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

In the Matter of Online Political Files of	)	File No.: POL-093020-835904
	)	
Crocodile Broadcasting Corp., Inc.	)	
	)	
Licensee of Commercial Radio Station(s)	)	FRN: 835904

ORDER

Adopted: October 26, 2020 **Released: October 26, 2020**

By the Chief, Media Bureau:

1. The Commission first adopted rules requiring broadcast stations to maintain public files documenting requests for political advertising time more than 80 years ago,[1] and political file obligations have been embodied in section 315(e) of the Act since 2002.[2] Section 315(e)(1) requires radio station licensees, among other regulatees, to maintain and make available for public inspection information about each request for the purchase of broadcast time that is made: (a) by or on behalf of a legally qualified candidate for public office,[3] or (b) by an issue advertiser whose advertisement communicates a message relating to a political matter of national importance.[4] Section 315(e)(3) of the Act requires stations to upload information about such requests to their online political files "as soon as possible."[5] Section 73.1943(a) of the Commission's Rules requires stations to maintain and make available for public inspection information about all requests for broadcast time made by or on behalf of candidates for public office,[6] and section 73.1943(c) requires stations to upload such information to their online political files "as soon as possible," meaning "immediately absent unusual circumstances."[7]

2. It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities pursuant to section 315(a) of the Act[8] and present their positions to the public prior to an election.[9] In addition, as the Commission has stated, "the disclosures included in the political

[1] *See* 3 Fed. Reg. 1691 (1938).

[2] 47 U.S.C. § 315. *See* Bipartisan Campaign Reform Act of 2002, P.L. 107–155, 116 Stat. 81 (2002).

[3] 47 U.S.C. § 315(e)(1)(A).

[4] 47 U.S.C. § 315(e)(1)(B).

[5] 47 U.S.C. § 315(e)(3).

[6] 47 CFR § 73.1943(a)

[7] 47 CFR § 73.1943(c).

[8] 47 U.S.C. § 315(a).

[9] Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent's initial "use" to request equal opportunities. 47 CFR § 73.1941(c). The failure by a station to promptly upload information about each "use" denies requesting candidates the notice they need to assert their statutory rights to equal opportunities in a

(continued….)

file further the First Amendment's goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy."[10]

3. Crocodile Broadcasting Corp., Inc. is the licensee of one or more commercial radio stations for which it has filed license renewal applications. The Audio Division of the FCC's Media Bureau suspended processing of those applications because of Crocodile Broadcasting Corp., Inc.'s failure to affirmatively certify compliance with its public file obligations in Section 73.3526 of the Commission's rules.[11] The Audio Division staff determined that the public file deficiencies were attributable to a failure by Crocodile Broadcasting Corp., Inc. to comply with political file requirements.

4. The Media Bureau and Crocodile Broadcasting Corp., Inc. have elected to resolve the matter of Crocodile Broadcasting Corp., Inc.'s public file derelictions through the attached Consent Decree. Pursuant to the Consent Decree, Crocodile Broadcasting Corp., Inc. agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its political file obligations and to submit periodic compliance reports to the Media Bureau.

5. 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.

6. Accordingly, **IT IS ORDERED** that, pursuant to the authority delegated by section 0.61(e) and 0.283 of the Commission's rules,[12] the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

7. **IT IS FURTHER ORDERED** that pursuant to 47 CFR § 73.3526(e)(10), a copy of the attached Consent Decree **SHALL BE RETAINED** in the online public inspection file of each station listed in Appendix A of the Consent Decree until grant of its next license renewal application.

8. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be served via electronic mail to Steve Lovelady, Esq., counsel for Crocodile Broadcasting Corp., Inc. at lovelady@fhhlaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

(Continued from previous page)
timely manner. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4562 para. 55 (2012).

[10] *Id.* at 4543-44, para. 16.

[11] See Section III, Question 3, of each application.

[12] 47 CFR §§ 0.61(e), 0.283.

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CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Crocodile Broadcasting Corp., Inc. (hereafter "Company," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Company's compliance with section 315(e)(3) of the Communications Act of 1934, as amended,[1] and section 73.1943(c) of the Commission's rules,[2] relating to the maintenance of online political files. To resolve this matter, the Company agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 315(e)(3) and section 73.1943(c).

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, 47 U.S.C. § 151 *et seq*.

(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 Media Bureau of the Commission.

(d) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.

