

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

In the Matter of)	
)	
LONG ISLAND UNIVERSITY PUBLIC)	EB-07-IH-5286
RADIO NETWORK)	NAL Account No. 201032080010
)	FRN No. 0015679806
Licensee of Noncommercial Educational Stations)	Facility ID Nos. 38340 and 38332
WLIU(FM), Southampton, NY and WCWP(FM),)	
Brookville, NY)	
)	

ORDER

Adopted: November 6, 2009

Released: November 6, 2009

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Long Island University Public Radio Network (“Licensee”). The Consent Decree terminates an investigation by the Bureau against the Licensee for possible violations of Section 399B of the Communications Act of 1934, as amended,¹ and Section 73.503(d) of the Commission’s Rules² regarding the broadcast by the Licensee of underwriting acknowledgments over Stations WLIU(FM), Southampton, NY and WCWP(FM), Brookville, NY (the “Stations”).

2. The Bureau and the Licensee 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 the Licensee 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,³ and Sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

³ See 47 U.S.C. § 154(i).

⁴ See 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that the third-party complaints and allegations against the Stations and/or the Licensee before the Enforcement Bureau related to the above-captioned investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent to Long Island University Public Radio Network c/o Lawrence Bernstein, Esq., 3510 Springland Lane, N.W., Washington, D.C., by first-class, certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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LONG ISLAND UNIVERSITY PUBLIC)	EB-07-IH-5286
RADIO NETWORK)	NAL Account No. 201032080010
)	FRN No. 0015679806
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Stations WLIU(FM), Southampton, NY and)	
WCWP(FM), Brookville, NY)	
)	

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and Long Island University Public Radio Network (the “Licensee”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s above-referenced investigation into whether the Licensee violated Section 399B of the Communications Act of 1934, as amended,¹ and Section 73.503(d) of the Commission’s Rules,² in connection with the broadcast by the Licensee of underwriting acknowledgments over its noncommercial educational Stations WLIU(FM), Southampton, NY and WCWP(FM), Brookville, NY (the “Stations”).

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” or “Order” means an Order by the Bureau 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) “Complaints” means a series of complaints and pleadings filed by LI Broadcasters, alleging violations of the Commission’s Underwriting Laws, including those dated July 3, 2007, August 30, 2007 and October 29, 2007, and all related information or allegations.
 - (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.

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

- (h) “Investigation” means the investigation concerning the Complaints commenced by the Bureau’s February 5, 2008, and June 4, 2008, Letters of Inquiry³ regarding whether the Licensee violated the Commission’s Underwriting Laws in connection with its operation of the Stations during the period May 26, 2007 through June 4, 2008.
- (i) “Licensee” means Long Island University Public Radio Network and its predecessors-in-interest and successors-in-interest as licensee of the Stations.
- (j) “LI Broadcasters” means the anonymous complainant, which also referred to itself as “Concerned Broadcasters of Long Island,” purportedly a group of commercial radio station operators who own and operate radio stations in the same market as the Licensee.
- (k) “Parties” means the Licensee and the Bureau.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Stations” means noncommercial educational Stations WLIU(FM), Southampton, New York (Facility ID No. 38340) and WCWP(FM), Brookville, NY (Facility ID No. 38332).
- (n) “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).

II. BACKGROUND

3. Pursuant to Section 399b(a) of the Act⁴ and Section 73.503(d) of the Rules, advertisements are defined as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.⁵ Section 399b(b)(2) specifically provides that noncommercial educational stations may not broadcast advertisements.⁶ Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors’ products, services, or businesses.⁷ Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.⁸ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter and is consistent with the Commission's Rules and decisions establishing compliant

³ See Letter from Jennifer Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Long Island University Public Radio Network, dated February 5, 2008 (“*LOP*”); see also Letter from Jennifer Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Long Island University Public Radio Network, dated June 4, 2008 (“*Second LOP*”).

⁴ See 47 U.S.C. § 399b(a).

⁵ See 47 C.F.R. § 399b(a).

⁶ See 47 U.S.C. § 399b(b)(2).

⁷ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), republished, 7 FCC Rcd 827 (1992) (“*Public Notice*”).

⁸ See *id.*

underwriting announcements. Consequently, the Commission expects licensees to exercise reasonable, “good faith” judgment in this area, and affords some latitude to the judgments of licensees who do so.⁹

4. On February 5, 2008, the Bureau inquired about a series of complaints filed by LI Broadcasters, which allege that the Licensee had aired advertisements in violation of the Underwriting Laws over the Stations on May 27, 2007, July 13, 2007, July 18, 2007, July 19, 2007, September 1, 2007 and September 2, 2007.¹⁰ The Bureau issued a *LOI* to the Licensee, which directed the Licensee, among other things, to submit a sworn written statement in response to questions relating to allegations that the Licensee had aired announcements in violation of the Underwriting Laws.¹¹ The Bureau issued a *Second LOI* on June 4, 2008, to clarify whether the material was broadcast over both Stations.¹² The Licensee responded to the *LOI* on March 12, 2008, and the *Second LOI* on June 12, 2008.¹³ LI Broadcasters filed further pleadings in response to the Licensee’s *LOI Response* and *Second LOI Response*, to which the Licensee filed additional responsive pleadings.¹⁴ Certain of the announcements may have violated the Underwriting Laws because they appear to exceed the bounds of what is permissible and within licensee discretion under the Act and pertinent Commission precedent.¹⁵

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.** The Licensee 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.

