

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

In the Matter of )  
 )  
Media General Operations, Inc. ) File No. BALCDT-20150917AEE  
 ) Acct. No.: 201641420015  
 ) FRN No.: 0005793666

ORDER

Adopted: July 13, 2016

Released: July 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 Media General Operations, Inc. (“Media General”).

2. 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 and terminating our Investigation regarding the possible violation by Media General of Section 310(d) of the Communications Act of 1934, as amended, and Sections 73.3540 and 73.3555(b) of the Commission’s Rules.<sup>1</sup> A copy of the Consent Decree is attached and incorporated by reference.

3. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Media General possesses the basic qualifications to remain a Commission licensee.

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and Sections 0.061 and 0.283 of the Commission’s Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the Investigation by the Bureau into the matters discussed above **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against Media General related to the above captioned Investigation that are pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and the Consent Decree shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to counsel for Media General, Scott R. Flick, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street NW, Washington, DC 20036-3006.

<sup>1</sup> 47 U.S.C. § 310(d); 47 C.F.R. §§ 73.3540, 73.3555(b).

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.061, 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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In the Matter of )  
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Media General Operations, Inc. ) File No. BALCDT-20150917AEE  
 ) Acct. No.: 201641420015  
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CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Media General Operations, Inc., for itself and on behalf of its direct and indirect parents, subsidiaries, and affiliates that hold Commission authorizations, hereby enter into this Consent Decree for the purpose of resolving and terminating the Investigation as defined below.

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) "Bureau" means the Media Bureau of the Federal Communications Commission.
- (d) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
- (e) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission, including but not limited to, 47 U.S.C. § 310(d) and 47 C.F.R. §§ 73.3540 and 73.3555(b).
- (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (g) "Georgia Preliminary Injunction" means *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Order, Case No. 2016-RCCV-71 (Ga. Sup. Ct. Richmond Cty. Mar. 3, 2016).
- (h) "Gray" means Gray Television Group, Inc.
- (i) "Investigation" means consideration of any and all alleged violations of the Communications Laws by Media General with regard to (1) the JSA/SSA; (2) the facts and circumstances surrounding Media General's requests for the issuance of a temporary restraining order/preliminary injunction against Gray, Schurz, and WAGT Licensee as a means of enforcing the terms of the JSA/SSA; and/or (3)

the actions taken by Media General subsequent to and in connection with the issuance of the Georgia Preliminary Injunction.

- (j) “JSA” means the Joint Sales Agreement that Schurz and WAGT Licensee entered into with Media General on October 16, 2009 (collectively with the SSA, “JSA/SSA”).
- (k) “Media General” means Media General Operations, Inc. and all of its direct and indirect parents, subsidiaries, and affiliates that have held or currently hold FCC licenses, including their successors and assigns.
- (l) “Parties” means Media General and the Bureau.
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “SSA” means the Shared Services Agreement that WAGT Licensee entered into with Media General on October 16, 2009.
- (o) “Station” means the broadcast television station WJBF(TV), Augusta, Georgia, FCC Facility ID No. 21740.
- (p) “Schurz” means Schurz Communications, Inc.
- (q) “WAGT Licensee” means WAGT Television, Inc., the previous licensee of broadcast television station WAGT(TV), Augusta, Georgia, FCC Facility ID No. 70699.

## II. BACKGROUND

3. On October 16, 2009, Media General, parent company of the licensee of the Station, entered into the JSA with WAGT Licensee, the then-licensee of WAGT(TV), Augusta, GA, and with Schurz. WAGT Licensee was ultimately controlled by Schurz. That same day, Media General also entered into the SSA with WAGT Licensee. Pursuant to the terms of the JSA/SSA, Media General was to operate as the sales agent for WAGT Licensee to market and sell advertising in connection with WAGT(TV) during the ten-year term of the JSA/SSA.

4. On September 17, 2015, Gray and Schurz filed applications for Commission consent to assign to Gray the license for WAGT(TV) as well as certain other full-power broadcast television licenses held by subsidiaries of Schurz.<sup>1</sup> Gray and Schurz informed the Commission in their applications that upon closing Gray would take WAGT(TV) silent, the JSA would be “broken”, and that Gray intended to relinquish WAGT(TV)’s license in the spectrum auction. Media General, Schurz, and Gray exchanged letters in November and December of 2015 in an ultimately unsuccessful attempt to resolve contractual disputes arising from the proposed transaction.

