

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	File Nos.: EB-FIELDWR-13-00009787
Kenai Educational Media, Inc.)	EB-FIELDWR-16-00022001 ¹
)	
Licensee of Station KIBH-FM)	NAL/Acct. No.: 201732960001
Seward, Alaska)	FRN: 0021903372
)	Facility ID: 176521

ORDER

Adopted: June 5, 2019

Released: June 12, 2019

By the Commission:

1. The Emergency Alert System rules ensure the public can receive accurate and expedient warnings during times of emergencies, such as hazardous weather events; the broadcast technical and operating rules are designed to ensure that a station can serve the needs of the community, protect other licensees from harmful interference, and provide the Commission and the public with information about station programming and operations; and the rules requiring licensees to respond to Notices of Violation and Commission requests for information ensure that the Commission receives other required information from licensees. On July 19, 2017, we issued a Notice of Apparent Liability for Forfeiture and Order in the amount of \$66,000 against Kenai Educational Media, Inc., (Kenai) licensee of Station KIBH-FM, in Seward, Alaska, Facility Identification Number 176521 (Station), for apparently violating certain Emergency Alert System rules, certain broadcast technical and operating rules, and the Commission's rules that require licensees to respond to Notices of Violation and Commission requests for information.² In its NAL Response and two supplemental filings, Kenai does not contest the violations described in the Notice of Apparent Liability for Forfeiture and Order, but instead requests that the forfeiture be reduced or cancelled due to its inability to pay.³ After reviewing the financial information submitted by Kenai that demonstrates its inability to pay the proposed fine and because of the impact of such a fine on Kenai as a small entity and on KIBH's ability as the only full-service radio station licensed to serve the Seward area to provide public safety alerts to local residents through the Emergency Alert System, the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its

¹ The investigation began under File No. EB-FIELDWR-13-00009787 and was subsequently assigned File No. EB-FIELDWR-16-00022001. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² *Kenai Educ. Media, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 32 FCC Rcd 6211 (2017). The Notice of Apparent Liability for Forfeiture and Order includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

³ Kenai Educational Media, Inc., Response to Notice of Apparent Liability for Forfeiture, dated Sept. 6, 2017 (on file in EB-FIELDWR-16-00022001) (NAL Response); Response to Notice of Apparent Liability filed by Kenai Educational Media, Inc. (received Jan. 5, 2018) (on file in EB-FIELDWR-16-00022001) (First Supplemental NAL Response); Response to Notice of Apparent Liability filed by Kenai Educational Media, Inc. (received Feb. 6, 2018) (on file in EB-FIELDWR-16-00022001) (Second Supplemental NAL Response).

investigation into whether Kenai, Station licensee, violated certain part 11 EAS rules,⁴ certain part 73 broadcast technical⁵ and operating rules,⁶ and sections 1.89(b) and 73.1015 of the Commission's rules, which require licensees to respond to Notices of Violation and Commission requests for information.⁷ To settle this matter, Kenai admits that it violated these requirements as described in the Notice of Apparent Liability for Forfeiture and Order,⁸ will implement a compliance plan, and will pay a \$2,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture and Order regarding Kenai's compliance with the Commission's rules pertaining to the EAS and the operations of broadcast stations, and the requirement that a licensee respond to Commission notices and requests for information.

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Kenai's basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.⁹

4. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Act,¹⁰ the Consent Decree attached to this Order **IS ADOPTED** and its terms incorporated by reference.

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

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First-Class U.S. Mail and Certified Mail, return receipt requested to Kenai Educational Media, Inc., 2001 Seward Highway, Suite B, Seward, AK, 99664.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴ 47 CFR §§ 11.15, 11.35(a), 11.52(d)(1).

⁵ *Id.* §§ 73.1125(a), 73.1400, 73.1870(a) and (b)(3).

⁶ *Id.* §§ 73.1230 (posting of station license); 73.1840(a) (retention of required station logs); 73.3527(a) (maintenance of a station local public inspection file).

⁷ *Id.* §§ 1.89(b) (duty to respond to a notice of violation); 73.1015 (requirement to respond to Commission request for information).

