

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (“Commission or FCC”) and Fifth Avenue Broadcasting Co., Inc. (“Fifth Avenue”) hereby enter into this Consent Decree for the purpose of terminating a forfeiture proceeding arising from an investigation of Fifth Avenue, for alleged violations of Sections 73.1225(d)(1), 73.1350(a), 73.1690(b)(2), 73.3526(e)(1), and 73.3526(e)(12) of the Commission’s Rules (“Rules”).¹

BACKGROUND

2. On September 14, 2000, the Federal Communications Commission received a complaint that Fifth Avenue had “...re-located its AM transmission site *into another state* without prior Commission authorization...”. The complainant requested “...immediate Commission action to require the termination of the unauthorized and potentially dangerous operations of WCMI(AM).” On September 25, 2000, an FCC agent from the FCC’s Detroit, Michigan Field Office (“Field Office”) monitored Station WCMI(AM) for transmissions. The station, however, was not on the air at the time. On September 26, 2000, the FCC agent conducted an inspection of Station WCMI(AM), and Fifth Avenue’s Stations WGGG(FM), and WRVC-FM. The studios of these stations are co-located in Huntington, West Virginia. As a result of the inspection, it was determined that WCMI(AM) had been operating from an unauthorized location from approximately August 18, 1999, until September 22, 2000. During the inspection, the agent also determined that Fifth Avenue had violated Sections 73.1225(d)(1), 73.1350(a), 73.1690(b)(2), 73.3526(e)(1), and 73.3526(e)(12) of the Rules.

3. On November 20, 2000, the Field Office issued a *Notice of Violation (“NOV”)* to Fifth Avenue regarding WCMI(AM). On December 4, 2000, Fifth Avenue filed a request for an extension of time to reply to the *NOV*. The request was granted, and on December 12, 2000, Fifth Avenue filed a reply. On September 21, 2001, the Field Office issued to Fifth Avenue a *Notice of Apparent Liability for Forfeiture* in the amount of \$20,000 for willful and repeated violations of Sections 73.1225(d)(1), 73.1350(a), 73.1690(b)(2), 73.3526(e)(1), and 73.3526(e)(12) of the Rules. The noted violations involved Fifth Avenue’s failure to maintain records, failure to operate WCMI(AM) according to the terms of the station authorization by constructing and operating from an unauthorized location, failure to file required forms, and failure to maintain a public inspection file.

DEFINITIONS

4. For the purposes of the 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. “Fifth Avenue” means Fifth Avenue Broadcasting Co., Inc., licensee of Stations WCMI(AM), Ashland, Kentucky, WGGG(FM), Ashland, Kentucky, and WRVC-FM, Catlettsburg, Kentucky.
 - d. The “Order” means the Bureau’s order adopting this Consent Decree.
 - e. “Enforcement Proceeding” means the investigation of alleged rule violations by Fifth Avenue culminating in the *Notice of Apparent Liability for Forfeiture*.
 - f. “*Notice of Apparent Liability For Forfeiture*” means *Fifth Broadcasting Co., Inc.*, File No. EB-00-DT-779, NAL/Acct. No. 200132360003 (Enf. Bur., Detroit Office, rel. September 21, 2001).

¹ 47 C.F.R. §§ 73.1225(d)(1), 73.1350(a), 73.1690(b)(2), 73.3526(e)(1), and 73.3526(e)(12).

AGREEMENT

5. Fifth Avenue 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.

6. Fifth Avenue 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 Fifth Avenue arising out of the Enforcement Proceeding, and that it is not to be construed as an admission of any violation by Fifth Avenue.

7. Fifth Avenue and the Bureau agree to the following:

a. Within thirty (30) days of the release date of the Order, Fifth Avenue will make a voluntary contribution to the United States Treasury by paying five (5) equal payments of Two Thousand Dollars (\$2,000.00) for a total of Ten Thousand Dollars (\$10,000.00). The first installment payment will be due thirty (30) days after the Order is released, with each of the four (4) subsequent payments due in thirty (30)-day intervals thereafter.

b. Fifth Avenue will continue to operate pursuant to its existing Compliance Plan which it had put in place upon learning of its violations to ensure that no further violations of the Commission's Rules will occur, with particular attention to those violations set forth in the *Notice of Apparent Liability for Forfeiture*. The Compliance Plan is administered by Fifth Avenue's President and General Manager, with assistance from Fifth Avenue's Operations Director. An outline of the Plan is set forth in Attachment A hereto.

