

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

In re Application of)	
)	
BRANDYWINE SCHOOL DISTRICT, BOARD OF EDUCATION)	NAL/Acct. No. MB-201841410012
)	FRN: 0014882435
)	Facility ID No. 6650
For Renewal of License for Station WMPH(FM) Wilmington, Delaware)	File No. BRED-20140331AVC

ORDER

**Adopted: September 13, 2018
2018**

**Released: September 13,
2018**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Brandywine School District, Board of Education (Brandywine), the licensee for Station WMPH(FM), Wilmington, Delaware (the Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station, as amended.¹ In particular, the Consent Decree resolves the Bureau's investigation of Brandywine's compliance with the Public File Rule contained in Section 73.3527 of the FCC's rules (Rules).²

2. Brandywine has shown that during the years 2006 - 2014, the Station was a student-run noncommercial educational (NCE) FM station and that entering into a Consent Decree for the Station's rule violation would be consistent with our policy concerning student-run NCE radio stations that violate the documentation requirements of the Rules.³ Specifically, Brandywine failed to prepare and place in the Station's public file certain quarterly issues-programs lists.

3. We have negotiated the attached Consent Decree in which Brandywine stipulates that it violated Section 73.3527 of the Rules. Consistent

¹ The Application was amended on June 1, 2018.

² 47 CFR § 73.3527.

³ See *William Penn Univ.*, Policy Statement and Order, 28 FCC Rcd 6932, para. 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, the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee will pay a reduced civil penalty and agree to a compliance plan. In negotiating the amount, 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.").

with our policy involving these types of first-time violations at student-run NCE radio stations, the Consent Decree requires that Brandywine adhere to the Compliance Plan set forth in the Appendix to the Consent Decree and pay a civil penalty to the United States Treasury in the total amount of \$1,000.

4. 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 disclosed in the Application.

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

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,⁴ and by the authority delegated by Sections 0.61 and 0.283 of the FCC's rules,⁵ the Consent Decree attached hereto IS ADOPTED without change, addition or modification.

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 Brandywine School District, Board of Education, c/o Howard M. Liberman, Esq., Wilkinson Barker Knauer LLP, 1800 M Street, N.W., Suite 800N, Washington, DC 20036.

COMMISSION

FEDERAL

COMMUNICATIONS

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴ 47 U.S.C. § 154(i), 154(j), and 503(b).

⁵ 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 and Brandywine School District, Board of Education, by their respective authorized representatives, for the purpose of resolving certain issues regarding compliance with the Public File Rule that have arisen in the Media Bureau's review of the pending application for the renewal of the license for noncommercial educational FM station WMPH(FM), Wilmington, Delaware.

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) "Application" means the pending application filed on March 31, 2014, as amended on June 1, 2018, for the renewal of license for the Station (File No. BRED-20140331AVC);
- (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;
- (g) "Compliance Plan" means the processes and procedures to ensure compliance with the FCC's rules as set forth in the Appendix hereto;
- (h) "Effective Date" means the date on which the Bureau releases the Adopting Order;
- (i) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
- (j) "Investigation" means the Bureau's investigation of licensee's compliance with the Public File Rule;
- (k) "Licensee" or "Brandywine" means Brandywine School District, Board of Education;

- (l) "Parties" means Brandywine and the Bureau;
- (m) "Public File Rule" means Section 73.3527 of the FCC's rules, 47 CFR § 73.3527;
- (n) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations;
- (o) "Station" means WMPH(FM), Wilmington, Delaware (Facility ID No. 6650); and
- (p) "Violations" means the violations of the Public File Rule stipulated in paragraph 9 of this Consent Decree.

III. Background

3. In the Application to renew the Station's license, Brandywine disclosed that prior to June 2010, when the Station went silent with Commission authorization,⁶ "the Station's public file was not completely maintained"⁷ Specifically, Brandywine reported that the Station's public file was missing issues and programs lists from September 2006 until June 2010, which it is unable to assemble, but that, "[a]ll WMPH 'issues/programs' lists pertaining to the period after the resumption of broadcasting in June 2011 to the present are up to date and in the Station's public file."⁸ Brandywine explained that, apart from a faculty member who serves as general manager, the Station "is a student-run station operated entirely by student volunteers"⁹ Brandywine attributed the Station's public file deficiencies to student intern turnover and the departure of its previous general manager.