⁸ Second Supplemental NAL Response at 2.

⁹ *See* 47 CFR § 1.93(b).

¹⁰ 47 U.S.C. §§ 154(i), 503(b).

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Kenai Educational Media, Inc.)	EB-FIELDWR-16-00022001 ¹
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Licensee of Station KIBH-FM)	NAL/Acct. No.: 201732960001
Seward, Alaska)	FRN: 0021903372
)	Facility ID: 176521

CONSENT DECREE

1. The Federal Communications Commission and Kenai Educational Media, Inc. (Kenai), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating an investigation by the Commission’s Enforcement Bureau into whether Kenai, licensee of Station KIBH-FM, Seward, Alaska, Facility Identification Number 176521, violated multiple rules concerning the Federal Communications Commission Emergency Alert System (EAS) Rules,² Broadcast Technical Rules,³ Broadcast Operating Rules,⁴ and rules requiring that licensees respond to Notices of Violation (NOVs) and Commission requests for information.⁵ These rules (i) ensure that the public can receive accurate and expedient warnings during times of emergencies, (ii) ensure that a station can serve the needs of the community, (iii) protect other licensees from harmful interference, (iv) provide the Commission and the public with information about station programming and operations, and (v) ensure that the Commission receives other required information from licensees. Kenai admits that it violated these rules, agrees to establish a compliance plan to ensure these violations do not recur in the future, and agrees to pay a civil penalty in the amount of \$2,000.

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.⁶

¹ The investigation began under File No. EB-FIELDWR-13-00009787 and was subsequently assigned File No. EB-FIELDWR-16-00022001. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² 47 CFR §§ 11.15, 11.35(a), 11.52(d)(1).

³ *Id.* §§ 73.1125(a) (main studio requirements); 73.1400 (transmission system monitoring and control requirements); 73.1870(a) and (b)(3) (designation of a chief operator of the station). Starting in October 2017, the Commission issued a series of deregulatory orders that eliminated certain broadcast operational rules at issue here. *See, e.g., December 11, 2018 Media Modernization Order; Elimination of Main Studio Rule*, Report and Order, 32 FCC Rcd 8158, 8161 (2017) (eliminating the main studio and associated staffing requirements in Section 73.1125(a) of the Commission’s rules). A recent rule change does not relieve a licensee from its obligation to comply with the rule while it is in effect. *Id.* at n.133.

⁴ 47 CFR §§ 73.1230 (posting of station license); 73.1840(a) (retention of required station logs); 73.3527(a) (maintenance of a station local public inspection file).

⁵ *Id.* §§ 1.89(b) (duty to respond to a notice of violation); 73.1015 (requirement to respond to Commission request for information).

⁶ 47 U.S.C. §§ 151, *et seq.*

- (b) “Adopting Order” means an order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (c) “Board of Directors” means individuals voted to serve collectively as president, vice president, secretary, and treasurer for Kenai.
- (d) “Broadcast Operating Rules” means sections 73.1230, 73.1840, and 73.3527 of the Rules.
- (e) “Broadcast Technical Rules” means sections 73.1125, 73.1400, and 73.1870 of the Rules.
- (f) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (g) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (h) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 11.
- (i) “Communications Laws” means collectively, the Act, the Rules, including the EAS Rules, Broadcast Operating Rules, Broadcast Technical Rules, and sections 1.89 and 73.1015 of the Rules, as they are currently in effect and as they may be amended in the future, and the published and promulgated orders and decisions of the Commission to which Kenai is subject by virtue of its business activities.
- (j) “Covered Employees” means all employees, agents, and volunteers of Kenai who perform, supervise, oversee, or manage the performance of, duties that relate to Kenai’s responsibilities as a radio station licensee under the Communications Laws.
- (k) “EAS Rules” means sections 11.15, 11.35, and 11.52 of the Rules.
- (l) “Effective Date” means the date by which all of the following have been accomplished: the Commission and Kenai have signed the Consent Decree and the Commission has released the Adopting Order adopting the Consent Decree.
- (m) “Investigation” means the investigation commenced by the Bureau in File No. EB-FIELDWR-13-00009787 regarding whether Kenai violated provisions of the Communications Laws relating to the EAS Rules, the Broadcast Operating Rules, the Broadcast Technical Rules, and sections 1.89 and 73.1015 of the Rules, as they were in effect at the time of the June 2013 station inspection.⁷
- (n) “Kenai” or “Company” means Kenai Educational Media, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (o) “NAL” means the Notice of Apparent Liability for Forfeiture and Order issued to Kenai on July 19, 2017, proposing a \$66,000 forfeiture for apparent violations of the EAS Rules, the Broadcast Operating Rules, the Broadcast Technical Rules, and sections 1.89 and 73.1015 of the Rules, as they were in effect at the time of the June 2013 station inspection.⁸

