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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Audio 20160602000000

In re)	
)	
Hyde County Board of Education)	NAL/Acct. No. 201641410008
)	FRN: 001688649
Licensee of WHYC(FM),)	BLEED-19980527KD
Swan Quarter, North Carolina)	BRED-20110729AID
Facility I.D. No. 28177)	Accepted / Filed

To: Marlene H. Dortch, Secretary

MAY 31 2016

For transmission to: Peter Doyle, Chief
Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

STATEMENT OF HYDE COUNTY BOARD OF EDUCATION
IN RESPONSE TO
MEMORANDUM OPINION AND ORDER AND NOTICE OF APPARENT LIABILITY FOR FORFEITURE

1. Hyde County Board of Education (“Hyde County”) hereby submits its statement in response to the Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 16-459 (released April 28, 2016) (“MO&O/NAL”), in the above-captioned matter. As set forth below, Hyde County believes that a substantial reduction in the proposed forfeiture is warranted under the policy set forth in *William Penn University*, DA 13-1074 (released May 13, 2013) (“*William Penn*”). Pursuant to the procedure announced in *William Penn*, Hyde County advises the Commission of Hyde County’s willingness to enter into a Consent Decree pursuant to which it would pay a voluntary contribution to the United States Treasury and agree to a compliance plan to ensure compliance with the Commission’s rules.
2. As an initial matter, Hyde County hereby confirms that Station WHYC(FM) is a “student-run station” as defined in *William Penn*. Licensed to the Hyde County Board of

Education, the station is located at the Mattamuskeet Early College High School, one of only two high schools in Hyde County. At all times covered by the MO&O/NAL, the station has been managed by a faculty advisor – Ms. Vanessa Bryant, who teaches English and Drama – and programmed by student volunteer staff, *not* by paid professional staff.¹ See Attachment A hereto.

3. The *William Penn* policy also requires that the licensee seeking to invoke that policy provide the Commission with a copy of the station's operating budget for the period in question, including specifically any staffing expenses. Station WHYC(FM) has no "operating budget"; rather, as expenses are incurred, they are paid from Hyde County's available funds. By way of illustration of the station's minimal expenses, included as Attachment B is a listing of the station's operating expenses from 2010-2016. No staffing expenses are listed because there are no paid staff. (Ms. Bryant provides her services to the station as part of her position as a teacher at the school.)

4. Based on the foregoing, Hyde County is eligible for the *William Penn* policy.
5. Moreover, the violations at issue here are all precisely of the type for which

William Penn relief is contemplated. According to *William Penn*, the policy is limited to violations of

¹ As the Commission has been advised, during the period 2006-2010, the station ceased operation on weekends, vacations and holidays, *i.e.*, when school was not in session, as expressly permitted by the Commission's rules. When questions arose with respect to the station's operating schedule in 2010 (as referenced at Paragraph 8 of the MO&O/NAL), the station conferred with representatives of Station WTEB(FM), New Bern, North Carolina, which is also licensed to an educational institution (Craven Community College). Station WTEB(FM) engineers had previously provided Hyde County occasional, informal technical assistance in the maintenance of Station WHYC(FM). As an accommodation to Hyde County, since approximately 2011 Station WTEB(FM) has allowed Station WHYC(FM) to rebroadcast WTEB's signal at times when the Hyde County school is not in session, thus obviating the need to turn Station WHYC(FM) off and on so frequently. The arrangement is informal, no consideration is involved, and WTEB has no involvement in the day-to-day management or operation of WHYC(FM).

rules that require the submission of reports and other materials or public notice of information where a student-run NCE station has failed to (a) file the required materials with the Commission, such as the Ownership Reporting Rule [or] (b) place the required materials in a file, such as in the station's public inspection file pursuant to the Public File Rule ...

William Penn, ¶11. In *William Penn*, the violations involved multiple failures to (a) prepare issues/programs lists and place them in the station's local public inspection file and (b) timely file multiple Ownership Reports. In the instant case, the two admitted violations involve exactly the same routine public file or reporting issues, *i.e.*, issues/programs list and Ownership Report matters. The third alleged violation here is not substantially different. It consisted of failing to inform – or failing to timely inform – the Commission of eight periods of nonoperation lasting 10 days or more, and by failing to seek Commission approval when four of those periods of non-operation extended beyond 30 days.

