

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

In re Application of)
Elmira College) NAL/Acct. No. MB-202341410028
For Renewal of License for) FRN: 0008837932
Full-service FM Station WECW(FM)) Facility ID No. 19446
Elmira, New York) Application File No. 0000188866

ORDER

Adopted: December 14, 2023

Released: December 14, 2023

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 Elmira College (Licensee), licensee of Station WECW(FM), Elmira, New York (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 section 73.3539 of the Commission’s Rules (Rules),¹ which sets forth the filing deadline for license renewal applications.

2. The Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational (NCE) station licensed to an educational institution and that the violations at the Station are first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations.² The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3539 of the Rules and provides that Licensee carry out a compliance plan and make a civil penalty payment to the United States Treasury in the amount of \$500.

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 or material question of fact as to whether Licensee possesses the basic qualifications to remain a Commission licensee.

¹ See 47 CFR § 73.3539.

² See William Penn University, Policy Statement and Order, 28 FCC Rcd 6932, 6932, para. 2 (MB 2013) (in cases of “first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations . . . instead of issuing a Notice of Apparent Liability (“NAL”), the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee agree to a compliance plan and makes a voluntary contribution to the United States Treasury. In negotiating the amount of the voluntary contribution, the Bureau will consider the totality of circumstances, including giving appropriate consideration to the station’s finances with respect to reducing the base forfeiture amount significantly.”).

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to sections 4(i) and 503(b) of the Communications Act of 1934, as amended,³ and by the authority delegated by sections 0.61 and 0.283 of the Rules,⁴ 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**.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Elmira College, c/o Ytzel Flores Christiansen, Assistant Director of Campus Life, 1 Park Place, Elmira, New York 14901.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

³ 47 U.S.C. § 4(i), 503(b).

⁴ 47 CFR §§ 0.61, 0.283.

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CONSENT DECREE

Adopted: December 14, 2023

Released: December 14, 2023

1. The Media Bureau of the Federal Communications Commission and Elmira College (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 73.3539 of the Commission's rules¹ relating to the timely filing of renewal applications. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3539.

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 Elmira College for renewal of the radio broadcast license for station WECW(FM), Application File No. 0000188866.
(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) "Covered Employees" means all employees, volunteers, and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the filing of timely renewal applications as required by the Filing Date Rule.
(g) "Effective Date" means the date by which both the Bureau and the Licensee have signed the Consent Decree.
(h) "Filing Date Rule" means 47 CFR § 73.3539.

¹ 47 CFR § 73.3539.

- (i) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s Application due to the noncompliance with timely filing of its renewal application.
- (j) “Licensee” means Elmira College and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (k) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 73.3539 of the Rules requires that applications for renewal of license for broadcast stations must 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.”² On April 5, 2022, the Licensee untimely filed the Application for the Station’s current license term in violation of the Filing Date Rule.³

4. Because of the issues identified in the Bureau’s investigation and the untimeliness of the Application, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

III. 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 Application 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.⁴

² 47 CFR § 73.3539(a).

³ The Application was due on or before February 1, 2022. The Station’s license term ended on June 1, 2022.

⁴ See 47 CFR § 1.93(b).

10. The Bureau will grant the Application after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the payment referenced in paragraph 16 of this Consent Decree; and 2) there are no issues that would preclude the grant of the Application.

11. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it failed to timely file its application for renewal of license, in violation of section 73.3539 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.⁵ 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 timely filing of applications or otherwise.

13. **Compliance Officer.** Within 30 calendar days after the Effective Date, the Licensee shall designate a responsible party to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee’s President (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 Filing Date Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, President, and/or Board Member may be the same individual.

14. **Compliance Plan.** Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan outlined in paragraph 15 for the purpose of ensuring compliance with the Filing Date Rule. Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

15. Elmira College or its successor-in-interest, as licensee of the Station, as appropriate, will institute the following procedures to ensure compliance with the Commission’s application filing Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- Licensee will conduct training for all Station employees on compliance with Commission Rules applicable to station operations. To augment this training, outside counsel, or other comparable professionals, will conduct an on-site workshop for all of the Station’s employees. This workshop will be recorded and used as refresher training for staff and management at least once every twelve (12) months, and to train any new employee within five (5) days of commencement of his or her duties at the Station.
- Licensee will engage communications counsel on an ongoing basis to provide guidance on Commission compliance issues, to provide regular updates and notices on applicable developments in communications law, and to review its applications and reports prior to filing with the Commission. In regard to the last matter, the Station’s licensee recognizes and acknowledges that any and all information provided to the Commission must completely and candidly set forth all relevant facts and circumstances, regardless of whether such a submission may disclose a violation of the Act or the Rules.

⁵ See 47 U.S.C. § 503(b)(2)(E).

- Licensee will use a commercially-available calendaring system, such as Microsoft Outlook or Google Calendar, to track filing deadlines. An authorized representative of Licensee will provide an annual declaration to the Bureau certifying that, since the commencement of this Compliance Plan or the filing of its last report, if any, Licensee has maintained and is maintaining such a calendar system each year of the three-year term of this Compliance Plan. In the event the Station's licensee is unable to so certify, it will disclose the reasons there for and indicate what steps it has taken to come into compliance with this Compliance Plan.

16. **Payment.** The Bureau has agreed to accept and Licensee has agreed to make a civil penalty payment to the United States Treasury in the amount of Five Hundred Dollars (\$500) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.sanjenis@fcc.gov on the date said payment is made.

17. 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),⁶ 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:⁷

- 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 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).⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's 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

⁶ Payments made using CORES do not require the submission of an FCC Form 159.

⁷ 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.

⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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.

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 Act⁹ 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.

⁹ 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
Media Bureau

12/14/2023

Date

Ytzel Flores Christiansen
Assistant Director of Campus Life
Elmira College

Date

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Albert Shuldiner
Chief, Audio Division
Media Bureau

Date

Ytzel Flores Christiansen

Ytzel Flores Christiansen
Assistant Director of Campus Life
Elmira College

12/13/23

Date