

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

In re Application of)	
)	
Tom Hodgins, Assignor, and)	NAL/Acct. No. MB-201641410013
McKenzie River Broadcasting Company, Inc.,)	FRN: 0008625543
Assignee)	
)	Facility ID No. 156660
For Consent to Assignment of License of)	File No. BALFT-20140505ACA
FM Translator Station K277CT, Cottage Grove,)	
Oregon)	

ORDER

Adopted: August 4, 2016

Released: August 5, 2016

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau), Tom Hodgins (Hodgins), and McKenzie River Broadcasting Company, Inc. (MRBC). The Consent Decree resolves issues arising from the Bureau's review of the captioned application, as amended,¹ for Commission consent to the proposed assignment of license of FM Translator Station K277CT, Cottage Grove, Oregon (the Station) from Hodgins to MRBC (Application). In particular, the Consent Decree resolves the Bureau's investigation of Hodgins and MRBC's compliance with Section 73.3540 of the FCC's Rules (Rules)² and Section 310 of the Communications Act of 1934, as amended (the Act).³

2. The Consent Decree stipulates that Hodgins and MRBC violated Section 310 of the Act and Section 73.3540 of the Rules. The Consent Decree also requires, among other things, that Hodgins and MRBC will collectively make a five thousand dollar (\$5,000) civil penalty payment to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

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 investigation of potential violations of the Rules and the Act in connection with the Application.

4. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Hodgins or MRBC possesses the basic qualifications to be a Commission licensee.

¹ The Application was amended on July 30, 2014, September 12, 2014, November 24, 2014, October 16, 2015, and February 16, 2016.

² 47 CFR § 73.3540.

³ 47 U.S.C. § 310.

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 Rules,⁵ the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

7. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. Tom Hodgins, 1600 Gray Lynn Drive, Walla Walla, WA 99362, and to Mr. John Q. Tilson, III, President, McKenzie River Broadcasting Company, Inc., 925 Country Club Road, Suite 200, Eugene, OR 97401, and MRBC's counsel, Jessica A. Rogers, Esq., Luvaas Cobb, 777 High Street, Suite 300, Eugene, OR 97401.

FEDERAL COMMUNICATIONS COMMISSION



William T. Lake
Chief, Media Bureau

⁴ 47 U.S.C. § 4(i).

⁵ 47 CFR §§ 0.61, 0.283.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission, Tom Hodgins, licensee and proposed assignor of FM Translator Station K277CT, Cottage Grove, Oregon (Facility ID No. 156660); and McKenzie River Broadcasting Company, Inc., proposed assignee, for the purpose of terminating the Bureau's Investigation concerning compliance with Section 73.3540 of the FCC's rules, 47 CFR § 73.3540, and Section 310 of the Communication Act of 1934, as amended, 47 U.S.C. § 310.

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) "Adopting Order" means the order of the Bureau adopting this Consent Decree;
- (c) "Application" means the FCC Form 345 application, as amended, for consent to assign the FM Translator Station license from Hodgins to MRBC (File No. BALFT-20140505ACA);
- (d) "Bureau" means the Media Bureau of the Commission;
- (e) "Commission" or "FCC" means the Federal Communications Commission;
- (f) "Effective Date" means the date on which the Bureau releases the Order;
- (g) "Investigation" means the Bureau's investigation of information contained in the Application;
- (h) "Licensee" or "Hodgins" refers to Tom Hodgins;
- (i) "MRBC" means McKenzie River Broadcasting Company, Inc., proposed assignee of the Station;
- (j) "Parties" means Hodgins, MRBC, and the Bureau;
- (k) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations;
- (l) "Station" means FM Translator Station K277CT, Cottage Grove, Oregon (Facility ID. No. 156660); and
- (m) "Violations" means the unauthorized transfer of control of the Station in violation of Section 73.3540 of the Rules and Section 310(d) of the Act.

