

to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.⁴

4. Likewise, section 73.3540(a) (Section 73.3540(a)) of the Commission's rules (Rules) states that “[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control.”⁵ Radio Cleveland stipulates that it violated Section 310(d) of the Act and Section 73.3540 of the Rules when Webster and Shurden transferred a controlling interest⁶ in the company to Cox prior to obtaining Commission consent. Accordingly, Radio Cleveland agrees to make a six thousand dollar (\$6000.00) civil penalty payment to the United States Treasury and the Bureau agrees to terminate its investigation into the above violation.

5. When entering into a consent decree—as with a forfeiture—we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Downward adjustments may be made based on: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of overall compliance; and (4) inability to pay.⁸ Corrective action is expected and does not nullify or mitigate the violations.⁹ Applying the above factors in this case, we find that a reduction from the \$8000.00 base forfeiture amount for an unauthorized substantial transfer of control¹⁰ is appropriate on the basis that Radio Cleveland does not have a history of prior offenses.¹¹

6. After reviewing the terms and conditions of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau’s investigation of potential violations of the Rules and the Act in connection with the unauthorized transfer of control of Radio Cleveland. A copy of the Consent Decree is attached hereto and incorporated by reference.

7. We also conclude that nothing in the record before us creates a substantial or material question of fact as to whether Radio Cleveland possesses the basic qualifications to continue to be the

⁴ 47 U.S.C. § 310(d).

⁵ 47 CFR §§ 73.3540(a), 1.80.

⁶ The Commission has repeatedly held that 50% or greater ownership of the voting stock of a corporate entity is sufficient to confer *de jure* control on the majority shareholder. *See, e.g., Sirius XM Radio, Inc, Transferor, and Liberty Media Corp., Transferee*, Order, 28 FCC Rcd 6, 10, para. 7 (IB 2013).

⁷ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10); *see generally, Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997).

⁸ *See* 47 CFR § 1.80, Table 3 to Paragraph (b)(1).

⁹ *See, e.g., AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71, para. 26 (2002) (holding that remedial action to correct violation at issue was not a mitigating factor; licensees are expected to take remedial action when violations are brought to their attention).

¹⁰ *See* 47 CFR § 1.80, Table 1 to Paragraph (b)(1).

¹¹ *See, e.g., Alabama Media, Inc.*, Order, 2021 WL 5181413, p.3, para. 8 (MB 2021) (reducing consent decree amount from \$18,000 proposed forfeiture to \$13,000 consent decree based on no history of prior offenses); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6793, para. 6 (MB 2018) (reducing forfeiture by 20% based solely on history of rule compliance); *Wendolynn Tellez*, Forfeiture Order, 33 FCC Rcd 4594, 4594, para. 4 (MB 2018) (same); *West Texas A&M University*, Memorandum Opinion and Order, 26 FCC Rcd 4016, 4018, para. 7 (MB 2011) (same); *Communications Systems, Inc.*, Forfeiture Order, 25 FCC Rcd 12516, 12517, para. 7 (MB 2010) (same); *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717, para. 12 (MB 2009) (same); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129, para. 6 (MB 2009) (same); *John Brown Univ.*, Forfeiture Order, 24 FCC Rcd 1536, 1537, para. 6 (MB 2009) (same); *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362, para. 13 (EB 2008) (same); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454, para. 10 (EB 2008) (same).

licensee of the Stations. However, our finding herein that Webster, Shurden, and Cox engaged in an unauthorized transfer of control may be taken into account in the course of any future application, proceeding or enforcement action involving these individuals.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,¹² and by the authority delegated by Sections 0.61 and 0.283 of the Rules,¹³ the Consent Decree appended hereto IS ADOPTED without change, addition, deletion, or modification.

9. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters described above IS TERMINATED.

10. IT IS FURTHER ORDERED that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to: Radio Cleveland, Inc., PO Box 780, Cleveland, MS 38732, and its counsel, Davina Sashkin, 1050 Connecticut Avenue NW, Suite 1100, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹² 47 U.S.C. § 4(i).

¹³ 47 CFR §§ 0.61, 0.283.

