

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

In re Applications of	)	
	)	
Dickey Broadcasting Company	)	NAL/Acct. No. MB-201841410016
	)	FRN: 0004205357
for Approval of Transfer of Control of	)	Facility ID Nos. 1098, 56389, and 72066
WIFN(AM), Atlanta, Georgia, WCNN(AM),	)	File Nos. BTC-20180302AAG, BTC-
North Atlanta, Georgia, and WFOM(AM),	)	20180302AAH, and BTC-20180302AAI
Marietta, Georgia	)	
	)	
from Lewis W. Dickey, Sr. (Deceased)	)	
(Transferor)	)	
to Lewis W. Dickey, Sr. Irrevocable Children’s	)	
Trust (Transferee)	)	

**ORDER**

**Adopted: August 15, 2018**

**Released: August 16, 2018**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau), Dickey Broadcasting Company (DBC or Licensee), and the Lewis W. Dickey, Sr. Irrevocable Children’s Trust (Trust or Transferee). The Consent Decree resolves issues arising from the Bureau’s review of the captioned applications, as amended, for Commission consent to the proposed transfers of control of DBC (Applications) from Lewis W. Dickey, Sr. (Deceased) to the Trust for Stations WIFN(AM), Atlanta, Georgia, WCNN(AM), North Atlanta, Georgia, and WFOM(AM), Marietta, Georgia (Stations). Licensee seeks *nunc pro tunc* grant of the Applications. While we anticipate the future grant of the Applications, subject to the terms of the Consent Decree, the grant will not be *nunc pro tunc*.<sup>1</sup>

2. The Consent Decree resolves the Bureau’s investigation of Licensee’s compliance with Section 310 of the Communications Act of 1934, as amended (the Act)<sup>2</sup> and Section 73.3540 of the Commission’s rules (Rules).<sup>3</sup> In particular, pursuant to the terms of the Consent Decree, DBC and the Trust stipulate that they violated Section 310 of the Act and Section 73.3540 of the Rules. The Consent Decree also requires, among other things, that Licensee make an eight thousand dollar (\$8,000) civil penalty payment to the United States Treasury and undertake a three-year compliance plan to prevent future similar violations. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be

<sup>1</sup> See e.g., *Time Warner Cable, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 879, 904, n.121 (MB, WCB, WTB, IB 2009).

<sup>2</sup> 47 U.S.C. § 310.

<sup>3</sup> 47 CFR § 73.3540.

served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Applications.

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

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Act,<sup>4</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Rules,<sup>5</sup> the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

6. IT IS FURTHER ORDERED that the investigation by the 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 Dickey Broadcasting Company, Two Ballpark Center, 800 Battery Avenue, S.E., Suite 400, Atlanta, GA 30339, Lewis W. Dickey, Sr. Irrevocable Children's Trust, Two Ballpark Center, 800 Battery Avenue, S.E., Suite 400, Atlanta, GA 30339, and to their counsel, Charles R. Naftalin, Esq., Holland and Knight LLP, 800 17<sup>th</sup> Street, NW, Suite 1100, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

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<sup>4</sup> 47 U.S.C. § 4(i).

<sup>5</sup> 47 CFR §§ 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, Dickey Broadcasting Company, and the Lewis W. Dickey, Sr. Irrevocable Children's Trust, for the purpose of terminating the Media Bureau's investigation concerning compliance with Section 73.3540 of the FCC's rules, 47 CFR §73.3540 and Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d).

**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) "Applications" means the FCC Form 315 applications, as amended on July 30, 2018, for consent to transfer of control of licenses associated with File Nos. BTC-20180302AAG; BTC-20180302AAH, and BTC-20180302AAI;
- (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) "Compliance Plan" means the compliance plan provided in Appendix hereto;
- (h) "DBC" means Dickey Broadcasting Company;
- (i) "Effective Date" means the date on which the Bureau releases the Adopting Order;
- (j) "Investigation" means the Bureau's investigation of information contained in the Applications, as detailed herein;
- (k) "Implementation Date" means the date on which the Compliance Plan commences and will occur within 60 days of the Effective Date of the Consent Decree;
- (l) "Licenses" refers to the license authorizations for Stations WIFN(AM), Atlanta, Georgia (Facility ID No. 1098), WCNN(AM), North Atlanta, Georgia (Facility ID No. 56389), and WFOM(AM), Marietta, Georgia (Facility ID No. 72066);
- (m) "Licensee" means DBC;
- (n) "Parties" means DBC, Trust, and the Bureau;
- (o) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations;
- (p) "Trust" means the Lewis W. Dickey, Sr. Irrevocable Children's Trust; and
- (q) "Violations" means the unauthorized transfer of control of the Licenses in violation of Section 73.3540 of the Rules and Section 310(d) of the Act.

