

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

In re Application of
Toccoa Falls College
For Renewal of License for
Station WTXR(FM)
Toccoa Falls, Georgia
Facility ID No. 77327
NAL/Acct. No. MB-201241410025
FRN: 0006338750
File No. BRED-20111201FOP

ORDER

Adopted: April 16, 2014

Released: April 17, 2014

By the Chief, Media Bureau:

1. The Media Bureau ("Bureau") has before it the August 27, 2012, Petition for Reconsideration of Toccoa Falls College ("Licensee"), seeking reconsideration of the Bureau's July 27, 2012, Forfeiture Order imposing a \$10,000 forfeiture for Licensee's willful and repeated violations of Section 73.3527 of the Commission's Rules ("Rules") by failing to properly maintain a public file for Station WTXR(FM), Toccoa Falls, Georgia ("Station").

2. We herein adopt the attached Consent Decree entered into by the Bureau and Licensee. The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application ("Renewal Application") for the Station, including whether Licensee violated Section 73.3527.

3. Licensee has shown that, at the time of the violations, the Station was a student-run noncommercial educational ("NCE") station licensed to an educational institution and that the violations at the Station are first-time documentation violations within the parameters of our policy concerning violations of documentation requirements of Rules by student-run NCE radio stations. We have negotiated the attached Consent Decree, which provides for Licensee to carry out a compliance plan that

1 Licensee filed a Petition for Leave to File Supplement and Supplement to its Petition for Reconsideration on November 1, 2012, and November 6, 2012, each at the request of the Media Bureau staff. The Petitions for Leave will be granted and the Supplements accepted below.

2 47 C.F.R. § 73.3527.

3 Toccoa Falls College, Forfeiture Order, 27 FCC Rcd 8365 (MB 2012) ("Forfeiture Order").

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

meets the requirements of the new policy and to make a voluntary contribution to the United States Treasury in the amount of \$1,000.

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

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,⁵ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁶ the Consent Decree attached hereto IS ADOPTED.

6. IT IS FURTHER ORDERED, that the August 27, 2012, Petition for Reconsideration, and the November 1, 2012, and November 6, 2012, Petitions for Leave to File Supplement to Petition for Reconsideration, ARE GRANTED, and the Supplements ARE ACCEPTED.

7. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules,⁷ that the *Forfeiture Order* issued to Toccoa Falls College for willfully and repeatedly violating Section 73.3527 of the Commission's Rules at Station WTXR(FM), Toccoa Falls, Georgia, IS HEREBY REDUCED TO \$1,000.

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

9. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Toccoa Falls College, 292 Old Clarkesville Road, Toccoa, GA 30577, and to its counsel, Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

⁵ 47 U.S.C. § 4(i).

⁶ 47 C.F.R. §§ 0.61, 0.283.

⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Toccoa Falls College, by their respective authorized representatives, for the purpose of resolving a certain issue that has arisen in the Media Bureau's review of the application for the renewal of the license for Noncommercial Educational Station WTXR(FM), Toccoa Falls, Georgia.⁸

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) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (c) "Commission" or "FCC" means the Federal Communications Commission;
 - (d) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Act and the Rules regarding the maintenance of the public inspection file of Station WTXR(FM), as summarized in the Appendix hereto;
 - (e) "Effective Date" means the date on which the Bureau releases the Order;
 - (f) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (g) "Licensee" refers to Toccoa Falls College (the "College" or the "Licensee");
 - (h) "Order" means the order of the Bureau adopting this Consent Decree;
 - (i) "Parties" means the Bureau and the Licensee;
 - (j) "Public File Rule" means Section 73.3527 of the Commission's rules, 47 C.F.R. §73.3527;
 - (k) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations;
 - (l) "Station" refers to Noncommercial Educational Station WTXR(FM), Toccoa Falls, Georgia; and
 - (m) "Violations" means the violation of the Public File Rule.

⁸ File No. BRED-20111201FOP

III. Background

1. On December 1, 2011, Licensee filed the referenced application to renew its license for the Station. In that application, Licensee made disclosures to the Commission concerning compliance issues with the Commission's Public File Rule. On May 2, 2012, the Bureau issued a *Notice of Apparent Liability for Forfeiture* in connection with the Violations disclosed in the renewal application for the Station,⁹ and on July 27, 2012, the Bureau issued a *Forfeiture Order* regarding those violations.¹⁰ The Licensee has timely disputed the *NAL* and sought reconsideration of the *Forfeiture Order*.

2. Because of the compliance issues raised by those disclosures, the Parties have agreed to enter into this Consent Decree to which both the Licensee and the Bureau intend to be legally bound.

