

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

In the Matter of)	
)	
Carolina Rays LLC)	FRN No. 0018324095
)	Facility ID No. 60888
)	
Licensee of Station WLNN-CD,)	
Boone, North Carolina)	

CONSENT DECREE

1. The Media Bureau and Wireless Telecommunications Bureau (“Bureaus”) and Carolina Rays LLC (“Carolina Rays” or “Licensee”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureaus’ Investigation into whether Carolina Rays violated section 309(j)(5) and/or 310(d) of the Communications Act of 1934, as amended,¹ and sections 1.2204(c), and/or 73.3540 of the Commission’s Rules,² by submitting inaccurate information in its application to participate in Auction 1001 and/or transferring control of Station WLNN-CD, Boone, North Carolina (the “Station”) without Commission authorization.

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) “Bureaus” means the Media Bureau and Wireless Telecommunications Bureaus of the Federal Communications Commission.
 - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (e) Family Member means any member of the family of Terry Smith or Sara Smith, including the children and parents of Terry Smith.
 - (f) “Investigation” means the Bureau’s investigation of allegations that Carolina Rays violated various requirements of the Act and Commission Rules by submitting inaccurate

¹ See 47 U.S.C. §§ 309(j)(5) (submission of required information is a precondition to participation in Commission auctions), 310(d) (requiring Commission authorization to transfer or assign a station license).

² See 47 C.F.R. §§ 1.2204(c) (information required on an application to participate in Auction 1001), 73.3540 (application for voluntary assignment or transfer of control).

information in its application to participate in Auction 1001 and/or transferring control of the Station without Commission authorization.³

- (g) “Carolina Rays” means Carolina Rays LLC, licensee of the Station, and its predecessors-in-interest and successors-in-interest.
- (h) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (i) “Parties” means Carolina Rays, Terry Smith, Sara Smith, Gerald Smith, Mary Smith, and the Bureau, and each is a “Party.”
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (k) “Station” means Station WLNN-CD, Boone, North Carolina, Facility ID No. 60888.

II. BACKGROUND

3. Section 309(j)(5) of the Act and section 1.2204(c) of the Rules require a licensee to submit requested information when applying to participate in the reverse auction portion of the broadcast television spectrum auction, also known as Auction 1001.⁴ Section 310(d) of the Act and section 73.3540 of the Rules prohibit a licensee from transferring control of a Commission license without prior authorization.⁵

4. Carolina Rays became the licensee of Class A broadcast TV stations WLNN-CD in 2008. In the Middle Class Tax Relief and Job Creation Act of 2012, Congress directed the Commission to conduct an incentive auction to repurpose some television broadcast spectrum to align with the public’s demand for wireless and broadband services.⁶ Carolina Rays filed an application to participate in the reverse auction portion of the broadcast television spectrum auction, also known as Auction 1001. The incentive auction was completed on April 13, 2017.⁷ Carolina Rays was a winning reverse auction bidder. Pursuant to its winning bid, Carolina Rays agreed to accept an incentive payment of \$21,321,125, the amount of its winning bid, in exchange for relinquishing the Station’s spectrum usage rights and broadcast TV license to operate on its pre-auction channel. It also maintained the option to continue to broadcast by sharing the channel of another licensed TV broadcast station that is remaining on the air

³ See 47 U.S.C. § 310(d); 47 C.F.R. §§ 1.2204(c), 73.3540.

⁴ See 47 U.S.C. § 309(j)(5); 47 C.F.R. § 1.2204(c).

⁵ See 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540.

⁶ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012) (Spectrum Act).

⁷ See *Incentive Auction Closing and Channel Reassignment Pub. Notice the Broad. TV Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final TV Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (2017) (*Closing and Channel Reassignment PN*).

after the auction.⁸ The deadline for the Station to implement a channel sharing arrangement is 180 days after receipt of its winning bid proceeds.⁹

5. In 2017, the Commission received information from Carolina Rays suggesting that it may have engaged in multiple unauthorized transfers of control between 2008 and the time it became a winning bidder. This information also called into question the accuracy of the information previously submitted in the application to participate in Auction 1001. The Commission therefore has not yet directed the U.S. Treasury to disburse Carolina Rays's winning bid pending resolution of the matter. Thereafter, Carolina Rays submitted information through its counsel wherein the Licensee admitted that its actions violated the Act and Commission rules.¹⁰ The Licensee explained, in arguing for consideration of mitigating circumstances, that it is a "family-held operation" and "did not engage or consult with FCC counsel in connection with any FCC reporting obligation or its participation in the incentive auction." The Licensee explained that the various individuals involved in the unauthorized transfers of control are "direct and immediate family members." The Licensee stated that they treated the ownership of the Licensee as joint marital property and that there was no change in marital status during the relevant period. The Licensee represented it otherwise has a history of compliance with the broadcast TV rules and in broadcasting in support of the public interest. The Licensee requested that the Bureaus consider the foregoing circumstances.¹¹

6. On November 30, 2017, the Station ceased broadcasting and filed a letter dated December 8, 2017, requesting Special Temporary Authority to remain silent in order to facilitate the post-incentive auction repack of broadcast TV stations, which it later amended on January 23, 2018.¹² The December letter stated that if the station were to channel share in the future it will turn the signal back on in that capacity.¹³

7. The Bureaus and Carolina Rays acknowledge that any proceedings that might result from the Investigation would be time-consuming and would require substantial expenditure of public and private resources. In order to conserve such resources, the Bureaus and Carolina Rays are entering into this Consent Decree in consideration of the mutual commitments made herein.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureaus by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

⁸ *Closing and Channel Reassignment PN*, 32 FCC Red at Appendix A.

