

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

In the Matter of)	
)	
DAVID CARUS & ASSOCIATES)	File No. EB-05-IH-1022
)	NAL/Acct. No. 201132080027
Licensee of FM Translator Stations)	FRN No. 0008605503
W264AS, Rockledge, Florida, W272BA,)	Facility ID Nos. 144128 and 144133
Cocoa Beach, Florida, and Aural Studio)	
Transmitter Link WQEQ835, Indialantic,)	
Florida)	

ORDER

Adopted: June 2, 2011

Released: June 3, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and David Carus & Associates (the “Licensee”). The Consent Decree terminates an investigation by the Bureau against the Licensee for possible violations of sections 399B and 310(d) of the Communications Act of 1934, as amended,¹ and sections 73.503(d), 73.3540, and 74.1231(g) of the Commission’s Rules,² in connection with the transfer of control of FM Translator Station W264AS, Rockledge, Florida (“Station W264AS”), FM Translator Station W272BA, Cocoa Beach, Florida, and Aural Studio Transmitter Link WQEQ835 (collectively, the “Stations”); and the broadcast of underwriting announcements and originations concerning financial support over Station W264AS.³

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

¹ See 47 U.S.C. §§ 399b, 310(d).

² See 47 C.F.R. §§ 73.503(d), 73.3540, 74.1231(g).

³ Although the Bureau is terminating its investigation into whether the Licensee engaged in conduct that violated these laws, the Commission and the Bureau retain their right to investigate the conduct of other targets in the above-captioned proceeding against which investigations under this same file number (EB-05-IH-1022) remain pending.

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

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,⁵ and sections 0.111 and 0.311 of the Commission's Rules,⁶ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation, as to the Station and/or the Licensee, **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that any 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 by first class certified mail, return receipt requested, to David S. Carus, President, David Carus & Associates, P.O. Box 780037, Orlando, Florida 32878.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁴ The Bureau's assessment that the Licensee possesses the basic qualifications to hold or obtain a Commission license or authorization applies to the Licensee's qualifications as a corporate entity. This finding, however, does not foreclose the Commission and the Bureau from making a separate assessment into whether the conduct of other targets in the above-captioned proceeding, against which investigations under this same file number (EB-05-IH-1022) remain pending, raises questions regarding their basic qualifications to hold or obtain a Commission permit, license, or authorization.

⁵ See 47 U.S.C. § 154(i).

⁶ See 47 C.F.R. §§ 0.111, 0.311.

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In the Matter of)	
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DAVID CARUS & ASSOCIATES)	File No. EB-05-IH-1022
)	NAL/Acct. No. 201132080027
Licensee of FM Translator Stations W264AS,)	FRN No. 0008605503
Rockledge, Florida, W272BA, Cocoa Beach,)	Facility ID Nos. 144128 and 144133
Florida, and Aural Studio Transmitter Link)	
WQEQ835, Indialantic, Florida)	
)	

CONSENT DECREE

1. The Enforcement Bureau (the “Bureau”) and David Carus & Associates (“Licensee”), by their authorized representatives, enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether the Licensee violated sections 399B and 310(d) of the Communications Act of 1934, as amended,⁷ and sections 73.503(d), 73.3540, and 74.1231(g) of the Commission’s Rules,⁸ in connection with the transfer of control of FM Translator Station W264AS, Rockledge, Florida (“Station W264AS”), FM Translator Station W272BA, Cocoa Beach, Florida (“Station W272BA”), and Aural Studio Transmitter Link WQEQ835 (collectively, the “Stations”); and the broadcast of underwriting announcements and originations concerning financial support over Station W264AS.

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 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) “Community Radio Foundation of Florida, Inc.” and “Community Radio” mean the permittee of FM translator station W277BO, Malabar, Florida (Facility ID 158421) and new FM station in Marietta, Ohio (Facility ID 176826).
 - (f) “Compliance Plan” means the program described in this Consent Decree at Paragraph 13.

⁷ See 47 U.S.C. §§ 399b, 310(d).

⁸ See 47 C.F.R. §§ 73.503(d), 73.3540, 74.1231(g).

