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

In re Application of	)	
	)	
Hyde County Board of Education	)	NAL/Acct. No. MB-201641410008
	)	FRN: 001688649
For Renewal of License for	)	
	)	
Station WHYC(FM)	)	Facility ID No. 28177
Swan Quarter, North Carolina	)	File No. BRED-20110729ADL

ORDER

Adopted: July 19, 2016 **Released: July 19, 2016**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Hyde County Board of Education (Licensee), licensee of Station WHYC(FM), Swan Quarter, North Carolina (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Renewal Application) for the Station as to whether the Licensee violated: 1) Section 73.561 of the FCC's Rules (Rules) by failing to notify the Commission that the Station was silent for ten or more days and by failing to seek Commission approval when a number of these periods of silence lasted for more than 30 days; 2) Section 73.3527 of the Rules by failing to retain all required documentation in the Station's public inspection file; and 3) violating Section 73.3615 of the Rules by failing to file biennial ownership reports.[1] On April 28, 2016, the Bureau issued a Notice of Apparent Liability to Licensee in the amount of $18,000 for these violations.[2]

2. The Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational (NCE) station licensed to an educational institution and that the violations at the Station are first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations.[3] We have negotiated the attached Consent Decree, which provides for the Licensee to carry out a compliance plan that meets the requirements of the new policy and to make a civil penalty payment to the United States Treasury in the amount of $2,250.

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[1] 47 CFR §§ 73.561, 73.3527, 73.3615

[2] *Hyde County Board of Education*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 3895 (MB 2016).

[3] *See William Penn University*, Policy Statement and Order, 28 FCC Rcd 6932, para. 2 (MB 2013) (in cases of "first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations . . . instead of issuing a Notice of Apparent Liability . . . the Bureau will first afford the licensee an opportunity to negotiate a consent decree in which the licensee agree to a complains plan and makes a voluntary contribution to the United States Treasury. In negotiating the amount of the voluntary contribution, the Bureau will consider the totality of circumstances, including giving appropriate consideration to the station's finances with respect to reducing the base forfeiture amount significantly.").

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules disclosed in Licensee's Renewal Application.

4. Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact whether Licensee possesses the basic qualifications to remain a Commission licensee and has satisfied the standards in Section 309(k)(1) of the Communications Act of 1934, as amended, for renewal of the Station's license.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,[4] and by the authority delegated by Sections 0.61 and 0.283 of the FCC's Rules,[5] the Consent Decree attached hereto IS ADOPTED.

6. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the FCC's Rules,[6] that the *Notice of Apparently Liability for Forfeiture* issued to Hyde Country Board of Education for willfully violating Sections 73.561, 73.3527, and 73.3615 of the FCC's Rules IS HEREBY REDUCED to $2,250.

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to the Hyde County Board of Education, 1430 Main Street, Swan Quarter, NC 27885, and to its counsel, Harry F. Cole, Esq., Fletcher Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

[6] 47 U.S.C. § 503(b); 47 CFR § 1.80.

CONSENT DECREE

I. Introduction

1. This Consent Decree is entered into by: (a) the Media Bureau of the Federal Communications Commission; and (b) Hyde Country Board of Education, licensee of Station WHYC(FM), Swan Quarter, North Carolina.

II. 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) "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 Licensee in an effort to ensure compliance with the Minimum Operating Schedule Rules, the Public File Rule, and the Ownership Report Rule, as summarized in the Appendix hereto;

(e) "Effective Date" means the date on which the Bureau releases the Order;

(f) "Investigation" means the Bureau's investigation of Licensee's violations of the Minimum Operating Schedule Rules, the Public File Rule, and the Ownership Report Rule;

(g) "Licensee" means Hyde County Board of Education, licensee of Station WHYC(FM), Swan Quarter, North Carolina;

(h) "Minimum Operating Schedule Reporting Rule" means Section 73.561 of the Rules, 47 CFR § 73.561;

(i) "Order" means an order of the Bureau adopting this Consent Decree;

(j) "Ownership Report Rule" means Sections 73.3615 of the FCC's Rules, 47 CFR § 73.561;

(k) "Parties" means Licensee and the Bureau;

(l) "Public File Rule" means Section 73.3527 of the Rules, 47 CFR § 73.3527;

(m) "Renewal Application" means the pending application for the renewal of the license for Station WHYC(FM), Swan Quarter, North Carolina (File No. BRED-20110729ADL);

(n) "Rules" means the FCC's regulations set forth in Title 47 of the Code of Federal Regulations;

(o) "Station" means WHYC(FM), Swan Quarter, North Carolina (Facility ID No. 28177), licensed to Lincoln County School District; and

(p) "Violations" means the violations of the Minimum Operating Schedule Reporting Rule, the Public File Rule, and the Ownership Report Rule.

