

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

In the Matter of)	
)	
Mission Broadcasting, Inc.)	Facility ID No. 57837
Application For Renewal of License For Television)	FRN No. 0004284899
Station WUTR(TV), Utica, New York)	Acct. No. 201641420021
)	File No. BRCDT-20150130AES

ORDER

Adopted: December 15, 2016

Released: December 15, 2016

By the Commission:

1. In this Order, we adopt the attached Consent Decree entered into between the Commission and Mission Broadcasting, Inc. (Mission). The Consent Decree resolves issues raised in our review of the above-captioned application for license renewal for full power commercial television station WUTR(TV), Utica, New York (Station), specifically regarding Mission’s compliance at the Station with the children’s programming requirements set forth in Section 73.671 of the Commission’s Rules (Rules),¹ which implements the Children’s Television Act of 1990 (CTA).² A copy of the Consent Decree is attached hereto and incorporated by reference.

2. After reviewing its terms, we find that the public interest would be served by adopting the Consent Decree. We conclude that there are no substantial or material questions of fact regarding Mission’s qualifications to remain a Commission licensee. After reviewing the record before us we conclude that the Consent Decree contains appropriate terms and conditions that warrants grant of the Station’s license renewal and find that the Licensee has demonstrated its ability to ensure ongoing compliance with the CTA and with Section 73.671 of the Rules.³ Accordingly, we direct the Media Bureau to grant the renewal application and renew the Station license for a full license term pursuant to Section 309(k)(2) of the Communications Act of 1934, as amended (Act), provided that WUTR has fully and timely satisfied its obligation to make the Settlement Payment called for by paragraph 13 of the attached Consent Decree. As a result, we need not determine whether Mission has committed “serious violations” of our rules or violations that constituted a “pattern of abuse” for purposes of Section 309(k)(1).⁴

¹ 47 C.F.R. § 73.671.

² Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, and 394.

³ Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application “if it finds, with respect to that station, during the preceding term of its license—(a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.” 47 U.S.C. § 309(k)(1). Section 309(k)(2) of the Act states, however, that if the licensee fails to meet this three-part standard, the Commission may deny the application—after notice and comment, and opportunity for hearing under Section 309(e) of the Act—“or grant the application on terms and conditions as are appropriate....” 47 U.S.C. § 309(k)(2).

⁴ See *Shareholders of Univision Communications Inc. et al.*, Memorandum Opinion and Order, 22 FCC Rcd 5842, 5859, n.113 (2007) (“Given our finding that the grant of the renewal application is warranted under Section 309(k)(2) of the Act because the consent decree contains appropriate terms and conditions, we need not determine whether Univision committed ‘serious violations’ of our rules or violations that constituted ‘a pattern of abuse’ for

(continued....)

3. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) of the Act,⁵ the Consent Decree attached to this Order IS ADOPTED.

4. IT IS FURTHER ORDERED that the investigation by the Commission into the matters discussed above and in connection with this station IS TERMINATED.

5. IT IS FURTHER ORDERED that a copy of this Order and Consent Decree shall be sent by both First Class mail and Certified Mail, Return Receipt Requested, to Mission Broadcasting, Inc., 30400 Detroit Road, Suite 304, Westlake, OH 44145-1855 and to its counsel Gregory L. Masters, Esq., Wiley Rein, 1776 K Street, N.W. Washington D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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purposes of Section 309(k)(1)).”

⁵ 47 U.S.C. § 154(i).

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Application For Renewal of License For Television)	FRN No. 0004284899
Station WUTR(TV), Utica, New York)	Acct. No. 201641420021
)	File No. BRCDT-20150130AES

CONSENT DECREE

1. The Federal Communications Commission (Commission) and Mission Broadcasting, Inc. (Mission), licensee of station WUTR(TV), Utica, New York, hereby enter into this Consent Decree for the purpose of: (i) resolving the Commission’s investigation of Mission’s compliance with the Children’s Television Act of 1990,⁶ as implemented by Section 73.671 of the Commission’s rules,⁷ and (ii) facilitating grant of WUTR’s above-captioned pending license renewal application.

