

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

| | | |
|---|---|-------------------------------|
| In re Application of |) | |
| |) | |
| WLFA(FM), Asheville, North Carolina |) | NAL/Acct. No. MB-201541410032 |
| |) | FRN: 0009306697 |
| For Consent to Assignment of License |) | Facility ID No. 2922 |
| from Asheville Educational Association, Inc., |) | File No. BALED-20150313AAW |
| Assignor, to Radio Training Network, Inc., |) | |
| Assignee |) | |

ORDER

Adopted: October 21, 2015

Released: October 22, 2015

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (“Bureau”), Asheville Educational Association, Inc., (“AEA”), and Radio Training Network, Inc. (“RTN”). The Consent Decree resolves issues arising from the Bureau’s review of the captioned application, as amended,¹ for Commission consent to the proposed assignment of license of Station WLFA(FM), Asheville, North Carolina (the “Station”) from AEA to RTN (“Application”). In particular, the Consent Decree resolves the Bureau’s investigation of the applicants’ compliance with Sections 73.3540 and 73.503(c) of the Commission’s Rules (“Rules”) and Section 310 of the Communications Act of 1934, as amended (the “Act”).²

2. The Consent Decree stipulates that AEA violated Section 73.503(c) of the Rules, and that AEA and RTN violated Section 310 of the Act and Section 73.3540 of the Rules.³ The Consent Decree also requires, among other things, that AEA and RTN will collectively make a ten thousand dollar (\$10,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau’s investigation of potential violations of the Rules and the Act in connection with the Application.

¹ The Application was amended: 1) on April 29, 2015, to include an exhibit in support of RTN’s multiple ownership certification and a revised draft security agreement; and 2) on June 12, 2015, to notify that “the parties terminated the previously listed time brokerage agreement as of June 9, 2015. The Station has now been taken temporarily silent by the assignee (see File No. BLSTA-20150609AAR, granted July 1, 2015, with an expiration date of December 28, 2015, See Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau to Asheville Educational Association, Inc., Ref. 1800B3-DW (MB Jul. 1, 2015)). The assignee will return the Station to the air upon the approval and closing of this transaction.” Exhibit 1, Application, as amended June 12, 2015.

² 47 U.S.C. §310.

³ 46 C.F.R. § 73.3540.

4. Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact as to whether AEA or RTN possesses the basic qualifications to be a Commission licensee.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁴ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁵ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

6. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

7. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ms. Janice Brantley, Vice President, Asheville Educational Association, Inc., P.O. Box 3172, Asheville, North Carolina 28802, and to AEA's counsel, John C. Trent, Esq., Putbrese Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, Virginia 22664; and to Mr. James L. Campbell, President, Radio Training Network, Inc., P.O. Box 7217, Lakeland, Florida 33807, and to RTN's counsel, A. Wray Fitch, III, Esq., Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

⁴ 47 U.S.C. § 4(i).

⁵ 47 C.F.R. §§ 0.61, 0.283.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission, Asheville Educational Association, Inc., licensee and proposed assignor of noncommercial educational FM Station WLFA(FM), Asheville, North Carolina (Facility ID No. 2922); and Radio Training Network, Inc., proposed assignee, for the purpose of terminating the Bureau's Investigation concerning compliance with Sections 73.503(c) and 73.3540 of the Commission's Rules, 47 C.F.R. §§ 73.503(c), 73.3540, and Section 310 of the Communication Act of 1934, as amended, 47 U.S.C. § 310.

II. Definitions

2. For 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 this Consent Decree;
 - (c) "Application" means the FCC Form 314 application, as amended, for consent to assign the Station license from AEA to RTN (File No. BALED-20150313AAW);
 - (d) "Bureau" means the Media Bureau of the Commission;
 - (e) "Commission" or "FCC" means the Federal Communications Commission;
 - (f) "Compliance Plan" means the compliance plan set forth in the Appendix hereto;
 - (g) "Effective Date" means the date on which the Bureau releases the Order;
 - (h) "Investigation" means the Bureau's investigation of information contained in the Application;
 - (i) "Licensee" or "AEA" refers to Asheville Educational Association, Inc.;
 - (j) "Parties" means AEA, RTN, and the Bureau;
 - (k) "RTN" means Radio Training Network, Inc., proposed assignee of the Station;
 - (l) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
 - (m) "Station" means Station WLFA(FM), Asheville, North Carolina (Facility ID. No. 2922);
 - (n) "TBA" means the time brokerage agreement executed on August 1, 2003, between AEA and RTN concerning the Station; and

