

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

In re Application of
Carlos Lopez
For Renewal of License for
Station KHTW(AM)
Lumberton, Texas
Facility ID No. 31108
FRN: 0020393385
File No.: 0000140148

MEMORANDUM OPINION AND ORDER

Adopted: October 14, 2022

Released: October 14, 2022

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Carlos Lopez (Licensee). The Consent Decree resolves the Bureau’s investigation of Licensee’s compliance with the Online Public Inspection File Rule contained in section 73.3526 of the Commission’s rules (Rules).<sup>1</sup> Also before us are: (1) the above-captioned application for renewal of license (Application) filed by Licensee for Station KHTW(AM), Lumberton, Texas (Station) on March 17, 2021;<sup>2</sup> and (2) an Informal Objection (Objection) to the Application filed by Robert L. Coyle, Jr. (Coyle) on November 7, 2021, and related responsive pleadings.<sup>3</sup> The Bureau’s Audio Division issued a Letter of Inquiry to Licensee (LOI),<sup>4</sup> to which Licensee filed a response on April 27, 2022 (LOI Response).<sup>5</sup> For the reasons stated below, we deny the Objection, grant the Application for a renewal period of one year from the date of this Memorandum Opinion and Order subject to the conditions of the Consent Decree, and terminate further investigation into the matters resolved by the Consent Decree. The Station’s term will expire on October 14, 2023, and a renewal application will be due June 1, 2023.<sup>6</sup>

II. BACKGROUND

2. In the Objection, Coyle argues that Application should be denied because the Station is currently silent and has been silent for the past four years.<sup>7</sup> Coyle states that, due to the Station’s

<sup>1</sup> 47 CFR § 73.3526 (Online Public Inspection File Rule).

<sup>2</sup> Application File No. 0000140148 (filed Mar. 17, 2021).

<sup>3</sup> Pleading File No. 0000166785 (filed Nov. 7, 2021). Licensee filed an Opposition to the Objection on December 20, 2021. Pleading File No. 0000177528 (filed Dec. 20, 2021). Coyle filed a reply (Reply) on March 25, 2022. Pleading File No. 0000187343 (filed Mar. 25, 2022).

<sup>4</sup> See Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to Donald Martin, Esq., counsel to Carlos Lopez (Mar. 29, 2022).

<sup>5</sup> See E-Mail from Donald E. Martin, Esq., counsel to Carlos Lopez, to Alexander Sanjenis, Audio Division, FCC Media Bureau (Apr. 27, 2022).

<sup>6</sup> See 47 CFR § 73.3539(a) (“an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed”).

<sup>7</sup> Objection at 1.

continued silence, it has failed to serve the public interest, convenience and necessity, and that the license should be made available to an organization that will better serve the community of license.<sup>8</sup>

3. In the Opposition, Licensee argues that the Objection fails to comply with section 1.52 of the Rules because it lacks Coyle's signature and address.<sup>9</sup> Licensee also states that Coyle failed to serve the Objection on Licensee.<sup>10</sup> Licensee argues that the Objection should therefore be dismissed on procedural grounds. Regarding the substantive issues raised, Licensee explains that he purchased the Station in 2019 and has experienced "operational challenges," including "destructive weather, poor quality of electrical service to the transmitter site, and general disrepair of the Station's equipment . . ."<sup>11</sup> Licensee states that he is taking active measures to resolve the Station's technical issues. Licensee states that Station has been on the air intermittently and was last on the air on November 1, 2021.<sup>12</sup> Licensee states that the Station has never been silent for 12 consecutive months.<sup>13</sup>

4. In the Reply, Coyle reiterates his argument that the station has been silent for the past four years.<sup>14</sup> Coyle contends that he has standing to file the Objection and that it is a "credible pleading."<sup>15</sup> Coyle notes that Licensee has failed to provide any evidence of its efforts resume broadcasting.<sup>16</sup> Coyle also states that the Station has failed to upload its required online public inspection file or program logs.<sup>17</sup>

5. In the LOI Response, Licensee provided evidence of its efforts to repair the transmitter site and return to the air, including copies of bills from its electric power provider and internet service provider indicating the Station's use of those services during various periods, and photographs and receipts for Station repairs.<sup>18</sup> Licensee filed an amendment to the Application, on August 8, 2022, indicating that the station resumed broadcasting on July 30, 2022.<sup>19</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Opposition at 1-2 (citing 47 CFR § 1.52).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> Declaration of Carlos Lopez at 1, Attach. to Opposition. (Lopez Declaration)

<sup>12</sup> *Id.*

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

<sup>14</sup> Reply at 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> See LOI Response at 1.

