

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

In the Matter of)
Univision Local Media, Inc., parent of)
WADO-AM License Corp.) File No.: EB-IHD-1400017097
Licensee of Station WXNY-FM,) Acct. No.: 201532080006
New York, New York) FRN: 0020907150
) Facility ID No.: 29022

ADOPTING ORDER

Adopted: January 23, 2015

Released: January 23, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Univision Local Media, Inc. (Univision), or its station WXNY-FM (licensed to WADO-AM License Corp., a subsidiary of Univision), aired Emergency Alert System (EAS) tones during the January 28, 2014 episode of the Luis Jimenez Show, in the absence of an actual emergency or authorized test of the EAS.

2. The EAS is the national public warning system that requires broadcasters, cable television operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers to supply the communications capability to the President of the United States to address the American public during a national emergency. Federal, state, and local authorities may also use the EAS to deliver emergency information, such as AMBER alerts and weather information targeted to specific areas. To preserve the unique purpose of the EAS tones, the Commission enforces laws prohibiting the use of the tones, or simulations of them, except in actual emergencies or authorized tests of the EAS. These distinctive tones are well-known warning signals to the public, and the laws governing use of the EAS tones apply irrespective of the language used by the entity that transmits the tones. Thus, frivolous, promiscuous, or other unauthorized use of actual or simulated EAS tones risks desensitizing the public to the tones' association with life-saving information, and such "Cry Wolf" scenarios present a real threat to public safety. To settle this matter, Univision admits that it misused the EAS Tones, will implement a compliance plan, and will pay a \$20,000 civil penalty.

3. WXNY-FM is one of Univision's Spanish-language radio stations serving the New York City metropolitan area. Several of WXNY's disc jockeys, speaking in a mix of Spanish and English, played the tones during a comedy routine, at one point acknowledging it was illegal, but continuing to broadcast the tones. The station's use of the EAS tones in this manner violated statutory and regulatory prohibitions against the transmission of actual or simulated EAS tones absent an emergency or test of the system.

4. 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 Univision's misuse of EAS Tones during the January 28, 2014 episode

of the *Luis Jimenez Show*, in violation of Section 325(a) of the Communications Act, as amended (Act)¹, and Section 11.45 of the Commission's rules (Rules).²

5. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Univision possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

7. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Univision and/or station WXNY-FM that are currently pending before the Bureau **ARE DISMISSED**.

9. **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 Kevin Cuddihy, President, Univision Local Media, Inc., 5999 Center Drive, Los Angeles, CA 90045 and Univision's lawyers, Eve Pogoriler, Esq., and Paul Swain, Esq., Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief, Enforcement Bureau

¹ 47 U.S.C. § 325(a).

² 47 C.F.R. § 11.45.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Univision Local Media, Inc., parent of
WADO-AM License Corp.
Licensee of Station WXNY-FM,
New York, New York
File No.: EB-IHD-1400017097
Acct. No.: 201532080006
FRN: 0020907150
Facility ID No.: 29022

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Univision Local Media, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether WADO-AM License Corp. (a subsidiary of Univision Local Media) misused Emergency Alert System (EAS) tones by transmitting the EAS Header and End-of-Message Codes during a comedy sketch of the Luis Jimenez Show, absent an actual emergency or authorized test of the EAS, in violation of Section 325(a) of the Communications Act of 1934, as amended, and Section 11.45 of the Commission’s rules pertaining to misuse of the EAS tones.

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.
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
(e) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Univision is subject by virtue of its business activities, including but not limited to, the EAS Laws.
(f) “Complainant” means the individual who transmitted to the FCC a complaint alleging that WADO violated Section 325(a) of the Act and Section 11.45 of the Rules.
(g) “Complaint” means the third-party complaint alleging that WADO violated Section 325(a) of the Act and Section 11.45 of the Rules, received by, or in the possession of, the Bureau.

1 47 U.S.C. § 151 et seq.

