

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

In the Matter of)
Tama Broadcasting Group of South Carolina,) File No.: EB-11-AT-0005
L.L.C.) Acct. No.: 20113248000X
Tampa, Florida) FRN: 0020030953
Owner of Antenna Structure Nos.:)
1055338, 1055339 and 1055340)

ORDER

Adopted: June 12, 2012

Released: June 12, 2012

By the Regional Director, South Central Region, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Tama Broadcasting Group of South Carolina, L.L.C. (Tama). The Consent Decree settles an investigation regarding Tama’s possible violation of Section 303(q) of the Communications Act of 1934, as amended (Act),¹ and Sections 17.48 and 17.51 of the Commission’s rules (Rules)² in connection with the required obstruction lighting on its antenna structures.

2. The Bureau and Tama have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein 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 Tama 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) and 503(b) of the Act,³ and Sections 0.111, 0.204, 0.311, 0.314 of the Rules,⁴ the Consent Decree attached to this Order IS ADOPTED.

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

1 47 U.S.C. § 303(q).
2 47 C.F.R. §§ 17.48, 17.51.
3 47 U.S.C. §§ 154(i), 503(b).
4 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Tama Broadcasting of South Carolina, L.L.C., 5207 Washington Blvd., Tampa, FL 33619, and to Dennis J. Kelly, its attorney, at P.O. Box 41177, Washington, DC 20018-0577.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Tama Broadcasting Group of South Carolina, LLC,¹ by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether Tama violated Section 303(q) of the Communications Act of 1934, as amended, and Sections 17.48 and 17.51 of the Commission's rules² by failing to exhibit required obstruction lighting on its antenna structures.

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) "Antenna Structure Rules" means collectively, Section 303(q) of the Act, 47 U.S.C. § 303(q), the Rules contained in Part 17, 47 C.F.R. § 17.1 *et seq.*, governing the painting, lighting, and monitoring of antenna structures, and other related Communications Laws.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Tama is subject

¹ "Tama Group L.L.C." is the name that appears as the owner of antenna structure numbers 1055338, 1055339 and 1055340 in the Antenna Structure Registration (ASR) database. However, this entity is registered with the South Carolina Secretary of State as "Tama Broadcasting Group of South Carolina, L.L.C." Tama shall correct its name in the ASR database.

² 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48, 17.51.

by virtue of its business activities, including but not limited to, the Antenna Structure Rules.

- (g) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraphs 9, 10, 11, and 12.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the investigation initiated by the Bureau on January 13, 2011 of possible violations of Section 303(q) of the Act and Sections 17.48 and 17.51 of the Rules regarding antenna structure numbers 1055338, 1055339 and 1055340 located in San Souci, South Carolina.
- (j) “Parties” means Tama and the Bureau, and each of which is a “Party.”
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “Tama” means Tama Broadcasting Group of South Carolina, L.L.C. and Tama Group, L.L.C.

II. BACKGROUND

3. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.³ Section 17.21 of the Rules requires all antenna structures more than 200 feet in height above ground to be painted and lighted.⁴ Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.⁵ Section 17.48 of the Rules requires that owners of registered antenna structures that have been assigned lighting specifications report immediately by telephone or telegraph to the Federal Aviation Administration (FAA) any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes.⁶

4. Antenna structure numbers 1055338, 1055339, and 1055340 are all more than 200 feet in height above ground and are required to be painted and lighted.⁷ According to Tama, the lights on antenna structure numbers 1055338, 1055339, and 1055340 went out sometime in January 2010.⁸ Tama

³ 47 U.S.C. § 303(q).

⁴ 47 C.F.R. § 17.21.

⁵ 47 C.F.R. § 17.51(a).

⁶ 47 C.F.R. § 17.48.

⁷ See Antenna Structure Registration database for antenna structure numbers 1055338, 1055339, and 1055340. See also 47 C.F.R. § 17.21 (requiring antenna structure more than 200 feet in height above ground to be painted and lighted).

⁸ See email from Dr. Glenn Cherry, General Manager of Tama, to Agent, Atlanta Office, South Central Region, Enforcement Bureau, dated Jan. 26, 2011.

also admitted that it failed to notify the FAA of the outages prior to January 13, 2011.⁹ Tama also has provided documentation showing that it has negligible gross revenues.

