

**CONSENT DECREE****I. INTRODUCTION**

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission and Brevard Youth Education Broadcasting Corporation, licensee of noncommercial educational FM Station WCEE-LP, Melbourne, Florida.

**II. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- a) “Brevard” refers to Brevard Youth Education Broadcasting Corporation, and its successors and assigns;
  - b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
  - c) “Parties” means the Bureau and Brevard;
  - d) “Commission” or “FCC” means the Federal Communications Commission;
  - e) “Station” means noncommercial educational FM Station WCEE-LP (Facility ID No. 13563), licensed to Melbourne, Florida;
  - f) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*;
  - g) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;
  - h) “Underwriting Laws” means section 399B of the Communications Act of 1934, 47 U.S.C. § 399B, and section 73.503(d) of the Commission’s rules, 47 C.F.R. § 73.503(d);
  - i) “Complaints” mean third-party complaints received by, or in the possession of, the Bureau alleging violation of the Underwriting Laws by Brevard, dated September 10 and December 12, 2003;
  - j) “Investigation” means the investigation of the allegations contained in the Complaints, including the letters of inquiry from the Bureau to Brevard, dated November 19, 2003, and April 8, 2004;
  - k) “Order” means an order of the Enforcement Bureau adopting this Consent Decree;
  - l) “Final Order” means the status of the Order after the period for

administrative and judicial review has lapsed; and

m) "Effective Date" means the date on which the Bureau releases the Order.

### **III. BACKGROUND**

3. The Bureau received the Complaints alleging that Brevard has broadcast certain material in violation of the Underwriting Laws over the Station. The Bureau thereafter commenced the Investigation to determine whether Brevard violated the Underwriting Laws in connection with such broadcasts.

4. Brevard has acknowledged that its broadcasts violated the Underwriting Laws and has committed to complete the remedial measures and other undertakings contemplated by this Consent Decree.

### **IV. AGREEMENT**

5. Brevard and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Brevard and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. Brevard agrees that the Commission has jurisdiction over the matters contained in this Consent Decree.

6. 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 Order.

7. The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Order and this Consent Decree shall have the same force and effect as any other order of the Bureau and any violation of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Bureau order.

8. Both the Bureau and Brevard acknowledge that any proceeding that might result from the Investigation will be time consuming and will require the expenditure of public and private resources.

9. As part of the Order, the Bureau shall terminate the Investigation and shall dismiss with prejudice the Complaints. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Brevard, or the Station, based in whole or in part on (i) the Investigation, (ii) the Complaints, (iii) any other similar complaints alleging violation by Brevard of the Underwriting Laws, with respect to any broadcast of any of the announcements specified in the Complaints occurring prior to the Effective Date, or (iv) the allegations contained in any of the foregoing. The Bureau agrees that, in the absence of material new evidence, it will not, on its own motion, initiate or recommend to the Commission, any new

proceeding, formal or informal, regarding the matters discussed in paragraph 3, above, with regard to broadcasts prior to the Effective Date. The Bureau further agrees that, in the absence of material new evidence, it will not use the facts developed in this Investigation prior to the Effective Date to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion against Brevard with respect to its basic qualifications to be or remain a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against Brevard, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Rules, consistent with the provisions of this Consent Decree.

10. Brevard admits, solely for the purpose of this Consent Decree and for FCC civil enforcement purposes, and in express reliance on the provisions of paragraph 9 hereof, that its broadcasts of the underwriting announcements at issue in the Investigation are in violation of the Underwriting Laws. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree is breached by the Bureau, or is invalidated or modified to Brevard's prejudice by the Commission or by any court, then the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Brevard shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning any announcements broadcast on the Station.

11. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Bureau's Investigation of the matters discussed in paragraph 3, above.

12. In consideration of the Bureau's termination of its Investigation into these matters, Brevard agrees to the terms set forth herein.

13. Brevard will make a voluntary contribution to the United States Treasury in the amount of One Thousand Dollars (\$1,000) within five (5) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN referenced above. 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.

14. As a further condition to this Consent Decree, Brevard will institute and follow the terms of the Compliance Plan identified in the Attachment to this Consent Decree within thirty (30) days of the Effective Date.

15. Brevard 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 Brevard fails to satisfy any condition, in the absence of Bureau alteration of the condition, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, designation of the matter for hearing, letters of admonishment, or forfeitures.

16. Brevard 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, provided that the Order adopts the Consent Decree without change, addition or modification.

17. Brevard 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 discussed in this Consent Decree.

18. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, neither Brevard nor the FCC shall contest the continuing validity of the Consent Decree or Order. Brevard and the Bureau further agree that they will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

19. 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.

20. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

ENFORCEMENT BUREAU  
FEDERAL COMMUNICATIONS COMMISSION

\_\_\_\_\_  
David H. Solomon, Chief

\_\_\_\_\_  
Date

BREVARD YOUTH EDUCATION BROADCASTING CORPORATION

\_\_\_\_\_  
Randy Bennett, President

\_\_\_\_\_  
Date

**Compliance Plan**

To ensure Station WCEE-LP's full compliance with the Underwriting Laws, Brevard will do the following:

1. Brevard will establish and maintain a review procedure for underwriting content to be aired over Station WCEE-LP, Melbourne, Florida. All scripts of announcements will be reviewed, prior to broadcast, for compliance with the Underwriting Laws.
2. Any new employee hired by Brevard will be trained on acceptable underwriting content that complies with the Underwriting Laws. In addition, Brevard's employees will be required to educate themselves on an annual basis regarding any new guidelines or changes to the Underwriting Laws.
3. Brevard will also implement and maintain a plan to educate prospective clients about appropriate underwriting content and the Underwriting Laws. To that end, it will provide a written overview of the Underwriting Laws to each client before it accepts any contract with the client to air material over Station WCEE-LP. Brevard will not accept any announcement that does not comply with the Underwriting Laws.