

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

| | | |
|----------------------|---|-----------------------------------|
| In the Matter of |) | |
| |) | File No.: EB-FIELDNER-15-00019211 |
| Winston Tulloch, |) | NAL/Acct. No.: 201832010001 |
| Paterson, New Jersey |) | FRN: 0015762370 |
| |) | |
| |) | |

ORDER

Adopted: February 26, 2019

Released: February 26, 2019

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Winston Tulloch (Mr. Tulloch)¹ operated an unauthorized radio station on 90.9 MHz in Paterson, New Jersey. Unlicensed radio stations create a danger of interference to licensed communications, including other broadcasters, aviation, and public safety frequencies. Such operations also undermine the Commission's authority over broadcast radio operations. Moreover, unlicensed radio stations do not broadcast Emergency Alert Service messages and thereby create a public safety hazard for their listeners. To settle this matter, Mr. Tulloch admits that he operated an unauthorized radio station, agrees not to operate an unauthorized radio station in the future, and will pay a \$1,500 civil penalty. However, Mr. Tulloch will pay an additional civil penalty of \$23,500 if the Commission finds that he operates an unauthorized radio station during the next twenty years or that he misled the Commission regarding his current financial status.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture (NAL)² and subsequent Forfeiture Order³ regarding Mr. Tulloch's compliance with operating an unauthorized radio station in violation of Section 301 of the Communications Act of 1934, as amended (Act).⁴

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Mr. Tulloch's basic qualifications to hold or obtain any Commission license or authorization.⁵

¹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

² *Winston Tulloch, Paterson, New Jersey*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3870 (EB 2018).

³ *Winston Tulloch, Paterson, New Jersey*, Forfeiture Order, DA 18-1104, __ FCC Rcd __ (EB 2018).

⁴ 47 U.S.C. § 301.

⁵ See 47 CFR § 1.93(b).

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act⁶ and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**, that the Forfeiture Order **IS RESCINDED** and the **NAL IS CANCELED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. Tulloch at his address of record and to Keith Campbell, Esq., 59 Main Street, Suite 208, West Orange, NJ 07052.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

⁶ 47 U.S.C. §§ 154(i), 503(b).

⁷ 47 CFR §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Winston Tulloch (Mr. Tulloch), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Mr. Tulloch violated Section 301 of the Communications Act of 1934, as amended, by operating an unauthorized radio station on 90.9 MHz in Paterson, New Jersey.

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.¹
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Commitment” means the compliance obligations described in this Consent Decree at paragraph 10.
 - (f) “Effective Date” means the date by which both the Bureau and Mr. Tulloch have signed the Consent Decree.
 - (g) “Forfeiture Order” means the Forfeiture Order issued to Mr. Tulloch on October 31, 2018, imposing a \$25,000 forfeiture on Mr. Tulloch for violations of Section 301 of the Act.²
 - (h) “Investigation” means the investigation commenced by the Bureau in File No. EB-FIELDNER-15-00019211 regarding whether Mr. Tulloch violated Section 301 of the Act by operating an unauthorized radio station, which culminated in the issuance of the NAL and the Forfeiture Order.
 - (i) “NAL” means the Notice of Apparent Liability for Forfeiture and Order issued to Mr. Tulloch on April 25, 2018, proposing a \$25,000 forfeiture for apparent violations of Section 301 of the Act.³

¹ 47 U.S.C. §§ 151, *et seq.*

² *Winston Tulloch, Paterson, New Jersey*, Forfeiture Order, DA 18-1104, __ FCC Rcd ____ (EB 2018).

³ *Winston Tulloch, Paterson, New Jersey*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3870 (EB 2018).

- (j) “NAL Response” means the written response to the NAL that Mr. Tulloch, through counsel, transmitted to the Commission on May 23, 2018.⁴
- (k) “Parties” means Mr. Tulloch and the Bureau, each of which is a “Party.”
- (l) “Petition for Reconsideration” means the request for reconsideration of the Forfeiture Order submitted by Mr. Tulloch and received by the Commission on November 28, 2018.⁵
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 301 of the Act states that “No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio [within the United States] ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”⁶ Unlicensed radio stations operate illegally, in violation of Section 301. Unlicensed radio stations undermine the Commission’s efforts to manage radio spectrum and can interfere with licensed communications, including authorized broadcasts and public safety transmissions. Moreover, unlicensed radio stations do not broadcast Emergency Alert Service messages, and so create a public safety hazard for their listeners.

4. Mr. Tulloch is an individual who operated an unauthorized radio station on 90.9 MHz from multiple locations in Paterson, New Jersey. On April 25, 2017, the Commission released the NAL proposing a \$25,000 penalty against Mr. Tulloch for apparently operating an unauthorized radio station in violation of Section 301 of the Act.⁷ On May 23, 2018, Mr. Tulloch, through counsel, attempted to respond to the NAL and submitted a filing seeking a reduction or cancellation of the proposed forfeiture based on his documented inability to pay the full amount of the proposed forfeiture. The Commission did not receive the NAL Response and, on October 31, 2018, released the Forfeiture Order imposing the full \$25,000 forfeiture. On November 28, 2018, Mr. Tulloch sought reconsideration of the Forfeiture Order, stating that he is unable to pay the forfeiture. In the Petition for Reconsideration, Mr. Tulloch also included a copy of the May 23, 2018, NAL Response, along with tracking information showing that on May 24, 2018, the NAL Response was received by a different federal agency in Washington, DC. Subsequently, Mr. Tulloch and the Bureau engaged in settlement negotiations. To settle this matter, the Bureau and Mr. Tulloch enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

6. **Jurisdiction.** Mr. Tulloch agrees that the Bureau has jurisdiction over him and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

⁴ Winston Tulloch, Response to Notice of Apparent Liability for Forfeiture, dated May 23, 2018 (on file in EB-FIELDNER-15-00019211).

