

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

In re Applications of)	NAL/Acct. No. MB-201641410023
)	FRN: 0004976882
WSKQ Licensing, Inc.)	Facility ID No. 61641
)	
For Renewal of License for Station)	File Nos. BRH-20060131AEU and
WSKQ-FM, New York, New York)	BRH-20140203ANX

ORDER

Adopted: April 4, 2017

Released: April 5, 2017

By the Acting Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and WSKQ Licensing, Inc. (Licensee), licensee of Station WSKQ-FM, New York, New York (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned applications for renewal of the Station's license filed in 2006 (2006 Renewal Application) and 2014 (2014 Renewal Application).¹

2. As detailed in the Consent Decree, the Renewal Applications raised issues of compliance with certain FCC rules. Specifically, a petition to deny the 2006 Renewal Application presented claims that the Station had aired indecent programming and violated the broadcast hoax rule.² These allegations were raised again by the petitioners in connection with the 2014 Renewal Application.³ The Bureau denied the first petition, dismissed the second petition, and granted the Renewal Applications in its March Decision. That decision held that the claim of a broadcast hoax violation was not substantiated in accordance with Section 309(d) of the Communications Act of 1934, as amended (Act).⁴ As for the indecency allegations, the March Decision did not rule on the merits of the allegations, but held that even if a violation were adjudicated based on the claims presented, such a violation would not justify denial or designation of the Renewal Applications or demonstrate a pattern of non-compliant behavior.⁵

3. The petitioners thereafter filed petitions for reconsideration of the March Decision.⁶ Accordingly, the indecency and broadcast hoax allegations remain pending before the Bureau.

4. The Consent Decree resolves the Bureau's investigation of the alleged violations. For the reasons stated in the March Decision, the Bureau has concluded that there is no basis for finding a

¹ Collectively, the 2005 Renewal Application and the 2013 Renewal Application will be referred to as the Renewal Applications.

² See *WSKQ Licensing, Inc.*, Letter Order (MB Mar. 9, 2016) (March Decision).

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.*

⁶ Identical petitions were filed with respect to each of the Renewal Applications.

violation of the broadcast hoax rule. With respect to the indecency allegations, Licensee argued that no sanction is appropriate because none of the Broadcasts are actionably indecent. The petitioners argued that the broadcasts in question are indecent, but they have not shown, and we are not aware of, any case where a broadcast station faced the prospect of license revocation pursuant to Section 312(a)(6) of the Act or non-renewal pursuant to Section 309(k) of the Act based on comparable facts. We note that Section 1.80 of the Rules, as of the date of the broadcasts in question, specified a base forfeiture amount of \$7,000 for a broadcast of indecent material between the hours of 6 a.m. and 10 p.m.⁷ Based on our review of the record, we find that the broadcasts are of a nature that could support a forfeiture proceeding against Licensee for violations of 18 U.S.C. § 1464, but do not implicate Licensee's basic qualifications, demonstrate a failure to serve the public interest, convenience, and necessity over the Station's license term of 1998-2006, or constitute serious violations for purposes of Section 309(k)(1) of the Act.⁸ In order to resolve the matter without further expenditure of scarce resources, the Bureau and Licensee have negotiated the attached Consent Decree to provide for Licensee to pay a civil penalty in the amount of \$10,000 and for the Bureau to terminate its investigation of the alleged violations.

5. 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 FCC's rules and the Act.

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

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁹ and by the authority delegated by Sections 0.61 and 0.283 of the FCC's rules,¹⁰ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

9. IT IS FURTHER ORDERED that the Petitions for Reconsideration of the March Decision ARE DISMISSED AS MOOT.

⁷ 47 CFR §1.80, Note to Paragraph (b)(8).

⁸ See *Liberman B'casting, Inc.*, Order, 28 FCC Rcd 15397, 15398, para. 4 (EB 2013) (admission by licensee of Spanish-language radio stations to multiple violations of Section 1464 does not implicate its qualifications to be an FCC licensee).

⁹ 47 U.S.C. § 154(i).

¹⁰ 47 CFR §§ 0.61 and 0.283.

10. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Nancy J. Ory, Esq., Lerman Senter PLLC, 2000 K Street, N.W., Washington DC 20006-1809, and to Dennis J. Kelly, Esq., P.O. Box 41177, Washington DC 20018-0577.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Acting 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 WSKQ Licensing, Inc., licensee of the Station (as defined below), for the purpose of terminating the Bureau's Investigation concerning the matters raised in the Petition to Deny and the Petition for Reconsideration (as defined below), including the substantive claims of indecent broadcasts by the Station in violation of 18 U.S.C. § 1464 and an alleged violation of the broadcast hoax rule in 47 CFR § 73.1217.