(e) "Company" means Crocodile Broadcasting Corp., Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(f) "Covered Employees" means all employees and agents of the Company who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online political files, as required by the Political Record-Keeping Statute and Rule.

(g) "Effective Date" means the date by which both the Bureau and the Company have signed the Consent Decree.

(h) "Investigation" means the Bureau's decision to hold and not process the Company's license renewal applications identified in Appendix A due to the Company's inability to certify compliance with its public file obligations.

[1] 47 U.S.C. § 315(e)(3).

[2] 47 CFR § 73.1943(c).

(i) "Parties" means the Company and the Bureau, each of which is a "Party."

(j) "Political Record-Keeping Statute and Rule" means 47 U.S.C. § 315(e)(3) and 47 CFR § 73.1943(c).

(k) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 315(e)(1) requires radio station licensees to maintain and make available for public inspection information about each request for the purchase of broadcast time that is made: (a) by or on behalf of a legally qualified candidate for public office,[3] or (b) by an issue advertiser whose advertisement communicates a message relating to a political matter of national importance.[4] Section 315(e)(3) requires stations to place information about such requests into their political files "as soon as possible."[5] Section 73.1943(a) of the Commission's Rules requires stations to maintain and make available for public inspection information about all requests for broadcast time made by or on behalf of candidates for public office,[6] and section 73.1943(c) requires stations to upload such information to their online political files "as soon as possible," meaning "immediately absent unusual circumstances."[7] A full-power station's political file is a subset of its public inspection file.[8]

4. It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities pursuant to section 315(a) of the Act[9] and present their positions to the public prior to an election.[10] In addition, as the Commission has stated, "the disclosures included in the political file further the First Amendment's goal of an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy."[11]

5. The Company owns and operates one or more commercial radio stations licensed by the Commission. The Company recently filed one or more applications for renewal of radio station licenses in which it was unable to certify compliance with the public file requirements during the relevant license term. Further, we have determined that the Company failed to certify compliance in those applications because it did not comply with the Political Record Keeping Statute and Rule. Those applications are

[3] 47 U.S.C. § 315(e)(1)(A).

[4] 47 U.S.C. § 315(e)(1)(B).

[5] 47 U.S.C. § 315(e)(3). Pursuant to *Expansion of Online Public File Obligations to Cable and Satellite TV Operator and Broadcast and Satellite Radio* Licensee, 31 FCC Rcd. 526 (2016), radio stations are required to upload records about requests for the purchase of political broadcast time to their online political files for public inspection.

[6] 47 CFR § 73.1943(a)

[7] 47 CFR § 73.1943(c).

[8] *See* 47 CFR § 73.3526(e)(6).

[9] 47 U.S.C. § 315(a).

[10] Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent's initial "use" to request equal opportunities. 47 CFR § 73.1941(c). The failure by a station to promptly upload information about each "use" denies requesting candidates the notice they need to assert their statutory rights to equal opportunities in a timely manner. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4562 para. 55 (2012).

[11] *Id.* at 4543-44, para. 16.

identified in **Appendix A**. Based on the Company's inability to provide the required certification, the Bureau commenced the Investigation and suspended processing those license renewal applications.

6. The Bureau acknowledges that the COVID-19 pandemic caused a dramatic reduction in advertising revenues which, in turn, placed the radio broadcast industry, including the Company, under significant, ongoing financial stress. The Bureau believes that the Company's disclosures in its license renewal applications combined with the exceptional circumstances brought about by the pandemic present a unique situation which, on balance, warrant resolution of the Bureau's investigation under the terms and conditions described below.

III. TERMS OF AGREEMENT

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

8. **Jurisdiction**. The Company agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

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

10. **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 addition, the Bureau agrees to process the Company's pending radio license renewal applications identified in Appendix A in the ordinary course. Furthermore, the Bureau agrees not to suspend the processing of such future radio license renewal applications that the Company files in the current renewal cycle (through August 2022) because of the Company's inability to certify compliance with its public file obligations in those applications. In consideration for such, the Company agrees to the terms, conditions, and procedures contained herein.

11. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Company 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 the Company's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[12]

12. **Admission of Liability**. The Company admits for the purpose of this Consent Decree that it failed to timely place records of all requests for the purchase of political broadcast time in its political file in a timely manner, in repeated violation of section 315(e)(3) of the Act, and section 73.1943(c) of the Rules.

13. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.[13] The Company acknowledges that the Commission or its delegated authority may consider the Company's admission of liability in this Consent Decree in proposing any future forfeiture against Company in the event the Company is determined to have apparently committed a violation of the Act, the Rules, or of

[12] *See* 47 CFR § 1.93(b).

[13] *See* 47 U.S.C. § 503(b)(2)(E).

any orders of the Commission after the Effective Date, whether related to political programming and record keeping or otherwise.

14. **Compliance Officer**. Within 30 calendar days after the Effective Date, the Company shall designate a senior manager to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Company's Chief Executive Officer (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Political Record-Keeping Statute and Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

15. **Compliance Plan**. For purposes of settling the matters set forth herein, the Company agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Political Record-keeping Statute and Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 15(c), shall apply to all radio stations owned by the Company. The Compliance Plan shall contain, at a minimum, the following elements:

(a) Compliance Manual. The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Company may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:

i. thoroughly explain the requirements embodied in the Political Record-keeping Statute and Rule;

ii. contain Operating Procedures that Covered Employees must follow to help ensure the Company's compliance with the Political Record-keeping Statute and Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company's stations upload all required information to their online political files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Political Record-keeping Statute and Rule; and

iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.

(b) Compliance Training Program. If the Company has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Political Record-keeping Statute and Rule. As part of the compliance training program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the Political Record-keeping Statute and Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Company shall provide training under the compliance training plan on at least an annual basis, and it shall

periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.

(c) **Compliance Report**. The Company shall submit one compliance report in the form of a spreadsheet to the Bureau for each station listed in Appendix A. The compliance report is intended to provide data about requests that the station received for the purchase of broadcast time by, or on behalf of, legally qualified candidates for public office or which communicate a message relating to any political matter of national importance.[14] The compliance report shall: (1) provide data about such requests that the station received for ads broadcast during the 6-month period preceding the general election on November 2, 2021, and (2) be submitted to the Bureau no later than December 10, 2021. The Bureau may, within its sole discretion, require the Company to submit more frequent or additional compliance reports in accordance with the terms of paragraph 17 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Company: (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.

ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,[15] and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.

iv. The Company's Chief Executive Officer (or equivalent senior officer/owner) shall also certify that he or she has reviewed the compliance report and that, based on his or her knowledge, the compliance report does not contain any untrue statement of a material fact, does not omit to state a material fact necessary to make the statements made therein, and is not misleading with respect to the period covered by the compliance report.

v. The compliance report shall be submitted to the Political Programming staff: Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, at Robert.Baker@fcc.gov; Gary Schonman, Special Counsel, Policy Division, Media Bureau, Federal Communications Commission, at Gary.Schonman@fcc.gov; and Sima Nilsson, Attorney-Advisor, Policy Division Media Bureau, Federal Communications Commission, at Sima.Nilsson@fcc.gov.

16. **Reporting Noncompliance**. The Company shall, for each station it owns, report any instance of noncompliance with the Political Record-keeping Statute and Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iiii) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the

[14] See 47 U.S.C. § 315(e).

[15] 47 CFR § 1.16.

schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Political Programming staff: Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, at Robert.Baker@fcc.gov; Gary Schonman, Special Counsel, Policy Division, Media Bureau, Federal Communications Commission, at Gary.Schonman@fcc.gov; and Sima Nilsson, Attorney-Advisor, Policy Division Media Bureau, Federal Communications Commission, at Sima.Nilsson@fcc.gov.

17. **Termination Date**. The obligations to which the Company is subject pursuant to this Consent Decree shall terminate 60 days after the filing of the compliance report referenced above, *provided* the Bureau is satisfied that the Company has demonstrated substantial compliance with its political file obligations. If the Bureau is not satisfied that the Company has demonstrated substantial compliance with its political file obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

18. The Company acknowledges that the Bureau retains the discretion and authority to propose sanctions against the Company, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by the Company of the Political Record-keeping Statute and Rule that occurs during the term of this Consent Decree.

19. **Waivers**. As of the Effective Date, the Company 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. The Company 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 Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may have under the Equal Access to Justice Act[16] relating to the matters addressed in this Consent Decree.

20. **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.

21. **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.

22. **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

[16] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

specifically intended to revise the terms of this Consent Decree to which the Company does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

26. **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.

27. **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.

28. **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.

_____
Michelle M. Carey
Chief, Media Bureau

_____
Date

_____
Crocodile Broadcasting Corp., Inc.

_____
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
WFNO	Gretna, LA	105143