

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

In the Matter of )
Tri-Cities Broadcasting Foundation ) NAL/Acct. No. MB-202141410042
Licensee of Low Power FM Station ) FRN: 0023126949
WAWL-LP, Grand Haven, Michigan ) File No.: 0000114275

ORDER

Adopted: September 7, 2021

Released: September 7, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. By this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Tri-Cities Broadcasting Foundation (Licensee). The Consent Decree resolves issues regarding the broadcast of commercial advertising on a noncommercial educational (NCE) station in violation of the section 399B of the Communications Act of 1934, as amended (Act), and sections 73.503(d) and 73.801 of the Commission’s rules (Underwriting Laws).1 Also before us are: (1) the above-captioned application for renewal of license (Application) filed by Licensee for low power FM (LPFM) station WAWL-LP, Grand Haven, Michigan (Station) on May 26, 2020;2 and (2) a Petition to Deny (Petition) the Application filed by WGHN, Inc. (WGHN) on September 1, 2020, and related responsive pleadings.3 The Bureau’s Audio Division issued a Letter of Inquiry to Licensee, to which Licensee filed a response on May 12, 2021.4 For the reasons stated below, we deny the Petition, grant the Application subject to the conditions of the Consent Decree, and terminate further investigation into the matters resolved by the Consent Decree.

II. DISCUSSION

2. In the Petition, WGHN argues that the Station “has been routinely airing” commercial advertisements, in violation of section 399B(b)(2) of the Act, section 73.503(d) of the Commission’s rules (Rules), and the Commission’s policies related to NCE advertisements.5 In support of its allegation, WGHN provides transcripts of “24 different announcements” that the Station allegedly aired between

1 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801 (applying the Underwriting Laws to LPFM stations as NCE stations).

2 Application File No. 0000114275 (filed May 26, 2020).

3 Pleading File No. 0000120991 (filed Sept. 1, 2020). Licensee filed an Opposition to the Petition on September 30, 2020. Pleading File No. 0000123270 (filed Sept. 30, 2020). WGHN filed a Reply to the Opposition on October 21, 2020. Pleading File No. 0000124938 (filed Oct 21, 2020).

4 See Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Dan J. Alpert, Esq., counsel to Tri-Cities Broadcasting Foundation (Apr. 12, 2021); Letter from Dan J. Alpert, Esq., counsel to Tri-Cities Broadcasting Foundation, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (May 12, 2021). WGHN filed a response to Licensee’s LOI Response on May 27, 2021. See Letter from Susan A. Marshall, Esq., and Anne Goodwin Crump, Esq., counsel to WGHN, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (May 27, 2021).

5 Petition at 1-2.

January 20, 2020, and August 7, 2020.<sup>6</sup> WHGN also argues that the Station has failed, since its initial licensing in 2014, to broadcast educational programming as required by the Commission's policies for NCE LPFM stations.<sup>7</sup> Specifically, WHGN alleges that the Station broadcasts "[m]usic, news, weather, sports and local area information" that is equivalent to commercial programming.<sup>8</sup>

3. In the Opposition, Licensee argues that WHGN has failed to make a prima facie case that the Application should not be granted.<sup>9</sup> Licensee states that the Commission may not deny the Application based upon a subjective determination of its programming,<sup>10</sup> and that it provides "appropriate educational and public interest programming that serves the community."<sup>11</sup>

4. In its Reply, WHGN reiterates its argument that the Station has failed to broadcast educational programming and that it has broadcast commercial advertisements. WHGN states that the Opposition fails to explain how its programming is educational.<sup>12</sup> WHGN also argues that the Licensee's Opposition does not deny that it aired the complained-of announcements, nor does it explain how the complained-of announcements are noncommercial.<sup>13</sup>

5. *Educational Programming.* We reject WHGN's argument that the Station's programming is not sufficiently educational. The Commission has long recognized that Licensees are entitled to broad discretion in the scheduling, selection, and presentation of programming.<sup>14</sup> This is particularly true with regard to the programming decisions of noncommercial educational stations.<sup>15</sup> In this regard, the Commission has made clear that it defers to a licensee's editorial judgment as to what constitutes "educational" programming, unless that judgment is arbitrary or unreasonable.<sup>16</sup> The Station provided several examples of its educational programming,<sup>17</sup> and WHGN concedes that at least one of the Station's programs may be educational in nature.<sup>18</sup> Therefore, we reject WHGN's contention that the Station's programming is not educational and conclude that further investigation into this issue is not warranted at this time.

