

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

In the Matter of
San Tan Educational Media
For License, Modification of License, Transfer of
Control, and Special Temporary Authority for
Station KFXE-LP, Mesa, Arizona
File Nos.: BLL-20170710AAT
BPL-20170911ADI
BTCL-20171004AAB
BPL-20180117ACV
BLESTA-20180514ACA
EB-IHD-17-00025521
Acct. No.: 201932080014
FRN: 0024208670
Facility ID No. 192016

ORDER

Adopted: September 4, 2019

Released: September 5, 2019

By the Chiefs, Media Bureau and Enforcement Bureau:

I. INTRODUCTION

1. The Media Bureau (MB) and the Enforcement Bureau (EB) of the Federal Communications Commission (Commission) have entered into a Consent Decree to resolve pending matters concerning San Tan Educational Media (San Tan), licensee of low power FM (LPFM) Station KFXE-LP, Mesa, Arizona (Station). Specifically, the Consent Decree resolves: (1) MB's investigation into several San Tan applications and objections thereto, with MB's procedural disposition of those matters addressed in a separate MB letter decision, and (2) EB's investigation into whether San Tan violated the Commission's underwriting laws by broadcasting announcements that promoted the products, services, or businesses of its financial contributors. To settle these matters, San Tan agrees to implement a compliance plan and pay a \$1,500 civil penalty.

II. DISCUSSION

2. Licensing Matters. San Tan has, in the Consent Decree, admitted to the following licensing-related violations of the Commission's rules (Rules) and of the Communications Act of 1934, as amended (Act): (a) violation of section 73.865(e) of the Rules by undergoing a sudden change of its entire governing board without timely filing an application for Commission consent on FCC Form 316; (b) violation of section 301 of the Act and section 73.1350 of the Rules by constructing a tower and antenna that were each of a lower height than authorized by the Commission and by operating those nonconforming facilities continuously for approximately four months without Commission consent; and (c) violation of section 1.17 of the Rules by falsely certifying to have constructed in accordance with its permit, under the signature of a person who was then no longer affiliated with San Tan, as a result of carelessness or negligence but without any intent to deceive. MB addressed each of these matters in the

1 See Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau to Ryan Greig, President, San Tan, Letter Order (MB Aug. XX, 2018) (MB Letter Order).

separate MB Letter Order and concluded that none of the violations affects San Tan's basic qualifications to be a Commission licensee.²

3. **Underwriting.** LPFM radio broadcasters are licensed to provide noncommercial, locally oriented programming for their communities. LPFM licensees benefit from being exempt from regulatory fees and from having fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and the Rules applicable to LPFM licensees specifically incorporate the same restrictions prohibiting the airing of commercial advertising applicable to noncommercial educational (NCE) FM broadcast licensees.³ These restrictions "protect the public's use and enjoyment of commercial-free broadcasts" and "provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising."⁴ The Commission acts when necessary to enforce the laws prohibiting LPFM stations from airing announcements that promote for-profit advertisers.

4. Although an LPFM licensee may broadcast underwriting announcements identifying entities that donate to the station by name, such announcements may not promote an entity's businesses, products, or services.⁵ In addition, such announcements may not contain comparative or qualitative descriptions; price information (sales or discounts); calls to action; inducements to buy, sell, rent, or lease; and excessively detailed "menu listings" of services offered by the entity.⁶ The Commission has not adopted any quantitative guidelines on underwriting announcements, but it has found that the longer the announcement, the more likely it is to contain material that is inconsistent with their "identification only" purpose.⁷ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter.⁸ Consequently, the Commission expects that licensees exercise reasonable "good faith" judgment in this area and affords some latitude to the judgments of licensees who do so.⁹

5. In this case, EB investigated a complaint alleging that the Station broadcast announcements that violated the underwriting laws. San Tan admits that these broadcasts violated the Commission's underwriting laws and will pay a civil penalty. San Tan also will implement a five-year compliance plan to avoid future violations of the Commission's underwriting laws.

² See MB Letter Order at 5.

³ 47 U.S.C. § 399b(b)(2). In addition, section 73.503, including the prohibitions against NCE licensees broadcasting commercial announcements on behalf of for-profit entities, has been incorporated into the rules applicable the LPFM service. 47 CFR § 73.801.

⁴ *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

⁵ 47 U.S.C. § 399b(a); Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992) (*Enhanced Underwriting Policy*).

