

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

In the Matter of	)	
	)	
Genesis Communications, Inc.	)	NAL/Account No. MB-202441410018
WREN-LP, Charlottesville, Virginia	)	FRN: 0023016124
Application for Renewal of License	)	Facility ID No. 194996
	)	Application File No. 72618

MEMORANDUM OPINION AND ORDER

Adopted: September 30, 2024**Released: September 30, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Application) filed by Genesis Communications, Inc. (Licensee) to renew the license of low power FM (LPFM) station, WREN-LP, Charlottesville, Virginia (Station).¹ Also before us are a Petition to Deny (Petition) the Application filed by Tidewater Communications, LLC (Petitioner),² an Informal Objection (Objection) filed by Petitioner,³ related

¹ Application File No. 72618.

² Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 80853 (filed Sept. 3, 2019) (Petition). Petitioner filed the Petition not only in relation to the Application but also in relation to applications to renew the licenses of four additional LPFM stations: WXRK-LP, WVAI-LP, and WPVC-LP, Charlottesville, Virginia, and WKMZ-LP, Ruckersville, Virginia. The licenses of WPVC-LP and WKMZ-LP were subsequently cancelled. *See* Letter from Lee J. Peltzman, Counsel for Promise Land Commc'ns, to James Bradshaw, Deputy Chief, Audio Div., Media Bureau (dated June 17, 2020) ("turning in" WPVC-LP license for cancellation and "requesting dismissal of any pending Application"); *Broadcast Actions*, Public Notice, Report No. 49778, at 2 (MB July 13, 2020) (cancelling WPVC-LP license); *Broadcast Actions*, Public Notice, Report No. 49971, at 1 (MB April 20, 2021) (cancelling WKMZ-LP license). WXRK-LP and WVAI-LP remain operational. We will address Petitioner's allegations with respect to those stations in separate decisions.

³ Consolidated Informal Objection of Tidewater Commc'ns, LLC, Pleading File No. 124876 (filed Oct. 19, 2020) (Objection). Petitioner filed the Objection in relation to the Application and the applications to renew the licenses of WXRK-LP, and WVAI-LP. As noted, we will address Petitioner's allegations regarding WXRK-LP and WVAI-LP in separate decisions.

responsive pleadings,⁴ and Licensee's response to our Letter of Inquiry (LOI).⁵ For the reasons discussed below, we grant in part and otherwise deny the Petition, grant the Objection, and adopt the attached Consent Decree, which resolves issues related to the broadcast of commercial advertising on the Station in violation of section 399B of the Communications Act of 1934, as amended (Act), and sections 73.503(d) and 73.801 of the Commission's rules (Underwriting Laws).⁶ We also grant the Application for a short renewal term of two years upon Licensee fully and timely satisfying its obligation to pay the civil penalty in the manner set forth in paragraph 16 of the attached Consent Decree.

II. BACKGROUND

2. In the Petition, Petitioner alleges that (1) the Station is "regularly broadcasting commercial announcements" in violation of the Underwriting Laws,⁷ (2) Licensee is a party "to a prohibited operating agreement or management agreement" in violation of section 73.860(e) of the Commission's rules (Rules),⁸ (3) the Station is not conforming to the educational purpose Licensee outlined in its application for the Station's initial construction permit (Permit Application),⁹ and (4) Licensee made false certifications in the Permit Application.¹⁰ In its Opposition, Licensee disputes all of Petitioner's allegations, except the assertion that Licensee made false certifications in the Application, which Licensee does not discuss.¹¹ Licensee also alleges that Petitioner is abusing the Commission's processes and has lacked candor in the Petition.¹² In its Reply, Petitioner denies abusing the

⁴ Licensee filed an Opposition to the Petition on October 25, 2019. Opposition to Consolidated Petition to Deny of Genesis Commc'ns, Inc., Pleading File No. 87324 (filed Oct. 25, 2019) (First Opposition). Petitioner filed a Reply to the Opposition on November 14, 2019. Consolidated Reply to Oppositions to Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 89557 (filed Nov. 14, 2019); Consolidated Reply to Oppositions to Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 90116 (filed Nov. 15, 2019) (resubmitting pleading filed on November 14, 2019, along with missing declaration) (collectively, Reply). *See also* Letter from Albert Shuldiner, Chief, Audio Div., Media Bureau, to Blue Ridge Free Media et al. (dated Oct. 21, 2019) (extending deadline for oppositions to the Petition until October 25, 2019, and extending deadline for reply to any oppositions until November 14, 2019). The Reply addressed not just the Opposition but oppositions to the Petition filed by Blue Ridge Free Media, licensee of WXRK-LP, and Air Mix Virginia, licensee of WVAI-LP. As noted above, we will address Petitioner's allegations about WXRK-LP and WVAI-LP in separate decisions. Licensee filed an Opposition to the Objection on November 2, 2020. Opposition to Consolidated Informal Objection of Genesis Commc'ns, Inc., Pleading File No. 125273 (filed Nov. 2, 2020) (Second Opposition).

⁵ Letter from Cary S. Tepper, Counsel to Genesis Commc'ns, Inc., to Tom Hutton, Deputy Div. Chief, Audio Div., Media Bureau (dated Feb. 27, 2020) (LOI Response). *See also* Letter from Albert Shuldiner, Chief, Audio Div., Media Bureau, to Blue Ridge Free Media, et al. (dated Jan. 28, 2020) (LOI). Licensee later supplemented its response on July 31, 2020. *See* Letter from Cary S. Tepper, Counsel to Genesis Commc'ns, Inc., to Tom Hutton, Deputy Div. Chief, Audio Div., Media Bureau (dated July 31, 2020) (Addendum).

⁶ 47 U.S.C. § 399B; 47 CFR §§ 73.503(d), 73.801.

⁷ Petition at 8-9, 14-15.

⁸ *Id.* at 3-8.

⁹ *Id.* at 13-14, 20. *See also* Application File No. BNPL-20131113BUP (Permit Application).

¹⁰ Petition at 17-21. Petitioner also makes a general allegation that Licensee made false certifications in the Application, and its application for the Station's license (License Application). Petition at 2, 12, 15. *See also* Application File No. BLL-20160309AAA. However, all of the specific certifications referenced by Petitioner were made in the Permit Application. Accordingly, we do not discuss certifications made in the Application or the License Application further herein.

¹¹ First Opposition at 3-11.

¹² *Id.* at 2, 6.

