

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

In the Matter of	)	
	)	
<b>CBS RADIO EAST INC.</b>	)	File No. EB-07-IH-9488
	)	
Licensee of Station KDKA(AM)	)	NAL Account No. 200932080026
Pittsburgh, Pennsylvania	)	Facility ID No. 25443
	)	FRN No. 0009225210

**CONSENT DECREE**

1. The Enforcement Bureau (“Bureau”) and CBS Radio East Inc. (“CBS”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s above-captioned forfeiture proceeding and investigation into whether CBS violated Section 73.1216 of the Commission’s rules concerning licensee conducted contests.<sup>1</sup>

**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) “Broadcast” means the Marty Griffin Show as broadcast by the Station on November 22, 2007.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “CBS” means CBS Radio East Inc. and all of its direct and indirect subsidiaries that hold authorizations issued by the Commission.
  - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) “Complainant” means the individual transmitting and filing the third-party complaint alleging violation of the Commission’s Licensee-Conducted Contest Rule, Section 73.1216, received by, or in the possession of, the Bureau, and subject to the NAL.
  - (g) “Complaint” means the third-party complaint alleging violation of the Commission’s Licensee-Conducted Contest Rule, Section 73.1216, received by, or in the possession of, the Bureau, and subject to the NAL.
  - (h) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
  - (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (j) “Investigation” means the investigation concerning the Complaint commenced by the Bureau’s December 10, 2007 Letter of Inquiry regarding whether the Licensee

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<sup>1</sup> See 47 C.F.R. § 73.1216.

violated the Commission's Licensee-Conducted Contest rule in connection with the Broadcast.

- (k) "Licensee" means CBS Radio East Inc. and its predecessors-in-interest and successors-in-interest.
- (l) "Licensee-Conducted Contest Rule" means 47 C.F.R. § 73.1216
- (m) "NAL" means the Notice of Apparent Liability for Forfeiture released by the Bureau's Investigations and Hearings Division on February 5, 2009 (File No. EB-07-IH-9488, DA No. 09-189).
- (n) "Order" or "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (o) "Parties" means CBS and the Bureau.
- (p) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (q) "Station" means AM radio Station KDKA(AM), Pittsburgh, Pennsylvania (Facility ID No. 25443).

## II. BACKGROUND

3. The Commission received a complaint, dated November 26, 2007 (the "Complaint"),<sup>2</sup> alleging that Station KDKA(AM)'s on-air host conducted a contest on November 22, 2007 that allegedly violated Section 73.1216 of the Commission's rules. Specifically, the Complaint alleged that, beginning approximately at 9:10 a.m. on November 27, 2007, the host announced that he would give away one million dollars (\$1,000,000) to the thirteenth caller, and that he would give away "a million an hour thereafter." The Complainant alleged that he called the Station and was informed that he was the thirteenth caller, but later was told that there was no million dollar prize being awarded and that the host's comments otherwise were a joke.

4. In response to the Complaint, the Bureau's Investigations and Hearings Division sent a Letter of Inquiry to CBS, dated December 10, 2007.<sup>3</sup> In its Response to the Letter of Inquiry, CBS did not dispute that it aired the complained-of material but argued that the Broadcast was a joke or prank originated by the on-air host, and not a Licensee-Conducted Contest subject to Section 73.1216 of the Commission's Rules.<sup>4</sup>

5. On February 5, 2009, the Bureau's Investigations and Hearings Division (the "Division") released a Notice of Apparent Liability for Forfeiture.<sup>5</sup> The Division ruled that CBS apparently violated the Licensee-Conducted Contest Rule by airing the Broadcast and proposed a forfeiture in the amount of

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<sup>2</sup> See Complaint, IC Number 07-WB13557366, filed November 26, 2007.

<sup>3</sup> See Letter from Jennifer A. Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Anne Lucey, Senior Vice President CBS Corp., dated December 10, 2007 (the "LOI").

<sup>4</sup> See Letter from Dennis P. Corbett, Leventhal Senter & Lerman PLLC, counsel to CBS Radio East Inc., to Jennifer A. Lewis, Investigations and Hearings Division, Enforcement Bureau, dated January 16, 2008 (the "LOI Response").