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between: the Media Bureau of the Federal Communications Commission and Radio Cleveland, Inc. (Radio Cleveland), licensee of WAID(FM), Clarksdale, MS; WCLD(AM), Cleveland, MS; WCLD-FM, Cleveland, MS; WKDJ-FM, Clarksdale, MS; and WMJW(FM), Rosedale, MS, for the purpose of terminating the Bureau's Investigation into Radio Cleveland's compliance with section 73.3540(a) of the Commission's rules (Rules)¹⁴ and section 310 of the Communication Act of 1934, as amended.¹⁵

II. DEFINITIONS

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

- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;
- (b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;
- (a) "Applications" means Application File Nos. BTCH-20200617AAD (WAID Application) and BTC-20200909AAS-AAV (together with the WAID Application, the Applications);
- (b) "Bureau" means the Media Bureau of the Commission;
- (c) "Commission" or "FCC" means the Federal Communications Commission and any or all of its bureaus and offices;
- (d) "Effective Date" means the date on which the Bureau releases the Adopting Order;
- (e) "Investigation" means the Bureau's investigation of information contained in the Applications;
- (f) "Licensee" or "Radio Cleveland" means Radio Cleveland, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
- (g) "Parties" means Radio Cleveland and the Bureau;
- (h) "Stations" means WAID(FM), Clarksdale, MS (WAID); WCLD(AM), Cleveland, MS; WCLD-FM, Cleveland, MS; WKDJ-FM, Clarksdale, MS; and WMJW(FM), Rosedale, MS;
- (i) "Violation" means the unauthorized transfer of Radio Cleveland's shares.

III. BACKGROUND

3. On June 17, 2020, Radio Cleveland filed the WAID Application, and then filed the remaining Applications on September 9, 2020. The Applications seek Commission consent to transfer 45% of Radio Cleveland's shares from Clint L. Webster (Webster) to Kevin W. Cox (Cox), and 10% of Radio Cleveland's shares from Greg Shurden (Shurden) to Cox (Stock Transfers), resulting in a majority transfer of voting shares in the company. However, the two asset purchase agreements (APAs) that were submitted concurrently with the Applications indicated that the Stock Transfers had already occurred—specifically, on or before January 1, 2020. Upon inquiry, counsel for Radio Cleveland confirmed that, as disclosed in the APAs, the Stock Transfers had occurred prior to the filing of the Applications.

¹⁴ 47 CFR § 73.3540(a).

¹⁵ 47 U.S.C. § 310.

IV. AGREEMENT

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

5. **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.

6. **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. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

7. **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 such, the Licensee agrees to the terms, conditions, and procedures contained herein.

8. The Bureau agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Licensee concerning the matters that were the subject of the Investigation, provided that Licensee satisfies all of its obligations under this Consent Decree. In the event that Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to the Violation, and/or the violation of this Consent Decree.

9. 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 a licensee.¹⁶ Therefore, the Licensee acknowledges that in the future, 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 timely filing of applications or otherwise.

10. **Admission of Liability.** For the purposes of this Consent Decree, the Licensee admits that it engaged in an unauthorized transfer of control when Cox acquired a majority voting and ownership interest in Radio Cleveland without obtaining prior Commission consent to the transfer, in violation of 47 U.S.C. § 310(d) and 47 CFR § 73.3540(a).

11. **Civil Penalty.** Radio Cleveland agrees to pay a civil penalty to the United States Treasury in the amount of six thousand dollars (\$6000.00) within thirty (30) calendar days from the Effective Date.

12. **Payment.** Licensee will send electronic notification of payment to Christine Goepf at Christine.Goepf@fcc.gov on the date said payment is made. Payment of the forfeiture 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),¹⁷ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected.¹⁸

13. 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

¹⁶ See 47 U.S.C. § 503(b)(2)(E).

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

¹⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

Communications Commission at 202-418-2843, or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing 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). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

14. Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the “Pay by Credit Card” option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.

15. Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. **Qualifications: Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Applications, after the Effective Date, provided that the following conditions have been met: 1) the civil penalty payment referenced in paragraph 11 of this Consent Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violation that would preclude grant of the Applications.

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. 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 Act¹⁹ relating to the matters addressed in this Consent Decree or Adopting Order.

18. **Severability.** The Parties agree that if a court of competent jurisdiction finds any of the provisions of this Consent Decree unenforceable, 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

¹⁹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

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.

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

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: 
Albert Shuldiner
Chief, Audio Division

Date: 6/14/2022

Radio Cleveland, Inc.

By: _____
Kevin W. Cox, President
Radio Cleveland, Inc.

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Albert Shuldiner
Chief, Audio Division

Date: _____

Radio Cleveland, Inc.

By:  _____
Kevin W. Cox, President
Radio Cleveland, Inc.

Date: 05/10/22