- (g) “Compliance Officer” means the individual designated in Paragraph 13.a. of this Consent Decree as the person responsible for administration of the Compliance Plan.
- (h) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (i) “Investigation” means the investigation commenced by the Bureau’s June 23, 2010, Letter of Inquiry⁹ regarding whether the Licensee violated the Underwriting Laws and Origination Laws in connection with its operation of Station W264AS on October 27, 2009, October 29, 2009, and February 26, 2010; and whether the Licensee violated the Unauthorized Transfer of Control Laws by transferring control of the Stations without obtaining prior consent of the FCC.
- (j) “Licensee” means David Carus & Associates as licensee of the Stations.
- (k) “Origination Laws” mean 47 C.F.R. § 74.1231(g).
- (l) “Parties” mean the Licensee and the Bureau, and each is a “Party.”
- (m) “Principal” means David S. Carus, President of David Carus & Associates.
- (n) “Public Radio Information Services of Central Florida, Inc.” means the permittee of low power FM station WNRG-LP, Palm Bay, Florida (Facility ID 135652).
- (o) “Randy Bennett” means the Director of Public Radio Information Services of Central Florida, Inc.
- (p) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Stations” mean FM Translator Stations W264AS, Rockledge, Florida (Facility ID No. 144128) and W272BA, Cocoa Beach, Florida (Facility ID No. 144133), and Aural Studio Transmitter Link WQEQ835, Indialantic, Florida.
- (r) “Station W264AS” means FM Translator Station W264AS, Rockledge, Florida (Facility ID No. 144128).
- (s) “Station W272BA” means FM Translator Station W272BA, Cocoa Beach, Florida (Facility ID No. 144133).
- (t) “Unauthorized Transfer of Control Laws” mean 47 U.S.C. § 310(d) and 47 C.F.R. § 73.3540.
- (u) “Underwriting Laws” mean 47 U.S.C. § 399b and 47 C.F.R. § 73.503(d).

⁹ See Letter from Anjali K. Singh, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to David Carus & Associates, dated June 23, 2010.

II. BACKGROUND

3. The Unauthorized Transfer of Control Laws prohibit a licensee from transferring control of a Commission license without prior Commission authorization.¹⁰

4. The Underwriting Laws define advertisements as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.¹¹ Section 399B(b)(2) specifically provides that noncommercial educational stations may not broadcast advertisements.¹² 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.¹³ Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.¹⁴ 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 Rules and decisions establishing compliant 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.¹⁵

5. The Origination Laws impose restrictions on the content, length, and frequency of licensee-originated program material broadcast over translator stations. Specifically, such originations shall be limited to emergency warnings of imminent danger and to seeking or acknowledging support deemed necessary to the continued operation of the translator. Originations concerning financial support are limited to a total of thirty (30) seconds per hour.¹⁶ Acknowledgments of support may identify the contributors and the size or nature of the contributions and may contain their advertising messages.¹⁷ The same restrictions that apply to messages aired by noncommercial FM stations apply to noncommercial FM translator facilities, however.¹⁸

6. On June 23, 2010, based on information gathered by the Bureau’s Tampa Field Office, the Bureau issued a Letter of Inquiry to the Licensee, directing the Licensee, among other things, to submit sworn written statements in response to questions relating to possible violations of the above-

¹⁰ See 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540.

¹¹ See 47 U.S.C. § 399b(a).

¹² See 47 U.S.C. § 399b(b)(2).

¹³ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992).

¹⁴ See *id.*

¹⁵ See *Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

¹⁶ See 47 C.F.R. § 74.1231(g).

¹⁷ See *id.*

¹⁸ See *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 25101, 25103-04 (Enf. Bur., Investigations & Hearings Div. 2003) (citing *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7217 (1990)). See also 47 C.F.R. § 74.1201 (referring to a noncommercial FM translator as an FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station).

described laws.¹⁹ The Licensee responded on August 23, 2010 and September 2, 2010, and provided a recording of some of the inquired-of material.²⁰

7. In its Response, the Licensee admits that it, through an agreement with Community Radio Foundation of Florida, Inc., permittee of FM translator station W277BO, Malabar, Florida (Facility ID 158421) and new FM station in Marietta, Ohio (Facility ID 176826) (“Community Radio”), transferred full ownership in the Stations to Community Radio on November 19, 2004 without prior Commission approval, and that Randy Bennett, Director of Public Radio Information Services of Central Florida, Inc.,²¹ and/or Community Radio has maintained control of the Stations’ facilities ever since.²² In its Response, the Licensee neither admits nor denies violating the Underwriting Laws.²³ The evidence in this case also establishes that the Licensee may have violated the Origination Laws by airing underwriting messages in excess of the thirty-second per hour limitation set forth in the Rules, which the Licensee does not dispute.²⁴

8. With respect to the issue of its ability to pay any forfeiture amount assessed, the Licensee also provided documentation to support its claim of significant financial hardship.²⁵ Commission records indicate that Station W272BA has suspended operations and has authority to remain silent.²⁶ Commission records also indicate that Station W264AS has suspended operations and has authority to remain silent.²⁷ The terms of the Consent Decree reflect the Bureau’s consideration of the Licensee’s limited ability to pay and the fact that Station W272BA and Station W264AS have suspended operations under authority granted by the Commission.