5. On January 28, 2016, Media General filed a complaint against Schurz, WAGT Licensee, and Gray in the U.S. District Court for the District of Columbia, along with a motion for a temporary

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<sup>1</sup> See File No. BALCDT-20150917AEE, Application (filed Sep. 17, 2015).

restraining order (“TRO”) and preliminary injunction and a memorandum in support of that motion.<sup>2</sup> In its motion, Media General sought to enjoin (1) the closing of the sale to Gray of WAGT(TV); (2) the transfer of WAGT(TV)’s programming to Gray; (3) the sale of WAGT(TV) bandwidth in the Commission’s upcoming spectrum auction; and (4) “further solicitation by Gray of Media General’s customers.”<sup>3</sup> The next day, the court denied Media General’s motion,<sup>4</sup> and on February 3, 2016, Media General gave notice to the court of its voluntary dismissal of the complaint.<sup>5</sup> Also on February 3, 2016, Media General filed a complaint against Schurz, WAGT Licensee and Gray in the Superior Court of Richmond County, Georgia, along with a motion for a preliminary injunction and supporting memorandum, seeking substantially the same relief denied by the federal court.<sup>6</sup> On February 12, 2016, the Video Division of the Bureau granted, *inter alia*, the application seeking approval of the sale of WAGT(TV) from Schurz to Gray, conditioned on termination of the JSA with Media General.<sup>7</sup> That same day, Media General stated in writing to Gray, Schurz, and WAGT Licensee that the JSA had not yet been terminated. Gray and Schurz consummated their transaction on February 16, 2016, and WAGT Licensee filed a notice of consummation with the Commission on February 22, 2016.

6. On February 19, 2016, Media General filed a supplemental memorandum in support of motion for preliminary injunction to account for the closing of the sale of WAGT(TV).<sup>8</sup> On March 2, 2016, the Georgia Superior Court granted Media General’s preliminary injunction motion, and enjoined defendants Schurz, Gray, and WAGT Licensee from: “(1) interfering with Media General’s continued performance of the Joint Sales Agreement and Shared Services Agreement; (2) transferring the WAGT television station programming to another station; (3) participating in the Federal Communications Commission’s spectrum auction with respect to WAGT; and (4) soliciting WAGT advertisers so as to interfere with Media General’s performance and revenues under the Joint Sales Agreement and Shared Services Agreement.”<sup>9</sup>

7. Also on March 2, 2016, before the order granting the preliminary injunction could be filed with the clerk of the court, Schurz, Gray, and the WAGT Licensee filed for removal of that action to federal court on the basis of federal-question jurisdiction. On March 4, 2016, the U.S. District Court for

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<sup>2</sup> *Media General, Inc. v. Schurz Communications, Inc. et al.*, Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction, Case No. 1:16-cv-00137-JEB (D.D.C. filed Jan. 28, 2016); *Media General, Inc. v. Schurz Communications, Inc. et al.*, Plaintiffs Motion for Temporary Restraining Order and Preliminary Injunction, Case No. 1:16-cv-00137-JEB (D.D.C. filed Jan. 28, 2016) (“Federal TRO Motion”); *Media General, Inc. v. Schurz Communications, Inc. et al.*, Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction, Case No. 1:16-cv-00137-JEB (D.D.C. filed Jan. 28, 2016).

<sup>3</sup> Federal TRO Motion at 1.

<sup>4</sup> Notice of Electronic Filing, Minute Entry, Case No. 1:16-cv-00137-JEB (D.D.C. Jan. 29, 2016) (denying Plaintiff’s Motion for TRO based in part on questions of jurisdiction and venue).

<sup>5</sup> *Media General, Inc. v. Schurz Communications, Inc. et al.*, Voluntary Notice of Dismissal, Case No. 1:16-cv-00137-JEB (D.D.C. filed Feb. 3, 2016).

