

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

In the Matter of
NVT PORTLAND LICENSEE, LLC
Licensee of Station KOIN(DT),
Portland, Oregon

File No.: EB-10-IH-2085
Acct. No.: 201232080026
FRN: 0016754103
Facility ID No.: 35380

ORDER

Adopted: September 12, 2012

Released: September 13, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) and NVT Portland Licensee, LLC (Licensee). The Consent Decree resolves and terminates the Bureau’s investigation into the Licensee’s possible violations of Section 73.1216 of the Commission’s rules (Rules),¹ in connection with a licensee-conducted contest promoted by the Licensee on Station KOIN(DT), Portland, Oregon (Station) in 2010.

2. The Bureau and the Licensee have negotiated the terms of the Consent Decree that resolve this matter, including a detailed, three-year compliance plan requirement. 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 Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Rules,³ 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 Station and/or the Licensee before the Enforcement Bureau related to the above-captioned investigation as of the date of this Consent Decree ARE DISMISSED.

1 See 47 C.F.R. § 73.1216 (titled “Licensee-Conducted Contests”).

2 See 47 U.S.C. §§ 154(i), 154(j), 503(b).

3 See 47 C.F.R. §§ 0.111, 0.311.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First Class mail and Certified Mail, Return Receipt Requested, to Licensee's counsel, Gregory L. Masters, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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| Portland, Oregon |) | Facility ID No.: 35380 |
| |) | |

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and NVT Portland Licensee, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into possible violations of Section 73.1216 of the Commission’s rules¹ pertaining to Licensee-Conducted contests.

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 the 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) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which NVT Portland is subject by virtue of it being a Commission licensee, including but not limited to Section 73.1216 of the Commission’s rules.
 - (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.
 - (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.

¹ See 47 C.F.R. § 73.1216.

- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
- (i) “Covered Employees” means all employees and agents of NVT Portland who perform, or supervise, oversee, or manage the performance of, duties that relate to NVT Portland’s responsibilities under the Licensee-Conducted Contest Rule.
- (j) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (k) “Investigation” means the investigation commenced by the Bureau’s June 25, 2012 Letter of Inquiry regarding whether the Licensee violated the Commission’s Licensee-Conducted Contest Rule.
- (l) “Licensee-Conducted Contest Rule” means Section 73.1216 of the Rules, 47 C.F.R. § 73.1216, governing how Commission licensees conduct contests that are broadcast or advertised.
- (m) “NVT Portland” means NVT Portland Licensee, LLC and its predecessors-in-interest and successors-in-interest.
- (n) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by NVT Portland to implement the Compliance Plan.
- (o) “Parties” means NVT Portland and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Station” means TV Station KOIN(DT), Portland, Oregon (Facility ID No. 35380).

II. BACKGROUND

3. Pursuant to Section 73.1216 of the Rules, a broadcast licensee “that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised.”² The Commission received a complaint, dated February 2, 2010,³ alleging that the Station conducted a contest that violated Section 73.1216 of the Commission’s rules. Specifically, the Complainant alleges that the Station failed to deliver a prize to the declared winner of a “man cave makeover” contest that the Station conducted and promoted.⁴ The Complainant further alleges that even though he was declared the winner of the contest and had not violated any Station guidelines relating to contest voting, the Station nonetheless voided the contest after it conducted an investigation into the validity of contest voting.⁵

² 47 C.F.R. § 73.1216.

³ See Complaint, Form 2000A, Key No. 10-C00193290-1 (Feb. 2, 2010).

⁴ *Id.*

⁵ *Id.*

4. In response to the Complaint, the Bureau's Investigations and Hearings Division sent a Letter of Inquiry to NVT Portland dated June 25, 2012.⁶ In its Response to the Letter of Inquiry, NVT Portland did not dispute that it conducted the contest described in the Complaint.⁷ NVT Portland also acknowledged that the Station did not broadcast the material terms of the contest rules (as required by the Commission's rules), but directed viewers to the Station's website where it had posted the official rules.⁸ In justifying its decision to void the contest, the Licensee explained that one of the contest finalists (not the Complainant) had contacted the Station to admit that he had used a vote-generating computer program to artificially inflate the number of votes cast for his entry.⁹ The Station launched an investigation to determine the extent to which electronic tampering may have skewed the results of the contest voting. After its investigation, the Station decided to cancel the contest and not award any prizes.¹⁰

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.

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

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission 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 the Investigation. In consideration for the termination of the Investigation, NVT Portland 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, 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 NVT Portland concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, 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 NVT Portland with respect to NVT Portland's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

⁶ See Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Gregory L. Masters, Esq., counsel to NVT Portland Licensee, LLC (June 25, 2012) (on file in EB-12-IH-1197) (LOI).