⁶ *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Hispanic Broadcast System, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2411, 2415, para. 9 (EB 2005), *aff'd with reduced forfeiture*, Forfeiture Order, 20 FCC Rcd 12008 (EB 2005); *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4920-21, paras. 3, 6 (1990) (*Xavier*).

⁷ *Enhanced Underwriting Policy*; *cf. Board of Education of New York (WNYE-TV)*, Letter of Caution, 7 FCC Rcd 6864 (MMB 1992).

⁸ *Xavier*, 5 FCC Rcd at 4921, para. 6 (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 911 (1982) (subsequent history omitted)).

⁹ *Id.*

6. **Consent Decree.** As part of this Order we are adopting a Consent Decree between MB, EB, and San Tan. The Consent Decree resolves issues related to San Tan's violation of the law and rules governing underwriting announcements, construction and operation at variance from its authorization, false certification of construction as authorized, and failure to timely file an FCC Form 316 for Commission consent to a transfer of control. The Consent Decree stipulates that San Tan violated sections 301 and 399B of the Act and sections 1.117, 73.801, 73.503(d), 73.865(e), and 73.1350 of the Rules. San Tan submitted financial documentation to MB and EB, including profit/loss statements for 2016-2018, to support a reduction of the Consent Decree's civil penalty based upon San Tan's inability to pay. The \$1,500 civil penalty set forth in the Consent Decree reflects consideration of San Tan's documented inability to pay. In addition to paying the civil penalty, San Tan will implement a compliance plan to avoid future violations.

7. We conclude that nothing in the record before us creates a substantial or material question of fact whether San Tan possesses the basic qualifications to be a Commission licensee. 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 terminating MB's and EB's referenced investigations.

8. In the absence of material new evidence relating to this matter, we do not set for hearing the question of San Tan's basic qualifications to hold or obtain any Commission license or authorization.¹⁰

III. CONCLUSION/ACTIONS

9. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act¹¹ and the authority delegated by sections 0.61, 0.111, 0.283, and 0.311 of the Rules,¹² the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

10. **IT IS FURTHER ORDERED** that the above-captioned matter before the Enforcement Bureau **IS TERMINATED**.

11. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against San Tan and/or its station(s) related to the above-captioned investigation that are pending before the Enforcement Bureau as of the date of this Consent Decree **ARE DISMISSED**.

12. **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 Ryan Greig, President, San Tan Educational Media, 550 W. Baseline Rd., Suite 102-116, Mesa, AZ 85210.

¹⁰ See 47 CFR § 1.93(b).

¹¹ 47 U.S.C. § 154(i).

¹² 47 CFR §§ 0.61, 0.111, 0.283, 0.311.

13. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail to John S. Neely, Esq., Counsel to 1TV.com, Inc., Miller & Neely, P.C., 3750 University Blvd. W., Suite 203, Kensington, Maryland 20895 and to Len Novin, 1318 N. 104th St., Mesa, AZ 85207.

FEDERAL COMMUNICATIONS COMMISSION

Michelle Carey
Chief
Media Bureau

Rosemary C. Harold
Chief
Enforcement Bureau

Before the
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San Tan Educational Media) File Nos.: BLL-20170710AAT
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) EB-IHD-17-00025521
)
) Acct. No.: 201932080014
) FRN: 0024208670
) Facility ID No. 192016
)

CONSENT DECREE

1. The Media Bureau (MB) and Enforcement Bureau (EB) (collectively, Bureaus) of the Federal Communications Commission (FCC or Commission) and San Tan Educational Media (STEM), licensee of low power FM (LPFM) Station KFXY-LP, Mesa, Arizona (Station), by their authorized representatives, hereby enter into this Consent Decree. The purpose of the Consent Decree is to: (1) resolve STEM’s petition for reconsideration (Petition) of an MB Decision which cancelled the Station’s license and dismissed several applications and objections thereto;¹ and (2) to terminate EB’s investigation into whether STEM violated section 399B of the Communications Act of 1934, as amended (Act), and sections 73.801 and 73.503(d) of the Commission’s rules (Rules) with regard to the Station.² To resolve this matter STEM agrees to implement a compliance plan and pay a \$1,500 civil penalty.