⁹ See *Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990) (“*Xavier*”).

¹⁰ See Complaint, filed with the Commission on July 3, 2007 (“*First Complaint*”); Second Complaint, filed with the Commission on August 30, 2007 (the “*Second Complaint*”); Third Complaint filed with the Commission on October 29, 2007 (the “*Third Complaint*”).

¹¹ See *LOI*, supra note 3.

¹² See *Second LOI*, supra note 3.

¹³ See Letter from Lawrence Bernstein, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 12, 2008 (“*LOI Response*”); Letter from Lawrence Bernstein, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 12, 2008 (“*Second LOI Response*”) (noting that, with a minor exception, the *Second LOI Response* is duplicative of the *LOI Response* with respect to the announcements that aired on WCWP(FM)).

¹⁴ See Reply to Response of Long Island University Public Radio Network, filed with the Commission on March 24, 2008 (“*LI Broadcasters Reply to LOI Response*”); Comments of Long Island University Public Radio Network, filed with the Commission on April 2, 2008 (“*LIU Comments to Reply to LOI Response*”); Reply to Comments of Long Island University Public Radio Network, filed with the Commission on May 1, 2008 (“*LI Broadcasters Reply to LIU Comments*”); Letter from Lawrence Bernstein, Esq. to Marlene Dortch, Secretary, Federal Communications Commission, dated May 6, 2008 (“*Motion to Dismiss*”); Opposition to Motion to Dismiss Any Subsequent Filings made by LI Broadcasters, filed with the Commission on May 13, 2008 (“*LI Broadcasters Opposition to Motion to Dismiss*”); Reply to Response of Long Island University Public Radio Network, filed with the Commission on June 19, 2008 (“*LI Broadcasters Reply to Second LOI Response*”).

¹⁵ See *Xavier*, supra note 9.

7. **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.

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 Complaints. In consideration for the termination of said Investigation and dismissal of the Complaints, the Licensee 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 Licensee 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 Licensee with respect to the Licensee's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, the Licensee 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. Licensee will use a multi-level review procedure for underwriting content to be broadcast on the Stations. All scripts of announcements will continue to be reviewed by the Licensee or its staff, prior to broadcast, for compliance with the Underwriting Laws.

b. Licensee will train employees on acceptable underwriting content that complies with the Underwriting Laws. Within thirty days of being hired by the Licensee, any new Station employee will be trained as to acceptable underwriting content that complies with the Underwriting Laws. In addition, the Licensee's Stations employees will receive refresher training, on an annual basis, regarding existing guidelines and, where applicable, pertinent changes to the Underwriting Laws.

c. Licensee will make good faith efforts, with respect to independently produced programming broadcast on the Stations, to obtain from the distributors of such programming the copy for underwriting announcements contained in such programming in advance of such programming's broadcast, for the purposes of independently reviewing such copy for compliance with the Underwriting Laws.

d. Licensee will also implement and maintain a plan to educate prospective underwriters about appropriate underwriting content and how the Licensee incorporates such underwriting content in the messages that it prepares for underwriter approval and eventual broadcast. To that end, the Licensee will summarize the Underwriting Laws for each client before it accepts any contract with the prospective underwriter to air underwriting messages over the Stations and prepares the underwriting message for the underwriter's review. The Licensee will not broadcast any announcement that does not comply with the Underwriting Laws, as interpreted from time to time by the Commission, and subject to the Licensee's exercise of "good faith" judgment as set forth in Paragraph 3, above.

10. **Compliance Reports.** Licensee will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, twenty-four months after the Effective Date, and upon expiration of this Consent Decree, three years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of the Licensee, stating that the officer has personal knowledge that the Licensee has established and maintained on an ongoing basis operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. Each compliance report will describe any significant difficulties the Licensee has encountered during the reporting period in ensuring compliance with the Underwriting Laws, what steps it has taken to resolve those difficulties, and the success of those steps in doing so. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554.

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

12. **Voluntary Contribution.** Licensee agrees that it will make a voluntary contribution to the United States Treasury in the amount of Twenty Four Thousand Dollars (\$24,000). Such contribution shall be made in four payments of six thousand dollars (\$6,000) each. The first payment is to be made within thirty (30) calendar days of the effective date, and the balance paid in subsequent consecutive quarterly installments as set forth above. The payments must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payments must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payments by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments 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 payments 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). The Licensee will also send electronic notification on the date said payments are made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Jennifer.Lewis@fcc.gov.

13. **Waivers.** The Licensee 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 Licensee 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 Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee 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 the Licensee does not expressly consent), that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns.** The Licensee 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 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. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Licensee does not admit or deny noncompliance, violation or liability for violating the Act, the Commission’s Rules or Orders in connection with the matters that are the subject of this Consent Decree.

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

P. Michele Ellison
Chief
Enforcement Bureau

Date

Elaine M. Crosson
Vice President for Legal Services
And University Counsel,
Long Island University

Date