- (o) “Violations” means the payments AEA received pursuant to the TBA in violation of Section 73.503(c) of the Rules and the failure of AEA to retain complete control of Station operations subsequent to the implementation of the TBA in violation of Section 73.3540 of the Rules and Section 310(d) of the Act.

III. Background

3. Section 73.503(c) of the Rules provides that:

A noncommercial educational FM broadcast station may broadcast programs produced by, or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station network, or someone other than the licensee on a noncommercial educational FM broadcast station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph.⁶

Time Brokerage Agreements are not precluded by any Commission rule or policy, so long as the ownership rules are not violated and the participating licensee maintains ultimate control over its facilities;⁷ the licensee maintains such control when it holds ultimate responsibility for essential station matters such as programming, personnel, and finances.⁸

4. Under the terms of the TBA, executed on August 1, 2003, AEA agreed to receive from RTN a series of escalating monthly payments that were unrelated to “costs incidental to its production and broadcast” in violation of Section 73.503(c) of the Rules. Specifically, the TBA provided for an initial monthly payment of \$6,750, for the first (2003) year of the TBA; which increased by five percent per annum in years two through five; in September 2008, after the start of license renewal term, the monthly payments increased to \$8,614.89; and thereafter, increased by five per cent per annum in successive years.⁹ In addition, the executed TBA effected an unauthorized transfer of control of the Station license in violation of Section 73.3540 of the Rules and Section 310 of the Act. In particular, pursuant to the TBA, AEA improperly delegated core licensee responsibilities including the requirement to retain Station

⁶ 47 C.F.R. § 73.503(c).

⁷ 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rule Making, 18 FCC Rcd 13620, 13743 (2003) (subsequent history omitted).

⁸ 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540(a). See also *Solar Broadcasting Co., Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5486 (2002) (“Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station matters, such as personnel, programming and finances, is nondelegable.”); *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306-07 (2002) (stating that “the Commission looks not only to who executes the programming, personnel, and finance responsibilities, but also to who establishes the policies governing those three areas.”); *Choctaw Broadcasting Corp.*, Memorandum Opinion and Order, 12 FCC 8534, 8538-39 (1997) (“[A] licensee involved in an LMA is not relieved of its responsibility to retain ultimate control.”).

⁹ See TBA at 3 ¶ 3.1, Exhibit 17, Application, as amended on April 29, 2015.

employees at the main studio¹⁰ and the need to maintain and repair Station equipment.¹¹

5. On March 13, 2015, AEA and RTN jointly filed the Application which included the TBA. In response, the Commission staff commenced its Investigation of the TBA. Subsequently, on June 9, 2015, AEA and RTN terminated the TBA¹² and the Station went silent pursuant to a granted Special Temporary Authority request.¹³

6. Because of the compliance issues raised by the TBA, the Parties have negotiated this Consent Decree to terminate the Bureau's Investigation.

IV. Agreement

7. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote the Station's compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

8. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. AEA and RTN further agree that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

9. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. AEA and RTN agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that either AEA or RTN fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, AEA or RTN will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures. Any violation of the Adopting Order or 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 enforcement of a Commission order.

10. 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, AEA and RTN agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations in any action against AEA and RTN, provided that AEA and RTN satisfies all of its obligations under this Consent Decree. In the event that either AEA or RTN fails to satisfy any of

¹⁰ *Id.* at 2 ¶ 2.3. A licensee is required to staff its main studio with at least two employees, one of whom must be managerial. See 47 C.F.R. § 73.1125, as interpreted by *Jones Easter of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 2615 (1991), *clarified*, Memorandum Opinion and Order, 7 FCC Rcd 6800 (1992). This staffing requirement applies even when the station is operated pursuant to a TBA. See, e.g., *KRLI, Malta Bend, Missouri*, Letter, 14 FCC 17731, 17734 (MMB 1999).

