

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

In re Application of) NAL/Acct. No. MB-202341410020
)
Fiorini Broadcasting, LLC) FRN: 0024634990
)
for Consent to Transfer of Control of Stations) Facility ID Nos. 47073, 200625, 200624,
WENG(AM), Englewood, Florida,) 72688, and 140474
W251CU, Port Charlotte, Florida,)
W283DB, Arcadia, Florida,) Application File No. 0000203650 et al.
WCXS(AM), Arcadia, Florida, and)
W298AV, Nokomis, Florida)
)
from)
)
Susan Whipple (Transferor))
Melissa C. Selleke, Trustee of the The Mary Jean)
Fiorini Trust (Transferor))
)
to)
)
Joseph E. Fiorini (Transferee))
Dennis G. Fiorini (Transferee))
Susan M. Sherman (Transferee))
Diane M. Paonessa (Transferee))
Melissa C. Selleke (Transferee))

ORDER

Adopted: September 15, 2023

Released: September 15, 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 Fiorini Broadcasting, LLC (Licensee), licensee of stations WENG(AM), Englewood, Florida; W251CU, Port Charlotte, Florida; W283DB, Arcadia, Florida; WCXS(AM), Arcadia, Florida; and W298AV, Nokomis, Florida (Stations). The Consent Decree resolves issues arising from the Bureau’s review of the captioned application (Voluntary Transfer Application).¹

2. In the course of processing the Voluntary Transfer Application, the Bureau staff found the application revealed that Joseph E. Fiorini acquired a controlling interest in the Licensee without prior Commission authorization. The Consent Decree resolves the Bureau’s investigation of the unauthorized transfer of control.

3. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section 310(d) of the Communications Act of 1934, as amended (the Act),² and section 73.3540 of the

¹ Application File No. 0000203650 et al. See Broadcast Applications, Public Notice, Report No. PN-1-221118-01, at 1, 3-4 (MB Nov. 18, 2022).

² 47 U.S.C. § 310(d).

Commission's rules (Rules).³ The Consent Decree requires, among other things, that Licensee 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.

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 investigation of potential violations of the Rules and the Act in connection with the Voluntary Transfer Application.

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

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,⁴ and by the authority delegated by sections 0.61 and 0.283 of the Rules,⁵ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Fiorini Broadcasting, LLC, and to its counsel, Reid Avett, Esq., 2001 K Street, NW, Suite 400, Washington, D.C. 20006.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,⁶ a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in 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

³ 47 CFR § 73.3540.

⁴ 47 U.S.C. § 4(i).

⁵ 47 CFR §§ 0.61, 0.283.

⁶ *Id.* § 73.3526(e)(10).

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

In re Application of) NAL/Acct. No. MB-202341410020
)
Fiorini Broadcasting, LLC) FRN: 0024634990
)
for Consent to Transfer of Control of) Facility ID Nos. 47073, 200625, 200624,
WENG(AM), Englewood, Florida) 72688, and 140474
W251CU, Port Charlotte, Florida)
W283DB, Arcadia, Florida) Application File No. 0000203650 et al.
WCXS(AM), Arcadia, Florida)
W298AV, Nokomis, Florida)
)
from)
)
Susan Whipple (Transferor))
Melissa C. Selleke, Trustee of the The Mary Jean)
Fiorini Trust (Transferor))
)
to)
)
Joseph E. Fiorini (Transferee))
Dennis G. Fiorini (Transferee))
Susan M. Sherman (Transferee))
Diane M. Paonessa (Transferee))
Melissa C. Selleke (Transferee))

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and Fiorini Broadcasting, LLC, licensee of the above-captioned stations, for the purpose of terminating the Bureau’s investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and section 73.3540 of the Commission’s rules, 47 CFR § 73.3540.

