

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

In the Matter of

Mako Communications LLC
Licensee of Station KNBX-CD
Las Vegas, Nevada

)
) Facility ID No. 33819
) File No.: BRC DT – 20140528AAM
) Acct. No.: 20164142004
) FRN: 0004985982

ORDER

Adopted: January 13, 2016

Released: January 13, 2016

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Media Bureau (the “Bureau”) of the Federal Communications Commission (the “Commission”) and Mako Communications LLC (the “Licensee”), licensee of Station KNBX-CD, Las Vegas, Nevada (the “Station”). Currently pending before the Commission is an application for renewal of the Station’s license (FCC Form 303-S). A review of the record indicates that the station committed numerous violations of Section 73.3526 of the Commission’s Rules.¹ For the reasons set forth below, however, we find that grant of the Station’s license renewal application would be consistent with Section 309(k)(1) of the Communications Act of 1934, as amended (the “Act”) and, accordingly, we grant the Licensee’s renewal application.

2. The Bureau and the Licensee have negotiated the terms of the Consent Decree that terminate the above-referenced matter. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree. A copy of the Consent Decree is attached and incorporated by reference.

3. In the absence of new material evidence relating to this matter, we conclude that the matters referenced above raise no substantial or material questions of fact as to whether the Licensee possesses the basic qualifications to hold a Commission license. We have further examined the above-captioned renewal application and find that the applicant is fully qualified and that grant of the renewal application is in the public interest, convenience and necessity.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3526(e)(11)(ii), 73.3526(e)(11)(iii), and 73.3526(e)(13). During the license period, the Station failed to file numerous issues and programs lists in its online public file, failed to file its children’s television programming reports in a timely manner and failed to file Class A certifications.

² 47 U.S.C. §§ 154(i), 154(j), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that, the application to renew the license of Station KNBX-CD, File No. BRC DT – 20140528AAM, **IS GRANTED**, subject to the Compliance Plan outlined in the Consent Decree.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First Class mail and Certified Mail, Return Receipt Requested, to Licensee's counsel, Lee Peltzman, Shainis & Peltzman, Chartered, 1850 M Street, NW, Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION



William T. Lake
Chief, Media Bureau

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|-----------------------------|---|-------------------------------|
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| Mako Communications LLC |) | File No.: BRCDT - 20140528AAM |
| Licensee of Station KNBX-CD |) | Acct. No.: 20164142004 |
| Las Vegas, Nevada |) | FRN: 0004985982 |

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Mako Communications LLC ("Mako"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into the Station's numerous violations of Section 73.3526 of the Commission's Rules.¹

I. 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) "Adopting Order" means the Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - c) "Mako" means Mako Communications LLC and its predecessors-in-interest and successors-in-interest.
 - d) "Bureau" means the Media Bureau of the Federal Communications Commission.
 - e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - f) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Mako is subject by virtue of it being a Commission licensee, including but not limited to 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3526(e)(11)(ii), 73.3526(e)(11)(iii), 73.3526(e)(13).

¹ 47 C.F.R. §§ 73.3526(e)(11)(i), 73.3526(e)(11)(iii), and 73.3526(e)(17). During the license period, the Station failed to file numerous issues and programs lists in its online public file correctly, failed to file its children's television programming reports correctly, and failed to file certifications of compliance with requirements for Class A stations during the license term.

- g) "License Term" means from the third quarter of 2009 (the first quarter following assignment of the license to Mako) to the Effective Date.
- h) "Division" means the Video Division, Media Bureau of the FCC.
- i) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- j) "Investigation" means the examination of both Mako's compliance with the Public File Rules, as well as the determination whether grant of the above-captioned application would be consistent with Section 309(k) of the Act.
- k) "Parties" means Mako and the Bureau, each of which is a "Party."
- l) "Public File Rules" means subsections of 47 C.F.R. § 73.3526, including but not limited to sections 73.3526(e)(11)(i), 73.3526(e)(11)(iii), and 73.3526(e)(17).
- m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- n) "Station" means KNBX-CD, Las Vegas, Nevada.