¹¹ *Id.* at 3 ¶ 2.4.

¹² See Application, as amended on June 12, 2015.

¹³ See File No. BLSTA-20150609AAR, granted on July 1, 2015. See Letter from Lisa Scanlan, Assistant Chief, Audio Division, Media Bureau to Asheville Educational Association, Inc., Ref. 1800B3-DW (MB Jul. 1, 2015).

its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

11. AEA stipulates that it violated Section 73.503(c) of the Rules by accepting the TBA fees. In addition, AEA and RTN stipulate that each violated Section 310(d) of the Act and Section 73.3540 of the Rules by allowing RTN to assume control of the Station without prior Commission authorization.

12. AEA and RTN agree to collectively pay a civil penalty to the United States Treasury in the amount of Ten Thousand Dollars (\$10,000), within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Michael Wagner at Michael.Wagner@fcc.gov on the date said payment is made. Such payment will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or credit card and must include the Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed 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). Below are additional instructions that should be followed based on the form of payment selected:

- 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.

13. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether AEA or RTN possesses the basic qualifications, including those relating to character, to hold or obtain a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the civil penalty payment, referenced in paragraph 12 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

14. Licensee agrees that it will abide by the Compliance Plan set forth in the Appendix hereto. Licensee further agrees, to the extent that it has not already done so, to implement the Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

15. AEA and RTN each agree to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or

modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and AEA and RTN will waive any statutory right to a *trial de novo*. AEA and RTN each further agree to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters herein.

16. The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

17. The Parties agree that if any provision of this 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 Licensee does not expressly consent), such provision will be superseded by such Commission rule or order.

18. The Consent Decree will be binding on Licensee's successors-in-interest and assigns. Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

19. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between AEA, RTN and the Bureau concerning the Violations discussed herein.

20. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

21. Each Party represents and warrants to the other Party 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.

22. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
William T. Lake, Chief

Date: _____

**ASHEVILLE EDUCATIONAL ASSOCIATION,
INC.**

By: _____
Janice Brantley, Vice President, Asheville
Educational Association, Inc.

Date: _____

RADIO TRAINING NETWORK, INC.

By: _____
James L. Campbell, President, Radio Training
Network, Inc.

Date: _____

APPENDIX**COMPLIANCE PLAN FOR STATION WLFA(FM)**

Within 30 days of the resumption of operation by the Station from the silent authority approved in BLSTA-20150609AAR, the licensee, including the current licensee AEA and any successor-in-interest licensee(s), of Station WLFA(FM) will institute the following procedures with regard to the Station to ensure compliance with the Commission's Rules and the Communications Act of 1934, as amended. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

1. Licensee will conduct training for all Station employees and management on compliance with FCC Rules applicable to Station operations. It will designate its Station Manager as a Compliance Officer responsible for responding to Station employee questions and consulting with outside counsel familiar with Communications law regarding compliance matters. Licensee will conduct refresher training for Station employees and management at least once every twelve (12) months, and will train any new Station employee within five (5) business days of commencement of his or her duties at the Station.

2. Licensee will engage FCC Counsel on an ongoing basis to provide guidance on FCC compliance issues, regular updates, and notices on developments in communications law applicable to the Station and the Station's operations, and to review applications and reports prior to filing with the FCC. In regard to the last matter, Licensee recognizes and acknowledges that any and all information provided to the FCC must completely and candidly set forth all relevant facts and circumstances, regardless of whether such submission may disclose a violation of the Act or Rules.

3. Licensee will maintain control of the programming, personnel, and finances of the Station and shall provide an affidavit or declaration to the Bureau, signed by Licensee's president, certifying that, since the commencement of this Compliance Plan or the filing of the last such report, if any, the Station has maintained such control and is in compliance with the Consent Decree, on or before December 31 (but no earlier than December 1) of each year of the three-year term of this Compliance Plan as provided in Paragraph 14 of the accompanying Consent Decree. In the event that Licensee is unable to so certify, it will disclose the reasons therefore and indicate what steps it has taken to render its operation of the Station in compliance with the Act, the Rules, and FCC Policy.