

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

In the Matter of )
Pluto Inc. ) File No.: EB-TCD-20-00030606
ViacomCBS Inc. ) CD Acct. No.: 202132170002
FRN: 0031351463

ORDER

Adopted: September 29, 2021

Released: September 29, 2021

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree with ViacomCBS Inc. (ViacomCBS) and its wholly owned subsidiary, Pluto Inc. (Pluto), to resolve its investigation into whether Pluto violated sections 79.4 and 79.103 of the Commission’s rules (Rules) pertaining to the closed captioning of video programming delivered through Pluto’s streaming service, Pluto TV. These rules require that all “nonexempt full-length video programming delivered using Internet Protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions.”1 This enforcement action is brought under the internet closed captioning provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA)2, and represents an important step toward meeting the CVAA’s goal of ensuring that “individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”3

2. To settle this matter, Pluto and ViacomCBS admit that their actions with respect to Pluto TV that were the subject of the Investigation violated the IP Closed Captioning Rules, will implement a compliance plan, and will pay a \$3,500,000 civil penalty.

3. 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.

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

1 47 CFR § 79.4(b) (establishing the requirements for the closed captioning of video programming delivered using Internet Protocol).

2 Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010), as amended by the Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).

3 S. Rep. No. 111-386, at 1 (2010); H.R. Rep. No. 111-563, at 19 (2010).

4 See 47 CFR § 1.93(b).

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act<sup>5</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,<sup>6</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

7. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Pluto related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

8. **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 Darin Bassin, Executive Vice President & General Counsel, Pluto Inc., 700 N San Vicente Blvd, 9th floor, West Hollywood, CA 90069, and to Matthew DelNero, Counsel to Pluto Inc. and ViacomCBS Inc., Covington & Burling LLP, One CityCenter, 850 10th Street, NW, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau

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<sup>5</sup> 47 U.S.C. § 154(i).

<sup>6</sup> 47 CFR §§ 0.111, 0.311.

Before the
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In the Matter of )
Pluto Inc. ) File No.: EB-TCD-20-00030606
ViacomCBS Inc. ) CD Acct. No.: 202132170002
FRN: 0031351463

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and ViacomCBS Inc. and its wholly owned subsidiary, Pluto Inc. (Pluto or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Pluto violated sections 79.4 and 79.103 of the Commission’s rules in connection with Pluto’s streaming service. To resolve this matter, Pluto and ViacomCBS agree to implement a compliance plan to ensure that non-exempt video programming that Pluto streams over the Internet includes closed captioning in compliance with Commission Rules, and Pluto Inc. and ViacomCBS Inc. agree to pay a \$3,500,000 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.
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Apparatus” shall have the same meaning as the term is defined in section 79.103(a) of the Rules.
(d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(e) “CD Acct No.” means account number 202132170002, associated with payment obligations described in paragraph 24 of this Consent Decree.
(f) “Closed Captioning” shall have the same meaning as the term is defined in section 79.4(a)(6) of the Rules.
(g) “Commission” and “FCC” means the Federal Communications Commission and all of its bureaus and offices.
(h) “Communications Laws” means, individually or collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Pluto is subject by virtue of its business activities.

1 47 U.S.C. § 151 et seq.

2 See 47 CFR § 79.103(a), Note 1 to paragraph (a).

- (i) “Complaint” means any communication that Pluto receives, whether written or oral, resulting from a person contacting the Commission, Pluto, ViacomCBS or a third-party to complain or comment about IP Closed Captioning on Pluto TV.
- (j) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 20.
- (k) “Covered Employees” means all employees and agents of Pluto who perform, supervise, oversee, or manage the performance of, duties that directly relate to Pluto’s responsibilities under the IP Closed Captioning Rules.
- (l) “CVAA” means the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010), as amended by the Amendment of Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-265, 124 Stat. 2795 (2010) (making technical corrections to the CVAA).
- (m) “Effective Date” means the date on which the Bureau, Pluto, and ViacomCBS have all signed the Consent Decree and the Bureau has released an Adopting Order.
- (n) “Internet Protocol” or “IP” shall have the meaning as the term is defined in section 79.4(a)(5) of the Rules.<sup>3</sup>
- (o) “IP-delivered Video Programming” shall mean video programming delivered using Internet Protocol.<sup>4</sup>
- (p) “IP Closed Captioning Rules” means sections 79.4 and 79.103 of the Rules and any additional rules the Commission adopts related to the Closed Captioning of IP-delivered Video Programming.
- (q) “Investigation” means the investigation commenced by the Bureau in File No. EB-TCD-20-00030606 regarding whether Pluto violated the IP Closed Captioning Rules or other Communications Laws.
- (r) “Letter of Inquiry” or “LOI” means the Letter of Inquiry issued by the Bureau to Pluto Inc. on February 7, 2020, in File No. EB-TCD-20-00030606.
- (s) “Nonexempt Programming” shall have the same meaning as the term is defined in section 79.4(a)(14) of the Rules.<sup>5</sup>
- (t) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Pluto to implement the Compliance Plan.
- (u) “Parties” means Pluto Inc., ViacomCBS Inc., and the Bureau, each of which is a “Party.”