⁹ 47 C.F.R. 73.3700(b)(3), 73.3700(b)(4)(ii). See paragraph 13 regarding License Relinquishment below.

¹⁰ See Letter from Kathleen A. Kirby, Wiley Rein LLP, to Marlene Dortch, Secretary, Federal Communications Commission, Attn David Brown, Deputy Division Chief, Video Division, Re: Clarification of Ownership, Carolina Rays LLC, dated July 19, 2017 (attaching Declaration of Terry Smith and Declaration of Sara L. Smith).

¹¹ *Id.*

¹² See Letter from Terry Smith, Carolina Rays LLC, to FCC Office of the Secretary, dated Dec. 8, 2017 (December Letter); Carolina Rays LLC WLNN-CD, Boone, NC (Fac. ID 60888), Request for STA, *Justification for STA* (LMS Jan. 23, 2018).

¹³ December Letter.

9. **Jurisdiction.** Carolina Rays agrees that the Bureaus have jurisdiction over it and the matters contained in this Consent Decree and have the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureaus. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureaus to exercise any rights and remedies attendant to the enforcement of a Commission Order.

11. **Release.** Carolina Rays agrees that the Commission shall not be obliged to make the incentive auction payment described in paragraph 4 of this Consent Decree until Carolina Rays delivers to the Commission a Release in a form acceptable to the Commission signed by each Family Member that is listed in any application or form filed by Carolina Rays with the Commission that is not a Party to this Consent Decree. Such Release will (i) be signed by each such Family Member and Terry Smith and Sara Smith, (ii) release any right of each such Family Member to assert any claim to the incentive auction payment or to the station's license, and (iii) state that Terry Smith is authorized to execute payment instructions for the incentive auction proceeds and the consent decree is a final settlement, and contains a valid indemnification clause.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureaus agree to terminate the Investigation. In consideration for the termination of said Investigation, Carolina Rays agrees to the terms, conditions, and procedures contained herein. The Bureaus further agree that in the absence of new material evidence, the Bureaus will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, 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 Carolina Rays concerning the matters that were the subject of the Investigation. The Bureaus also agree that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, 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 Carolina Rays with respect to Carolina Rays' basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

13. **Settlement Payment and Incentive Auction Payment.** For purposes of settling the matters set forth herein, Carolina Rays will be responsible for the payment of a settlement payment to the United States Treasury in the amount of \$2 million. Carolina Rays agrees that its responsibility to pay this settlement payment constitutes a final, non-appealable debt owed to the Commission or the United States for purposes of the procedures in Procedures for Submitting Financial Information Required for the Disbursement of Incentive Payments and Reimbursement Payments After the Incentive Auction Closes, Public Notice, 32 FCC Rcd 2003 (OMD, MB, WTB 2017). Carolina Rays further agrees that the amount of the settlement payment as such a final, non-appealable debt will be offset from the amount of its incentive payment. Carolina Rays/the parties hereto agree that the Terry Smith is authorized to execute payment instructions on behalf of Carolina Rays with respect to Carolina Rays' incentive payment.

14. **License Relinquishment.** Carolina Rays will surrender to the Commission its license to operate Station WLNN-CD, Facility ID No. 60888 on the Effective Date and will not exercise the option to channel share that the Licensee elected in its incentive auction application.

15. **Waivers.** Carolina Rays 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 Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Carolina Rays shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained 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 Carolina Rays nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Carolina Rays shall waive any statutory right to a trial *de novo*. Carolina Rays hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁴ relating to the matters addressed in this Consent Decree.

16. **Admission of Liability.** Carolina Rays admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes and in express reliance on the provisions of paragraphs 11 and 12 herein, that its actions relative to violations referred to in this Consent Decree, were violative of Commission regulations and requirements in force at the time at issue. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraphs 11 or 12 hereof, or both, are breached by the Bureaus, or are invalidated or modified to Carolina Rays' prejudice by the Commission, Bureaus, or any court, then and in that event the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Carolina Rays shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning any material violation.

17. **Indemnification.** Carolina Rays, Terry Smith, and Sara Smith shall indemnify, defend and hold the Commission, its employees, agents and representatives harmless from and against any and all damages, losses, liabilities actions, claims, suits, proceedings, costs and expenses directly or indirectly based upon, arising out of, resulting from or relating to any claim brought against the Commission by any Family Member relating to (i) any license held, whether now or in the past and whether in its entirety or in part, by Carolina Rays, and (ii) the incentive auction proceeds described in paragraph 4 of this Consent Decree.

18. **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

19. **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 Carolina Rays does not expressly consent) that provision will be superseded by such Commission rule or Order.

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

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree, including but not limited to the procedures set forth in paragraph 12 with respect to Carolina Rays'

¹⁴ 5 U.S.C. § 504; 47 C.F.R. § 1.1501, *et seq.*

incentive payment and paragraph 13 regarding relinquishment of its license, shall constitute a final settlement between the Parties.

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

23. **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.

24. **Authorized Representative**. Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

25. **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.

Michelle M. Carey
Chief, Media Bureau

Date

Donald Stockdale
Chief, Wireless Telecommunications Bureau

Date

Terry Smith
Individually and as corporate representative of
Carolina Rays LLC

Date

Sara Smith

Date

Gerald Smith

Date

Mary Smith

Date