III. TERMS OF AGREEMENT

9. **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.

10. **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.

¹⁹ See *supra* note 3.

²⁰ See Letter from David S. Carus, President of David Carus & Associates, LLC, to Anjali K. Singh, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, filed August 23, 2010 (“Response”); E-mail from David Carus, President of David Carus & Associates, LLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, submitted September 2, 2010.

²¹ Public Radio Information Services of Central Florida, Inc. is the permittee of low power FM station WNRG-LP, Palm Bay, Florida (Facility ID 135652).

²² See Response at 3-6.

²³ See *id.* at 1-2.

²⁴ See 47 C.F.R. § 74.1231(g).

²⁵ See E-mail from David S. Carus, President of David Carus & Associates, LLC, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, submitted November 9, 2010.

²⁶ See FCC File No. BLSTA-20101026AAX.

²⁷ See FCC File No. BLSTA-20110103AAM.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau 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.

12. **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 with respect to the Licensee and its Principal.²⁸ In consideration for the termination of said Investigation, 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 and its Principal concerning the matters that were the subject of the Investigation.²⁹ 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 and its Principal with respect to the Licensee's basic qualifications, including its character qualifications, to be a Commission licensee.³⁰

13. **Compliance Plan.** For purposes of settling the matters set forth herein, the Licensee agrees to create and implement within thirty (30) days of the Effective Date a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's Orders. The Compliance Plan shall include, at a minimum, the following components:³¹

- a. **Compliance Officer.** The Licensee shall designate an individual to serve as its Compliance Officer, who shall be responsible for administering the Compliance Plan. In discharging such duties, the Compliance Officer, if not an FCC regulatory counsel, shall consult with and be assisted by outside FCC regulatory counsel.
- b. **Counsel Consultation.** The Licensee shall consult with outside FCC regulatory counsel regarding the Licensee's overall compliance with the Unauthorized Transfer of Control Laws, the Underwriting Laws, and the Origination Laws on an annual basis, if not more frequently.
- c. **Review Procedure.** The Licensee shall utilize a review procedure for underwriting content to be aired on Station W264AS and Station W272BA. All scripts of

²⁸ This termination is without prejudice to the Commission's and/or the Bureau's prosecution of other individuals and/or entities in this proceeding (EB-05-IH-1022) or any investigation or matter related to this proceeding.

²⁹ See *infra* Paragraph 22.

³⁰ See *id.*

³¹ While Station W272BA and Station W264AS have suspended operations under authority granted by the Commission, the obligations set forth in Paragraphs 13.c., 13.d., 13.e., and 13.f. of this Consent Decree will not apply with respect to those stations; such provisions, however, must be complied with immediately upon resumption of operations or expiration of the authority.

announcements shall be reviewed by the Licensee or its Compliance Officer, prior to broadcast, for compliance with the Underwriting Laws.

- d. **Training.** The Licensee shall train any and all employees on acceptable underwriting content that complies with the Underwriting Laws. Within thirty (30) days of being hired by the Licensee, any new Licensee employee shall be trained as to acceptable underwriting content that complies with the Underwriting Laws. In addition, the Licensee's employees shall receive refresher training, on an annual basis, regarding existing guidelines and, where applicable, pertinent changes to the Underwriting Laws.
 - e. **Education Program.** The Licensee shall 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 shall summarize the Underwriting Laws for each client before it accepts any contract with the prospective underwriter to air underwriting messages over Station W264AS and Station W272BA and prepares the underwriting message for the underwriter's review. The Licensee shall not broadcast any announcement that does not comply with the Underwriting Laws.
 - f. **Origination.** Station W264AS and Station W272BA shall not air underwriting messages in excess of the thirty-second per hour limitation pursuant to the Origination Laws.
 - g. **Employment; Control.** The Licensee shall not allow Randy Bennett and/or Community Radio Foundation of Florida, Inc. to work for, contract for, consult for, or hold any ownership interest (outright or beneficial, through any mechanism, including *de facto* control)³² in the Licensee and the Stations.
 - h. **Assignment.** The Licensee shall not assign any of the authorizations of the Stations to Randy Bennett and/or Community Radio Foundation of Florida, Inc. or to any entity in which Randy Bennett and/or Community Radio Foundation of Florida, Inc. holds any ownership interest (outright or beneficial, though any mechanism, including *de facto* control).³³
 - i. **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire three (3) years after the Effective Date or upon the Licensee's complete assignment of all Commission licenses, whichever is earlier.³⁴
14. **Cooperation.** The Principal agrees to make his best efforts to cooperate with the