### III. Background

3. Section 310(d) of the Act, provides in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.<sup>6</sup>

4. On August 29, 2000, Lewis W. Dickey, Sr. created the Trust and named his sons Lewis W. Dickey, Jr. and David W. Dickey as co-trustees in the Trust; in reality, however, Mr. Dickey, Sr. functioned as the trustee of the Trust.<sup>7</sup> On August 30, 2000, without the knowledge of his sons, Mr. Dickey, Sr., sole owner of DBC,<sup>8</sup> transferred 90% of his equity in DBC to the Trust.<sup>9</sup> Because Mr. Dickey, Sr. acted as *de facto* trustee of the Trust, in this manner he retained sole voting control of DBC.<sup>10</sup> On August 31, 2000, DBC acquired the Licenses pursuant to assignments granted on August 29, 2000,<sup>11</sup> but failed to report to the Commission the existence of the Trust until the filing of the instant Applications.

5. On August 29, 2010, the Trust was divided into separate sub-trusts for Mr. Dickey's six children: David W. Dickey, Lewis W. Dickey, Jr., Michael W. Dickey, Patricia L. Dickey, Caroline Dickey Oberg, and John W. Dickey (collectively, Dickey Children).<sup>12</sup> The Dickey Children were each to serve as trustee of his/her own separate sub-trust; however, they were unaware of their status until shortly before Mr. Dickey, Sr.'s November 28, 2013, death.<sup>13</sup>

6. On November 19, 2013, the Dickey Children assumed control of the Trust in their capacity as trustees of the individual sub-trusts, originally created on August 29, 2010, and "the Trust's stock in DBC was converted to voting stock and all other shares of stock of DBC were cancelled . . ."<sup>14</sup> In this manner, Mr. Dickey, Sr.'s 10% equity interest in DBC was indirectly transferred to the Trust when it was cancelled. This structure of Trust remains in effect through the present date.

7. On March 2, 2018, DBC filed the referenced Applications seeking Commission consent, *nunc pro tunc*, to the unauthorized transfers of control of the Licenses. In the Applications, DBC disclosed, for the first time, the existence of the Trust and the preceding unauthorized transfers of control of the Licensee. DBC explained that the failure to accurately report DBC's ownership structure and request prior Commission consent to the unauthorized transfers of control was inadvertent and due to Mr. Dickey's "complicated" estate planning, the ramifications of which neither Mr. Dickey, Sr. nor the

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<sup>6</sup> 47 U.S.C. § 310(d).

<sup>7</sup> See Trust at 1, and Applications, Exh. 1, "Declaration of David W. Dickey" (dated Jul. 26, 2018) (David Dickey Declaration) at 1. ("[W]e were not asked to take any actions as Trustees until shortly before my father's death.).

<sup>8</sup> DBC states that although DBC had reported to the Commission that it was 99% owned by Mr. Dickey, Sr, in fact, Mr. Dickey, Sr. was the sole owner of DBC. See Applications, Exh. 6, "Narrative Statement."

<sup>9</sup> Applications, Exh. 1, David Dickey Declaration at 1. ("Until recently, it was my understanding that my father owned 99% of DBC.")

<sup>10</sup> *Id.*

<sup>11</sup> See File Nos. BAL-20000817AAG, BAL-20000817AAK, and BAL-20000817AAL.

<sup>12</sup> Applications, Exh. 1, David Dickey Declaration at 2.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.* at 2.