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<sup>3</sup> 47 CFR § 79.4(a)(5).

<sup>4</sup> See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787 (2012) (*2012 IP Closed Captioning Order*).

<sup>5</sup> 47 CFR § 79.4(a)(14).

- (v) “Petition for Waiver” means the Petition that Pluto filed with the FCC’s Media Bureau on May 15, 2019, wherein Pluto requested a waiver of the IP Closed Captioning Rules with respect to Pluto’s streaming service.<sup>6</sup>
- (w) “Platform” means a streaming media platform or family of platforms that Pluto licenses or authorizes to distribute Pluto TV to viewers and includes Pluto’s own website and app, as well as any additional platforms or families of platforms that Pluto licenses or authorizes to distribute Pluto TV to viewers subsequent to the Effective Date.
- (x) “Pluto” or “Company” shall mean Pluto Inc., the entity ViacomCBS Inc. acquired in March 2019, that offers Video Programming to the public through Pluto TV and is now operated as a wholly owned subsidiary of ViacomCBS Inc., and its predecessors-in-interest, and successors-in-interest (including via any corporate reorganization).
- (y) “Pluto TV” shall mean Pluto’s streaming video service that offers Video Programming to the public.
- (z) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (aa) “ViacomCBS” shall mean ViacomCBS Inc., the affiliates it owns that have control over the manner in which Pluto conducts its business in the United States, predecessors-in-interest, and successors-in-interest.
- (bb) “Video Programming” shall have the same meaning as the term is defined in section 79.4(a)(1) of the Rules.<sup>7</sup>
- (cc) “Video Programming Distributor” and “Video Programming Provider” shall have the same meaning as the terms are defined in section 79.4(a)(3) of the Rules.<sup>8</sup>
- (dd) “Video Programming Owner” shall have the same meaning as the term is defined in section 79.4(a)(4) of the Rules.<sup>9</sup>

## II. BACKGROUND

3. The CVAA “help[s] ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.”<sup>10</sup> The CVAA applies broadly to the distributors, providers, and owners of IP-delivered Video Programming. Section 202(b) of

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<sup>6</sup> Petition for Waiver of Pluto, Inc. regarding Closed Captioning of Internet Protocol-Delivered Video Programming, MB Docket No. 11-154, at 2 (filed May 15, 2019), <https://ecfsapi.fcc.gov/file/10515140142576/5-15-§§19%20Pluto%20Petition%20For%20Waiver%20As%20Filed.pdf> (Pluto Inc. Petition for Waiver). Pluto Inc. previously filed a similar petition on May 13, 2019, which requested relief under both sections 1.3 and 79.4(d) of the Rules. Petition for Waiver of Pluto, Inc. regarding Closed Captioning of Internet Protocol-Delivered Video Programming, MB Docket No. 11-154 (filed May 13, 2019). Pluto failed to prosecute the May 13 petition and ultimately withdrew the May 13 petition on June 8, 2020. Letter from Matthew S. DelNero, Counsel to ViacomCBS Inc. and Pluto Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 11-154 (filed June 8, 2020) (Pluto Update to Record).

<sup>7</sup> 47 CFR § 79.4(a)(1).

<sup>8</sup> 47 CFR § 79.4(a)(3).

<sup>9</sup> 47 CFR § 79.4(a)(4).