<sup>19</sup> See Application, Amendment; Notice of Resumption of Operations, dated Aug. 8, 2022. On July 16, 2022, Coyle emailed the Bureau staff stating the Station was off the air. Email from Robert L. Coyle, Jr., to Alexander Sanjenis, Audio Division, FCC Media Bureau (July 17, 2022, 12:36 PM EDT). Coyle again emailed the Bureau staff on August 1, 2022, stating that the Station had resumed operation. Email from Robert L. Coyle, Jr., to Alexander Sanjenis, Audio Division, FCC Media Bureau (Aug. 1, 2022, 6:03 AM EDT). On August 3, 2022, Coyle emailed Licensee's counsel, copying the Bureau staff, stating that the Station was illegally operating. Email from Robert L. Coyle, Jr., Don Martin, Esq. (Aug. 3, 2022, 9:31 AM EDT). The Bureau staff informed Coyle that any substantive arguments regarding the operation of the Station must be submitted in a pleading filed in LMS. Email from Alexander Sanjenis, Audio Division, FCC Media Bureau, to Robert L. Coyle Jr (Aug. 3, 2022 1:43 PM EDT). On the same date, Coyle e-mailed the Bureau that his prior e-mail communications were not an additional complaint against Licensee. Email from Robert L. Coyle, Jr., to Alexander Sanjenis, Audio Division, FCC Media Bureau (Aug. 3, 2022, 5:15 PM EDT). To date, no pleadings have been submitted aside from the aforementioned Objection and Reply. We will thus not consider the arguments raised in these emails.

### III. DISCUSSION

6. *Procedural Issues.* We find that the Objection meets the procedural requirements for an informal objection under sections 73.3587 and 1.52 of the Rules.<sup>20</sup> Contrary to Licensee's position, informal objections need not be served on the licensee.<sup>21</sup> Further, Coyle filed the Objection using the Commission's Licensing and Management System, which includes the required certifications.<sup>22</sup> Therefore, we reject Licensee's contention that the Objection is procedurally defective and review it on the merits.

7. *Objection.* Informal objections to license renewal applications, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.<sup>23</sup> Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.<sup>24</sup> For the reasons set forth below, we find that Coyle has not met this burden.

8. We find no merit in Coyle's claim that Station was silent for four years because Coyle provides no specific dates or supporting evidence to substantiate his allegation.<sup>25</sup> Additionally, based on our review of the LOI Response, we are satisfied that the Station has not been silent for any period exceeding 12 months because Licensee provided evidence indicative of operation, including evidence of power and internet services to the transmitter site.

9. *Short Term Renewal.* We reject Coyle's contention that the Application should be denied based on the Station's extended periods of silence, but will instead grant the Application for a shortened period. The record reflects that the Station was assigned to Licensee on November 16, 2019,<sup>26</sup> and its license term ended on August 1, 2021. The Station was silent at the time its license was assigned, having gone silent on January 20, 2019, until January 6, 2020,<sup>27</sup> and then again from November 11, 2021, to July

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<sup>20</sup> 47 CFR §§ 1.52, 73.3587.

<sup>21</sup> See, e.g., *Geraldine R. Miller*, 24 FCC Rcd 11814, 11815 (MB2009) (treating a petition to deny as an informal objection because the objector failed to properly serve the pleading on either the licensee or its counsel and because the objector did not provide an affidavit to support the allegations).

<sup>22</sup> 47 CFR § 1.52 ("A party who is not represented by an attorney shall sign and verify the document and state his address."); 47 CFR 73.3587; see, e.g., *Channel 61 Associates, LLC*, Letter Order, 31 FCC Rcd 1340, 1342-43 (MB 2016) (treating a petition to deny from a party not represented by an attorney as an informal objection under section 73.3587 of the rules, because it lacked verification under penalty of perjury and did not state the party's address); *Windy City Broad., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-276, 2022 WL 810036, at \*2 (MB Mar. 15, 2022) (finding that an objection was properly verified when filed using the Commission's Licensing and Management System).

<sup>23</sup> 47 U.S.C. § 309(d)-(e). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986) (*Area Christian*) (stating informal objections must contain a adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>24</sup> See *Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

<sup>25</sup> See, e.g., *Centro Cristiano de Vida Eterna*, Memorandum Opinion and Order, DA 22-340, 2022 WL 1090801 at \*5, para. 23 (MB 2022) (rejecting argument in informal objection that station's license expired where objector was not able to prove station did not resume operations).

<sup>26</sup> File No. BAL-20190827AAZ (granted Oct. 23, 2019); Notice of Consummation, dated Nov. 18, 2019.

<sup>27</sup> See File Nos. BLSTA-20190313AAC (granted Apr. 15, 2019) and BLESTA-20191015AAB (granted Oct. 31, 2019); Notice of Resumption of Operations, dated Jan. 7, 2020).