MO&O/NAL at ¶9. These are nothing more than reporting requirements, matters of omission rather than commission. They do not constitute “substantive operational violations”.²

6. Moreover, as the MO&O/NAL repeatedly acknowledges (at ¶¶15 and 19), the calculation of precisely when notice of nonoperation is required to be made is “complicated” here by the fact that noncommercial educational stations are not necessarily subject to a standardized mandatory operating schedule. Despite that, and also despite the fact that, from 2006-2010 the Board did not have the advantage of communications counsel and was attempting to understand and comply with the Commission's rules on a *pro se* basis, the MO&O/NAL acknowledges (at ¶19) that the Board made good faith efforts to apprise the Commission of the

² Though a request for authority to remain silent does contemplate action by the Commission, the only action required by a licensee is the filing of the request, which filing reports on the condition of the station. Thus, failure to make such a filing is essentially the failure to make a required report.

station's operational status. And, having since retained communications counsel, the Board has complied with the rule. These considerations weigh heavily in favor of lenity here.

7. Further, all of the Hyde County's violations are "first-time violations" as described in *William Penn* (at ¶10). When they came to Hyde County's attention, Hyde County took prompt action to correct them and to report them to the Commission.³

8. In view of all of these considerations, the instant case falls comfortably within scope of the *William Penn* policy.

9. That being so, Hyde County proposes to enter a Consent Decree akin to that entered into in *William Penn*. A draft of such a decree, modeled after the *William Penn* decree, is included as Attachment C.⁴ Hyde County will be happy to discuss the proposed terms with the

³ The fact that each of the three generic types of violation involved multiple separate instances – e.g., failure to file three separate Ownership Reports – is immaterial. *William Penn* expressly provides (at ¶10) that the leniency policy extends to "repeated instances of violations discovered at once", as here.

⁴ With respect to the voluntary contribution proposed in the attached draft consent decree, Hyde County notes the following. In *William Penn*, the violations would, at the base forfeiture levels specified in the Commission's rules, have led to a \$20,000 fine, *William Penn* at ¶7; that amount was reduced to \$2,500 in the eventual Consent Decree. In the instant case, the base forfeiture – as calculated by the Commission, see MO&O/NAL at ¶20 – is \$18,000, 10% less than was the case in *William Penn*. That being so, Hyde County believes that the voluntary contribution to which it is subject should be reduced by 10%, to \$2,250. Such a reduction is particularly appropriate in view of the station's minimal ordinary operating expenses which have averaged slightly more than \$3,000 per year since May, 2010.

Commission's staff with the goal of achieving a mutually acceptable agreement to appropriate terms.⁵

Respectfully submitted,


Harry F. Cole

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Counsel for the Hyde County Board of Education

May 31, 2016

⁵ Hyde County observes that, under *William Penn* (at ¶12), ordinarily the Commission's staff would advise the licensee of its right to seek a consent decree. Hyde County received no such advisory prior to the issuance of the MO&O/NAL.

Attachment A

DECLARATION

Dr. Randolph H. Latimore, Sr., under penalty of perjury, hereby declares the following to be true and correct:

I am Superintendent of Hyde County Schools and a member of the Hyde County Board of Education ("Board"). I am preparing this declaration for submission to the Federal Communications Commission in connection with the Board's Statement in response to the Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("MO&O/NAL") issued by the Commission to the Board.

The MO&O/NAL is directed to certain violations of the FCC's rules that occurred at Station WHYC(FM), of which the Board is the licensee. Station WHYC(FM) is a "student-run station": it is located at the Mattamuskeet Early College High School, one of only two high schools in Hyde County. At all times covered by the MO&O/NAL, the station has been managed by a faculty advisor – Ms. Vanessa Bryant, who teaches English and Drama – and programmed by student volunteer staff, *not* by paid professional staff.⁶

Station WHYC(FM) has no "operating budget"; rather, as expenses are incurred, they are paid from the Board's available funds. By way of illustration of the station's minimal expenses,

⁶ During the period 2006-2010, the station ceased operation on weekends, vacations and holidays, *i.e.*, when school was not in session, as expressly permitted by the Commission's rules. When issues arose with respect to the station's operating schedule in 2010 (as referenced at Paragraph 8 of the MO&O/NAL), the station conferred with representatives of Station WTEB(FM), New Bern, North Carolina, which is also licensed to an educational institution (Craven Community College). Station WTEB(FM) engineers had previously provided the Board occasional, informal technical assistance in the maintenance of Station WHYC(FM). As an accommodation to Hyde County, since approximately 2011 Station WTEB(FM) has allowed Station WHYC(FM) to rebroadcast WTEB's signal at times when the Hyde County school is not in session, thus obviating the need to turn Station WHYC(FM) off and on so frequently. The arrangement is informal, no consideration is involved, and WTEB has no involvement in the day-to-day management or operation of WHYC(FM).

included as Attachment B is a listing of the station's operating expenses during the period 2010-2016. No staffing expenses are listed because there are no paid staff. (Ms. Bryant provides her services to the station as part of her position as a teacher at the school.)