Commission's processes,¹³ and reiterates the claims it made in the Petition.¹⁴ Given the incomplete state of the record, we sent the LOI to Licensee, requesting additional information about the allegations made in the Petition. Licensee submitted its response on February 27, 2020.¹⁵ Subsequently, Petitioner submitted the Objection, which alleges that the Station continues to violate the Underwriting Laws.¹⁶ Licensee opposed the Objection, asserting that the underwriting announcements referenced in the Objection was "in material compliance with FCC policy."¹⁷

III. DISCUSSION

A. Standard of Review

3. Under section 309(k) of the Act, the Commission shall grant a station's 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁸ 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."¹⁹

4. If a petition to deny or informal objection has been filed against a renewal application, the Commission reviews the pleading pursuant to Section 309(d) to determine whether it contains "specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with . . . subsection (k) of this section . . ."²⁰ If so, the Commission examines the record to determine whether a "substantial and material question of fact is presented to warrant further inquiry in a hearing."²¹ If the Commission determines that the record as a whole presents a substantial and material question of fact, or if it is unable to determine that the licensee has met the statutory renewal standard, it will designate the application for hearing.²² If it finds that the record does not present any substantial and material questions of fact and that the licensee has met the statutory standard, the Commission will grant the application.²³ As an alternative to finding that renewal should be denied where the licensee has failed to meet the statutory standard, the Commission may grant the application subject to conditions, including renewal for less than the maximum term.²⁴

¹³ Reply at 3.

¹⁴ *Id.* at 3-11.

¹⁵ Letter from Cary S. Tepper, Counsel to Genesis Commc'ns, Inc., to Tom Hutton, Deputy Div. Chief, Audio Div., Media Bureau (dated Feb. 27, 2020).

¹⁶ Objection at 2, 4-5.

¹⁷ Second Opposition at 2-4.

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ *Id.* § 309(k)(2), (3).

²⁰ *Id.* § 309(d)(1); *Astroline Commc'ns Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (*Astroline*). At this stage of the inquiry, the Commission determines whether the alleged facts, if true, "would alter the Commission's public interest calculus." *Gencom Inc. v. FCC*, 832 F.2d 171, 180-81 (D.C. Cir. 1987) (*Gencom*).

²¹ *Astroline*, 857 F.2d at 1561. The Commission's focus and discretion are wider at this stage. *Gencom*, 832 F.2d at 181 (stating that, in the second step, the Commission "must consider not only petitioner's evidence, but it must weigh that evidence against the facts offered in rebuttal . . .").

²² 47 U.S.C. § 309(k)(2), (3). *See also* 47 U.S.C. § 309(d)(2), (e).

²³ *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(k)(1).

²⁴ 47 U.S.C. § 309(k)(2).

B. Abuse of Process

5. We reject Licensee's assertion that Petitioner is abusing the Commission's process because it is using this proceeding to try to "maintain market dominance in Charlottesville."²⁵ "Abuse of process" has been defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule."²⁶ As the party alleging abuse of process, Licensee needed to make a clear showing that an abuse was actually perpetrated.²⁷ Licensee, though, has offered no specific evidence to support its abuse of process allegation. Further, while Licensee does allege that Petitioner had an economic motive for filing the Petition,²⁸ the mere existence of an ulterior economic motive in the filing of pleadings before the Commission is not sufficient to establish abuse of process without the presence of exacerbating factors.²⁹ Moreover, the Petition does touch upon compliance with the Underwriting Laws and other Commission rules, and thus addresses legitimate public interest concerns. Accordingly, we cannot find that Licensee raised a substantial and material question of fact regarding whether Petitioner abused Commission processes by filing the Petition.

C. Operating Agreement

6. Petitioner has brought to our attention the agreement between Licensee and other LPFM licensees, which formed the Virginia Radio Coop (Coop),³⁰ the agreements regarding the sale of underwriting announcements that Licensee and other LPFM licensees that are also Coop members had with Experience Media, LLC (Experience Media), and the arrangements regarding the sale of underwriting announcements that Licensee and other LPFM licensees that are also Coop members have with Experience Media Sales LLC (Experience Sales).³¹ These agreements are highly unusual in the context of the LPFM service. For this reason, we have reviewed them carefully to ensure that they do not create common ownership or control of the Station and any other broadcast station, which would violate

²⁵ First Opposition at 2.

²⁶ *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, BC Docket No. 81-742, First Report and Order, 4 FCC Rcd 4780, 4780, para. 2, n.3 (1989). In dealing with allegations of abuse of process by the filing of petitions to deny, we focus on whether the petition was filed for the primary and substantial purpose of delay. *HATCO-60*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1521 (1986) (*HATCO-60*), citing *Radio Carrollton*, Memorandum Opinion and Order, 69 FCC 2d 1139, 1150-51 (1978) (*Radio Carrollton*), modified, 72 FCC 2d 264 (1979), *aff'd sub nom.*, *Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981).

²⁷ *HATCO-60*, 60 Rad. Reg. 2d at 1521, para. 22, citing *Ralph C. Wilson Indus., Inc.*, 91 FCC 2d 139, 143 (1982). See also *WWOR TV, Inc.*, Decision 7 FCC Rcd 636, 638, para. 24 (1992) (noting that abuse of process is "not an easy matter prove"); *Evansville Skywave, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1699, 1702 n.10 (1992) (stating that a finding of abuse of process must be based on "more than a generalized concern" and that a conclusion that an entity abused the Commission's process requires a "specific finding, supported by the record, of abusive intent.").

²⁸ First Opposition at 2.

²⁹ See *Radio Carrollton*, 69 FCC 2d at 1151, n.25, citing *Gill Indus.*, Memorandum Opinion and Order, 56 FCC 2d 765, 769, para. 10 (1975).

³⁰ The legal name of this entity is the Virginia Radio Coalition LLC but the entity does business as Virginia Radio Coop.

³¹ It appears that Experience Sales replaced Experience Media but that both entities assisted Licensee with the sale of underwriting announcements. See Opposition to Consolidated Petition to Deny of Blue Ridge Free Media, Inc., Pleading File No. 82435, at 11, n.24 (filed Sept. 27, 2019) (BRFM Opposition).

the LPFM ownership restrictions set forth in sections 73.855 and 73.860 of the Rules.³² We note that we will scrutinize any agreement of a similar nature that involves an LPFM applicant or licensees to ensure that it does not contravene those restrictions.

7. In this case, Petitioner alleges³³ that the agreements noted in the preceding paragraph violate section 73.860(e) of the Rules. That section prohibits an LPFM licensee from “enter[ing] 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.*”³⁴ None of the Coop, Experience Media, or Experience Sales hold any Commission authorizations. Further, as detailed below, Petitioner has not raised a substantial and material question of fact regarding whether (1) the Coop holds an attributable interest in Licensee, any of its other LPFM licensee members, or any other individual or entity that holds FCC broadcast authorizations,³⁵ or (2) Experience Media held, or Experience Sales holds, an attributable interest in Licensee or any other individual or entity that holds FCC broadcast authorizations.³⁶ Accordingly, while we believe that Petitioner raised valid concerns about Licensee’s relationship with the Coop and its members, Experience Media and Experience Sales, we find that there is no substantial and material question of fact as to whether the prohibition set forth in section 73.860(e) bars Licensee’s membership in the Coop, Licensee’s agreement with Experience Media, or Licensee’s arrangement with Experience Sales.³⁷

8. *Coop.* We acknowledge that the Coop operating agreement is highly unusual and that Petitioner has identified issues that we will bear in mind should we be called upon to examine a similar agreement in the future. However, the Coop operating agreement itself does not contain any provisions that allow the Coop to control the programming, personnel, or finances of any Station operated by its

³² See 47 CFR §§ 73.855(a) (generally prohibiting grant of an LPFM authorization “to any party if the grant of that authorization will result in any such party holding an attributable interest in two or more LPFM stations”); 73.860(a) (generally prohibiting grant of an LPFM license “to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions”), 73.860(e) (prohibiting an LPFM licensee from “enter[ing] 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”).

³³ Petition at 3-8; Reply at 3-11.

³⁴ 47 CFR § 73.860(e) (emphasis added). Petitioner focuses on the fact that the agreement forming the Coop is entitled “Operating Agreement.” Reply at 4. Licensee disputes that any agreement referred to as an “operating agreement” is subject to the prohibition. First Opposition at 3-4 (suggesting that, if the agreement forming the Coop “does not rise to create a time brokerage or management operating relationship,” it is not an “operating agreement” prohibited by section 73.860(e)). Given our finding that the prohibition does not apply here because the Coop itself is not an FCC licensee and does not hold an attributable interest in any full power broadcast or LPFM station, we do not address this issue herein.

³⁵ We acknowledge that Licensee, like all of the Coop members, holds an interest in the Coop because the Coop is a limited liability company and the Coop’s organizational document does not contain any provisions insulating any member from any of the Coop’s activities. See LOI Response at Attachs. However, because we do not find that the Coop itself holds an attributable interest in any entity that holds broadcast authorizations, the fact that Licensee holds a cognizable interest in the Coop has no impact on Licensee’s compliance with the multiple ownership, cross-ownership and operating agreement prohibitions set forth in sections 73.855(a) and 73.860 of the Rules. 47 CFR §§ 73.855(a); 73.860(a), 73.860(e).

³⁶ See 47 CFR § 73.858 (providing that, with a few exceptions not applicable here, “[o]wnership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860, in accordance with the provisions of § 73.3555”).

³⁷ Because we find that the agreements at issue do not involve an LPFM licensee and another full power FM or LPFM licensee, we need not reach Petitioner’s and Licensee’s arguments about whether the agreements are the types of agreements prohibited by section 73.860(e). Petition at 3-6; First Opposition at 3-4; Reply at 4-5, 7, 8-10, 12-13, 21.

members that are Commission licensees. The agreement specifically states: “Nothing in this Operating Agreement shall supersede or violate any FCC, IRS, or federal, state, or local statute, rule or regulation pertaining to the separate and distinct business and operational integrity of its members.”³⁸ Licensee also has confirmed that “[t]he Coop’s role is limited to shared real property, facilities and other limited related expenses,”³⁹ and “[e]ach member remains independent from a programming and management perspective.”⁴⁰ Further, nothing in the record suggests that the day-to-day operation of the Coop involves the Coop exercising control over Licensee’s programming, personnel or finances. In fact, Licensee has explicitly stated that is not the case.⁴¹ The record supports Licensee’s claim, and includes evidence that Licensee maintains its own bank account,⁴² pays its apportioned share of any costs incurred by the Coop on behalf of it and the other Coop members,⁴³ purchased all equipment used solely for its own operations,⁴⁴ pays its own personnel costs,⁴⁵ and pays all of its own programming costs.⁴⁶

9. We acknowledge that, as Petitioner points out, Licensee and the other Coop members formed the Coop in order to share “a transmitter site, antenna, studio and office facilities.”⁴⁷ We agree with Petitioner that this sort of arrangement is unconventional and warrants greater scrutiny to ensure that it does not result in violations of the restrictions on LPFM ownership. However, after reviewing the record, we conclude that the Coop operating agreement is akin to a shared services agreement. As such, on its own, it does not give the Coop an attributable interest in Licensee or its other members,⁴⁸ and thus does not alter our conclusion that Petitioner has not raised a substantial and material question of fact as to whether section 73.860(e) bars the agreement by which Licensee and other LPFM licensees formed the Coop.

³⁸ LOI Response at Attach.

³⁹ See First Opposition at 3.

⁴⁰ First Opposition at 4. See also LOI Response at Sworn Statement of Jon Hall (stating that only individuals authorized by Licensee have “programming control over” the Station).

⁴¹ First Opposition at 3-4 (“None of the members of the Coop have any type of control or influence over the on-air broadcast programming of the other members. None of the members of the Coop exercise managerial influence over the other members.”); LOI Response at Sworn Statement of Jon Hall (stating “[t]here is no programming control over WREN-LP save for WREN-LP authorized, internal staff members” and “[o]ur programming is fully independent”). We note that other LPFM licensee members of the Coop have affirmed Licensee’s statements. See BRFM Opposition at 5 (“there is no common control”); Opposition to Consolidated Petition to Deny of Air Mix Virginia, Pleading File No. 87383, at Decl. of Joseph Middleton (filed Oct. 25, 2019) (“Neither the Coop nor any of the other members of the Coop has any involvement in the management or execution of WVAI-LP’s programming, finances or personnel.”).

⁴² LOI Response at Sworn Statement of Sharon Hall (“The WREN checking account was opened in late December 2016.”), and Attach. (WREN Checking Account Activity Since December 2016).

⁴³ *Id.* at Sworn Statement of Sharon Hall (“Each station reimburses [the Coop] ¼ of the shared expenses.”) and Virginia Rado Co-op Check Register (containing entries for various expenses with notes stating “divide by 4 stations”).

⁴⁴ *Id.* at Sworn Statement of Jon Hall (“Each station owns their studio equipment, transmitter, audio processors, and Wide-orbit software, etc.”).

⁴⁵ *Id.* (noting that if “people are paid, they are paid by the station that uses their services”).