I. DEFINITIONS

2. For the purposes of this Consent Decree the following definitions shall apply:
- a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - b) “Adopting Order” means the Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - c) “Bureau” means the Media Bureau of the Federal Communications Commission.
 - d) “Commission” or “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - e) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission including but not limited to, 47 C.F.R. § 73.671 and the CTA.
 - f) “CTA” means the Children’s Television Act of 1990, Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, and 394.
 - g) “Division” means the Video Division of the Media Bureau.
 - h) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - i) “Investigation” means the Bureau’s investigation of Mission’s potential violations of the CTA and 47 C.F.R. § 73.671.
 - j) “License Renewal Application” means the license renewal application of station WUTR(TV), Utica, New York, File No. BRCDT-20150130AES.
 - k) “Mission” means Mission Broadcasting, Inc. and its subsidiaries, affiliates, successors, assigns, and/or transferees.
 - l) “Parties” means Mission and the Commission, each of which is a “Party.”

⁶ Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, and 394.

⁷ 47 C.F.R. §§ 73.671.

- m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- n) “Station” means the broadcast television station WUTR(TV), Utica, New York.

II. BACKGROUND

3. On January 30, 2015, Mission timely filed its License Renewal Application for the Station. An audit by Division staff of the Station’s Children’s Television Programming Reports revealed that for a portion of the Station’s prior license term, Mission failed to air the necessary amount of children’s programming per week, as averaged over a period of six months, on its supplemental digital program stream.⁸ Under the CTA, as implemented by Section 73.671 of the Rules, a broadcast television licensee is required “to serve, over the term of its license, the educational and informational needs of children through both the licensee’s overall programming and programming specifically designed to serve such needs.”⁹ Programming specifically designed to serve the educational and informational needs of children is defined by the Rules as “Core Programming.”¹⁰ In the *1996 Children's Television Order* revising our rules and policies governing children's programming, the Commission established a license renewal application processing guideline of at least three hours of Core Programming per week.¹¹ The Rules provide that the Media Bureau staff shall approve the CTA portion of any license renewal application where the licensee demonstrates that it has aired an average of at least three hours per week of Core Programming, as averaged over a six-month period.¹² A licensee will also be deemed to have satisfied this obligation and be eligible for staff approval if it demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children at least equivalent to airing three hours per week of Core Programming.¹³ The renewal applications of licensees that do not meet these processing guidelines are referred to the Commission, where the licensees have a full opportunity to demonstrate compliance with the CTA.¹⁴

4. In 2004, the Commission amended its rules to extend its Core Programming processing guidelines to broadcasters’ digital program streams.¹⁵ In addition to maintaining an independent three

⁸ See *supra* para. 4 and n.12.

⁹ See 47 C.F.R. § 73.671(a).

¹⁰ See 47 C.F.R. § 73.671(c).

¹¹ *Policies and Rules Concerning Children's Television Programming: Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660, 10718 (1996) (*1996 Children's Television Order*). The Commission established rules setting forth seven criteria for evaluating whether a program qualifies as Core programming: (1) the program has serving the educational and informational needs of children ages 16 and under as a significant purpose; (2) the program is aired between the hours of 7:00 a.m. and 10:00 p.m.; (3) the program is a regularly-scheduled weekly program; (4) the program is at least 30 minutes in length; (5) the program is identified as being specifically designed to educate and inform children through the on-screen display of the E/I symbol throughout the program; (6) the educational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report; and (7) instructions for listing the program as educational/ informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides. *1996 Children's Television Order*, 11 FCC Rcd at 10696; 47 C.F.R. § 73.671(c).

