

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

In re Application of	)	
	)	
The Emperor's Circle of Shen Yun	)	Facility ID No. 196570
	)	NAL/Acct. No. MB-202341410002
For Renewal of License for	)	FRN: 0023122559
Station KQSG-LP	)	Application File No.: 0000154968
El Monte, California	)	

**ORDER**

**Adopted: February 24, 2023**

**Released: February 24, 2023**

By the Chief, Audio Division, Media Bureau

**I. INTRODUCTION**

1. By this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and The Emperor's Circle of Shen Yun (Licensee), licensee of low power FM (LPFM) station KQSG-LP, El Monte, California (Station). The Consent Decree resolves issues regarding the Bureau's investigation of Licensee's compliance with section 73.850(d) of the Commission's rules (Rules), regarding the Station's compliance with the requirement to notify the Commission no later than the 10th day of any period of any silence and to request Commission authorization for any period of silence exceeding 30 days.<sup>1</sup> This Consent Decree also resolves the Bureau's investigation into Licensee's compliance with section 1.17(a)(2) of the Rules regarding inaccurate certifications in its renewal Application. Also before us are: (1) the above-captioned application for renewal of license (Application) filed by Licensee for the Station on July 30, 2021;<sup>2</sup> and (2) an Informal Objection (Objection) to the Application filed by Nora Hamamciyan (Hamamciyan) on July 31, 2021, and related pleadings.<sup>3</sup> The Bureau suspended processing of the Application pending its investigation into Licensee's violations. On April 4, 2022, the Bureau issued a Letter of Inquiry (LOI) to Licensee, to which Licensee filed a response to the LOI (LOI Response) on May 20, 2022.<sup>4</sup> For the reasons stated below, we deny the Objection, grant the Application subject to the conditions of the Consent Decree, and terminate further investigation into the matters resolved by the Consent Decree.

**II. BACKGROUND**

2. In the Objection, Hamamciyan alleges that Licensee is "shadow controlled" by New Tang Dynasty Television Network (New Tang Dynasty). Hamamciyan also alleges that the Station (1) is

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<sup>1</sup> 47 CFR § 73.850(d).

<sup>2</sup> Application File No. 0000154968 (filed July 30, 2021).

<sup>3</sup> Pleading File No. 0000155119 (filed July 31, 2021). Licensee filed two motions for an extension of time to respond to the Objection. Pleading File Nos. 0000156850 and 0000157719 (filed Aug. 11, 2021, and Aug. 20, 2021, respectively). Licensee filed an Opposition to the Objection on August 30, 2021, and a duplicate copy on November 30, 2021. Pleading File Nos. 0000158171 and 0000173736 (filed Aug. 30, 2021, and Nov. 30, 2021, respectively).

<sup>4</sup> See Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to James Winston, Esq., counsel to The Emperor's Circle of Shen Yun (Apr. 4, 2022); Letter from James Winston, Esq., counsel to The Emperor's Circle of Shen Yun, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (May 20, 2022).

operating as a translator for KQEV-LP, Walnut, California,<sup>5</sup> (2) broadcasts commercial advertisements, and (3) does not provide local programming.<sup>6</sup>

3. In the Opposition, Licensee contends that the Objection is procedurally flawed because Hamamciyan has not demonstrated residency in the Station's service area and therefore lacks standing to file an informal objection, and the Objection fails to provide factual and evidentiary support for its allegations.<sup>7</sup> Licensee also denies each of Hamamciyan's factual allegations, stating that: (1) Licensee is neither "shadow controlled" by nor does the Station receive programming from New Tang Dynasty, (2) the Station airs separate programming than KQEV-LP and does not operate as a translator for KQEV-LP, (3) the commercials referenced in the Objection were aired on behalf of nonprofit entities, and (4) the Station airs local programming.<sup>8</sup> Licensee also disclosed that the Station had 61 consecutive days of silence between October 26, 2017, and August 20, 2021.<sup>9</sup> Licensee supports its Opposition with the Declaration of Chris Lee, its President and one of its Directors, made under penalty of perjury.<sup>10</sup> Hamamciyan did not file a Reply to the Opposition.

