

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

In the Matter of	)	
	)	
Alpha & Omega Communications, LLC	)	Facility I.D. No. 10177
Licensee of Station KTMW(TV)	)	File No.: BRC DT - 20140805ADI
Salt Lake City, Utah	)	Acct. No.: 201541420007
	)	FRN: 0005898093
	)	

**ORDER**

**Adopted: July 31, 2015**

**Released: July 31, 2015**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Media Bureau (the “Bureau”) of the Federal Communications Commission (the “Commission”) and Alpha & Omega Communications, LLC (the “Licensee”), licensee of Station KTMW(TV), Salt Lake City, Utah (the “Station”). Currently pending before the Commission are (a) an application for renewal of the Station’s license (FCC Form 303-S), (b) an application for involuntary transfer of control (FCC Form 316), and (c) an application for consent to assign the license of the Station to Serestar Communications Corporation (FCC Form 314). Upon review of the Station’s public file, the Video Division discovered several violations of Commission Rules, including Sections 73.3539, 73.3526, and 73.3514.<sup>1</sup>

2. The Bureau and the Licensee have negotiated the terms of the Consent Decree that terminate the above-referenced matter. 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. A copy of the Consent Decree is attached and incorporated by reference.

3. In the absence of new material evidence relating to this matter, we conclude that the matters referenced above raise no substantial or material questions of fact as to whether the Licensee possesses the basic qualifications to hold a Commission license and that grant of the above-captioned pending license renewal application is consistent with Section 309(k) of the Communications of 1934, as amended (the “Act”).<sup>2</sup>

<sup>1</sup> 47 C.F.R. §§ 73.3539(a), 73.3526(e)(11)(i), 73.3526(b)(2) and 73.3514(a). During the current license period, the Station filed its renewal application late, failed to properly place issues and programs lists into its online public file in a timely manner, and failed to disclose these violations in its renewal application.

<sup>2</sup> Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application “if it finds, with respect to that station, during the preceding term of its license—(a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.” 47 U.S.C. § 309(k)(1). Section 309(k) of the Act states, however, that if the licensee fails to meet this three part standard, the Commission may deny the application—after notice and comment, and opportunity for hearing under Section 309(e) of the Act—“or grant the application on terms and conditions as are appropriate....” 47 U.S.C. §§ 309(k)(2) and 309(k)(3).

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,<sup>3</sup> and Sections 0.111 and 0.311 of the Commission's Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that, pursuant to Section 309(k) of the Communications Act of 1934,<sup>5</sup> the application to renew the broadcast license of KTMW(TV), Salt Lake City, Utah, BRC DT - 20140805ADI, **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First Class mail and Certified Mail, Return Receipt Requested, to Licensee's counsel, Barry D. Wood, Esq., Wood, Martin & Hardy, P.C., 3300 Fairfax Drive, Suite 202, Arlington, VA 22201-4400.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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<sup>3</sup> 47 U.S.C. §§ 154(i), 154(j), 503(b).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

<sup>5</sup> 47 C.F.R. § 309(k).

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Licensee of Station KTMW(TV)	)	Acct. No.: 201541420007
Salt Lake City, Utah	)	FRN: 0005898093

**CONSENT DECREE**

1. The Media Bureau of the Federal Communications Commission and Alpha & Omega Communications, LLC (“Alpha & Omega”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into possible violations of the Commission’s public file rules, including 47 C.F.R. §§ 73.3539, 73.3526 and 73.3514.

**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 the Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - c) “Alpha & Omega” means Alpha & Omega Communications, LLC and its predecessors-in-interest and successors-in-interest.
  - d) “Bureau” means the Media 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 Alpha & Omega is subject by virtue of it being a Commission licensee, including but not limited to 47 C.F.R. §§ 73.3539(a), 73.3526(e)(11)(i), 73.3526(e)(13), 73.3526(b)(2), and 73.3514(a).
  - g) “Consummation” refers to the time/date of closing of the transaction that is the subject of the pending application, File No. BALCDT-20150319ABJ seeking consent to assign station KTMW(TV) from Alpha & Omega to Serestar Communications Corporation.
  - h) “Current License Period” means from the fourth quarter of 2006 to the effective date.

