

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Board of Trustees of the University of Arkansas)	File No.: EB-IHD-17-00024914
)	Acct. No.: 201932080015
)	FRN: 0007260276
Licensee of Noncommercial Educational Stations)	
KBPU(FM), De Queen, Arkansas and)	Facility ID No.: 92030
KTYC(FM), Nashville, Arkansas)	Facility ID No.: 175551
)	

ORDER

Adopted: January 7, 2020

Released: January 7, 2020

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve the Commission’s investigation into whether Board of Trustees of the University of Arkansas (University), licensee of noncommercial educational (NCE) Stations KBPU(FM), De Queen, Arkansas, and KTYC(FM), Nashville, Arkansas, violated the Commission’s underwriting laws by broadcasting announcements that promoted the products, services or businesses of its financial contributors. To settle this matter, University admits that it broadcast announcements that violated the Commission’s underwriting laws and agrees to implement a five-year compliance plan and pay a \$76,000 civil penalty.

2. NCE broadcasters are licensed to use spectrum that is specifically reserved for them, and they benefit from lower regulatory fees and fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and NCE broadcasters cannot air commercial advertising.¹ 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.”² NCE broadcasters are licensed to provide noncommercial, locally oriented programming for their communities, and the Commission acts when necessary to enforce the laws prohibiting NCE-FM stations from airing announcements that promote for-profit advertisers.

3. Although an NCE 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.³ 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; or excessively detailed “menu listings” of services offered by the entity.⁴ Although the Commission has

¹ 47 U.S.C. § 399b(b)(2).

² *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

³ 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*).

⁴ *Enhanced Underwriting Policy*, 7 FCC Rcd at 827-28; *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, (continued....)

not adopted any quantitative guidelines on underwriting announcements, it has found that the longer the announcement, the more likely it is to contain material that is inconsistent with their “identification only” purpose.⁵ The Commission expects that licensees will exercise reasonable “good faith” judgment in this area and affords some latitude to the judgments of licensees who do so.⁶

4. 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 the referenced investigation regarding University’s compliance with section 399B of the Communications Act of 1934, as amended (Act),⁷ and section 73.503(d) of the Commission’s rules (Rules).⁸

5. In the absence of material new evidence relating to this matter, we do not set for hearing the question of University’s basic qualifications to hold or obtain any Commission license or authorization.⁹

6. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) of the Act¹⁰ and the authority delegated by sections 0.111 and 0.311 of the Rules,¹¹ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

8. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against University and/or its stations related to the above-captioned investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

9. **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 Gina Terry, Chief Financial Officer, University of Arkansas System, 2404 North University Avenue, Little Rock, Arkansas 72207, JoAnn C. Maxey, General Counsel, University of Arkansas System, 2404 North University Avenue, Little Rock, Arkansas 72207, and to Jerold L. Jacobs, Esq., Law Offices of Jerold L. Jacobs, 1629 K Street, NW, Suite 300, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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20 FCC Rcd 12008 (EB 2005); *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4920-21, paras. 3, 6 (1990).

⁵ *Enhanced Underwriting Policy*, 7 FCC Rcd at 827-28; cf. *Board of Education of New York (WNYE-TV)*, Letter of Caution, 7 FCC Rcd 6864 (MMB 1992).

⁶ *Id.*

⁷ 47 U.S.C. § 399b.

⁸ 47 CFR § 73.503(d).

⁹ See 47 CFR § 1.93(b).

¹⁰ 47 U.S.C. § 154(i).

¹¹ 47 CFR §§ 0.111, 0.311.

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CONSENT DECREE

1. Noncommercial educational (NCE) broadcasters are licensed to use spectrum that is specifically reserved for them, and they benefit from lower regulatory fees and fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and NCE broadcasters cannot air commercial advertising.¹² 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.”¹³ These restrictions do not preclude NCE radio stations from receiving donations and underwriting support from for-profit entities, and airing donor and underwriter support acknowledgments, provided such acknowledgments are consistent with section 399B of the Communications Act of 1934, as amended (Act), and section 73.503(d) of the Commission’s rules (Rules).

2. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Board of Trustees of the University of Arkansas (University or Licensee), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether University violated section 399B of the Communications Act of 1934, as amended (Act), and section 73.503(d) of the Commission’s rules (Rules) prohibiting NCE broadcast stations from airing promotional announcements on behalf of for profit entities in exchange for consideration to the licensee, its principals, or employees¹⁴ with regard to NCE Stations KPBU(FM), De Queen, Arkansas, and KTYC(FM), Nashville, Arkansas, which are managed by Cossatot Community College of the University of Arkansas (Cossatot), a campus under University’s control. As set forth herein, University agrees to implement a compliance plan and pay a \$76,000 civil penalty. Settling this matter will spare Commission resources and help ensure the University’s prospective compliance with the Underwriting Laws.

¹² 47 U.S.C. § 399b(b)(2).

¹³ *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

¹⁴ 47 U.S.C. § 399b; 47 CFR § 73.503(d) (providing, in part, “No *promotional* announcement *on behalf of for profit entities* shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees.”) (emphasis in original).

I. DEFINITIONS

3. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.¹⁵
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Cossatot” means Cossatot Community College of the University of Arkansas, a campus that is under the control of University and which manages the Stations.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which University is subject by virtue of its being a Commission licensee, including but not limited to the Underwriting Laws.
 - (g) “Complaint” means the third-party submissions received by, or in the possession of, the Bureau, on file in EB-IHD-17-00024914, alleging violation of the Underwriting Laws.
 - (h) “Covered Employee” means all University employees and agents, including but not limited to volunteers, who perform, or supervise, oversee, or manage the performance of duties related to University’s responsibilities under the Communications Laws, including the Underwriting Laws.
 - (i) “Effective Date” means the date by which both the Bureau and University have signed the Consent Decree and the Bureau releases the Adopting Order.
 - (j) “Investigation” means the investigation commenced by the Bureau in EB-IHD-17-00024914, regarding whether University violated the Underwriting Laws in connection with the Stations, which are managed by Cossatot.
 - (k) “KBPU” means noncommercial educational station KBPU(FM), De Queen, Arkansas (Facility Identification Number 92030), licensed to University and managed by Cossatot.
 - (l) “KTYC” means noncommercial educational station KTYC(FM), Nashville, Arkansas (Facility Identification Number 175551), licensed to University and managed by Cossatot.
 - (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by University and/or Cossatot to implement the Underwriting Compliance Plan.
 - (n) “Parties” means University and the Bureau, each of which is a “Party.”
 - (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
 - (p) “Stations” means, individually or collectively, KBPU and/or KTYC.

¹⁵ 47 U.S.C. § 151 *et seq.*

- (q) “University” or “Licensee” means Board of Trustees of the University of Arkansas and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (r) “Underwriting Announcement” means any announcement, message, or other program material, broadcast over a noncommercial station licensed to University, or by any of its successors, assigns, or transferees, made in exchange for consideration, on behalf of any for-profit entity.
- (s) “Underwriting Compliance Checklist” means the obligation under Paragraph 13(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.
- (t) “Underwriting Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 13.
- (u) “Underwriting Laws” means, individually or collectively, section 399B of the Act, and section 73.503(d) of the Rules,¹⁶ and the decisions and orders of the Commission interpreting these provisions.

II. BACKGROUND

4. 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.¹⁷ Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.¹⁸ 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, services, or businesses.¹⁹ Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.²⁰

5. The Commission received a Complaint alleging that University violated the Underwriting Laws when the Stations, managed by Cossatot, aired announcements on an ongoing basis, including from September 14 through September 17, 2016, that impermissibly promoted their for-profit underwriters’ products or services and contained qualitative descriptions and comparative language, pricing information, and/or calls to action.²¹ The Commission has not received any complaints indicating that other stations licensed to University have violated the Underwriting Laws. The Bureau issued letters of

¹⁶ 47 U.S.C. § 399b; 47 CFR § 73.503(d).

¹⁷ 47 U.S.C. § 399b(a).

¹⁸ 47 U.S.C. § 399b(b)(2).

¹⁹ See 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).

²⁰ *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*, Memorandum Opinion and Order, 90 FCC 2d 895 (1982)).