4. On December 17, 2021, Licensee filed an amendment to the Application reflecting that the Station's 61 consecutive days of silence occurred from May 26, 2021, to July 25, 2021.<sup>11</sup> On April 4, 2022, the Bureau issued an LOI to Licensee seeking information related to the Station's operation status during its most recent license term.<sup>12</sup> On May 20, 2022, Licensee submitted its LOI Response in which it disclosed that the Station was also silent from for 21 days, sporadically, between August 21, 2021, and May 8, 2022.<sup>13</sup>

### III. DISCUSSION

5. *Objection.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k)(1) of the communications Act of 1934, as amended (Act). Under section 309(k) of the Act, the Commission shall grant the renewal application if, upon consideration of the application and 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.<sup>14</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>15</sup>

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<sup>5</sup> KQEV-LP is licensed to Chinese Sound of Oriental and Western Heritage. Hamamciyan filed a separate informal objection to the license renewal application for that station. *See also* Pleading File No. 0000154023. We will address that objection by separate action.

<sup>6</sup> Objection at 1.

<sup>7</sup> Opposition at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at Exh. B (Lee Declaration).

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

<sup>11</sup> Application, Amendment, Chris Lee Supplemental Declaration Dec. 16, 2021 (Amendment).

<sup>12</sup> *See* LOI.

<sup>13</sup> *See* LOI Response at 10-11.

<sup>14</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 Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

<sup>15</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

6. Informal objections, 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>16</sup> For the reasons set forth below, we find that Soto has not met this burden.

7. *Standing.* As a threshold matter, we find that Licensee’s suggestion that Hamamciyan lacks standing to challenge the Application is incorrect. Section 73.3587 of the Rules permits “any person” to file informal objections to the grant of any application for an instrument of authorization and contains no requirement that an objector reside in the Station’s service area.<sup>17</sup> Accordingly, standing is not required to file an informal objection.<sup>18</sup> Therefore, we will consider Hamamciyan’s Objection to the Application.

8. *Silent Notification.* We find that Licensee failed to timely inform the Commission and seek Commission approval for an extended period of silence. Section 73.850(d) of the Rules provides that if causes beyond the control of the licensee make it impossible to adhere to the minimum operating schedule required by the Rules, “the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission provided that notice is sent to the Commission ... no later than the 10th day of limited or discontinued operation.”<sup>19</sup> Then, if “causes beyond the control of the licensee make it impossible to comply within the allowed period ... [an STA] must be requested to remain silent for such additional time as deemed necessary.”<sup>20</sup> Licensee admits that the Station discontinued operations for 61 days from May 26, 2021, to July 25, 2021.<sup>21</sup> The Station’s filings indicate, and licensee admits, that it didn’t notify the Commission of its discontinued operations no later than the 10th day of silence or file an STA after 30 days of silence.<sup>22</sup> Accordingly, we find that this unauthorized silence constitutes a violation of section 73.850(d) of the Rules.

9. *Inaccurate Certification.* We find that Licensee’s certification to the Application’s question regarding compliance with Section 73.850(d) was inaccurate. The Application required Licensee to certify “during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days.”<sup>23</sup> Licensee certified

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<sup>16</sup> 47 U.S.C § 309(d)-(e). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (Sept. 10, 1993) (*WWOR-TV*); *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); *WFBM, Inc.*, Memorandum Opinion and Order, 47 F.C.C.2d 1267, 1268, para. 3 (1974) (*WFBM, Inc.*).

<sup>17</sup> 47 CFR § 73.3587. The Bureau’s practice is to treat petitions to deny that fail to demonstrate standing as an informal objection. *See, e.g., Alpha Media Licensee LLC, Debtor-in-Possession (Assignor) and Alpha Media Licensee LLC (assignee) et. al.*, Memorandum Opinion and Order, DA 21-825 at 11-12, paras. 32-33 (MB 2021).

<sup>18</sup> *Id.*; 47 CFR § 1.41.

<sup>19</sup> 47 CFR § 73.850(d).

<sup>20</sup> *Id.* In 2020, the Commission amended section 73.850 of the Rules to require that LPFM stations that are silent for more than 30 days obtain special temporary authority (STA) to remain silent. *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 19-193, 17-105, Report and Order, 35 FCC Rcd 4115, 4135, paras. 49-50 (2020); 47 CFR § 73.850(d). This revision to section 73.850 became effective on October 30, 2020, and therefore, Licensee’s silence fell under the ambit of this Rule. *Media Bureau Announces October 30, 2020, Effective Date for New LPFM Technical Rules*, MB Docket Nos. 19-193, 17-105, Public Notice, 35 FCC Rd 12692 (MB 2020).

<sup>21</sup> Amendment.

