

**DISSENTING STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Cumulus Radio LLC et al.*, File No.: EB-IHD-18-00027598.

This Commission has seldom had to act against a party for violating a consent decree. This isn't surprising. Consent decrees are agreed to by the target of an investigation, often to avoid a more severe enforcement action. The terms are negotiated, and through these terms the Commission is often able to secure commitments that significantly advance the public interest, such as consumer refunds or other compliance activity. In return, and to reflect the value of these commitments, the target often pays a penalty that is slightly lower than they otherwise would have had the investigation resulted in a notice of apparent liability. Ideally, a consent decree results in a win-win-win situation, with the Commission, the target, and consumers all satisfied in some way by the result. And, importantly, in the rare cases involving consent decree violations that the Commission has previously considered, they were dealt with severely.

In fact, this system only works if noncompliance with our consent decrees is strongly punished. Prior Commission precedent that is quoted in this item states that "a consent decree violation, like misrepresentation, is particularly serious."<sup>1</sup> Indeed, misrepresentation, or lying to the Commission, is among the most serious violations that we enforce.<sup>2</sup> It is easy to understand why the Commission has historically understood consent decree violations to be similarly serious. As the Commission has previously noted: "The whole premise of a consent decree is that enforcement action is unnecessary due, in substantial part, to a promise by the subject of the consent decree to take the enumerated steps to ensure future compliance."<sup>3</sup> As an Enforcement Bureau field office further explained in a later case and the Commission, again, notes in this item: "The Commission expects parties to honor agreements made in consent decrees, and . . . failure to do so undermines the value of consent decrees as an efficient means to resolve investigations without further expenditure of public resources."<sup>4</sup>

Today, the Commission changes course on how it deals with consent decree violations. Specifically, we are dealing with Cumulus, a radio broadcaster who previously entered a consent decree in 2016 with the Enforcement Bureau to settle an investigation into 178 sponsorship identification violations for failing to tell its listeners that certain programming spots were in fact paid promotional material. Sponsorship identification rules are important because they ensure that listeners know when the content they are consuming is an advertisement and who exactly is paying for it. These rules are particularly crucial for paid political speech because, as we well know, Americans should not be confused or misled by content that goes to the heart of how people make up their minds, exercise their right to vote, and participate in our democracy. The 2016 Cumulus consent decree included a compliance plan to specifically make sure that the broadcaster had better practices around attributing paid advertisements.

We are here today considering another enforcement action against Cumulus because, despite the promises made in the consent decree, the broadcaster has a fresh round of sponsorship identification violations, including some for political advertisements. When you promise the Commission better policies and practices, and then repeat the same violation that you were obligated to correct, we must vindicate the public interest and demand full accountability. Moreover, despite agreeing in the consent

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<sup>1</sup> *SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 19091, 19125 (2001) (*SBC NAL*).

<sup>2</sup> See 47 CFR § 1.80.

<sup>3</sup> *SBC NAL*, 16 FCC Rcd at 19125.

<sup>4</sup> *A Radio Company, Inc.*, Forfeiture Order, 27 FCC Rcd 6336, 6337, para. 4 (EB 2012).

decree to notify us almost immediately after discovering noncompliance, Cumulus uncovered violations in a timely manner but, inexplicably, waited nearly eight months to disclose certain violations to the Commission.

The \$25,000 proposed forfeiture for the consent decree violation does not follow well-established Commission precedent and is not, in my mind, commensurate with the misconduct and violations at issue.

From my time in the Enforcement Bureau, I know that these actions are significant and will not go unnoticed by savvy lawyers, who will undoubtedly refer to this case in future investigations. I fear that the Commission's action here will make it more difficult for us to impose significant penalties for consent decree violations in the future and will signal to industry that we do not take noncompliance seriously. This will undermine the deterrent effect of our enforcement actions and make it more difficult for the Enforcement Bureau to prosecute its important mission. For these reasons, I dissent.