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) "Broadcasts" means the broadcasts on the Station in March 2005 and June 2005 that are addressed in the Petition to Deny and supported by taped excerpts submitted with the Petition to Deny;
- (d) "Bureau" means the Media Bureau of the Federal Communications Commission;
- (e) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury;
- (f) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;
- (g) "Effective Date" means the date on which the Bureau releases the Adopting Order;
- (h) "Investigation" means the Bureau's investigation of the Renewal Applications and the allegations set forth in the Petition to Deny and the Petition for Reconsideration;
- (i) "Letter Decision" means the Bureau's letter dated March 9, 2016, addressing the Petitions to Deny and granting the Renewal Applications;
- (j) "Licensee" means WSKQ Licensing, Inc.;
- (k) "Parties" means Licensee and the Bureau;
- (l) "Petition for Reconsideration" means each of the petitions for reconsideration filed by Agustina Perez, *et al.*, on April 14, 2016 with respect to the Letter Decision;
- (m) "Petitioners" means Agustina Perez, *et al.*, as set forth in the Petitions to Deny;

- (n) “Petition to Deny” means the petition to deny filed by Agustina Perez, *et al.*, on May 1, 2006 against the Station’s 2006 license renewal application;
- (o) “Renewal Applications” refers to Licensee’s applications for renewal of the Station’s license (File Nos. BRH-20060131AEU and BRH-20140203ANX);
- (p) “Rules” means the FCC’s rules, found in Title 47 of the Code of Federal Regulations;
- (q) “Section 1217” means 47 CFR § 73.1217;
- (r) “Section 1464” means 18 U.S.C § 1464;
- (s) “Station” means Station WSKQ-FM, New York, New York (Facility ID No. 61641).

III. Background

3. On May 1, 2006, Petitioners filed the Petition to Deny, alleging that Licensee had repeatedly violated Section 1464 and also violated Section 1217.¹ With respect to the alleged violations of Section 1464, Petitioners submitted recorded excerpts of the Station’s Spanish-language Broadcasts from two days in March 2005 and two days in June 2005, along with an English-language translation of the taped excerpts.² Licensee challenged the linguistic accuracy of parts of Petitioners’ translation and provided its own translation, which included less explicit interpretations of certain words or phrases. Licensee further challenged certain portions of the allegations that were not supported by taped excerpts and disputed that any of the Broadcasts that were taped violated Section 1464. With respect to the alleged violations of Section 1217, Licensee presented evidentiary challenges to the claims and argued that the alleged Lincoln Tunnel hoax did not present “public harm” as defined in Section 1217.³

¹ Petitioners claimed that the Station had aired a number of hoax broadcasts in violation of Section 1217, but only provided support for those claims in the form of a *New York Times* article dated August 13, 2001, which included a brief description of an incident in which the hosts of the Station’s morning program claimed the Lincoln Tunnel was flooding. *See* Letter Decision at 2.

² Petitioners also claimed that a March 8, 2005 broadcast included indecent language (specific words cited, without context, and with translations of words that are unsupported by any reference source and contrary in some cases to our interpretation) and “a song . . . describing how a man desired to have perverse sexual relations.” Petition to Deny at 5. No tape or transcript was provided of this alleged broadcast. In response, Licensee submitted a declaration from the Station’s General Manager, stating: “I do not believe the words [claimed to have been broadcast on March 8, 2005] were used specifically and while there may have been a racy song broadcast, I do not believe that it was in any way indecent.” Opposition to Petition to Deny at Att. 1 (May 31, 2006). Similarly, Petitioners alleged that certain indecent expressions or words were aired by the Station on unspecified dates and times, with no supporting tape or transcript. Petition to Deny at 6. In response, the Station’s General Manager stated: “[W]e have no specific recollection of use of the words set forth, but in any case I do not agree with the English translation of several of those words.” Opposition to Petition to Deny at Att. 1 (May 31, 2006). Due to the shortcomings in these aspects of the allegations—*e.g.*, lack of context, lack of specificity, lack of date/time, interpretations of specific terms that are unsupported by a reference source and in some cases contrary to our interpretation—we find that these claims fail to present specific allegations of fact which are sufficient to show that renewal of the Station’s license would be inconsistent with the public interest, convenience, and necessity. *See* 47 U.S.C. §309(d)(1); *see also Astroline Commc’ns Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

³ *Id.* Petitioners repeated their claims in a Renewal of Petition to Deny, filed on May 1, 2014, and Licensee responded with reiterations of its arguments in response.