<sup>22</sup> *See* LOI Response at 12.

<sup>23</sup> Application.

“Yes” in response to this question.<sup>24</sup> The Station was silent for 61 days from May 26, 2021, to July 25, 2021. Therefore, Licensee should have answered “No” to this question. Section 1.17(a)(2) of the Rules prohibits applicants from providing material information that is incorrect without a reasonable basis for believing that such information is not incorrect or misleading.<sup>25</sup> We find that its incorrect certification constitutes a violation of section 1.17(a)(2) of the Rules. However, because the record does not reflect, and the Objection does not establish,<sup>26</sup> that Licensee’s incorrect certification was intentionally false, we will not deny the Application on this basis.<sup>27</sup>

10. *Control.* We reject Hamamciyan’s claim that the Station is controlled by New Tang Dynasty. As discussed above, informal objections must include properly supported allegations of fact that grant of the application would be prima facie inconsistent with section 309(k) of the Act. The Commission has been clear that the principal indicia of control include “governance of policies regarding (1) the personnel matters of a station, (2) the programming of a station, and (3) the finances of a station.”<sup>28</sup> Hamamciyan submits no evidence or an affidavit or declaration of someone with personal knowledge that New Tang Dynasty has exercised control over Licensee or the Station in any of these areas. Licensee, however, asserts (supported by the sworn Lee Declaration) that “the station lacks any relationship or involvement with” New Tang Dynasty.<sup>29</sup> Therefore, we will not consider Hamamciyan’s unsupported claims that New Tang Dynasty controls the Station.

11. *Translator station.* We also reject Hamamciyan’s claim that the Station operates as a translator station for KQEV-LP. An FM translator is a broadcast station that solely retransmits the signal of a primary AM or FM radio broadcast station on another frequency without significantly altering any characteristics of the incoming signal, and is generally prohibited from originating programming.<sup>30</sup> Hamamciyan argues that KQSG-LP operates as a translator station because, it alleges, the Station rebroadcasts “100%” identical programming, dead air, and commercials as KQEV-LP.<sup>31</sup> Hamamciyan submits no evidence to support its claims. Licensee denies that it operates as a translator for KQEV-LP and contends that the similarities that Hamamciyan references are a result of its shared programming with KQEV-LP and Sound of Hope Radio Network, Inc. (Sound of Hope).<sup>32</sup> Licensee explains that it shares some programming with KQEV-LP, but both stations produce and broadcast separate programming for their respective communities.<sup>33</sup> Licensee explains that both the Station and KQEV-LP also receive programming from Sound of Hope through online internet protocol, and that “concurrent station failures reflect a disruption in the network feed to both stations.”<sup>34</sup> Licensee further explains that the Station has

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<sup>24</sup> *Id.*

<sup>25</sup> 47 CFR § 1.17(a)(2).

<sup>26</sup> Licensee disclosed the Station’s unauthorized silence in its Opposition. *See* Lee Declaration.

<sup>27</sup> *See* 47 U.S.C. § 312(a)(1) (“The Commission may revoke any station license or construction permit for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308 of this title.”)

<sup>28</sup> *See Solar Broadcasting Co., Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5486, para. 71 (2002) (“Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station matters, such as personnel, programming and finances, is nondelegable.”).

<sup>29</sup> Opposition at 3; *Id.* at Lee Declaration at para. 2.

<sup>30</sup> *See* 47 CFR §§ 74.1201(a), 74.1284(a) and 74.1231(a), (g).

<sup>31</sup> Objection at 1.

<sup>32</sup> Opposition at 4-5. Licensee states that Sound of Hope is a nonprofit entity that provides Mandarin language programming to low power FM stations that serve Chinese American communities nationally.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> *Id.* at 5.

aired some (but not all) of the same commercials as KQEV-LP.<sup>35</sup> We find that Hamamciyan's claims are unsubstantiated. According to Licensee's Opposition and the Lee Declaration, the Station originates and broadcasts its own programming and does not operate for the purpose of retransmitting KQEV-LP's signal.<sup>36</sup> Licensee admits that it shares certain programming with Sound of Hope and KQEV-LP. However, the Commission's rules do not prohibit an LPFM from sharing programming with another LPFM.<sup>37</sup> Thus, the fact that KQEV-LP and the Station share some programming does not qualify the Station as a translator station. Accordingly, we find that Hamamciyan has failed to establish that the Station operates as a translator station.

