

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

In the Matter of	)	
	)	
<b>CAPITOL BROADCASTING COMPANY,</b>	)	NAL/Acct. No. 200532080005
<b>INC.</b>	)	File No. EB-04-IH-0048
	)	FRN No. 1961713

**ORDER**

**Adopted: October 21, 2004**

**Released: October 22, 2004**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau has been investigating whether Capitol Broadcasting Company, Inc. (“Capitol”), licensee of various television broadcast stations, disclosed information about its bids or bidding strategies in advance of the Commission’s auction of Multi-Channel Video Distribution and Data Service licenses, held between January 14 and 27, 2004 (“Auction No. 53”), in violation of the Commission’s auction anti-collusion rule, 47 C.F.R. § 1.2105(c).

2. The Bureau and Capitol have negotiated the terms of a Consent Decree, a copy of which is attached hereto and incorporated by reference. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the captioned investigation involving Capitol’s conduct in Auction No. 53.

3 Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>1</sup> that the attached Consent Decree IS ADOPTED.

4. IT IS FURTHER ORDERED that the above-captioned investigation involving Capitol IS TERMINATED.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>1</sup> 47 U.S.C. § 154(i).

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and Capitol Broadcasting Company, Inc. hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation of Capitol Broadcasting's compliance with the Commission's auction anti-collusion rule, section 1.2105(c), 47.C.F.R. § 1.2105(c).
2. For the purposes of this Consent Decree, the following definitions shall apply:
  - a. "Commission" means the Federal Communications Commission.
  - b. "Bureau" means the Enforcement Bureau of the Commission.
  - c. "Capitol Broadcasting" means Capitol Broadcasting Company, Inc., any affiliate, d/b/a, predecessor-in-interest, parent company, any wholly or partially owned subsidiary or other affiliated company or business, and their respective successors and assigns.
  - d. "Parties" means Capitol Broadcasting and the Bureau, collectively, and "Party" means Capitol Broadcasting or the Bureau, individually.
  - e. "Order" or "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - f. "Effective Date" means the date on which the Bureau releases the Adopting Order.
  - g. "Auction No. 53" means the Commission's auction of Multichannel Video Distribution and Data Service licenses, conducted between January 14 and 27, 2004.
  - h. "Inquiry" means the Bureau's investigation of Capitol Broadcasting's compliance with Section 1.2105(c) of the Commission's rules in connection with Auction No. 53.

**I. BACKGROUND**

3. On November 12, 2003, Capitol Broadcasting filed an application with the Commission on FCC Form 175 (Application to Participate in an FCC Auction) to participate in Auction No. 53 and represented therein that it intended to bid for all 214 licenses that were to be the subject of the auction. By *Multichannel Video Distribution and Data Service Spectrum Auction*, Public Notice, 18 FCC Rcd 26,068 (WTB 2003), at Attachment A, the Commission's Wireless Telecommunications Bureau certified Capitol Broadcasting as a qualified bidder in Auction No. 53.
4. In January 2004, in his capacity as Vice President, Special Projects of Capitol Broadcasting, John L. Greene gave an interview to a reporter for *Broadcasting & Cable*, a trade industry publication, regarding Capitol Broadcasting's planned participation in Auction No. 53. In response to questions from the reporter, Mr. Greene indicated that

Capitol Broadcasting's interest in the auction was principally in geographic areas served by its television broadcast facilities in North Carolina and South Carolina. This information was published in the January 5, 2004, edition of *Broadcasting & Cable*.

5. By letter dated January 12, 2004, filed pursuant to Section 1.2105(c)(6) of the Commission's rules, 47 C.F.R. § 1.2105(c)(6), Capitol Broadcasting informed the Commission of Mr. Greene's interview and the resulting published article. Following receipt of that filing, upon referral by the Wireless Telecommunications Bureau, the Bureau commenced the Inquiry to determine whether, as a result of Mr. Greene's published interview in *Broadcasting and Cable*, Capitol had disclosed information about its bids or bidding strategies, in violation of the Commission's auction anti-collusion rule, 47 C.F.R. § 1.2105(c).