⁴⁶ *Id.* (explaining that each individual member of the Coop is responsible for its own music licensing costs).

⁴⁷ Petition at 5; Reply at i.

⁴⁸ 2014 Quadrennial Regulatory – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket Nos. 14-50, 09-182, 07-294 and 04-256, Second Report and Order, 65 Comm. Reg. (P & F) 553, 559, para. 368 (2016) (declining to adopt even a disclosure requirement for shared services agreements involving radio stations, and explaining that radio shared services arrangements did not appear to present “potential public interest concerns”).

10. Finally, to the extent that Petitioner alleges that Licensee and other Coop members collaborated and consulted with each other about their LPFM applications,⁴⁹ we note that the Commission believes that “allowing and encouraging applicants to collaborate” can help ensure increased service to the public.⁵⁰ Petitioner has failed to explain how the pre-filing activities of the Licensee and the other Coop members demonstrate that the Coop agreement is an operating agreement prohibited by section 73.860(e).

11. *Experience Media.* We agree with Petitioner that Licensee’s agreement with Experience Media was unusual and that close scrutiny of the relationship between Experience Media and Licensee is warranted, especially since other Coop members had similar agreements with Experience Media. Additionally, we acknowledge that—as Petitioner points out—some of the marketing materials distributed by Experience Media use language suggesting that the Station was under “common ownership” or “common management” with the LPFM stations of other Coop members.⁵¹ However, Licensee’s agreement with Experience Media specified that Experience Media was “acting as an independent contractor and not as an employee” and explicitly stated that it did “not create a partnership or joint venture” between the parties and is “exclusively a contract for service.”⁵² Moreover, the marketing materials specified different rates for underwriting announcements at each station, and did not indicate that the purchase of underwriting announcements on one station was tied to the purchase of announcements on any other station or that a discount was being offered for the purchase of underwriting announcements on more than one of the stations.⁵³ Given the information provided by Licensee and discussed above, we find that there is no substantial and material question of fact regarding whether, based on the agreement between Licensee and Experience Media, that entity holds an attributable interest in Licensee. We note, though, that we remain concerned about these types of arrangements and will subject any similar agreements to careful scrutiny going forward.

12. *Experience Sales.* Like Licensee’s agreement with Experience Media, Licensee’s arrangement with Experience Sales is unconventional. Given that other Coop members have similar arrangements with Experience Sales, careful review of Licensee’s arrangement with Experience Sales is warranted. In discussing its arrangement with Experience Sales, Licensee has explained that it “maintains the right to accept or reject any underwriting referrals from [Experience Sales].”⁵⁴ Further, while Petitioner asserts that Licensee’s arrangement with Experience Sales is problematic because the owner of that entity is also an on-air personality at the Station,⁵⁵ being an employee at a station does not give someone an attributable interest in that station.⁵⁶ Given the information before us, we find that Petitioner has not raised a substantial and material question of fact regarding whether Experience Sales holds an attributable interest in Licensee or any other entity holding FCC authorizations. We remain troubled by this type of arrangement, and will continue to subject any similar agreements to careful review. We

⁴⁹ Reply at 6.

⁵⁰ *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educ. Broad. Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519, 12534, para. 37 (2019). Specifically, “[b]y allowing organizations interested in filing an LPFM application the leeway to communicate with other eligible organizations, they can maximize their chances of acquiring LPFM construction permits and explore potential time-share construction and operating efficiencies.” *Id.*

⁵¹ Petition at 4, 6, and Attach. 1.

⁵² LOI Response at Attach. (Consulting Agreement).

⁵³ See also Petition at Attach. 1.

⁵⁴ First Opposition at 8.

⁵⁵ Petition at 5-6.

⁵⁶ See *The Helpline*, Letter Order, 23 FCC Rcd 12665, 12670 (MB 2008), citing *State of Oregon Acting by and through the State Board of Higher Educ. for the Benefit of S. Oregon Univ.*, Letter Order, 22 FCC Rcd 17663, 17665 (MB 2007) (“A mere employment relationship is not cognizable under the NCE attribution standards.”).

caution Licensee to ensure that any marketing materials created by itself, Experience Sales or any other entity do not imply or state that the Station is commonly owned, managed or marketed with any other broadcast station.

D. Educational Programming

13. We find Petitioner did not raise a substantial and material question of fact regarding whether the Station's programming qualifies as educational. Besides Petitioner's allegations regarding the Station's underwriting announcements (which we address separately below) and its general assertion that the Station broadcasts "a 'Real Oldies' music format,"⁵⁷ Petitioner does not offer any specific evidence to support its arguments that the Station is not being used for an educational purpose.⁵⁸

14. We also note that Petitioner misses the mark with its argument that the Station is not providing the type of educational programming that Licensee specified in the Permit Application.⁵⁹ The Commission has long recognized that licensees are entitled to broad discretion in the scheduling, selection, and presentation of programming,⁶⁰ and has found that this is particularly true with regard to the programming decisions of noncommercial educational stations, such as LPFM stations.⁶¹ Nothing in the Act, or the Rules bars Licensee—or any other LPFM station—from modifying its program offerings so long as those offerings continue to advance the educational objectives of its licensee.

E. Misrepresentations⁶²

15. We find Petitioner has failed to either make a prima facie case or raise a substantial and material question of fact regarding whether Licensee made false statements and/or false certifications in the Permit Application.⁶³ For instance, Petitioner suggests that Licensee may have falsely certified that it

⁵⁷ Petition at 14.

⁵⁸ To the extent that Petitioner focuses on the fact that the Station primarily broadcasts music, we note that it is not necessary that a station's programming be exclusively, or even primarily, educational in nature in order for the station to qualify as an educational station. *See Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642, at n. 30 (MB July 31, 2023), *citing Lower Cape Commc'ns, Inc.*, Memorandum Opinion and Order, FCC 80-453, 47 Rad. Reg. 2d 1577, 1579 (1980). Further, on at least one occasion, the Commission has found that use of an NCE station to create and disseminate "specially formatted classical music programming" advances an educational program. *Univ. of San Francisco & Classical Pub. Radio Network, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10534-35, para. 8 and n.34 (2015).

⁵⁹ Petition at 13-15.

⁶⁰ *See, e.g., License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401, para. 7 (MB 1993).

⁶¹ *Pittsburg State Univ.*, Letter Order, 22 FCC Rcd 12983, 12985 (MB 2007). The Commission has made clear that it defers to a licensee's editorial judgment as to what constitutes "educational" programming, unless that judgment is arbitrary or unreasonable. *Enid Public Radio Ass'n*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 9138, 9141, n.23 (MB 2010); *WQED Pittsburgh and Cornerstone Television, Inc.*, Order on Reconsideration, 15 FCC Rcd 2534, 2535, para. 3 (2000). The Commission historically "has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming." *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732, para. 36 (1981).