12. *Commercials.* We reject Hamamciyan's claims that the Station violated the Rules by broadcasting "full commercial[s]."<sup>38</sup> Section 399B of the Act and sections 73.503(d) and 73.801 of the Rules (Underwriting Laws) explicitly prohibit noncommercial educational stations, such as KQSG-LP, from broadcasting advertisements.<sup>39</sup> The Underwriting Laws define an advertisement as, among other things, programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.<sup>40</sup> As an initial matter, we find that the Objection does not describe or include any specific commercial advertisements upon which it bases its argument. Hamamciyan simply alleges that the Station's commercials are identical to commercials that Hamamciyan described in a separately filed amendment to the informal objection against the renewal of KQEV-LP.<sup>41</sup> Hamamciyan also does not provide any evidence, other than Hamamciyan's bare assertion, or arguments as to how any advertisements aired by the Station were impermissible. The Lee Declaration indicates that the advertisements it aired were made on behalf of non-profit entities,<sup>42</sup> and such advertisements are permitted under the Underwriting Laws.<sup>43</sup> Without any evidence to the contrary, we accept Licensee's sworn declaration. Accordingly, we find no violation of the Commission's Underwriting Laws.

13. *Local Programming.* Finally, we reject Hamamciyan's argument that the Station does not broadcast local programming.<sup>44</sup> Similar to the other arguments raised in the Objection, Hamamciyan submits no evidence to support this allegation nor does the Objection reference any legal authority establishing any rule violation. Additionally, the Lee Declaration specifically states that the Station does provide local programming and provides examples of this programming.<sup>45</sup> We thus find this argument without merit.

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<sup>35</sup> *Id.* at 6 ("KQSG-LP did not broadcast those announcements.").

<sup>36</sup> *Id.* at 5; *id.* at Lee Declaration, paras. 5 and 6.

<sup>37</sup> The Commission's rules do explicitly prohibit an LPFM licensee from entering into an operating agreement of any type, including a time brokerage or management agreement, with either a full power broadcast station or another LPFM station. 47 CFR § 73.860(e). Hamamciyan, however, does not allege or present any evidence that Licensee has entered into any prohibited time brokerage agreement. *See also* 47 CFR § 73.879 (prohibiting LPFMs from rebroadcasting a full-service broadcast station).

<sup>38</sup> Objection at 1.

<sup>39</sup> 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801 (applying the Underwriting Laws to LPFM stations as NCE stations).

<sup>40</sup> 47 U.S.C. § 399B(a).

<sup>41</sup> Objection at 1. *See also* Pleading File No. 0000154202 (providing a paraphrased description of commercials that Hamamciyan alleged KQEV-LP illegally broadcast).

<sup>42</sup> Opposition at Lee Declaration, para. 8.

<sup>43</sup> *Cesar Chaves Foundation*, Memorandum Opinion and Order, 34 FCC Rcd 1536, 1537, para. 4 (2019).

<sup>44</sup> Objection at 1.

<sup>45</sup> Objection at Lee Declaration, paras. 5 and 6.

14. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee admits that it violated sections 73.850(d) and 1.17(a)(2) of the Rules. The Consent Decree provides that Licensee shall carry out a compliance plan and make a civil penalty payment to the United States Treasury in the amount of Five Hundred Dollars (\$500). A copy of the Consent Decree is attached and incorporated by reference.

15. Finally, we have reviewed Licensee's Application in accordance with section 309(k) of the Act,<sup>46</sup> and we find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing else in the record creates a substantial or material question of fact calling for further inquiry regarding the Application.<sup>47</sup> After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree, terminating the Bureau's investigation into Licensee's violations of sections 73.850(d) and 1.17(a)(2) 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 12 of the attached Consent Decree.

#### IV. CONCLUSION

16. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4(j) and 309(k) of the Communications Act of 1934, as amended,<sup>48</sup> and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,<sup>49</sup> the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

17. **IT IS FURTHER ORDERED** that the application of The Emperor's Circle of Shen Yun, for renewal of license for low power FM Station KQSG-LP, El Monte, California, Facility ID No. 196570 (Application File No. 0000154968) **IS GRANTED**, as conditioned herein.

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

19. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to: The Emperor's Circle of Shen Yun, 9280 Alpaca Street, South El Monte, CA 91733, and to its counsel, James L. Winston, Esq, Rubin, Winston, Diercks, Harris & Cooke, LLP, 1250 Connecticut Ave., NW, Suite 700, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>46</sup> 47 U.S.C. § 309(k)(1).

