

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

In re Applications of)	
)	
WAGY, Inc)	NAL/Acct. No. MB-201941410001
)	FRN: 0007689771
for Approval of Transfer of Control of)	Facility ID Nos. 70700, and 202870
WAGY(AM), Forest City, North Carolina, and)	File Nos. BTC-20180426ABF, and BTCFT-
W298CZ, Forest City, North Carolina)	20180426ABG
)	
from)	
)	
WAGY, Inc. (Initial Shareholders) (Transferor))	
)	
to)	
)	
Marjorie Huskey (Transferee))	

ORDER

Adopted: February 13, 2019

Released: February 13, 2019

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau), WAGY, Inc. (WAGY or Licensee), and Marjorie Huskey (Mrs. Huskey or Transferee). The Consent Decree resolves issues arising from the Bureau’s review of the captioned applications for Commission consent to the proposed transfers of control of WAGY (Applications) from WAGY (Initial Shareholders) to Marjorie Huskey for Stations WAGY(AM), Forest City, North Carolina, and FM Translator W298CZ, Forest City, North Carolina (Stations). 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)¹ and Sections 73.3540,² 73.3615³, and 73.3526⁴ of the Commission’s rules (Rules).⁵

2. In series of unauthorized transactions occurring over many years, control of WAGY was transferred on several occasions without Commission consent. Pursuant to the terms of the Consent Decree, WAGY and Mrs. Huskey stipulate that they violated Section 310 of the Act and Section 73.3540 of the Rules. In addition, Licensee failed to timely file Biennial Ownership Reports for the periods from 1999 through 2015 in violation of Section 73.3615 of the Rules.

¹ 47 U.S.C. § 310.
² 47 CFR § 73.3540.
³ 47 CFR 73.3615.
⁴ 47 CFR 73.3526.
⁵ 47 CFR § 73.3540.

3. The Consent Decree 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.

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 investigation of potential violations of the Rules and the Act in connection with the Applications.

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 WAGY possesses the basic qualifications to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Act,⁶ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁷ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

7. IT IS FURTHER ORDERED that the investigation by the 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 WAGY, Inc. and Marjorie Huskey, c/o Elizabeth Spainhour, Esq., Brooks Pierce *et. al.*, 150 Fayetteville Street, Suite 1700, Raleigh, NC 27601.

FEDERAL COMMUNICATIONS COMMISSION



Albert Shuldiner
Chief, Audio Division
Media Bureau

⁶ 47 U.S.C. § 4(i).

⁷ 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, WAGY and Marjorie Huskey 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), and Sections 73.3615 and 73.3526 of the Rules, 47 CFR §§73.3615 and 73.3526..

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 for consent to transfer of control of licenses associated with File Nos. BTC-20180426ABF, and BTCFT-20180426ABG;
- (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) "Effective Date" means the date on which the Bureau releases the Adopting Order;
- (i) "Investigation" means the Bureau's investigation of information contained in the Applications, as detailed herein;
- (j) "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;
- (k) "Licenses" refers to the license authorizations for Stations WAGY(AM), Forest City, North Carolina (Fac. ID No. 70700), and FM Translator W298CZ, Forest City, North Carolina, (Fac. ID No. 202870);
- (l) "Licensee" means WAGY;
- (m) "Mrs. Huskey" means Marjorie Huskey;
- (n) "Parties" means WAGY, Mrs. Huskey and the Bureau;
- (o) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations; and
- (p) "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 and failure to timely file Biennial Ownership Reports for the periods from 1999 through 2015 in violation of Section 73.3615 of the Rules.

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.⁸

4. On January 21, 1986, WAGY⁹ acquired the license for Station WAGY(AM).¹⁰ At the time Licensee is believed¹¹ to have had five attributable¹² shareholders: Tri-City Concrete Co., Inc. (Tri-City) with 7.81% equity and voting stock;¹³ Reid Godfrey (Godfrey) with 7.81% equity and voting stock; Kenneth Hughes (Hughes) with 7.81% equity and voting stock; James Campbell (Campbell) with 7.81% equity and voting stock; and Webb Hunt (Hunt)¹⁴ with 6.25% equity and voting stock; no shareholder held a controlling interest in WAGY.¹⁵

5. Subsequently, in a series of gradual transactions between 1989 – 1991, more than fifty percent of WAGY stock was transferred without Commission consent. During this period, attributable shareholder Hunt and non-attributable shareholder Damon Huskey acquired additional WAGY stock: in July 1989, Damon Huskey acquired Hunt's 6.25% interest as well as other non-attributable interests and became an attributable shareholder [with a 10.94% interest]; in August 1989, Hunt acquired a 42.19% interest from unspecified shareholders; in May 1990, Damon Huskey acquired additional stock from unspecified non-attributable shareholders and held a 14.06% interest; and in April 1991, Hunt acquired additional stock from unspecified non-attributable shareholders and held a 46.88% interest; no shareholder held a controlling interest in WAGY.¹⁶

6. Next, in January 1992, more than fifty percent of WAGY stock was again transferred without Commission consent. Specifically, Hunt sold his shares to Ray Riffle, who also acquired additional stock from unspecified non-attributable shareholders. Ray Riffle also transferred some shares he acquired to his wife Alta Grace Riffle. As a result of these transfers, Ray Riffle held a 45.13% and Alta Grace Riffle held a 9.38% interest. In addition, Damon Huskey's holdings increased to a 15.63% interest; no shareholder held a controlling interest in WAGY, however, Ray Riffle, his relative Randy Riffle,¹⁷ and

⁸ 47 U.S.C. § 310(d).