⁶² A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129, para. 6 (1983); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted).

⁶³ Petition at 17-19. Grant of the Permit Application is final. However, Licensee's character is relevant to our consideration of the Application. Accordingly, we herein consider Petitioner's allegations that Licensee made misrepresentations and false certifications in those applications. *See, e.g., Lighthouse Christian Ctr.*, Memorandum

and all parties to the Permit Application complied with the Commission's policies regarding investor insulation and the non-participation of non-party investors or creditors.⁶⁴ However, Petitioner offers no evidence to support this claim.⁶⁵

16. In addition, as noted above, Petitioner has not raised a substantial and material question of fact regarding Licensee's compliance with the operating agreement prohibition set forth in section 73.860(e) of the Rules. Nor has Petitioner offered any evidence suggesting Licensee violated the cross-ownership prohibition set forth in section 73.860(a) of the Rules. Accordingly, there is no evidence in the record raising a substantial and material question of fact regarding whether Licensee falsely certified that it and all parties to the Permit Application complied with the LPFM cross-ownership limits.⁶⁶

17. Further, although we conclude below that the spouse of one of Licensee's board members holds an attributable interest in Licensee, and this means Licensee incorrectly certified in the Permit Application that it and all parties to the Permit Application complied with the Commission's policies relating to media interests of immediate family members and with the multiple ownership limits set forth in section 73.855 of the Rules,⁶⁷ we conclude that Licensee did not make these incorrect certifications with an intent to deceive.⁶⁸ We base this conclusion on the fact that Licensee sought the advice of communications counsel regarding this certification and was advised that it did comply with the policies,⁶⁹ and the fact that the worksheet (Worksheet #1a—Family Relationships) that was part of the Permit Application form also suggested that Licensee complied with the policies.⁷⁰

Opinion and Order, 32 FCC Rcd 6244, 6249, para. 15 and n. 45 (MB 2017); *Lazer Licenses, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 6357, 6359, para. 5 (MB2015); *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Comm'ns Co. to Sinclair Television Grp., Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9156 (MB 2014); *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722 (MB 2013) (all considering character-related allegations made in relation to other applications in evaluating the applications under consideration).

⁶⁴ Petition at 18. See also Permit Application, Section II—Legal, Item 5—Ownership.

⁶⁵ Petitioner did offer a vague allegation that “the Coop charade is in violation of the Commission's policies relation to investor insulation and non-participation of non-party investors or creditors” but offered no details. Petition at 18.

⁶⁶ See also Permit Application, Section II—Legal, Item 5—Ownership.

⁶⁷ See also Permit Application, Section II—Legal, Item 5—Ownership.

⁶⁸ Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816, n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

⁶⁹ LOI Response at Sworn Statement of Jon Hall (“I did run down a checklist ...to verify that the distance between the stations and signal overlap issues allowed us to both apply for these frequencies legally. I also verified that at the time with our lawyer”).

⁷⁰ When the Permit Application was filed, the instructions to FCC Form 318 (Low Power FM Station Construction Permit Application) told applicants to use the Worksheet re Family Relationships to determine how to regarding the media interests of immediate family members. The worksheet first asked whether any member of the immediate family (i.e., husband, wife, father, mother, sister, brother, son and/or daughter) of any party to the application had any interest in or connection with any other broadcast station, pending broadcast application, or daily newspaper in the same area. It indicated that two LPFM stations were considered to be in the same area if their transmitting antennas were located within seven miles of one another. Based on the coordinates provided in the Permit Application and the Gateway application for WKMZ-LP's construction permit, minor modification of construction permit and license to cover, Application File Nos. BNPL- 20131114ACU, BMPL-20170130AAA, BLL- 20170209ABP, the transmitting antennas of the two stations were more than 12 miles apart. See also LOI Response at Sworn Statement of Jon Hall (“I did verify a checklist ... to verify that mileage separations and other parameters did work for Sharon and myself to be on the two independent boards.”).

18. Finally, we find that Petitioner has failed to make a prima facie case that Licensee made a misrepresentation in the Permit Application when it pledged to air at least eight hours of locally originated programming per day.⁷¹ Petitioner suggests that Licensee made this pledge in order to obtain a comparative advantage in the event the Permit Application was mutually exclusive with any other applications for LPFM station construction permits, and implies Licensee never intended to honor the pledge.⁷² However, Petitioner offers no evidence to support its allegations. Indeed, it is hard to envision how Petitioner could offer such evidence since the Permit Application was granted as a singleton. Licensee therefore was not required to honor its pledge to air locally originated programming.

F. Underwriting Announcements

19. As noted above, we have negotiated—and herein adopt—a Consent Decree with Licensee. Therein, Licensee acknowledges that it has violated the Underwriting Laws, agrees to make a civil penalty payment to the United States Treasury in the amount of one thousand dollars (\$1,000) and agrees to adopt a compliance plan to prevent further violations of the Underwriting Laws. After reviewing the terms of the Consent Decree, we find the public interest would be served by its approval and by terminating the Bureau’s investigation of Licensee’s violations of the Underwriting Laws, subject to the terms of the Consent Decree. We note that, given the findings made herein, we grant the Petition in part and grant the Objection.

G. Multiple Ownership Limit

20. We find that Licensee was involved in a violation of section 73.855(a) of the Rules.⁷³ Specifically, we have determined that Jonathan Hall (Hall) held attributable interests in Licensee and the Station, and Gateway Media, Inc. (Gateway) and WKMZ-LP, Ruckersville, Virginia, in violation of section 73.855(a) of the Rules. Hall was one of Gateway’s officers, and was and is married to one of Licensee’s directors. While Licensee claims that Hall does not have any control over the Station’s programming, personnel or finances,⁷⁴ the record indicates otherwise.⁷⁵ Hall participated in

⁷¹ Permit Application, Section III—Point System Factors, Item 2—Local program origination.

⁷² Petition at 19.