⁷ See *infra* para. 3 (discussing June 2013 station inspection).

⁸ *Kenai Educ. Media, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 32 FCC Rcd 6211 (2017).

- (p) “NAL Response” means the written response to the NAL that Kenai transmitted to the Commission on September 6, 2017, and its supplemental responses that it submitted on January 5, 2018, and February 6, 2018.⁹
- (q) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Kenai to implement the Compliance Plan.
- (r) “Parties” means Kenai and the Commission, each of which is a “Party.”
- (s) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (t) “Station” means KIBH-FM, Seward, Alaska (Facility ID No. 176521).

II. BACKGROUND

3. The EAS Rules ensure that the public can receive accurate and expedient warnings during times of emergencies. The Broadcast Operating Rules and the Broadcast Technical Rules, collectively, ensure that a station can serve the needs of the community, protect other licensees from harmful interference, and provide the Commission and the public with information about station programming and operations. Sections 1.89 and 73.1015 of the Rules require licensees to respond to Commission notices and requests for information, which are necessary for the Commission to carry out its responsibilities. On June 18, 2013, an agent from the Bureau’s Anchorage Resident Agent Office (Anchorage Office) inspected the main studio for KIBH-FM, a non-commercial educational station at 222 Fourth Avenue, Seward, Alaska.¹⁰ The inspection revealed several apparent violations of the Rules, including the EAS Rules, the Broadcast Operating Rules, and the Broadcast Technical Rules. Subsequently, pursuant to section 1.89 of the Rules, the Anchorage Office sent Kenai several NOV’s and warning letters,¹¹ each directing Kenai to respond within 20 days, to provide an explanation for the violations, and to delineate the corrective actions proposed or taken to address each violation observed during the June 2013 inspection.¹² All such communications were sent to Kenai at its address of record at the Commission. The Anchorage Office did not receive a response to any of the communications.¹³

4. On July 19, 2017, the Commission issued the *NAL*, proposing a \$66,000 forfeiture against Kenai for willful violations of the EAS Rules, the Broadcast Operating Rules, and the Broadcast Technical Rules, and for willful and repeated violations of sections 1.89(b) and 73.1015 of the Rules.¹⁴ On September 11, 2017, in the *NAL* Response, Kenai did not contest the violations described in the *NAL*, but instead requested that the Commission substantially reduce or cancel the forfeiture based on its

⁹ Kenai Educational Media, Inc., Response to Notice of Apparent Liability for Forfeiture, dated Sept. 6, 2017 (on file in EB-FIELDWR-16-00022001) (*NAL* Response); Response to Notice of Apparent Liability filed by Kenai Educational Media, Inc. (received Jan. 5, 2018) (on file in EB-FIELDWR-16-00022001) (First Supplemental *NAL* Response); Response to Notice of Apparent Liability filed by Kenai Educational Media, Inc. (received Feb. 6, 2018) (on file in EB-FIELDWR-16-00022001) (Second Supplemental *NAL* Response).

¹⁰ *NAL*, 32 FCC Rcd at 6211.

¹¹ *Id.* at 6212, n.18.

