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

In re Applications of	)	
	)	
Tiffin Broadcasting II, LLC (Assignor)	)	NAL/Acct. No. MB-202041410001
	)	FRN: 0023550882
and	)	Facility ID Nos. 70527 and 142257
	)	File No. BAL-20200406AAH and BALFT-20200406AAI
BAS Broadcasting Inc. (Assignee)	)	
	)	
for Consent to Assignment of WTTF(AM), Tiffin, Ohio and W227BJ, Tiffin, Ohio	)	

ORDER

Adopted: May 26, 2020 **Released: May 27, 2020**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau), Tiffin Broadcasting II, LLC (Tiffin), and BAS Broadcasting Inc. (BAS). The Consent Decree resolves issues arising from the Bureau's review of the captioned applications (Applications) for Commission consent to the proposed assignment of WTTF(AM), Tiffin, Ohio, and FM Translator W227BJ, Tiffin, Ohio (Stations) from Tiffin to BAS. Specifically, the Consent Decree resolves the Bureau's investigation of Tiffin and BAS' compliance with Section 310 of the Communications Act of 1934, as amended (the Act)[1] and Section 73.3540 of the Commission's rules (Rules).[2]

2. In an unauthorized transaction that was initiated in 2015 and concluded in 2019, WTTF(AM) and W227BJ were assigned without Commission consent. Pursuant to the terms of the Consent Decree, Tiffin and BAS stipulate that they violated section 310 of the Act and section 73.3540 of the Rules.

3. The Consent Decree requires, among other things, that BAS make an eight thousand dollar ($8,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. 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.

5. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Tiffin or BAS possess the basic qualifications to be a Commission licensee.

[1] 47 U.S.C. § 310.

[2] 47 CFR § 73.3540.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[3] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[4] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by Email, to Tiffin Broadcasting II, LLC and BAS Broadcasting Inc., c/o Melodie A. Virtue, Esq., MELODIE.VIRTUE@FOSTER.COM.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

[3] 47 U.S.C. § 4(i).

[4] 47 CFR §§ 0.61, 0.283.

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CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission, Tiffin Broadcasting II, LLC, and BAS Broadcasting Inc., by their respective authorized representatives, for the purpose of resolving certain issues related to the unauthorized assignment of WTTF(AM), Tiffin, Ohio, and FM Translator W227BJ, Tiffin, Ohio, and terminating the Media Bureau's investigation concerning compliance with section 73.3540 of the FCC's rules and section 310(d) of the Act, 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 314 applications, as amended on May 20, 2020, for consent to assignment of broadcast station licenses associated with File Nos. BAL-20200406AAH and BALFT-20200406AAI;

(d) "BAS" means BAS Broadcasting Inc.;

(e) "Bureau" means the Media Bureau of the Federal Communications Commission;

(f) "Civil Penalty" means the payment BAS 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) "Effective Date" means the date on which the Bureau releases the Adopting Order;

(i) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;

(j) "Investigation" means the Bureau's investigation of information contained in the Applications, as detailed herein;

(k) "Licenses" refers to the license authorizations for Stations WTTF(AM), Tiffin, Ohio, (Fac. ID No. 70527), and FM Translator W227BJ, Tiffin, Ohio, (Fac. ID No. 142257);

(l) "Parties" means Tiffin, BAS, and the Bureau;

(m) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations; and

(n) "Tiffin" means Tiffin Broadcasting II, LLC;

(o) "Violations" means the unauthorized assignment of the Licenses in violation of Section 73.3540 of the Rules and Section 310(d) of the Act.

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.[5]

4. On April 10, 2014, Tiffin acquired the license for Stations WTTF(AM) and FM Translator W227BJ.[6] After grant of the Original Assignment Application, the transaction was consummated on April 11, 2014.[7] Also on April 11, 2014, Tiffin entered into a written, attributable Local Marketing Agreement (LMA) for Stations WTTF(AM) and FM Translator W227BJ with BAS.[8] Pursuant to the LMA, Tiffin retained full control of operations, programming, personnel, and facilities.[9]

5. On January 1, 2015, Tiffin and BAS entered into an Asset Purchase Agreement (APA) in which BAS agreed to purchase from Tiffin, among other assets, the licenses for the Stations (Transaction).[10] As consideration for the APA, BAS agreed to tender six hundred eight thousand dollars

[5] 47 U.S.C. § 310(d).

[6] *See* File No. BAL-20140214ABC (Original Assignment Application), Attachments 5; Asset Purchase Agreement, Bill of Sale, Local Marketing Agreement, and Option to Purchase Agreement. (Assigning Stations WTTF(AM) and FM Translator Station W227BJ).

[7] *See* Form 905 Consummation Notice filed April 18, 2014, lead application File No. BAL-20140214ABC.