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.³
(b) “Adopting Order” means an order of the Bureaus adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Bureaus” means, collectively, the Media Bureau and Enforcement Bureau of the FCC.
(d) “Commission” and “FCC” mean the Federal Communications Commission and any or all of its bureaus and offices.
(e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which each Commission licensee, including STEM, is subject by virtue of its being a Commission licensee, including but not limited to the Underwriting Laws.

¹ KFXY-LP, Mesa, AZ, Petition for Reconsideration, Informal Objections, Letter Order (MB-AD June 25, 2018) (Decision).

² 47 U.S.C. § 399b; 47 CFR §§ 73.801, 73.503(d).

³ 47 U.S.C. § 151 et seq.

- (f) “Complaint” means the third-party submission received by, or in the possession of, EB and alleging violations of the Underwriting Laws, as described in this Consent Decree at Paragraph 6.
- (g) “Compliance Manual” means the part of the Underwriting Compliance Plan that explains the Underwriting Laws and sets forth the Operating Procedures that Covered Employees shall follow to help ensure STEM’s compliance with the Communications Laws, including the Underwriting Laws, pursuant to Paragraph 16(d).
- (h) “Compliance Officer” means an independent FCC regulatory counsel or other third party with the requisite corporate and organizational authority to serve in this capacity pursuant to Paragraph 14, and if the latter, in consultation with and assisted by outside regulatory counsel.
- (i) “Compliance Reports” means the reports that STEM shall be required to file pursuant to Paragraph 18.
- (j) “Covered Employee” means all STEM employees and agents, including, but not limited to volunteers and members of STEM’s governing board who perform, or supervise, oversee, or manage the performance of duties related to STEM’s responsibilities under the Communications Laws, including the Underwriting Laws.
- (k) “Decision” means *KFXY-LP, Mesa, AZ, Petition for Reconsideration, Informal Objections*, Letter Order (MB-AD June 25, 2018) from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC to Ryan Greig, President, STEM, John S. Neely, Esq., Miller and Neely, P. C., counsel to 1TV.com, Inc., and Len Novin, which acted upon the STEM Applications.
- (l) “EB” means the Enforcement Bureau of the Federal Communications Commission.
- (m) “Effective Date” means the date by which the Bureaus and STEM have all signed the Consent Decree.
- (n) “Investigation” means the investigation commenced by EB in EB-IHD-17-00025521, regarding whether STEM violated the Underwriting Laws.
- (o) “Licensing Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 15.
- (p) “Licensing Matters” means, individually or collectively, matters pertaining to STEM’s requests to MB for a permit, license, transfer of control, or special temporary authority, whether in the STEM Applications or in future applications by STEM.
- (q) “MB” means the Media Bureau of the Federal Communications Commission.
- (r) “Objections” means, individually or collectively, submissions MB received from Objectors alleging violation of the Communications Laws with respect to the Licensing Matters.
- (s) “Objectors” means, individually or collectively, 1TV.com, Inc. (licensee of KBSZ(AM), Apache Junction, Arizona) and Len Novin (owner of the Station’s last authorized transmitter site).
- (t) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by STEM to implement the Underwriting Compliance Plan.
- (u) “Parties” means STEM and the Bureaus, each of which is a “Party.”

- (v) “Petition” means STEM’s July 23, 2018, petition for reconsideration of the Decision.
- (w) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (x) “Site Documentation” means the obligation under Paragraph 15(a) that describes the steps that STEM must follow to ensure that future applications to license modified facilities for the Station are accurate.
- (y) “Station” means KFXV-LP, Mesa, Arizona (Facility ID No. 192016).
- (z) “STEM” means San Tan Educational Media and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (aa) “STEM Applications” means, individually and collectively, File Nos. BLL-20170710AAT (License Application), BPL-20170911ADI (First Modification Application), BTCL-20171004AAB (Transfer Application), BPL-20180117ACV (Second Modification Application), and BLESTA-20180514ACA.
- (bb) “Underwriting Announcement” means any announcement, message, or other program material, broadcast over a noncommercial station licensed to STEM, or by any of its successors, assigns, or transferees, made in exchange for consideration, on behalf of any for-profit entity.
- (cc) “Underwriting Compliance Checklist” means the obligation under Paragraph 16(c) that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with relevant past Commission precedent regarding the Underwriting Laws.
- (dd) “Underwriting Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 16.
- (ee) “Underwriting Compliance Training Program” means the requirements of the Underwriting Compliance Plan as detailed in Paragraph 16(e).
- (ff) “Underwriting Laws” means, individually or collectively, section 399B of the Act, and sections 73.801 and 73.503(d) of the Rules,⁴ and the decisions and orders of the Commission interpreting these provisions.