¹² See Letter from David J. Carlton, Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau, to Annette Shacklett, President, Kenai Educational Media, Inc. (September 2013 Warning) (incorporated herein by reference); NOV No. V201432780006 (Nov. 7, 2013) (November 2013 NOV) (incorporated herein by reference); NOV No. V201632780001, 2016 WL 1645237 (Apr. 20, 2016) (April 2016 NOV) (incorporated herein by reference) (Notices on file in EBATS File No. EB-FIELDWR-16-00022001).

¹³ See *NAL*, 32 FCC Rcd at 6216, para. 10.

¹⁴ 47 CFR §§ 1.89(b), 11.15, 11.35(a), 11.52(d)(1), 73.1015, 73.1125(a), 73.1230; 73.1400, 73.1840(a), 73.1870(a), (b)(3), 73.3527(a).

inability to pay the proposed forfeiture.¹⁵ In addition, Kenai stated that it addressed all of the deficiencies identified in the *NAL*.¹⁶ In supplemental filings, on January 5, 2018, and February 6, 2018, Kenai submitted financial evidence to further support its inability to pay claim.¹⁷ In total, Kenai submitted information establishing its inability to pay the proposed fine, including but not limited to (i) three years of Federal tax filings, (ii) records documenting that it has no income and is primarily supported by monetary and equipment donations from individuals, vendors, and organizations in the local community, (iii) a declaration stating that it has “no liquid assets, lines of credit, investments, vehicles, loans receivable or real estate.”¹⁸ Subsequently, the Commission and Kenai engaged in settlement negotiations. To settle this matter, the Commission and Kenai enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

6. **Jurisdiction.** Kenai agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **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.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for terminating the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Kenai concerning the matters that were the subject of the Investigation. The Commission also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Kenai’s basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁹

9. **Admission of Liability.** Kenai admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that its actions referenced in paragraph 3 herein and in the *NAL* violated the EAS Rules, the Broadcast Technical Rules, the Broadcast Operating Rules, and the rules requiring that licensees respond to NOV’s and Commission requests for information.²⁰

¹⁵ *NAL* Response at 1; Second Supplemental *NAL* Response at 2.

¹⁶ *NAL* Response at 6.

¹⁷ See First Supplemental *NAL* Response at 1-2, Attachs. 1-15; Second Supplemental *NAL* Response at 1-2, Attachs. 1-5.

¹⁸ See First Supplemental *NAL* Response at 2; Second Supplemental *NAL* Response at 2-3; Email from Wolfgang Kurtz, Kenai Educational Media, Inc. to Joy Ragsdale, Acting Field Counsel, Office of the Field Director, FCC (received Jan. 19, 2018) (on file in EB-FIELDWR-16-00022001); Email from Wolfgang Kurtz, Kenai Educational Media, Inc. to Joy Ragsdale, Field Counsel, Office of the Field Director, FCC (received Feb. 4, 2019) (on file in EB-FIELDWR-16-00022001).

¹⁹ See 47 CFR § 1.93(b).

²⁰ See *supra* note 5.

10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Kenai shall designate a senior officer or an individual with the requisite corporate and organizational authority to serve as its Compliance Officer and to discharge the duties set forth below in paragraphs 11 through 13. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Kenai 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 EAS Rules, Broadcast Technical Rules, and Broadcast Operating Rules, and sections 1.89 and 73.1015 of the Rules, as they are currently in effect and as they may be amended in the future, prior to assuming his/her duties. Kenai must notify the Bureau's Office of Field Director in writing within five (5) business days of any changes to the Compliance Officer or the Compliance Officer's contact information.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, Kenai 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, including the EAS Rules, Broadcast Operating Rules, and Broadcast Technical Rules, and sections 1.89 and 73.1015 of the Rules, as they are currently in effect and as they may be amended in the future, and with the terms and conditions of this Consent Decree. With respect to the above rules, Kenai shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Kenai shall establish Operating Procedures that all Covered Employees must follow to help ensure Kenai's compliance with the rules identified in this paragraph 11. Kenai's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Kenai complies with the rules identified in this paragraph 11. Kenai shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the rules identified in this paragraph 11.
- (b) **Compliance Manual.** Within ninety (90) 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 rules identified in this paragraph 11 and set forth the Operating Procedures that Covered Employees shall follow to help ensure Kenai's compliance with these rules. Kenai shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Kenai shall distribute any revisions to the Compliance Manual promptly to Covered Employees.
- (c) **Compliance Training Program.** Kenai shall establish and implement a Compliance Training Program on compliance with the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Kenai's obligation to report any noncompliance with the rules identified in this paragraph 11, and shall be instructed on how to disclose noncompliance to the Compliance Officer in accordance with paragraph 12 of this Consent Decree. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time after the Initial Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Kenai shall conduct 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.