- (h) “Compliance Officer” means the individual designated in paragraph 12 of this Consent Decree as the person responsible for administration of the Compliance Plan.
- (i) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
- (j) “Covered Employees” means all employees and agents of Univision who perform, or supervise, oversee, or manage the performance of, duties that relate to Univision’s responsibilities as a radio licensee under the EAS Laws.
- (k) “EAS” means the Emergency Alert System.
- (l) “EAS Laws” means the rules and regulations embodied in Section 325(a) of the Act, Section 11.45 of the Rules, and the published and promulgated orders and decisions of the Commission regarding the misuse of EAS Tones.
- (m) “EAS Tones” means any part of the four-part message used to activate an emergency alert, specifically: the Preamble and EAS Header Codes; Audio Attention Signal; message; and, Preamble and EAS End Of Message (EOM) Codes, as defined in Section 11.31 of the Rules, as well as of simulations thereof.
- (n) “Effective Date” means the date by which both the Bureau and Univision have signed the Consent Decree.
- (o) “Investigation” means the investigation commenced by the Bureau in EB-IHD-1400017097 regarding whether WADO violated the EAS Laws.
- (p) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Univision to implement the Compliance Plan.
- (q) “Parties” means Univision and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “Station” means commercial radio Station WXNY-FM, New York, New York (Facility ID No. 29022), licensed to WADO.
- (t) “Univision” means Univision Local Media, Inc., and all subsidiaries, predecessors-in-interest, and successors-in-interest to the extent they hold FCC authorizations to operate radio stations.
- (u) “WADO” means WADO-AM License Corp. and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. Pursuant to Section 325(a) of the Act, no person within the jurisdiction of the United States shall knowingly utter or transmit any false signals of distress.² Additionally, Section 11.45 of the Rules prohibits the transmission of false or deceptive “EAS codes or Attention Signal[s], or a recording or simulation thereof, in any circumstance other than in an actual National, State, or Local Area emergency or authorized test of the EAS.”³

² 47 U.S.C. § 325(a).

³ 47 C.F.R. § 11.45.

4. The Commission received a Complaint from a resident of Passaic County, New Jersey (a suburb of New York City) alleging that, on January 28, 2014, he heard “EAS warning tones” aired over Station WXNY-FM.⁴ He then tuned in to listen for further instruction but did not hear Station employees declare any type of emergency or announce a test of the EAS.⁵ The listener tried to understand the Spanish words to determine the nature of the warning, but ultimately realized that it was not a true emergency alert. The Complainant noted that it would be confusing for listeners to hear the EAS Tones and distinguish a real alert or legitimate test from a comedy routine.⁶ The Bureau directed WADO, the licensee of WXNY-FM, to respond to the allegations.⁷ WADO did so by providing a recording of the broadcast, transcripts in English and Spanish, and other relevant documents.⁸

5. WADO acknowledges that the Station aired the complained-of material from 9:45 a.m. to 9:55 a.m., on January 28, 2014, during an episode of the *Luis Jimenez Show*, a Spanish-language program produced by WADO and hosted by disc jockeys Luis and Speedy.⁹ WADO states that the DJs played a sound effect containing a “simulated” version of the EAS Header and End-of-Message Codes several times during a comedy sketch.¹⁰ WADO admits that the sound effect contained recorded EAS Tones that had aired over the Station during the previous day’s broadcast of an authorized EAS test.¹¹ The Station first broadcast the EAS Tones while DJ Speedy was speaking about men who gain weight.¹² The Station broadcast the EAS Tones a second time when DJ Luis, laughing, remarked, “[H]ey you set off the radio emergency system” and then played them a third time as part of the continuing banter among the DJs.¹³ Moments later, just after DJ Speedy said “I’m going to tell you about two young boys that . . .,” the Station played the EAS Tones a fourth time. Then DJ Luis commented: “[I]o que no se puede poner es el sonido por que I think it’s illegal, ya Eso es para emergencias . . .,” before playing the EAS Tones a fifth time.¹⁴

6. WADO states that it has “taken steps to educate on-air talent and staff . . . regarding the proper use of EAS sounds, tones, codes, and equipment,” and points out that, for reasons unrelated to the broadcast of the EAS Tones, it canceled the *Luis Jimenez Show* in July 2014.¹⁵

⁴ Complaint.

