

CONSENT DECREE

1. The Enforcement Bureau (the “Bureau”) of the Federal Communications Commission (“Commission” or “FCC”) and Natchez Communications, Inc. (“Natchez”) hereby enter into this Consent Decree for the purpose of terminating forfeiture proceedings arising from an investigation related to Natchez’s alleged failure to paint and light properly the tower for Natchez’s FM radio station WTYJ, Fayette, Mississippi (the “Station”).

BACKGROUND

2. On March 19, 1999, an agent from the FCC’s New Orleans Field Office (“Field Office”) inspected the Station and determined that the Station was not in compliance with the Commission’s Rules (“Rules”) in that the antenna structure registration number was not displayed, the structure’s lights were not functioning and the structure’s paint was faded and chipped such that it no longer provided sufficiently good visibility. On March 31, 1999, the Field Office issued a Notice of Violation (“NOV”) to Natchez citing these deficiencies.

3. Natchez responded to the NOV. On July 8, 1999, the Field Office issued a Notice of Apparent Liability (“NAL”), which proposed imposing a monetary forfeiture of Ten Thousand Dollars (\$10,000) for willful violation of Section 73.1213(b) of the Rules (antenna tower with defective paint and non-functioning lighting).¹ On August 9, 1999, Natchez opposed the NAL on the basis that the violations were not willful and, in the alternative, requested reduction in the forfeiture to \$1,000, citing financial hardship of the Station.

4. On March 3, 2000, the Bureau released its *Forfeiture Order*,² in which it reduced the forfeiture to \$5,000. Natchez sought reconsideration of the Forfeiture Order.

5. On August 17, 2000, the Bureau issued a *Memorandum Opinion and Order* in which it denied Natchez’s petition for reconsideration and affirmed the imposition of the \$5,000 forfeiture.³

6. On September 7, 2000, the Field Office issued a new *Notice of Apparent Liability for Forfeiture* (“NAL II”),⁴ in which it cited Natchez for continuing violations of Sections 17.4(g) and 17.50 of the Rules and concluded that Natchez was apparently liable for a forfeiture of \$16,000. This action was based on a July 21, 2000, inspection of the Station.

7. On September 12, 2000, Natchez reported to the FCC’s Mass Media Bureau that it intended temporarily to cease operation of the Station in order to dismantle the original antenna

¹ 47 C.F.R. § 73.1213(b), which requires broadcast licensees to comply with the FCC’s tower painting and lighting rules. See 47 C.F.R. §§ 17.23 and 17.1213.

² *Natchez Communications, Inc.*, 15 FCC Rcd 4628 (Enf. Bur. 2000).

³ *Natchez Communications, Inc.*, 15 FCC Rcd 18798 (Enf. Bur. 2000) (hereinafter “*Memorandum Opinion and Order*”).

⁴ *Natchez Communications, Inc.* File No. EB-00-OR-134 (Enf. Bur., New OrL. Office, rel. Sept. 7, 2000).

tower that was the subject of the *Forfeiture Order* and move the Station's transmission equipment to a new antenna site and tower.⁵

8. On September 14, 2000, Natchez completed the demolition of the antenna tower that had been the subject of the *Forfeiture Order*.

9. On September 18, 2000, Natchez filed a petition for further reconsideration of the *Forfeiture Order* and the *Memorandum Opinion and Order*.

10. On September 29, 2000, Natchez reported to the FCC that it completed construction of its modified facilities⁶ and had resumed operation of the Station pursuant to program test authority, 17 days after discontinuing operations.

11. Natchez is currently the defendant in a condemnation and ejectment action brought by the Mississippi Department of Transportation ("MDOT"), which seeks to condemn the existing Natchez tower site.⁷ Presently, Natchez has accrued approximately \$50,000 in expenses that it will seek to have reimbursed by MDOT, but for which there is no certainty that MDOT will reimburse. MDOT has informed Natchez that it will have to return to court to obtain reimbursement of such expenses.

DEFINITIONS

12. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) The "Commission" or "FCC" means the Federal Communications Commission.
- (b) The "Bureau" means the Enforcement Bureau of the FCC.
- (c) "Natchez" means Natchez Communications, Inc., a FCC licensee in the FM radio broadcast service.
- (d) "First Enforcement Proceeding" means the investigation of and the series of FCC orders concerning the conduct cited in the *NOV*, culminating with the *Forfeiture Order*.
- (e) "Second Enforcement Proceeding" means the investigation of and the series of FCC orders concerning the conduct cited in the *NAL II*.
- (f) The "Order" means the Bureau's order adopting this Consent Decree.
- (g) The "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
- (h) The "Station" refers to Natchez's FM radio station, WTYJ, Fayette, Mississippi.
- (i) "Effective Date" refers to the date upon which the Order is released by the FCC.