12. **Reporting Noncompliance.** Kenai shall report any noncompliance with the rules identified in paragraph 11 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 Kenai 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 Kenai has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Federal Communications Commission, Office of the Field Director, Enforcement Bureau, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Joy M. Ragsdale at Joy.Ragsdale@fcc.gov.

13. **Compliance Reports.** Kenai 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 on January 31, 2022.

- (a) Each Compliance Report shall include a detailed description of Kenai's efforts during the relevant period to comply with the rules identified in paragraph 11 and the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Kenai, stating that the Compliance Officer has personal knowledge that Kenai (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 12 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.²¹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Kenai, 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 Kenai 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 Kenai has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Joy M. Ragsdale at Joy.Ragsdale@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 10 through 13 of this Consent Decree shall expire on February 1, 2022.

15. **Civil Penalty.** In light of Kenai's demonstrated inability to pay, and subject to the provisions of paragraph 16 below, Kenai will pay a civil penalty to the United States Treasury in the amount of Two Thousand Dollars (\$2,000) (Civil Penalty) with an initial payment of Five Hundred Dollars (\$500.00) (Initial Payment) and three (3) quarterly installment payments, each in the amount of Five Hundred Dollars (\$500.00), paid over the course of three additional calendar quarters (each, an

²¹ 47 CFR § 1.16.

Installment Payment). The Initial Payment of \$500.00 shall be made within thirty (30) calendar days of the Effective Date. Thereafter, the Installment Payments are due and payable quarterly on the 18th of the month starting on December 18, 2019, with a final Installment Payment due on June 18, 2020. Kenai acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a “Claim” or “Debt” as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996 (DCIA).²² Kenai shall send electronic notification of payment to Joy.Ragsdale@fcc.gov and field@fcc.gov on the date each 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),²³ 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:²⁴

- 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).²⁵ 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 NAL Account – the bill number is the NAL Account number with the first two digits excluded. – and then choose the “Pay by Credit Card” option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made, and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. **Event of Default.** Kenai agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalty to the U.S. Treasury on or before the due dates specified in paragraph 15 of this Consent Decree; (2) the release of an order by the Commission on or before February 1, 2022, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Kenai violated the rules described in paragraph 1 of this Consent Decree; (3) an admission of non-compliance required by paragraph 12; or (4) the release of an order by the Commission finding that Kenai materially

²² Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²³ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

²⁴ 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.

²⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

misstated its financial condition in the documents it produced to support its claim of inability to pay in response to the *NAL*.

17. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law²⁶ may, at the Commission's discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Kenai: (a) any unpaid Civil Penalty referenced in paragraph 15, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys' fees.

18. **Waivers.** As of the Effective Date, Kenai 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. Kenai 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 Kenai nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Kenai shall waive any statutory right to a trial *de novo*. Kenai hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁷ relating to the matters addressed in this Consent Decree.

19. **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.

20. **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.

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

22. **Successors, Assigns, and Transfers.** This Consent Decree shall be binding on Kenai's successors-in-interests, assigns, and transferees. Kenai agrees to amend its pending application to assign the Station to include a statement executed by the authorized representative of the proposed assignee consenting to assuming the responsibilities and duties of Kenai as set forth in this Consent Decree.

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

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

25. **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.

26. **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

²⁶ See 31 CFR Part 900, *et seq.*

²⁷ 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.

27. **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.

FEDERAL COMMUNICATIONS COMMISSION
Marlene H. Dortch
Secretary

Date

Cindy Clock
President
Kenai Educational Media, Inc.

Date