II. BACKGROUND

3. *MB Licensing Matters.* STEM first received a license for the Station in 2015, subsequently lost its transmitter site, and filed applications in 2017 and 2018 to be licensed at a new site and to make further facility modifications.⁵ Objectors opposed the STEM Applications, arguing that STEM is unqualified due to alleged violations of Communications Laws including construction of unauthorized facilities, a false certification that the facilities were constructed as authorized by the Commission, and an alleged unauthorized transfer of control to a new governing board.⁶ In response to these objections, STEM acknowledged a sudden, 100% transfer of control without Commission consent and filed the Transfer Application approximately two years after the transfer occurred.⁷ STEM also

⁴ 47 U.S.C. § 399b; 47 CFR §§ 73.801, 73.503(d).

⁵ Decision at 1-2, nn.1-3.

⁶ *Id.* at 2.

⁷ STEM’s original governing board consisted mostly of the family of STEM’s original President, Christopher Shon White (White). That family gave up their control of STEM because White moved from Arizona to Texas for business shortly after the station was first licensed and the entire family moved along with him. Existing volunteers
(continued....)

acknowledged that it had constructed facilities at a lower height than authorized by the Commission. STEM says it erroneously believed that no further Commission consent was needed for the transfer or construction at variance.

4. MB dismissed the Transfer Application pursuant to section 73.865(c) of the Rules, which prohibits LPFM transfers prior to completion of a three-year, on-air holding period.⁸ Although MB acknowledged that the Commission treats routine LPFM board turnover as insubstantial,⁹ it did not view STEM's board change as routine or insubstantial because there had been a sudden 100% transfer during the holding period, without notification to the Commission, following what appeared to be the original board's abandonment of the Station.¹⁰ MB ruled that STEM's transfer of control amounted to a fatal failure to meet a condition of the permit's grant, which warranted cancellation of the Station's authorization.¹¹ MB did not reach the Objectors' allegations of other violations because those contentions became moot upon cancellation of the Station's license.¹² STEM argues on reconsideration that section 73.865(e) rather than 73.865(c) governs because the transfer of control did not alter STEM's mission, and Commission rulings under section 73.865(e) have recognized non-mission-altering LPFM board turnover as routine without regard to when such a transfer occurs.¹³ Thereafter, the Parties agreed to enter into this Consent Decree.

5. *EB Investigation.* The Underwriting Laws define an advertisement as programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.¹⁴ Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.¹⁵ Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors' products,

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assumed control without notifying the Commission. *Id.* at 3-4. The Decision noted that the transfer occurred no later than January 2016 (when new officers took office) but that the exact date was not specified. *Id.* On reconsideration STEM clarifies that the old board moved out of the area in November 2015, *i.e.*, five months after grant of the license. *See* Petition, Exh. D.

⁸ Decision at 3-4 (citing 47 CFR § 73.865(c)). The holding period deters speculation and ensures that the public will receive benefits which were the basis for the license grant. *Id.* at 3, n.17 (citing *Creation of a Low Power Radio Service*, MM Docket No. 99-25, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21920, para. 17 (2007) (*Third LPFM Order*)). When an LPFM permit is granted from among mutually exclusive applicants pursuant to a point system, the holding period also maintains the integrity of the comparative process.

⁹ Decision at 3. Gradual LPFM governing board changes do not require approval. Sudden LPFM board changes are generally treated as insubstantial because LPFM licensees are often volunteer organizations that commonly experience turnover of board members in the regular course of business. Such transfers require approval which licensees can obtain in a simplified manner, *i.e.*, by filing FCC Form 316 (a "short form") rather than FCC Form 315 (a "long form"). *See* 47 CFR § 73.865(e). Commission review of a transfer application ensures compliance with anti-trafficking safeguards and confirms the licensee's continued eligibility.