II. DISCUSSION

3. On May 28, 2014, Mako filed its license renewal application (FCC Form 303-S) for the Station. In the process of evaluating the application, Division staff noticed that the Licensee indicated it was silent and off the air in its Children's Programming reports and issues and programs lists for two quarters during which it was purportedly on the air for a portion of the quarter, and for two quarters during which the Station did not have a Special Temporary Authorization ("STA") to remain silent. In addition, the Station did not file any Class A certifications during the license term. Division Staff asked Mako to provide an explanation, including a full accounting of the Station's periods of silence, and the Station provided an explanatory memo on October 12, 2015.² The Bureau's findings with regard to this investigation are outlined below.

4. After Mako acquired KNBX-CD on June 30, 2009,³ two STAs were granted and the Station was silent from July 6, 2009 to May 26, 2010⁴ and from October 8, 2010 to October 5, 2011.⁵ On April 28, 2010, Mako made an engineering STA request, and this STA was granted on May 4, 2010.⁶ Although the Station was on the air between May 26, 2010 and October 8, 2010, the Children's Programming reports and issues and program lists filed for second, third and fourth quarters 2010

² Memorandum from Lee J. Peltzman to Pamela Gallant re: KNBX-CD, Las Vegas, Nevada, available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=62373.

³ File No. BALTTA-20090501ABA.

⁴ File No. BLSTA-20090713ABQ.

⁵ File No. BLSTA-20101012ABG.

⁶ File No. BESTA-20100428AAT.

indicated the Station was silent. Additionally, the Children's Programming reports and issues and programs lists filed for first quarter 2012 indicated the Station was silent, even though no STA had been granted to permit the Station to remain silent during 2012.

5. In response to Division staff's request for clarification, Mako stated it had incorrectly indicated the station was silent in the Children's Programming reports and issues and programs lists filed for the second, third and fourth quarters of 2010 and the first quarter of 2012. Mako confirmed that that the Station broadcast during these periods. By way of explanation for the 2010 reports, Mako explained that the individual responsible for compliance at the station mistook an engineering STA granted to the Station on April 28, 2010 for a silent authority STA. With regard to the first quarter 2012 reports, Mako states that the compliance official thought a Silent Authority STA approved for unrelated Station KNBX(FM)⁷ had been approved for KNBX-CD.⁸ In October 2015, Mako corrected and refiled its Children's Programming and issues and programs lists for the quarters at issue and filed Class A certifications of continuing eligibility for all years during the license term.

6. Subsection 73.3526(e)(11)(iii) of the Rules requires each commercial television and Class A licensee to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during the quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission by the tenth day after the close of the reporting quarter.⁹ Commission records show that Mako filed a Children's Television Programming Report for the second, third and fourth quarters of 2010 and the first quarter of 2012 incorrectly indicating the station was silent and, thus, not broadcasting programming designed to serve the educational and informational needs of children. Because the station had not been silent during that entire time, it should have filed reports detailing the children's programming it broadcast even for those quarters during which it was silent for part of the quarter.

7. In addition, subsection 73.3526(e)(11)(i) of the Rules requires commercial television licensees to retain in their public file, every three months, "a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period." The TV issues/programs lists must be filed by the tenth calendar day of the succeeding quarter. Commission records show that Mako filed issues and programs lists for the second, third and fourth quarters of 2010 and the first quarter of 2012 incorrectly indicating the station was silent. Because the station had not been silent during that entire time, it should have filed reports detailing the issues and programs related to community issues for those quarters.

8. Mako also violated subsection 73.3526(e)(17), which requires each Class A television station to include in its public files documentation sufficient to demonstrate that it is continuing to meet the eligibility requirements set forth at Section 73.6001.¹⁰ The Licensee did not file any certifications indicating it meet the requirements set out in the Rules for Class A stations during the license term.

III. TERMS OF AGREEMENT

⁷ See BSTA-20120127AEO.

⁸ Mako provided a declaration signed under penalty of perjury attesting to the statements contained in paragraph 5.

⁹ 47 C.F.R. § 73.3526(e)(11)(iii).

¹⁰ 47 C.F.R. § 73.3526(e)(17).

9. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

10. **Jurisdiction.** Mako agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of 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 the enforcement of a Commission order.

12. **Termination of Investigation; Grant of Renewal Application.** 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, Mako agrees to the terms and conditions contained herein. In exchange, Mako agrees to follow the Compliance Plan, outlined below. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Mako concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Mako with respect to Mako's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

13. **Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints or other adjudicatory pleadings filed against Mako or its affiliates for alleged violations of the Act or the Commission's rules or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Mako with the Communications Laws.