<sup>10</sup> S. Rep. No. 111-386, at 1 (2010); H.R. Rep. No. 111-563, at 19 (2010).

the CVAA, amending section 713 of the Act, directs the Commission to revise its regulations to require the closed captioning of IP-delivered Video Programming, and imposes requirements on certain Apparatus that receive or play back Video Programming (including certain recording devices).<sup>11</sup> Subject to a timeline set forth in the Rules, “[a]ll nonexempt full-length video programming delivered using Internet Protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions.”<sup>12</sup> Most nonexempt full-length Video Programming delivered using Internet Protocol must be provided with closed captioning if the programming was published or exhibited with captions on television in the United States on or after September 30, 2013.<sup>13</sup> For uncaptioned programming that is in a Video Programming Distributor’s library, that is subsequently shown on television with captions, the Video Programming Distributor has 15 days to caption such programming.<sup>14</sup> The Rules provide a detailed timeline for captioning previously televised pre-recorded, live and near live, and full length programming and video clips.<sup>15</sup>

4. Video Programming Distributors must “[e]nable the rendering or pass through of all required captions to the end user.”<sup>16</sup> The Video Programming Distributor must maintain the quality of the captions provided by the Video Programming Owner and transmit captions in a format reasonably designed to reach the end user in that quality.<sup>17</sup> A Video Programming Distributor that provides applications, plug-ins, or devices in order to deliver Video Programming must comply with the requirements of section 79.103(c) and (d), which govern the technical display capabilities for IP closed captioning and interconnection on covered Apparatus.<sup>18</sup>

5. Video Programming Distributors are also required to use an agreed upon mechanism, which may include the use of certifications, for determining whether Video Programming from a Video Programming Owner is subject to the IP Closed Captioning Rules.<sup>19</sup> Further, Video Programming Distributors must “[m]ake contact information available to end users for receipt and handling of written closed captioning complaints.”<sup>20</sup>

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<sup>11</sup> 47 U.S.C. § 303(u)(1), (z)(1). Closed captioning is the visual display of the audio portion of video programming.

<sup>12</sup> 47 CFR § 79.4(b) (establishing the requirements for the closed captioning of video programming delivered using Internet Protocol).

<sup>13</sup> 47 CFR § 79.4(b)(1).

<sup>14</sup> 47 CFR § 79.4(b)(1)(iv).

<sup>15</sup> See 47 CFR § 79.4(b).

<sup>16</sup> 47 CFR § 79.4(c)(2).

<sup>17</sup> 47 CFR § 79.4(c)(2)(i).

<sup>18</sup> 47 CFR § 79.4(c)(2)(i). See also 47 CFR § 79.103(c) and (d) (setting forth the closed caption decoder requirements for Apparatus as well as the requirement that captions be formatted in a fashion that allows viewers to control the caption display, such as changing the font, character size, and background color).

<sup>19</sup> 47 CFR § 79.4(c)(2)(ii). A Video Programming Distributor or Video Programming Provider may rely in good faith on a certification by a Video Programming Owner that the Video Programming need not be captioned if the certification includes a clear and concise explanation of why captioning is not required and the Video Programming Distributor or Video Programming Provider is able to produce the certification to the Commission in the event of a complaint. *Id.*

<sup>20</sup> 47 CFR § 79.4(c)(2)(iii) (setting forth the obligations of Video Programming Distributors and Video Programming Providers to make contact information available to end users for the receipt and handling of written closed captioning complaints alleging violations of the IP Closed Captioning Rules).

6. The Internet has become central to the distribution of video programming. Consumers rely on a multitude of devices, including tablets, wireless phones, and game consoles, to access IP-delivered Video Programming.<sup>21</sup> Video Programming Distributors often make their programming available through their own websites or the distribution mechanisms of other parties through negotiated agreements.<sup>22</sup>

7. Pluto began offering service in March 2014.<sup>23</sup> Pluto offers free Video Programming through Pluto TV, which streams over the Internet via the Pluto TV app, Pluto's website, or another Platform.<sup>24</sup> As a Video Programming Distributor, Pluto must enable the rendering or pass through of all required captions to the end user, maintaining the quality of the captions provided by the Video Programming Owner.<sup>25</sup> If the Video Programming Owner's captioning allows consumers to customize caption features, Pluto must make that capability available as well. When Pluto delivers programming through its website, the embedded video player on its website qualifies as Apparatus and subjects Pluto to section 79.103 of the Rules.<sup>26</sup>

8. In January 2018 and thereafter, the Commission received several consumer Complaints alleging that the consumer could not get the closed captioning feature to work on Pluto TV.<sup>27</sup> The Consumer and Governmental Affairs Bureau attempted to informally resolve the Complaints by requiring Pluto to submit monthly progress reports to the Commission. In the reports, Pluto described its efforts to comply with the IP Closed Captioning Rules on the various Platforms that streamed Pluto TV.

9. On May 15, 2019, Pluto filed a Petition for Waiver of section 79.4 with respect to Pluto TV on certain Platforms.<sup>28</sup> On June 27, 2019, the Media Bureau put the Petition for Waiver on public notice.<sup>29</sup> The Media Bureau granted two requests to extend the comment period, including one in part

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<sup>21</sup> *2012 IP Closed Captioning Order*, 27 FCC Rcd at 791-92, para. 5.

<sup>22</sup> The Commission defined Video Programming Distributors and Video Programming Providers as interchangeable, stating that “[Video Programming Distributors] and [Video Programming Providers] are both people or entities that make video programming available directly to the end user through a distribution method that uses IP.” *2012 IP Closed Captioning Order*, 27 FCC Rcd at 794, para. 9. Furthermore, because section 79.4 defines Video Programming Distributor and Video Programming Provider synonymously, we refer to Video Programming Distributors when discussing the obligations under the Rules for Video Programming Distributors and Video Programming Providers alike. *See* 47 CFR § 79.4(a)(3).

<sup>23</sup> Response to Letter of Inquiry from Matthew S. DelNero, counsel for Pluto Inc., to Marlene Dortch, Secretary, FCC and attention to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 2 (Mar. 11, 2020) (on file in EB-20-TCD-00030606) (LOI Response). Pluto initially provided mostly user-generated and web-only content, and subsequently expanded its offerings to include Video Programming.

<sup>24</sup> Pluto Inc. Petition for Waiver; *see also* <https://pluto.tv/about-us#about> (last visited Sept. 23, 2021); <https://pluto.tv/where-to-watch#smart-tv> (last visited Sept. 23, 2021).

<sup>25</sup> 47 CFR § 79.4(c)(2)(i).

<sup>26</sup> 47 CFR § 79.103.

<sup>27</sup> *See, e.g.*, Complaint No. 2157997 (Jan. 10, 2018); Complaint No. 2664211 (July 26, 2018); Complaint No. 2791713 (Sept. 23, 2018); and Complaint No. 3477567 (Aug. 20, 2019).

<sup>28</sup> Pluto Inc. Petition for Waiver.

<sup>29</sup> *Media Bureau Seeks Comment on Pluto TV's Petition for Waiver of IP Closed Captioning Requirements*, MB Docket No. 11-154, Public Notice, 34 FCC Rcd 5152 (MB 2019).

intended to provide Pluto with the opportunity to work with interested stakeholders on solutions.<sup>30</sup> In Comments filed on February 21, 2020, Pluto purported to withdraw its Petition for Waiver with respect to certain Platforms, reiterated its request concerning other Platforms, and sought guidance from the Commission and stakeholders with respect to Platforms where Pluto claimed that “compliance may not be reasonably feasible.”<sup>31</sup> On June 8, 2020, Pluto filed a letter to update the record, stating that it had sunset its programming several weeks prior on three Platforms for which Pluto had sought a waiver and requesting that the Media Bureau suspend further action on the Petition for Waiver.<sup>32</sup> On September 21, 2021, Pluto filed a Request to Withdraw its Petition for Waiver with the Media Bureau, which the Media Bureau granted contemporaneously with the Order adopting this Consent Decree.<sup>33</sup>

10. The Enforcement Bureau issued a Letter of Inquiry to Pluto on February 7, 2020.<sup>34</sup> Pluto responded on March 11, 2020.<sup>35</sup> The Investigation confirmed that Pluto had failed to comply with the IP Closed Captioning Rules when disseminating Video Programming on some Platforms.<sup>36</sup> Even after being reminded of its closed captioning obligations, after filing the Petition for Waiver, after receiving the LOI and throughout the Investigation, Pluto continued to offer Pluto TV on existing Platforms and initiated Pluto TV on several new Platforms without being in compliance with the IP Closed Captioning Rules. As a result of Pluto’s actions, individuals with hearing disabilities were unable to access closed captioning when viewing Pluto TV over some Platforms. The Bureau found that Pluto failed to: (a) enable the rendering or pass through of required captions provided by the Video Programming Owners on numerous Platforms used to disseminate Pluto TV, pursuant to section 79.4, (b) implement the closed captioning functionality requirements contained in section 79.103, and (c) make contact information available to end

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<sup>30</sup> *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order Granting Extension of Time to File Comments and Reply Comments, 34 FCC Rcd 6303 (MB 2019); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order Granting Further Extension of Time to File Comments and Reply Comments, 34 FCC Rcd 10356 (MB 2019) (granting an extension due to a good cause showing that TDI and Pluto would “work together to reach a solution to the issues raised in the Petition that is mutually acceptable both to Pluto TV and the deaf or hard of hearing community”).