<sup>6</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Complaint (Ga. Sup. Ct. Richmond Cty., filed Feb. 3, 2016); *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Plaintiff’s Motion for Preliminary Injunction Against Defendants, and Memorandum in Support Thereof, Case No. 2016-RCCV-71 (Ga. Sup. Ct. Richmond Cty., filed Feb. 3, 2016).

<sup>7</sup> Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Jack N. Goodman, counsel for Schurz Communications, Inc., and John R. Feore, counsel for Gray Television Group, Inc., DA 16-154 (Feb. 12, 2016) (“WAGT(TV) Assignment Order”).

<sup>8</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Supplemental Memorandum in Support of Motion for Preliminary Injunction, Case No. 2016-RCCV-71 (Ga. Sup. Ct. Richmond Cty., filed Feb. 19, 2016).

<sup>9</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Order, Case No. 2016-RCCV-71 (Ga. Sup. Ct. Richmond Cty. Mar. 3, 2016).

the Southern District of Georgia required Gray, Schurz, and the WAGT Licensee to comply with the terms of the state court's preliminary injunction, pending briefing on the federal court's jurisdiction.<sup>10</sup>

8. On March 9, 2016 the U.S. Department of Justice ("DOJ") submitted to the federal court a statement informing the court of the government's view that the injunctive relief that Media General sought conflicted with the conditions imposed on Schurz and Gray in the WAGT(TV) Assignment Order and with section 310(d) of the Act.<sup>11</sup> DOJ attached to its filing a letter of the same date from the Commission to DOJ expressing this position, in which the Commission took the view that Media General violated section 310(d) by seeking injunctive relief that interfered with a licensee's ultimate control of a station.<sup>12</sup> The Commission asserted that, by seeking and obtaining a court order preventing Gray from offering station WAGT(TV)'s licensed spectrum in the upcoming Commission incentive auction, without first seeking Commission approval, Media General improperly deprived Gray of the control of an essential function of station ownership—the ability to decide whether to sell the station's spectrum.<sup>13</sup> The FCC Letter also reported that the Commission had initiated an investigation into Media General's actions and planned to issue a Letter of Inquiry within the near future in order to determine the full nature of the possible violation, and whether a hearing would be appropriate under Section 312 of the Communications Act.<sup>14</sup>

9. On March 10, 2016, the federal court found that it lacked subject matter jurisdiction and remanded the case to the state court.<sup>15</sup> On March 16, 2016, the Media Bureau initiated the Investigation and sent a Letter of Inquiry to Media General. On March 23, 2016, the Georgia Supreme Court granted a stay, pending appeal, of the preliminary injunction.<sup>16</sup> On April 1, 2016, Media General filed an amended complaint in Georgia state court that did not contain a request for any injunctive relief.<sup>17</sup>

10. The Bureau and Media General acknowledge that any proceedings that might result from the Investigation will be time-consuming and will require substantial expenditure of public and private resources. In order to conserve such resources and to resolve the Investigation in accordance with the public interest, the Bureau and Media General are entering into this Consent Decree, in consideration of the mutual commitments made herein.

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<sup>10</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Transcript of Motion for Preliminary Injunction at 79, Case No.: 1:16-cv-26-JRH-BKE (Mar. 4, 2016).

<sup>11</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, U.S. Dept. of Justice Statement of Interest, Case No.: 1:16-cv-26-JRH-BKE, 2016 WL 930580 (S.D. GA filed Mar. 9, 2016) ("DOJ Statement").

<sup>12</sup> DOJ Statement Attach., Letter from David M. Gossett, Deputy General Counsel, FCC to John Griffiths, Director, Federal Programs Branch, Civil Division, Dept. of Justice, 2016 WL at 930580 ("FCC Letter").

<sup>13</sup> DOJ Statement, 2016 WL 930580 at \*2-3 (citing *Citicasters Co.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 3415, 3419 (EB 2001)) ("Where a contractual dispute is before a court, the licensee must retain actual control of essential station functions unless the Commission gives prior consent to the assignment or transfer of control of the station. Thus, it is a violation of the Communications Act to invoke remedies for breach, including injunctive or other equitable relief, that impinge on such control, without obtaining prior Commission consent.").

<sup>14</sup> *Id.* at 930591 n.10 (citing 47 U.S.C. § 312).