³² In determining *de facto* control, the Commission traditionally looks beyond the legal title to whether an entity or individual has obtained the right to determine the basic operating policies of the station. *See WHDH, Inc.*, Memorandum Opinion and Order, 17 FCC 2d 856 (1969), *aff'd sub nom.*, *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). While such an analysis transcends formulas, the Commission generally looks to policies concerning programming, personnel, and finances to make this determination. *See, e.g., Stereo Broadcasters, Inc.*, Decision, 87 FCC 2d 87 (1981), *recon. denied*, 50 RR 2d 1346 (1982).

³³ *See supra* note 26.

³⁴ There is a pending application to assign the authorizations for Station W272BA and Station W264AS to National Christian Network, Inc. *See* FCC File No. BALFT-20110107AER.

Commission and the Bureau and provide written statements and/or serve as a witness as requested in any other investigations conducted by the Commission or the Bureau and/or hearings involving the Commission as part of this proceeding (EB-05-IH-1022). As part of such cooperation, the Principal, as an officer of the court, commits to telling the truth. Any such cooperation provided shall be limited to the facts and circumstances within the knowledge of the Licensee and its Principal as it pertains to matters subject to this investigation. This commitment shall extend throughout the duration of such proceedings regardless of whether David Carus & Associates is still the licensee of any of the Stations. Notwithstanding this provision, the Commission, Bureau, and the Principal reserve any and all legal rights that they would otherwise have.

15. **Updated Contact Information.** The Principal agrees to provide to the Commission any updated contact information (phone number and/or mailing address) for him for the next three (3) years after the Effective Date. This information should be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554.

16. **Compliance Reports.** The Licensee shall file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and upon expiration of the Compliance Plan in this Consent Decree, as defined above in Paragraph 13.i. of the Compliance Plan. This compliance reporting requirement will expire three (3) years after the Effective Date or upon the Licensee's complete assignment of all Commission licenses, whichever is earlier. Each compliance report shall include a compliance certificate from the Compliance Officer, as defined in Paragraph 13.a. of the Compliance Plan, as an agent of the Licensee, stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, the Unauthorized Transfer of Control Laws, the Underwriting Laws, and the Origination Laws, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules³⁵ and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Licensee, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree, the Unauthorized Transfer of Control Laws, the Underwriting Laws, or the Origination Laws; and (ii) the steps that the Licensee has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. 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, with a copy submitted electronically to Anjali Singh at Anjali.Singh@fcc.gov, and to Melissa Marshall at Melissa.Marshall@fcc.gov.

17. **Voluntary Contribution.** The Licensee agrees that it will make a voluntary contribution to the United States Treasury in the amount of six thousand five hundred dollars (\$6,500). The payment will be made within thirty (30) calendar 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

³⁵ See 47 C.F.R. § 1.16.

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). The Licensee will also send electronic notification on the date said payment is made to Terry.Cavanaugh@fcc.gov, Anjali.Singh@fcc.gov, and Melissa.Marshall@fcc.gov.

18. **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.

19. **Invalidity.** In the event that this Consent Decree in its entirety 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.

20. **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.

21. **Admission of Liability.** Notwithstanding any of the Licensee's prior submissions in this proceeding, the Licensee admits, for Commission civil enforcement purposes and in express reliance on the provisions of Paragraph 12 herein, that its actions with respect to the ownership and control of the Stations and the broadcast of underwriting announcements and originations referenced in Paragraph 7 herein violated the Commission regulations and requirements in force at the time of such actions.

22. **Investigation of Other Individuals and/or Entities in Proceeding.** The Commission and the Bureau retain their authority to investigate the conduct of other individuals and/or entities in this proceeding (EB-05-IH-1022) or any investigation or matter related to this proceeding. The Commission and the Bureau reserve the right to use facts developed during the course of this Investigation in any investigation of other individuals and/or entities in this proceeding (EB-05-IH-1022) or any investigation or matter related to this proceeding.

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties.³⁶

³⁶ The Consent Decree between the Bureau and David Carus & Associates applies only to David Carus & Associates as a corporate licensing entity and its Principal and does not constitute a settlement between the Commission or the Bureau and any other individuals and/or entities in this proceeding (EB-05-IH-1022) or any investigation or matter related to this proceeding.

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

25. **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.

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

27. **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

David S. Carus
President
David Carus & Associates

Date