

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

In re Application of
Ottawa University
For Renewal of License for
Station KTJO-FM
Ottawa, Kansas
NAL/Acct. No. MB-20144140037
FRN: 0012624771
Facility ID No. 50757
File No. BRED-20130201ABW

ORDER

Adopted: March 19, 2015

Released: March 20, 2015

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau ("Bureau") and Ottawa University ("Ottawa"), the licensee for noncommercial educational ("NCE") FM Station KTJO-FM, Ottawa, Kansas (the "Station"). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application ("Renewal Application") for the Station as to whether the Station violated Sections 73.3527 ("Public File Rule"), 73.3615 ("Ownership Report Rule"), 73.561 ("NCE Minimum Operating Schedule Rule"), and 11.56 ("EAS CAP Compliance Rule") of the Commission's Rules (the "Rules").

2. In a recent Policy Statement the Bureau announced that certain student-run NCE radio Stations that committed first-time violations of certain documentation requirements of our Rules would be afforded the opportunity to negotiate a consent decree with a reduced payment amount. The Policy Statement limited the policy to "violations of rules that require the submission of reports and other

1 47 C.F.R. § 73.3527.

2 47 C.F.R. § 73.3615.

3 47 C.F.R. § 73.561.

4 47 C.F.R. § 11.56.

5 See William Penn University, Policy Statement and Order, 28 FCC Rcd 6932 (MB 2013) ("Policy Statement")

6 Id., 28 FCC Rcd at 6932 ¶ 2 (in cases of "first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations," instead of issuing a Notice of Apparent Liability (NAL), the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee will pay a reduced civil penalty and agree to a compliance plan. In negotiating the amount, the Bureau will consider "the totality of circumstances, including giving appropriate consideration to the station's finances with respect to reducing the base forfeiture amount significantly.").

materials or public notice of information”⁷ Additionally, it stated that all other violations of Rules were not included and would be processed under current procedures applicable to all licensees.⁸

3. We have negotiated the attached Consent Decree in which Ottawa stipulates that it violated the Public File Rule, the Ownership Report Rule, the EAS CAP Compliance Rule and the NCE Minimum Operating Schedule Rule. The Consent Decree also requires that Ottawa adhere to a Compliance Plan as set forth in the Appendix to the Consent Decree and pay a specified civil penalty. With respect to the Public File Rule and Ownership Report Rule violations, Ottawa has shown that, at the time of the violations, the Station was a student-run NCE FM station and that the violations at the Station are first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations. For these violations, Ottawa will pay a civil penalty to the United States Treasury in the amount of one thousand two hundred dollars (\$1,200). Regarding the EAS CAP Compliance Rule and the NCE Minimum Operating Schedule Rule violations, these are substantive violations that are not covered by special processing as set forth in the *Policy Statement*. For these violations, Ottawa has agreed to pay a civil penalty to the United States Treasury in the amount of eleven thousand dollars (\$11,000). Thus, Ottawa has agreed to pay a total civil penalty of twelve thousand two hundred dollars (\$12,200). A Copy of the Consent Decree is attached hereto and incorporated by reference.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by its approval and by terminating the Bureau’s investigation of Ottawa’s violations of the Rules as disclosed in the Renewal Application. In addition, based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact as to whether Ottawa possess the basic qualifications to be a Commission licensee and that the Renewal Application should be granted subject to the satisfaction of the terms and conditions set forth in the Consent Decree, but only for a term of four (4) years.⁹

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,¹⁰ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,¹¹ the Consent Decree attached hereto IS ADOPTED.

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

⁷ *Id.*, 28 FCC Rcd at 6936 - 6937 ¶11. Covered violations include the failure to “(a) file the required materials with the Commission, such as the Ownership Reporting Rule, (b) place the required materials in a file, such as in the station’s public inspection file pursuant to the Public File Rule, or (c) publish a notice in a local newspaper or broadcast as an announcement on the station pursuant to Section 73.3580 of the Rules.”