## II. AGREEMENT

6. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau by incorporation of such provisions by reference in an Adopting Order.
7. Capitol Broadcasting acknowledges that the Commission has jurisdiction to enforce the provisions of section 1.2105 of the Commission's rules, 47 C.F.R. § 1.2105.
8. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Bureau, and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission or the Bureau, pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.
9. The Parties agree that this Consent Decree and Capitol Broadcasting's voluntary contribution pursuant to Paragraph 12 hereto do not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Capitol Broadcasting with the requirements of the Act or the Commission's rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that, by agreeing to this Consent Decree, Capitol Broadcasting does not admit to or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.
10. As part of the Adopting Order, the Bureau will terminate its Inquiry. From and after the Effective Date, in the absence of the discovery of material new information not previously disclosed to the Bureau by Capitol Broadcasting, the Bureau will not, either on its own motion or in response to any petition, third-party objection, complaint or other information, initiate any inquiries, investigations, forfeiture proceedings, hearings or other actions, formal or informal, against Capitol Broadcasting for the alleged violation of the rules that was the subject of the Inquiry or use the facts developed in the Inquiry through the Effective Date or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Capitol Broadcasting concerning the matters that were the subject of the Inquiry. The Bureau also will not use the underlying facts or conduct relating to any of the

foregoing for any purpose relating to Capitol Broadcasting, and shall treat all such matters as null and void for all purposes.

11. In consideration for the termination by the Bureau of its Inquiry in accordance with the terms of this Consent Decree, Capitol Broadcasting agrees to the terms, conditions and procedures contained herein.
12. Capitol Broadcasting agrees that it shall, within thirty (30) calendar days after the Effective Date, make a voluntary contribution to the United States Treasury in the amount of ten thousand dollars (\$10,000). The payment shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL Acct. No. and the FRN No. referenced in the Adopting Order. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8<sup>th</sup> Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.
13. Capitol Broadcasting agrees, to the extent it has not already done so, to implement a Compliance Program, a copy of which is appended hereto, within thirty (30) calendar days of the Effective Date. Capitol Broadcasting further agrees that such Compliance Plan shall continue in effect for a period of not less than three (3) years thereafter.
14. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating material new evidence of noncompliance by Capitol Broadcasting of the Act, the rules, or this Order.
15. Capitol Broadcasting 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 that the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Capitol Broadcasting shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.
16. Capitol Broadcasting's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.
17. In the event that this Consent Decree 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.
18. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Capitol Broadcasting nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Capitol Broadcasting shall waive any statutory right to a trial *de novo*. Capitol Broadcasting shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.

19. Capitol Broadcasting agrees that any violation by it of the Consent Decree or the Adopting Order shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies authorized by law attendant to the enforcement of a Commission order.
20. 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 Capitol Broadcasting does not consent), that provision will be superseded by such Commission rule or order.
21. Capitol Broadcasting 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 addressed in this Consent Decree.
22. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.
23. This Consent Decree may be signed in counterparts.

**ENFORCEMENT BUREAU**

\_\_\_\_\_  
David H. Solomon  
Chief, Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

**CAPITOL BROADCASTING COMPANY,  
INC.**

\_\_\_\_\_  
James F. Goodmon  
President and CEO  
Capitol Broadcasting Company, Inc.

\_\_\_\_\_  
Date

**ATTACHMENT****COMPLIANCE PLAN OF CAPITOL BROADCASTING COMPANY, INC.**

1. Capitol Broadcasting shall implement a formal, comprehensive compliance program (the "Compliance Program") for the education of all officers, employees, contractors, consultants and any other persons or entities who have or will have responsibilities for or on behalf of Capitol Broadcasting relating to the participation by Capitol Broadcasting in FCC-conducted auctions (collectively, "Auctions Personnel"). The purpose of the Compliance Program is to ensure compliance by Capitol Broadcasting with all applicable auction-related rules and regulations of the Federal Communications Commission and the prompt reporting of possible violations thereof, including, but not limited to, the auction anti-collusion provisions of Section 1.2105(c) of the Commission's rules, 47 C.F.R. § 1.2105(c). Capitol Broadcasting may at its own discretion terminate the Compliance Program after three (3) years from the date of its implementation.
  
2. The head of Capitol Broadcasting's corporate compliance shall administer the Compliance Program (the "Administrator"). The Administrator shall establish and maintain a monitoring and evaluation scheme to oversee mandatory participation in the Compliance Program prior to the assumption of auction-related duties by Auctions Personnel. The Administrator shall require written certification from Auctions Personnel that each has read, understands and agrees to abide by the terms of the Consent Decree and the Commission's auction-related rules and regulations. The Administrator shall further maintain auditable records and shall produce such records within ten (10) calendar days upon written request of the Commission. The Administrator shall have primary responsibility for compliance by Capitol Broadcasting with Section 1.2105(c) of the Commission's rules and will provide a copy to the Bureau of any notification filed by Capitol Broadcasting pursuant to Section 1.2105(c)(6) of the Commission's rules at the time of such filing with the Commission's Wireless Telecommunications Bureau.