4. Because of the compliance issues raised by Brandywine's disclosures, the Bureau and Brandywine negotiated this Consent Decree to terminate the Bureau's Investigation of Brandywine's compliance with the Public File Rule. The Parties acknowledge that any proceeding that might result from the compliance issues referenced in Paragraph 3 would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote Brandywine's compliance with the FCC's rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. Agreement

⁶ Licensee reported that "[t]he Station was off the air between June 11, 2010, and June 6, 2011. On June 15, 2010, the Licensee notified the FCC that the Station was off the air, and the authority to remain silent was granted on September 8, 2010, (BLSTA-20100901ADD)." Exh. 13, Application.

⁷ Exh. 12, Application.

⁸ "Declaration of Paul Wishengrad," (dated May 16, 2016), Exh. 1, Application.

⁹ *Id.*

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

6. **Jurisdiction.** Brandywine agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree. Brandywine and the Bureau further agree to be legally bound by the terms and conditions of this Consent Decree.

7. **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. Brandywine 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 Brandywine fails to satisfy any condition or Rule, 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, 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.

8. **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, Brandywine 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 in any action against Brandywine, provided that Brandywine satisfies all of its obligations under this Consent Decree. In the event that Brandywine 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.

9. **Admission of Liability.** Brandywine hereby stipulates that it violated the Public File Rule during the 2006-2014 license term by failing to prepare and place in the Station's public file, from September 2006 until June 2010, quarterly issues and programs lists of public affairs programming broadcast by the Station.

10. **Civil Penalty.** Brandywine agrees to pay the Civil Penalty to the United States Treasury in the amount of One Thousand Dollars (\$1,000), within thirty (30) calendar days after the Effective Date. Brandywine 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 1996.¹⁰

¹⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

11. **Payment.** Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Karen Workeman at Karen.Workeman@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 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.

12. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material fact as to whether Brandywine possesses the basic qualifications, including character, to hold a Commission license. Accordingly, the Bureau agrees to grant the Application, after the Effective Date provided that the following conditions have been met: 1) Brandywine has fully and timely satisfied its obligation to make the Civil Penalty payment referenced in paragraph 10 of this Consent Decree; and 2) there are no issues other than the Violations that would preclude grant of the Application.

13. **Compliance Plan.** Brandywine 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, as set forth in the Appendix, for the purpose of ensuring compliance with the Rules. Licensee further 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.

14. **Public File Representation.** Brandywine represents that as of the Execution Date, apart from the Violations, the Station's public file fully complies with the Public File Rule.

15. **Waivers.** As of the Effective Date, Brandywine waives 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 either 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, neither Brandywine nor the Commission will contest the validity of the Consent Decree or Adopting Order, and Brandywine will waive any statutory right to a *trial de novo*. Brandywine further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 CFR Section 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

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

17. **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.

18. **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 Commission Rule or Order.

19. **Successors and Assigns.** The Consent Decree will be binding on Licensee's successors-in-interest and assigns. 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 of Licensee set forth in this Consent Decree.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Licensee and the Bureau concerning the Violations.

21. **Modifications.** This Consent Decree cannot be modified or amended

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.** 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.

24. **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.

COMMISSION

**MEDIA BUREAU
FEDERAL COMMUNICATIONS**

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

**BRANDYWINE SCHOOL DISTRICT,
BOARD OF EDUCATION**

By: _____
Dr. Jason Hale, CFO

Date: _____

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

For a period of three (3) years commencing as of the Effective Date of the Consent Decree, Licensee, or its successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Commission's Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- 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 staff, management, and others who perform duties for Licensee that trigger or may trigger compliance-related responsibilities. The Compliance Manual shall include an overview of the Commission's requirements with respect to the Station's record-keeping, monitoring and reporting obligations, including those required pursuant to 47 CFR §§ 1.65, 11.1-11.56, 73.1350, 73.1800-1870, and 73.3527, including the need to timely upload quarterly issues and programs lists to the Station's online public inspection file. 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 staff, management, and others who perform duties for the Station, on compliance with the FCC's rules applicable to Station operations and shall track the Compliance Manual, focusing on proper implementation of the Compliance Manual. This Compliance Training Program shall be completed within one hundred and twenty (120) days of the Effective Date. Licensee will further conduct refresher training for staff, management, and others who perform duties for the Station, at least once every twelve (12) months. In addition, this Compliance Training Program shall be presented to new staff, management, and others who perform duties for the Station, within the first sixty (60) calendar days of their work with the Station.
- 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 the Rules specified in paragraph II, 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 Rules. The certification must comply with section 1.16 of the 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 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.