III. Background

3. On March 17, 2003, Hodgins filed an application for a construction permit for new FM Translator Station at Cottage Grove, Oregon.⁶ While that application was pending, Hodgins executed an Option Agreement with MRBC granting it an option to acquire the permit, if it was granted by the Commission.⁷ On December 4, 2013, the Commission granted the permit application. Thereafter, the Station was constructed and Hodgins filed a license to cover the construction permit which was granted on February 5, 2014.⁸

4. On May 5, 2014, Hodgins and MRBC jointly filed the Application which was amended on October 16, 2015. The Application proposes to assign the Station license pursuant to the executed Option Agreement. Under the Option Agreement, MRBC was “to reimburse Hodgins for all documented reasonable expenses related to obtaining the construction permit for the FM Translator. One-thousand dollars (\$1,000) for these expenses is advanced by MRB to Hodgins at the time of signing this Agreement and is non-refundable.”⁹ Additionally, in response to a Commission staff inquiry, MRBC further acknowledged that its “President John Tilson . . . and [its] chief engineer, Chris Murray, did in fact oversee the construction of the translator and paid the suppliers and local construction workers.”¹⁰

5. Because of the unauthorized transfer of control identified in the Bureau’s review of the Application, the Parties have negotiated this Consent Decree to terminate the Bureau’s Investigation.

IV. Agreement

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

7. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Hodgins and MRBC further agree that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

8. 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. Hodgins and MRBC agree that each 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 either Hodgins or MRBC fails to satisfy any condition or FCC rule, in the absence of Commission alteration of the condition or Rule, Hodgins or MRBC 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.

⁶ Application File No. BNPFT-20030317HYZ.

⁷ See “Option Agreement” (dated Sep. 23, 2003), Exhibit 4, Application, as amended October 16, 2015.

⁸ Application File No. BLFT-20140114AFZ.

⁹ See “Option Agreement” at 1 para. 2, Exhibit 4, Application, as amended October 16, 2015.

¹⁰ See *Letter to Michael Wagner from Jessica A. Rogers* at 2 (dated Jul. 31, 2015).

9. 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. In consideration for the termination of the Investigation, Hodgins and MRBC agree 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 Hodgins and MRBC, provided that Hodgins and MRBC satisfy all obligations under this Consent Decree. In the event that either Hodgins and or MRBC 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.

10. Hodgins and MRBC stipulate that each violated Section 310(d) of the Act and Section 73.3540 of the Rules by allowing MRBC to assume control of the Station without prior Commission authorization.

11. Hodgins and MRBC agree to collectively pay a civil penalty to the United States Treasury in the amount of Five Thousand Dollars (\$5,000), within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Kim Varner at Kim.Varner@fcc.gov and Michael Wagner at Michael.Wagner@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.

12. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Hodgins or MRBC possesses the basic qualifications, including those relating to character, to hold or obtain a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the civil penalty payment, referenced in paragraph 11 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

13. Hodgins and MRBC each agree to waive 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 any 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, no Party will contest the validity of the Consent Decree or Adopting Order, and Hodgins and MRBC will waive any statutory right to a *trial de novo*. Hodgins and MRBC each further agree 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 herein.

14. 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. 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.

15. 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.

16. 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 set forth in this Consent Decree with regard to the Station.

17. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Hodgins, MRBC and the Bureau concerning the Violations discussed herein.

18. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

19. 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.

20. 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: 8-4-16

TOM HODGINS

By: _____
Tom Hodgins

Date: _____

**MCKENZIE RIVER BROADCASTING
COMPANY, INC.**

By: _____
John Q. Tilson, III, President, McKenzie River
Broadcasting Company, Inc.

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
William T. Lake, Chief

Date: _____

TOM HODGINS

By: _____
Tom Hodgins

Date: 7-29-16

**MCKENZIE RIVER BROADCASTING
COMPANY, INC.**

By: _____
John Q. Tilson, III, President, McKenzie River
Broadcasting Company, Inc.

Date: _____

20. 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: _____

TOM HODGINS

By: _____
Tom Hodgins

Date: _____

**MCKENZIE RIVER BROADCASTING
COMPANY, INC.**

By: John Q. Tilson III
John Q. Tilson, III, President, McKenzie River
Broadcasting Company, Inc.

Date: 7/28/16