

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

In re Application of)	
)	
Ward Broadcasting Corporation)	FRN: 0001718337
)	Facility ID No. 2772
For Renewal of License for)	File Nos. 0000087659, 0000105757
Station WTOY(AM))	
Salem, Virginia)	

ORDER

Adopted: March 1, 2023

Released: March 1, 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 Ward Broadcasting Corporation (Licensee), the licensee for Station WTOY(AM), Salem, Virginia (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station.¹ In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Public File Rule contained in section 73.3526 of the Commission's rules (Rules),² section 73.3539 of the Rules,³ which sets forth the filing deadline for license renewal applications, and section 301 of the Communications Act of 1934, as amended (Act),⁴ which requires a valid authorization from the Commission to operate a broadcast station.

2. Licensee filed the Renewal Application on October 30, 2019. On, June 4, 2020, the Bureau issued a Notice of Apparent Liability for Forfeiture to Licensee because it did not file the Renewal Application by the June 3, 2019, deadline, and the Station did not request special temporary authority to continue operations after its license until October 30, 2019.⁵ Licensee filed a Petition for Reconsideration of the *NAL* on July 6, 2020, in which it explained that the failure to timely file the renewal application was due to the illness and death of its sole-owner, Irvin Lee Ward, Sr., who died on August 18, 2019.⁶ Subsequently, the Bureau determined that the Licensee did not comply with its public file obligations in section 73.3526 because the Licensee had failed to timely upload any issues and programs lists to its online public inspection file.

3. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3526 and 73.3539 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future

¹ Application File Nos. 0000087659 (filed Oct. 30, 2019) and 0000105757 (amendment filed Feb. 10, 2020) (Renewal Application).

² 47 CFR § 73.3526.

³ See 47 CFR § 73.3539.

⁴ 47 U.S.C. § 301.

⁵ *Ward Broadcasting Corporation*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5592 (MB 2020) (proposing \$7,000 forfeiture for apparent violation of section 73.3539 of the Rules and section 301 of the Act) (*NAL*).

⁶ Pleading File No. 0000117001 (filed July 6, 2020). On November 13, 2019, Licensee filed an application to transfer control of the Station to the Irvin Lee Ward, Jr., as administrator of Ward's estate. Application File No. BTC-20191113AAF (Transfer of Control Application). That application remains pending.

compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division. The Bureau has agreed to cancel the *NAL* issued to Licensee and grant the pending Renewal Application.

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.

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

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,⁷ and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,⁸ 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** the license renewal application filed by Ward Broadcasting Corporation on October 30, 2019, and amended on February 10, 2020 (Application File Nos. 0000087659 and 0000105757) for Station WTOY(AM), Salem, Virginia, **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the Notice of Apparent Liability issued to Ward Broadcasting Corporation on June 4, 2020 (MB-202041410002) **IS CANCELLED**.

10. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Ward Broadcasting Corporation on July 6, 2020 (Pleading No. 0000117001) **IS DISMISSED**.

11. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Irvin L. Ward, Jr., Ward Broadcasting Corporation, 80 Gracie Court, Evington, VA 24550, and to its counsel, Dennis J. Kelly, Esq. Law Office of Dennis J. Kelly, PO Box 41177, Washington, DC 20018-0577.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁷ 47 U.S.C. § 154(i), 154(j), and 503(b).

⁸ 47 CFR §§ 0.61, 0.283.

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

In the Matter of Online Public Inspection Files of)	File Nos. 0000087659, 0000105757
)	
Martins & Associates, Inc.)	
)	FRN: 0021010038
Licensee of Station WTOY(AM))	
Salem, Virginia)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Ward Broadcasting Corporation (hereafter “Licensee,” as defined below), licensee of Station WTOY(AM), Salem, Virginia, 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 73.3539(a) and 73.3526 of the Commission’s rules,¹ regarding compliance with the requirement to timely file an application for renewal of license,² and to upload copies of its issues and programs lists to its online public inspection file.³ To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with these rule sections.

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 Station WTOY(AM), Salem, Virginia (File Nos. 0000087659, 0000105757).
 - (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 47 CFR §§ 73.3539(a) and 73.3526 of the Rules.
 - (g) “Covered Employees” means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.
 - (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (i) “Filing Deadline Rule” means 47 CFR § 73.3539(a).

¹ 47 CFR §§ 73.3539(a), 73.3526.

² 47 CFR § 73.3539(a).

³ 47 CFR 47 § 73.3526 (requiring that items be uploaded to the online public inspection file hosted by the Commission).

- (j) “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 47 CFR §§ 73.3539(a) and 73.3526 of the Rules.
- (k) “Licensee” means Ward Broadcasting Corporation and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (l) “Online Public Inspection File Rule” means 47 CFR § 73.3526.
- (m) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Station” means Station WTOY(AM), Salem, Virginia.

