

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

In re Applications of)	
)	
Big Horn Media, Inc)	NAL/Acct. No. MB-202041410004
)	FRN: 0027121771
for Approval of Transfer of Control of)	Facility ID Nos. 165338, and 181097
KUEZ(FM), Fallon, Nevada, and KUEZ-FM1,)	File Nos. BTCH-20200212AAE, and
Reno, Nevada)	BTCFTB-20200212AAF
)	
from)	
)	
John Burkavage and Mercedes Burkavage)	
(Transferors))	
)	
to)	
)	
Harry Dixon and Bonnie Dixon (Transferees))	

ORDER

Adopted: September 17, 2020

Released: September 18, 2020

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau), Big Horn Media, Inc (BHM or Licensee), John Burkavage (J. Burkavage), Mercedes Burkavage (M. Burkavage),¹ Harry Dixon (H. Dixon), and Bonnie Dixon (B. Dixon).² The Consent Decree resolves issues arising from the Bureau’s review of the captioned applications, as amended, for Commission consent to the proposed transfer of control of BHM (Applications) from the Burkavages to the Dixons for Stations KUEZ(FM), Fallon, Nevada, and KUEZ-FM1, Reno, Nevada (Stations). BHM seeks *nunc pro tunc* grant of the Applications.³ While we anticipate the future grant of the Applications, subject to the terms of the terms of the Consent Decree, the grant will not be *nunc pro tunc*.⁴

2. The Consent Decree resolves the Bureau’s investigation of Licensee’s compliance with

¹ Collectively, J. Burkavage and M. Burkavage will be referred to as “the Burkavages or Transferors.”

² Collectively, H. Dixon and B. Dixon will be referred as “the Dixons or Transferees.”

³ Applications, Attachment 1, “Amendment to Request for Waiver.”

⁴ Here, the unauthorized transfer of control occurred on November 30, 2017, over two years prior to when BHM notified the Commission of the violation. In addition, BHM disclosed that it failed to file the required 2019 Biennial Ownership Report only in response to a Commission staff inquiry. Given these facts, we cannot conclude that BHM has adequately discharged its legal obligations and we decline to grant the Applications *nunc pro tunc*. See e.g. *McCaw Communications Companies, Inc.*, Order and Notice of Apparent Liability, 4 FCC Rcd 547, para. 7 (CCB 1989) (“Given these facts, we cannot conclude that the licensee has adequately discharged its legal obligations . . . we will not grant discontinuance *nunc pro tunc*”). See also e.g. *Beasley Broadcast Group, Inc.*, Order, 33 FCC Rcd 2748, para. 1 (MB 2018); and *Dickey Broadcasting Company*, Order, 33 FCC Rcd. 8103, para. 1 (MB 2018).

section 310 of the Communications Act of 1934, as amended (the Act)⁵ and sections 73.3540⁶ and 73.3615⁷ of the Commission's rules (Rules). Pursuant to the terms of the Consent Decree, BHM, the Burkavages, and the Dixons stipulate that they violated section 310 of the Act and sections 73.3540 and 73.3615 of the Rules. The Consent Decree requires, among other things, that BHM make an eight thousand dollar (\$8,000) civil penalty payment to the United States Treasury and undertake a three-year compliance plan to prevent future similar violations. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Applications.

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

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Act,⁸ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁹ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

6. IT IS FURTHER ORDERED that the investigation by the Bureau of the matters noted above IS TERMINATED.

7. IT IS FURTHER ORDERED that copies of this Order shall be sent, by email, to Big Horn Media, Inc., John Burkavage, Mercedes Burkavage, Harry Dixon and Bonnie Dixon, c/o Tom W. Davidson, Esq., counsel to Big Horn Media, Inc., TDAVIDSON@AKINGUMP.COM.

8. IT IS FURTHER ORDERED that pursuant to 47 CFR § 73.3526(e)(10) a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Station's online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁵ 47 U.S.C. § 310.

⁶ 47 CFR § 73.3540.

⁷ 47 CFR § 73.3615.

⁸ 47 U.S.C. § 4(i).

⁹ 47 CFR §§ 0.61, 0.283.

Before the
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In re Applications of
Big Horn Media, Inc
for Approval of Transfer of Control of
KUEZ(FM), Fallon, Nevada, and KUEZ-FM1,
Reno, Nevada
from
John Burkavage and Mercedes Burkavage
(Transferors)
to
Harry Dixon and Bonnie Dixon (Transferees)

NAL/Acct. No. MB-2020414100XX
FRN: 0027121771
Facility ID Nos. 165338, and 181097
File Nos. BTCH-20200212AAE, and
BTCFTB-20200212AAF

CONSENT DECREE

I. Introduction

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission, Big Horn Media, Inc., John Burkavage, Mercedes Burkavage, Harry Dixon and Bonnie Dixon, by their respective authorized representatives, for the purpose of resolving certain issues related to the unauthorized transfer of control of Big Horn Media, Inc. and terminating the Media Bureau’s investigation concerning compliance with sections 73.3540 and 73.3615 of the Commission’s rules, 47 CFR §73.3540 and 73.3615, and Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d).

