

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

In the Matter of)	File No. EB-08-IH-0582
)	
GAP BROADCASTING, LLC)	NAL/Acct. No. 200932080003
)	FRN No. 0015495955
Applicant for FM Broadcast Construction)	
Permits in Auction 70)	

ORDER

Adopted: October 14, 2008

Released: October 14, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and GAP Broadcasting, LLC (“GAP Broadcasting”), an applicant for FM broadcast construction permits in Auction 70. The Consent Decree terminates an investigation by the Bureau into compliance by GAP Broadcasting with Sections 1.2105(c)(1) and (c)(6) of the Commission’s rules,¹ relating to collusive conduct.

2. The Bureau and GAP Broadcasting have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. 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 GAP Broadcasting possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ See 47 C.F.R. § 1.2105(c)(1) and (c)(6).

² 47 U.S.C. § 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Howard M. Liberman, Esquire, Drinker Biddle & Reath, LLP, 1500 K Street, N.W., Suite 1100, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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Applicant for FM Broadcast Construction)	
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CONSENT DECREE

1. The Enforcement Bureau and GAP Broadcasting, LLC, a Florida limited liability company, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into compliance by GAP Broadcasting, LLC, with Sections 1.2105(c)(1) and (c)(6) of the Commission's Rules,¹ relating to collusive conduct.

I. DEFINITIONS

2. For the 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) "Auction 70" means the Federal Communications Commission's auction of certain construction permits in the FM Broadcast service for stations throughout the United States, held from March 7 through March 26, 2007.
- (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
- (e) "Compliance Plan" means the program described in this Consent Decree at paragraph 10.
- (f) "Effective Date" means the date on which the Commission releases the Adopting Order.
- (g) "Investigation" means the investigation commenced by the Bureau's February 28, 2008, Letter of Inquiry² relating to GAP Broadcasting's compliance with Section 1.2105(c) of the Commission's Rules.
- (h) "GAP Broadcasting" means GAP Broadcasting, LLC and its predecessors-in-interest and successors-in-interest.
- (i) "KM Communications" means KM Communications, Inc.

¹ See 47 C.F.R. § 1.2105(c)(1) and (c)(6).

² See Letter from Gary Schonman, Acting Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to GAP Broadcasting, LLC, dated February 28, 2008 ("LOI").

- (j) “MB” means the FCC’s Media Bureau.
- (k) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (l) “Parties” means GAP Broadcasting and the Bureau.
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “WTB” means the FCC’s Wireless Telecommunications Bureau.

II. BACKGROUND

3. Section 1.2105(c)(1) of the Commission’s Rules states, in pertinent part:

[A]fter the [FCC Form 175] short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other’s, or any other competing applicants’ bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder’s short-form application³

In addition, Section 1.2105(c)(6) of the Commission’s Rules requires “[a]ny applicant that makes or receives a communication of bids or bidding strategies prohibited under [Section 1.2105(c)(1) of the Commission’s Rules] shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.”⁴

4. On November 2, 2006, WTB and MB announced procedures governing Auction 70.⁵ Pursuant to the *Auction 70 Procedures Public Notice*, GAP Broadcasting and KM Communications each timely submitted a short-form application to participate in Auction 70 and to bid for all 120 construction permits offered in the auction.

5. GAP Broadcasting concedes that, on March 23, 2007, after both GAP Broadcasting and KM Communications had placed bids for the Eldorado, Texas, construction permit and while bidding in Auction 70 was still underway, GAP Broadcasting’s Managing Member, George Laughlin, placed a telephone call to KM Communications for the purpose of determining whether KM Communications would be amenable to selling any of its radio stations to GAP Broadcasting.⁶ During the conversation, Mr. Laughlin stated that GAP Broadcasting no longer intended to place bids for the Eldorado, Texas construction permit. GAP Broadcasting states that neither it nor Mr. Laughlin was a member of any bidding consortium or other joint arrangement in Auction 70 with KM Communications. Further, GAP

³ 47 C.F.R. § 1.2105(c)(1).

⁴ 47 C.F.R. § 1.2105(c)(6).

⁵ See *Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007: Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 70*, AU Docket No. 06-170, Public Notice, 21 FCC Rcd 12957 (WTB/MB 2006) (“*Auction 70 Procedures Public Notice*”).

⁶ See Letter from George Laughlin, Managing Member, GAP Broadcasting, LLC, to Marlene H. Dortch, Secretary Federal Communications Commission, dated March 10, 2008 (“*LOI Response*”).

Broadcasting acknowledges that it did not contemporaneously disclose the telephone call to the Commission.⁷

III. TERMS OF AGREEMENT

6. **Adopting Order.** 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 the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** GAP Broadcasting agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or 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 Commission Order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, GAP Broadcasting agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, 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 GAP Broadcasting concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against GAP Broadcasting with respect to GAP Broadcasting's or George Laughlin's basic qualifications, including their character qualifications, to be a Commission licensee or hold Commission authorizations.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, GAP Broadcasting agrees to develop and implement a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

a. **Auctions Compliance Manual.** GAP Broadcasting shall develop an Auctions Compliance Manual for distribution on or before the date of the initial Compliance Training Program described in Paragraph 8(b), to company lawyers, managers, and other parties responsible for participating in FCC auctions as designated bidders on behalf of GAP Broadcasting. The Auctions Compliance Manual will include, in greater detail, the matters covered in the Compliance Training Program, e.g., an overview of the Commission's requirements for participation in auctions, including the Commission's Rules and the requirements of the Communications Act of 1934, as amended, regarding the prohibitions on auction collusion and related reporting requirements. The Compliance Manual will be updated from time to time, as needed.

b. **Compliance Training Program.** GAP Broadcasting shall conduct an initial education program within ninety (90) days of the Effective Date for company lawyers, managers,

⁷ See LOI Response at 2.

and other parties responsible for participating in Commission's auctions as designated bidders on behalf of GAP Broadcasting. This education program will include an overview of the Commission's auctions rules, including the Commission's rules and the requirements of the Communications Act of 1934, as amended, regarding the prohibitions on auction collusion and related reporting requirements. This education program will be updated and presented annually and additionally from time to time, as needed, to ensure that new employees are informed of regulatory compliance requirements and that existing employees are reminded of the same.

c. **Compliance Reports.** GAP Broadcasting shall file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of GAP Broadcasting, stating that the officer has personal knowledge that GAP Broadcasting has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Hillary S. DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

d. **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire after the final Voluntary Contribution payment, as described below, has been received by the Commission. On that date, GAP Broadcasting shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of GAP Broadcasting with personal knowledge of the representations therein, verifying that GAP Broadcasting has complied with the terms of this Consent Decree. The affidavit or declaration shall be submitted to Hillary S. DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

11. **Voluntary Contribution.** GAP Broadcasting agrees that it will make a voluntary contribution to the United States Treasury in the total amount of \$65,000, to be paid as follows: an initial payment, in the amount of \$7,500, shall be made within thirty (30) calendar days of the Effective Date; a second payment, in the amount of \$17,500, shall be made on or before one year after the Effective Date; a third payment, in the amount of \$25,000, shall be made on or before two years after the Effective Date; and a fourth and final payment, in the amount of \$15,000, shall be made on or before three years after the Effective Date. Each payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). GAP Broadcasting will also send electronic notification on the date said payments are made to Hillary.DeNigro@fcc.gov, Gary.Schonman@fcc.gov, and Jennifer.Lewis@fcc.gov.

12. **Waivers.** GAP 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 the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. GAP Broadcasting shall retain the right to challenge Commission interpretation of the Consent Decree or any terms

contained herein. 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 GAP Broadcasting nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and GAP Broadcasting shall waive any statutory right to a trial *de novo*. GAP 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. \

13. **Subsequent Rule or Order.** 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 GAP Broadcasting does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** GAP Broadcasting agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further 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 Act or the Commission's Rules and Orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief, Enforcement Bureau

Date

George Laughlin
Managing Member
GAP Broadcasting, LLC

Date