6. *Underwriting Announcements.* We have negotiated the Consent Decree adopted herein, in which the Licensee acknowledges that it has violated the Underwriting Laws, agrees to make a civil penalty payment to the United States Treasury in the amount of \$17,500, and agrees to adopt a compliance plan to prevent further violations of the Underwriting Laws. Additionally, after reviewing the record before us, we believe that the grant of a short-term renewal is appropriate in order to ensure the

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 1-2 (citing 47 CFR § 73.853(a)(1)).

<sup>8</sup> *Id.* at 6-7.

<sup>9</sup> Opposition at 3-5.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> Reply at 3.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401, para. 7 (MB 1993).

<sup>15</sup> *Pittsburg State Univ.*, Letter Order, 22 FCC Rcd 12983, 12985 (MB 2007).

<sup>16</sup> *Enid Public Radio Ass'n*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 9138, 9141 n.23 (MB 2010); *WQED Pittsburgh and Cornerstone Television, Inc.*, Order on Reconsideration, 15 FCC Rcd 2534, 3535 (2000).

<sup>17</sup> Opposition at 6.

<sup>18</sup> Petition at 7 (stating that the Station's program "Tales of the Tri-Cities" contains "some potentially educational content").

Licensee's ongoing compliance with the Act and the Rules.<sup>19</sup> Accordingly, we grant the Station's renewal application for a period of four years, to expire on October 1, 2024.<sup>20</sup> Grant shall be conditioned upon Licensee fully and timely satisfying its obligation to pay the civil penalty and implement a Compliance Plan in the manner set forth in paragraphs 12 and 18, respectively, of the attached Consent Decree.

7. Finally, we have reviewed the Application in accordance with section 309(k) of the Act,<sup>21</sup> and we find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing else in the record creates a substantial or material question of fact calling for further inquiry regarding the Application. After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree, terminating the Bureau's investigating into Licensee's violations of the Underwriting Laws, denying the Petition, and granting the Application.

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 309(k) of the Communications Act of 1934, as amended,<sup>22</sup> and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,<sup>23</sup> the Consent Decree attached hereto **IS ADOPTED** and its terms incorporated by reference.

9. **IT IS FURTHER ORDERED** that the Petition to Deny filed by WGHN, Inc. on September 1, 2020 **IS DENIED**.

10. **IT IS FURTHER ORDERED** that the application of Tri-Cities Broadcasting Foundation, for renewal of license for low power FM station WAWL-LP, Grand Haven, Michigan, Facility ID No. 196109 (File No. 0000114275) **IS GRANTED**, as conditioned herein.

11. **IT IS FURTHER ORDERED** that the investigation by the Media Bureau of the matters noted above **IS TERMINATED**.

12. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to: (1) Dan J. Alpert, Esq., Counsel to Tri-Cities Broadcasting Foundation, 2120 21<sup>st</sup> Rd. N, Arlington, Virginia 22201; and (2) Susan A. Marshall and Anne G. Crump, Counsel to WGHN, Inc., Fletcher Heald & Hildreth, P.L.C., 1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

<sup>19</sup> 47 U.S.C. § 309(k)(2); 47 CFR §§ 73.503(d), 73.801.

<sup>20</sup> *Id.* We remind Licensee that a license renewal application is due four months before the October 1, 2024, license expiration date. See 47 CFR § 73.3539(a).

<sup>21</sup> 47 U.S.C. § 309(k)(1).

<sup>22</sup> 47 U.S.C. §§ 154(i), 154(j), and 309(k); 47 CFR §§ 0.61, 0.283.

<sup>23</sup> 47 U.S.C. § 309(k); 47 CFR §§ 0.61, 0.283.

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WAWL-LP, Grand Haven, Michigan ) File No.: 0000114275

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Tri-Cities Broadcasting Foundation (hereafter "Licensee," as defined below), licensee of low power FM (LPFM) station WAWL-LP, Grand Haven, Michigan (Station), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into whether the Licensee violated section 399B of the Communications Act of 1934, as amended, and sections 73.503(d) and 73.801 of the Commission's rules (Underwriting Laws) with regard to the Station.24 The Commission adopted such rules and procedures to preserve the unique non-profit and locally oriented nature of LPFM stations. To settle this matter, Licensee admits that it violated the Underwriting Laws. Licensee agrees to a short-term, four-year license renewal for the Station, to implement a comprehensive Compliance Plan to ensure its future compliance with the Underwriting Laws, and to pay a \$17,500 civil penalty to the U.S. Treasury.