IV. Agreement

5. The Parties acknowledge that any proceeding that might result from the Public File Rule compliance issues referred to in Paragraph 3 above would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, and to promote the Licensee's compliance with the Public File Rule, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Both the Licensee and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Licensee agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Licensee and the Bureau concerning the Licensee's Violations at its Station, as discussed herein.

8. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will cancel the Forfeiture and not use the Violations in any action against the Licensee, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

9. The Licensee hereby stipulates that it has failed to comply with the Public File Rule in its maintenance of the public files of the Station during the 2004-2012 license term, but contends that the failure of compliance does not rise to the level of a willful nor repeated violation of the Public File Rule as those terms are defined in the Act.

10. The Licensee agrees to make a voluntary contribution to the United States Treasury in the amount of One Thousand Dollars (\$1,000). Such contribution will be made, without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or money order payable to the

⁹ *Toccoa Falls College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4905 (MB 2012) ("*NAL*").

¹⁰ *Toccoa Falls College*, Forfeiture Order, 27 FCC Rcd 8365 (MB 2012) ("*Forfeiture Order*").

order of the Federal Communications Commission. Payment by check or money order maybe mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SLMO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORE" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Tom.Hutton@fcc.gov and Alexander.Sanjenis@fcc.gov.

11. The Licensee represents that, in addition to its existing policies and procedures, it has adopted, is currently in the process of implementing, and agrees to abide by the Compliance Plan for the purpose of ensuring compliance with the Public File Rule, which Compliance Plan is summarized in the Appendix attached hereto. The Licensee agrees, to the extent that it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

12. The Licensee represents that, as of the date of its execution of this Consent Decree, the Station's public file fully comports with the Public File Rule.

13. The Licensee agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that the Licensee fails to satisfy any condition or Commission 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.

14. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns, if any. The Licensee agrees that any future application filed within three (3) years of the Effective Date 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.

15. The 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 Order, provided the Order adopts the Consent Decree without change, addition or modification.

16. The Licensee agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Section 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

17. The Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided that the Order adopts the Consent Decree without change, addition or modification.

18. The Licensee and the Bureau agree that, if the Licensee, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither the Licensee nor the Commission will contest the validity of the Consent Decree or Order, and the Licensee and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited

to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

19. The Licensee and the Bureau agree that, in the event that this Consent Decree 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.

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: _____

TOCCOA FALLS COLLEGE

By: _____
(Signatory for Toccoa Falls College)

Date: _____

APPENDIX**COMPLIANCE PLAN OF TOCCOA FALLS COLLEGE**

For the duration of the license term ending April 1, 2020, unless a different time period is specified below, Toccoa Falls College or its successors-in-interest, as appropriate, will institute the following procedures to ensure compliance with the Commission's Public File Rule. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I.
 - A. The program hosts and other appropriate staff of the Station will log all broadcasts of public affairs programming. These logs will be compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station.
 - 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 Dr. Gina Bailey, faculty advisor to Station (or such other non-student employee of the Licensee who may be the successor supervisor of the volunteer student staff of the Station, hereinafter the "College Advisor") and accompanied with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
 - D. The College Advisor will explain and emphasize to the volunteer student staff of the Station the absolute requirement to follow all Commission rules, regulations, and policies and will fully explain the obligations imposed by the Public File Rule to the student staff member or members charged with maintenance of the Station's public files. Should the Licensee or College Advisor learn that the Public File Rule has been violated, the student responsible will be subject to appropriate disciplinary action, including being removed from any duties relating to the Public File.
- II. For a period of three years from the date of the Effective Date, the Licensee, or successor licensees, as appropriate, will conduct in-house reviews of the Station's public file as detailed below. The three-year period will terminate on the successful completion of the third annual public file review pursuant to Item I. The second and third reviews pursuant to Item I will be due on the anniversary of the first review. Semi-annual in-person inspections will be conducted by a member of the College faculty or administration.
- III. The Licensee shall annually submit a sworn certification to the Commission, signed by an officer of the Licensee, affirming that its Station's public inspection file fully complies with the Public File Rule. 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 the completion of the first annual public file review pursuant to Item II above, and on that date yearly thereafter during each year of the license term. A copy will be served on Peter H. Doyle, Chief Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at peter.doyle@fcc.gov.
- IV. The Compliance Plan, set forth above, will be under the direct supervision of Dr. Gina Bailey, or other appointees as designated by the Licensee's Office of the Dean, or in the event Dr. Bailey is no longer associated with the Licensee or the Station's license has been assigned to a third party, by his or her successor(s) or his or her successor's designee in the Licensee's Office of the Dean or by a successor non-student official designated by a successor licensee's chief executive officer.