30, 2022.<sup>28</sup> The Station is presently operating with reduced power.<sup>29</sup> Accordingly, we find that the Station was silent for over 8% of its license term under Licensee, and 30% of its extended term under 307(c)(3) of the Act.

10. Silence instead of operation in accordance with a station's FCC authorization is a fundamental failure to serve a broadcast station's community of license, because a silent station offers that community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications. Moreover, brief periods of station operation sandwiched between prolonged periods of silence are of little value because the local audience is not accustomed to tuning into the station's frequency.<sup>30</sup>

11. The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.<sup>31</sup> That section provides that if, upon consideration of a station's license renewal application and related pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules (Rules); and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>32</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>33</sup>

12. In 2001, the Commission cautioned “all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term.”<sup>34</sup> It also acknowledged the agency's longstanding policy to encourage stations to resume broadcast operations when license renewal applications were pending. However, the Commission noted that section 309(k)(1) applies a “backwards-looking standard” that does not give any weight to efforts to return a station to full-time operation in the future.<sup>35</sup> The Commission held that denial of the renewal application of the station in question in *Birach* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the section 309(k)(1) standard would have on

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<sup>28</sup> File No. BLSTA-20211221AAA (granted Feb. 25, 2022); Notice of Resumption of Operations, dated Aug. 8, 2022). The request for authority to remain silent for more than 30 days was not timely filed. See 47 CFR 73.1740(a)(d).

<sup>29</sup> Application File No. 0000197169, Reduced Power Notification.

<sup>30</sup> See *Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

<sup>31</sup> 47 U.S.C. § 309(k). See also 47 U.S.C. § 312(g) (the license of any station that fails to transmit broadcast signals for any consecutive 12-month period expires automatically at the end of that period, unless extended or reinstated). In addition to its enforcement of sections 309(k) and 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the public in several different contexts. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) (citing the Commission's “fundamental interest” in expediting new radio service and preventing “warehousing” of scarce spectrum); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23090-93, paras. 83-90 (1998), on reconsideration, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Lieberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

<sup>32</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecomm. Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

<sup>33</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>34</sup> See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*).

<sup>35</sup> *Id.* at para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.”).

silent stations.<sup>36</sup> Since the issuance of the *Birach* decision in 2001, licensees have been on notice as to how section 309(k)(1) applies to silent stations.

13. In this case, Licensee's conduct has fallen short of that which would warrant routine license renewal. Licensee's stewardship of the Station fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Station was silent for a significant portion of its license term.<sup>37</sup>

14. On the facts presented here, we conclude that a short-term license renewal for the Station is the appropriate sanction. Although the Station sought Commission authorization for its periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to its extended periods of non-operation. Additionally, as discussed below, Licensee failed to comply with the online public inspection file requirements set out in section 73.3526 of the Rules.<sup>38</sup> Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Station a short-term license renewal, limited to a period of one year from the date of this letter.<sup>39</sup> This limited renewal period will afford the Commission an opportunity to review the Station's public service performance, as well as compliance with the Act and the Rules, and to take whatever corrective actions, if any, that may be warranted at that time.

15. *Consent Decree.* The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee admits that it violated the Online Public Inspection File Rule. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

16. 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 consideration of potential violations of the Rules.

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

#### IV. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED** that the Informal Objection filed by Robert L. Coyle, Jr. on November 7, 2021, **IS DENIED**.

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<sup>36</sup> In *Birach*, the station was silent for the entire period (approximately two and one-half years) in which the license renewal applicant (Birach) held the license. Section 312(g) of the Act took effect during that period, and Birach returned the station to operation before that provision would have applied. See 47 U.S.C. § 312(g). The Commission stated: "The fact that Birach resumed WDMV operations only when faced with the potential license cancellation is not lost on us. Although we have concluded that Birach is qualified to be a licensee and that grant of the renewal application was proper, it is equally clear to us that Birach's conduct as a licensee upon acquiring WDMV fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis." *Id.*, 16 FCC Rcd at 5021, para. 13.

<sup>37</sup> See *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n. 40 (MB 2014) (Commission considers the licensee's performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

<sup>38</sup> 47 CFR § 73.3526 (Online Public Inspection File Rule). Licensee did upload issues and programs lists to the Station's online public inspection file, but the lists were untimely.

<sup>39</sup> See, e.g., *Mekaddesh Grp. Corp.*, Memorandum Opinion and Order, DA 22-772, 2022 WL 2828283, at \*1 (MB July 18, 2022) (one-year renewal granted due to stations' extended periods of non-operation, and failure to comply with the Online Public Inspection File Rule).