⁸ *Id.*, 28 FCC Rcd at 6937 ¶ 11. Specifically, the *Policy Statement* noted “that substantive operational violations, e.g. broadcast of indecent/obscene/profane material, commercial announcements, illegal contests, underwriting, news distortion and other programming-related violations, violations of the Commission’s technical, public safety, tower/transmitter site construction and maintenance rules, etc., as well as recurring or subsequent violations of any kind will continue to be handled under current procedures, with no reduction or relief for student-run stations, apart from those potentially available to all licensees under current procedures in appropriate circumstances.”

⁹ See 47 C.F.R. § 309(k) (permitting the Commission to grant an application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”).

¹⁰ 47 U.S.C. §§ 154(i), 154(j), and 503(b).

¹¹ 47 C.F.R. §§ 0.61, 0.283.

7. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ottawa University, 1001 S. Cedar Street, Ottawa, KS 66067 and to its counsel, Mark Van Bergh, Esq., 2538C South Arlington Mill Drive, Arlington, VA 22206.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Ottawa University, by their respective authorized representatives, for the purpose of resolving certain issues regarding compliance with the Public File Rule, the Ownership Report Rule, the NCE Minimum Operating Schedule Rule and the EAS CAP Compliance Rule, as defined below, that have arisen in the Media Bureau's review of the pending application for the renewal of the license for Noncommercial Educational FM Station KTJO-FM, Ottawa, Kansas.

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) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (c) "Commission" or "FCC" means the Federal Communications Commission;
 - (d) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Rules, as summarized in the Appendix;
 - (e) "EAS CAP Compliance Rule" means Section 11.56 of the Commission's Rules, 47 C.F.R. § 11.56;
 - (f) "Effective Date" means the date on which the Bureau releases the Order;
 - (g) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (h) "Licensee" or "Ottawa" refers to Ottawa University;
 - (i) "NCE Minimum Operating Schedule Rule" means Section 73.561 of the Commission's Rules, 47 C.F.R. § 73.561;
 - (j) "Order" means the Order of the Bureau adopting this Consent Decree;
 - (k) "Ownership Report Rule" means Section 73.3615 of the Commission's Rules, 47 C.F.R. § 73.3615;
 - (l) "Parties" means the Bureau and the Licensee;
 - (m) "Public File Rule" means Section 73.3527 of the Commission's Rules, 47 C.F.R. § 73.3527;
 - (n) "Renewal Application" means the pending application for the renewal of the license for KTJO-FM, Ottawa, Kansas (File No. BRED-20130201ABW);

- (o) “Rules” means the Commission’s Rules, found in Title 47 of the Code of Federal Regulations;
- (p) “Station” means Station KTJO-FM, Ottawa, Kansas (Facility ID No. 50757); and
- (q) “Violations” means the violations of the Public File Rule, the Ownership Report Rule, the NCE Minimum Operating Schedule Rule and the EAS CAP Compliance Rule.

III. Background

3. On February 1, 2013, Licensee filed the Renewal Application to renew its license for the Station. In the Renewal Application, Ottawa disclosed to the Commission that the Station had not complied with the Public File Rule, the Ownership Report Rule, the NCE Minimum Operating Schedule Rule and the EAS CAP Compliance Rule. Specifically, Licensee stated that quarterly issues and programs lists were missing from the Station’s public file from July 2005 through 2010. Additionally, Ottawa noted that it recreated issues and programs lists for 2011 and the first half of 2012. Licensee also disclosed that it failed to timely file biennial Ownership Reports in 2007 and 2009, but it has since filed these with the Commission. In addition, Ottawa stated that during periods of 2009 and 2010, it was silent without Commission consent. The Licensee further disclosed that it was not EAS CAP compliant on June 30, 2012, due to misplacement of the equipment it had previously ordered. Subsequently, it re-ordered and installed the EAS CAP compliant equipment.

4. Because of the compliance issues raised by these disclosures, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the compliance issues referenced in Paragraph 3 would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote Licensee’s compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Each represents and warrants to the other that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee’s Violations at the Station, as discussed herein.

8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of 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.