4. In the Letter Decision, the Bureau did not rule on the merits of Petitioners' indecency allegations. The Bureau stated: "However, we have reviewed the facts presented in the 2006 Petition and have concluded that, even if a violation were adjudicated based on these facts, such a violation would not justify denial or designation of the license renewal application or demonstrate a pattern of non-compliant behavior."⁴ With respect to the alleged violations of Section 1217, the Letter Decision held that the Petitioners had failed to show any violation occurring in the relevant license term.⁵

5. The Petition for Reconsideration argues that the Bureau failed to address the matter on a timely basis and now needs to address the merits of the indecency allegations.⁶ Based on its review of the record, the Bureau finds that Petitioners have failed to present a substantial and material question of fact with respect to the taped excerpts of Broadcasts presented in the Petition to Deny.⁷ Licensee has not disputed the authenticity of the tapes or argued that any of the Broadcasts aired before 6 a.m., so we conclude that the Station aired the taped material between the hours of 6 a.m. and 10 p.m. on the days specified by Petitioners.

6. Because there is no factual dispute, the sole issue to be addressed is whether a sanction is appropriate under these circumstances. Licensee argues that no sanction is appropriate because none of the Broadcasts are actionably indecent. Petitioners argue that the Broadcasts are indecent, but they have not shown, and we are not aware of, any case where a broadcast station faced the prospect of license revocation pursuant to Section 312(a)(6) of the Act or non-renewal pursuant to Section 309(k) of the Act based on comparable facts. We note that Section 1.80 of the Rules, as of the date of the Broadcasts, specified a base forfeiture amount of \$7,000 for a broadcast of indecent material between the hours of 6 a.m. and 10 p.m., in violation of Section 1464. Based on our review of the record, we find that the Broadcasts are of a nature that could support a forfeiture proceeding against Licensee for violations of Section 1464, but do not implicate Licensee's basic qualifications, demonstrate a failure to serve the public interest, convenience, and necessity over the Station's license term of 1998-2006, or constitute serious violations for purposes of Section 309(k)(1) of the Act.⁸ In order to resolve the matter without further expenditure of scarce resources, the Bureau and Licensee have negotiated this Consent Decree to provide for Licensee to pay a civil penalty in the amount of \$10,000 and for the Bureau to terminate its Investigation.

IV. Terms of Agreement

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Licensee agrees that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

⁴ *Id.* at 3. The Letter Decision dismissed the Renewal of Petition to Deny as an unauthorized pleading. *Id.* at 3-4.

⁵ *Id.* at 3 (rejecting the Lincoln Tunnel hoax allegation as based on hearsay, lacking specificity—e.g., no date specified for the date of the broadcast, and therefore no way to know whether it occurred in the relevant license term—and failing to show a violation of Section 1217 even if the hearsay were credited).

⁶ Petition for Reconsideration at 2-7.

⁷ See 47 U.S.C. §309(d)(2) and *Astroline*, *supra*.

⁸ See *Lieberman B'casting, Inc.*, Order, 28 FCC Rcd 15397, 15398, para. 4 (EB 2013) (admission by licensee of Spanish-language radio stations to multiple violations of Section 1464 does not implicate its qualifications to be an FCC licensee).

9. **Effective Date; Violations.** 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. 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 Licensee fails to satisfy any condition, in the absence of Commission alteration of the condition, Licensee 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. **Termination of Investigation.** 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, Licensee 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 alleged violations reviewed as part of the Investigation in any action against Licensee, provided that Licensee satisfies all of its obligations under this Consent Decree.

11. **Civil Penalty.** 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 Ten Thousand Dollars (\$10,000), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996.⁹

12. **Payment.** Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.Sanjenis@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.

⁹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

- 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. **Qualifications.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether (a) Licensee possesses the basic qualifications, including those relating to character, to hold or obtain a Commission license or authorization, (b) the Station served the public interest, convenience, and necessity during the Station's 1998-2006 and 2006-2014 license terms, or (c) the Broadcasts constitute serious violations for purposes of Section 309(k)(1) of the Act.¹⁰ Accordingly, the Bureau agrees not to take any action to reconsider the Letter Decision's grant of the Renewal Applications, 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 alleged violations of Section 1464 that would support reconsideration of the Letter Decision's grant of the Renewal Applications.

14. **Waivers.** Licensee agrees 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 Licensee 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 Section 1.1501 *et seq.* of the FCC's rules on relating to the matters herein.

15. **Severability.** The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

16. **Invalidity.** 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. **Subsequent Rule or Order.** 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 Rule or Order.

18. **Successors and Assigns.** Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

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

¹⁰ 47 U.S.C. § 309(k)(1).

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

21. **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.

22. **Authorized Representative.** 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.

23. **Counterparts.** 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: _____
Michelle M. Carey, Chief

Date: _____

WSKQ LICENSING, INC.

By: _____
Joseph A. Garcia, Senior Executive Vice President

Date: _____