⁷ See Letter from Gregory L. Masters, Esq., Wiley Rein LLP, counsel to NVT Portland Licensee, LLC, to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, FCC Enforcement Bureau, (July 6, 2012) (on file in EB-12-IH-1197) (LOI Response).

⁸ See *id.* at 2.

⁹ See *id.* at 2.

¹⁰ See *id.* at 2-3.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, NVT Portland shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that NVT Portland complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Licensee-Conducted Contest Rule prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, NVT Portland agrees that it shall, within sixty (60) calendar days of the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Licensee-Conducted Contest Rule, NVT Portland shall implement the following procedures:

- (a) **Operating Procedures for Licensee-Conducted Contests.** Within sixty (60) calendar days after the Effective Date, NVT Portland shall establish Operating Procedures that all Covered Employees must follow to help ensure NVT Portland's compliance with the Licensee-Conducted Contest Rule. NVT Portland's Operating Procedures shall include internal procedures and policies specifically designed to ensure that NVT Portland fully and accurately discloses the material terms of its contests, and conducts the contests substantially as announced or advertised, consistent with Section 73.1216 of the Commission's rules. NVT Portland also shall develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that Licensee-Conducted contests will not result in a violation of the Communications Laws regarding Licensee-Conducted contests. At a minimum, the Compliance Checklist shall require at all times that at least two station employees, one of which shall be a management-level employee, be involved in all aspects of the selection of winners and the award of prizes to participants in Licensee-Conducted contests.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensee-Conducted Contest Rule and set forth the Operating Procedures that Covered Employees shall follow to help ensure NVT Portland's compliance with the Communications Laws. NVT Portland shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. NVT Portland shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** NVT Portland shall establish and implement a Compliance Training Program on compliance with the Licensee-Conducted Contest Rule and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of NVT Portland's obligation to report any noncompliance with the Licensee-Conducted Contest Rule under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered

Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. NVT Portland shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

11. **Reporting Noncompliance.** NVT Portland shall report any noncompliance with the Licensee-Conducted Contest Rule, and with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that NVT Portland has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that NVT Portland has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance 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 Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and to Brian J. Carter at Brian.Carter@fcc.gov.

12. **Compliance Reports.** NVT Portland 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 thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of NVT Portland's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Licensee-Conducted Contest Rule. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of NVT Portland, stating that the Compliance Officer has personal knowledge that NVT Portland (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules¹¹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of NVT Portland, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that NVT Portland has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial action will be taken; and (iii) the steps that NVT Portland has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) 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

¹¹ 47 C.F.R. § 1.16.

submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and to Brian J. Carter at Brian.Carter@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 9 through 12 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

14. **Section 73.1216 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 73.1216 of the Commission's rules against NVT Portland or its affiliates for alleged violations of the Act or the Commission's rules or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by NVT Portland with the Communications Laws.

15. **Voluntary Contribution.** NVT Portland agrees that it will make a voluntary contribution to the United States Treasury in the amount of four thousand dollars (\$4,000) within thirty (30) calendar days after the Effective Date. NVT Portland shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel, Jr. at Kenneth.Scheibel@fcc.gov, and to Brian J. Carter at Brian.Carter@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹² 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). Below are additional instructions you should follow based on the form of payment you select:¹³

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

16. **Waivers.** NVT Portland 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

¹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹³ Should NVT Portland have questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at ARINQUIRIES@fcc.gov.

Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. NVT Portland 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 NVT Portland nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NVT Portland shall waive any statutory right to a trial *de novo*. NVT Portland hereby agrees to waive any claims it may 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.

17. **Liability.** NVT Portland admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 hereof, that the broadcast material at issue in this Consent Decree is in violation of 47 C.F.R. § 73.1216, assuming construction of these terms as they are construed by the Bureau as of the date hereof. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraph 8 hereof, or both, are breached by the Bureau, or are invalidated or modified to NVT Portland's prejudice by the Commission, Bureau, or any court, then and in that event the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and NVT Portland shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning violations of 47 C.F.R. § 73.1216.

18. **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.

19. **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 NVT Portland does not expressly consent) that provision will be superseded by such rule or Commission order.

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

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

23. **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.

24. **Authorized Representative.** The individual signing this Consent Decree on behalf of NVT Portland represents and warrants that he is authorized by NVT Portland to execute this Consent Decree and to bind NVT Portland to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

25. **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

NVT PORTLAND LICENSEE, LLC

By: NVT License Company, LLC, sole member of
NVT Portland Licensee, LLC

By: NVT License Holdings, LLC, sole member of
NVT License Company, LLC

By:

C. Thomas McMillen
Sole Class A Member

Date