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

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|---|---|---|
| In the Matter of | ) | File Nos. BMPH-20000505AAI |
| | ) | BLH-20030430ADP |
| **Roy E. Henderson d/b/a Fife Lake Broadcasting** | ) | BMPH-20030617ABC |
| | ) | FRN: 0006187835 |
| Permittee of Station WTCU(FM) | ) | Facility ID No. 88723 |
| Fife Lake, Michigan | ) | |
| | ) | |
| | ) | |

**ORDER**

**Adopted: January 23, 2004** **Released: January 30, 2004**

By the Chief, Media Bureau:

1. In this *Order*, we adopt the attached Consent Decree entered into between the Media Bureau and Roy E. Henderson d/b/a Fife Lake Broadcasting ("FLB"). The Consent Decree resolves issues concerning whether FLB misrepresented facts to, or lacked candor with, the Commission regarding Station WTCU(FM) in violation of Sections 1.17 and/or 73.1015 of the Commission's rules.[1]

2. The Consent Decree provides, among other things, that FLB will surrender for cancellation its authorization for Station WTCU(FM) and make a $20,000 voluntary contribution to the United States Treasury.

3. Based upon the record before us, we conclude that no substantial or material questions of fact exist as to whether FLB possesses the basic qualifications, including those related to character, to hold any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, which is incorporated herein by reference, we believe that the public interest will be served by adopting the Consent Decree.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) and (j) of the Communications Act of 1934, as amended,[2] and Sections 0.61 and 0.283 of the Commission's rules,[3] the Consent Decree attached to this *Order* **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the permit for Station WTCU(FM), Fife Lake, Michigan (File No. BMPH-20000505AAI) is cancelled, the call sign WTCU(FM) is deleted, and the license to cover application (File No. BLH-20030430ADP) and the application to modify the WTCU(FM) permit (File No. BMPH-20030617ABC) are dismissed.

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[1] 47 C.F.R. §§ 1.17, 73.1015.

[2] 47 U.S.C. §4(i) and (j).

[3] 47 C.F.R §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that FLB shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note FRN 0006187835.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by certified mail, return receipt requested, to Roy E. Henderson, Fife Lake Broadcasting, 1110 West William Cannon Dr., Suite 402, Austin, Texas 78745 and its counsel, Lauren A. Colby, Esq., Law Offices of Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland, 21701.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

# CONSENT DECREE

## I. Introduction

1. The Media Bureau of the Federal Communications Commission and Roy E. Henderson d/b/a Fife Lake Broadcasting hereby enter into a Consent Decree resolving possible violations of Sections 1.17 and/or 73.1015 of the Commission's rules relating to the operation of Station WTCU(FM), Fife Lake, Michigan.[1]

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

(a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*;

(b) "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree;

(c) "Bureau" means the FCC's Media Bureau;

(d) "Commission" or "FCC" means the Federal Communications Commission;

(e) "Execution Date" means the date on which this Consent Agreement is executed by the Parties;

(f) "Parties" means Fife Lake Broadcasting and the Bureau, each being a separate "Party;"

(g) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations;

(h) "FLB" means Fife Lake Broadcasting, permittee of Station WTCU(FM), Fife Lake, Michigan; and

(i) "Henderson" means Roy E. Henderson, the 100 percent sole proprietor of FLB;

## II. Background

3. FLB was issued a construction permit for a new FM broadcast station at Fife Lake, Michigan, and the call letters WTCU were assigned to the station. Subsequently, FLB filed an application for a license to cover the construction permit ("License Application").[2] As the result of a petition to deny the License Application filed by MacDonald Garber Broadcasting, Inc., which alleged, *inter alia*, misrepresentation and/or lack of candor with the Commission concerning construction of Station WTCU(FM), the Bureau issued a letter of inquiry to FLB.[3]

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[1] 47 C.F.R. §§ 1.17, 73.1015.

[2] File No. BLH-20030430ADP.

[3] *See* Letter of Inquiry from Peter H. Doyle, Chief, Audio Division, Media Bureau to Roy E. Henderson d/b/a Fife Lake Broadcasting, dated Oct. 6, 2003.

## III. Terms of Settlement

4. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order.

5. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon such release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

6. FLB agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the matters that are subject to this Consent Decree.

8. The Bureau and FLB agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Act or the Commission's rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, FLB does not admit or deny any liability for violating the Act or Commission rules in connection with the matters that are the subject of this Consent Decree.

9. FLB agrees to surrender for cancellation the permit for Station WTCU(FM), Fife Lake, Michigan (FCC Facility ID No. 88723),[4] and to request the dismissal of all of its applications and pleadings currently pending before the Commission regarding the station, including its License Application and its application to modify the WTCU(FM) permit to specify a different tower site,[5] within five business days from the Execution Date.

10. Additionally, FLB will make a voluntary contribution to the United States Treasury in the amount of $20,000.00 within thirty days from the release of the Adopting Order. In the event that the Adopting Order is changed materially on review, FLB will have the option to withdraw from the Consent Decree and have its $20,000.00 contribution refunded.

11. FLB agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that FLB fails to satisfy any condition or Commission rule, in the absence of Commission alteration of the condition or rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

12. The Bureau agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the Execution Date of this Consent Decree or the existence of this Consent Decree to recommend to the Enforcement Bureau or the Commission any proceeding, formal or informal, with respect to FLB's basic qualifications, including its character qualifications, to be or continue to be a Commission licensee. The Parties agree that nothing in this Consent Decree shall prevent the Bureau from recommending to the Enforcement Bureau or the

[4] File No. BMPH-20000505AAI.

[5] File No. BMPH-20030617ABC.

Commission, new investigations or enforcement proceedings against FLB or any entity in which it or Henderson holds an interest, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's rules as consistent with the provisions of this Consent Decree.

13. FLB 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, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

14. Any violation of this Consent Decree or the Adopting Order 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.

15. If either Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, neither FLB nor the FCC shall contest the continuing validity of the Consent Decree or Adopting Order. FLB retains the right to challenge the Bureau's interpretation of the Consent Decree or any terms contained therein.

16. FLB hereby 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.*, relating to the matters covered by this Consent Decree.

17. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

18. The Parties agree that any provision of this Consent Decree that would require FLB to act in violation of a future rule or order adopted by the Commission will be superseded by such Commission rule or order.

19. This Consent Decree may be signed in counterparts.

For the Media Bureau:

W. Kenneth Ferree
Chief, Media Bureau

1/23/04
Date

Fife Lake Broadcasting:

Roy E. Henderson d/b/a
Fife Lake Broadcasting

Date

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For the Media Bureau:

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| W. Kenneth Ferree<br>Chief, Media Bureau | Date |

Fife Lake Broadcasting:

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|---|---|
| Roy E. Henderson d/b/a<br>Fife Lake Broadcasting | 1/22/2004<br>Date |