Dickey Children fully understood.<sup>15</sup>

8. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

#### IV. Terms of Agreement

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

10. **Jurisdiction.** Licensee agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and 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. 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. 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.

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 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 Violations or the existence of this Consent Decree in any action against Licensee, provided that it satisfies all of its obligations under this Consent Decree. In the event that 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.

13. **Admission of Liability.** DBC and the Trust stipulate that the actions described in Paragraphs 4 – 7 violated Section 310(d) of the Act and Section 73.3540 of the Rules.

14. **Civil Penalty.** Licensee agrees to make the Civil Penalty payment to the United States Treasury in the amount of eight thousand dollars (\$8,000), within thirty (30) calendar days of 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.<sup>16</sup>

15. **Payment.** Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Michael Wagner at Michael.Wagner@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:

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<sup>15</sup> *Id.*

<sup>16</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

- 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 the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lock box #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.

16. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Applications, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 14 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Applications.<sup>17</sup>

17. **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 Rules relating to the Consent Decree or Adopting Order.

18. **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.

19. **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.

20. **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.

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

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<sup>17</sup> Grant of the Applications will not be *nunc pro tunc*. See, e.g., *Time Warner Cable, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 879, 904, n.121 (MB, WCB, WTB, IB 2009).

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

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

24. **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.

25. **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.

26. **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: \_\_\_\_\_

**DICKEY BROADCASTING COMPANY**

By: \_\_\_\_\_  
David W. Dickey, President

Date: \_\_\_\_\_

**APPENDIX A: COMPLIANCE PLAN**

For a period of three (3) years commencing on the Implementation Date of the Compliance Plan, DBC and/or any other successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan. In addition, except as otherwise provided, all requirements are to occur by the Implementation Date, which is within 60 days of the Effective Date of the Adopting Order.

- I. **FCC Compliance Officer.** Licensee shall designate an FCC Compliance Officer who will administer the Compliance Plan, supervise Licensee's compliance with the Act and the Rules, and serve as the point of contact on behalf of Licensee for all FCC-related compliance matters.
- II. **Compliance Manual.** The FCC Compliance Officer shall develop and distribute a Compliance Manual to employees and others who perform duties for Licensee that trigger or may trigger compliance-related responsibilities. The Compliance Manual shall include: (1) an overview of the Commission's requirements with respect to applications for assignment or transfer of control of FCC licenses, including the need for prior approval for license assignments and transfers of control, and the requirements set forth in the Rules at issue in the Investigation and; (2) a description of the regulatory requirements applicable to the accurate reporting of information in assignment and transfer of control applications. Licensee shall update the Compliance Manual from time to time to reflect changes to relevant sections of the Act, Rules, and Commission orders, and as otherwise needed.
- III. **Compliance Training Program.** Within 90 days of the Effective Date, Licensee shall begin administering a Compliance Training Program for employees and others who perform duties for Licensee related to assignment and transfer of control applications. This Compliance Training Program shall be completed for all such employees within one hundred and twenty (120) days of the Effective Date. This Compliance Training Program shall also be presented to new employees who are engaged in such activities, within the first sixty (60) calendar days of employment. This Compliance Training Program shall track the Compliance Manual, focusing on proper implementation of the Compliance Manual.
- IV. **Compliance Reports.** Licensee shall submit a Compliance Report to the Commission 90 days after the Effective Date and annually thereafter on the anniversary of the Effective Date until the Termination Date. Each Compliance Report will include a certification by the FCC Compliance Officer, as an agent of and on behalf of Licensee, stating that he/she has personal knowledge that: (1) Licensee has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Section 310(d) of the Act and Section 73.3540 of the Rules, together with an accompanying statement explaining the basis for the certification; (2) Licensee has been utilizing those procedures since the previous Compliance Report was submitted; and (3) Licensee is not aware of any instances of non-compliance with the Consent Decree or those specified sections of the Act and Rules. The certification must comply with section 1.16 of the Commission's Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the FCC Compliance Officer cannot provide the requisite certification, he/she shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Act or Rules, and (ii) the steps that Licensee has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. A copy will be served on Michael F. Wagner, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at Michael.Wagner@fcc.gov.