¹⁰ Decision at 3-4.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

¹³ Petition at 1-3. STEM also disputes the Bureau's characterization of the old board as "abandoning" the Station. *Id.* at 5.

services, or businesses.¹⁶ Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.¹⁷

6. The Commission received a complaint from 1TV.com., Inc., one of the Objectors, alleging that STEM violated the Underwriting Laws by regularly airing announcements on the Station, including from May 8, 2017, to August 7, 2017, that impermissibly promoted their for-profit underwriters' products or services and contained qualitative descriptions and comparative language, pricing information, and calls to action.¹⁸ EB issued a letter of inquiry seeking more information about the complained-of programming and STEM's efforts to comply with the Underwriting Laws.¹⁹ STEM's response²⁰ confirmed that it broadcast the complained-of Underwriting Announcements over the Station at various times over a 15-month period (from May 2016 through July 2017).²¹ Thereafter, the Parties engaged in settlement negotiations and agreed to enter into this Consent Decree.

7. On March 19, 2019, STEM submitted financial documentation to the Bureaus, including profit/loss statements for 2016-2018, to support a reduction of the Consent Decree's civil penalty based upon STEM's inability to pay.²² The civil penalty set forth in this Consent Decree reflects consideration of STEM's documented inability to pay.

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¹⁴ 47 U.S.C. § 399b(a).

¹⁵ 47 U.S.C. § 399B(b)(2).

¹⁶ Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992).

¹⁷ *Id.*; see *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990) (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, BC Docket No. 21136, Memorandum Opinion and Order, 90 FCC 2d 895 (1982) (subsequent history omitted)).

¹⁸ Letter from John S. Neely, Esq., Miller and Neely, P. C., counsel to 1TV.com, Inc., to Secretary, FCC at 1-4, Attachs. (Aug. 14, 2017) (on file in EB-IHD-17-00025521).

¹⁹ Letter of Inquiry from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Ryan Greig, President, San Tan Educational Media at 4-5, Questions 1-5 (Dec. 8, 2017) (on file in EB-IHD-17-00025521).

²⁰ Response to Letter of Inquiry, from San Tan Educational Media, to Investigations and Hearings Division, FCC Enforcement Bureau (Dec. 15, 2017) (on file in EB-IHD-17-00025521) (LOI Response). STEM requested confidential treatment of certain portions of its LOI Response, including the E-mail Attach. LOI Response at 15, Response to Question 5. This Order and Consent Decree do not disclose material identified as confidential by STEM, so we defer ruling on the request unless and until necessary. 47 CFR § 0.459(d)(3) (the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to § 0.460 or § 0.461. Such materials will be accorded confidential treatment until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted). See, e.g., *Radio License Holding CBC, LLC*, Order and Consent Decree, 31 FCC Rcd 3, 8, para. 5 & n.16 (EB 2016).

²¹ LOI Response, E-mail Attach.

²² E-mail from Ryan Greig, President, San Tan Educational Media, to Christopher Sova, Deputy Division Chief, Investigations and Hearings Division, FCC Enforcement Bureau, and Tom Hutton, Deputy Division Chief, Audio Division, FCC Media Bureau (Mar. 19, 2019, 1:05 MST) (includes attached profit and loss statements pertaining to STEM's 2016-2018 revenues) (March 19, 2019 E-mail); E-mail from Ryan Greig, President, San Tan Educational Media, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, et al., at Attach. (Mar. 20, 2019, 13:37 MST) (includes signed declaration from Ryan Greig, President of San Tan Educational Media, that financial information in March 19, 2019 E-mail is complete and accurate to the best of his knowledge and belief).

III. TERMS OF AGREEMENT

8. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureaus in an Adopting Order without change, addition, deletion, or modification.

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

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the 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.

11. **Termination of EB Investigation and MB Licensing Matters.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureaus agree with respect to the Underwriting Laws to terminate the Investigation and dismiss the Complaint, and with respect to the Licensing Matters to: (1) grant reconsideration in part; (2) reinstate and return the STEM Applications to pending status; and (3) determine that STEM's admitted rule violations in Paragraph 12 are not disqualifying. On the Effective Date, MB will grant the Transfer and Second Modification Applications, and the STA Request, thereby giving STEM the opportunity to return the Station to the air.²³ In consideration for these Bureau actions, STEM agrees to the terms, conditions, and procedures contained herein. The Bureaus further agree that in the absence of new material evidence, they will not use the facts developed in the Investigation and/or in the Licensing Matters through the Effective Date, or the existence of this Consent Decree, to institute on their own motion, any new proceeding, formal or informal, or take any action on its own motion against STEM concerning the matters that were the subject of the Investigation and Licensing Matters. The Bureaus also agree that in the absence of new material evidence, they will not use the facts developed in the Investigation or Licensing Matters through the Effective Date, or the existence of this Consent Decree, to institute on their own motion any proceeding, formal or informal, or take any action on their own motion against STEM with respect to STEM's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