⁷³ 47 CFR § 73.855(a) (generally prohibiting any party from holding an attributable interest in two or more LPFM stations). We note that Petitioner alleged only that Licensee was a party to violations of section 73.860 of the Rules, 47 CFR § 73.860, which prohibits cross-ownership of an LPFM station and any other non-LPFM broadcast station, and also prohibits operating agreements between an LPFM licensee and either a full power broadcast station or another LPFM station. Petition at 18 (“The issue is whether there is a violation of section 73.860 of the Rules resulting from the relationship of Sharon P. Hall, who is listed as an officer of [Licensee], licensee of WREN-LP, and Jonathan G. Hall, who is listed as an officer of Gateway Media, Inc., licensee of WKMZ-LP.”); Reply at 11 (asserting “the common operation of WREN-LP and WKMZ-LP violated Section 73.860(e) of the Rules, both as a result of the simulcast as well as the direct involvement of Jon Hall in operation of WREN-LP” and referencing the “spousal attribution policy”). However, because Petitioner provided no evidence of any agreement between Licensee and Gateway Media, Inc., and because Petitioner’s allegations related to two LPFM licensees, we instead considered whether a violation of section 73.855(a) had occurred.

⁷⁴ First Opposition at 10. Licensee also states that it (1) was advised by communications counsel that it was in compliance with the Commission’s policies regarding media interests of immediate family members, and (2) relied upon the worksheet (Worksheet #1a—Family Relationships) that was part of the Permit Application form, which also suggested that Licensee complied with the policies. LOI Response at Sworn Statement of Jon Hall. While both of these claims are relevant to our determination, *supra* at para. 17, that Licensee did not possess an intent to deceive the Commission regarding its compliance with the Commission’s policies regarding the media interests of immediate family members, they did not exempt Licensee or Hall from the obligation to comply with the prohibition on multiple ownership of LPFM stations.

⁷⁵ We acknowledge that, as Licensee states, the Commission no longer presumptively attributes the media interests of one spouse to the other solely on the basis of marital status. First Opposition at 8-9, citing *Clarification of Commission Policies Regarding Spousal Attribution*, Policy Statement, 7 FCC Rcd 1920, 1920, para. 1 (1992).

programming, and personnel decisions related to the Station.⁷⁶ Hall had prior broadcast experience, while his wife is an accountant.⁷⁷ Hall was involved in the Licensee's application process.⁷⁸ Finally, Genesis and Gateway shared personnel, and programming.⁷⁹ Because both the Station and WKMZ-LP were subject to Hall's influence and control, their media interests will be attributed to one another. We note that Hall no longer holds an attributable interest in WKMZ-LP, which ceased operation on October 11, 2019,⁸⁰ and later had its license cancelled.⁸¹ For these reasons, we are not taking separate enforcement action in relation to this violation.

H. Renewal Application

21. After reviewing the record before us, we believe that grant of a short-term license renewal is appropriate in order to ensure Licensee's ongoing compliance with the Act and the Rules.⁸² Accordingly, upon Licensee fully and timely satisfying its obligation to pay the Civil Penalty in the manner set forth in Paragraph 16 of the attached Consent Decree, we will grant the Application for a short-term renewal of two years (24 months).

22. Finally, we have reviewed the Application in accordance with section 309(k) of the Act⁸³ and find that the Station has served the public interest, convenience, and necessity during the subject license term. We find that nothing in the record creates a substantial or material question of fact calling

Instead, the Commission decides spousal attribution issues based on certain factors traditionally considered relevant: (1) Representations that the media interests of close family members will be independent and will not be subject to common influence or control; (2) Commingling of ownership or other interests in media businesses; (3) Participation by family members in the financial affairs, programming and personnel decisions of each other's media interests; (4) Prior broadcast experience of the individual seeking to establish independent interests; (5) Financial independence; (6) Sharing of personnel, equipment, contractors or information regarding programming; and (7) Involvement by family members in the acquisition or application process. *See id.* at 1922-23, paras. 16, 21.

⁷⁶ First Opposition at Decl. of Sharon Hall (noting that Hall was "on the air" during the Station's early operations, and stating that Hall is the Station's engineer, General Manager, Program Director, and "the one who handles most of the 'back end' work such as editing programs and nearly everything else"); LOI Response at Sworn Statement of Jon Hall (referring to the Station's programming as "our programming" stating "we are a volunteer operation" in reference to Licensee, and indicating he had "never in any way been in involvement with any other stations programming in any way beyond [the Station]"); Addendum at 1 (consisting of sworn statement by Hall, which discusses various underwriting announcements and at various points characterizes Licensee's actions and decisions as things that "we" did).

⁷⁷ *See* LOI Response at Sworn Statement of Jon Hall (explaining that Hall was a Vice President at another Charlottesville area station, and that Hall has performed broadcast engineering work) and Jon Hall Emails (including email from Sharon Hall in which she states she works at an "accounting firm"). *See also* LinkedIn Profile, Sharon Hall, <https://www.linkedin.com/in/sharon-hall-2b0b0a3b> (last visited Aug. 28, 2024) (explaining that Sharon Hall is "an accounting/bookkeeping manager at a public accounting firm" and also a board member for the Station).

⁷⁸ LOI Response at Sworn Statement of Jon Hall ("I decided that filing for a station in Charlottesville would be highly cost effective given the economy of scale and the much larger potential audience. Sharon, would apply for the Charlottesville channel.").

⁷⁹ LOI Response at Sworn Statement of Jon Hall (stating that Gateway "originally intended to operate as a separate entity from [the Station]," acknowledging that WKMZ-LP "was simply a repeater of [the Station's] programming," and noting that WKMZ-LP "was simply an 'extension' of [the Station]" for purposes of the agreement by which the Coop was formed). Notably, neither of the statements made by Sharon Hall under penalty of perjury discussed the Station's programming, or the process of applying for the Station's construction permit. Only the statements made by Jon Hall address them.

⁸⁰ LOI Response at Sworn Statement of Jon Hall.

⁸¹ *See supra* note 2.

⁸² 47 U.S.C. §§ 317, 399B; 47 CFR §§ 73.503(d), 73.801.

⁸³ 47 U.S.C. § 309(k)(1).

for further inquiry regarding the Application. After reviewing the record and 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 of the issues raised in the Petition and Objections, and granting the Application for a short renewal term of two years.

IV. CONCLUSION/ACTIONS

23. **IT IS ORDERED** that, pursuant to Section 4(i), 4(j) and 309(k) of the Communications Act of 1934, as amended,⁸⁴ and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,⁸⁵ the Consent Decree attached hereto **IS ADOPTED** and its terms incorporated by reference.

24. **IT IS FURTHER ORDERED** that the Petition to Deny (Pleading File No. 80853) filed by Tidewater Communications, LLC, on September 3, 2019, **IS GRANTED TO THE EXTENT INDICATED HEREIN**, and the Informal Objection (Pleading File No. 124876) filed by Tidewater Communications, LLC, on October 19, 2020, **IS GRANTED**.

