

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

In the Matter of
Rocket Radio Corporation
K246CH, Tuba City, Arizona
NAL/Account No. MB-202041410005
FRN: 0001595149
File Nos. BLFT-20160404ACM, BPFT-20180625ABP
Facility ID No. 155722

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2020

Released: September 28, 2020

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us Rocket Radio Corporation's (RRC) application (License Application) for a license to cover facilities authorized in a construction permit (Permit) for K246CH, Tuba City, Arizona (Translator), that we issued to RRC on February 25, 2016. Also before us is an informal objection to the License Application (Corso Objection) filed by Linda C. Corso (Corso). For the reasons discussed below, we grant in part and otherwise deny the Corso Objection, and adopt the attached Consent Decree, which resolves issues raised during our review of the License Application. As set forth in the Consent Decree, we will grant the License Application so long as RRC fully and timely pays the civil penalty required by the Consent Decree, and there are no issues other than those resolved by the Consent Decree that would preclude grant of the Renewal Application.

2. In addition to the License Application, RRC filed an application to make minor changes to the Translator's licensed facilities (Minor Change Application). Mountain Community Translators, LLC (MCT) filed an informal objection to the Minor Change Application (MCT Objection). Below, we deny the MCT Objection. We will grant the Minor Change Application concurrent with grant of the License Application, so long as there are no issues that have arisen that would preclude grant of the Minor Change Application.

II. BACKGROUND

3. The Translator currently is authorized to operate on Channel 246 at Tuba City, Arizona, as a "fill-in" translator for KIKO(AM), Claypool, Arizona. During a 2016 filing window for FM

1 See File No. BLFT-20160404ACM (License Application).
2 Informal Objection and Petition for Immediate Revocation of Program Test Authority of Linda C. Corso, File No. BLFT-20160404ACM (filed Sept. 26, 2016) (Corso Objection).
3 Consent Decree at para. 13.
4 File No. BPFT-20180625ABP (Minor Change Application).
5 Informal Objection of Mountain Community Translators, LLC, File No. BPFT-20180625ABP (filed June 28, 2018) (MCT Objection).

translator modification applications,⁶ RRC filed an application (Permit Application), which proposed to change the Translator's channel to Channel 275.⁷ We granted the Permit Application and issued the Permit to RRC.⁸

4. On April 4, 2016, RRC filed the License Application, and submitted a letter (Program Test Letter) to the Commission indicating the Translator had "commenced program tests operations with the facilities authorized in the [Permit]."⁹ Corso then filed the Corso Objection. Therein, she asserts that RRC did not construct the facilities authorized in the Permit, violated the Commission's rules governing station identification, and made false certifications and statements in the License Application and the Program Test Letter. In response, on July 12, 2017, RRC amended the License Application, revising its certifications to reflect that the facilities constructed varied from those authorized in the Permit.¹⁰ In addition, RRC attached declarations to the amended License Application, which explain that RRC was unaware that the Translator's facilities had not been constructed as authorized, and that, since October 7, 2016, the Translator has operated with the facilities authorized in the Permit.¹¹ Corso subsequently submitted a Supplement to Informal Objection (Corso Supplement).¹² Therein, she questions the explanations offered by RRC as to why the Translator was not constructed as authorized and why RRC was unaware of this,¹³ and asserts that RRC made deliberate misrepresentations and concealed facts from the Commission in a letter it submitted on October 28, 2016.¹⁴ Corso also makes a number of allegations regarding RRC's use of temporary facilities in constructing another translator and filing a series of minor change applications related to that translator.¹⁵ Lastly, Corso accuses RRC, its principal and its consulting engineer of "witness intimidation and harassment."¹⁶

5. On June 25, 2018, RRC filed the Minor Change Application. The Minor Change Application proposes to increase the Translator's power and change its channel from Channel 275 to

⁶ See *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications and Availability of FM Translator Technical Tools*, Public Notice, 30 FCC Rcd 14690 (MB 2015); *Revitalization of the AM Radio Service*, MB Docket No. 13-249, Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12150-51, para. 12 (2015) (AM licensee seeking to rebroadcast on an FM translator may acquire and relocate one and only one authorized non-reserved band FM translator station up to 250 miles).

⁷ File No. BPFT-20160129AVI. Initially, RRC proposed to change the Translator's channel to Channel 230, and its primary station to KBSZ(AM), Apache Junction, Arizona. On February 19, 2016, RRC amended the Permit Application to specify Channel 275, and no change to the Translator's primary station.

⁸ See *Broadcast Actions*, Public Notice, Report No. 48681, at 9 (MB rel. Mar. 1, 2016).

⁹ See Letter from John S. Neely, Esq., Miller and Neely, P.C., to Secretary, Federal Communications Commission, File No. BPFT-20160129AVI (dated April 4, 2016) (Program Test Letter).

¹⁰ RRC also amended the License Application on April 12, 2019, and amended the License Application again on April 27, 2020. The most recent amendment revises the License Application to specify a Transmitter Power Output (TPO) of 55 watts, and to explain that the Translator was achieving its authorized Effective Radiated Power (ERP) using an attenuator. See License Application (as amended on April 28, 2020), K246CH TPO Calculation, and Nov. 2019 Pelley Decl. at paras. 3-4. RRC also indicates that it has modified the Translator's transmission system to use a transmitter capable of producing the Translator's authorized TPO without the need for additional filtering. See License Application (as amended on April 28, 2020), Mar. 2020 Schminke Decl. at para. 5.

¹¹ License Application (as amended on July 12, 2017), July 2017 Low Decl., and July 2017 Hendershott Decl.

¹² Supplement to Informal Objection of Linda C. Corso, File No. BLFT-20160404ACM (filed Oct. 19, 2017) (Corso Supplement).

¹³ *Id.* at 7-8.

¹⁴ *Id.* at 14-16.

¹⁵ *Id.* at 10.

¹⁶ *Id.* at 11-12, *citing* 18 U.S.C. §§ 1512(b), (d), (k).