II. Definitions

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §151 et. seq.;
(b) “Adopting Order” means the order of the Bureau adopting this Consent Decree;
(c) “Applications” means the FCC Form 315 applications for consent to transfer of control of licenses associated with File Nos. BTCH-20200212AAE, and BTCFTB-20200212AAF;
(d) “BHM” means Big Horn Media, Inc.;
(e) “Bureau” means the Media Bureau of the Federal Communications Commission;
(f) “Civil Penalty” means the payment Licensee has agreed to pay to the United States Treasury;
(g) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices;

- (h) “Compliance Plan” means the compliance plan provided in the Appendix hereto;
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- (j) “Investigation” means the Bureau’s investigation of information contained in the Applications, as detailed herein;
- (k) “Implementation Date” means the date on which the Compliance Plan commences and will occur within 60 days after the Effective Date of the Consent Decree;
- (l) “Licenses” refers to the license authorizations for Stations KUEZ(FM), Fallon, Nevada (Fac. ID No. 165338), and KUEZ-FM1, Reno, Nevada (Fac. ID No. 181097);
- (m) “Licensee” means BHM;
- (n) “Parties” means BHM, the Burkavages, the Dixons, and the Bureau;
- (o) “Rules” means the FCC’s rules, found in Title 47 of the Code of Federal Regulations;
- (p) “The Burkavages” means John Burkavage and Mercedes Burkavage;
- (q) “The Dixons” means Harry Dixon and Bonnie Dixon; and
- (r) “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 the failure to timely file a Biennial Ownership Report for the year 2019.

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.¹⁰

4. On October 16, 2017, BHM acquired the Stations pursuant to a granted assignment of licenses.¹¹ At that time, BHM was controlled by the Burkavages, its sole shareholders.¹² Licensee states that prior to November 30, 2017, BHM, which was authorized to issue 100 shares of stock, issued 27 shares jointly, as community property to the Burkavages, with the remaining 73 shares unissued.¹³ Licensee reports that on November 30, 2017, BHM, the Burkavages, and the Dixons entered into a “Buy/Sell Agreement and Stock Purchase Agreement” whereby Licensee issued the remaining 73 stock shares of BHM, jointly, as community property, to the Dixons, but, due to an oversight, did not request

¹⁰ 47 U.S.C. § 310(d). *See also* section 73.3540 of the Rules which implements section 310(d) of the Act.

¹¹ *See* FCC Form 905, Consummation Notice for File Nos. BALH-20170717ACF and BALFTB-20170717ACB (filed Oct. 17, 2017).

¹² Applications, Attachment 1, “Amendment to Request for Waiver.”

¹³ *Id.*

prior approval of the transaction as required by the Act and the Rules.¹⁴

5. On February 21, 2020, Licensee filed the instant Applications disclosing the unauthorized transfer of control of BHM and amended the Applications on July 6, 2020, to clarify the Burkavages' ownership of the stock shares of BHM prior to the unauthorized transfer of control. Licensee reports that it filed the Applications when it "became aware of the filing obligation" and requests waiver of section 73.3540 of the Rules and *nunc pro tunc* grant of the Applications.¹⁵ Licensee states that grant of its waiver request "will permit the continued operations of [the Stations] . . . and bring Licensee into compliance with the Commission's rules."¹⁶

6. In addition, during the Bureau's investigation of the above unauthorized transfer of control, Licensee further disclosed that it failed to timely file the Biennial Ownership Report for the year 2019.

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

IV. Terms of Agreement

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

9. **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.

10. **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.

11. **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 concerning the matters that were the subject of the Investigation, provided that Licensee 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.

12. **Admission of Liability.** BHM, the Burkavages, and the Dixons stipulate that for purposes of this Consent Decree and in express reliance on the provisions in Paragraph 11 herein, the actions described in Paragraphs 4-6 herein violated section 310(d) of the Act and sections 73.3540 and 73.3615 of the Rules.

13. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

amount of eight thousand dollars (\$8,000), within one hundred eighty (180) calendar days after 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 1996.¹⁷

14. **Payment.** Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty 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),¹⁸ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁹

- 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).²⁰ For 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 dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- 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.

15. **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 13 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

¹⁷ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁸ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

¹⁹ 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.

²⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Applications.²¹

16. **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.

17. **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.

18. **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.

19. **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.

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

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 or amended without the advance written consent of all 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 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.

25. **Counterparts.** This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

²¹ As noted, *supra*, in the order adopting this Consent Decree, grant of the Applications will not be *nunc pro tunc*.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

Big Horn Media, Inc.

By: _____
Harry Dixon, CEO/President, Big Horn Media, Inc.

Date: _____

APPENDIX: COMPLIANCE PLAN

For a period of three (3) years commencing on the Implementation Date of the Compliance Plan, BHM 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 after 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 matters relating to the Compliance Plan.
- II. **Compliance Manual.** Within 90 days after the Effective Date, the FCC Compliance Officer shall develop and distribute a Compliance Manual to employees, contractors, volunteers, and interns who perform duties for Licensee that trigger or may trigger compliance-related responsibilities relating to the Compliance Plan. 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 after the Effective Date, Licensee shall begin administering a Compliance Training Program for employees, contractors, volunteers, and interns 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 after 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 120 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; (2) Licensee has been utilizing those procedures since implementation of the Compliance Manual; 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 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 Christopher Clark, Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at Christopher.Clark@fcc.gov.