8. Fifth Avenue and the Bureau acknowledge and agree that this Consent Decree will constitute a final settlement between them of the Enforcement Proceeding.

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

10. In consideration for the termination of the Enforcement Proceeding, Fifth Avenue agrees to the terms, conditions, and procedures detailed in this Consent Decree.

11. Fifth Avenue 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.

12. In the event that the Commission or its delegated authority finds that Fifth Avenue violates Sections 73.1225(d)(1), 73.1350(a), 73.1690(b)(2), 73.3526(e)(1) or 73.3526(e)(12) of the Commission's Rules subsequent to the release of this Consent Decree and Order, Fifth Avenue agrees that the Commission or its delegated authority may consider the violations documented in the Enforcement Proceeding when determining an appropriate sanction.

13. Fifth Avenue 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.

14. Fifth Avenue 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.

15. Fifth Avenue 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 Fifth Avenue nor the Commission will contest the validity of the Consent Decree or Order and Fifth Avenue 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.

16. Fifth Avenue agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Sections 1.1501 *et seq.*

17. Fifth Avenue 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 or remedies attendant to the enforcement of a Commission order.

18. 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.

19. Fifth Avenue and the Bureau agree to be bound by the terms and conditions stated in this Consent Decree.

20. Fifth Avenue and the Bureau agree that the terms and conditions of this Consent Decree shall remain in effect for a period of twenty-four (24) months, which shall begin on the release date of the Order.

21. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____

Date: _____

David H. Solomon

Chief, Enforcement Bureau

FIFTH AVENUE BROADCASTING CO., INC.

By: _____

Date: _____

Richard Michael Kirtner, President

Attachment A

OUTLINE **FIFTH AVENUE BROADCASTING CO., INC.** **TWO-YEAR COMPLIANCE PROGRAM**

The primary purpose of this Compliance Program (the “Program”) is to ensure for Fifth Avenue Broadcasting Co., Inc. (“Fifth Avenue”) that an effective and meaningful procedure is in place to detect and prevent Fifth Avenue’s violation of the FCC Rules pertaining to the operation of its radio broadcast stations, with particular attention directed to the matters relating to the following specified FCC Rules:

- Operation and modification of station transmission facilities in accordance with station authorizations and filing appropriate applications for same [Sections 73.1350(a) and 73.1690(b)(2)].
- Maintenance of station authorizations and contour maps in appropriate station local public inspection files [Sections 73.3526(e)(1) and (4)].
- Organization and maintenance of issues/programs lists and placement in the appropriate station local public inspection files [Section 73.3526(e)(12)].
- Maintenance of required records, such as, the logging of antenna impedance measurements and maintenance of separate binders in accessible locations at station transmitter sites and main studio locations [Section 73.1225(d)(1)].

Specifically, in order to effectuate these goals, the following procedures will be adopted: During each year of the Program’s two (2)-year period, the Kentucky Broadcasters Association (“KBA”), under contract with Fifth Avenue, will conduct an inspection of station operations. Fifth Avenue will forward the results of such inspections (including reports of noncompliance) to the Director of the FCC Detroit Field Office. Fifth Avenue will also place copies of the inspection reports in its local public records file and copies will be retained by Fifth Avenue’s President/General Manager, Director of Operations and key station staff personnel familiar with the KBA inspections and the FCC Rules and procedures reviewed in those inspections.

In addition to the KBA annual inspections, Fifth Avenue will conduct its own monthly compliance checks to ensure that all appropriate FCC Rules, including but not limited to those listed above, are being met. The monthly checks will end when Fifth Avenue has completed twelve (12) consecutive monthly checks that indicate complete compliance. For the next twelve (12) months, and also subsequent to the two (2)-year Program, Fifth Avenue will conduct its own checks on a random basis. Finally, Fifth Avenue will conduct both during and after the Program period, an annual training program for its employees to review Fifth Avenue’s standards and the FCC Rules applicable to station operations.

Fifth Avenue is committed to full and complete compliance with FCC Rules, and in order to ensure compliance, it will incorporate this Program into its operational practices. Ultimate responsibility for the administration of the Program is to be held by Fifth Avenue’s President/General Manager. Responsibility for the day-to-day supervision of the Program is to be held by Fifth Avenue’s recently-named management-level Director of Operations, and by Fifth Avenue’s consulting engineer, both of whom are to report regularly to Fifth Avenue’s President/General Manager about the results of the Program.