- i) “Division” means the Video Division, Media Bureau of the FCC.
- j) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- k) “Investigation” means the examination of Alpha & Omega’s compliance with the Public File Rules as related to the above-captioned application.
- l) “Parties” means Alpha & Omega and the Bureau, each of which is a “Party.”
- m) “Public File Rules” means 47 C.F.R. §§ 73.3539(a), 73.3526, including but not limited to 73.3526(b)(2), 73.3526(e)(11)(i), and 73.3526(e)(13), and also 47 C.F.R. § 73.3514(a).
- n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- o) “Station” means KTMW(TV), Salt Lake City, Utah.

## II. DISCUSSION

3. On August 5, 2014, Alpha & Omega filed its license renewal application (FCC Form 303-S) with the Commission. In the process of evaluating the application, the Bureau identified several potential violations of the Commission’s Public File Rules, which are outlined below.

4. Section 73.3539(a) of the Rules requires a broadcast television license renewal application to be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed....”<sup>1</sup> The Station’s license was scheduled to expire on October 1, 2014. In accordance with Section 73.3539(a) of the Rules, the Licensee was required to file its Form 303-S to renew the license of KTMW on or before June 2, 2014.<sup>2</sup> The Licensee did not file its Form 303-S until August 5, 2014.<sup>3</sup>

5. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. Subsection 73.3526(e)(11)(i) of the Rules requires every commercial television and Class A licensee to place in its public inspection file, on a quarterly basis, a list of issues and programs “that have provided the station’s

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<sup>1</sup> 47 C.F.R. § 73.3539(a).

<sup>2</sup> *Id.* Because June 1, 2014 fell on a weekend, a license renewal application filed on June 2, 2014 would have been considered timely. See also *Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S License Renewal Application; Television License Renewal Filings Accepted Beginning May 1, 2012*, Public Notice, 27 FCC Rcd 2460 (MB 2012).

<sup>3</sup> See *Application for Renewal of Broadcast Station License*, FCC File No. BRCDDT-20140805ADI. Alpha & Omega states that it completed its EEO Program Report and license renewal application and filed them in early June, 2014 in CDDBS. Alpha & Omega further states that the renewal application received file number 20140604AAB, but due to a problem with payment of the filing fee, the application was rejected as “not paid.” The application was resubmitted, with the filing fee, on August 5.

most significant treatment of community issues during the preceding three month period.”<sup>4</sup> Copies of the issues and programs lists must be “retained in the public inspection file until final action has been taken on the station’s next license renewal application.”<sup>5</sup>

6. In 2012 the Commission adopted Section 73.3526(b) of the Rules, which requires licensees to upload elements of stations’ public files to an online Commission hosted website (*i.e.*, a Station’s “e-pif”).<sup>6</sup> This requirement includes uploading copies of a station’s quarterly TV issues/programs lists to its e-pif.<sup>7</sup> Broadcasters’ e-pif requirements were phased in between August 2012 and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station’s public file, with limited exception, to their e-pif on a moving forward basis. By February 4, 2013, stations were required to upload to their e-pif those public file documents, with limited exceptions, that were already in their physical public file prior to August 2, 2012.<sup>8</sup> During the current license period, it appears that Alpha & Omega failed to comply with this requirement. The Station’s public file was, until recently, missing its issues/programs lists for all quarters prior to Q1 2013. Alpha & Omega has stated, however, that all of the subject information was placed in its physical public file at the Station at the appropriate times. The issues/programs lists that had been missing from the e-pif were uploaded to the e-pif in June, 2015.

7. Subsection 73.3526(e)(13) of the Rules provides that “[e]ach applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(h), place in the station’s local public inspection file a statement certifying compliance with this requirement...”<sup>9</sup> This rule extends to the licensee’s online public file.<sup>10</sup> Alpha & Omega’s online public file did not, until recently, contain any statements that would demonstrate compliance with this requirement. Alpha & Omega notes that statements demonstrating compliance with Section 73.3580(h) were at all relevant times in the physical public file, and have since been uploaded to the e-pif.

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<sup>4</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>5</sup> *Id.*

<sup>6</sup> See generally, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children’s Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Second Report and Order*”) (requiring broadcast television stations to post their public inspection files, with limited exception, online in a Commission-hosted database).

<sup>7</sup> 47 C.F.R. § 73.3526(b)(2); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children’s Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) (“*Second Report and Order*”) (requiring broadcast television stations to post their public inspection files, with limited exception, to an online Commission-hosted database).

