

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

In the Matter of)
Application of William O'Shaughnessy)
(Deceased), Transferor)
and) NAL/Acct. No. MB-202341410013
The Kate O'Shaughnessy Nulty Trust and the)
David Tucker O'Shaughnessy Trust II, Transferees)
For Consent to Transfer Control of Hudson-) FRN: 0004284147
Westchester Radio, Inc., Licensee of Stations)
WVOX(AM), New Rochelle, New York,) Facility ID Nos. 28024, 28023, and 201735
WVIP(FM), New Rochelle, New York, and) File No. 0000202818 et al.
W252DX, White Plains, New York)

ORDER

Adopted: July 11, 2023

Released: July 11, 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 Hudson-Westchester Radio, Inc. (HWR), licensee of stations WVOX(AM), New Rochelle, New York; WVIP(FM), New Rochelle, New York; and W252DX, White Plains, New York. The Consent Decree resolves issues arising from the Bureau's review of the captioned application (Application) for Commission consent to transfer of control of HWR.

2. In the course of processing the Application, the Bureau staff found that an unauthorized transfer of control occurred more than four months before HWR filed the Application. Pursuant to the terms of the Consent Decree, HWR stipulates that it violated section 310 of the Communications Act of 1934, as amended (the Act),1 and sections 73.3540 of the Commission's rules (Rules).2 The Consent Decree requires, among other things, that HWR make an eight thousand dollar (\$8,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

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 investigation of potential violations of the Act and the Rules in connection with the Application. Based on the record before us, we conclude that nothing in the record creates a substantial and material question of fact as to whether HWR possesses the basic qualifications to be a Commission licensee.

4. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,3 and by the

1 47 U.S.C. § 310.

2 47 CFR § 73.3540.

3 47 U.S.C. § 4(i).

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.

5. IT IS FURTHER ORDERED that the investigation by the Bureau of the matters noted above IS TERMINATED.

6. IT IS FURTHER ORDERED that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Hudson-Westchester Radio, Inc., c/o Melodie A. Virtue, Esq., 1000 Potomac Street, NW, Suite 200, Washington, DC 20007.

7. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,⁵ a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in each of the above-captioned stations' online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴ 47 CFR §§ 0.61, 0.283.

⁵ *Id.* § 73.3526(e)(10).

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W252DX, White Plains, New York)

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) and Hudson-Westchester Radio, Inc. (HWR), licensee of stations WVOX(AM), New Rochelle, New York; WVIP(FM), New Rochelle, New York; and W252DX, White Plains, New York, for the purpose of terminating the Bureau's investigation of HWR's compliance with section 310(d) of the Communications Act of 1934, as amended,1 and section 73.3540 of the Commission's rules.2

II. DEFINITIONS

- 2. For purposes of this Consent Decree, the following definitions shall apply:
(a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 et. seq.;
(b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;
(c) "Application" means the application of HWR for FCC consent to a non pro forma transfer of control, application file no. 0000202818 et al.;
(d) "Bureau" means the Media Bureau of the Federal Communications Commission;
(e) "Civil Penalty" means the payment HWR has agreed to pay to the United States Treasury;
(f) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;
(g) "Effective Date" means the date on which the Bureau releases the Adopting Order;

1 47 U.S.C. § 310(d).

2 47 CFR § 73.3540.

- (h) “Execution Date” means the date on which this Consent Decree is executed by the last of the Parties to do so;
- (i) “HWR” means Hudson-Westchester Radio, Inc.;
- (j) “Investigation” means the Bureau’s investigation of information contained in the Application, as discussed herein;
- (k) “Licenses” refers to the license authorizations for stations WVOX(AM), New Rochelle, New York (Fac. ID No. 28024); WVIP(FM), New Rochelle, New York (Fac. ID No. 28023); and W252DX, White Plains, New York (Fac. ID No. 201735);
- (l) “Parties” means HWR and the Bureau;
- (m) “Rules” means the FCC’s rules, found in Title 47 of the Code of Federal Regulations; and
- (n) “Violations” means the unauthorized transfers of control of HWR in violation of section 310(d) of the Act and section 73.3540 of the Rules.

III. BACKGROUND

3. Section 310(d) of the Act, provides in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.³

Section 73.3540 of the Rules implements section 310(d) of the Act.⁴ It is well-settled that “control” as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control, actual or legal, direct or indirect, negative or affirmative, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.⁵

4. William O’Shaughnessy held 55% of HWR’s issued and outstanding voting stock. On March 3, 2022, HWR issued his shares in the name of the William O’Shaughnessy Revocable Trust (WSOR Trust).⁶ William O’Shaughnessy then resigned as trustee of the WSOR Trust effective March 4, 2022, and in accordance with the terms of the trust, his son, David O’Shaughnessy, succeeded him as trustee of the WSOR Trust.⁷

³ 47 U.S.C. § 310(d).

⁴ 47 CFR § 73.3540.

⁵ See, e.g., *Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975) (citing *WWIZ, Inc.*, 36 FCC 561 (1964)), modified, 59 FCC 2d 1002 (1976).