<sup>5</sup> See *CBS Radio East Inc. (Station KDKA(AM))*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1293 (Investigations & Hearings Div., Enf. Bur. 2009) ("NAL").

\$6,000. On March 9, 2009, CBS filed a response to the NAL, reasserting its argument that Section 73.1216 is inapplicable to the Broadcast.<sup>6</sup>

### 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.** CBS 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; Cancellation of NAL.** As part of the Adopting Order, in express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau shall terminate the above-captioned Investigation, cancel the NAL, and dismiss with prejudice the Complaint. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to any petition to deny or other third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against CBS, the Station, or any pending or future application to which CBS or the Station is a party (including, without limitation, any application for a new station, for renewal of license, for assignment of license or for transfer of control), based in whole or in part on (i) the NAL, (ii) the Complaint, (iii) any other similar complaints alleging violation by the Station of the Contest Rule with respect to the Broadcast at issue in the Complaint occurring prior to the Effective Date, or (iv) the allegations contained in any of the foregoing. Without limitation to the foregoing, the Bureau shall not use the facts of this Consent Decree, the NAL, the Complaint, any other similar complaints alleging violation by the Station of the Contest Rule with respect to the Broadcast at issue in the Complaint prior to the Effective Date, or the underlying facts, behavior, or broadcasts that relate to any of the foregoing, for any purpose relating to CBS or the Station, and shall treat all such matters as resolved for all purposes. In consideration for the termination of the above-captioned Investigation and in express reliance on the provisions of paragraph 9 hereof, CBS agrees to the terms, conditions and procedures contained herein and agrees not to pursue any further challenges to the Bureau's findings, as outlined in the NAL.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, CBS agrees to create within 30 days 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. CBS shall prepare and distribute a memorandum to all Station employees materially involved in the broadcast of programming explaining the Commission's Licensee-Conducted Contest Rule and setting forth Station procedures applicable to avoiding violations thereof.
- b. Following distribution of the aforesaid memorandum, all Station employees materially involved in the broadcast of programming shall receive appropriate training with respect to

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<sup>6</sup> See CBS Radio East Inc., Response to Notice of Apparent Liability for Forfeiture, dated and filed on March 9, 2009 by Steven A. Lerman, Esq. and Dennis P. Corbett, Esquire, Lerman Senter PLLC ("CBS Response").

compliance with the Licensee-Conducted Contest Rule and Station procedures with respect thereto. CBS shall conduct such training annually for the aforementioned employees and on initial appointment for new relevant employees within the terms of this Consent Decree.

11. **Compliance Reports.** CBS will file compliance reports with the Bureau ninety days after the Effective Date, twelve months after the Effective Date, two years after the Effective Date and three years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of CBS, stating that the officer has personal knowledge that CBS 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., Washington, D.C. 20554.

12. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire three (3) years after the Effective Date.

13. **Voluntary Contribution.** CBS agrees that it will make a voluntary contribution to the United States Treasury in the amount of six thousand dollars (\$6,000). The payment will be made within ten calendar days of 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 200932080026 and FRN Number 00009225210. 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). CBS shall also send an electronic notification on the date such payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, and Melanie.Godschall@fcc.gov.

14. **Waivers.** CBS 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. CBS 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 or Bureau) brings a judicial action to enforce the terms of the Adopting Order, neither CBS nor the Commission or Bureau shall contest the validity of the Consent Decree or the Adopting Order, and CBS shall waive any statutory right to a trial *de novo*. CBS 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.

15. **No Admission of Liability.** The Parties 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. 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 matters that are the subject of this Consent Decree.

16. **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 CBS does not expressly consent)

that provision will be superseded by such Commission rule or Order.

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

18. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties.

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

20. **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.

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

22. **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.

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P. Michele Ellison  
Chief, Enforcement Bureau

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Date

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Jo Ann Haller  
Senior Vice President and General Counsel  
CBS Radio East Inc.

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Date