Channel 256. RRC anticipates grant of the License Application prior to action on the Minor Change Application. MCT objected to the Minor Change Application.¹⁷ MCT alleges that RRC made a false certification in the Minor Change Application and requests that we dismiss it.¹⁸ RRC amended the Minor Change Application on April 24, 2020.¹⁹

6. On July 6, 2018, RRC filed an application to modify the Permit to specify the same power increase and channel change proposed in the Minor Change Application.²⁰ MCT objected to this application too.²¹ RRC opposed the Minor Modification Objection and MCT replied.²²

III. DISCUSSION

A. License Application

7. For the reasons set forth below, we reject Corso's allegations that the Translator was operating with a different antenna and at a different power than specified in the Permit. We also find no merit to Corso's allegation that the Translator violated the Commission's rules governing station identification, or her allegations that RRC made misrepresentations to the Commission.²³ We do find, though, that the facilities constructed were not those authorized in the Permit, and thus determine that RRC violated sections 74.1251(b)(2) and (8) of the Commission's rules (Rules).²⁴ Further, by commencing program tests with non-conforming facilities, RRC violated section 301 of the Communications Act of 1934, as amended (Act),²⁵ and section 74.14 of the Rules.²⁶ Finally, we find that RRC violated section 1.65 of the Rules by failing to timely amend the License Application and failing to

¹⁷ MCT also argues that RRC is not eligible to take advantage of the Commission's decision to allow applicants who relocated FM translators during the Commission-ordered 2016 translator modification windows to further move their cross-service FM translators. MCT Objection at 2. MCT relies on the fact that the License Application—which seeks a license to cover the Permit that RRC obtained through one of the 2016 translator modification windows—is pending, not granted. Because we herein commit to act on the License Application prior to—or at the same time as—we act on the Minor Change Application, we need not consider this argument.

¹⁸ MCT Objection at 1, 2-3, 4.

¹⁹ This amendment corrected an error in the Minor Change Application. As originally filed, the Minor Change Application erroneously listed 1TV.Com, Inc. (1TV) (a commonly-owned company) as the licensee of the Translator. See Minor Change Application (as amended on April 24, 2020), March 2020 Low Decl. at paras. 3-4.

²⁰ File No. BMPFT-20180706ABB (Minor Modification Application).

²¹ Informal Objection of Mountain Community Translators, LLC, File No. BMPFT-20180706ABB (filed July 10, 2018) (Minor Modification Objection).

²² Opposition to Informal Objection of Rocket Radio Corp., File No. BMPFT-20180706ABB (filed July 18, 2018); Reply to Objection to Informal Objection of Mountain Community Translators, LLC, File No. BMPFT-20180706ABB (filed July 23, 2018) (Minor Modification Reply).

²³ We decline to consider Corso's allegation that the facilities of either another RRC translator or those of a translator licensed to 1TV were not constructed as authorized. Corso Objection at 21-22. The Commission has held that misconduct at one station generally is not relevant to consideration of applications related to another commonly-held station. See, e.g., *Policy Regarding Character Qualifications in Broadcast Licensing*, Gen. Docket No. 81-500; BC Docket No. 78-108, Report, Order and Policy Statement, 102 FCC 2d 1179, 1223, para. 92 (1986) (subsequent history omitted) (*Character Policy Statement*). Moreover, in considering an application for a license to cover, the Commission's inquiry generally is limited to whether the constructed facilities match those specified in the construction permit. Indeed, an applicant for a license to cover is entitled to a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless circumstances have arisen that would make operation of the station at issue against the public interest. See, e.g., *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

²⁴ 47 CFR § 74.1251(b)(2), (8).

²⁵ 47 U.S.C. § 301.

²⁶ 47 CFR § 74.14.

correct the Program Test Letter to reflect that the facilities constructed were not those specified in the Permit. We adopt a Consent Decree that addresses these violations.

1. Facilities Constructed

8. Corso alleges that RRC did not construct the facilities authorized in the Permit.²⁷ Specifically, she asserts that the antenna installed was not the antenna specified in the Permit,²⁸ the antenna was installed at a different height and with a different orientation than specified in the Permit,²⁹ and the Translator was operating with a higher effective radiated power (ERP) than authorized in the Permit.³⁰ Corso further argues that RRC was not entitled to conduct equipment tests or commence program tests because the Translator was not constructed in accordance with the Permit.³¹

9. We reject Corso's assertion that the antenna installed was not the Scala Model CL-FM antenna specified in the Permit.³² Corso herself acknowledges that a Scala Model CL-FM was mounted on the tower located at the geographic coordinates specified in the Permit.³³ In addition, RRC has submitted the statement of an individual with personal knowledge about the construction of the facilities specified in the Permit.³⁴ He states under penalty of perjury that RRC provided a "Scala CLFM antenna and related parts and equipment necessary for [the Translator's] construction."³⁵

10. We also conclude that, contrary to Corso's claims, the Translator was not operating with a higher ERP than authorized in the Permit.³⁶ RRC acknowledges that the Translator's Transmitter Power Output (TPO) was set at 55 watts.³⁷ RRC explains, though, that the transmitter was "not rated to go below 32 Watts TPO."³⁸ Thus, to achieve the TPO specified in the Permit, the transmitter output was set to 55 watts and a 5 dB attenuator was installed between the transmitter and the antenna.³⁹ RRC asserts—and we have verified—that this achieved the ERP specified in the Permit (18 watts).⁴⁰ In any event, RRC recently modified the Translator's transmission system to utilize a transmitter rated at 10-100 watts

²⁷ Corso Objection at 11, 19.

²⁸ *Id.* at 20-21.

²⁹ *Id.* at 15, 21.

³⁰ *Id.* at 19.

³¹ *Id.* at 28-29.

³² *Id.* at 20-21.

³³ *Id.* at 14 (noting that a visitor to the transmitter site specified in the Permit observed an antenna "identical in appearance to the Scala CL-FM antenna"), 17 (noting that a different visitor also observed a "Scala Model CL-FM eight-element log periodic"). *See also, id.*, Exh. J, Second Decl. of Frank M. Magarelli, at 3-4, and Exh. Q, Decl. of Mark Miller, at 2.