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.** Tama 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.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. 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 the Investigation. In consideration for the termination of the Investigation, Tama 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 Tama 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 Tama with respect to Tama's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Tama 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 Tama 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 Antenna Structure Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Tama agrees that it shall within sixty (60) calendar days after 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 Antenna Structure Rules, Tama shall implement the following procedures:

- (a) **Repairs.** No later than September 1, 2012, Tama shall restore the tower lighting systems on antenna structure numbers 1055338 and 1055340 in San Souci, South Carolina to ensure compliance with the Commission's and the FAA's lighting requirements.¹⁰

⁹ See email from Dennis J. Kelly, attorney for Tama, to Agent, Atlanta Office, South Central Region, Enforcement Bureau, dated Feb. 10, 2011.

- (b) Notifications. Until the obstruction lighting is restored, Tama shall continue to notify the FAA of the lighting outages on antenna structure numbers 1055338 and 1055340 to ensure that active Notices to Airmen remain in place.
- (c) Monitoring. As soon as the obstruction lighting is restored, Tama shall hire an engineer or train employees to monitor the lights on antenna structure numbers 1055338 and 1055340 to ensure that the lighting stays operational and in good repair. Tama's antenna structure light monitoring procedures shall comply with Section 17.47 of the Rules, 47 C.F.R. § 17.47.
- (d) Compliance Training Program. Tama shall establish and implement a Compliance Training Program on compliance with the Antenna Structure Rules. As part of the Compliance Training Program, employees who perform, supervise, oversee or manage the performance of duties that relate to Tama's responsibilities under the Antenna Structure Rules shall be advised of Tama's obligation to report any noncompliance with the Antenna Structure Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All such employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who is assigned to a position with duties related to Tama's compliance with the Antenna Structure Rules any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person's responsibilities relating to the Antenna Structure Rules begin. Tama 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. Tama shall report any noncompliance with the Antenna Structure Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Tama 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 Tama has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Regional Counsel, South Central Region, Enforcement Bureau, Federal Communications Commission, Atlanta Office, 3575 Koger Blvd. Suite 320, Duluth, GA 30096, with a copy submitted electronically to SCR-Response@fcc.gov. The obligations set forth in this paragraph 11 shall expire twenty-four (24) months after the Effective Date.

12. Compliance Reports. Tama shall file Compliance Reports with the Commission within ten (10) calendar days of the antenna structures' lighting restoration, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) The first Compliance Report shall state the date the lights were restored on antenna structure numbers 1055338 and 1055340 and describe the steps Tama has taken to monitor the lights on the structures. The first Compliance Report shall describe the steps it has taken to update the ownership information for antenna structure numbers 1055338, 1055339, and 1055340 and the determination of no hazard for antenna structure number 1055339 in the Antenna

¹⁰ On December 20, 2011, the FAA issued a "determination of no hazard" for antenna structure number 1055339, which states that "marking and lighting are not necessary for aviation safety." See Aeronautical Study No. 2011-ASO-8419-OE. Tama shall update the ASR database accordingly.

Structure Registration database. Each Compliance Report thereafter shall include a detailed description of Tama's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Antenna Structure Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Tama, stating that the Compliance Officer has personal knowledge that Tama (i) has established and implemented the Compliance Plan; and (ii) 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 Rules, 47 C.F.R. § 1.16, 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 Tama, 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 Tama has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Tama 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 Regional Counsel, South Central Region, Enforcement Bureau, Federal Communications Commission, Atlanta Office, 3575 Koger Blvd. Suite 320, Duluth, GA 30096, with a copy submitted electronically to SCR-Response@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 9-12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

14. **Voluntary Contribution.** Tama agrees that it will make a voluntary contribution to the United States Treasury in the amount of one thousand dollars (\$1,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. Regardless of the form of payment, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Tama shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. **Waivers.** Tama 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 Adopting Order, provided the Bureau issues an Adopting Order as described herein. Tama 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 Tama nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Tama shall waive any statutory right to a trial *de novo*. Tama 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.

16. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. **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 Tama does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws.

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

21. **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.

22. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

23. **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.

Dennis P. Carlton
Regional Director
South Central Region
Enforcement Bureau

Date

**TAMA BROADCASTING GROUP OF SOUTH
CAROLINA, L.L.C.**

Glenn W. Cherry
Manager
Tama Broadcasting Group of South Carolina, LLC

Date