12. **Admission of Liability.** STEM admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 11 herein: (a) that STEM violated section 73.865(e) by undergoing a 100%, sudden non-mission-altering transfer of control without timely filing an application for Commission consent on Form 316; (b) that STEM violated section 301 of the Act and section 73.1350 of the Rules by constructing a tower and antenna that were each of a lower height than authorized by the Commission and by operating those nonconforming facilities continuously for approximately four months without obtaining Commission consent;²⁴ (c) that STEM, as a result of carelessness or negligence but without any intent to deceive,

²³ The Station went silent on November 11, 2017 and received authority to remain off-air. Decision at 1, n.1. A broadcast station's license expires automatically upon 12 consecutive months of silence, in this case at 12:01 a.m. on November 12, 2018. 47 U.S.C. § 312(g). However, the Act allows the Commission to extend or reinstate the license in limited circumstances, including one present here: when the licensee "prevails in an administrative or judicial appeal." *Id.* Upon the Effective Date, we will provide STEM with the amount of time that remained on its silence "clock" when MB cancelled the Station's operating authority. That remaining period (between June 25, 2018 and November 12, 2018) equals four months, eighteen days.

²⁴ STEM received authorization from MB to move to a new site and to construct a 30-meter (95.1-foot) broadcast tower with an antenna center of radiation at 29 meters (98.4 feet). File No. BPL-20170206ACD, at 2 (granted Feb. 16, 2017) (February Permit). STEM actually constructed a 24-meter (79.35-foot) tower with a center of radiation for the two-bay antenna of 22.5 meters (73.8 feet). The four-month period of operation at variance from the FCC February Permit began with STEM's filing of the License Application on July 10, 2017, and continued until the Station went silent on November 19, 2017. Objectors submitted information also reflecting that the constructed

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violated section 1.17 of the Rules by falsely certifying to have constructed in accordance with its permit,²⁵ under the signature of a person who was then no longer affiliated with STEM as a result of a transfer of control; and (d) that STEM's actions with respect to the broadcast of the material referenced in Paragraph 6 of this Consent Decree violated the Commission's Underwriting Laws.

13. **Restoration of License and Effect of Station Silence.** MB will restore the license for the Station with authority to remain silent until a date four months, eighteen days from the Effective Date, as explained in note 23. The restored license will expire automatically pursuant to section 312(g) of the Act if STEM does not return the Station to the air with authorized facilities within four months, eighteen days from the Effective Date. The Parties recognize that several steps are prerequisites to STEM's return to the air, such as STEM's locating a new site, obtaining FCC and local permits for the site, and construction. Given the brief time remaining in which the Station can remain silent until automatic expiration pursuant to section 312(g), STEM must include a request for expedited treatment with any FCC application needed for the Station to return to the air and provide the Commission with adequate time to review the application. STEM acknowledges that, although MB attempts to act quickly on applications requesting expedited treatment, MB cannot guarantee that it will be able to act on STEM applications before the Station's license may terminate pursuant to section 312(g) and that the Station's license may, thus, forfeit.

14. **Compliance Officer.** Within fourteen (14) calendar days after the Effective Date, STEM shall designate an independent FCC regulatory counsel or other third party with the requisite corporate and organizational authority and knowledge to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as Compliance Officer shall be responsible for developing, implementing, and administering the Underwriting Compliance Plan and ensuring that STEM complies with the terms and conditions of the Licensing Compliance Plan, Underwriting Compliance Plan, and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Underwriting Laws before assuming his/her duties.

15. **Licensing Compliance Plan.**

(a) **Site Documentation.** STEM shall for the term of three (3) years from the Effective Date, ensure that the Station, and/or any broadcast facility STEM then owns or thereafter acquires, submits with any application for a license to cover construction, an exhibit containing Site Documentation consisting of:

- i. the tower height, antenna type, antenna height, and coordinates of the facilities constructed;
- ii. a description of how it is known that the construction matches those specifications, certified by the person who supervised the construction;
- iii. photographs of the completed construction showing the tower and antenna;
- iv. a statement of whether the construction also required local approval and, if so, providing and documenting the terms for which local approval was received; and
- v. a statement that the Site Documentation is being provided pursuant to

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facilities were beyond the scope of a permit received from local authorities specifying construction of an "amateur radio" tower.