14. **Voluntary Contribution.** Mako agrees that it will make a voluntary contribution to the United States Treasury in the amount of Eighteen Thousand Dollars (\$18,000) within thirty (30) calendar days after the Effective Date. Mako shall also send electronic notification of payment to Alison Nemeth at alison.nemeth@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹¹ When completing the FCC Form 159, enter the Account Number in block number

¹¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:¹²

- 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.

15. **Waivers.** Mako waives any and all rights 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 Adopting Order, provided the Bureau issues an Adopting Order as defined herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Mako nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mako shall waive any statutory right to a trial *de novo*. Mako hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

16. **Liability.** Mako admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 14 hereof, that the facts discussed in paragraphs three through eight, above, constitute violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(iii) and 73.3526(e)(17) of the Rules. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraph twelve hereof, or both, are breached by the Bureau, or are invalidated or modified to Mako's prejudice by the Commission, Bureau, or any court, then and in that event the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and Mako shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(iii) and 73.3526(e)(17) of the Rules.

17. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

¹² Should the Station have questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at ARINQUIRIES@fcc.gov.

18. **Subsequent Rule or Order.** The Parties agree that if any provision of the 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 Mako does not expressly consent) that provision will be superseded by such rule or Commission order.

19. **Successors and Assigns.** Mako agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

21. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

22. **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.

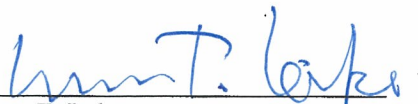
23. **Authorized Representative.** The individual signing this Consent Decree on behalf of Mako represents and warrants that he or she is authorized to execute this Consent Decree and to bind Mako to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Federal Communications Commission

**Media Bureau
Federal Communications Commission**

By:



William T. Lake
Chief

1-12-16
Date:

Mako Communications LLC

By:



Amanda Orrick Mintz
Member

12/23/2015
Date:

COMPLIANCE PLAN OF MAKO COMMUNICATIONS LLC

For a period of two (2) years from the Effective Date, Mako Communications LLC, or its successor-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Communications Act and Commission rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

1.
 - A. The Station Manager and other appropriate staff of the Station will log all broadcasts of public affairs and public service programming broadcast by the Station. These logs will be compiled into quarterly issues/programs lists and will be timely placed in both the public file at the main studio and in the Station's online public file.
 - 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 the Station's management and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
2.
 - A. The Station Manager and other appropriate staff of the Station will log all children's programming broadcast by the Station. These logs will be compiled into quarterly Children's Television Programming Reports (FCC Form 398) and will be timely placed in the public file at the main studio and in the Station's online public file.
 - B. All such Children's Television Programming Reports will be signed and dated by their preparer before they are placed in the public file.
 - C. Late-filed reports will be reviewed and signed by the Station's management and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
3. The Station Manager and other appropriate staff of the Station will comply with the Commission's Public File Rules by filing commercial limit certifications on a quarterly basis both in the public file at the main studio and in the Station's online public file.
4. At the time the Station's license is up for renewal, the Station Manager and other appropriate staff of the Station will properly broadcast and file with the Commission local public notice announcements pursuant to Commission rules.
5. Licensee or successor licensees, as appropriate, will conduct annual audits, beginning one year from the Effective Date, of the Station's public file. This exercise will terminate on the successful completion of the second annual public file audit. The second audit will be due on the anniversary of the first audit.
6. Licensee shall conduct training for station employees and management personnel concerning compliance with the Commission's Public File Rules within thirty (30) days of the effective date. Licensee will designate a Compliance Officer responsible for responding to employee questions

regarding compliance with these rules. Licensee shall conduct refresher training for the station's administrative employees and management at least every twelve (12) months. Licensee will train any new station administrative employee within ten (10) days of commencement of his or her duties at the station.

7. Licensee shall annually submit a sworn certification to the Commission, signed by the Licensee, that the Station's public file fully complies with the Public File Rules. If the Licensee cannot truthfully make this certification, it shall set forth in detail any public file deficiencies and describe any corrective measures taken. This report shall be filed within ten (10) days of each annual public file audit pursuant to number 5 above. A copy must be served on Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission and e-mailed to her at Barbara.Kreisman@fcc.gov.