<sup>8</sup> See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012)(announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding station’s to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013)(providing a final reminder to broadcasters to upload copies of existing public file documents to their electronic public file); see also *Second Report and Order*, 27 FCC Rcd at 4580, para. 97 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

<sup>9</sup> 47 C.F.R. § 73.3526(e)(13).

<sup>10</sup> See *Second Report and Order*, 27 FCC Rcd at 4539.

8. Subsection 73.3514(a) of the Rules provides that “[e]ach application shall include all information called for by the particular form on which the application is required to be filed...”<sup>11</sup> Section IV, Question 3 of the license renewal application requires the licensee to certify that during the license term it has placed all documents required by Section 73.3526 of the Commission’s rules into the Station’s public file at appropriate times.<sup>12</sup> In response to Question 3 in its license renewal application, Alpha & Omega certified that it had placed all required documents in its public inspection file at the appropriate times. Alpha & Omega failed to disclose that it had failed to upload to the e-pif the above-described documents in accordance with the new procedures announced in the Commission’s April 2012 Second Report and Order and the July 2012 Public Notice.<sup>13</sup>

### III. TERMS OF AGREEMENT

9. **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.

10. **Jurisdiction.** Alpha & Omega agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of 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 the enforcement of a Commission order.

12. **Termination of Investigation; Grant of Renewal Application.** 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, Alpha & Omega agrees to the terms and conditions contained herein. Furthermore, pursuant to Section 309(k)(2) of the Act, the Bureau agrees to grant, in conjunction and simultaneously with the adoption of this Consent Decree, the Station’s Renewal Application through October 1, 2022, without any additional conditions beyond those set forth 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, 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 Alpha & Omega concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, 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 Alpha & Omega with respect to Alpha & Omega’s basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

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<sup>11</sup> 47 C.F.R. § 73.3514(a).

<sup>12</sup> *FCC Form 303-S*, Section IV, Question 3.

<sup>13</sup> *See supra* fn. 6 and 8. Alpha & Omega has amended the license renewal application to specify the items that were not uploaded to the e-pif on a timely basis.



13. **Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints or other adjudicatory pleadings filed against Alpha & Omega or its affiliates for alleged violations of the Act or the Commission's rules or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Alpha & Omega with the Communications Laws.

14. **Voluntary Contribution.** Alpha & Omega agrees that it will make a voluntary contribution to the United States Treasury in the amount of Six Thousand Dollars (\$6,000) on the date of Consummation of the pending assignment application, File No. BALCDT-20150319ABJ. Alpha & Omega shall also send electronic notification of payment to Alison Nemeth at [alison.nemeth@fcc.gov](mailto:alison.nemeth@fcc.gov) on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>14</sup> 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 you should follow based on the form of payment you select:<sup>15</sup>

- 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.

15. **Waivers.** Alpha & Omega 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 defined 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 Alpha & Omega nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Alpha & Omega shall waive any statutory right

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<sup>14</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>15</sup> Should the Station have questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

to a trial *de novo*. Alpha & Omega hereby agrees to waive any claims it may 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. **Liability.** Alpha & Omega admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 11 hereof, that the facts discussed in paragraphs 3-8 above constitute violations of Sections 73.3539(a), 73.3526(e)(11)(i), 73.3526(b)(2), 73.3526(e)(13), and 73.3514(a) of the Rules. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraph 12 hereof, or both, are breached by the Bureau, or are invalidated or modified to Alpha & Omega's prejudice by the Commission, Bureau, or any court, then and in that event the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Alpha & Omega shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning violations of Sections 73.3539(a), 73.3526(e)(11)(i), 73.3526(b)(2), 73.3526(e)(13), and/or 73.3514(a) of the Rules.

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

18. **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 Alpha & Omega does not expressly consent) that provision will be superseded by such rule or Commission order.

19. **Successors and Assigns.** Alpha & Omega agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

22. **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.

23. **Authorized Representative.** The individual signing this Consent Decree on behalf of Alpha & Omega represents and warrants that she is authorized to execute this Consent Decree and to bind Alpha & Omega to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

24. **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.



**Media Bureau  
Federal Communications Commission**

By:

\_\_\_\_\_  
William T. Lake  
Chief

\_\_\_\_\_  
Date

**Alpha & Omega Communications, LLC**

By:

\_\_\_\_\_  
Connie Whitney  
Member of LLC

\_\_\_\_\_  
Date