<sup>47</sup> We do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, para. 11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992). Additionally, Licensee's adoption of the Compliance Plan set forth in the Consent Decree shall ensure that the Station shall in the future be operated in accordance with the Rules.

<sup>48</sup> 47 U.S.C. §§ 154(i), 154(j), 309(k).

<sup>49</sup> 47 CFR §§ 0.61, 0.283.

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In re Application of	)	
	)	
The Emperor’s Circle of Shen Yun	)	Facility ID No. 196570
	)	NAL/Acct. No. MB-202341410002
For Renewal of License for	)	FRN: 0023122559
Station KQSG-LP	)	Application File No.: 0000154968
El Monte, California	)	

**CONSENT DECREE**

1. The Media Bureau of the Federal Communications Commission (Commission) and The Emperor’s Circle of Shen Yun (hereafter “Licensee,” as defined below), licensee of low power FM (LPFM) station KQSG-LP, El Monte, California, 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 73.850(d) of the Commission’s rules (Rules), regarding the Station’s compliance with the requirement to notify the Commission no later than the 10th day of any period of any silence and to request Commission authorization for any period of silence exceeding 30 days.<sup>50</sup> This Consent Decree also resolves the Bureau’s investigation into Licensee’s compliance with section 1.17(a)(2) of the Rules regarding inaccurate certifications in its renewal Application. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with these rule sections and to pay a civil penalty to the United States Treasury as described herein.

**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) “Application” means the pending application for renewal of license for low power FM station KQSG-LP, El Monte, California (Application File No. 0000154968).
  - (c) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (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) “Compliance Plan” means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Silent Notification Rule.
  - (g) “Covered Employees” means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to compliance with the Silent Notification Rule.
  - (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (i) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s license renewal application identified in Appendix A due to the Licensee’s failure to comply with the Silent Notification Rule and the Truthful and Accurate Statements Rule.

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<sup>50</sup> 47 CFR §73.850(d).

- (j) “Licensee” means The Emperor’s Circle of Shen Yun 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.
- (m) “Silent Notification Rule” means 47 CFR § 73.850.
- (n) “Station” means low power FM station KQSG-LP, El Monte, California.
- (o) “Truthful and Accurate Statements Rule” means 47 CFR § 1.17(a)(2).
- (p) “Violation” means the Licensee’s noncompliance with sections 73.850(d) of the Rules.

## II. BACKGROUND

3. Section 73.850(d) of the Rules, the Silent Notification Rule, states that if causes beyond the control of the licensee make it impossible for the licensee to operate, “the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission provided that notice is sent to the Commission ... no later than the 10th day of limited or discontinued operation.”<sup>51</sup> Then, if “causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period ... [an STA] must be requested to remain silent for such additional time as deemed necessary.”<sup>52</sup>

4. The Commission received an Informal Objection to Licensee’s renewal Application.<sup>53</sup> The Objection alleged that Licensee is “shadow controlled” by New Tang Dynasty Television Network, and that the Station (1) is operating as a translator for KQEV-LP, Walnut, California,<sup>54</sup> (2) broadcasts commercial advertisements, and (3) does not provide local programming.<sup>55</sup> The Bureau determined that each of allegations these allegations is unsupported and without merit. However, upon review of the record,<sup>56</sup> the Bureau confirmed that Licensee failed to inform the Commission of a period of silence by the 10th day of discontinued operation, and failed to timely request authorization for a period of silence exceeding 30 days.<sup>57</sup> Additionally, upon review of the Application, the Bureau determined that Licensee inaccurately certified in the Application that the Station had not been silent for any period of more than 30 days.<sup>58</sup> The Bureau determined that Licensee’s inaccurate certification in the Application constitutes a

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<sup>51</sup> 47 CFR § 73.850(d).

<sup>52</sup> *Id.*

<sup>53</sup> Pleading File No. 0000155119 (filed July 31, 2021).

<sup>54</sup> KQEV-LP is licensed to Chinese Sound of Oriental and Western Heritage. Hamamciyan filed a separate informal objection to the license renewal application for that station. *See also* Pleading File No. 0000154023. We will address that objection by separate action.

<sup>55</sup> Objection at 1.