Dr. Randolph H. Latimore, Sr.

Date: 5/26/2016

Attachment B

Vendor	Amount	Dates	Check #	
SESAC	824.00	3.07.11 - 1.14.16	Various	Music License fee
American Society of Composers	1,567.00	3.07.11 - 2.23.15	Various	Music License fee
Tower Maintenance Corp	3,495.00	4.09.13	803269/Cap Outlay	Painting
Adams Tower Services Inc	897.50	3.08.13	836210/Local	Relamping tower lights
Radio Station	699.00	6.18.10	832853/Local	Advertising
Broadcast Music Inc	1,902.92	4.15.11 - 3.15.16	Various	Music License fee
Robinson Tower Inc	3,797.50	9.23.11 - 3.12.15	Various	Change Bulbs on Tower
ITS	4,108.17	May 2010 - Apr 2016	59moX 69.63/mo	Telephone WHYC Radio
HBC Solutions	<u>2,474.56</u>	5/20/2016	credit card	Part for radio station
	19,765.65			

Attachment C

CONSENT DECREE

I. Introduction

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Hyde County Board of Education ("Board"), by their respective authorized representatives, for the purpose of resolving a certain issue that has arisen in the Media Bureau's review of the pending application for the renewal of the license for noncommercial educational radio station WHYC(FM), Swan Quarter, North Carolina.

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) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (c) "Commission" or "FCC" means the Federal Communications Commission;
 - (d) "Compliance Plan" means the processes and procedures developed by the Board to ensure compliance with the Act and the Rules at the Station, as summarized in the Appendix hereto;
 - (e) "Effective Date" means the date on which the Bureau releases the Order;
 - (f) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (g) "Minimum Operating Schedule Reporting Rule" means Section 73.561 of the Rules, 47 C.F.R. § 73.561;
 - (h) "Order" means the order of the Bureau adopting this Consent Decree;
 - (i) "Ownership Report Rule" means Section 73.3615 of the Rules, 47 C.F.R. § 73.3615;
 - (j) "Ownership Reports" means reports on FCC Form 323-E that the Board is required to file pursuant to the Ownership Report Rule;
 - (k) "Parties" means the Bureau and the Board;

- (l) “Public File Rule” means Section 73.3527 of the Rules, 47 C.F.R. § 73.3527;
- (m) “Renewal Application” means the pending license renewal application for the Station (File No. BRED-20110729ADL);
- (n) “Rules” means the Commission’s rules, found in Title 47 of the Code of Federal Regulations;
- (o) “Station” means noncommercial educational radio station WHYC(FM), Swan Quarter, North Carolina, FCC Facility ID Number 28177;
- (p) “Board” means the Hyde County Board of Education; and
- (q) “Violations” means the violations of the Ownership Report Rule, the Public File Rule and the Minimum Operating Schedule Reporting Rule disclosed by the Board.

III. Background

3. In February, 2010, the Bureau advised the Board that, because the Station had supposedly been off the air for 12 consecutive months, its license had expired. In response, the Board sought reconsideration of that determination, demonstrating that the station had not in fact been off the air for any 12 consecutive month period. On July 29, 2011, the Board timely filed its application to renew its license for the Station. In that application, the Board disclosed Violations of the Ownership Report Rule and the Public File Rule, and provided detailed information concerning its efforts to comply with the Minimum Operating Schedule Reporting Rule. Specifically, the Board disclosed that it had failed to submit three Ownership Reports. The Board also disclosed that it had failed to prepare and place in the Station’s local public inspection file quarterly issues/programs lists. And it provided detailed information concerning the Station’s operating schedule that reflected the Board’s good faith efforts to comply with the Minimum Operating Schedule Reporting Rule.

4. Because of the compliance issues raised by those disclosures, the Parties have agreed to enter into this Consent Decree to which both the Board and the Bureau intend to be legally bound.

IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the Violations referred to in Paragraph 3 above would be time-consuming and require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Board’s compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Board and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Both the Board and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Board agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Board and the Bureau concerning the Board's Violations at the Station, as discussed herein.

8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will not use the Violations in any action against the Board, provided that the Board satisfies all of its obligations under this Consent Decree. In the event that the Board fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

9. The Board hereby stipulates that it violated the Ownership Report Rule, the Public File Rule and the Minimum Operating Schedule Reporting Rule to the extent described in Paragraph 3 above.