¹² 47 CFR §§ 73.671(d), (e)(1).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *In the Matter of Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 00-167, 19 FCC Rcd 22943 (2004) (*Children's DTV R&O*) *aff'd* Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006).

hour Core Programming processing guideline for a broadcaster's main digital program stream, the Commission extended its core processing guideline and broadcasters' Core Programming obligations to supplemental digital program streams.¹⁶ For a broadcaster that chooses to provide additional streams of free over-the-air video programming, the additional processing benchmark is that it air a weekly average of at least 0.5 hours per week of additional core programming for every increment of 1 to 28 hours of programming aired on additional streams other than on the Station's main stream.¹⁷ Broadcasters airing more than one free over-the-air digital stream are permitted to air all additional Core Programming, apart from the three hours that must be aired on a station's main stream, on a single stream or across multiple streams as long as the stream on which the programming is aired has comparable MVPD carriage to the stream whose programming generated the requirement.¹⁸

5. On June 28, 2016, following the request of staff, Mission amended its License Renewal Application acknowledging its Core Programming shortfalls on its supplemental digital program stream and describing the circumstances that led to its failure to comply with its Core Programming obligations.¹⁹ Mission states that starting in March 2009, the Station began rebroadcasting the signal of analog low power station WPNY-LP, Utica, New York on its secondary digital program stream an average of 168 hours per week.²⁰ Mission contends that because WPNY-LP was not subject to the Commission's children's television programming obligations, Station personnel "incorrectly understood that WPNY-LP's status as a low power station exempted WUTR from the Children's Programming rules when WPNY-LP was placed on WUTR's secondary digital program stream."²¹ Even taking into account that Mission surpassed its three hour benchmark for Core Programming on its primary digital program stream – airing a weekly average of 3.5 hours – it still failed to meet its children's programming processing guideline on its secondary digital program stream from the first quarter of 2009 through third quarter of 2011.²² Mission represents that, from third quarter of 2009 through second quarter of 2011, the Station also aired a weekly average of 3.5 hours of Non-Core Programming on its supplemental digital stream. Mission contends that "[o]ther than airing outside of the Core hours of 7:00am-10:00pm, the programming aired on WUTR's secondary digital programming stream met the requirements for Core

¹⁶ See *Children's DTV R&O*, 19 FCC Rcd 22951, para. 21 ("To be considered core, the programming must comply with all of the requirements for core programming specified in our rules....").

¹⁷ 47 C.F.R. § 73.671(e)(2)(i); *Children's DTV R&O*, 19 FCC Rcd at 22950-51, para. 19. For example, a station that airs 168 hours of programming per week on a supplemental digital stream, which is the equivalent to one 24/7 digital stream, would be required to air a weekly average of three hours of Core Programming per week on either that stream or another stream that has equivalent MVPD carriage. This obligation would be in addition to the three hours per week of Core Programming required on the station's main digital stream.

¹⁸ 47 C.F.R. § 73.671(e)(2)(ii); *Children's DTV R&O*, 19 FCC Rcd 22952, para 24.

¹⁹ License Renewal Application, Exh. 1. Mission also represents that, while from fourth quarter of 2011 through fourth quarter of 2015, the Station was in full compliance with its Core Programming obligations on both its main and supplemental digital streams, on its Children's Television Programming Report it provided information pertaining to the children's programming it aired in response to the wrong question. Mission claims that the substance of the information provided was accurate and clearly showed that the Station had in fact complied with its Core obligation.

²⁰ *Id.* at 1. In accordance with 47 C.F.R. § 73.671(e)(2)(i) the Station was thereby required to air three hours of Core Programming per week, as averaged over a six month period, over its secondary digital program stream. See *supra* n.12 and accompanying text.

²¹ License Renewal Application, Exh. 1 at 1.

²² *Id.* at 1-2. Even assuming that the Station's main program stream has had comparable MVPD carriage as the secondary stream that aired WPNY-LP, the excess 0.5 hours of Core Programming the Station aired on its primary stream would not be sufficient to cover the Station's Core Programming obligation on its secondary stream. See *id.* at 1-2; *supra* n.13 and accompanying text.

Programming as stated in the FCC's Children's Programming rules."²³ Based on these facts, the staff concluded that it could not clear the License Renewal Application under the Commission's processing guidelines and referred the matter to the Commission as required by Section 73.671(e)(1) of the Rules.

6. As required by the CTA, we have considered whether Mission "has served the educational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." The Commission and Mission have negotiated the terms of the Consent Decree that terminates the Investigation. As part of the Consent Decree, Mission has agreed to make a settlement payment of Twenty-Nine Thousand Dollars (\$29,000) to the U.S. Treasury.²⁴

III. TERMS OF THE AGREEMENT

7. Adopting Order. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Commission, which approval shall be evidenced by incorporation of the Consent Decree by reference in the Adopting Order.

