

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

In re Application of Sunflower Community Action
For Renewal of License for Low-Power FM Station KYOM-LP
Wichita, Kansas
NAL/Acct. No. MB-202341410025
FRN: 0023046659
Facility ID No. 193711
Application File No. 0000134278

ORDER

Adopted: November 14, 2023

Released: November 14, 2023

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Sunflower Community Action (Licensee), licensee of Station KYOM-LP, Wichita, Kansas (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 sections 73.845 and 73.875 of the Commission’s Rules (Rules), which require that licensees operate stations in accordance with the terms of the station authorization, and seek authorization under a construction permit application for any modifications of authorized broadcast transmission system facilities, including use of unauthorized equipment.

2. On February 1, 2021, Licensee filed the above-captioned application to renew the license for the Station. In the Application, Licensee disclosed that the Station’s antenna was initially constructed at the wrong height. The initial construction permit for the Station authorized an antenna height of 24 meters above ground level (AGL). However, the antenna was actually constructed at a height of 13 meters AGL, causing Licensee to broadcast with unauthorized equipment. Following the discovery of this discrepancy, Licensee sought Commission authority to remain silent, and filed an

1 See 47 CFR § 73.845 (“Each LPFM licensee is responsible for maintaining and operating its broadcast station in a manner that complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization.”); 47 CFR § 73.875(b) (“The following changes may be made only after the grant of a construction permit application on FCC Form 318 . . . [a]ny change in antenna height more than 2 meters above or 4 meters below the authorized value.”).

2 Id.

3 Application File No. 0000134278 (Application).

4 Id. at Attach. “kyom.pdf”.

5 Application File No. BNPL-20131106ALG at Antenna Location Data (granted Feb. 14, 2014).

6 Application File No. BLSTA-20200916AAG (granted Nov. 2, 2020).

application to modify the facility and operate at 13 meters AGL.<sup>7</sup> Licensee then filed a covering license at the newly authorized antenna height and resumed Station operations.<sup>8</sup>

3. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.845 and 73.875 of the Rules and provides that Licensee agrees, among other things, to make a civil penalty payment (Civil Penalty) to the United States Treasury in the amount of two thousand five hundred dollars (\$2,500).

4. 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, and granting the Application. Grant shall be conditioned upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in paragraph 13 of the attached Consent Decree.

5. Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact as to whether Licensee possesses the basic qualifications to remain a Commission licensee.

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i), 4(j) and 503(b) of the Communications Act of 1934, as amended,<sup>9</sup> and by the authority delegated by sections 0.61 and 0.283 of the Rules,<sup>10</sup> the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

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

8. **IT IS FURTHER ORDERED** that the application of Sunflower Community Action, for renewal of license for Station KYOM-LP, Wichita, Kansas (Application File No. 0000134278) **IS GRANTED**, as conditioned herein.

9. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Sunflower Community Action, c/o David Chiles, Executive Director, 1016 E Pawnee, Wichita, Kansas, 67211.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>7</sup> Application File No. 0000128366 (granted Dec. 14, 2020).

<sup>8</sup> See Application No. 0000131173 (License to Cover) (granted Jan. 13, 2021); Notice of Resumption of Operation (filed Mar. 17, 2021).

<sup>9</sup> 47 U.S.C. § 4(i), 4(j), 503(b).

<sup>10</sup> 47 CFR §§ 0.61, 0.283.

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Wichita, Kansas
NAL/Acct. No. MB-202341410025
FRN: 0023046659
Facility ID No. 193711
Application File No. 0000134278

CONSENT DECREE

Adopted: November 14, 2023

Released: November 14, 2023

1. The Media Bureau of the Federal Communications Commission and Sunflower Community Action (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 sections 73.845 and 73.875 of the Commission's rules relating to operating station facilities as authorized and obtaining authorization to use unauthorized equipment.

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) "Application" means application of Sunflower Community Action for renewal of the radio broadcast license for station KYOM-LP, Application File No. 0000134278.
(d) "Bureau" means the Media Bureau of the Commission.
(e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
(f) "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 Application due to the noncompliance with authorized Station operation and required antenna height authorization.
(h) "Licensee" means Sunflower Community Action and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
(i) "Parties" means the Licensee and the Bureau, each of which is a "Party."
(j) "Rules" means the Commission's regulations found in Title 47 of the Code of

1 47 CFR §§ 73.845 and 73.875.

Federal Regulations.

(k) “Station” means Station KYOM-LP, Wichita, Kansas.

## II. BACKGROUND

3. Section 73.845 of the Rules provides that each LPFM licensee is responsible for maintaining and operating its broadcast station according to the terms of the station authorization.<sup>2</sup> Additionally, Section 73.875 provides that modifications of authorized broadcast transmission system facilities requires authorization under a construction permit.<sup>3</sup>

4. On February 1, 2021, Licensee filed the above-captioned application to renew the license for the Station.<sup>4</sup> In the Application, Licensee disclosed that the Station’s antenna was initially constructed at the wrong height.<sup>5</sup> The initial construction permit for the Station authorized an antenna height of 24 meters above ground level (AGL).<sup>6</sup> However, the antenna was actually constructed at a height of 13 meters AGL. Following the discovery of this discrepancy, Licensee sought Commission authority to remain silent,<sup>7</sup> and filed an application to modify the facility and operate at 13 meters AGL.<sup>8</sup> Licensee then filed a covering license at the newly authorized antenna height and resumed Station operations.<sup>9</sup>

5. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500) to the U.S. Treasury.

## 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 grant the Application. 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

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<sup>2</sup> 47 CFR § 73.845.

<sup>3</sup> 47 CFR § 73.875.

<sup>4</sup> Application File No. 0000134278 (Application).

<sup>5</sup> *Id.* at Attach. “kyom.pdf”.

<sup>6</sup> Application File No. BNPL-20131106ALG at Antenna Location Data (granted Feb. 14, 2014).

<sup>7</sup> Application File No. BLSTA-20200916AAG (granted Sep. 16, 2020).

<sup>8</sup> Application File No. 0000128366 (granted Dec. 14, 2020).

<sup>9</sup> *See* Application No. 0000131173 (License to Cover) (granted Jan. 13, 2021); Notice of Resumption of Operation (filed Mar. 17, 2021).

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>10</sup>

11. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it failed to operate the Station as authorized, by failing to seek authorization to construct its antenna at a height at variance from its authorization, in violation of sections 73.845 and 73.875 of the Rules.

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

13. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Two Thousand Five Hundred Dollars (\$2,500) within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.<sup>12</sup>

14. **Payment.** Licensee will send electronic notification of payment to Alexander Sanjenis at Alexander.sanjenis@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 CORES (the Commission's online payment system),<sup>13</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:<sup>14</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>15</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>10</sup> See 47 CFR § 1.93(b).

<sup>11</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>13</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>14</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>15</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. 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 “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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.

15. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Licenses possesses the basic qualifications, including those relating to character, to continue to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 13 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

16. **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>16</sup> relating to the matters addressed in this Consent Decree.

17. **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

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<sup>16</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

18. **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.

19. **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.

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

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

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

23. **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.

24. **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.

25. **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  
Media Bureau

\_\_\_\_\_  
11/14/2023  
Date

\_\_\_\_\_  
David Chiles, Executive Director  
Sunflower Community Action

\_\_\_\_\_  
Date

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Albert Shuldiner  
Chief, Audio Division  
Media Bureau

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
David Chiles, Executive Director  
Sunflower Community Action

11/8/2023  
\_\_\_\_\_  
Date