

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

In re Application of)
Lincoln County School District) NAL/Acct. No. MB-201441410033
For Renewal of License for) FRN: 0017048695
Station KLYX(FM)) Facility ID No. 175553
Pioche, Nevada) File No. BRED-20131018AFP

ORDER

Adopted: July 1, 2015

Released: July 2, 2015

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau ("Bureau") and Lincoln County School District ("Licensee"), licensee of Station KLYX(FM), Pioche, Nevada ("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 Licensee violated Section 73.3539 of the Commission's Rules ("Rules"), which sets forth the filing deadline for license renewal application, and Section 301 of the Communications Act of 1934, as amended ("Act"), which requires a valid authorization from the Commission to operate a broadcast station.

2. The Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational ("NCE") station licensed to an educational institution 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. We have negotiated the attached Consent Decree, which provides for the Licensee to carry out a compliance plan that meets the requirements of the new policy and to make a civil penalty payment to the United States Treasury in the amount of \$1,000.

1 See 47 C.F.R. § 73.3539.

2 47 U.S.C. § 301.

3 See Lincoln County School District, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15821 (MB 2013) (proposing \$7,000 forfeiture for apparent violation of Section 73.3539 and Section 301).

4 See William Penn University, Policy Statement and Order, DA 13-1074, ¶ 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 ("NAL"), the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee agree to a complains plan and makes a voluntary contribution to the United States Treasury. In negotiating the amount of the voluntary contribution, 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.").

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 consideration of potential violations of the Rules and the Act disclosed in Licensee's Renewal Application.

4. Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact whether Licensee possesses the basic qualifications to remain a Commission licensee and has satisfied the standards in Section 309(k)(1) of the Act for renewal of the Station's license.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁵ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁶ the Consent Decree attached hereto IS ADOPTED.

6. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules,⁷ that the *Notice of Apparently Liability for Forfeiture* issued to Lincoln County School District, for willfully violating Section 73.3539 of the Commission's Rules, and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended, IS HEREBY REDUCED to \$1,000.

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. Martin Soderborg, Lincoln County School District, P.O. Box 268, 1111 Edwards St., Panaca, Nevada 89042.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

⁵ 47 U.S.C. § 4(i).

⁶ 47 C.F.R. §§ 0.61, 0.283.

⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by: (a) the Media Bureau of the Federal Communications Commission; and (b) Lincoln County School District, licensee of Station KLYX(FM), Pioche, Nevada.

II. 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) “Bureau” means the Media Bureau of the Federal Communications Commission;
 - (c) “Compliance Plan” means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Filing Date Rule and Section 301 at the Station, as summarized in the Appendix hereto;
 - (d) “Commission” or “FCC” means the Federal Communications Commission;
 - (e) “Effective Date” means the date on which the Bureau releases the Order;
 - (f) “Filing Date Rule” means Section 73.3539 of the Commission’s Rules, 47 C.F.R. § 73.3539;
 - (g) “Final Order” means the status of the Order after the period for administrative and judicial review has lapsed;
 - (h) “Investigation” means the Bureau’s investigation of Licensee’s violations of the Filing Date Rule and Section 301;
 - (i) “Licensee” means Lincoln County School District, licensee of Station KLYX(FM), Pioche, Nevada;
 - (j) “Order” means an order of the Bureau adopting this Consent Decree;
 - (k) “Parties” means Licensee and the Bureau;
 - (l) “Renewal Application” means the pending application for the renewal of the license for Station KLYZ(FM), Pioche, Nevada (File No. BRED-20131018AFP);
 - (m) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;
 - (n) “Section 301” means Section 301 of the Communications Act of 1934, as amended;
 - (o) “Station” means Station KLYZ(FM), Pioche, Nevada (Facility ID No. 175553), licensed to Lincoln County School District; and

(p) “Violations” means the violations of the Filing Date Rule and Section 301.

III. Background

3. On October 18, 2013, the Licensee untimely filed the Renewal Application for the Station’s current license term in violation of the Filing Date Rule,⁸ and filed a request for Special Temporary Authority (“STA”) to continue the Station’s operations pending consideration of the Renewal Application.⁹ On November 13, 2014, the Bureau issued a *Notice of Apparent Liability for Forfeiture* for the Violations.¹⁰ The Licensee has timely disputed the *NAL* based on financial hardship and the fact that it is a student-run station.

4. Because of the issues identified in the Bureau’s investigation and the untimeliness of the Renewal Application, 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 Licensee’s violations of the Filing Date Rule and Section 301 of the Act, referred to in Paragraph 3 above, would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Licensee’s future compliance with the Filing Date Rule and Section 301 of the Act, 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. Both the Licensee and the Bureau each represent and warrant 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.

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.

⁸ The Renewal Application was due on or before June 1, 2013. The Station’s license term ended on October 1, 2013.

⁹ See File No. BLSTA-20131018AFU (“STA Request”). The staff granted the STA Request on October 31, 2014. *Lincoln County School District*, Letter, Ref. 1800B3 (MB Oct. 31, 2014).

¹⁰ See *Lincoln County School District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15821 (MB 2013) (proposing \$7,000 forfeiture for apparent violation of Section 73.3539 and Section 301).

9. The Licensee hereby stipulates that it violated the Filing Date Rule by filing the Renewal Application after June 1, 2013, and that it violated Section 301 of the Act by continuing the Station's operations without STA after its license had expired.

10. The Bureau has agreed to accept and Licensee has agreed to make a civil penalty payment to the United States Treasury in the amount of One Thousand Dollars (\$1,000) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.sanjenis@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 will grant the pending Renewal Application for the Station (File No. BRED-20131018AFP) after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the payment referenced in Paragraph 10 of this Decree; and 2) there are no issues other than the Violations that would preclude the 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 Filing Date Rule and Section 301. 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 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 the Licensee fails to satisfy any condition, 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, designation of the matter for hearing, letters of admonishment, or forfeitures.

14. 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.

15. The Licensee waives any and all rights that 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 Order, provided that the Order adopts the Consent Decree without change, addition or modification.

16. The Licensee waives any claims that 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 discussed in this Consent Decree.

17. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, none of the Parties shall contest the continuing validity of the Consent Decree or the Order. The Licensee and the Bureau further agree that they 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 that they will consent to a judgment incorporating the terms of this Consent Decree.

18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

19. 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: _____

LINCOLN COUNTY SCHOOL DISTRICT

By: _____
Mr. Marty Soderborg, Principal and Station Manager

Date: _____

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

Lincoln County School District or its successor-in-interest, as licensee of the Station, as appropriate, will institute the following procedures to ensure compliance with the Commission's application filing Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

1. The Station's licensee will conduct training for all Station employees on compliance with Commission Rules applicable to station operations. To augment this training, outside counsel, or other comparable professionals, will conduct an on-site workshop for all of the Station's employees. This workshop will be recorded and used as refresher training for staff and management at least once every twelve (12) months, and to train any new employee within five (5) days of commencement of his or her duties at the Station.

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

3. The Station's licensee will use a commercially-available calendaring system, such as Microsoft Outlook or Google Calendar, to track filing deadlines. An authorized officer of the Station's licensee will provide an annual declaration to the Bureau certifying that, since the commencement of this Compliance Plan or the filing of its last report, if any, the Station's licensee has maintained and is maintaining such a calendar system each year of the three-year term of this Compliance Plan. In the event the Station's licensee is unable to so certify, it will disclose the reasons there for and indicate what steps it has taken to come into compliance with this Compliance Plan.