8. Jurisdiction. Mission agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and that the Commission has the authority to enter into and adopt this Consent Decree.

9. Effective Date. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission.

10. Violations. The Parties agree that any violation of the Adopting Order or of 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 the enforcement of a Commission order.

11. Termination of Investigation; Grant Renewal Application. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of the Investigation, Mission agrees to the terms and conditions contained herein. The Commission further agrees to direct the Media Bureau to grant, in conjunction with the adoption of this Consent Decree, the License Renewal Application provided that Mission has fully and timely satisfied its obligation to make the Settlement Payment referenced in paragraph 13 of this Consent Decree. The Media Bureau shall take such action within two business days of receipt of the Settlement Payment by the Commission. The Commission further agrees that in the absence of new material evidence it will not use the facts developed, in whole or in part, from the Investigation through the Effective Date, or the existence of this Consent Decree to institute on its own motion any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Mission concerning the matters that were the subject of the Investigation. The Commission also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Mission with respect to Mission's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

12. Subsequent Investigations. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Mission with the Communications Laws. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints or other adjudicatory pleadings filed against Mission for alleged violations of the Act or the Commission's rules or for any other type of alleged

²³ License Renewal Application, Exh. 1 at n.1.

²⁴ Given the Station's apparently continuous compliance with its Core Programming obligations since third quarter of 2011, the Parties have agreed that a Compliance Plan is unnecessary.

misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints or pleadings will be based solely on the record developed in that proceeding.

13. Settlement Payment. Mission agrees to make a total settlement payment to the United States Treasury in the amount of Twenty-Nine Thousand Dollars (\$29,000), within thirty (30) calendar days after the Effective Date (Settlement Payment). Mission acknowledges and agrees that upon execution of this Consent Decree, the Settlement Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).²⁵ Mission shall send electronic notification of payment to Evan Morris at evan.morris@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN captioned above.²⁶ An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website. When completing the FCC Form 159, Mission should enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that Mission should follow based on the form of payment it selects:²⁷

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payment (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Waivers. Mission waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues an Adopting Order as defined herein. Mission shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Mission nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mission shall waive any statutory right to a trial *de novo*. Mission hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree. Notwithstanding any provision of this Consent Decree or the Adopting Order, this Consent

²⁵ *Debt Collection Improvement Act of 1996*, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

²⁶ Payment may be made online at the Commission's Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require payors to submit FCC Form 159. Alternatively, payment may be made using FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁷ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

Decree shall be void and of no further force and effect if the condition specified in paragraph 13 is not fully and timely satisfied by Mission.

15. Admission of Liability. Mission admits to the facts discussed in paragraphs 3-5 regarding its failure to provide sufficient Core Programming, as defined in Section 73.671. By entering into this Consent Decree, Mission makes no other admission of liability or violation of any law, regulation or policy, and the Commission makes no finding of any such liability or violation. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraph 11 hereof, or both, are breached by the Commission, or are invalidated or modified to the signatories' prejudice by the Commission or any court, then and in that event the provisions of the immediately-preceding sentences shall be of no force or effect.

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

17. Subsequent Rule or Order. The Parties agree that if any provision of the 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 Mission expressly consents) that provision will not be superseded by such rule or Commission order.

18. Successors and Assigns. Mission agrees that the provisions of this Consent Decree shall be binding on its subsidiaries, affiliates, successors, assigns, and/or transferees.

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

20. Modifications. This Consent Decree cannot be modified without the advance written consent of all Parties.

21. 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.

22. Authorized Representative. The individual signing this Consent Decree on behalf of Mission represents and warrants that he is authorized by Mission to execute this Consent Decree and to bind Mission to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

23. Counterparts. This Consent Decree may be signed in any number of counterparts, each of which, when executed and delivered (including by pdf or facsimile), shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Federal Communications Commission

By:

Marlene H. Dortch
Secretary

Date

Mission Broadcasting, Inc.

By:

Dennis P. Thatcher
President

Date