25. **IT IS FURTHER ORDERED** that the application of Genesis Communications, Inc., for renewal of license for noncommercial educational low power FM station WREN-LP, Facility ID No. 194996 (Application File No. 72618) **IS GRANTED**, as conditioned herein.

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

27. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order and Consent Decree shall be sent via email to Sharon Hall, Genesis Communications, Inc., and Cary S. Tepper, Counsel, Genesis Communications, Inc..

28. **IT IS FURTHER ORDERED** that, pursuant to 47 CFR § 73.878, a copy of this Memorandum Opinion and Order and Consent Decree, and as otherwise required all related investigatory materials, **SHALL BE RETAINED** in the station records for WREN-LP, until grant of the next license renewal application for that station.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁸⁴ 47 U.S.C. §§ 154(i), 154(j), 309(k).

⁸⁵ 47 CFR §§ 0.61, 0.283.

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

In the Matter of	)	
	)	
Genesis Communications, Inc.	)	NAL/Account No. MB-202441410018
WREN-LP, Charlottesville, Virginia	)	FRN: 0023016124
Application for Renewal of License	)	Facility ID No. 194996
	)	Application File No. 72618

CONSENT DECREE

I. INTRODUCTION

1. The Media Bureau of the Federal Communications Commission and Genesis Communications, Inc. (hereinafter Licensee, as defined below), licensee of low power FM station WREN-LP, Charlottesville, Virginia (hereinafter Station, as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation concerning Licensee's compliance with sections 399B of the Act and 73.503(d) and 73.801 of the Commission's rules.¹ Pursuant to the Consent Decree, Licensee agrees, among other things, to a short-term, two-year license renewal for the Station, to implement a comprehensive plan to ensure its future compliance with its underwriting obligations, and to pay a Civil Penalty to the United States Treasury in the total amount of one thousand dollars (\$1,000).

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 an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification;
 - (c) "Application" means the pending application for renewal of license for low power FM station WREN-LP, Charlottesville, Virginia, Facility ID No. 194996 (Application File No. 72618).
 - (d) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (e) "Civil Penalty" means the payment Licensee 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) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Licensee is subject by virtue of being a Commission licensee, including, but not limited to, section 399B of the Act, 47 U.S.C. § 399B, and sections 73.503(d), and 73.801 of the Rules, 47 CFR §§ 73.503(d), 73.801;
 - (h) "Compliance Plan" means the processes and procedures developed by Licensee in an effort to ensure compliance with section 399B of the Act, 47 U.S.C. §

¹ See [47 U.S.C. §399B](#); [47 CFR §§ 73.503\(d\), 73.801](#) (Underwriting Laws).

399B, and sections 73.503(d) and 73.801 of the Rules, 47 CFR §§ 73.503(d), 73.801;

- (i) “Covered Employees” means all employees, volunteers, and agents of Licensee who are responsible for performing, supervising, overseeing, or managing activities related to Licensee’s responsibilities under the Act and the Rules, including the Underwriting Laws;
- (j) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- (k) “Investigation” means the Bureau’s investigation of information contained in the Application and related pleadings, as detailed herein;
- (l) “License” refers to the license authorization for low power FM station WREN-LP, Charlottesville, Virginia (Facility ID No.194996);
- (m) “Licensee” means Genesis Communications, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
- (n) “Parties” means Licensee and the Bureau;
- (o) “Rules” means the FCC’s rules, found in Title 47 of the Code of Federal Regulations;
- (p) “Station” means low power FM station WREN-LP, Charlottesville, Virginia (Facility ID No. 194996);
- (q) “Underwriting Laws” means section 399B of the Act, 47 U.S.C. § 399B, and sections 73.503(d) and 73.801 of the Rules, 47 CFR §§ 73.503(d), 73.801, and the decisions and orders of the Commission interpreting these provisions; and
- (r) “Violations” means the violations of section 399B of the Communications Act, as amended, 47 U.S.C. § 399B, and sections 73.503(d), and 73.801 of the Commission’s rules, 47 CFR §§ 73.503(d), 73.801.

III. BACKGROUND

A. Legal Background

3. *Underwriting Laws.* Noncommercial educational broadcasters, including low power FM stations, are licensed to use spectrum that is specifically reserved for them, and they benefit from lower regulatory fees and fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and noncommercial educational broadcasters cannot air commercial advertising.² The Underwriting Laws help “protect the public’s use and enjoyment of commercial-free broadcasts” and “provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising.”³ Noncommercial educational broadcasters are licensed to provide noncommercial, locally-oriented programming for their communities, and the Commission acts when necessary to enforce the laws prohibiting noncommercial educational stations from airing announcements that promote for-profit advertisers.

4. 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

² 47 U.S.C. § 399B(b)(2).

³ *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

product” of for-profit entities.⁴ Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.⁵ Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors’ products, services, or businesses.⁶ Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.⁷

B. Factual Background

5. The Commission received a Petition to Deny and later an Informal Objection filed against the above-captioned Application alleging that Licensee violated the Underwriting Laws by broadcasting advertisements, which impermissibly promoted their for-profit underwriters’ products or services and contained comparative and qualitative descriptions, pricing information, calls to action, and inducements to buy the products or services.⁸ Both the Petition to Deny and the Informal Objection included full written transcripts of the alleged advertisements.⁹

6. Based on the foregoing, the Bureau’s Audio Division issued a letter of inquiry to gather additional information concerning the allegations and suspended processing of the Application.¹⁰ 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

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

8. **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.

9. **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.

⁴ 47 U.S.C. § 399B(a).

⁵ 47 U.S.C. § 399B(b)(2).

⁶ *Noncommercial Educ. Broad. Serv.; Clarification of Underwriting Guidelines*, Public Notice, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Red 827 (1992).

⁷ *Id.*

⁸ See Consolidated Petition to Deny of Tidewater Commc'ns, LLC, Pleading File No. 80850 (filed Sept. 3, 2019) (Petition); Consolidated Informal Objection of Tidewater Commc'ns, LLC, Pleading File No. 124783 (filed Oct. 19, 2020) (Objection).

⁹ See Petition, Attach. 5; Objection, Attach.

¹⁰ See Letter from Albert Shuldiner, Chief, Audio Div., Media Bureau, to Blue Ridge Free Media, et al. (dated Jan. 28, 2020).

10. **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. The Bureau further 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 any new proceeding on its own motion against Licensee concerning the matters that were the subject of the Investigation, or to set for hearing the question of Licensee's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.¹¹ Licensee acknowledges and agrees that nothing herein prevents the Bureau or Commission from instituting any new proceedings against Licensee during the term of this Consent Decree concerning any matters that were not the subject of the Investigation.¹²

11. **Admission of Liability.** Licensee stipulates that it violated section 399B of the Act and sections 73.503(d), and 73.801 of the Rules.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Licensee shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Underwriting Laws prior to assuming such duties.