³⁴ License Application (as amended on July 12, 2017), July 2017 Hendershott Decl. at para. 1. Bart Hendershott is President of Action Tower Company (ATC), the company that owns, operates and leases the tower site specified in the Permit. *Id.* Action Tower Company was retained by RRC (along with an engineering firm recommended by Hendershott) to construct the Translator's facilities. *Id.* at para. 2.

³⁵ *Id.* at para. 2.

³⁶ Given this, we reject Corso's allegation that RRC falsely certified in the License Application that "[t]he operating transmitter power output produces the authorized effective radiated power." Corso Objection at 22. *See also*, License Application, Section III, Item 6 (Transmitter Power Output).

³⁷ License Application (as amended on April 28, 2020), K246CH TPO Calculation, and Nov. 2019 Pelley Decl. at para. 3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

TPO.⁴¹ As a result, the Translator’s authorized TPO now is achieved “without the need of additional filtering.”⁴²

11. We do find that, as Corso alleges and RRC admits,⁴³ between April 4, 2016, and October 7, 2016, the Translator’s antenna was mounted at the wrong height in violation of section 74.1251(b)(8), and oriented in the wrong direction in violation of sections 74.1251(b)(2) and (8).⁴⁴ Further, by operating the Translator with non-conforming facilities, RRC violated section 301 of the Act, and section 74.14 of the Rules.⁴⁵ We adopt a Consent Decree that addresses these violations.

2. Station Identification

12. We reject Corso’s allegation that the Translator has failed to comply with the Commission’s station identification requirements. Corso asserts that the on-air station identification broadcast by the Translator did not identify the Translator.⁴⁶ Based on this, she concludes RRC violated section 74.1283 of the Rules.⁴⁷ RRC, however, indicates that the Translator’s “station identification obligation was satisfied using automatic frequency shifting key technology ... which is not reflected by the subject off-air recording.”⁴⁸ Section 74.1283 of the Rules permits an FM translator station to be identified “[b]y transmitting the call sign in International Morse Code at least once each hour” and states that “[t]ransmission of the call sign can be accomplished by ... [f]requency shifting key.”⁴⁹ Accordingly, we find no violation of section 74.1283 occurred.⁵⁰

⁴¹ License Application (as amended April 27, 2020), Mar. 2020 Schminke Decl. at para. 5.

⁴² *Id.*

⁴³ Corso Objection at 20-21; License Application (as amended on July 12, 2017), July 2017 Low Decl. at para. 5.

⁴⁴ 47 CFR § 74.1251(b)(2) (requiring a permittee or a licensee to file an application on FCC Form 349 and obtain Commission approval for any changes to the “the direction of radiation” of an FM translator antenna), (8) (requiring a permittee or licensee to file an application on FCC Form 349 and obtain Commission approval for any “change in area being served” by an FM translator). We note section 74.1251(b)(6)—which Corso cites as applicable to antenna height changes—is not applicable. Corso Objection at 20-21. Section 74.1251(b)(6) instead relates to changes “in the output frequency of a translator.” 47 CFR § 74.1251(b)(6).

⁴⁵ 47 U.S.C. § 301 (“No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . , except . . . with a license in that behalf granted under the provisions of this chapter.”); 47 CFR § 74.14(a) (“Upon completion of construction of a radio station in accordance with the terms of the construction permit, the technical provisions of the application therefor, technical requirements of this chapter, and applicable engineering standards, and when an application for station license has been filed showing the station to be in satisfactory operating condition, the permittee . . . may, without further authority of the Commission, conduct service or program tests.”). Given that the Translator has operated with the facilities specified in the Permit since October 7, 2016, we will not, as Corso requests, revoke RRC’s program tests authority and order the Translator to shut down. Corso Objection at 1, 29.

⁴⁶ Corso Objection at 6, n. 9. Corso submits recordings to support her claim. The recordings mention KIKO(AM) and K247CF but do not mention the Translator. *Id.* (citing audio recordings available at <http://tinyurl.com/hbxho8m>).

⁴⁷ *Id.*

⁴⁸ License Application (as amended on April 27, 2020), Nov. 2019 Pelley Decl. at para. 6.

⁴⁹ 47 CFR § 74.1283(c).

⁵⁰ Given this, we reject Corso’s allegation that RRC falsely certified in the License Application that it would “comply with applicable station identification rules.” Corso Objection at 22. *See also* License Application (as filed and as amended on July 12, 2017, April 12, 2019, and April 27, 2020), Section II, Item 6 (Station identification).

⁵¹ *Fox River Broad., Inc.*, BC Docket No. 80-310, Order, 93 FCC 2d 127, 129, para. 4 (1983).

3. Character Issues

13. A misrepresentation is a false statement of fact⁵¹ or false certification⁵² made with intent to deceive the Commission. Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification),⁵³ and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive.⁵⁴ The Commission may disqualify an applicant who deliberately makes misrepresentations.⁵⁵ In addition, section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁵⁶ Similarly, section 1.65 of the Rules requires licensees to notify the Commission within 30 days whenever any information furnished in a pending application “is no longer substantially accurate and complete in all significant respects” or “[w]hen there has been a substantial change as to any other matter which may be of decisional significance” with respect to a pending application.⁵⁷ A finding of intent to deceive is not required to find a violation of these sections, but the incorrect information must be material under section 1.17 or potentially decisionally significant under section 1.65. For the reasons discussed below, we find that, while RRC did provide incorrect information to the Commission, Corso has failed to raise a substantial and material question of fact regarding whether RRC made misrepresentations to the Commission.⁵⁸ However, we do find that, as Corso alleges,⁵⁹ RRC violated section 1.65 of the Rules when it failed to timely amend the License Application to reflect that the Translator had not been constructed as authorized and failed to timely correct an erroneous statement made in the Program Test Letter.

