

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

In the Matter of
GREATER HARDIN ASSOCIATION
Licensee of Low Power FM Station KRWS-LP,
Hardin, Montana
EB-05-IH-0897
Facility ID No. 134773
NAL/Account No. 200932080049
FRN 0008094708

CONSENT DECREE

1. The Enforcement Bureau ("Bureau") and Greater Hardin Association ("GHA"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether GHA violated Sections 73.858 and 73.860 of the Commission's rules.

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) "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(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) "Complaint" means any third-party complaint that may have been received by or is otherwise in the possession of the Commission or Bureau alleging that GHA engaged in conduct which violated the Commission's multiple ownership rules.
(f) "Compliance Plan" means the program described in this Consent Decree at paragraph 9.
(g) "Effective Date" means the date on which the Commission releases the Adopting Order.
(h) "Investigation" means the investigation commenced by the Bureau's Investigations and Hearings Division's October 25, 2005, and February 6, 2006, Letters of Inquiry regarding whether GHA had engaged in conduct which violated the Commission's multiple ownership rules.

1 See 47 C.F.R. §§ 73.858 (attribution of LPFM station interests) and 73.860 (cross-ownership).

2 See Letters from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to GHA, dated October 25, 2005 and February 6, 2006 ("October 25th LOP" and "February 6th LOP" respectively and collectively the "LOIs").

- (i) “Investigations and Hearings Division” means the Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, acting on behalf of the Enforcement Bureau.
- (j) “Parties” means Greater Hardin Association and the Bureau.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “Licensee” means Greater Hardin Association (“GHA”).
- (m) “Station” means low power FM Station KRWS-LP, licensed to Greater Hardin Association.

II. BACKGROUND

3. Sections 73.858 and 73.860 of the Commission’s rules prohibit licensees of low power FM radio stations from holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to the Commission’s broadcast ownership regulations.³

4. The Bureau received a Complaint alleging that GHA, licensee of low power FM Station KRWS-LP, Hardin, Montana, failed to satisfy a condition requiring that its principal, Al Sargent, prior to commencement of station operations, divest ownership of a local newspaper, “The Original Briefs,”⁴ consistent with the attribution and cross-ownership limitations contained in Sections 73.858 and 73.860 of the Commission’s rules.⁵ The Bureau investigated and issued LOIs to GHA.⁶ GHA responded to the respective LOIs, and while not denying having violated the pertinent rules, reports that it has since come into compliance with the pertinent Commission rules by completing the required divestiture.⁷ With respect to the issue of liability for any Commission rule violations that have occurred, GHA also provided documentation, supported by affirmations, attempting to support its claim of financial hardship. The Bureau finds GHA’s financial showing credible in all respects. In arriving at the voluntary contribution amount, the Bureau, therefore, considers not only the nature of the misconduct in question, but also GHA’s limited ability to pay.

³ See 47 C.F.R. §§ 73.858 (attribution of LPFM station interests) and 73.860 (cross-ownership).

⁴ See Letter of the Chief, Audio Services Division, Mass Media Bureau, to GHA, *et al.*, dated March 22, 2004 (“*Grant Letter*”). GHA notes that the newspaper in question, cited by the processing staff as “The Briefs,” is correctly known as “The Original Briefs.” See Response to Supplemental Letter of Investigation, dated March 22, 2006.

⁵ See 47 C.F.R. §§ 73.858 and 73.860.

⁶ See LOIs.

⁷ See Letters from Robert C. Griffin, Esq., and Kenneth E. Hardman, Esq., counsel for GHA, to Kenneth M. Scheibel, Jr., Attorney, Investigations & Hearings Division, Enforcement Bureau, dated November 14, 2005, and March 22, 2006 (“*November 14th Response*” and “*March 22nd Response*,” respectively).

III. TERMS OF AGREEMENT

5. **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.

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

7. **Effective Date; Violation.** 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.

8. **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 dismiss the Complaint. In consideration for the termination of said Investigation and dismissal of the Complaint, GHA 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 this Consent Decree, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action on its own motion against GHA 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 any proceeding, formal or informal, or take any action against GHA with respect to GHA's basic qualifications, including character qualifications, to be a Commission licensee.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, GHA agrees to create within thirty (30) days a Compliance Plan related to its future compliance the Act, the Commission's Rules, and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

- a. The President of GHA will conduct a compliance examination of the number and type of media outlets owned by the Licensee and whether such ownership complies with Sections 73.858 and 73.860 of the Commission's Rules. Such examination will be conducted, at a minimum, every six (6) months, beginning on the Effective Date of the Consent Decree.
- b. The President of GHA shall also consult with its telecommunications counsel regarding its overall compliance with Sections 73.858 and 73.860 of the Commission's Rules on an annual basis, if not more frequently.
- c. The requirements of this Compliance Plan will expire three (3) years from the Effective Date of the Consent Decree or upon GHA's complete assignment of all Commission licenses, whichever is earlier.

10. **Compliance Reports.** GHA will file its compliance reports with the Commission 12 months, 24 months, and 36 months following the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of GHA, stating that the officer has personal knowledge that GHA 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 the Chief, Investigations and

Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554.

11. **Termination Date:** Unless stated otherwise, the requirements of this Consent Decree will expire three years from the Effective Date.

12. **Voluntary Contribution.** GHA agrees that it will make a voluntary contribution to the United States Treasury in the amount of five hundred dollars (\$500). Such contribution shall be made in two (2) payments of two hundred and fifty dollars (\$250). The first payment shall be made on or before July 8, 2009, and the second payment shall be made on or before July 15, 2009. The payment must include the Account Number and the FRN Number of each respective payee 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. Payments 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 Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). GHA will also send an electronic notification on the date each said payment is made to: Hillary S. DeNigro (Hillary.Denigro@fcc.gov), Kenneth M. Scheibel, Jr. (Kenneth.Scheibel@fcc.gov), and Anita Patankar-Stoll (Anita.Patankar-Stoll@fcc.gov).

13. **Waivers.** GHA waives any and all respective rights each 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. GHA shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, GHA nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and GHA shall waive any statutory right to a trial *de novo*. GHA 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.

14. **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 GHA does not expressly consent) that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns:** GHA agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **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.

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

18. **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.

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

20. **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

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau

Date

[licensee]

Date