⁵ Winston Tulloch, Petition for Reconsideration, filed on November 28, 2018 (on file in EB-FIELDNER-15-00019211).

⁶ 47 U.S.C. § 301.

⁷ NAL, 33 FCC Rcd at 3870-72. The NAL includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

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, Mr. Tulloch 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 facts developed in the Investigation through the Effective Date, 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 Mr. Tulloch concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Mr. Tulloch's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.⁸

9. **Admission of Liability.** Mr. Tulloch admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that his actions referenced in paragraph 4 herein and in the NAL violated Section 301 of the Act.

10. **Compliance Commitment.** Mr. Tulloch has ceased using or operating and in the future will not use, operate, or provide material assistance to another in the use or operation of, any unauthorized radio station. Any use, operation, or provision of material assistance to another in the use or operation of an unauthorized radio station by Mr. Tulloch will violate Section 301 of the Act and the terms of this Consent Decree. Mr. Tulloch will report any noncompliance with Section 301 of the Act or with the terms and conditions of this Consent Decree within fifteen (15) calendar days of such noncompliance to Field Director, Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Matthew.Gibson@fcc.gov and field@fcc.gov; any failure to report such noncompliance will violate the terms of this Consent Decree.

11. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraph 10 (compliance commitment paragraph) of this Consent Decree shall expire twenty (20) years after the Effective Date.

12. **Civil Penalty.** In light of Mr. Tulloch's demonstrated inability to pay, and subject to the provisions of paragraph 13 below, Mr. Tulloch will pay a civil penalty to the United States Treasury in the amount of one thousand, five hundred Dollars (\$1,500) (Civil Penalty), with an initial payment of Forty-One Dollars and Ninety Cents (\$41.90) (Initial Payment) and thirty-five (35) monthly installment payments, each in the amount of Forty-One Dollars and Sixty-Six Cents (\$41.66), paid over the course of a thirty six month period (each, an Installment Payment). The Initial Payment shall be made within thirty (30) calendar days of the Effective Date. Thereafter, the Installment Payments are due and payable monthly on the fifth (5th) day of the month, starting on April 5, 2019, and with a final Installment Payment due on February 5, 2022. Mr. Tulloch acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty (including, for the avoidance of doubt, the Initial Payment and each Installment Payment) shall become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996 (DCIA).⁹ Mr. Tulloch shall send electronic notification of payment to Matthew.Gibson@fcc.gov and field@fcc.gov on the date each payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159

⁸ See 47 CFR § 1.93(b).

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

(Remittance Advice) must be submitted.¹⁰ When completing the FCC Form 159, enter the NAL/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.
- 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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. **Suspended Penalty.** Mr. Tulloch further agrees that, upon an Event of Default (as described below in paragraph 14), he will pay a further civil penalty to the United States Treasury in the amount of twenty-three thousand, five hundred Dollars (\$23,500) (Additional Civil Penalty). Mr. Tulloch acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a “Claim” or “Debt” as defined in Section 3701(b)(1) of the DCIA,¹¹ and all procedures for collection of the Additional Civil Penalty may, at the Commission’s discretion, be initiated against Mr. Tulloch.

14. **Event of Default.** Mr. Tulloch agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalty to the U.S. Treasury on or before the date specified in Paragraph 12; (2) the release of an order within three years of the Effective Date by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Mr. Tulloch violated Section 301 of the Act; (3) an admission of non-compliance required by Paragraph 10; or (4) the release of an order by the Commission finding that Mr. Tulloch materially misstated his financial condition in the documents he produced to support his claim of inability to pay.

15. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law¹² may, at the Commission’s discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Mr. Tulloch: (a) any unpaid Civil Penalty referenced in Paragraph 12, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) the Additional Civil Penalty referenced in Paragraph 13, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (c) any

¹⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹¹ *Id.*

¹² See 31 CFR Part 900, *et seq.*

penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys' fees.

16. **Waivers.** As of the Effective Date, Mr. Tulloch waives any and all rights he 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 Adopting Order. Mr. Tulloch 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 Consent Decree or the Adopting Order, neither Mr. Tulloch nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mr. Tulloch shall waive any statutory right to a trial *de novo*. Mr. Tulloch hereby agrees to waive any claims he may otherwise have under the Equal Access to Justice Act¹³ relating to the matters addressed in this Consent Decree.

17. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire 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.

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 Mr. Tulloch does not expressly consent) that provision will be superseded by such Rule or Order.

20. **Successors and Assigns.** Mr. Tulloch agrees that the provisions of this Consent Decree shall be binding on his successors and assigns.

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

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. 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.

¹³ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

25. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Winston Tulloch

Date