14. *Construction of Translator as Authorized.* Corso argues that, given RRC’s failure to construct the Translator as specified in the Permit, it made a number of false certifications to the Commission in the License Application and in the Program Test Letter.⁶⁰ Specifically, Corso asserts that, in the License Application, RRC falsely certified that (1) “all terms, conditions, and obligations” set forth

⁵² *San Francisco Unified Sch. Dist.*, MB Docket No. 04-191, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 nn.40-41 (2004) (subsequent history omitted).

⁵³ *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

⁵⁴ *See American Int’l Dev., Inc.*, BC Docket No. 78-40, 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).

⁵⁵ *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000).

⁵⁶ 47 CFR § 1.17(a)(2).

⁵⁷ 47 CFR § 1.65.

⁵⁸ We do not consider herein Corso’s allegations regarding the “candor and character qualifications” of the principal of the engineering firm RRC hired to construct the Translator’s facilities. Corso Objection at 27-28. He is not a party to the License Application. *See* FCC Form 350, Application for an FM Translator or FM Booster Station License, Section II – Legal, Items 7 (Character Issues) and 8 (Adverse Findings); Instructions for FCC Form 350, Instructions for Section II – Legal Information, Items 7 and 8: Character Issues/Adverse Findings (requiring an applicant to report character issues and adverse findings related to itself and any parties to the application and defining the term “party to the application” to include any individual or entity whose ownership or positional interest in the applicant is attributable under the Commission’s multiple ownership rules). Thus, his character qualifications are not relevant to our consideration of the License Application. We also do not consider Corso’s allegation that RRC’s President, and the principal of the engineering firm violated 18 U.S.C. § 1512(b), (d), (k), by retaliating against and intimidating witnesses “who provide[d] the Commission with truthful testimony.” Corso Supplement at 11-12. As noted, the principal of the engineering firm is not a party to the License Application. Further, the Commission generally does not “take cognizance of non-FCC misconduct . . . unless it is adjudicated.” *Character Policy Statement*, 102 FCC 2d at 1204-05, para. 48.

⁵⁹ Corso Objection at 20.

⁶⁰ *Id.* at 22-27.

in the Permit were met,⁶¹ (2) the Translator was “constructed in compliance with all special operating conditions, terms, and obligations described in the construction permit,”⁶² (3) the Translator was “in satisfactory operating condition and ready for regular operation,”⁶³ (4) the statements made in the License Application were “true, complete, and correct to the best of [RRC’s] knowledge and belief” and “made in good faith,”⁶⁴ and (5) the Translator’s directional antenna was “oriented in the proper direction.”⁶⁵ Corso also argues that RRC made a misrepresentation in the Program Test Letter when it stated the Translator had “commenced program test operations with the facilities authorized in the [Permit].”⁶⁶

15. We reject Corso’s allegation that RRC made misrepresentations in the License Application and the Program Test Letter. The declarations submitted by RRC state—under penalty of perjury—that RRC was unaware that its certifications and statement were incorrect at the time it filed the License Application and submitted the Program Test Letter.⁶⁷ While Corso speculates that the companies RRC engaged to construct the Translator intentionally constructed the Translator’s facilities at a variance from those specified in the Permit,⁶⁸ she does not present any evidence contradicting the declarations stating RRC was unaware that the Translator had not been constructed as authorized in the Permit. Accordingly, based on the evidence before us, we conclude that RRC lacked knowledge that the certifications and statement were incorrect. Given this, we cannot conclude they were made with an intent to deceive and thus do not find them to be misrepresentations. Likewise, because RRC had a reasonable basis for believing that its certifications and statement were “correct and not misleading,” we find no merit to Corso’s argument that RRC violated section 1.17 of the Rules in making them.⁶⁹

16. We do find that, as Corso asserts,⁷⁰ RRC violated section 1.65 of the Rules by failing to timely amend the License Application once it determined that certifications made therein were incorrect.⁷¹ By its own admission, RRC became aware of the need to correct certifications made in the License

⁶¹ *Id.* at 22, *citing* License Application (as originally filed), Section II, Item 2 (Conditions).

⁶² *Id.* at 22, *citing* License Application (as originally filed), Section III, Item 5 (Special Operating Conditions).

⁶³ *Id.* at 22, *citing* License Application (as originally filed), Section II, Item 5 (Station ready for operation).

⁶⁴ *Id.* at 23, *citing* License Application (as originally filed), Section II.

⁶⁵ *Id.* at 22, License Application (as originally filed), Section III, Item 7 (Directional Antenna).

⁶⁶ *Id.* at 25, *citing* Program Test Letter at 1.

⁶⁷ Low states that he engaged an engineering firm to construct the facilities authorized in the Permit. License Application (as amended on July 12, 2017), July 2017 Low Decl. at para. 2. He explains that he does not reside in Arizona and relied on the firm—and ATC—to notify him about “communications site issues.” *Id.* Low states that, in early April 2016, the engineering firm notified him that the facilities specified in the Permit were “constructed as authorized, all conditions were satisfied, and the station was ready to commence automatic program test operation.” *Id.* at para. 3. He indicates that, relying on this information, RRC filed the License Application. *Id.* Low’s statements are confirmed by Hendershott. He affirms that the engineering firm notified RRC that “construction was complete as authorized by the construction permit, that all terms and conditions had been satisfied, that the station was ready to commence compliant program test operation, and that he could stipulate to that effect in an application for a license to cover.” License Application (as amended July 12, 2017), July 2017 Hendershott Decl. at para. 3.

⁶⁸ Corso Objection, Exh. I at para. 1 (asserting that the “misdirection of the antenna” was so great that “it could not have been the result of an innocent mistake”); Corso Supplement at 7-8 (questioning why RRC did not submit a statement from the engineering firm itself and how individuals “experienced and knowledgeable in the installation and maintenance of communications facilities” could have mistakenly advised RRC that the facilities had been constructed as authorized in the Permit, and speculating there was no mistake or oversight in orienting the Translator’s antenna toward Phoenix as opposed to in the direction specified in the Permit).