²⁵ License Application, Section II-Legal, Question 1, Section III-Application to Cover a Construction Permit, Question 2.

this Consent Decree.

(b) **Assignments and Transfers of Control.** STEM shall comply with section 73.865 of the Rules which provides that the Station's license cannot be assigned and that STEM cannot undergo a "substantial" transfer of control until the Station has operated on-air for three years. Non-substantial transfers of control are permissible pursuant to section 73.865(e) provided that the licensee promptly files FCC Form 316. Within ninety (90) calendar days after the Effective Date, STEM shall develop an organization statement concerning the requirement to seek Commission consent to a transfer and/or assignment of the Station pursuant to section 73.865 of the Rules, who will be responsible for filing such an application, and safeguards to ensure that STEM complies. STEM shall provide a copy of such statement to each of its board members and officers within one hundred twenty (120) days of the Effective Date and to any new board member and officers within thirty (30) days of their taking office.

16. **Underwriting Compliance Plan.** STEM shall, within sixty (60) calendar days after the Effective Date, develop and implement an Underwriting Compliance Plan designed to ensure its immediate compliance with the Communications Laws and with the terms and conditions of this Consent Decree.

(a) **Underwriting Compliance Notification.** Within three (3) calendar days of the Effective Date, STEM shall immediately notify and distribute to Covered Employees at the Stations, and at any noncommercial broadcast facilities it then owns, notice of the requirements of Paragraph 16. The Notification shall explain the Underwriting Laws that the Covered Employees shall follow.

- i. STEM shall provide a copy of such Underwriting Compliance Notification to the Enforcement Bureau within seven (7) calendar days from the Effective Date.
- ii. Every thirty (30) days from the Effective Date, STEM shall review its Underwriting Compliance Notification, and provide any updates or amendments thereto, to all Covered Employees.

(b) **Consultation with Counsel.** If the Compliance Officer is not an FCC regulatory counsel, STEM shall consult with outside FCC regulatory counsel regarding STEM's overall compliance with the Underwriting Laws. Such consultations shall occur on a biannual basis, or more frequently to ensure STEM's compliance with the terms of this Consent Decree.

(c) **Operating Procedures.** Within sixty (60) calendar days of the Effective Date, STEM shall establish Operating Procedures that all Covered Employees must follow to help ensure STEM's compliance with the Communications Laws, including the Underwriting Laws. STEM's Operating Procedures shall include internal procedures and policies specifically designed to ensure that STEM complies with the Underwriting Laws. STEM shall use a multi-level review procedure for underwriting content to be aired on the Station. The Compliance Officer, or a management-level employee of STEM directly supervised by the Compliance Officer, shall review all scripts of Underwriting Announcements prior to broadcast. STEM shall develop an Underwriting Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with relevant past Commission precedent regarding the Underwriting Laws.

(d) **Compliance Manual.** Within sixty (60) calendar days of the Effective Date, STEM shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Underwriting Laws and set forth the Operating Procedures that the Covered Employees shall follow to help ensure STEM's

compliance with the Communications Laws, including the Underwriting Laws. STEM shall periodically review and revise the Compliance Manual as necessary to ensure the information set forth therein remains current and accurate. STEM shall distribute any revisions to the Compliance Manual to all Covered Employees within three calendar days of any updated revisions.

- (e) **Underwriting Compliance Training Program.** Within thirty (30) calendar days of the Effective Date, STEM shall establish an Underwriting Compliance Training Program in compliance with the Underwriting Laws and the Operating Procedures that STEM will follow immediately following the Underwriting Compliance Plan as stated in Paragraph 16. As part of the Underwriting Compliance Training Program, Covered Employees shall be advised of STEM's obligation to report any noncompliance with the Underwriting Laws under Paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. STEM shall repeat compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (f) **Compliance Education Program.** Within sixty (60) calendar days of the Effective Date, STEM shall implement and maintain a plan to educate prospective for-profit underwriters about appropriate underwriting content and about how STEM incorporates such underwriting content in the announcements that it prepares for underwriter approval and eventual broadcast over the Station. To that end, STEM shall summarize the Underwriting Laws for each prospective for-profit client before accepting any contract with a prospective for-profit client to air Underwriting Announcements over the Station and shall prepare the Underwriting Announcement for the underwriter's review. STEM shall not broadcast over the Station any announcement that does not comply with the Underwriting Laws.