⁵ See File No. BMPH-1990511IE. See also *Public Notice*, Report No. 94078, released July 7, 1999, wherein the Mass Media Bureau approved an application for minor modification of the Station's facilities to relocate the antenna and transmitter to a new tower.

⁶ See File No. BMPH-1990511IE.

⁷ MDOT, through the Mississippi Transportation Commission, moved for a formal ejectment of the Station from its original location. *Mississippi Transportation Commission v. Natchez Communications, Inc.*, Chancery Court of Jefferson County, Mississippi, Cause No. 98-0152.

AGREEMENT

13. Natchez acknowledges and agrees that the Bureau 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.

14. Natchez 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 Natchez arising out of the First and Second Enforcement Proceedings.

15. Natchez shall make a voluntary contribution to the United States Treasury in the amount of \$8,000 (the "Contribution Payment"), payable in installments as follows: (a) \$4,000 within 45 calendar days of the Effective Date; and (b) \$4,000 within 90 days of the Effective Date.

16. Natchez agrees to implement procedures to ensure that the Station's antenna tower remains in compliance with the Rules regarding antenna tower painting and lighting, including contracting for regular maintenance of the new antenna tower, and will secure the antenna tower site to prevent vandalism or other damage to the antenna tower that might prevent the tower from being properly lighted at all times (the "Compliance Program"). Natchez agrees either to maintain a daily log of tower light observations for one year following the Effective Date or present a certification to the FCC that it has installed an automatic alarm system that would notify its staff of tower light outages or other problems. On request, Natchez will make either the daily log or automatic alarm system records available to the FCC.

17. Natchez has participated in the Alternative Broadcast Inspection Program ("ABIP") and received a Certificate of Compliance dated November 20, 2000, following an inspection of the Station facilities. Notwithstanding Natchez's ABIP Certificate of Compliance, the FCC expressly reserves its right to inspect the Station (and related structures) for tower-related violations. Nothing in this Consent Decree and adopting order limit the FCC's right to inspect the Station (and related structures) for Act or Rule violations.

18. Further, Natchez will further designate one Natchez employee as the point of contact for all matters related to the license, and will notify the FCC of this assignment. Natchez hereby designates Diana Nutter, Vice President of Natchez, as the employee initially responsible for the Compliance Program. Natchez shall notify the Enforcement Bureau at such time as a new employee is responsible for the Compliance Program.

19. Natchez and the Bureau acknowledge and agree that this Consent Decree shall constitute a final settlement between them of the First and the Second Enforcement Proceedings.

20. In express reliance on the covenants and representations contained in this Consent Decree, the Bureau agrees to terminate the First and the Second Enforcement Proceedings at such time as the Bureau adopts this Consent Decree.

21. In consideration for the termination of the First and Second Enforcement Proceedings, Natchez agrees to the terms, conditions, and procedures detailed in this Consent Decree.

22. In the absence of material new evidence, the Bureau agrees not to institute, on its own motion, any new proceeding, formal or informal, of any kind against Natchez for the specific violations which are the subject of the First and Second Enforcement Proceedings.

23. In the event that the FCC or its delegated authority find that Natchez violates Sections 17.4(g), 17.50, and 73.1213(b) of the Rules subsequent to the release of this Consent Decree and Order, Natchez agrees that the FCC or its delegated authority may consider the

violations documented in the First and Second Enforcement Proceedings when determining an appropriate sanction.

24. Natchez 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.

25. Natchez 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.

26. Natchez 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.

27. Natchez and the Bureau agree that, if the FCC, or the United States on behalf of the FCC, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Natchez nor the FCC will contest the validity of the Consent Decree or Order, and Natchez 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.

28. Natchez 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.*

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

30. Any provision of this Consent Decree affected by or inconsistent with any subsequent Rule or order adopted by the FCC will be superseded by such FCC Rule or order.

31. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____
David H. Solomon
Chief, Enforcement Bureau

_____ Date

NATCHEZ COMMUNICATIONS, INC.

By: _____
James Nutter
President

_____ Date