⁶⁹ Corso Objection at 20.

⁷⁰ Corso Supplement at 13-14.

⁷¹ 47 CFR § 1.65.

Application no later than October 7, 2016.⁷² However, RRC did not amend the License Application within 30 days as required by section 1.65. We also find that RRC violated section 1.65 of the Rules by failing to timely correct the erroneous statement made in the Program Test Letter. This statement was “decisionally significant.” As discussed above, the fact that the Translator was not constructed as authorized in the Permit meant RRC did not have authority to commence program test operations. The Consent Decree adopted below addresses these violations.

17. *Request for Additional Time.* We find no merit to Corso’s assertion that, in a letter submitted to the Commission on October 28, 2016, RRC lacked candor and violated section 1.17 of the Rules.⁷³ Corso argues that RRC lacked candor when it stated that it required additional time to review and consider the record and that it was actively preparing and would file an opposition to the Corso Objection.⁷⁴ Corso notes that RRC already knew that the Translator had not been constructed as authorized when it submitted the letter.⁷⁵ Given this, Corso argues RRC did not require further time to respond, and its statement to that effect was false.⁷⁶ She also argues that by failing to inform the Commission in the letter that the Translator had not been constructed as authorized, RRC omitted “material information” from the letter.⁷⁷ According to Corso, the omission rendered the statements made in the letter misleading.⁷⁸ RRC disputes Corso’s claims. RRC notes that Corso raised multiple issues beyond the alleged failure to construct the Translator as authorized and states “additional time was required to carefully review and consider the voluminous material submitted and matters raised by [Corso].”⁷⁹ RRC also states that its “comprehensive review and investigation” of the Translator’s construction continued beyond October 28, 2016.⁸⁰ Finally, RRC notes that it and the tower site owner spent time developing processes designed to prevent “a recurrence of similar events.”⁸¹ We find RRC has provided a reasonable explanation for its statement that it required more time to respond. We conclude that the statement was not incorrect or mistaken. We further conclude that RRC did not violate section 1.17. While it is true that RRC could have disclosed in the letter that the Translator was not constructed as authorized, the letter is not misleading without that information.

18. *Construction of K230BT As Authorized.* Corso argues that RRC failed to construct another FM translator—K230BT, Globe, Arizona—as specified in its construction permit (K230BT Permit),⁸² and, as a result, made a number of false certifications and statements to the Commission in an application for a license to cover the K230BT Permit and letters to the Commission regarding equipment

⁷² License Application (as amended July 12, 2017), July 2017 Low Decl. at paras. 5, 7. *See also* Corso Supplement at 13-14.

⁷³ Corso Supplement at 14-16.

⁷⁴ *Id.* *See also*, Letter from John S. Neely, Miller and Neely, P.C., to Peter Doyle, Chief, Audio Division, Media Bureau, File Nos. BLFT-20160404ACM, BLFT-20160519ABI (dated Oct. 28, 2016).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ License Application (as amended April 27, 2020), Dec. 2019 Low Decl. at para. 8.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Corso Objection at 11, 15, 19-25. Because misconduct at one station generally is not relevant to consideration of applications related to another commonly-held station, Character Policy Statement, 102 FCC 2d at 1223, para. 92, we do not consider these allegations herein except to the extent that they implicate RRC’s character qualifications. For the same reason, we do not consider Corso’s allegations that RRC was not authorized to conduct equipment tests or program tests for K230BT, RRC violated section 1.65 of the Rules, and RRC abused Commission processes by constructing temporary facilities for K230BT and “filing [] sequential ‘minor-change’ applications” for that translator. Corso Objection at 28-29; Corso Supplement at 10-11, 14.

tests and program test operations for that translator.⁸³ RRC submits declarations made under penalty of perjury that indicate the Translator was constructed as specified in the K230BT Permit.⁸⁴ RRC notes, though, that K230BT's facilities were constructed on a flatbed-mounted telescoping antenna structure adjacent to the antenna structure specified by the K230BT Permit.⁸⁵ It also notes that its engineer "would intermittently take K230BT off the air" and "retract the telescoping antenna arm."⁸⁶ Corso has not offered any evidence to rebut RRC's statements. Further, given that RRC's engineer indicates he would retract the telescoping arm on which K230BT's transmitter was mounted when K230BT was off the air, it is plausible that others may have overlooked K230BT's antenna on their site visits. Accordingly, we conclude that Corso has not made a *prima facie* showing that the certifications made in the K230BT License Application and the statements made in the equipment test and program test letters were misrepresentations.

B. Minor Change Application

19. Section 74.1232(b) of the Rules provides that "[m]ore than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations."⁸⁷ It is a "spectrum efficiency rule based on [the Commission's] experience that parties rarely need such multiple translators."⁸⁸ Applicants for authority to construct or make changes to an FM translator station must certify that they do not have "any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station."⁸⁹

20. We reject MCT's assertion that RRC falsely certified in the Minor Change Application that it did not have an authorization for an FM translator station that served "substantially the same area

⁸³ Specifically, Corso asserts that RRC falsely certified that K230BT's facilities satisfied "all terms, conditions and obligations set forth in the underlying construction permit," the translator was "in satisfactory operating condition and ready for regular operation," the Translator "was constructed in compliance with all special operating conditions, terms, and obligations described in the construction permit," and the translator's antenna was "mounted in accordance with the specific instructions provided by the antenna manufacturer and ... oriented in the proper direction." File No. BLFT-20160519AI, Section II, Item 2 (Conditions) and Item 5 (Station ready for operation), Section III, Item 54 (Special Operation Conditions) and Item 7 (Directional Antenna) (K230BT License Application). She also asserts that RRC made false statements in an April 4, 2016, letter notifying the Commission that K230BT was conducting equipment tests "with facilities authorized by [the K230BT Permit]," and a May 10, 2016, letter notifying the Commission that "K230BT has completed construction of its authorization, File no. BPFT-20160129AWZ, and began operating under program test authority on May 9, 2016." Corso Objection at 25. See also Letter from John S. Neely, Esq., Miller and Neely, P.C., to Secretary, FCC, File No. BPFT-20160129AWZ (dated April 4, 2016); Letter from Jerrold D. Miller, Esq., Miller and Neely, P.C., to Secretary, FCC, File No. BPFT020160129AWZ (dated May 10, 2016).

⁸⁴ License Application (as amended on April 27, 2020), July 2019 Pelley Decl. at para. 3.

⁸⁵ *Id.* RRC apparently was not aware that the antenna was mounted on a telescoping antenna structure until RRC made inquiries at staff's request. License Application (as amended on April 27, 2020), Dec. 2019 Low Decl. at para. 3. RRC notes, however, that the coordinates of the antenna were the same as those listed in the K230BT Permit. *Id.* at para. 5. While RRC clearly envisioned mounting the K230BT antenna on the same tower structure as the Translator's antenna, *id.*, the K230BT Permit specified only geographic coordinates and not an Antenna Structure Registration number.

⁸⁶ *Id.* at para. 6.

⁸⁷ 47 CFR § 74.1232(b).

⁸⁸ *Creation of a Low Power Radio Service*, MM Docket No. 99-25; MB Docket No. 07-172, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3392, para. 59 (2012).

⁸⁹ FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, Section III, Item 14 (Multiple Translators). See also Instructions for FCC Form 349, Instructions for Section III – Preparer's Certification And Engineering Data, Section III-A Engineering, Section B Additional Questions, Item 14: Multiple Translators.

and rebroadcasts the same signal” as the Translator.⁹⁰ While MCT correctly notes that RRC is the licensee of another FM translator—K247CF, Payson, Arizona—that serves substantially the same area as the facilities authorized in the Permit,⁹¹ the two translators have not rebroadcast the signal of the same primary station at the same time. K247CF only began rebroadcasting the Translator’s primary station—KIKO(AM)—when the Translator went off the air in May 2018.⁹² Indeed, at that time, RRC notified staff that K247CF would rebroadcast the Translator’s primary station while the Translator was silent, and would rebroadcast a different primary station once the Translator resumed operations. The Translator resumed operations on April 10, 2019.⁹³ RRC indicates that K247CF ceased rebroadcasts of KIKO(AM) at that time.⁹⁴ Accordingly, we find that RRC’s certification in response to the Multiple Translators item was accurate and did not constitute a misrepresentation.⁹⁵

C. Minor Modification Application

21. Despite the fact that we anticipate dismissing the Minor Modification Application—and pleadings filed in relation to it—as moot,⁹⁶ we consider allegations made in pleadings related to that application regarding the character qualifications of RRC and its sole proprietor, John Low (Low),⁹⁷ and conclude that MCT has not raised a substantial and material question of fact regarding RRC’s or Low’s

⁹⁰ Minor Change Objection at 2-3. *See also* File No. BPFT-20180625ABP, Section III, Item 14 (Multiple Translators).

⁹¹ Minor Change Objection at 3.

⁹² RRC communicated with staff at that time regarding the change in K247CF’s primary station. *See* File No. BLSTA-20180508ACH; *Rocket Radio Corp.*, File No. BLSTA - 20180508ACH, Letter Order (dated June 18, 2019).

⁹³ *Rocket Radio Corp.*, Resumption of Operations (filed April 11, 2019).

⁹⁴ Minor Change Application (as amended on April 24, 2020), March 2020 Low Decl. at paras. 7-8.

⁹⁵ We note that MCT also alleges that another RRC translator that also rebroadcasts KIKO(AM) “may not be in proper compliance” with the Rules regarding translator service areas. We do not consider this allegation herein because misconduct at one station generally is not relevant to consideration of applications related to another commonly-held station. *See, e.g., Character Policy Statement*, 102 FCC 2d at 1223, para. 92.

⁹⁶ We herein decide to act on the License Application prior to or concurrent with any action on the Minor Change or Minor Modification Applications. Thus, it is more appropriate to consider the power increase and channel change proposed by RRC in the context of the Minor Change Application. Upon action on the Minor Change Application, we will dismiss the Minor Modification Application and any pleadings filed in relation to it as moot.

⁹⁷ *See, e.g., Lighthouse Christian Center*, Memorandum 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 (MB 2015)); *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, 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).

character.⁹⁸ Specifically, we reject MCT’s assertion that an interference complaint made by 1TV—a company owned and controlled by Low—regarding one of its translators contained false statements.⁹⁹ MCT bases its claim on the fact that the translator at issue was silent on the date 1TV filed its complaint and on the dates listed on the listener complaints attached to the filing.¹⁰⁰ However, as RRC notes, 1TV “expressly acknowledged” that MCT’s translator held an STA to remain silent, and suggested that K271CR “was causing the subject interference when operating intermittently on or about the dates of the complaints.”¹⁰¹ Given this, we cannot conclude that MCT has raised a substantial and material question of fact regarding whether 1TV or Low made misrepresentations to the Commission.

22. We further find no merit to MCT’s allegation that RRC itself made false statements in a complaint filed with the Commission regarding interference to the Translator’s signal caused by another MCT translator.¹⁰² In support of this assertion, MCT relies on the fact that the listener complaint relied upon by RRC was “submitted” two days after the Translator went silent.¹⁰³ However, the complaint was dated only two days after the Translator went silent and did not specifically allege that the interference occurred during the Translator’s silence. Without more, we cannot conclude that MCT has raised a substantial and material question of fact regarding whether RRC made misrepresentations to the Commission.

23. Finally, we reject MCT’s assertion that, on May 8, 2018, RRC made misrepresentations to the Commission or lacked candor when it requested special temporary authority for the Translator to remain silent.¹⁰⁴ In its request, RRC indicated that the Translator had gone silent “while dealing with interference issues from” an MCT translator.¹⁰⁵ MCT suggests that the circumstances surrounding the

⁹⁸ In addition to the allegations discussed above, MCT reprises its allegation that RRC made a false certification in response to the Multiple Translators item on the Minor Modification Application. Minor Modification Objection at 3-4. MCT also references the Corso Objection and its allegations that RRC made false certifications in the License Application. Minor Modification Reply at 4. These allegations are considered and rejected herein. *See supra* paras. 14-15 and 20. MCT also generally alleges “many misrepresentations and lack of candor statements were made by RRC” in a license application related to K230BT filed on June 14, 2017, and asserts that Low has made false statements about “an ongoing business relationship” with MCT’s sole member. *Id.* at 5, 8. MCT offers no specifics regarding the former and does not identify the proceedings in which the latter allegedly occurred. Without more, we are unable to consider MCT’s claims. MCT also notes a decision we issued in relation to KIKO-FM and notes that we cautioned 1TV “to be more attentive to the information it provides to the Commission in the future.” Minor Modification Reply at 8-9, *citing 1TV.com, Inc.*, File Nos. BPH-20170620ABH, BLH-20170620ABG, Letter Order, at n. 9 (MB April 25, 2018). Therein, however, we stated that the incorrect statement that resulted in our cautioning 1TV was “immaterial to our actions herein and does not require a formal sanction.”

⁹⁹ Minor Modification Reply at 5-6.

¹⁰⁰ *Id.* MCT also alleges that RRC submitted two listener complaints alleging the same MCT translator was interfering with the signal of an RRC translator. *Id.* at 6. However, we have no record of any such complaints being submitted by RRC and are unable to consider this allegation further.

¹⁰¹ License Application (as amended April 27, 2020), Dec. 2019 Low Decl. at para. 12. *See also* Letter from John Low, 1TV.com, Inc. to Chief, Audio Division, Media Bureau, File No. BMPFT-20170718AGR (rec’d Mar. 19, 2018).

¹⁰² Minor Modification Reply at 6.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 6-7.

¹⁰⁵ File No. BLSTA-20180508ACH.

Translator's silence were suspicious and the timing of the Translator's silence was "very unusual."¹⁰⁶ MCT, however, has not submitted any evidence to support its speculations.

D. Consent Decree

24. As part of this Order, we are adopting a Consent Decree entered into by the Media Bureau (Bureau) and RRC. The Consent Decree resolves issues related to RRC's unauthorized construction of the Translator, and its violations of section 1.65 of the Rules. As part of the Consent Decree, RRC will pay a civil penalty to the United States Treasury of fifteen thousand dollars (\$15,000). Further, for three years from the date of this Order, RRC must have an unaffiliated broadcast engineer visit and examine any facilities it (or any commonly-owned entity) constructs and operates pursuant to Commission authorization. This engineer also must review for accuracy any application related to such facilities that RRC (or any commonly-owned entity) submits to the Commission. RRC must include, with any application for a license to cover such facilities, a declaration—made under penalty of perjury by the engineer—that confirms the application accurately reflects the technical parameters of the facility constructed.

25. We conclude that nothing in the record before us creates a substantial or material question of fact whether RRC possesses the basic qualifications to be a Commission licensee. 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 RRC's violations of the Act and Rules, subject to the terms of the Consent Decree.¹⁰⁷ We note that, given RRC's acknowledgment that it constructed the Translator at a variance from the technical parameters set forth in the Permit, we grant the Corso Objection in part. As provided in the Consent Decree,¹⁰⁸ however, we otherwise deny the Petition.

IV. CONCLUSION/ACTIONS

26. IT IS ORDERED that the Informal Objection filed by Linda C. Corso, on September 26, 2016, IS GRANTED IN PART, AND OTHERWISE DENIED.

27. IT IS FURTHER ORDERED that the Informal Objection filed by Mountain Community Translators, LLC, on June 28, 2018, IS DENIED.

28. IT IS FURTHER ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended,¹⁰⁹ and by the authority delegated by sections 0.61 and 0.283 of the Commission's rules,¹¹⁰ the Consent Decree attached hereto IS ADOPTED.

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

30. IT IS FURTHER ORDERED that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Rocket Radio Corporation, 4501 Broadway, Miami, AZ 85539; counsel for Rocket Radio Corporation, John S. Neely, Esq., Miller and Neely, PC., 3750

¹⁰⁶ *Id.* MCT points out that its translator had been operating for more than a year when RRC filed its request. *Id.* MCT suggests that RRC claimed it needed to take the Translator off the air because of interference issues but actually took the Translator off the air so that it could have K247CF rebroadcast KIKO(AM). *Id.* As noted *supra* at para. 20, though, K247CF rebroadcast the signal of KIKO(AM) only while the Translator was silent and is now rebroadcasting the signal of another primary station.

¹⁰⁷ As a result, we also deny Corso's request that we designate the License Application for hearing. Corso Objection at 1, 29; Corso Supplement at 1. Further, we decline her request that we "commence revocation proceedings against any and all licensees and permittees under common control with RRC." Corso Objection at 1, 29-30; Corso Supplement at 1.

¹⁰⁸ *See* Consent Decree at para. 8.

¹⁰⁹ 47 U.S.C. §§ 154(i).

¹¹⁰ 47 CFR §§ 0.61, 0.283.

University Boulevard, West, Suite 203, Kensington, MD 20895-2136; counsel for Linda C. Corso, John Joseph McVeigh, 16230 Falls Road, PO Box 128, Butler, MD 21023-0128; and Victor A. Michael, Jr., Mountain Community Translators, LLC, 87 Jasper Lake Road, Loveland, CO 80537.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division, Media Bureau

CONSENT DECREE**V. INTRODUCTION**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Rocket Radio Corporation, by their respective authorized representatives, for the purpose of resolving certain issues related to the construction of non-conforming facilities that have arisen in the Media Bureau's review of the pending application for a license to cover a construction permit issued for FM translator station K246CH, Tuba City, Arizona.

VI. 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 the order of the Bureau adopting this Consent Decree;
 - (c) "Application" means the pending application (File No. BLFT-20160404ACM) filed on April 4, 2016, as amended on July 12, 2017, April 12, 2019, and April 27, 2020, for a license to cover the facilities specified in the Permit;
 - (d) "Bureau" means the Media Bureau of the FCC;
 - (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;
 - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order;
 - (h) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (i) "Investigation" means the Bureau's investigation of Licensee's construction of the facilities specified in the Permit;
 - (j) "Licensee" means Rocket Radio Corporation (FRN: 0001595149);
 - (k) "Low Entity" means any entity other than Licensee in which John Low holds an interest that is within the ownership and control disclosure standard set forth in section 1.2112 of the Rules;
 - (l) "Objection" means the Informal Objection and Petition for Immediate Revocation of Program Test Authority filed in relation to the Application by Linda C. Corso on September 24, 2016;
 - (m) "Parties" means Licensee and the Bureau;
 - (n) "Permit" means the construction permit (File No. BPFT-20160129AVI) for the Station issued to Licensee on February 25, 2016;
 - (o) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations;
 - (p) "Station" means K246CH, Tuba City, Arizona (Facility ID No. 155722); and
 - (q) "Violations" means the violations of section 301 of the Act, and sections 1.65, 74.14 and 74.1251 of the Rules stipulated in paragraph 9 of this Consent Decree.

VII. BACKGROUND

3. Section 301 of the Act requires that no person use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and

in accordance with the Act and with a license. Section 74.14(a) of the Rules grants authority to the permittee of an FM translator station to conduct service or program tests so long as it has (1) completed construction “in accordance with the terms of the construction permit, the technical provisions of the application therefor, technical requirements of this chapter, and applicable engineering standards,” and (2) filed an application for station license “showing the station to be in satisfactory operating condition.” Section 74.1251(b)(2) requires a permittee or licensee to file an application on FCC Form 349 and obtain Commission approval for any change in “the direction of radiation” of an FM translator. Similarly, Section 74.1251(b)(8) requires a permittee or licensee to file an application on FCC Form 349 and obtain Commission approval for any “change in area being served” by an FM translator.

4. The Objection alleges Licensee did not construct the facilities authorized in the Permit. Among other things, the Objection states that the Station’s antenna was installed at a different height and with a different orientation than specified in the Permit. The Objection further argues that Licensee was not entitled to conduct equipment tests or commence program tests because the Translator was not constructed in accordance with the Permit. In light of these compliance issues, the Parties have agreed to enter into this Consent Decree by which both Licensee and the Bureau intend to be legally bound.

VIII. AGREEMENT

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

6. **Jurisdiction.** Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree. Licensee and the Bureau further agree to be legally bound by the terms and conditions of this Consent Decree.

7. **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. To the extent that Licensee 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. 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.

8. **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, and grant the Objection in part and deny it in all other respects. 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 Violations in any action against Licensee, provided that Licensee satisfies all of its obligations under this Consent Decree. In the event that 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. **Admission of Liability.** Licensee hereby stipulates that it installed the Station’s antenna at a different height and with a different orientation than specified in the Permit and therefore failed to construct the facilities authorized in the Permit. Licensee stipulates that its construction and operation of non-conforming facilities violated section 301 of the Act, and sections 74.14 and 74.1251 of the Rules. Licensee also stipulates that it failed to timely amend the Application (and failed to timely correct other materials before the Commission) to reflect the fact that it had constructed non-conforming facilities and thus violated section 1.65 of the Rules.

10. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Fifteen Thousand Dollars (\$15,000), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in Section 3701(b)(1) of the Debt Collection Improvement Act of 1996.¹¹¹

11. **Payment.** Licensee shall send electronic notification of payment to Heather.Dixon@fcc.gov and Tom Hutton at Tom.Hutton@fcc.gov on the date payment of the Civil Penalty is made. Payment shall be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),¹¹² or by wire transfer. The Commission no longer accepts civil penalty or forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹¹³

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block 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 referenced above (Payor FRN).¹¹⁴ 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 the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN referenced above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN referenced above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and 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.

12. **Independent Engineering Review.** Licensee agrees that, for three years from the date of the Adopting Order, it shall have an independent and unaffiliated broadcast engineer visit and examine any broadcast facilities it (or any Low Entity) constructs and/or operates pursuant to Commission authorization. Licensee agrees that this engineer also shall review for accuracy any application related to such facilities that Licensee (or any Low Entity) submits to the Commission. Licensee agrees that it will include, with any application for a license to cover such facilities, a declaration—made under penalty of

¹¹¹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹¹² Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

¹¹³ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

¹¹⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

perjury by said engineer—that confirms the technical information provided in the application being filed accurately reflects the technical parameters of the facility constructed.

13. **Qualifications; Agreement to Grant.** The Bureau finds that its Investigation raises no substantial and material fact as to whether Licensee possesses the basic qualifications, including character, to hold a Commission license. Accordingly, the Bureau agrees to grant the Application, after the Effective Date provided that the following conditions have been met: (1) Licensee has fully and timely satisfied its obligation to make the Civil Penalty payment referenced in paragraph 10 of this Consent Decree; and (2) there are no issues other than the Violations that would preclude grant of the Application.

14. **Waivers.** As of the Effective Date, Licensee 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 Adopting Order, provided the Consent Decree is adopted without change, addition or modification. 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 Adopting Order, neither Licensee nor the Commission will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 CFR Section 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

15. **Severability.** The Parties agree that if a court of competent jurisdiction renders any of the provisions of this Consent Decree invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

16. **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.

17. **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 Commission Rule or Order.

18. **Successors and Assigns.** The Consent Decree will be binding on Licensee's successors-in-interest and assigns. 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 of Licensee set forth in this Consent Decree.

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Licensee and the Bureau concerning the Violations.

20. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of both 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.** 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.

23. **Counterparts.** 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: _____
Albert Shuldiner
Chief, Audio Division, Media Bureau

Date: _____

ROCKET RADIO CORPORATION

By: _____
John Low, President

Date: _____