<sup>31</sup> Pluto, Inc. Comments, MB Docket No. 11-154, at 1-2 (Feb. 21, 2020) (Pluto Feb. 21, 2020 Waiver Comments). The Pluto Inc. Petition for Waiver was opposed by various consumer groups including Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI). Consumer Groups Opposition to the Petition for Waiver by Pluto, Inc., MB Docket No. 11-154 (Feb. 21, 2020) (Consumer Groups Opposition).

<sup>32</sup> Pluto Update to Record at 1.

<sup>33</sup> Request to Withdraw Petition for Waiver of Pluto Inc., MB Docket 11-154 (filed Sept. 21, 2021) (<https://ecfsapi.fcc.gov/file/10921979606112/Pluto%20Inc%20-%20Request%20for%20Withdrawal%20of%20Petition%20for%20Waiver%20%5BSept.%2021%202021%5D.pdf>); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Order, DA 21-1184 (MB Sept. 29, 2021).

<sup>34</sup> Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Gerard J. Waldron, Esq., Counsel to Pluto, Inc. (Feb. 7, 2020) (on file in EB-TCD-20- 00030606) (LOI).

<sup>35</sup> LOI Response.

<sup>36</sup> LOI Response at 3-5, Response to Questions 3-6.



users for receipt and handling of written closed captioning Complaints, pursuant to section 79.4(c)(2)(iii) of the Rules.<sup>37</sup>

11. During the waiver process and Investigation, Pluto failed to provide timely and accurate information to Commission staff. While Pluto appears to have had no intent to deceive or mislead the Commission, Pluto's failure to give timely and accurate information hindered the Media Bureau's ability to act on the Petition for Waiver and the Enforcement Bureau's ability to execute an efficient investigation. Pluto's conduct during the pendency of these proceedings wasted valuable Commission resources and delayed the resolution of the accessibility issues on Pluto's service, to the detriment of consumers with hearing disabilities.

12. Pluto, ViacomCBS, and the Bureau engaged in settlement negotiations. To settle this matter, Pluto, ViacomCBS, and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

### III. TERMS OF AGREEMENT

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

14. **Jurisdiction.** Pluto and ViacomCBS agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

15. **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.

16. **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, Pluto and ViacomCBS agree 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 Pluto, ViacomCBS, concerning the matters that were the subject of the Investigation, or to set for hearing the question of the basic qualifications of Pluto, ViacomCBS, or any of their affiliates to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.<sup>38</sup>

17. **Representations; Warranties.** Pluto and ViacomCBS represent that they have provided the Commission with a complete list of Pluto's Platforms as of September 27, 2021, attached hereto as Attachment A.<sup>39</sup> Pluto and ViacomCBS also represent that the list identifies whether Pluto TV is fully compliant with the IP Closed Captioning Rules on the Platforms.<sup>40</sup> With respect to any Platform(s) for

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<sup>37</sup> 47 CFR § 79.4(c)(2)(iii). There were other instances of non-compliance that fell outside of the relevant statute of limitations. For example, Pluto failed to use an agreed upon mechanism to determine whether the programming it acquired from Video Programming Owners contained closed captioning or was exempt from the IP Closed Captioning Rules prior to distributing it to viewers as required in 47 CFR § 79.4(c)(2)(ii).

<sup>38</sup> See 47 CFR § 1.93(b).

<sup>39</sup> Pluto's representation concerning full compliance on the "Android Mobile" Platform is based on its testing of those unique models of devices listed on Attachment A.

<sup>40</sup> 47 CFR §§ 79.4, 79.103. In order to be "fully compliant," the closed captioning must comply with applicable provisions of section 79.103, as well as section 79.4 of the Rules.

which Pluto TV is identified as not fully compliant, Pluto and ViacomCBS warrant that they will bring Pluto TV fully into compliance on such Platform(s) or cease to provide service on such Platform(s) within sixty (60) calendar days after the Effective Date. Pluto and ViacomCBS warrant that they will consult with disability consumer advocacy groups and members of the disability community to maintain and improve the accessibility and usability of Pluto TV for viewers with hearing disabilities.

18. **Admission of Liability.** Pluto and ViacomCBS admit for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 16 herein, that their actions with respect to Pluto TV that were the subject of the Investigation violated the IP Closed Captioning Rules, as described herein.

19. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, ViacomCBS and Pluto shall designate a senior corporate manager or officer with the requisite corporate and organizational authority to serve as the Pluto 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 Pluto complies with the terms and conditions of this Consent Decree. The Compliance Officer shall provide a quarterly report to the executive with principal responsibility for Pluto describing Pluto's compliance efforts. The Compliance Officer may supplement his or her general knowledge of the Communications Laws and specific knowledge of the IP Closed Captioning Rules as necessary to discharge his or her duties under this Consent Decree.

20. **Compliance Plan.** For purposes of settling the matters set forth herein, Pluto and ViacomCBS agree that within sixty (60) calendar days after the Effective Date, Pluto shall develop and implement a Compliance Plan for Pluto TV that is designed to ensure Pluto's compliance with the Communications Laws applicable to Video Programming Distributors and the terms and conditions of this Consent Decree. At a minimum, Pluto will implement the following procedures within the applicable timeframes provided below:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Pluto shall establish Operating Procedures that all Covered Employees must follow to help ensure Pluto's compliance with the IP Closed Captioning Rules. Pluto's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Pluto routinely:
  - i. Coordinates with Platform owners to obtain all technical requirements to ensure compliance with the IP Closed Captioning Rules when distributing Pluto TV on the Platform;
  - ii. Tests closed captioning functionality, and maintains records documenting such testing;
  - iii. Coordinates and collaborates with members of the disability community to assess and advise Pluto on the accessibility of Pluto TV;
  - iv. Addresses indicators of closed captioning problems associated with Pluto TV;
  - v. Maintains a system that allows Pluto to be responsive to consumers and resolve accessibility issues; and
  - vi. Updates its website to conspicuously reflect Video Programming offerings and other relevant information to assist viewers with disabilities.

- (b) **Platform Testing.** Within fifteen (15) calendar days after the Effective Date, Pluto shall establish testing procedures specifically designed to ensure that, on an ongoing basis, Pluto:
- i. Works with Platform owners to meet the technical requirements necessary to ensure Pluto TV's Closed Captioning features are accessible, usable, and comply with the IP Closed Captioning Rules and shall document such efforts;
  - ii. Conducts Closed Captioning functionality testing and documents such testing:
    1. prior to and immediately after launching Pluto TV on a new Platform;
    2. prior to and immediately after deploying any Pluto TV software update, if such software update could reasonably be expected to affect video playback or Closed Captioning; and
    3. prior to directing consumers to install a software update, if such software update could reasonably be expected to affect video playback or Closed Captioning.
  - iii. Provides results of Closed Captioning functionality testing to the Compliance Officer;
  - iv. Notifies the Compliance Officer, within 24 hours of discovery, of any failure of the Closed Captioning functionality of Pluto TV on any Platform; and
  - v. Maintains, for a minimum of two (2) years, records sufficient to document that required Closed Captioning testing has occurred, and the results of such testing, as required in paragraph 20(b)(iii).
- (c) **Platform Compliance; Consumer Information.**
- i. Pursuant to paragraph 17 of this Consent Decree, for each Platform that Pluto and ViacomCBS have identified as not fully compliant with sections 79.4 and 79.103 of the Rules (as listed on Attachment A):
    1. Pluto shall come into compliance with the IP Closed Captioning Rules or shall cease operating on each noncompliant Platform within sixty (60) days of the Effective Date;
    2. Pluto shall notify the Commission fourteen (14) calendar days in advance of ceasing to provide Pluto TV on a specific Platform. The notice shall identify the date that viewers will be notified, and the date that Pluto expects to cease offering Pluto TV on the Platform.
    3. Pluto shall provide a clear and conspicuous notice to consumers on its website that it is ceasing to offer Pluto TV on such Platform(s):
      - a. Pluto shall make the service cessation notice available to consumers as soon as reasonably practicable, but in no event later than seven (7) calendar days prior to Pluto ceasing operating Pluto TV on the identified Platform;

