

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

In the Matter of )  
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Fort Myers Broadcasting Company )  
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File No.: EB-SED-21-00032162  
CD Acct. No.: 202232100009  
FRN: 0004078598

ORDER

Adopted: November 2, 2021

Released: November 2, 2021

By the Associate Chief, Enforcement Bureau:

1. The Enforcement Bureau of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Fort Myers Broadcasting Company (FMBC) began clearing land for a wireless telecommunications tower before completing the required environmental review, as required by the Commission’s environmental rules, including rules implementing the National Environmental Policy Act of 1969 (NEPA).<sup>1</sup> The Commission’s rules ensure applicants and licensees comply with environmental review and antenna structure registration procedure requirements to assess whether proposed facilities may significantly affect the environment. To settle this matter, FMBC admits that it violated the Commission’s environmental and antenna structure rules, will implement a compliance plan, and will pay a \$20,000 civil penalty.

2. 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 FMBC’s compliance with environmental protection requirements found in NEPA and in sections 1.1307 and 1.1312 of the Commission’s rules,<sup>2</sup> as well as the antenna structure registration procedures found in section 17.4 of the Commission’s rules.<sup>3</sup>

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of FMBC’s basic qualifications to hold or obtain any Commission license or authorization.<sup>4</sup>

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act<sup>5</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules,<sup>6</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

<sup>1</sup> See National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (NEPA).

<sup>2</sup> *Id.*; 47 CFR §§ 1.1307, 1.1312.

<sup>3</sup> 47 CFR § 17.4.

<sup>4</sup> See 47 CFR § 1.93(b).

<sup>5</sup> 47 U.S.C. § 154(i).

<sup>6</sup> 47 CFR §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by e-mail to Mark Gilson, Assistant Secretary, Fort Myers Broadcasting Company, [mark.gilson@fmbcmail.com](mailto:mark.gilson@fmbcmail.com), and to Joseph A. Belisle, Esq., Belisle Law Firm, P.A., [joe@belislelaw.com](mailto:joe@belislelaw.com).

FEDERAL COMMUNICATIONS COMMISSION

Jeremy D. Marcus  
Associate Chief  
Enforcement Bureau



responsibilities under the Communications Laws, including the Environmental and ASR Rules.

- (j) “Effective Date” means the date by which both the Bureau and FMBC have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “Environmental Rules” means sections 1.1301-1.1319 of the Rules<sup>3</sup> and other Communications Laws implementing the National Environmental Policy Act of 1969, as amended (NEPA).<sup>4</sup>
- (l) “FMBC or Company” means Fort Myers Broadcasting Company and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (m) “Investigation” means the investigation commenced by the Bureau in EB-SED-21-00032162 regarding whether FMBC violated the Environmental Rules and the ASR Rules.<sup>5</sup>
- (n) “Operating Procedures” means the standard internal operating procedures and compliance policies established by FMBC to implement the Compliance Plan.
- (o) “Parties” means FMBC and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

3. Under the Commission’s Environmental Rules, applicants and licensees are required to assess whether certain proposed facilities may significantly affect the environment, as defined in section 1.1307 of the Rules.<sup>6</sup> Specifically, section 1.1307(a)(3) requires a licensee or applicant to prepare an Environmental Assessment (EA) for facilities that may have a significant environmental effect.<sup>7</sup> Pursuant to section 1.1312, this obligation expressly applies to certain facilities for which no preconstruction authorization is required, unless exempt.<sup>8</sup> In considering actions that may have a significant environmental effect, section 1.1307(a)(3) requires a licensee or applicant to consider several factors, including, but not limited to, whether the proposed site may affect listed threatened or endangered species or designated critical habitats.<sup>9</sup> Under the Commission’s ASR Rules, the owner of any proposed or existing antenna structure is required to follow the prescribed registration procedures set forth in section 17.4 of the Rules prior to construction or alteration.<sup>10</sup> If an EA is required under section 1.1307, the ASR applicant must include the EA with its submission.<sup>11</sup>

4. FMBC is an established FCC licensee and provider of television and radio services within the State of Florida. In July and August 2020, the licensee engaged a series of independent contractors to perform the required environmental review, antenna structure registration procedures, and construction for a proposed wireless communications tower within a designated critical habitat of the

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<sup>3</sup> 47 CFR §§ 1.1301-1.1319.