II. BACKGROUND

3. Section 73.3539(a) 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.”⁴ An application for renewal of the Station’s license should have been filed by June 3, 2019, the first full business day following the first day of the fourth full calendar month prior to the Station’s license expiration date of October 1, 2019.⁵ The Station’s Application was not filed until October 30, 2019.⁶ Licensee also filed a request for special temporary authorization (STA) to operate the Station pending consideration of the untimely renewal application.⁷ The staff granted the STA Request on November 7, 2019.⁸

4. On June 3, 2020, the Media Bureau issued a Notice of Apparent Liability for Forfeiture (*NAL*) to Licensee in the amount of seven thousand dollars (\$7,000) for apparently violating: (1) section 73.3539 of the Rules,⁹ by failing to file a timely license renewal application for the Station; and (2) section 301 of the Act,¹⁰ by engaging in unauthorized operation of the Station after its authorization had expired.¹¹

5. Licensee filed a response to the *NAL* on July 6, 2020.¹² Licensee claims that there are “exceptional equities” in this case that warrant mitigation of the proposed sanctions.¹³ Specifically,

⁴ 47 CFR § 73.3539(a).

⁵ See 47 CFR §§ 73.1020, 73.3539(a).

⁶ File No. 0000087659. On February 11, 2020, Licensee filed an amendment to the original Application, which generated a new file number. File No. 0000105757.

⁷ BLSTA-20191030AAN (STA Request).

⁸ *Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Dennis J. Kelly, Counsel for Ward Broadcasting Corporation* (Nov. 7, 2019). The initial STA grant was to expire on May 7, 2020. On May 4, 2020, Licensee filed for an extension of its STA which the staff accepted for filing on May 6, 2020, and granted on September 9, 2020, with an expiration date of November 7, 2020. See File No. BLESTA-20200504AAR. Licensee has not filed for an additional extension of its STA.

⁹ See 47 CFR § 73.3539.

¹⁰ See 47 U.S.C. § 301.

¹¹ See *Ward Broadcasting Corporation, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 35 FCC Rcd 5592 (MB Jun. 4, 2020) (*NAL*).

¹² Response to Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture and in the Alternative, Petition for Reconsideration (Response). See Pleading No. 0000117001.

¹³ *Id.* at 3.

Licensee argues that the health problems and eventual death of sole owner Licensee Irwin L. Ward, Sr. (Ward), on August 18, 2019, mitigate against an administrative punishment or sanction that might be imposed by the Commission.¹⁴ Licensee asserts that Ward's heirs took immediate corrective action upon learning of the Station's deficiencies and filed the renewal application and STA Request within 30 days of WTOY(AM)'s license expiration.¹⁵ Licensee asserts that these reasons warrant a cancellation of the assessed forfeiture and a renewal of the Station's license for a full eight-year term.¹⁶

6. Section 73.3526 of the Rules requires that quarterly issues and programs lists be uploaded to the station's online public inspection file no later than the tenth day after each quarter.¹⁷ It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations.

7. After the issuance of the *NAL*, the Bureau determined that Licensee did not comply with the Online Public Inspection File Rule during the relevant license term because the Licensee failed to place any issues and programs lists in its online public file as required by the Online Public Inspection File Rule. Based on the Licensee's failure to comply with the Online Public Inspection File Rules, the Bureau commenced the Investigation and suspended processing the license renewal application(s) detailed in Appendix A.

8. The radio industry is recovering from a recent dramatic reduction in sponsorship revenues which, in turn, placed the industry, including the Licensee, under significant, ongoing financial stress. The Bureau believes that the exceptional circumstances brought about by the industry's economic situation present a unique situation which, in addition to the unique circumstances encountered by the Licensee upon the illness and death of its sole owner, warrant resolution of the Bureau's investigation under the terms and conditions described below.

9. 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 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

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

11. **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.

12. **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.

13. **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 Licensee's pending radio license renewal application (File Nos. 0000087659, 0000105757) and to cancel the *NAL* (MB-202041410002). Additionally, the Bureau will dismiss the Response, treated as a petition for reconsideration, as moot

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ 47 CFR § 73.3526.

(Pleading No. 0000117001). In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

14. 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.¹⁸

15. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it violated section 73.3539(a) of the Rules by failing to file its renewal application by June 3, 2019. The Licensee also admits that it violated section 73.3526 of the Rules by failing to timely place its issues and programs lists in its online public file.

16. 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.¹⁹ 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.

17. **Compliance Officer.** Within 30 calendar days after the Effective Date, the Licensee shall designate a senior manager to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee's Chief Executive Officer (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Filing Deadline Rule and Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

18. **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 Filing Deadline Rule and the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 18(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

¹⁸ See 47 CFR § 1.93(b).

¹⁹ See 47 U.S.C. § 503(b)(2)(E).

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 Filing Deadline Rule and the Online Public Inspection File Rule;
 - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Filing Deadline Rule and the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Filing Deadline Rule and the Online Public Inspection File Rule; and
 - iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.
- (b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a compliance training program to provide periodic training to those Covered Employees on complying with the Filing Deadline Rule and the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that 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 Filing Deadline Rule and the Online Public Inspection File 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 20 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,²⁰ 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.

19. **Reporting Noncompliance.** The Licensee shall, for each station it owns, report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (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.

20. **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 18(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.

21. **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 Online Public Inspection File Rule that occurs during the term of this Consent Decree.

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 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 Act²¹ 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

²⁰ 47 CFR § 1.16.

²¹ 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.

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.

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

3/1/2023
Date

Irvin Ward, Jr., President
Ward Broadcasting Corporation

Date

Date

I. L. Ward Jr.

Irvin Ward, Jr., President
Ward Broadcasting Corporation

2-5-2023

Date

Appendix A

Station Call Sign
WTOY(AM)

Community of License
Salem, Virginia

Application for License Renewal File No.
0000087659, 0000105757