⁹ Licensee was incorporated in 1985, with initial stock certificates issued on June 27, 1986. Exhibit 1 at 1 and note 1, Applications.

¹⁰ See File No. BAL-19851022EF (Original Assignment Application) which assigned only Station WAGY(AM); FM Translator Station W298CZ was licensed by the Bureau on October 31, 2018 (File No. BLFT- 20180920ABU).

¹¹ Because the Original Assignment Application is unable to be located, Licensee reviewed its contemporaneous corporate records and other resources to determine ownership information. Exhibit 1 at 1, Applications.

¹² Licensee also had 37 non-attributable shareholders who held ownership percentages of less than five percent.

¹³ Tri-City was a North Carolina corporation formed in 1977 with three principals: James Edward Robbins, Larry T. Tomblin, and Thomas M. Robbins. *Id.* (citing North Carolina Secretary of State Office records).

¹⁴ Collectively, Tri-City, Godfrey, Hughes, Campbell, and Hunt will be referred to as "Initial Shareholders."

¹⁵ Exhibit 1 at 1, Applications.

¹⁶ *Id.*

¹⁷ Licensee does not state Randy Riffle's exact relationship to Ray Riffle.

(continued....)

James Frazier were appointed as Directors and controlled the company.¹⁸

7. Then in a June 1994 transfer without prior Commission authorization, Damon Huskey became the controlling shareholder and his wife Mrs. Huskey acquired an attributable interest in WAGY. Specifically, Damon Huskey acquired shares from Ray Riffle and other unspecified shareholders to hold a 65.63% interest in WAGY; and Mrs. Huskey acquired from Alta Grace Riffle a 6.25% interest and became an attributable shareholder; Damon Huskey and Mrs. Huskey became the only attributable interest holders in WAGY.¹⁹ Licensee further states that “it is believed that Mrs. Huskey and one or more of her sons became Directors of Licensee . . .”²⁰

8. Subsequently, in December 2000, without Commission consent, Licensee entered into an oral, attributable Local Marketing Agreement (LMA) for Station WAGY(AM) with Malcom Watson (Watson). Pursuant to the LMA, Watson served as general manager; provided programming; sold advertising; and directly paid certain WAGY(AM)’ expenses.²¹ Licensee reports that it terminated the unwritten LMA on March 15, 2018.²²

9. Lastly, in 2004, without Commission consent, Mrs. Huskey assumed control of WAGY. Specifically, on May 17, 2004, Damon Huskey died; thereafter, his 65.63% interest was ultimately transferred to his wife. As a result of this transfer, Mrs. Huskey currently holds a 71.88% interest and is the controlling shareholder of WAGY.²³

10. On April 26, 2018, WAGY filed the instant Applications disclosing the unauthorized transfers of control. Licensee reports that “with the exception of the recently-concluded LMA, the [unauthorized transfers] . . . occurred no fewer than 13 years ago . . . The individuals involved are now elderly, deceased, or no longer shareholders . . . and [Company records] have been lost or destroyed.” Licensee further reports that Mrs. Huskey, who is in her 80s and previously unrepresented by Communications counsel, promptly caused the Applications to be filed once she became aware that the above transfers were unauthorized.²⁴

11. In addition to disclosing the transfers of control without prior Commission authorization described above, in the Applications the Licensee sought to correct, to the extent possible, late filings of Biennial Ownership Reports for the period 1999 through 2015.²⁵ The Licensee explained that the Commission’s databases would not permit the missing ownership reports from being filed due to the conversion of the filing system from the Consolidated Database System (CDBS) to the Licensing Management System (LMS).²⁶

12. 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.

¹⁸ Exhibit 1 at 1-2, Applications.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ Exhibit 1 at 4, Applications.

²² Exhibit 19, Applications.

²³ Exhibit 1 at 4, Applications.

²⁴ *Id.*

²⁵ Exhibit 1 at 5-8.

²⁶ Late-filing a new Biennial Ownership Report for periods prior to 2017 is not technically possible through LMS.

IV. Terms of Agreement

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

14. **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.

15. **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.

16. **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.

17. **Admission of Liability.** WAGY and Mrs. Huskey stipulate that 1) the actions described in Paragraphs 4 – 10 violated Section 310(d) of the Act and Section 73.3540 of the Rules, and 2) failure to timely file required ownership reports and place them in the WAGY(AM) public inspection file violated Sections 73.3615 and 73.3526 of the Rules.

18. **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 1996.²⁷

19. **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:

- 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.

²⁷ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

- 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.

20. **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 18 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.²⁸

21. **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.

22. **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.

23. **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.

24. **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.

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

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

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

²⁸ 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).

28. **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.

29. **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.

30. **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: Albert Shuldiner
Albert Shuldiner, Chief, Audio Division

Date: February 13, 2019

WAGY, INC.

By: _____
Marjorie Huskey, President

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

WAGY, INC.

By: Marjorie Huskey
Marjorie Huskey, President

Date: 2-7-19

APPENDIX A: COMPLIANCE PLAN

For a period of three (3) years commencing on the Implementation Date of the Compliance Plan, WAGY 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.