<sup>4</sup> National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (NEPA).

<sup>5</sup> LOI issued under File No. EB-SED-21-00031915 (on file in EB-SED-21-00032162).

<sup>6</sup> 47 CFR § 1.1307.

<sup>7</sup> 47 CFR § 1.1307(a)(3).

<sup>8</sup> *See* 47 CFR § 1.1312(a), (e).

<sup>9</sup> 47 CFR § 1.1307(a)(3).

<sup>10</sup> 47 CFR § 17.4.

<sup>11</sup> *See* 47 CFR §§ 1.923(e), 17.4(c).

endangered Florida bonneted bat in Punta Gorda, Florida (Punta Gorda Tower). During the ASR application and environmental review process, FMBC admitted to preconstruction activities.<sup>12</sup> In November 2020, FMBC filed an ASR application and EA related to the Punta Gorda Tower depicting the premature clearing.<sup>13</sup>

5. The Wireless Telecommunication Bureau (WTB) referred the matter to the Enforcement Bureau and the Enforcement Bureau's Spectrum Enforcement Division (SED) opened the Investigation. SED issued a Letter of Inquiry to FMBC, directing it to submit a sworn written response to a series of questions relating to its compliance with the Commission's Environmental and ASR Rules.<sup>14</sup> FMBC filed a response to the Letter of Inquiry on July 1, 2021 (LOI Response).<sup>15</sup> In the LOI Response, FMBC admits that it began construction by clearing vegetation in the tower site on or about August 3, 2020, before preparing an EA and before applying for an ASR for the Punta Gorda Tower.<sup>16</sup> Since commencing the Investigation, WTB has concluded the environmental review and authorized construction of the Punta Gorda Tower.<sup>17</sup>

6. FMBC violated the Environmental and ASR Rules by failing to complete the requisite environmental review and antenna structure registration processes before initiating construction of the Punta Gorda Tower. Specifically, it failed to initiate and complete the environmental review of whether the proposed tower could have a significant effect on the environment or may affect listed threatened or endangered species prior to clearing land within the critical habitat. The Bureau and FMBC entered into a tolling agreement to toll the statute of limitations and negotiated the terms of the 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.

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

9. **Effective Date; 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.

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<sup>12</sup> See E-mail from Joseph A. Belisle, Belisle Law Firm, Counsel for FMBC, to Erica Rosenberg, Assistant Chief, Competition and Infrastructure Policy Division, FCC Wireless Communications Bureau (Jan. 27, 2021, 12:41 EDT) (on file in EB-SED-21-00032162).

<sup>13</sup> See WTB, Online Systems, Antenna Structure Registration Application, <https://wireless2.fcc.gov/UlsApp/AsrSearch/asrApplication.jsp?applKey=4665155> (last visited August 13, 2021) (ASR Application); see also Environmental Assessment at 8, 10, 56, 61-63, 74-76 (Appendix E at 1), <https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1151043247&attachmentKey=21070007&applID=4642856&attachExt=pdf&attachLocDt=202011&applOrLicKey=T> (last visited August 13, 2021).

<sup>14</sup> See Letter of Inquiry from JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau to Joseph A. Belisle, Belisle Law Firm, Counsel for FMBC (April 9, 2021) (on file in EB-SED-21-00032162) (LOI).

<sup>15</sup> See Response to Letter of Inquiry, from Joseph A. Belisle, Belisle Law Firm, Counsel for FMBC, to JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, at 23-25, Response to Question 20 (July 1, 2021) (on file in EB-SED-21-00032162) (LOI Response).