⁶ William O’Shaughnessy was the grantor and the initial trustee (until his resignation, effective March 4, 2022) of the WSOR Trust. Application Attach., Trust Agreement. The beneficiaries of the WSOR Trust are the David Tucker O’Shaughnessy Trust II and the Kate O’Shaughnessy Nulty Trust. Application Attach., Description of Transaction.

⁷ Application Attach., David O’Shaughnessy Appointment as Trustee.

5. William O'Shaughnessy died on May 28, 2022.⁸ Upon his death, the WSOR Trust agreement provides that half of the shares of HWR's voting stock held in the trust shall be distributed to the David Tucker O'Shaughnessy Trust II (DTOS Trust II) and the other half to the Kate O'Shaughnessy Nulty Trust (KOSN Trust).⁹ The proposed distribution of shares from the WSOR Trust will result in the DTOS Trust II and the KOSN Trust holding 37.5% and 42.5%, respectively, of the issued and outstanding HWR voting stock.¹⁰ The David Tucker O'Shaughnessy Trust (DTOS Trust I) will continue to hold the remaining 20% of the issued and outstanding HWR voting stock.¹¹ Thus, as a result of the proposed distribution of shares from the WSOR Trust, David Tucker O'Shaughnessy will hold a total voting interest of 57.5% in HWR through the DTOS Trust I and the DTOS Trust II.¹²

6. On July 7, 2022, HWR filed an application for an involuntary pro forma transfer of control of HWR from William O'Shaughnessy (deceased) to the William O'Shaughnessy Irrevocable Trust.¹³ Subsequently, at the request of the Bureau staff, HWR filed a non pro forma transfer of control application (the Application) seeking Commission consent for the transfer to the WSOR Trust and withdrew the involuntary pro forma transfer application.¹⁴

7. The Application seeks FCC consent for the voluntary transfer of HWR voting stock from William O'Shaughnessy to the WSOR Trust, which occurred without prior FCC authorization on March 3, 2022, as discussed above. The Application also seeks FCC consent for the unauthorized transfer of control that resulted from the appointment of David Tucker O'Shaughnessy as the successor trustee of the WSOR Trust on March 4, 2022. Additionally, the Application seeks consent for the proposed distribution of the HWR voting stock from the WSOR Trust to the DTOS Trust II and the KOSN Trust.

8. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. AGREEMENT

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

10. **Jurisdiction.** HWR acknowledges that the Bureau has jurisdiction over it and the matters contained in this Consent Decree, and the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. HWR agrees

⁸ Application Attach., Description of Transaction.

⁹ Application Attach., Trust Agreement.

¹⁰ The DTOS Trust II and the KOSN Trust currently hold 10% and 15%, respectively, of the issued and outstanding HWR voting stock. Application Attach., Description of Transaction.

¹¹ Application, Changes In Interest.

¹² *Id.*

¹³ Application Attach., Description of Transaction; *see also Broadcast Applications*, Public Notice, Report No. PN-1-220712-01, at 1, 3, 7 (MB July 12, 2022) (accepting pro forma transfer application for filing).

¹⁴ Application Attach., Description of Transaction. We dismissed the pro forma transfer of control application on December 1, 2022. *Broadcast Actions*, Public Notice, Report No. PN-2-221205-01, at 2-3 (MB Dec. 5, 2022). *See also Broadcast Applications*, Public Notice, Report No. PN-1-220712-01, at 1, 3, 7 (MB July 12, 2022) (accepting the Application for filing).

that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, HWR agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against HWR, provided that HWR satisfies all of its obligations under this Consent Decree. In the event that HWR fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

13. **Admission of Liability.** HWR stipulates that the actions described in paragraph 4 of this Consent Decree violated section 310(d) of the Act and section 73.3540 of the Rules.

14. **Civil Penalty.** HWR agrees to make the Civil Penalty payment to the United States Treasury in the amount of eight thousand dollars (\$8,000), within thirty (30) calendar days of the Effective Date. HWR 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 1996.¹⁵

15. **Payment.** HWR shall send electronic notification of payment to Christopher Clark at Christopher.Clark@fcc.gov on the date 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),¹⁶ 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:¹⁷

- 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 emailed 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).¹⁸ 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 captioned above. If payment must be split across FRNs, complete this process for each

¹⁵ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁶ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

¹⁷ 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.

¹⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether HWR 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, referenced in paragraph 14 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

17. **Waivers.** HWR agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any 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, no Party will contest the validity of the Consent Decree or Adopting Order, and HWR will waive any statutory right to a *trial de novo*. HWR further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁹ relating to the Consent Decree or Adopting Order.

18. **Severability.** The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree unenforceable, such unenforceability shall not render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

20. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which HWR does not expressly consent), such provision will be superseded by such Rule or Order.

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

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

¹⁹ 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

23. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

24. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative.** Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

HUDSON-WESTCHESTER RADIO, INC.

By: _____
David T. O’Shaughnessy, President

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: 
Albert Shuldiner, Chief, Audio Division

Date: 7/11/23

HUDSON-WESTCHESTER RADIO, INC.

By: 
David T. O'Shaughnessy, President

Date: 7/10/23