47 CFR § 1.93(b).

designated and will advise the Enforcement Bureau upon any change in such designation.³¹ The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Air Voice 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 Lifeline Rules and ACP Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Air Voice 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 Lifeline Rules and ACP (as defined above, to include any successor or similar program established by the Commission in which Air Voice participates) Rules, Air Voice will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within forty-five (45) calendar days after the Effective Date, Air Voice shall establish written Operating Procedures approved by the Compliance Officer that all Covered Employees must follow to help ensure Air Voice's compliance with the Lifeline Rules and ACP Rules. Air Voice's Operating Procedures shall include written internal procedures and policies specifically designed to ensure that it meets all Lifeline Rules and ACP Rules, the terms of its Lifeline Compliance Plan, now and as it may be revised, and the directions and guidance of all Commission and USAC advisories relating to Lifeline and ACP. Air Voice shall also develop a written Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Lifeline Rules and ACP Rules (Air Voice may develop separate Compliance Checklists for separate functions). Air Voice shall periodically, not less than annually, review and revise the written Operating Procedures and Compliance Checklist(s) as necessary to ensure they effectively address current operations and Commission rules and guidance. Air Voice will make copies of the Operating Procedures and Compliance Checklist(s) available for inspection upon the FCC's request.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a written Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Lifeline Rules and ACP Rules and set forth the Operating Procedures and Compliance Checklists (as described in subparagraph (a)) that Covered Employees shall follow to help ensure Air Voice's compliance with the Lifeline Rules and ACP Rules. The Manual shall include phone numbers for the USAC Hotline, the FCC's OIG Hotline, and the Compliance Hotline established by Air Voice that employees may use to report possible violations of the Lifeline Rules, the ACP Rules, Air Voice's Operating Procedures, or violations of its Lifeline Compliance Plan. The Manual shall also explain how to contact the Compliance Officer to report any such possible violations. Air Voice shall periodically, but not less than annually, review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Air Voice shall distribute the initial Compliance Manual and any revisions to the Compliance Manual promptly to all Covered Employees. Copies of the most recent updated Compliance Manual shall be available to all Covered Employees online. Air Voice will make copies of the Compliance Manual available for inspection upon the FCC's request.

³¹ Notification shall be made to Meghan Ingrisano, Chief, Fraud Division, Enforcement Bureau, or her successor or designee, by e-mail at Meghan.Ingrisano@fcc.gov.

- (c) **Compliance Training Program.** Air Voice shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules and ACP Rules and the Operating Procedures, and the Compliance Checklists. As part of the Compliance Training Program, Covered Employees shall be advised of Air Voice's obligation under paragraph 15 to report any noncompliance with the Lifeline Rules and ACP Rules or with the terms 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 ninety (90) 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. Air Voice shall repeat compliance training on an annual basis, and shall periodically, not less than annually, review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness. Air Voice will make copies of all training materials available for inspection upon the FCC's request and shall retain documentation that Covered Employees have completed their training through online documentation of the Certificates of Completion. Air Voice will make copies of all compliance training materials available for inspection upon the FCC's request.

15. **Reporting Noncompliance.** Air Voice shall report any material noncompliance with the Lifeline Rules and ACP Rules or with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. In determining whether such noncompliance is material, any close calls will be resolved in favor of reporting. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Air Voice 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 Air Voice has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Meghan Ingrisano, Chief, Fraud Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or her successor or designee, with a copy submitted electronically to Meghan.Ingrisano@fcc.gov; Mehrdad.Barikbin@fcc.gov; and Nicholas.Page@fcc.gov.

16. **Compliance Reports.** Air Voice shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, and twelve (12) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Air Voice's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules and ACP Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Air Voice, stating that the Compliance Officer has personal knowledge that Air Voice: (i) has established and implemented the Compliance Plan; (ii) has utilized the written 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.³²
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Air Voice, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of

³² 47 CFR § 1.16.

noncompliance; (ii) the steps that Air Voice 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 Air Voice 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 Meghan Ingrisano, Chief, Fraud Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or her successor or designee, with a copy submitted electronically to Meghan.Ingrisano@fcc.gov; Mehrdad.Barikbin@fcc.gov; and Nicholas.Page@fcc.gov.

17. **Remedies for Non-Compliance.** The FCC reserves its right to pursue violations of the terms of the Compliance Obligations, of the Lifeline Rules, and/or of the ACP Rules consistent with its authority under the Communications Act of 1934 (“Act”).

- (a) Violation of Lifeline Rules and/or ACP Rules.
- i. If there is non-compliance with the Lifeline Rules or the ACP Rules, USAC may take action pursuant to its normal processing procedures, in accordance with FCC rules and orders and USAC procedures. Any such actions taken by USAC may be appealed as provided by the Universal Service Program rules as set forth in 47 CFR §§ 54.719 through 54.722.
 - ii. If there is material non-compliance with any provision of the Lifeline Rules or the ACP Rules, the FCC may also extend the Compliance Obligations as set forth in Paragraph 18. The failure to extend the Compliance Obligations under this paragraph shall not constitute a determination that Air Voice has complied with any or all of the Lifeline Rules and/or the ACP Rules.
- (b) Violation of Compliance Obligations. The FCC may pursue the following remedies for material noncompliance with the Compliance Obligations (other than a violation of the Lifeline Rules or ACP Rules, for which remedies are separately provided for by subparagraph (a)):
- i. Air Voice acknowledges and agrees that if Air Voice fails to materially comply with any Compliance Obligations, the FCC may treat such noncompliance in the same manner as the failure to comply with a rule promulgated by the Commission.
 - ii. Extension of the Compliance Obligations. If there is material non-compliance with any term of the Compliance Obligations, the FCC may extend the term of the Compliance Obligations as set forth in paragraph 18.

18. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire twelve (12) months after the Effective Date. If Air Voice does not materially comply with the Compliance Obligations and all Lifeline Rules and ACP Rules, as reasonably determined by the FCC, during the any twelve (12) month period prior to the aforementioned expiration date, the obligations set forth herein may be extended, in the discretion of the FCC, by an additional twelve (12) months.

19. **Civil Penalty.** Air Voice will pay a civil penalty to the United States Treasury in the amount of one hundred fifty thousand dollars (\$150,000.00) within thirty (30) calendar days of the Effective Date.³³ Air Voice acknowledges and agrees that upon execution of this Consent Decree, the

³³ Of this total, one hundred thirty-three thousand, three hundred thirty-three dollars and thirty-three cents (\$133,333.33) is attributable to Air Voice conduct prior to December 30, 2021, and sixteen thousand, six hundred sixty-six dollars and sixty-seven cents (\$16,666.67) is attributable to Air Voice conduct after December 30, 2021.

Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).³⁴ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Air Voice shall send electronic notification of payment to Meghan.Ingrisan@fcc.gov and Mehrdad.Barikbin@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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.³⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159³⁶ or printed CORES form³⁷ 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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).³⁸ 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find 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., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find 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., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

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

³⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

³⁶ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

³⁷ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

³⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

21. **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 Air Voice.

22. **Waivers.** As of the Effective Date, Air Voice 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. Air Voice 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 Air Voice nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Air Voice shall waive any statutory right to a trial *de novo*. Air Voice hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁹ relating to the matters addressed in this Consent Decree.

23. **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.

24. **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.

25. **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 Air Voice does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

29. **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.

30. **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.

³⁹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

31. **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.

Loyaan A. Egal
Chief
Enforcement Bureau

Date

John T. Nakahata
Outside Counsel and Authorized Signatory
Air Voice Wireless, LLC

Date