17. **Reporting Noncompliance.** STEM shall report any noncompliance with the Underwriting Laws and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that STEM has taken or will take to address such noncompliance; (iii) the schedule on which such actions will be taken; and (iv) the steps that STEM has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

18. **Compliance Reports.** STEM shall file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, thirty-six (36) months after the Effective Date, forty-eight (48) months after the Effective Date, and sixty (60) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of STEM's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Underwriting Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent and on behalf of STEM, stating that the Compliance Officer has personal knowledge that STEM: (i)

has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraphs 17 and 18 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall 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.²⁶
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent and on behalf of STEM, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that STEM has taken or will take to address such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that STEM has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 14 through 18 of this Consent Decree shall expire sixty (60) months after the Effective Date.

20. **Civil Penalty.** STEM will pay a civil penalty to the United States Treasury in the amount of one thousand five hundred dollars (\$1,500) within fifteen (15) calendar days of the Effective Date. STEM shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Melissa A. Marshall at Melissa.Marshall@fcc.gov, Tom Hutton at Tom.Hutton@fcc.gov, and Irene Bleiweiss at Irene.Bleiweiss@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²⁷ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁹ For

²⁶ See 47 CFR § 1.16.

²⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. **Underwriting Complaints; Subsequent Investigations.** Pursuant to the limitations set forth under Paragraphs 11 and 28, nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to the Underwriting Laws against STEM or its affiliates for alleged violations of the Act or the Rules or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Licensee with the Act or the Rules.

22. **Event of Default by Nonpayment.** STEM agrees that an Event of Default shall occur upon the failure by STEM to pay the full amount on or before the due date specified in this Consent Decree.

23. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75% from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by STEM.

24. **Waivers.** As of the Effective Date, STEM waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. STEM 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 STEM nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and STEM shall waive any statutory right to a trial *de novo*. STEM hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁰ relating to the matters addressed in this Consent Decree.

³⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.530.

25. **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.

26. **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.

27. **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 STEM does not expressly consent) that provision will be superseded by such Rule or Order.

28. **Successors, Assigns, and Transferees.** STEM agrees that the terms of this Consent Decree shall be binding on its successors, assigns, and transferees, for the duration of the agreement, unless such successor, assign, or transferee has a compliance record free from any liability found and finally determined under any Warning, Notice of Violation, Admonishment, Notice of Apparent Liability, Forfeiture Order, Consent Decree, or other FCC enforcement action, decision, or settlement, respecting the successor, assignee, or transferee, that was (i) issued and became final during the thirty-six (36)-month period immediately preceding the Effective Date, pursuant to any provision of the Act or Rules, or (ii) issued and became final during the one hundred twenty (120)-month period immediately preceding the Effective Date, pursuant to the Underwriting Laws (“Exempted Successor”). STEM further agrees as follows:

- (a) that any application seeking Commission consent to the assignment of the Station to an Exempted Successor shall include a certification or affidavit from STEM which affirms that it, and/or its successor, assignee, or transferee, has satisfied the obligations under Paragraph 15;³¹
- (b) in the event STEM consummates an assignment of the Station to an Exempted Successor within 90 days of the Effective Date, then the Exempted Successor shall assume STEM’s obligations under Paragraph 15;
- (c) that any authority granted to a successor, assignee, or transferee, shall be conditioned upon STEM’s filing a compliance report at the time of sale which details all steps taken to satisfy the obligations under Paragraphs 15 and 28, as well as its certification thereto; and that
- (d) nothing in this Paragraph shall limit the Commission’s rights under Paragraphs 11 and 21 and shall not prevent the Commission from investigating new material evidence that the settlement hereunder was falsely procured by STEM, or new evidence of noncompliance by STEM with the Act or the Rules.

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

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

31. **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

³¹ Such certification or affidavit shall include language that STEM has satisfied its obligations under Paragraphs 15 and 16 “to the best of its knowledge.”

Decree.

32. **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.

33. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including 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.

Michelle Carey
Chief
Media Bureau

Date

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Ryan Greig
President
San Tan Educational Media

Date