[8] *See* Application, File No. BAL-20200406AAH, Attachment 17, LMA. The Commission has consistently held that a licensee's participation in a local marketing agreement (LMA), does not per se constitute an unauthorized transfer of control or a violation of the Act or any Commission rules or policies. *See, e.g.*, *WGPR, Inc*., Memorandum Opinion and Order, 10 FCC Rcd 8140 at 8141 ¶ 10 (1995); *Roy R. Russo, Esquire*, Letter decision, 5 FCC Rcd 7586 (MMB 1990); *Joseph A. Belisle, Esquire*, Letter decision, 5 FCC Rcd 7585 (MMB 1990). Since 2006, BAS maintained a similar LMA with former licensee Tiffin Broadcasting, LLC.

[9] *Id.* at Section 4, 2.7 Control of the Station.

[10] *Id.* at Attachment 5, Asset Purchase Agreement at 1-2 (APA).

($608,000) to Tiffin.[11] On October 25, 2018, Tiffin and BAS signed an Amendment to the APA in which BAS agreed to reimburse Tiffin for taxes related to the APA transaction.[12] Finally, effective December 31, 2019, without Commission consent, Tiffin and BAS executed a Bill of Sale to complete the Transaction.[13]

6. On April 8, 2020, Tiffin and BAS filed the instant Applications disclosing the unauthorized assignment of WTTF(AM) and W227BJ. Tiffin and BAS report that "[t]he parties request *nunc pro tunc* approval of the transaction which was closed for tax purposes at year end [of 2019]. The parties mistakenly believed that the ownership change would be implemented through the process of filing the renewal applications."[14] In addition to disclosing the assignments without prior Commission authorization described above, Tiffin and BAS included the LMA and LMA Amendments as attachments to the Applications.[15]

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. AGREEMENT

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

9. **Jurisdiction**. Tiffin and BAS acknowledge that the Bureau has jurisdiction over them, 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. Tiffin and BAS agree that they are 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, Tiffin and BAS agree 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 Tiffin and BAS, provided that they satisfy all of their obligations under this Consent Decree. In

[11] *Id.* at Attachment 1, Letter from Thomas E. Kolena, Mira+Kolena, Ltd., to Melodie A. Virtue, Counsel to BAS Broadcasting (May 19, 2020) (Kolena Letter); *id.* at Attachment 1, Amendment to APA (June 30, 2018). Initially, the total purchase price was $688,000 with monthly payments of $19,000 beginning in January 2015. Subsequently, the purchase price was reduced to $608,000. Payments of $228,000 were made in 2015, $218,000 in 2016, and $162,000 in 2017. Thus, BAS paid the full purchase price before the parties filed the pending Application seeking Commission consent to assign the Licenses from Tiffin to BAS. *Id.* at Attachment 1, Kolena Letter.

[12] *Id.* at Attachment 5, Amendment to APA (Oct. 25, 2018).

[13] *Id.* at Attachment 5, Bill of Sale.

[14] *Id*. at Exhibit 5, Written Agreements.

[15] Exhibit 1 at 5-8.

the event that Tiffin and BAS fail to satisfy any of their 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**. Tiffin and BAS stipulate that 1) the actions described in Paragraphs 4–7 violated Section 310(d) of the Act and Section 73.3540 of the Rules.

13. **Civil Penalty**. BAS agrees to make the Civil Penalty payment to the United States Treasury in the amount of eight thousand dollars ($8,000), within thirty (30) calendar days of the Effective Date. BAS 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.[16]

14. **Payment**. BAS shall send electronic notification of payment to Ariane Rangel at Ariane.Rangel@fcc.gov and Tom Hutton at Tom.Hutton@fcc.gov on the date payment is made. Payment shall 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),[17] or by wire transfer. The Commission no longer accepts civil penalty or forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[18]

- 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 emailed 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).[19] 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.
- 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

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

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

[18] 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.

[19] Instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

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 Tiffin and BAS possess 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 18 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 Applications.[20]

16. **Waivers**. Tiffin and BAS agree to waive any and all rights they 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 Tiffin and BAS will waive any statutory right to a *trial de novo*. Tiffin and BAS further agree to waive any claims they 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 Tiffin and BAS do not expressly consent), such provision will be superseded by such Rule or Order.

20. **Successors and Assigns**. Tiffin and BAS agree that the provisions of this Consent Decree shall be binding on their 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.

[20] Grant of the Applications will not be *nunc pro tunc*. *See, e.g., Time Warner Cable, Inc.,* Memorandum Opinion and Order, 24 FCC Rcd 879, 904, n.121 (MB, WCB, WTB, IB 2009).

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

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Michelle M. Carey, Chief, Media Bureau

Date: _____

TIFFIN BROADCASTING II, LLC

By: _____
Anthony J. Paradiso, President

Date: _____

BAS BROADCASTING, INC.

By: _____
Thomas W. Klein, President

Date: _____