<sup>15</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Order, Case No.: 1:16-cv-26-JRH-BKE (Mar. 10, 2016).

<sup>16</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Order, Case No. S16M1114 (Ga. Supreme Ct. Mar. 23, 2016).

<sup>17</sup> *Media General Operations, Inc. v. Schurz Communications, Inc. et al.*, Amended Complaint, Case No. 2016-RCCV-71 (Ga. Sup. Ct. Richmond Cty. filed Apr. 1, 2016).

### III. TERMS OF AGREEMENT

11. Adopting Order. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau on behalf of the Commission, which approval shall be evidenced by incorporation of the Consent Decree by reference in the Adopting Order.

12. Jurisdiction. Media General agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

13. Non-Admission of Liability. The Parties agree that this Consent Decree is solely for settlement of the issues raised in the Investigation and the matters described in paragraphs 3-9, based on the specific facts related thereto; that it does not constitute either an adjudication on the merits or a factual or legal finding regarding compliance or noncompliance by Media General with the Communications Laws in connection with the aforementioned matters; and that, by entering into this Consent Decree, Media General makes no admission of liability of any kind.

14. Effective Date. 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.

15. Termination of Investigation. As part of the Adopting Order, the Bureau shall terminate the Investigation and dismiss with prejudice or deny any outstanding adversarial pleadings or complaints relating to the Investigation. From and after the Effective Date, the Commission shall not, either on its own motion or in response to any petition to deny or other third-party complaint or objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against Media General and/or its successors and assigns related in whole or in part to the Investigation. Without limitation to the foregoing, the Commission shall not use the facts of this Consent Decree or the Investigation for any purpose relating to Media General, except with respect to enforcement of the Adopting Order as described in paragraph 18.

16. Subsequent Investigations. Nothing in this Consent Decree shall prevent the Bureau from investigating or recommending to the Commission the investigation of new evidence of noncompliance by Media General with the Communications Laws unrelated to the Investigation. Except as expressly provided in this Consent Decree, nothing in this Consent Decree shall prevent the Bureau from adjudicating or recommending to the Commission the adjudication of complaints or other adjudicatory pleadings filed against Media General for alleged violations of the Communications Laws or for any other type of alleged misconduct, regardless of when such misconduct took place.

17. Settlement Payment. Media General will make a settlement payment to the United States Treasury in the amount of Seven Hundred Thousand Dollars (\$700,000) within thirty (30) calendar days after the Effective Date (“Settlement Payment”). Media General acknowledges and agrees that upon execution of this Consent Decree, the Settlement Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).<sup>18</sup> Media General shall send electronic notification of payment to Jeremy Miller at [jeremy.miller@fcc.gov](mailto:jeremy.miller@fcc.gov) and Alison Nemeth at [alison.nemeth@fcc.gov](mailto: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 FRN captioned above.<sup>19</sup> An FCC Form 159 (Remittance Advice) must be

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<sup>18</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

<sup>19</sup> Payment may be made online at the Commission’s Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require payees to submit FCC Form 159. Alternatively, payment may be made using

submitted with payment unless payment is made online at the Commission's Fee Filer website. 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 Media General should follow based on the form of payment it selects:<sup>20</sup>

- 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 201641420015. 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.

18. Waivers. Each party hereto 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. Media General shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained 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 Media General nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and Media General shall waive any statutory right to a trial *de novo*. Media General 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.

19. 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.

20. Successors and Assigns. Media General agrees that the provisions of this Consent Decree shall be binding on its subsidiaries, affiliates, successors, assigns, and/or transferees.

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

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

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FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Fonn159/159.pdf>.

<sup>20</sup> Should Media General 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](mailto:ARINQUIRIES@fcc.gov).

23. 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.

24. Authorized Representative. The individual signing this Consent Decree on behalf of Media General represents and warrants that he is authorized by Media General to execute this Consent Decree and to bind Media General to the obligations set forth herein. The Bureau signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

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

**Media Bureau  
Federal Communications Commission**

By:

\_\_\_\_\_  
William T. Lake  
Chief

\_\_\_\_\_  
Date

**Media General Operations, Inc.**

By:

\_\_\_\_\_  
Andrew C. Carington  
Secretary

\_\_\_\_\_  
Date