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) "Application" means the pending application for renewal of license for station WAWL-LP, Grand Haven, Michigan (File No. 0000114275).
(c) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(d) "Bureau" means the Media Bureau of the Commission.
(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
(f) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with 47 U.S.C. § 399b and 47 CFR §§ 73.503(d) and 73.801 of the Rules.
(g) "Covered Employees" means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to Licensee's responsibilities under the Act and the Rules, including the Underwriting Laws.
(h) "Effective Date" means the date on which the Bureau releases the Adopting Order.

24 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801 (applying the Underwriting Laws to LPFM stations as NCE stations).

- (i) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s license renewal application identified in Appendix A due to the Licensee’s failure to comply the Underwriting Laws.
- (j) “Licensee” means Tri-Cities Broadcasting Foundation and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (k) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Station” means the station WAWL-LP, Grand Haven, Michigan.
- (n) “Underwriting Laws” means 47 U.S.C. § 399B and 47 CFR §§ 73.503(d), 73.801.

## II. BACKGROUND

3. The Underwriting Laws define an advertisement as, among other things, programming material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product” of for-profit entities.<sup>25</sup> Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.<sup>26</sup> 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.<sup>27</sup> Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.<sup>28</sup>

4. The Commission received a Petition to Deny (Petition) and related pleadings associated with the Station’s renewal application.<sup>29</sup> The Petition alleged, *inter alia*, that the Licensee violated the Underwriting Laws by regularly airing announcements on the Station, including from January 20, 2020, to August 7, 2020, that impermissibly promoted their for-profit underwriters’ products or services and contained qualitative descriptions and comparative language, menu listing of products, and inducements to do business with the underwriter (Underwriting Announcements).<sup>30</sup> The Bureau issued a letter of inquiry seeking more information about the complained-of Underwriting Announcements and Licensee’s efforts to comply with the Underwriting Laws.<sup>31</sup> Licensee’s response confirmed that it broadcast the complained-of Underwriting Announcements over the Station at various times over a more than 2-year period (from August 2018 through October 2020).<sup>32</sup> Thereafter, the Parties engaged in settlement negotiations and agreed to enter into this Consent Decree.

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<sup>25</sup> 47 U.S.C. § 399B(a).

<sup>26</sup> 47 U.S.C. § 399B(b)(2).

<sup>27</sup> *Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines*, Public Notice, 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).

<sup>28</sup> *Id.*

<sup>29</sup> On September 1, 2020, WGHN, Inc. filed the Petition. Pleading File No. 0000120991 (filed Sept. 1, 2020). Tri-Cities Broadcasting Foundation filed an Opposition to the Petition on September 30, 2020. Pleading File No. 0000123270 (filed Sept. 30, 2020). WGHN, Inc. filed its Reply to the Opposition on October 21, 2020. Pleading File No. 0000124938 (filed Oct 21, 2020).

<sup>30</sup> Petition at 4-5, Exh. 1.

<sup>31</sup> Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Dan J. Alpert, Esq., counsel to Tri-Cities Broadcasting Foundation (Apr. 12, 2021) (WAWL Letter of Inquiry).

<sup>32</sup> Letter from Dan J. Alpert, Esq., counsel to Tri-Cities Broadcasting Foundation, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (May 12, 2021) (Response to Letter of Inquiry).

### III. TERMS OF AGREEMENT

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

6. **Jurisdiction.** The Licensee 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.

7. **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.

8. **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 Licensee's pending radio license renewal application identified in Appendix A in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

9. 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 Licensee 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 Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.<sup>33</sup>

10. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it violated the Commission's Underwriting Laws.

11. 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.<sup>34</sup> The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the Commission's Underwriting Laws or otherwise.

12. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500). Such payment shall be made in 7 consecutive monthly installments (each an Installment Payment). The first Installment Payment in the amount of two thousand five hundred dollars (\$2,500) is due within thirty (30) calendar days of the Effective Date. Thereafter, subsequent Installment Payments of two thousand five hundred dollars (\$2,500) will be due sixty (60) calendar days of the Effective Date, ninety (90) calendar days of the Effective Date, one hundred twenty (120) calendar days of the Effective Date, one hundred fifty (150) calendar days of the Effective Date, one hundred eighty (180) calendar days of the Effective Date, and two hundred ten (210) calendar days of the Effective Date. Licensee 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 section 3701(b)(1) of the Debt Collection Improvement Act of 1996.<sup>35</sup> Upon an

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<sup>33</sup> See 47 CFR § 1.93(b).