10. The Board agrees to make a voluntary contribution to the United States Treasury in the amount of Two Thousand Two Hundred and Fifty Dollars (\$2,250). Such contribution will be made, without further protest or recourse to a trial *de novo*, by a check or similar instrument, wire transfer or money order payable to the order of the Federal Communications Commission. Payment by check or money order maybe mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SLMO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter theNAL/Account number (MB-201341410005) in block number 23A (call sign/other ID), and enter the letters "FORE" in block number 24A (payment type code).

11. The Bureau agrees to grant the Renewal Application after the Effective Date, provided that the following conditions have been met: (a) the Board has fully and timely satisfied its obligation to make the voluntary contribution referenced in Paragraph 10 of this Consent Decree; and (b) there are no issues other than the Violations that would preclude grant of the Renewal Application.

12. The Board represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan summarized in the Appendix for the purpose of ensuring compliance with the Rules. The Board agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for the period specified in the Compliance Plan.

13. The Board represents that, as of the date of its execution of this Consent Decree, the Station's public inspection file fully comports with the Public File Rule except as described in Paragraph 3 above.

14. The Board 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. To the extent that the Board fails to satisfy any condition or Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

15. The Consent Decree will be binding on the Board's successors-in-interest and assigns, if any. The Board agrees that any future application filed within three (3) years of the Effective Date to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

16. The Board waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order, provided the Order adopts the Consent Decree without change, addition or modification.

17. The Board agrees to waive any claims it may otherwise 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 discussed in this Consent Decree.

18. The Board and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided that the Order adopts the Consent Decree without change, addition or modification.

19. The Board and the Bureau agree that, if the Board, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Board nor the Commission will contest the validity of the Consent Decree or Order, and the Board and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order adopts the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

20. The Board and the Bureau agree that, in the event that this Consent Decree 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.

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

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
William T. Lake, Chief

Date: _____

HYDE COUNTY BOARD OF EDUCATION

By: _____

Date: _____

APPENDIX

COMPLIANCE PLAN OF HYDE COUNTY BOARD OF EDUCATION

For the duration of the license term ending December 1, 2019, unless a different time period is specified below, Hyde County Board of Education or its successors-in-interest, as appropriate, will institute and maintain the following procedures to ensure compliance with the Commission's Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I. A. The program hosts and other appropriate staff of the Station will log all broadcasts of public affairs programming. These logs will be compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station in accordance with the Public File Rule.
- B. All such quarterly issues/programs lists will be signed and dated by their preparer before they are placed in the public file.
- C. Late-filed lists will be reviewed and signed by Vanessa Bryant, faculty advisor to the Station (or such other non-student employee of the Board who may be the successor supervisor of the volunteer student staff of the Station, hereinafter the "Faculty Advisor") and accompanied with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
- D. On or before September 1 of each year in which the Board must file a biennial Ownership Report, the Faculty Advisor and/or the Board's legal counsel will consult with appropriate Board officials to ensure the timely and accurate filing of the required Ownership Report.
- E. The Faculty Advisor will explain and emphasize to the volunteer student staff of the Station the absolute requirement to follow all Commission Rules, regulations, and policies and will fully explain the obligations imposed by the Public File Rule to the student staff member or members charged with maintenance of the Station's public files. Should the Board or Faculty Advisor learn that the Public File Rule has been violated, the student responsible will be subject to appropriate disciplinary action, including being removed from any duties relating to the Public File.
- F. The Board will train each member of the Station's staff not less than annually concerning the Rules as they apply to the Station.
- G. The Board will engage a consulting engineer to conduct a semi-annual audit of the Station's technical operations.

- II. For a period of three years from the date of the Effective Date, the Board, or successor licensee, as appropriate, will conduct semi-annual in-house reviews of the Station's public inspection file. Such reviews will be undertaken by the Faculty Advisor or by a successor non-student official designated by the Board or by a successor licensee's chief executive officer.
- III. On or before August 1 of 2016, 2017 and 2018, the Board will submit a sworn certification to the Commission, signed by an officer of the Board, affirming that the Station is in compliance with the Rules. If the Board cannot truthfully make this certification, it shall set forth in detail any Violations or deficiencies and describe any corrective measures taken. A copy will be served on Peter H. Doyle, Chief Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at peter.doyle@fcc.gov.
- IV. The Compliance Plan, set forth above, will be under the direct supervision of the Faculty Advisor or a successor non-student official designated by the Board or by a successor licensee's general manager or other comparable official who actively oversees the Station's broadcast operations.