

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

In the Matter of

Vexus Fiber, LLC

)
)
)
)
)
)
)

File No.: EB-IHD-23-00035043
CD Acct. No.: 202432080008
FRN: 0004266938

ORDER

Adopted: March 15, 2024

Released: March 15, 2024

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 Vexus Fiber, LLC (Vexus) engaged in impermissible downselling of its broadband services to households eligible for reimbursement under the Affordable Connectivity Program. To settle this matter, Vexus admits that it violated the Commission’s rules as described, will implement a compliance plan, and will pay a \$100,000 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 Vexus’s compliance with section 1752(b) of the Communications Act of 1934, as amended (Act),¹ and sections 54.1802(b), 54.1810(a), (e), and (i), and 54.1811 of the Commission’s rules.²

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

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act, 47 U.S.C. § 154(i), and 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 47 U.S.C. § 1752(b).

² 47 CFR §§ 54.1802(b), 54.1810(a), (e), (i), 54.1811.

³ See *id.* § 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 Keith Davidson, Chief Financial Officer, Vexus Fiber, LLC, 4006 West Loop 289, Lubbock, TX 79407, and to Frank Lamancusa, Esq., Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Ave NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of)	
)	
Vexus Fiber, LLC)	File No.: EB-IHD-23-00035043
)	NAL/CD Acct. No.: 202432080008
)	FRN: 0004266938
)	
)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Vexus Fiber, LLC (Vexus or Company),¹ by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation, as defined below, into whether Vexus, as a participating provider in the Affordable Connectivity Program (ACP) complied with section 1752(b) of the Communications Act of 1934, as amended (Act),² and sections 54.1802(b), 54.1810(a), (e), and (i), and 54.1811 of the Commission’s rules.³ Specifically, the Bureau investigated whether Vexus engaged, among other things, in impermissible downselling of its broadband services to ACP-eligible households by preventing customers from applying the ACP benefit to any residential broadband internet access service plan they selected. To resolve this matter, Vexus admits that it violated the provisions of the Act and the Commission’s rules as described herein and agrees to implement a Compliance Plan and pay a one hundred thousand dollar (\$100,000) 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.⁴
 - (b) “ACP Rules” means sections 54.1802(b), 54.1810(a), (e), and (i) of the Commission’s rules, and other Communications Laws related to the ACP.
 - (c) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “CD Acct No.” means account number 202432080008, associated with payment obligations described in paragraph 21 of this Consent Decree.
 - (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.

¹ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

² 47 U.S.C. § 1752(b).

³ 47 CFR §§ 54.1802(b), 54.1810(a), (e), (i), 54.1811.

⁴ 47 U.S.C. § 151 *et seq.*

- (g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Vexus is subject by virtue of its business activities, including but not limited to the ACP Rules.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.
- (i) “Covered Employees” means all employees and agents of Vexus who perform, supervise, oversee, or manage the performance of, duties that relate to Vexus’s responsibilities under the Communications Laws, including the ACP Rules.
- (j) “Effective Date” means the date by which both the Bureau and Vexus have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “Investigation” means the investigation commenced by the Bureau in EB-IHD-23-00035043 regarding whether Vexus violated the ACP and Lifeline Rules.
- (l) “LOI” means the Letter of Inquiry issued by the Bureau to Vexus on March 29, 2023, in EB-IHD-23-00035043.
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Vexus to implement the Compliance Plan.
- (n) “Parties” means Vexus and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Vexus” or “Company” means Vexus Fiber, LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

II. BACKGROUND

3. *Legal Background.* In the 2021 Infrastructure Investment and Jobs Act (Infrastructure Act), Congress appropriated \$14.2 billion to implement a broadband internet access affordability program known as the ACP.⁵ Under the ACP, eligible low-income households may apply a discount of up to \$30 per month to broadband service offered by participating providers, who in turn can seek reimbursement for the discount from the Affordable Connectivity Fund created by the Infrastructure Act.