- b. Any service cessation notice must state that Pluto TV will no longer be available on the Platform as of a date certain, and include information describing where viewers may obtain additional information about accessing Pluto TV -- the notice shall be updated to the extent the cessation date is materially delayed; and
  - c. Upon cessation of the Pluto TV service on the applicable Platform and for two (2) weeks thereafter, if technically feasible, Pluto shall replace Pluto TV with a “barker” channel that describes where viewers may obtain additional information about accessing Pluto TV.
- ii. Within fifteen (15) calendar days after the Effective Date, Pluto shall post and maintain on its website a list of all Platforms on which Pluto offers Pluto TV. This list must be updated on a quarterly basis to reflect any Platform being added or discontinued;
  - iii. Within thirty (30) calendar days after the Effective Date, Pluto shall implement a process for placing a conspicuous notification on its website in the event Pluto becomes aware of a failure that results in Pluto TV’s inability to display Closed Captioning on Video Programming on one or more Platforms for a period greater than two (2) hours in a 24 hour period. The notification shall be placed on Pluto’s website within twenty-four (24) hours after Pluto determines that such a failure has occurred, and updated promptly after the Closed Captioning functionality is reinstated;
  - iv. Within sixty (60) calendar days after the Effective Date, Pluto shall add and maintain a Frequently Asked Questions (FAQ) section to its website to address commonly asked questions about Closed Captioning on Pluto TV; and,
  - v. Within ten (10) calendar days after the Effective Date, Pluto shall include on its website the contact information for written Complaints pertaining to Closed Captioning and the method(s) for filing such Complaints, as provided for in section 79.4(c)(2)(iii) of the Commission’s Rules.
- (d) **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 IP Closed Captioning Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Pluto’s compliance with the IP Closed Captioning Rules. Pluto and ViacomCBS shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein is current and accurate. Pluto shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (e) **Compliance Training Program.** Within ninety (90) calendar days after the Effective Date, Pluto and ViacomCBS shall establish and implement a Compliance Training Program regarding Pluto’s compliance with the IP Closed Captioning Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Pluto’s obligation to report any noncompliance with the IP Closed Captioning Rules under paragraph 21 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. Pluto shall provide compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it is current and accurate and to enhance its effectiveness.

21. **Reporting Noncompliance.** Within fifteen (15) calendar days after discovery of noncompliance with the terms and conditions of this Consent Decree and the IP Closed Captioning Rules, Pluto shall report any such noncompliance that results in (a) a lack of Closed Captioning greater than two (2) hours in a 24-hour period across one or more Platforms, or (b) a lack of Closed Captioning on any one specific program, i.e., Nonexempt Programming, that occurs on one or more Platforms more than six (6) times in a three-month period.<sup>41</sup> Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Pluto 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 Pluto has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to: [Amelia.Brown@fcc.gov](mailto:Amelia.Brown@fcc.gov), with electronically submitted copies to [fcebackcess@fcc.gov](mailto:fcebackcess@fcc.gov), and [Michael.Scurato@fcc.gov](mailto:Michael.Scurato@fcc.gov) (Media Bureau) and [Suzanne.Singleton@fcc.gov](mailto:Suzanne.Singleton@fcc.gov) (Consumer and Governmental Affairs Bureau).

22. **Compliance Reports.** Pluto shall file compliance reports with the Commission one hundred eighty (180) 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 Pluto's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the IP Closed Captioning Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Pluto, stating that the Compliance Officer has personal knowledge that Pluto: (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 requirements set forth in paragraph 21 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.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Pluto, 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 Pluto 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 Pluto has taken or will take to prevent the recurrence of

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<sup>41</sup> 47 CFR § 79.4(c)(3).

any such noncompliance, including the schedule on which such preventive action will be taken.

- (d) Each Compliance Report shall also include:
- i. the total number of written Complaints Pluto received;
  - ii. the total number of Complaints, written or oral, Pluto received from a disability rights advocacy group;
  - iii. a brief description of each such Complaint or category of Complaints (to the extent multiple Complaints raise the same issue(s) about the same program or Platform) that the Company has received within the time period for the relevant Compliance Report;
  - iv. any corrective measures Pluto has taken pertaining to the IP Closed Captioning on Pluto TV based on Complaints;
  - v. an acknowledgment that the Company has complied with its process for determining whether all programming it receives from a Video Programming Owner is captioned or is exempt from the IP Closed Captioning Rules; and
  - vi. a list of any new Platform(s) on which Pluto TV commenced service during the relevant reporting period and the date on which Pluto TV began offering programming on the Platform. An iterative update to, or variation on, a Platform on which Pluto TV is offered as of the Effective Date, shall not be considered to be a “new” Platform for purposes of this provision
- (e) Each Compliance Report shall identify any instance during the relevant reporting period where Pluto learns of noncompliance with the IP Closed Captioning Rules on any platform not authorized or licensed to distribute Pluto TV.
- (f) All Compliance Reports shall be submitted via email to Sharon Lee, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, at [sharon.lee@fcc.gov](mailto:sharon.lee@fcc.gov) and Amelia Brown, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, FCC, at [amelia.brown@fcc.gov](mailto:amelia.brown@fcc.gov), with a copy to [fccebaaccess@fcc.gov](mailto:fccebaaccess@fcc.gov). The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data’s source.

23. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 19 through 22 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

24. **Civil Penalty.** Pluto and ViacomCBS will pay a civil penalty to the United States Treasury, for which they are jointly and severally liable, in the amount of three million five hundred thousand dollars (\$3,500,000) within thirty (30) calendar days of the Effective Date.

25. Pluto and ViacomCBS acknowledge and agree 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).<sup>42</sup> Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Pluto and/or ViacomCBS shall send electronic notification of payment to [Amelia.Brown@fcc.gov](mailto:Amelia.Brown@fcc.gov) and to [fccebaaccess@fcc.gov](mailto:fccebaaccess@fcc.gov) on the date said payment is made. Payment of the

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<sup>42</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

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),<sup>43</sup> 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:<sup>44</sup>

- 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](mailto: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).<sup>45</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the "Pay by Credit Card" option. IMPORTANT NOTE: there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

26. **Event of Default.** Pluto and ViacomCBS agree that an Event of Default shall occur upon the failure by Pluto and/or ViacomCBS to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

27. **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,

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<sup>43</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>44</sup> 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](mailto:ARINQUIRIES@fcc.gov).

<sup>45</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 Pluto and ViacomCBS.

28. **Waivers.** As of the Effective Date, Pluto and ViacomCBS waive any and all rights they 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. Pluto and ViacomCBS 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 Pluto or ViacomCBS, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Pluto and ViacomCBS shall waive any statutory right to a trial *de novo*. Pluto and ViacomCBS hereby agree to waive any claims they may individually or collectively otherwise have under the Equal Access to Justice Act<sup>46</sup> relating to the matters addressed in this Consent Decree.

29. **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.

30. **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.

31. **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 Pluto and ViacomCBS do not expressly consent) that provision will be superseded by such Rule or order.

32. **Successors and Assigns.** Pluto and ViacomCBS agree that the provisions of this Consent Decree shall be binding on each of its successors, assigns, and transferees.

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

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

35. **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.

36. **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.

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<sup>46</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.



37. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

\_\_\_\_\_  
Rosemary C. Harold  
Chief  
Enforcement Bureau

\_\_\_\_\_  
Date

\_\_\_\_\_  
Darin Bassin  
Executive Vice President & General Counsel  
Pluto Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Christa D'Alimonte  
Executive Vice President, General Counsel  
ViacomCBS Inc.

\_\_\_\_\_  
Date

**Attachment A**

**Pluto TV Platforms as of September 27, 2021**

<b>Platform Owner(s)</b>	<b>Platform Name(s)</b>	<b>Fully Compliant</b>
Amazon	Amazon Fire TV (incl. Fire TV Stick, Fire TV Cube)	Yes
Apple	iOS, tvOS (Apple TV)	Yes
Comcast/Cox	X1 STB / X1 Flex / Contour STB	Yes
Facebook	Portal	Yes
Google	Android Mobile*, Android TV, Chromebook, Chromecast	Yes
Hisense	2018 model (chipset 6586), models from 2020-present	Yes
Life Fitness	Life Fitness	Yes
LG	LG (TVs), LG Channels (TVs)	Yes
Microsoft	Xbox One, Series S/X	Yes
MSN	Embed	Yes
Pluto	Web 2.0 (browser access to https://pluto.tv, including via Safari, Edge, Chrome, Firefox browsers) Desktop App w/ Web 2.0 (Windows 10)	Yes
Roku	Roku	Yes
Samsung	Tizen models from 2016-present	Yes
Sony	PlayStation 4, PlayStation 5	Yes
TiVo	Stream, TiVo STB	Yes
Verizon	FiOS (STB, Stream TV)	Yes
Vizio	SmartCast, VIA+ (Blink), WatchFree+	Yes

*\* Per note 39 of the Consent Decree, Pluto's representation concerning full compliance on the "Android Mobile" Platform is based on its testing of the Pluto TV app on the following unique models of devices:*

<b>Manufacturer</b>	<b>Device Model</b>
Alcatel	Alcatel 5044C
Amazon	Fire HD 10 (versions 7, 9, 10), Fire HD 8 (version 8)
Google	Pixel 3
LG	Stylo 5
Motorola	Moto E5 Play, Moto E6 Plus, Moto G7, Moto G8, Moto G9+
Samsung	Galaxy S5 G900V, Galaxy S9, Galaxy S9+, Galaxy A20, Galaxy Tablet A7 SM-T500, Galaxy Tablet A