19. **IT IS FURTHER ORDERED** pursuant to section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,<sup>40</sup> and by the authority delegated by sections 0.61 and 0.283 of the Commission's rules,<sup>41</sup> the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

21. **IT IS FURTHER ORDERED** that the license renewal application (Application File No. 0000140148) filed by Carlos Lopez for AM station KHTW(AM), Lumberton, Texas, **IS GRANTED** pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,<sup>42</sup> for a license term of one year from the date of this Memorandum Opinion and Order.<sup>43</sup>

22. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Carlos Lopez, 514 Greenway Dr., Corpus Christie, TX 78412, and to his counsel, Donald Martin, Esq., P.O. Box 8433, Falls Church, VA 22041.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>40</sup> 47 U.S.C. § 154(i)6 154(j), and 503(b).

<sup>41</sup> 47 CFR §§ 0.61, 0.283.

<sup>42</sup> 47 U.S.C. § 309(k)(2).

<sup>43</sup> The date set in this Order for the new license terms supersedes any notice generated from the FCC Licensing and Management System (LMS). *See* 47 CFR § 73.3539(a).

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

In re Application of	)	
	)	
Carlos Lopez	)	Facility ID No. 31108
	)	FRN: 0020393385
For Renewal of License for	)	File No.: 0000140148
Station KHTW(AM)	)	
Lumberton, Texas	)	

**CONSENT DECREE**

1. The Media Bureau of the Federal Communications Commission and Carlos Lopez (hereafter “Licensee,” as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation into the Licensee’s compliance with section 73.3526 of the Commission’s rules,<sup>44</sup> relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

**V. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (c) “Bureau” means the Media Bureau of the Commission.
- (d) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
- (e) “Covered Employees” means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.
- (f) “Effective Date” means the date by which both the Bureau and the Licensee have signed the Consent Decree.
- (g) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s license renewal application identified in Appendix A due to the noncompliance with its public file obligations.
- (h) “Licensee” means Carlos Lopez and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (i) “Online Public Inspection File Rule” means 47 CFR § 73.3526.

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<sup>44</sup> 47 CFR § 73.3526.

- (j) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## VI. BACKGROUND

3. Section 73.3526 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission’s public inspection file database throughout the year. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public’s ability to be informed about a station’s compliance with its obligations.

4. The Licensee owns and operates one or more radio stations licensed by the Commission. The Licensee recently filed an application for renewal of a radio station license. We have determined that the Licensee did not comply with the Online Public Inspection File Rule. The application is identified in **Appendix A**. Based on the Licensee’s noncompliance with the Online Public Inspection File Rule, the Bureau commenced the Investigation and suspended processing the license renewal application. The Consent Decree resolves the Bureau’s Investigation under the terms and conditions described below.

## VII. 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>45</sup>

10. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely place records in its online public inspection file, in repeated violation of section 73.3526 of the Rules.

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>46</sup> The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee’s

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<sup>45</sup> See 47 CFR § 1.93(b).

<sup>46</sup> See 47 U.S.C. § 503(b)(2)(E).



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 online public inspection file and record keeping or otherwise.

12. **Compliance Officer.** Within 30 calendar days after the Effective Date, the Licensee shall designate a senior manager or outside legal counsel to serve as a Compliance Officer and to discharge the duties set forth below. The 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 Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, the Licensee agrees that he shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 14(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 he 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 Online Public Inspection File Rule;
  - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and
  - iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.
- b) **Compliance Training Program.** If the 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 Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan

on at least an annual basis, and he 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 Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 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 15 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>47</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 Audio Division staff: Alexander Sanjenis ([alexander.sanjenis@fcc.gov](mailto:alexander.sanjenis@fcc.gov)).

14. **Reporting Noncompliance.** The Licensee shall, for each station it owns, report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the 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 ([alexander.sanjenis@fcc.gov](mailto:alexander.sanjenis@fcc.gov)).

15. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 14(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.

16. **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 Online Public Inspection File Rule that occurs during the term of this Consent Decree.

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<sup>47</sup> 47 CFR § 1.16.

17. **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>48</sup> relating to the matters addressed in this Consent Decree.

18. **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.

19. **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.

20. **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.

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

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

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

24. **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.

25. **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>48</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

26. **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.



\_\_\_\_\_  
Albert Shuldiner  
Chief, Audio Division

\_\_\_\_\_  
10/14/2022  
Date


\_\_\_\_\_  
Carlos Lopez

\_\_\_\_\_  
Date

26. **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.

\_\_\_\_\_  
Albert Shuldiner  
Chief, Audio Division

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Carlos Lopez

9-30-22  
\_\_\_\_\_  
Date

Appendix A

Station Call Sign  
KHTW(AM)

Community of License  
Lumberton, Texas

Application for License Renewal File No.  
0000140148