²¹ See Letter from Bunyard Broadcasting, Inc. and Arklatex Radio, Inc., to Chief, FCC Enforcement Bureau (Dec. 12, 2016) (on file in EB-IHD-17-00024914) (Complaint). In a follow-up e-mail, counsel to Bunyard Broadcasting, Inc. and Arklatex Radio, Inc. clarified that a recording of the announcements referenced in the Complaint was “made from September 14-17, 2016.” E-mail from Dan J. Alpert, Esq., Counsel for Complainant, to Judy Lancaster, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jan. 11, 2017, 22:25 EDT).

inquiry seeking more information about the complained-of announcements and University's efforts to comply with the Underwriting Laws.²²

6. University responded to the LOIs, admitting that the Stations, as managed by Cossatot, broadcast the complained-of Underwriting Announcements, which were simulcast on the Stations.²³ University confirmed the accuracy of the transcriptions provided with the Complaint, and asserted that Cossatot had provided its staff extensive retraining concerning underwriting issues prior to receiving the Bureau's LOIs, and believed that the Stations had complied with the enhanced underwriting rules as concerned the announcements at issue.²⁴ Thereafter, the Parties agreed to enter into this Consent Decree.

III. TERMS OF AGREEMENT

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

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

9. **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.

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 and dismiss the Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, University agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, any new proceeding, formal or informal, or take any action on its own motion against University 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 take any action on its own motion against University with

²² Letter of Inquiry from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Fred Harrison, General Counsel, Board of Trustees of the University of Arkansas (Oct. 24, 2017) (on file in EB-IHD-17-00024914) (LOI); Follow-up Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Fred Harrison, Counsel, University of Arkansas System, Board of Trustees of the University of Arkansas (June 25, 2018) (on file in EB-IHD-17-00024914) (Follow-up LOI) (LOI and Follow-up LOI, together, LOIs).

²³ Response to Letter of Inquiry, from Dr. Steve Cole, Chancellor, University - Cossatot, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, at 3-8, Response to Question 1 (Nov. 20, 2017) (on file in EB-IHD-17-00024914) (LOI Response); Response to Follow-up Letter of Inquiry, from Dr. Steve Cole, Chancellor, University - Cossatot, to Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, at 11-12, Response to Question 3 (Aug. 1, 2018) (on file in EB-IHD-17-00024914) (Follow-up LOI Response). The page numbers in the Follow-up LOI Response are not specified in the document itself so the page numbers here correspond to the counted page numbers in the document. The Follow-up LOI Response was timely filed pursuant to an extension grant. *See* E-mail from Melissa Marshall, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, to Jerold Jacobs, Counsel for Board of Trustees of the University of Arkansas, et al. (July 24, 2018, 13:58 EDT) (granting extension request for Licensee to file its responses to the June 25, 2018, supplemental inquiries by August 1, 2018).

²⁴ LOI Response at 2, 3-8, Response to Question 1; Follow-up LOI Response at 12, Response to Question 4, 13, Response to Question 9.

respect to University's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

11. **Admission of Liability.** University admits, in express reliance on the provisions of Paragraph 10 herein, and in order to minimize the expenditure of public resources, that its actions with respect to the broadcast of the material referenced in the Complaint and described in Paragraph 5 herein violated the Commission's Underwriting Laws.²⁵

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, University shall designate an independent FCC regulatory counsel or other individual 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 University complies with the terms and conditions of the 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.

13. **Underwriting Compliance Plan.** University shall, within, one hundred twenty (120) 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 ten (10) calendar days of the Effective Date, University 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 this Paragraph 13. The Notification shall explain the Underwriting Laws that the Covered Employees shall follow.
- i. University shall provide a copy of such Underwriting Compliance Notification to the Enforcement Bureau within fourteen (14) calendar days from the Effective Date.
 - ii. Every thirty (30) calendar days from the Effective Date, University shall review its Underwriting Compliance Notification, and provide any updates or amendments to the Underwriting Compliance Notification to all Covered Employees.
 - iii. University shall, within seven (7) calendar days of newly acquiring any noncommercial broadcast facility during the period of this agreement, adopt the foregoing procedures outlined in this Paragraph 13 to those facilities and follow them thereafter.
- (b) **Consultation with Counsel.** If the Compliance Officer is not an FCC regulatory counsel, University shall consult with outside FCC regulatory counsel regarding University's overall compliance with the Underwriting Laws. Such consultations shall occur on a biannual basis, or more frequently to ensure University's compliance with the terms of this Consent Decree.
- (c) **Operating Procedures.** Within one hundred twenty (120) calendar days of the Effective Date, University shall establish Operating Procedures that all Covered Employees must follow to help ensure University's compliance with the Communications Laws, including the Underwriting Laws. University's Operating

²⁵ Complaint, Attach.; LOI at 14-19, Exh. 1.