13. **Compliance Plan.** Licensee agrees that, within 60 calendar days after the Effective Date, the Compliance Officer shall, on behalf of Licensee, develop, implement, and administer a Compliance Plan designed to ensure Licensee's future compliance with the Communications Laws, the Underwriting Laws, and the terms and conditions of this Consent Decree. The Compliance Plan shall contain, at a minimum, the following components:

- (a) **Consultation with Counsel.** If the Compliance Officer is not an FCC regulatory counsel or in-house counsel, Licensee shall consult with outside FCC regulatory counsel regarding Licensee's overall compliance with the Underwriting Laws. Such consultations shall occur on an annual basis, if not more frequently.
- (b) **Operating Procedures.** The Compliance Plan shall contain Operating Procedures that all Covered Employees must follow to ensure Licensee's compliance with the Underwriting Laws. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that Licensee complies with the Underwriting Laws.
- (c) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that the Compliance Officer has distributed to all Covered Employees within 60 calendar days after the Effective Date. The Compliance Manual shall explain fully and completely the Underwriting Laws and include the Operating Procedures that Covered Employees shall follow. The Compliance Officer shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The

¹¹ See 47 CFR § 1.93(b).

¹² We caution Licensee that it may jeopardize its license if ongoing violations of the Underwriting Laws persist.

Compliance Officer shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (d) **Compliance Training Program.** The Compliance Plan shall contain a comprehensive Compliance Training Program for all Covered Employees regarding compliance with the Underwriting Laws. As part of the Compliance Training Program, the Compliance Officer shall advise all Covered Employees of Licensee's obligation to report any noncompliance with the Underwriting Laws under Paragraph 13(e) of this Consent Decree and shall instruct Covered Employees on how to disclose noncompliance to the Compliance Officer and Licensee. The Compliance Officer shall train all Covered Employees pursuant to the Compliance Training Program within 75 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within 30 calendar days after the date such person becomes a Covered Employee. The Compliance Officer shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (e) **Reporting Noncompliance.** Licensee agrees that it shall report any noncompliance with the Underwriting Laws, and with the terms and conditions of this Consent Decree within 15 calendar days after discovery of such noncompliance at any station of which Licensee is or becomes the licensee. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, at Albert.Shuldiner@fcc.gov; and Heather Dixon, Audio Division, Media Bureau, Federal Communications Commission, at Heather.Dixon@fcc.gov.

14. **Compliance Reports.** Licensee agrees that it shall submit Compliance Reports to the Commission 90 calendar days after the Effective Date and thereafter annually on the anniversary of the Effective Date up to and including the Termination Date, as that term is defined below.¹³

- (a) Each Compliance Report shall include a detailed description of Licensee's efforts during the preceding period to comply with the terms and conditions of this Consent Decree and the Underwriting Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, stating that the Compliance Officer has personal knowledge that 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, including the reporting obligations set forth in Paragraph 13(e) of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of

¹³ A Compliance Report must be filed on the Termination Date in the event that the Termination Date does not fall on the anniversary of the Effective Date.

the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁴

- (c) If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Licensee, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Licensee has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted via email to: Albert Shuldiner, Audio Division, Media Bureau, Federal Communications Commission, at Albert.Shuldiner@fcc.gov; and Heather Dixon, Audio Division, Media Bureau, Federal Communications Commission, at Heather.Dixon@fcc.gov.

15. **Termination Date.** The obligations to which Licensee is subject pursuant to this Consent Decree shall terminate twenty-four (24) months after grant of the Application, *provided* the Bureau is satisfied that Licensee has demonstrated substantial compliance with its obligations under the terms of the Consent Decree. If the Bureau is not satisfied that Licensee has demonstrated substantial compliance with the terms of the Consent Decree, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for an additional period of time as the Bureau deems appropriate.

16. **Civil Penalty.** Licensee will pay a civil penalty to the United States Treasury in the amount of one thousand dollars (\$1,000) within thirty (30) calendar days of the Effective Date (Civil Penalty). Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default, as described below in paragraph 18, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated.

17. **Payment.** Licensee shall send electronic notification of payment to Heather Dixon, Audio Division, Media Bureau, Federal Communications Commission, at Heather.Dixon@fcc.gov, on the date said payment is made. Below are payment instructions that Licensee shall follow based on the form of payment it has selected:¹⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159¹⁶ or printed Commission Registration System (CORES) form¹⁷ 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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block

¹⁴ 47 CFR § 1.16.

¹⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

¹⁶ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁷ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/core/userLogin.do>.

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 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 CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, 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” 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 CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. **Event of Default.** Licensee agrees that an Event of Default shall occur upon: (a) the failure by Licensee to pay the full amount of the Civil Penalty to the U.S. Treasury on or before the due date specified in paragraph 16 of this Consent Decree; or (b) the release of an order within thirty-six (36) months of the Effective Date by the Commission or Bureau, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Licensee or any other entity owned, operated, or controlled by, or under common control with Licensee violated the Commission’s Underwriting Laws and/or the terms of this Consent Decree.

19. **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 and the Suspended Penalty 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 and the Suspended Penalty, together with 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.

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

20. **Waivers.** Licensee agrees that, as of the Effective Date, it waives any and all rights it may otherwise 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 Parties agree that Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. The Parties further agree that 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 the Adopting Order, neither Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Licensee shall waive any statutory right to a trial *de novo*. Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁹ relating to the matters addressed in this Consent Decree.

21. **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.

22. **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.

23. **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.

24. **Successors and Assigns.** Licensee acknowledges and agrees that this Consent Decree and all of the obligations, terms and conditions herein shall be binding on its successors, assigns, and transferees, and on the successors, assigns, and transferees of all broadcast stations of which it is and becomes the licensee.

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

26. **Modifications.** The Parties agree that this Consent Decree may not be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The Parties agree that 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.

28. **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.

¹⁹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **Counterparts.** The Parties agree that 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.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: 
Albert Shuldiner
Chief, Audio Division

Date: September 30, 2024

GENESIS COMMUNICATIONS, INC.

By: _____
Sharon Hall
President

Date: _____

29. **Counterparts.** The Parties agree that 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.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Albert Shuldiner
Chief, Audio Division

Date: _____

GENESIS COMMUNICATIONS, INC.

By: Sharon Hall/President
Sharon Hall
President

Date: 9/30/24