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Jeffrey J. Gee, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to WADO-AM License Corp. (Sep. 29, 2014) (on file in EB-IHD-1400017097).

⁸ *See* Letter from Eve R. Pogoriler, Esq., and Paul Swain, Esq., Covington & Burling LLP, counsel for WADO-AM License Corp., to Dana E. Leavitt, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 20, 2014) (on file in EB-IHD-1400017097) (LOI Response); Letter from Eve R. Pogoriler, Esq., and Paul Swain, Esq., Covington & Burling LLP, counsel for WADO-AM License Corp., to Dana E. Leavitt, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Nov. 20, 2014) (on file in EB-IHD-1400017097) (Supplemental LOI Response).

⁹ LOI Response at 2, 6.

¹⁰ *Id.* at 2.

¹¹ *See* LOI Response and Supplemental LOI Response.

¹² LOI Response at Enclosure 1.

¹³ *See id.*

¹⁴ *Id.* at Enclosure 1. According to the English-language transcript WADO provided, DJ Luis says: [t]he thing is that we cannot play the sound because I believe it’s illegal . . . it is for emergencies.”

¹⁵ *Id.* at 5, 7.

III. TERMS OF AGREEMENT

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

8. **Jurisdiction.** Univision 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.

9. **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.

10. **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 and dismiss the Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, Univision agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Univision concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or use the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Univision with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

11. **Admission of Liability.** Univision admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions with respect to the broadcast of EAS Tones during the January 28, 2014, episode of the *Luis Jimenez Show* violated the Commission's EAS Laws.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Univision 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 Univision 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 Laws prior to assuming his/her duties.

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

- (a) **Operating Procedures for Compliance with the EAS Laws.** Within sixty (60) calendar days after the Effective Date, Univision shall establish Operating Procedures that all Covered Employees must follow to help ensure Univision's compliance with the EAS Laws. Univision's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Univision does not broadcast the EAS Tones absent an emergency or authorized EAS test. Univision shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the EAS Laws regarding broadcast of the EAS Tones.

- (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 EAS Laws and set forth the Operating Procedures that Covered Employees shall follow to help ensure Univision's compliance with the EAS Laws. Univision shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Univision shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Univision shall establish and implement a Compliance Training Program on compliance with the EAS Laws and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Univision's obligation to report any noncompliance with the EAS Laws under paragraph 14 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. Univision shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Univision shall report any instance of noncompliance with the EAS Laws, or with the terms and conditions of this Consent Decree, by any Univision radio station, 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 Univision 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 Univision has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Dana E. Leavitt at Dana.Leavitt@fcc.gov.

15. **Compliance Reports.** Univision 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 Univision's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the EAS Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Univision, stating that the Compliance Officer has personal knowledge that Univision: (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 14 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.¹⁶

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Univision, 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 Univision has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial action will be taken; and (iii) the steps that Univision has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Dana E. Leavitt at Dana.Leavitt@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Univision will pay a civil penalty to the United States Treasury in the amount of twenty thousand dollars (\$20,000) within thirty (30) calendar days of the Effective Date. Univision shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and Dana E. Leavitt at Dana.Leavitt@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

¹⁶ 47 C.F.R. § 1.16.

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **Waivers.** As of the Effective Date, Univision 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. Univision 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 Adopting Order, neither Univision nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Univision shall waive any statutory right to a trial *de novo*. Univision hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁸ 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 Univision does not expressly consent), that provision will be superseded by such Rule or Order.

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

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 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.

¹⁸ 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

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.

Travis LeBlanc
Chief
Enforcement Bureau

Date

UNIVISION LOCAL MEDIA, INC.

Kevin Cuddihy
President
Univision Local Media, Inc.

Date