4. Among the numerous regulations imposed on the ACP, participating providers must allow eligible customers to apply the ACP benefits to any of the broadband services they offer to the general public.⁶ Both the Act and the Commission’s Rules prohibit the practice of “downselling” in connection with the ACP, which the Commission has defined as “any business practice that pressures a subscriber to lower the quality of broadband service . . . to the benefit of the provider rather than the consumer.”⁷ Specifically, section 1752(b)(7)(A)(i) of the Act states that “[a] participating provider . . . shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms available to households that are not eligible households.”⁸

5. Under the Commission’s Rules, “[a] participating provider may allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the

⁵ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf>. The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752, *Benefit for broadband service*.

⁶ See 47 U.S.C. § 1752(b)(7)(A)(i).

⁷ *Affordable Connectivity Program; Emergency Broadband Benefit Program*, WC Docket Nos. 21-450, 20-445, Report and Order, 37 FCC Rcd 484, 562, para. 163 (2022).

⁸ 47 U.S.C. § 1752(b)(7)(A)(i).

eligible household that includes broadband internet access.”⁹ To protect consumers, providers must inform them that, among other things, “[t]he household may apply the affordable connectivity benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for [ACP]-supported service.”¹⁰ Finally, the Rules explicitly prohibit providers from “exert[ing] pressure on an eligible household to induce the purchase of a broadband internet access service or bundled plan that is . . . less costly, . . . provides higher or lower speed or bandwidth, [or] is subject to higher or lower data caps . . . than the service or plan that the household is already purchasing or has inquired about purchasing through the [ACP].”¹¹ Violating any of these Rules constitutes an unjust and unreasonable act or practice that undermines the purpose, intent, or integrity of the ACP.¹²

6. *Factual Background.* Vexus Fiber is a limited liability company organized in Delaware that provides integrated communications services, including voice, video, and data in Arizona, Louisiana, Missouri, New Mexico, and Texas.¹³ Vexus has been designated an eligible telecommunications carrier (ETC) in Texas and Louisiana, where it provides Lifeline services.¹⁴ Vexus was originally authorized to provide services under the Emergency Broadband Benefit (EBB) Program in Texas and Louisiana in March 2021, which were transferred to the ACP when that program launched.¹⁵ As of June 2023, Vexus had over 8,000 ACP customers.¹⁶

7. In January 2023, the Bureau received a complaint alleging that Vexus had an established policy of only offering a 150/150 Mbps broadband plan, its slowest and lowest-cost broadband plan to customers seeking to take advantage of the ACP discount.¹⁷ This complaint prompted the Bureau to initiate an investigation into the precise nature of Vexus’s policies and practices with respect to the ACP and to determine the extent of any potential violations. On March 29, 2023, the Bureau issued a letter of inquiry (LOI) to Vexus.¹⁸ Vexus partially responded to the LOI on April 28, 2023, and submitted a supplemental response on May 31, 2023.¹⁹

8. In its May 31, 2023 LOI Response, Vexus admitted that beginning in January 2023, its customer service representatives began informing new ACP-eligible customers that they could only sign up for its 150/150 Mbps broadband plan—the slowest plan it offered—and did not offer other broadband-only service plans to those customers.²⁰ This practice continued through the end of April 2023, when

⁹ 47 CFR § 54.1802(b).

¹⁰ *Id.* § 54.1810(a)(1)(iii).

¹¹ *Id.* § 54.1810(e)(1).

¹² *Id.* § 54.1810(i)(1), (2)(vii).

¹³ See Letter from Frank G. Lamancusa, Morgan, Lewis & Bockius, LLP, Counsel for Vexus, to Pamela Gallant, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau at Responses to Inquiries 1, 4 (Apr. 28, 2023) (on file in EB-IHD-23-00035043) (April 28, 2023 LOI Response).

¹⁴ April 28, 2023 LOI Response to Inquiry 8.

¹⁵ *Id.*

¹⁶ See USAC, Vexus Claims Data (July 5, 2023) (on file in EB-IHD-23-00035043).

¹⁷ See Complaint Concerning Vexus Fiber (Jan. 4, 2023) (on file in EB-IHD-23-00035043).

¹⁸ Letter from Pamela Gallant, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to James Gleason, President, Vexus Fiber, LLC (Mar. 29, 2023) (on file in EB-IHD-23-00035043) (LOI).