<sup>56</sup> Licensee filed two motions for an extension of time to respond to the Objection. Pleading File Nos. 0000156850 and 0000157719 (filed Aug. 11, 2021, and Aug. 20, 2021, respectively). Licensee filed an Opposition to the Objection on August 30, 2021, and a duplicate copy on November 30, 2021. Pleading File Nos. 0000158171 and 0000173736 (filed Aug. 30, 2021, and Nov. 30, 2021, respectively). On April 4, 2022, the Bureau issued a Letter of Inquiry (LOI) to Licensee, to which Licensee filed a response to the LOI on May 20, 2022. *See* Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau, to James Winston, Esq., counsel to The Emperor’s Circle of Shen Yun (Apr. 4, 2022); Letter from James Winston, Esq., counsel to The Emperor’s Circle of Shen Yun, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (May 20, 2022).

<sup>57</sup> Opposition at Exh. B (Lee Declaration).

<sup>58</sup> *See* Application.



violation of the Truthful and Accurate Statements Rules, which requires all statements made to the Commission be truthful and accurate.<sup>59</sup> Based on the foregoing, the Bureau commenced the Investigation and suspended processing the license renewal application detailed in Appendix A.

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 make a settlement payment of Five Hundred Dollars (\$500) to the U.S. Treasury, and to implement and maintain a Compliance Plan designed to ensure its future compliance with the Rules noted above for one (1) year after the Effective Date.

### 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.<sup>60</sup>

11. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it violated the Silent Notification Rule by failing to notify the Commission no later than the 10th day of the Station's period of silence, and by failing to timely request authorization for a period of silence exceeding 30 days. Licensee also admits to violating the Truthful and Accurate Statements Rules by making inaccurate certifications in its Application. 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>61</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 online public inspection file and record keeping or otherwise.

12. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of **Five Hundred Dollars (\$500)**, within thirty (30) calendar days after the Effective Date.

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<sup>59</sup> 47 CFR § 1.17(a)(2).

<sup>60</sup> See 47 CFR § 1.93(b).

<sup>61</sup> See 47 U.S.C. § 503(b)(2)(E).

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>62</sup>

13. **Payment.** Licensee shall send electronic notification of payment to Alexander.Sanjenis@fcc.gov on the date said payment of the Civil Penalty and each Installment Payment is made. Payment shall 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),<sup>63</sup> or by wire transfer. The Commission no longer accepts civil penalty or forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>64</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 emailed 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 referenced above (Payor FRN).<sup>65</sup> 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 Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN referenced 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.
- 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 referenced 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.

14. **Event of Default.** Licensee agrees that an Event of Default shall occur upon the failure by Licensee to pay the full amount of the Civil Penalty or any Installment Payment on or before the due date specified in this Consent Decree.

15. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty or any Installment Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty or any Installment Payment, together with

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<sup>62</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>63</sup> Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

<sup>64</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>65</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Licensee.

16. **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 Licensee's obligations related to compliance with Licensee's compliance with the Silent Notification Rule. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

17. **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 Silent Notification 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 19(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 Silent Notification Rule;
  - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Silent Notification Rule. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Silent Notification 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 Silent Notification Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Silent Notification 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 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 Silent Notification Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30

calendar 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 21 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>66</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, Assistant Division Chief, at [Alexander.Sanjenis@fcc.gov](mailto:Alexander.Sanjenis@fcc.gov).

18. **Reporting Noncompliance.** The Licensee shall, for each station it owns, report any instance of noncompliance with the Silent Notification 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, Assistant Division Chief, at [Alexander.Sanjenis@fcc.gov](mailto:Alexander.Sanjenis@fcc.gov).

19. **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 19(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 sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

20. **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 Silent Notification Rule that occur during the term of this Consent Decree.

21. **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 Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, reference in paragraph 13, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

22. **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

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<sup>66</sup> See 47 CFR § 1.16.

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>67</sup> relating to the matters addressed in this Consent Decree.

23. **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.

24. **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.

25. **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.

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

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

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

29. **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.

30. **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>67</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

31. **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

\_\_\_\_\_  
2/24/23  
Date

\_\_\_\_\_  
[SIGNATORY]  
The Emperor's Circle of Shen Yun

\_\_\_\_\_  
Date

Federal Communications Commission

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31. **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.

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Albert Shuldiner  
Chief, Audio Division

02/15/2023

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Date

*Chris Lee*

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**SIGNATORY**

The Emperor's Circle of Shen Yun

2/16/2023

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Date

Appendix A

Station Call Sign  
KQSG-LP

Community of License  
El Monte, California

Application for License Renewal File No.  
0000154968