

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

In the Matter of	)	
	)	File No. EB-04-TC-149
Fort Myers Broadcasting Company.	)	NAL/Acct. No. 200732170044
Licensee of WINK-TV	)	FRN: 0004078098
Fort Myers, Florida	)	

**ORDER**

**Adopted: February 5, 2007**

**Released: February 5, 2007**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau, and Fort Myers Broadcasting Company ("FMBC"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau regarding whether FMBC violated section 713 of the Communications Act of 1934, as amended (the "Act"),<sup>1</sup> and section 79.2(b)(1)(i) of the Commission's rules<sup>2</sup> by failing to make accessible to persons with hearing disabilities emergency information that it provided aurally in its programming for WINK-TV during Hurricane Charley, in the Fort Myers-Naples Designated Market Area on August 13, 2004.

2. The Enforcement Bureau and FMBC have negotiated the terms of a Consent Decree that resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether FMBC possess the basic qualifications, including character qualifications, to remain a Commission licensee.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>3</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,<sup>4</sup> that the attached Consent Decree **IS ADOPTED**.

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<sup>1</sup> 47 U.S.C. § 613.

<sup>2</sup> 47 C.F.R. § 79.2(b)(1)(i).

<sup>3</sup> 47 U.S.C. § 154(i).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein is terminated.

6. **IT IS FURTHER ORDERED** that copies of this order shall be sent by regular first class mail and certified mail - return receipt requested to Joseph A. Belisle, Leibowitz & Associates, P.A., One SE Third Avenue, Suite 1450. Miami, FL 33131-1715.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

<sup>2</sup> 47 C.F.R. § 79.2(b)(1)(i).

- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
- (c) “Commission” or “FCC” means the Federal Communications Commission;
- (d) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- (e) “Extended news coverage of an emergency condition” means news programming of one half hour or greater duration, other than WINK-TV’s regularly scheduled news programming, during which emergency information, as defined in section 79.2 of the Commission’s rules, is provided;
- (f) “Investigation” means the investigation of the Station’s broadcasts on August 12 and 13, 2004;
- (g) “FMBC” or the “Company” means Fort Myers Broadcasting Company, licensee of WINK-TV, Fort Myers, Florida, and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses, and their successors and assigns;
- (h) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation;
- (i) “Parties” means FMBC and the Bureau;
- (j) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations; and
- (k) “Station” or “WINK-TV” means Fort Myers Broadcasting Company’s station WINK-TV, Facility ID. No. 22093, serving the Fort Myers-Naples Designated Market Area.

#### IV. AGREEMENT

4. FMBC agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

5. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Investigation. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, FMBC agrees to the terms, conditions, and procedures contained herein.

6. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance by FMBC with the requirements of the Act and the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, FMBC does not admit or deny any non-compliance or violation of the Act or the Commission rules in connection with the matters that are the subject of this Consent

Decree.

7. 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.

8. The parties agree that this Consent Decree shall become effective on the Effective Date and shall have the same force and effect as any other order of the Commission. Any violation of the terms of this Consent Decree shall 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.

9. The Bureau agrees that it shall terminate the Investigation. The Bureau agrees that, in the absence of new material evidence, it will not on its own motion initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against FMBC, based in whole or in part on the Investigation or any complaints alleging violations of section 79.2 relating to the coverage FMBC provided of Hurricane Charley on August 12 and 13, 2004.

10. In consideration for the termination of the Investigation, the Station will implement within 30 days of the Effective Date and maintain the following Emergency Visual Presentation Policy, which will be overseen by the Station's News Director:

(a) It shall be the policy of the station to close caption the regularly scheduled local news and emergency information set forth below. Pursuant to this policy, the Station will contract with a reputable real-time closed captioning service provider to obtain real-time closed captioning for the said regularly scheduled local news and emergency information presented on WINK-TV:

(1) Monday- Friday News Broadcast at 6 a.m., 12 p.m., 5 p.m., 5:30 p.m., 6 p.m., and 11 p.m.;

(2) Saturday News at 6 p.m. and 11 p.m.;

(3) Sunday News at 6:30 p.m. and 11 p.m.; and,

(4) Any "extended news coverage of an emergency condition" affecting the Fort-Myers-Naples Designated Market Areas.