¹⁹ Letter from Frank G. Lamancusa, Morgan, Lewis & Bockius, LLP, Counsel for Vexus Fiber, LLC, to Pamela Gallant, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 28, 2023) (on file in EB-IHD-23-00035043) (May 31, 2023 LOI Response).

²⁰ May 31, 2023 LOI Response at Response to Inquiry 15.

Vexus eliminated the foregoing restrictions and adopted an extensive retraining program regarding the ACP for its employees.²¹

9. These actions undermine the purpose, intent, and integrity of the ACP by potentially dissuading eligible low-income households from obtaining access to broadband internet and by limiting consumer choice against the express intent of Congress. To resolve these matters, the Parties enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

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

12. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.

13. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Vexus 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 Vexus concerning the matters that were the subject of the Investigation, or to set for hearing the question of Vexus'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.²²

14. **Admission of Liability.** Vexus admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 13 herein, that its actions described in paragraph 8 violated the ACP Rules.

15. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Vexus 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 Vexus 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 ACP Rules prior to assuming his/her duties.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, Vexus 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 ACP Rules and with the terms and conditions of this Consent Decree. With respect to the ACP Rules, Vexus will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Vexus shall establish Operating Procedures that all Covered Employees must follow to help ensure Vexus's compliance with the ACP Rules. Vexus's Operating

²¹ *Id.*

²² *See* 47 CFR § 1.93(b).

Procedures shall include internal procedures and policies specifically designed to ensure that it does not engage in downselling to ACP-eligible customers. Vexus shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the ACP 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 ACP Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Vexus's compliance with the ACP Rules. Vexus shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Vexus shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Vexus shall establish and implement a Compliance Training Program on compliance with the ACP Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Vexus's obligation to report any noncompliance with the ACP Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. In any period during which the Commission is accepting reimbursement requests or providing monetary support for service providers participating in ACP, 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, provided that any Covered Employee must be trained prior to soliciting any customer to enroll in ACP. Vexus shall repeat compliance training on an annual basis during any period during which the Commission is accepting reimbursement requests or providing monetary support for service providers participating in ACP, 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.

17. **Reporting Noncompliance.** Vexus shall report any noncompliance with the ACP Rules and with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Vexus 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 Vexus has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Mindy Littell at Mindy.Littell@fcc.gov and Ryan Mitchell at Ryan.Mitchell@fcc.gov, with an electronic copy to EnforcementBureauIHD@fcc.gov.

18. **Compliance Reports.** Vexus 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 Vexus's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the ACP Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Vexus, stating that the Compliance Officer has personal knowledge that Vexus: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent

Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²³
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Vexus, 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 Vexus 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 Vexus 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 Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Mindy Littell at Mindy.Littell@fcc.gov and Ryan Mitchell at Ryan.Mitchell@fcc.gov, with an electronic copy to EnforcementBureauIHD@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 16 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date. All obligations thereunder are waived for any period during which the Commission is not accepting reimbursement requests or providing monetary support for service providers participating in ACP.

20. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act²⁴ against Vexus or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Vexus with the Communications Laws.

21. **Civil Penalty.** Vexus will pay a civil penalty to the United States Treasury in the amount of one hundred thousand dollars (\$100,000) within thirty (30) calendar days of the Effective Date. Vexus 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).²⁵ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Vexus shall send electronic notification of payment to at Patrick.McGrath@fcc.gov and EnforcementBureauIHD@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:²⁶

²³ 47 CFR § 1.16.

²⁴ 47 U.S.C. § 208.

²⁵ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

- 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 159²⁷ or printed CORES form²⁸ 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).²⁹ 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.

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

23. **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 Vexus.

24. **Waivers.** As of the Effective Date, Vexus 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

²⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²⁸ 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>.

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

validity of this Consent Decree and the Adopting Order. Vexus 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 Vexus nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Vexus shall waive any statutory right to a trial *de novo*. Vexus hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁰ relating to the matters addressed in this Consent Decree.

25. **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.

26. **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.

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

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

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

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

31. **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.

32. **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.

³⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

33. **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
Bureau Chief
Enforcement Bureau

Date

Keith Davidson
Chief Financial Officer
Vexus Fiber, LLC

Date