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

In re Application of	)	
	)	
OpenSkyRadio Corp.	)	FRN: 0016868747
	)	Facility ID No. 172565
For Renewal of License for	)	File No. 0000152969
Station KVYA(FM)	)	
Cedarville, California	)	

ORDER

Adopted: February 22, 2022 **Released: February 22, 2022**

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and OpenSkyRadio Corp. (Licensee), the licensee for Station KVYA(FM), Cedarville, California (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Public File Rule contained in section 73.3527 of the Commission's rules (Rules).[1] The Bureau's Audio Division suspended processing of the Application because Licensee did not comply with its public file obligations in section 73.3527.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3527 of the Rules. 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.

3. 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.

4. 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.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[2] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[3] the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

[1] 47 CFR § 73.3527.

[2] 47 U.S.C. § 154(i)6 154(j), and 503(b).

[3] 47 CFR §§ 0.61, 0.283.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to OpenSkyRadio Corp., c/o Jeff Cotton, 42528 Rd. 1, Lake City, CA 96115

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of Online Public Inspection Files of	)	File No.: 0000152969
	)	
OpenSkyRadio Corp.	)	FRN: 0016868747
	)	
Licensee of Station KVYA(FM)	)	
Cedarville, California	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and OpenSkyRadio Corp. (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 73.3527 of the Commission's rules,[1] 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 73.3527.

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) "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 OpenSkyRadio Corp., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(i) "Online Public Inspection File Rule" means 47 CFR § 73.3527.

(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.

[1] 47 CFR § 73.3527.

II. BACKGROUND

3. Section 73.3527 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 radio station licenses. Further, we have determined that the Licensee did not comply with the Online Public Inspection File Rule. That 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 that license renewal application.

5. The radio industry is recovering from a recent dramatic reduction in sponsorship revenues which, in turn, placed the industry, including the Licensee, under significant, ongoing financial stress. The Bureau believes that the exceptional circumstances brought about by the industry's economic situation present a unique situation which, on balance, warrant resolution of the Bureau's investigation under the terms and conditions described below.

III. TERMS OF AGREEMENT

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

7. **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.

8. **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.

9. **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.

10. 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.[2]

11. **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 73.3527 of the Rules.

[2] *See* 47 CFR § 1.93(b).

12. 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.[3] 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 online public inspection file and record keeping or otherwise.

13. **Compliance Officer**. Within 30 calendar days after the Effective Date, the Licensee shall designate a senior manager 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.

14. **Compliance Plan**. 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 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 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 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

[3] *See* 47 U.S.C. § 503(b)(2)(E).

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 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 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,[4] 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).

15. **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 (iiii) 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).

16. **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.

17. **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

[4] 47 CFR § 1.16.

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.

18. **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[5] relating to the matters addressed in this Consent Decree.

19. **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.

20. **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.

21. **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.

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

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

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

25. **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.

26. **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.

[5] *See* 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

27. **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

_____2/22/2022_____
Date

_____
Jeff Cotton
OpenSkyRadio Corp.

_____
Date

Date

Jeff Cotton
OpenSkyRadio Corp.

17FEB22
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
KVYA(FM)	Cedarville, California	0000152969