(b) It shall be the policy of WINK to close caption all emergency information broadcast outside a regularly scheduled newscast if such information is conveyed via the Station's audio. However, pursuant to the Emergency Visual Presentation Policy, if captioning services are not immediately available or if captioning services cannot be immediately secured, WINK will make the critical details of the emergency information accessible by other visual means, such as crawls, scrolls, or handwriting on a blackboard, and will continue to do so until captioning begins. In any event, captioning must be provided as set forth above, within the first thirty (30) minutes of any "extended news coverage of an emergency condition." Emergency information will include any information relating to an imminent or ongoing emergency, as described in section 79.2 of the Commission's rules, affecting WINK's viewers that is intended to protect life, health, or property;

(c) Pursuant to the Emergency Visual Presentation Policy, WINK will promptly commence captioning, or contact its captioning service, before or contemporaneously with any broadcast coverage of a pending or imminent emergency that endangers the

Station's viewers and will make its best reasonable efforts to ensure that coverage of the emergency is captioned as soon as possible. As set forth above, captioning must be provided within the first thirty (30) minutes of any "extended news coverage of an emergency condition." Consistent with section 79.2 of the Commission's rules, during any time that captioning is not immediately available to caption the newscast or breaking news report, WINK will make the critical details of the emergency information accessible by other visual means, such as crawls, scrolls, or handwriting on a blackboard;

(d) The telephones used by the Station's general manager, news director, program production manager and executive producers shall have speed dialing capability and the direct dial telephone number of the Stations' captioning service shall be programmed into the speed dialing function of each such telephone;

(e) The Station will distribute, at least every six (6) months, the Station's Emergency Visual Presentation Policy to all News Room and Master Control employees;

(f) The Station will incorporate the Station's Emergency Visual Presentation Policy into the Station's annual news employee training session;

(g) FMBC shall consult with organizations representing deaf and hard of hearing persons on a yearly basis as part of the ongoing assessment of how the Station is meeting the needs of its hearing impaired viewers. These consultations will include discussions of how the station can best serve the needs of the hearing impaired viewers for emergency information; and

(h) Each year, on or before the commencement of the hurricane season, the Station's management shall review with the Station's News Room and Master Control staff Emergency Visual Presentation Policy procedures and processes to ensure the Station is prepared to provide emergency information to hearing impaired viewers.

11. In consideration for the termination of the Investigation, and in accordance with the terms of this Consent Decree, FMBC will make a voluntary contribution to the United States Treasury without further protest or recourse to a trial de novo in the amount of twenty thousand dollars (\$20,000) within thirty (30) calendar days after the Effective Date. FMBC must make this payment 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 358340 Pittsburgh, Pennsylvania, 15251. Payment by overnight mail may be sent to Mellon Client Service, 500 Ross Street, Room 670, Pittsburgh, PA, 15262-0001, Atten: FCC Module Supervisor. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Please include your NAL/Acct No. with your wire transfer.

12. FMBC'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 or modification.

13. FMBC 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 the Bureau issues an Order adopting the Consent Decree without change, addition or modification.

14. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the

terms of the Order, neither FMBC nor the FCC shall contest the continuing validity of the Consent Decree or Order. FMBC and the Commission 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.

15. 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.

16. The Parties agree that if any provision of this 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 FMBC does not consent), that provision will be superseded by such Commission rule or order.

17. By this Consent Decree, FMBC does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

18. The Parties agree that the requirements of this Consent Decree shall expire thirty-six (36) months from the Effective Date.

19. 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.

For the Enforcement Bureau

For Fort Myers Broadcasting Company

By: \_\_\_\_\_  
Kris Anne Monteith  
Chief

By: \_\_\_\_\_  
Gary Gardner  
Vice President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date