Procedures shall include internal procedures and policies specifically designed to ensure that University complies with the Underwriting Laws. University shall use a multi-level review procedure for underwriting content to be aired on the Stations and at any noncommercial broadcast facilities it then owns. The Compliance Officer, or a management-level employee of University (to include a management-level employee of a University radio station) working in cooperation with the Compliance Officer, shall review all scripts of Underwriting Announcements prior to broadcast. University 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 one hundred twenty (120) calendar days of the Effective Date, University 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 University's compliance with the Communications Laws, including the Underwriting Laws. University shall periodically review and revise the Compliance Manual as necessary to ensure the information set forth therein remains current and accurate. University shall distribute any revisions to the Compliance Manual to all Covered Employees within three (3) calendar days of any updated revisions.
- (e) **Underwriting Compliance Training Program.** Within one hundred twenty (120) calendar days of the Effective Date, University shall establish an Underwriting Compliance Training Program in compliance with the Underwriting Laws and the Operating Procedures that University will follow immediately following the Underwriting Compliance Plan as stated in this Paragraph 13. As part of the Underwriting Compliance Training Program, Covered Employees shall be advised of University's obligation to report any noncompliance with the Underwriting Laws under Paragraph 14 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 one hundred fifty (150) 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. University 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 one hundred twenty (120) calendar days of the Effective Date, University shall implement and maintain a plan to educate prospective for-profit underwriters about appropriate underwriting content and about how University incorporates such underwriting content in the announcements that it prepares for underwriter approval and eventual broadcast over the Stations and at any noncommercial broadcast facilities it then owns. To that end, University 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 Stations or at any noncommercial broadcast facilities it then owns and shall prepare the Underwriting Announcement for the underwriter's review. University shall not broadcast over the Stations, or at any noncommercial broadcast facilities it then owns, any announcement that does not comply with the Underwriting Laws.

14. **Reporting Noncompliance.** University 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 University has taken or will take to address such noncompliance; (iii) the schedule on which such actions will be taken; and (iv) the steps that University 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, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

15. **Compliance Reports.** University shall file Compliance Reports with the Commission one hundred eighty (180) calendar 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 University'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 University, stating that the Compliance Officer has personal knowledge that University: (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 14 and 15 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 University, 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 University 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 University 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, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 12 through 15 of this Consent Decree shall expire sixty (60) months after the Effective Date.

²⁶ See 47 CFR § 1.16.

17. **Civil Penalty.** University shall pay a civil penalty to the United States Treasury in the amount of seventy-six thousand dollars (\$76,000). Such payment may be made in four installments (each an Installment Payment). The first Installment Payment in the amount of nineteen thousand dollars (\$19,000) is due on or before the date that is thirty (30) calendar days after the Effective Date. Thereafter, subsequent Installment Payments of nineteen thousand dollars (\$19,000) will be due on or before July 1, 2020, December 31, 2020, and December 31, 2021. At University's option, University may accelerate this payment schedule. University acknowledges and agrees that upon execution of this Consent Decree, the civil penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).²⁷ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. University shall send electronic notification of payment on the date said payment is made 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, Frederick Giroux at Frederick.Giroux@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov. 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),²⁸ 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:²⁹

- 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).³⁰ 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 Account – the bill number is the 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 limit 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 then select the bill number associated to the Account – the bill number is the Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to

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

²⁸ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁹ 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.

³⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

18. **Event of Default**. University agrees that an Event of Default shall occur upon the failure by University to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

19. **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 percent, 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 University.

20. **Underwriting Complaints; Subsequent Investigations**. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to the Underwriting Laws against University 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.

21. **Waivers**. As of the Effective Date, University 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. University 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 University nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and University shall waive any statutory right to a trial *de novo*. University hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³¹ relating to the matters addressed in this Consent Decree.

22. **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.

23. **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.

24. **Subsequent Rule or Order**. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which University does not expressly consent) that provision will be superseded by such Rule or order.

³¹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

25. **Successors, Assigns, and Transferees.** University agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees for the duration of the agreement.

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

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

28. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

29. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Gina Terry
Chief Financial Officer
University of Arkansas System

Date