<sup>34</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>35</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

Event of Default, as set forth in paragraph 14, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

13. **Payment.** Licensee shall send electronic notification of payment to Alexander.Sanjenis@fcc.gov on the date said payment of the Civil Penalty and each Installment 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),<sup>36</sup> 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:<sup>37</sup>

- 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 emailed to [RROGWireFaxes@fcc.gov](mailto: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 referenced above (Payor FRN).<sup>38</sup> 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 referenced 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 CD Account – the bill number is the CD 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 referenced 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 CD Account – the bill number is the CD 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.

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

15. **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 or any Installment Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty or any Installment Payment, 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

<sup>36</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>37</sup> 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](mailto:ARINQUIRIES@fcc.gov).

<sup>38</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Licensee.

16. **Short-Term License Renewal.** The Commission will grant a short-term license renewal for the Station, which will expire on October 1, 2024, and require Licensee to file a renewal application by June 1, 2024. Licensee agrees that the short-term license grant shall be conditioned upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in paragraph 12 of the Consent Decree.

17. **Compliance Officer.** Within 30 calendar days after the Effective Date, the Licensee shall designate an FCC regulatory counsel or other party with the requisite corporate and organizational authority and knowledge to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as Compliance Officer shall report directly to the Licensee'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 Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Underwriting Laws prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

18. **Compliance Plan.** Although Licensee has taken some initial steps to implement compliance with the Commission's Underwriting Laws,<sup>39</sup> for purposes of settling the matters set forth herein, the Licensee 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 Underwriting Laws, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 18(c), shall apply to all radio stations owned by the Licensee. 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 Licensee 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 Underwriting Laws;
  - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Underwriting Laws. The Operating Procedures shall include internal procedures and policies specifically designed to ensure compliance with the Licensee's stations' obligations under the Underwriting Laws. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure that all material approved for broadcast is consistent with the Underwriting Laws; 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 Licensee has Covered Employees, the Compliance Plan shall include a compliance training program to provide periodic training to those Covered Employees on complying with the Underwriting Laws. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Underwriting Laws 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

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<sup>39</sup> See Response to Letter of Inquiry at 21; Attach. C.



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 Licensee 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.** One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with the Underwriting Laws during the previous year. The compliance report shall be submitted to the Bureau no later than 30 calendar days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 20 below.
- i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (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,<sup>40</sup> 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 compliance report shall be submitted to the Bureau's Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at [Alexander.Sanjenis@fcc.gov](mailto:Alexander.Sanjenis@fcc.gov).

19. **Reporting Noncompliance.** The Licensee shall, for each station it owns, report any instance of noncompliance with the Underwriting Laws, 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 Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at [Alexander.Sanjenis@fcc.gov](mailto:Alexander.Sanjenis@fcc.gov).

20. **Termination Date.** The obligations to which the Licensee is subject pursuant paragraphs 17 to 19 of this Consent Decree shall terminate upon submission of the Compliance Report pursuant to paragraph 18(c), *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its 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.

21. **Further Violation(s).** The Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against the Licensee, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by the Licensee of the Underwriting Laws that occurs during the term of this Consent Decree.

22. **Waivers.** As of the Effective Date, the Licensee 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 Licensee 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 Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act<sup>41</sup> relating to the matters addressed in this Consent Decree.

23. **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.

24. **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.

25. **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 the Licensee does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

29. **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.

30. **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.

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<sup>41</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

31. **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.



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Albert Shuldiner  
Chief, Audio Division

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9/7/2021  
Date

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Eric Kaelin, President  
Tri-Cities Broadcasting Foundation


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Date

31. **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.

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Albert Shuldiner  
Chief, Audio Division

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Date

  
\_\_\_\_\_  
Eric Kaelin, President  
Tri-Cities Broadcasting Foundation

*September 4, 2021*  
\_\_\_\_\_  
Date

Appendix A

Station Call Sign  
WAWL-LP

Community of License  
Grand Haven, Michigan

Application for License Renewal File No.  
0000114275

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