III. Background

3. On July 29, 2011, the Licensee filed the Renewal Application for the Station's current license term. Therein, the Licensee indicated that, on eight occasions, it failed to notify the Commission when the Station went silent and that silence lasted for ten or more days.[1] The Board further disclosed that, on four occasions, it failed to seek Special Temporary Authority for the station to remain silent when the Station's silence lasted 30 days or more. The Board also admits that, since the Station's last license renewal, it has failed to prepare and timely place any quarterly issues and programs lists in the Station's public inspection file.[2] Finally, the Board disclosed that it did not file any biennial ownership reports during this same time period.[3] On April 28, 2016, the Bureau issued a *Notice of Apparent Liability for Forfeiture* for the Violations.[4] The Licensee has timely disputed the *NAL* based on the fact that the Station was student-run at the time the Violations occurred.

4. Because of the issues identified in the Bureau's investigation, the Parties have agreed to enter into this Consent Decree, to which both the Licensee and the Bureau intend to be legally bound.

IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the Licensee's violations of the Minimum Operating Schedule Reporting Rule, the Public File Rule, and the Ownership Report Rule, 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 Licensee's future compliance with the Minimum Operating Schedule Reporting Rule, the Public File Rule, and the Ownership Report Rule, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Both the Licensee and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee 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 Licensee and the Bureau concerning the Licensee'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 Licensee, provided that the

[1] Renewal Application, Exh. 13.

[2] *Id.*

[3] *Id.*, Exh. 9.

[4] *See Hyde County Board of Education*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 3895 (MB 2016) (*NAL*).

Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

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

10. The Bureau has agreed to accept and Licensee has agreed to make a civil penalty payment to the United States Treasury in the amount of Two Thousand Two Hundred and Fifty Dollars ($2,250) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Alexander Sanjenis at Alexander.Sanjenis@fcc.gov and Penelope Dade at Penelope.Dade@fcc.gov on the date said payment is made. Such payment will be made, without further protest or recourse to a *trial de novo,* by a check or similar instrument, wire transfer or credit card and must include the Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, 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 should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (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.

11. The Bureau will grant the pending Renewal Application for the Station (File No. BRED-20110729ADL) after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the payment referenced in Paragraph 10 of this Decree; and 2) there are no issues other than the Violations that would preclude the grant of the Renewal Application.[5]

12. The Licensee 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 for the

[5] The *NAL* proposed a two-year license renewal for the Station. *NAL*, 31 FCC Rcd at 3900, paras. 17-19. However, the renewal cycle for North Carolina radio stations will occur in 2019, and in the meantime the Licensee will be subject to the Compliance Plan. Thus, we find that the proposed short-term renewal is unnecessary.

purpose of ensuring compliance with the Minimum Operating Schedule Reporting Rule, the Public File Rule, and the Ownership Report Rule. Licensee 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 three (3) years after the Effective Date.

13. The Licensee 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 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. To the extent the Licensee fails to satisfy any condition, 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, designation of the matter for hearing, letters of admonishment, or forfeitures.

15. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. The Licensee agrees that any future application 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 Licensee waives any and all rights that 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 Order, provided that the Order adopts the Consent Decree without change, addition or modification.

17. The Licensee waives any claims that it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 CFR § 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. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, none of the Parties shall contest the continuing validity of the Consent Decree or the Order. The Licensee and the Bureau further agree that they 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 is limited to adopting the Consent Decree without change, addition, or modification), and that they will consent to a judgment incorporating the terms of this Consent Decree.

20. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall 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
William T. Lake, Chief

Date: 7-19-16

HYDE COUNTY BOARD OF EDUCATION

By: Randolph H. Latimore, Sr.
Dr. Randolph H. Latimore, Sr.
Superintendent of Hyde County Schools and Board Secretary

Date: 7/13/2016

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.