9. The Licensee hereby stipulates that the Station violated the Public File Rule, the Ownership Report Rule, the NCE Minimum Operating Schedule Rule and the EAS CAP Compliance Rule, during the 2005-2013 license term.

10. The Licensee agrees to pay a civil penalty to the United States Treasury in the amount of twelve thousand two hundred dollars (\$12,200.00) within thirty (30) days after the Effective Date. 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 include the Account Number and FRN referenced in the caption above. Regardless of the form of payment selected, a completed 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade at Penelope.Dade@fcc.gov and Kim Varner at Kim.Varner@fcc.gov. 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.

11. Because the Public File Rule violations continued over seven years of the license term, the Bureau agrees to grant the Renewal Application, after the Effective Date, for a four (4) year time period, provided that the following conditions have been met: a) Licensee has fully and timely satisfied its obligation to pay the civil penalty as set forth in paragraph 10 of this Decree; and b) there are no issues other than the Violations that would preclude grant of the Renewal Application.

12. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Rules. Licensee agrees, to the extent that it has not already done so, to implement this 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.

13. The Licensee represents that as of the Execution Date, apart from the issues and programming lists noted in paragraph 3, the Station's public file fully complies with the Public File Rule.

14. The Licensee agrees that it 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 the Licensee fails to satisfy any condition or Commission Rule, in the absence of Commission alteration of the condition or Rule, it 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.

15. The Consent Decree will be binding on the Licensee’s successors-in-interest and assigns. The 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.

16. The Licensee waives 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 Order, provided the Order adopts the Consent Decree without change, addition or modification.

17. The Licensee agrees 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 discussed in this Consent Decree.

18. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

19. The Licensee and the Bureau agree that if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a *trial de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

20. The Licensee and the Bureau agree that, in the event that this Consent Decree 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.

21. 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: _____

OTTAWA UNIVERSITY

By: _____
Keith Johnson, Chief Operating Officer, Ottawa University

Date: _____

APPENDIX**COMPLIANCE PLAN FOR STATION KTJO-FM**

For a period of three (3) years commencing as of the Effective Date of the Consent Decree, Ottawa University, or its successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Commission's Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I. A. The Station Manager (*i.e.*, the student designated as the Station Manager) and other appropriate staff of the Station will log all broadcasts of programming which, in the Licensee's judgment, constitutes public affairs and public service programming, broadcast by the Station. These logs will be compiled into quarterly issues and programs lists and will be timely placed in the public file of the Station.
 - B. All such quarterly issues and programs lists will be signed and dated by their preparer before they are placed in the public file.
 - C. Late-filed lists will be reviewed and signed by the Station Manager and the Station's faculty advisor and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
 - D. Within 30 days of the Effective Date of this Compliance Plan, Licensee will conduct training for all Station employees (which includes students working at the Station) and management on compliance with Commission Rules applicable to Station operations. It will also designate a Compliance Officer responsible for responding to Station employee questions and consulting with outside counsel familiar with Communications law regarding compliance matters. Additionally, 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.
- II. Licensee and/or any successor licensee, as appropriate, will conduct annual audits of the Station's public file on or about the anniversary date of the Effective Date of the Consent Decree. The three-year period will terminate on the successful completion of the third annual public file audit. The second and third audits will be due on the anniversary of the first audit.
 - III. Licensee shall annually submit a sworn certification to the Commission, signed by Licensee, that the Station's public file fully complies with the Public File Rule. If the Licensee cannot truthfully make this certification, it shall set forth in detail any public file deficiencies and describe any corrective measures taken. This report shall be filed within ten (10) days of the completion of the first annual public file audit pursuant to Item II above, and on that date yearly thereafter for two additional years. A copy will be served on Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at Peter.Doyle@fcc.gov.
 - IV. This Compliance Plan will be under the direct supervision of Dr. Beverly Rodgers, Dean, School of Arts and Sciences or by any member of Ottawa University designated by Dr. Beverly Rodgers, or in the event Dr. Beverly Rodgers, is no longer with Ottawa University or if the license has been assigned, by his/her successor or his/her successor's designee who is affiliated with the successor Licensee's Board.