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) “Bureau” means the Media Bureau of the Federal Communications Commission;
(d) “Civil Penalty” means the payment Licensee has agreed to pay to the United States Treasury;
(e) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices;

- (f) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- (g) “Investigation” means the Bureau’s investigation of information contained in the Voluntary Transfer Application, as detailed herein;
- (h) “Licensee” means Fiorini Broadcasting, LLC, licensee of stations WENG(AM), Englewood, Florida; W251CU, Port Charlotte, Florida; W283DB, Arcadia, Florida; WCXS(AM), Arcadia, Florida; and W298AV, Nokomis, Florida, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
- (i) “Mr. Fiorini” means Joseph E. Fiorini;
- (j) “Ms. Selleke” means Melissa C. Selleke;
- (k) “Ms. Whipple” means Susan Whipple (formerly Susan Fiorini);
- (l) “Parties” means the Licensee and the Bureau;
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations;
- (n) “Violations” mean the violations of the Voluntary Transfer of Control Rule and section 310(d) of the Act;
- (o) “Voluntary Transfer Application” means the FCC Form 2100, Schedule 315 application for consent to the voluntary transfer of control, Application File No. 0000203650 et al.; and
- (p) “Voluntary Transfer of Control Rule” means 47 CFR § 73.3540.

III. BACKGROUND

3. *Unauthorized Transfer of Control.* 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.⁷

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.⁸ 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.⁹

4. Mr. Fiorini and Ms. Whipple were each members of, and held a 40.5% voting and equity interest in, the Licensee.¹⁰ On December 10, 2020, Mr. Fiorini acquired the 40.5% interest that Ms. Whipple held in the Licensee, and thus *de jure* control, without prior Commission consent.¹¹ On

⁷ 47 U.S.C. § 310(d).

⁸ 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that “[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control.” *Id.* § 73.3540(a).

⁹ 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).

¹⁰ The remaining 19% voting and equity interest was held by Ms. Selleke as trustee of the Mary Jean Fiorini Trust.

¹¹ Voluntary Transfer Application Attach., Final Judgment.

November 16, 2022, the Licensee filed the Voluntary Transfer Application.¹² In the course of processing the Voluntary Transfer Application, the Bureau staff identified the unauthorized transfer of control discussed above.

5. Based on the foregoing, the Bureau commenced the Investigation and suspended processing of the Voluntary Transfer Application. 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 matters, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. TERMS OF AGREEMENT

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

7. **Jurisdiction.** Licensee agrees 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.

8. **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. Licensee agrees 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.

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 consideration for the termination of the Investigation, Licensee agrees to the terms, conditions, and procedures contained herein.

10. 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 Licensee concerning the matters that were the subject of the Investigation, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee 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.

11. **Admission of Liability.** Licensee stipulates that its actions described in Paragraph 4 violated section 310(d) of the Act and the Voluntary Transfer of Control Rule.

12. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of eight thousand dollars (\$8,000), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.¹³

13. **Payment.** Licensee will also send electronic notification of payment to Joseph Cohen at Joseph.Cohen@fcc.gov and Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House)

¹² See *Broadcast Applications*, Public Notice, Report No. PN-1-221118-01, at 1, 3-4 (MB Nov. 18, 2022).

¹³ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

debit from a bank account using CORES (the Commission's online payment system),¹⁴ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

14. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Application after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 12 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 Voluntary Transfer Application.

15. **Waivers.** Licensee agrees to waive any and all rights it may have to seek administrative

¹⁴ Payments made using CORES do not require the submission of an FCC Form 159.

¹⁵ 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.

¹⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁷ relating to the Consent Decree or Adopting Order.

16. **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.

17. **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.

18. **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 Licensee does not expressly consent), such provision will be superseded by such Rule or order.

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

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

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

22. **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.

23. **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.

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

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

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**



By: _____
Albert Shuldiner, Chief, Audio Division

Date: 9/14/2023

Fiorini Broadcasting, LLC

By: _____
Joseph E. Fiorini, President

Date: _____

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

Fiorini Broadcasting, LLC

By: **Joseph** Digitally signed
by Joseph
Joseph E. Fiorini, President Fiorini

Date: **Fiorini** Date:
2023.09.12
14:15:59 -04'00'