

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

In re Application of)	
)	
Board of Trustees, Vermont State Colleges)	NAL/Acct. No. MB-201541410026
)	FRN: 0003651882
For Renewal of License for)	Facility ID No. 4304
Station WIUV(FM))	File No. BRED-20131127ACW
Castleton, Vermont)	

ORDER

Adopted: June 9, 2015

Released: June 9, 2015

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (“Bureau”) and the Board of Trustees, Vermont State Colleges (“VSC”), the licensee for Station WIUV(FM), Castleton, Vermont (the “Station”). The Consent Decree resolves issues arising from the Bureau’s review of the captioned license renewal application (“Renewal Application”) for the Station. In particular, the Consent Decree resolves the Bureau’s investigation of VSC’s compliance with Section 73.3527¹ of the Commission’s Rules (the “Rules”).

2. VSC has shown that, at the time of the violations, the Station was a student-run noncommercial educational (“NCE”) FM station licensed to VSC 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.² Specifically, VSC failed to prepare and place in the Station’s public file certain quarterly issues-programs lists.

3. We have negotiated the attached Consent Decree in which VSC stipulates that it violated Section 73.3527 of the Rules. The Consent Decree also requires that VSC adhere to a Compliance Plan as set forth in the Appendix to the Consent Decree and pay a civil penalty to the United States Treasury in the amount of \$1,000.

4. 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 consideration of potential violations of the Rules disclosed in the Renewal Application. In addition, based on the record

¹ 47 C.F.R. § 73.3527.

² See *William Penn University*, Policy Statement and Order, 28 FCC Rcd 6932 ¶ 2 (MB 2013) (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, 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.”).

before us, we conclude that nothing in that record creates a substantial or material question of fact as to whether VSC possess the basic qualifications to be a Commission licensee.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i), 4 (j) and 503(b)of the Communications Act of 1934, as amended,³ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁴ 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 the Board of Trustees, Vermont State Colleges, WIUV(FM) c/o Dennis P. Proulx, Dean of Students, Castleton State College,49 College Drive, Castleton, Vermont, 05735 and to its counsel Anne Goodwin Crump, Esq., Fletcher Heald & Hildreth, P.L.C., 1300 N 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

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

⁴ 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 and the Board of Trustees, Vermont State Colleges, by their respective authorized representatives, for the purpose of resolving certain issues regarding compliance with the Public File Rule that have arisen in the Media Bureau's review of the pending application for the renewal of the license for Noncommercial Educational FM Station WIUV(FM), Castleton, Vermont.

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) "Bureau" means the Media Bureau of the Commission;
- (d) "Commission" or "FCC" means the Federal Communications Commission;
- (e) "Compliance Plan" means the processes and procedures to ensure compliance with the Public File Rule as set forth in the Appendix hereto;
- (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) "Investigation" means the Bureau's investigation of licensee's compliance with the Public File Rule;
- (i) "Licensee" or "VSC" refers to the Board of Trustees, Vermont State Colleges;
- (j) "Parties" means VSC and the Bureau;
- (k) "Public File Rule" means Section 73.3527 of the Commission's Rules, 47 C.F.R. § 73.3527;
- (l) "Renewal Application" means the pending application, as amended, for the renewal of license for Station WIUV(FM), Castleton, Vermont (File No. BRED-20131127ACW);
- (m) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
- (n) "Station" means Station WIUV(FM), Castleton, Vermont (Facility ID. No. 4304); and

- (o) “Violations” means the violations of the Public File Rule.

III. Background

3. On November 27, 2013, VSC filed the Renewal Application to renew its license for the Station. In the Renewal Application, VSC disclosed that the Station had not complied with the Public File Rule. Specifically, Licensee stated that during the license term the Station’s public file failed to include quarterly issues and programs lists for the years prior to 2013. In particular, VSC noted that on June 8, 2009, the Station’s main studio suffered a flood that destroyed all of its records, including the public file.⁵ Afterwards, in the Fall of 2009, the Station relocated its studio and, as a consequence of the move, the issues and programs lists for the second and third quarters of 2009 were lost. Thereafter, until January 2013, the Station was managed by a series of student volunteers with “no clear responsibility or routine . . . to prepare or review the issues/programs lists . . .”⁶ In January 2013, Licensee implemented a new Station constitution that designated certain Station staffers with responsibility for maintaining and overseeing the Station’s public file. Subsequently, VSC has taken additional measures to ensure future compliance with the Commission’s rules and regulations including joining the Vermont Association of Broadcasters and requesting to participate in its Alternative Inspection Program.

4. Because of the compliance issues raised by VSC’s disclosures, the Bureau and VSC negotiated this Consent Decree to terminate the Bureau’s Investigation of VSC’s compliance with the Public File Rule.

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 VSC’s compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. VSC and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. VSC further 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 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. VSC 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 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. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission

⁵ Declaration of Dennis P. Proulx, Dean of Students, at 1, Application, as amended on April 2, 2015. For purposes of this Consent Decree, VSC is not considered to be in violation of the Public File Rule for the missing issues and programs lists prior to June 8, 2009, that were destroyed by the flood.

⁶ *Id.* at 2.

order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

8. 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, VSC agrees 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 VSC, provided that 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. VSC hereby stipulates that it violated the Public File Rule during the 2006-2014 license term by failing to prepare and place in the Station's public file quarterly issues and programs lists of public affairs programming broadcast by the Station in violation of Section 73.3527(e)(8) of the Rules.

10. VSC agrees to pay a civil penalty to the United States Treasury in the amount of One Thousand Dollars (\$1,000.00), 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 Penelope Dade at Penelope.Dade@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.

11. The Bureau agrees to grant the Renewal Application, after the Effective Date provided that the following conditions have been met: 1) VSC has fully and timely satisfied its obligation to make the civil penalty payment referenced in paragraph 10 of this Decree; and 2) there are no issues other than the Violations that would preclude grant of the Renewal Application.

12. VSC 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 further 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. VSC further 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. As of the Effective Date, VSC 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 Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If either 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, neither VSC nor the Commission will contest the validity of the Consent Decree or Adopting Order, and VSC will waive any statutory right to a *trial de novo*. Licensee further 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 addressed in this Consent Decree.

15. 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.

16. 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.

17. The Consent Decree will be binding on VSC'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.

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

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

20. 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.

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: _____

**BOARD OF TRUSTEES, VERMONT STATE
COLLEGES**

By: _____
Jeb Spaulding
Chancellor, Vermont State Colleges

Date: _____

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

For a period of three (3) years commencing as of the Effective Date of the Consent Decree, the Board of Trustees, Vermont State Colleges, 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 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's management 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 staff and management on compliance with Commission Rules applicable to Station operations. It will also designate a Compliance Officer responsible for responding to staff questions and consulting with counsel familiar with Communications law regarding compliance matters. Additionally, Licensee will conduct refresher training for staff and management at least once every twelve (12) months, and will train any new Station staffer 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 Dean Dennis P. Proulx, or by any member of Castleton State College designated by Dean Proulx, or in the event Dean Proulx is no longer with Castleton State College 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.