<sup>16</sup> See LOI Response to Question 21 at 5, 25-26.

<sup>17</sup> On May 5, 2021, WTB issued a Finding of No Significant Impact and granted the antenna structure registration on May 7, 2021. See generally ASR Application; see also LOI Response to Question 15 at 21-22. To offset potential impacts to the environment caused by the premature clearing, FMBC voluntarily contributed to the Fish and Wildlife Foundation of Florida's "Florida Bonneted Bat Fund" to address the loss of potential roost trees. See LOI Response to Question 9 at 19-20.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, FMBC 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 any new proceeding on its own motion against FMBC concerning the matters that were the subject of the Investigation, or to set for hearing the question of FMBC's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.<sup>18</sup>

11. **Admission of Liability.** FMBC admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions violated the Environmental Rules and the ASR Rules.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, FMBC shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that FMBC complies with the terms and conditions of the 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 Environmental and ASR Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, FMBC agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Environmental and ASR Rules, FMBC will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, FMBC shall establish Operating Procedures that all Covered Employees must follow to help ensure FMBC's compliance with the Environmental and ASR Rules. FMBC's Operating Procedures shall include internal procedures and policies specifically designed to ensure that all environmental review and ASR obligations are fully satisfied prior to commencing construction on any proposed wireless facilities. FMBC shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Environmental and ASR Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Environmental and ASR Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure FMBC's compliance with the Environmental and ASR Rules. FMBC shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. FMBC shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** FMBC shall establish and implement a Compliance Training Program on compliance with the Environmental and ASR Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of FMBC's obligation to report any noncompliance with the Environmental and ASR Rules under paragraph 14 of this

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<sup>18</sup> See 47 CFR § 1.93(b).

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 sixty (60) 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. FMBC 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.

14. **Reporting Noncompliance.** FMBC shall report any noncompliance with the Environmental and ASR Rules 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 FMBC has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that FMBC has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov), with a copy submitted electronically to Daniela Arregui at [Daniela.Arregui@fcc.gov](mailto:Daniela.Arregui@fcc.gov).

15. **Compliance Reports.** FMBC shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of FMBC's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Environmental and ASR Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of FMBC, stating that the Compliance Officer has personal knowledge that FMBC: (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 paragraph 14 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.<sup>19</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of FMBC, 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 FMBC has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that FMBC 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 electronically to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, at [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov), with a copy submitted electronically to Daniela Arregui at [Daniela.Arregui@fcc.gov](mailto:Daniela.Arregui@fcc.gov).

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<sup>19</sup> 47 CFR § 1.16.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** FMBC will pay a civil penalty to the United States Treasury in the amount of twenty thousand dollars (\$20,000) within thirty (30) calendar days of the Effective Date. FMBC acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).<sup>20</sup> Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. FMBC shall send electronic notification of payment to [Daniela.Arregui@fcc.gov](mailto:Daniela.Arregui@fcc.gov) and [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov) on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),<sup>21</sup> 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:<sup>22</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 faxed to the Federal Communications Commission at 202-418-2843 or e-mailed 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(s) captioned above (Payor FRN).<sup>23</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 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 CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the “Pay by Credit Card” option. IMPORTANT NOTE: 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 and then select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – 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.

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

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<sup>20</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>21</sup> Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

<sup>22</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>23</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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%, 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 FMBC.

20. **Waivers.** As of the Effective Date, FMBC 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. FMBC 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 FMBC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and FMBC shall waive any statutory right to a trial *de novo*. FMBC hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>24</sup> relating to the matters addressed in this Consent Decree.

21. **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.

22. **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.

23. **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 FMBC does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

27. **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.

28. **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>24</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **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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Jeremy D. Marcus  
Associate Chief  
Enforcement Bureau

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Date

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Mark Gilson  
Assistant Secretary  
Fort Myers Broadcasting Company

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Date