

FEDERAL COMMUNICATIONS COMMISSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-99-OR-231
Miracle Assembly of God)	
P. O. Box 1307)	
Buras, Louisiana 70041-1307)	
)	NAL Acct. No 915OR0005
Licensee of Station KAGY(AM))	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Miracle Assembly of God hereby enter into this Consent Decree for the purpose of terminating a forfeiture proceeding arising from an investigation related to Miracle Assembly of God's failure to enclose an antenna tower which has radio frequency potential at its base with an effective locked fence or enclosure.

BACKGROUND

2. Agents from the Commission's New Orleans Field Office conducted an inspection of Station KAGY(AM) on June 8, 1999. KAGY(AM) had a series fed, insulated antenna that had radio frequency potential at its base. The agents observed that the fence enclosing the antenna of KAGY(AM) had fallen down and was no longer effectively preventing access to the base of the antenna. Four other violations of Commission Rules were observed. During the inspection, the licensee's representative admitted that he was aware that the fence had fallen, but had failed to make repairs.

3. In June 1999, the New Orleans Field Office issued a Notice of Violation to Miracle Assembly of God ("Miracle") detailing the violations. Miracle replied and satisfactorily resolved two of the violations.

4. On September 30, 1999, the Commission's New Orleans Field Office issued a Notice of Apparent Liability for Forfeiture ("NAL") to Miracle finding it apparently liable for a forfeiture in the amount of \$7,000.¹ The NAL stated that Miracle had failed to have KAGY(AM)'s antenna enclosed with an effective locked fence or other enclosure from at least May 20, 1999 through June 8, 1999, despite its representative's knowledge that the fence had fallen down. The NAL stated that Miracle had apparently violated Section 73.49 of the Commission's Rules, 47 C.F.R. Section 73.49.

¹ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 915OR0005 (Compliance & Information Bureau, New Orleans Office, released September 30, 1999).

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5. On October 25, 1999, Miracle submitted a response to the NAL and requested that the Commission forgive the forfeiture or greatly reduce it. Pastor Max Latham, on behalf of Miracle, stated that the whole fence had not fallen down but only a portion of it had rusted and fallen. He stated that he had put a new chain and lock on the gate, and had not been aware that the antenna presented a potentially lethal situation. He stated that the station is located in a very remote area and that he had no experience with antennas. Miracle further stated that KAGY(AM) had operated at a \$2,874 loss in 1999 and had been for sale for a lengthy period of time for \$12,500 and that it had just found a buyer. Miracle further stated that the station had generated no income other than small donations and that those had decreased as families moved out of the area.

DEFINITIONS

6. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) The "Commission" means the Federal Communications Commission.
 - (b) The "Bureau" means the Enforcement Bureau of the Commission.
 - (c) The "Order" means the Bureau's order adopting this Consent Decree.
 - (d) "Enforcement Proceeding" means the investigation of alleged rule violations of Miracle culminating in the Notice of Apparent Liability.
 - (e) The "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
 - (f) "Miracle" means Miracle Assembly of God, licensee of radio station KAGY(AM), Buras, Louisiana.
 - (g) "Notice of Apparent Liability" means *Miracle Assembly of God*, NAL/Acct. No. 915OR0005 (released September 30, 1999).

AGREEMENT

7. Miracle acknowledges and agrees that the Commission has jurisdiction over the matters referenced in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

8. Miracle agrees not to contest the statements in the *Notice of Apparent Liability* that Miracle violated Section 73.49 of the Commission's Rules requiring that antennas having radio frequency potential at the base be enclosed with an effectively locked fence or other enclosure, provided that these findings shall not be used by the Bureau against Miracle in any other current or future proceedings before the Bureau, except as set forth in paragraph 14 of this Consent Decree.

9. Miracle and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any violations committed by Miracle arising out of the Enforcement Proceeding, and that it is not to be construed as an admission of the violation by Miracle.

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10. Miracle shall make a voluntary contribution to the United States Treasury in the amount of \$500 within 30 calendar days after the Order adopting this Consent Decree is no longer subject to reconsideration, appeal or review in accordance with the Act and the Commission's Rules.

11. Miracle and the Bureau acknowledge and agree that this Consent Decree shall constitute a final settlement between them.

12. In express reliance upon the covenants and representations contained herein, the Bureau agrees to terminate the Enforcement Proceeding at such time as the Bureau adopts this Consent Decree.

13. Miracle 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 Order adopting this Consent Decree, provided the Order adopts the Consent Decree without modification.

14. In the event that Miracle is found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in paragraph 2 of this Consent Decree, Miracle and the Bureau agree that the apparent misconduct described in paragraph 2 may be used by the Bureau only to fashion an appropriate sanction, provided that Miracle shall not be precluded or estopped from litigating *de novo* any and all of the issues arising from the facts and allegations presented in the NAL as necessary to defend, in any forum, its interest from challenge by any person or entity not a party to this Consent Decree.

15. Miracle and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without modification.

16. Miracle and the Bureau agree that, in the event any court of competent jurisdiction renders this Consent Decree invalid, the Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

17. Miracle and the Bureau agree that, if the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Miracle nor the Commission will contest the validity of the Consent Decree or Order, and Miracle will waive any statutory right to a trial *de novo* with respect to the matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

18. Miracle agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. §§ 1.1501 *et seq.*

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19. Miracle agrees that any violation of the Consent Decree or the Order adopting this Consent Decree will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

20. Any provision of this Consent Decree affected by or inconsistent with any subsequent rule or order adopted by the Commission will be superseded by such Commission rule or order.

21. This Consent Decree may be signed in counterparts.

**FEDERAL COMMUNICATIONS COMMISSION MIRACLE ASSEMBLY OF GOD
ENFORCEMENT BUREAU**

By: _____
David H. Solomon
Chief, Enforcement Bureau
Date:

By: _____
Max Latham, Pastor
Miracle Assembly of God
Date: