

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

In the Matter of	)	
	)	
Steven A. Roy	)	File Numbers: EB-06-PL-008
Personal Representative,	)	
Estate of Lyle Evans	)	NAL/Acct. No. 200732420001
	)	
Antenna Structure Registrant	)	FRN 0015223530
Antenna Structure # 1059331	)	
Stephenson, Michigan	)	

**ORDER**

**Adopted:** February 25, 2008

**Released:** February 27, 2008

By the Associate Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) and the Estate of Lyle R. Evans by Steven A. Roy, its appointed Personal Representative (“the Estate”). The Consent Decree terminates the Bureau’s enforcement proceeding relating to the Estate’s compliance with Section 17.51(a) of the Commission’s Rules (“Rules”).<sup>1</sup>

2. The Bureau and the Estate have negotiated the terms of a Consent Decree that would resolve these matters and terminate the enforcement proceeding. 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 enforcement proceeding.

4. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) and 503(b) of the Act,<sup>2</sup> and the authority delegated by Sections 0.111 and 0.311 of Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned enforcement proceeding **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that the Estate shall make its voluntary contribution to

<sup>1</sup> 47 C.F.R. § 17.51(a).

<sup>2</sup> 47 U.S.C. §§ 154(i) and 503(b).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, 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).

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 Denise Moline, Esq., counsel for Steven A. Roy, at 358 Pines Blvd., Lake Villa, IL 60046.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau

---

**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and the Estate of Lyle R. Evans by Steven A. Roy, its appointed Personal Representative (“the Estate”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether the Estate violated Section 303(q) of the Communications Act of 1934, as amended, (“the Act”), 47 U.S.C. § 303(q), and Section 17.51(a) of the Commission’s Rules (“Rules”), 47 C.F.R. § 17.51(a), by failing to exhibit all red obstruction lighting from sunset to sunrise on antenna structure # 1059331 in Stephenson, Michigan.

**I. DEFINITIONS**

1. 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) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (d) “Compliance Plan” means the program described in this Consent Decree at paragraph 7.
  - (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
  - (f) “FAA” means Federal Aviation Administration.
  - (g) “Investigation” means the investigation initiated by the Bureau regarding whether Roy violated Section 303(q) of the Act and Section 17.51(a) of the Commission’s rules.<sup>4</sup>
  - (h) “Estate” means the Estate of Lyle R. Evans by Steven A. Roy, its appointed Personal Representative and his predecessors-in-interest and successors-in-interest.
  - (i) “NAL” means Notice of Apparent Liability for Forfeiture.

---

<sup>4</sup> 47 U.S.C. § 303(q); 47 C.F.R. 17.51(a).

- (j) "Order" or "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (k) "Parties" means the Estate and the Bureau.
- (l) "Rules" means the Commission's regulations found in Title 47 of the Federal Regulations.

## II. BACKGROUND

1. Pursuant to Section 303(q) of the Act, antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.<sup>5</sup> Part 17 of the Rules is designed to promote air safety, by prescribing regulations for antenna structures that constitute or that potentially constitute "a menace to air navigation." Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified.<sup>6</sup>

2. On January 25, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL")<sup>7</sup> proposing that the Estate be held liable for a forfeiture of ten thousand dollars (\$10,000) under section 503(b)(1)(B) of the Act, and ordered the Company either to pay the proposed forfeiture or file a written response within thirty (30) days of the NAL release date stating why the proposed forfeiture should be reduced or canceled.

## III. TERMS OF AGREEMENT

3. **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.

4. **Jurisdiction.** The Estate 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.

5. **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

---

<sup>5</sup> 47 U.S.C. § 303(q).

<sup>6</sup> 47 C.F.R. § 17.51(a).

<sup>7</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732420001 (Enf. Bur., St. Paul Office, released January 25, 2007).

Commission or 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 or Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

6. **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 and to cancel its NAL. In consideration for the termination of said investigation and cancellation of the NAL, the Estate 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 the Estate 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 the Estate with respect to the Estate's basic qualifications, including his character qualifications, to hold Commission authorizations.

7. **Compliance Plan.** For purposes of settling the matters set forth herein, the Estate agrees to maintain 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. At the time of execution of this Consent Decree, the Estate has effected the repair of all tower obstruction lighting on Antenna Structure # 1059331 in Stephenson, Michigan. The tower lights are presently operating in compliance with the FAA requirements set forth in the tower's FCC Antenna Structure Registration.
- B. *Monitoring of Tower Lighting:* As part of his regular duties, and in compliance with Section 17.47(a) of the Commission's rules, and at the Estate's direction, the Programming Director at Station WMXG is checking the status of the tower lights twice daily, once during daylight hours, and once after sunset. This task will be retained as a management duty, and is not delegated to the Station's regular staff. The Programming Director accesses the tower lighting through an automated monitoring system which provides meter and monitoring readouts on the tower lighting, as well as on the output power, ERP, and various other systems of the WMXG transmission system. The automated system provides information whether the tower lights are in day or night mode, and whether the lights are operating normally or malfunctioning. The information retrieved from the automated system is logged, and the logs are maintained as part of the Station's technical records. In the event of any malfunction of the tower lights, the Programming Director has instructions to immediately notify the FAA, and thereafter to

immediately arrange for repair of the tower lights. Upon completion of repairs, the FAA is notified that the tower lights are again operating normally.

- C. *Maintenance and Repair of Tower Lighting.* The tower lighting and associated automated monitoring equipment will be maintained and checked routinely at least every three months in compliance with Section 17.47(b) by the Licensee's Technical consultants and its Chief Operator as part of routine tower maintenance. The Station's chief engineer (the Chief Operator) checks the equipment at the transmitter site every two weeks, and will inspect the automated monitoring system each time, to be sure that the automated tower lighting reporting system is operating normally. Those inspections will be logged, and any repairs or maintenance performed will also be detailed.
- D. *Reporting to FCC.* The Estate will provide a report to the FCC regarding the tower lighting daily monitoring, and all maintenance and repair visits, including logs and documentation, 90 days from the date of the Consent Decree, and one year from the date of the Consent Decree.
- E. The Estate hereby certifies that the foregoing plan to maintain the Structure's tower lighting in compliance with the FAA requirements set forth in the tower's FCC antenna structure registration will continue indefinitely in the future.

**Compliance Reports.** The Estate will file compliance reports with the Commission ninety days after the Effective Date and twelve months after the Effective Date. Each compliance report shall include a compliance certificate from the Estate, stating that the Estate 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 Sharon Webber, Regional Counsel, Northeast Region, Federal Communications Commission, One Oxford Valley Office Building, Room 404, 2300 East Lincoln Highway, Langhorne, PA 19047.

8. **Voluntary Contribution.** The Estate agrees that it will make a voluntary contribution to the United States Treasury in the amount of five thousand dollars (\$5000) within ten (10) days after the Effective Date of the Adopting Order. The 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).

9. **Waivers.** the Estate 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. The Estate 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 the Estate nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Estate shall waive any statutory right to a trial *de novo*. The Estate 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.

10. **Invalidation.** 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.

11. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

12. **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 the Estate does not expressly consent) that provision will be superseded by such Commission rule or order.

13. **Successors and Assigns.** The Estate agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **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.

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

16. **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.

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

18. **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.

\_\_\_\_\_  
George R. Dillon  
Associate Chief  
Enforcement Bureau

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steven A. Roy

Personal Representative for the Estate of Lyle

R. Evans

\_\_\_\_\_  
Date