

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

In re Application of)
Hoosier Broadcasting Corporation, Assignor,) NAL/Acct. No. MB-20141410028
and Inter Mirifica, Inc., Assignee) FRN: 0010019115
for Assignment of License for)
Station WSPM(FM)) Facility I.D. No. 93486
Cloverdale, Indiana) File No. BAL-20130919ABI

ORDER

Adopted: December 31, 2014

Released: January 9, 2015

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (the “Bureau”), the Hoosier Broadcasting Corporation (“Hoosier”), and Inter Mirifica, Inc. (“IMI”). The Consent Decree resolves issues arising from the Bureau’s review of the captioned application for consent to the proposed assignment of license for Station WSPM(FM), Cloverdale, California (the “Station”) from Hoosier to IMI. In particular, the Consent Decree resolves the Bureau’s investigation of the applicants’ compliance with Sections 1.17 and 73.503(c) of the Commission’s Rules, 47 C.F.R. §§1.17, 73.503(c) (the “Rules”)¹ and Section 310 of the Communications Act of 1934, as amended (“Act”) and Section 73.3540 of the Rules.²

2. The Consent Decree stipulates that both Hoosier and IMI violated Section 1.17 of the Rules and that Hoosier violated Section 73.503(c) of the Rules, and that Hoosier and IMI violated Section 310 of the Communications Act of 1934, as amended (“Act”) and Section 73.3540 of the Rules. It provides, among other things, that Hoosier and ISF will collectively make a \$50,000 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 the Bureau’s investigation of potential violations of the Rules in connection with the captioned application and granting that application.

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

¹ 47 C.F.R. §§ 1.17, 73.530(c).

² 47 U.S.C. §310, 47 C.F.R. § 73.3540.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,³ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,⁴ the Consent Decree attached hereto IS ADOPTED.

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. William S. Poorman, President, Hoosier Broadcasting Corporation, Suite 285, 3500 DePauw Boulevard, Indianapolis, IN 46268, and to its counsel, J. Richard Carr, Esq., 5528 Trent Street, Chevy Chase, MD 20815; and to Mr. Robert Teipen, President, Inter Mirifica, 1056 S. Cataract Road, Spencer, IN 47460, and to its counsel, Stewart W. Nolan, Jr., Esq., Legal Works Apostolate, 4 Family Life Lane, Front Royal, VA 22630.

FEDERAL COMMUNICATIONS COMMISSION



William T. Lake

Chief, Media Bureau

³ 47 U.S.C. § 4(i).

⁴ 47 C.F.R. §§ 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, Hoosier Broadcasting Corporation, and Inter Mirifica, Inc., by their respective authorized representatives, for the purpose of terminating the Bureau's Investigation of the parties' compliance with Sections 1.17 and 73.503(c) of the Commission's Rules, 47 C.F.R. §§1.17, 73.503(c), and Section 310 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 310 and Section 73.3540 of the Rules, 47 C.F.R. § 73.3540.

II. 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) "Application" means the application filed with the Commission for consent to assign the license for the Station from Hoosier to IMI (FCC file no. BALED-20130919ABI);
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "Commission" or "FCC" means the Federal Communications Commission;
 - (e) "Effective Date" means the date on which the Bureau releases the Order;
 - (f) "Hoosier" means Hoosier Broadcasting Corporation;
 - (g) "IMI" means Inter Mirifica, Inc;
 - (h) "Investigation" means the investigation commenced by the FCC in April of 2014;
 - (i) "Order" means an order of the Bureau adopting this Consent Decree;
 - (k) "Parties" means the Bureau, Hoosier and IMI;
 - (l) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
 - (m) "Station" means WSPM(FM), Cloverdale, Indiana (Fac. ID 93486);
 - (n) "TBA" means the Time Brokerage Agreement that was the subject of an Initial Oral Understanding as of May 29, 2003, initially executed on March 1, 2004, and extended on March 1, 2007, and January 1, 2014;
 - (o) "Violations" means the payments received by Hoosier pursuant to the TBA in violation of Section 73.503(c) of the Rules; the certification by Hoosier in Section II, Item 3c of the Application that the agreements between Hoosier and

IMI “comply fully with the Commission’s rules and policies”; the certification by IMI in Section III, Item 3b of the Application that the agreements between Hoosier and IMI “comply fully with the Commission’s rules and policies”; and the failure of Hoosier to retain complete control of Station operations subsequent to implementation of the TBA, as evidenced by the TBA’s failure to require, and Hoosier’s failure to retain, at least one management-level and one staff-level employee at the Station’s main studio.

III. Background

3. Section 73.503(c) of the Rules provides that:

A noncommercial educational FM broadcast station may broadcast programs produced by, or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station network, or someone other than the licensee on a noncommercial educational FM broadcast station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph.⁵

Additionally, although LMA's are not precluded by any Commission rule or policy, as long as our ownership rules are not violated and the participating licensee maintains ultimate control over its facilities,⁶ the licensee maintains such control when it holds ultimate responsibility for essential station matters such as programming, personnel, and finances.⁷

4. Under the terms of TBA, originally executed in May of 2003, Hoosier agreed pursuant to an Initial Oral Understanding of May 29, 2003, to make the Station’s facilities available to air programming supplied by IMI “24 hours a day, seven days per week” for a period of 24 months for an initial consideration of \$18,000, per month, which would include reimbursement of Hoosier’s “hard costs” of \$5,000 per month. At the end of that period, IMI was granted an option to purchase the Station for \$2,500,000, and the amount paid above the “hard costs” would be subtracted from the total purchase price.⁸ The Initial Oral Understanding was reduced to writing and executed on March 1, 2004, and was to run for 24 months with an option to extend for an additional 12 months; consideration for the

⁵ 47 C.F.R. § 73.503(c).

⁶ *2002 Biennial Regulatory Review — Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rule Making, 18 FCC Rcd 13620, 13743 (2003) (subsequent history omitted).

⁷ 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540(a). See also *Solar Broadcasting Co., Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5486 (2002) (“Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station matters, such as personnel, programming and finances, is nondelegable.”); *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306-07 (2002) (stating that “the Commission looks not only to who executes the programming, personnel, and finance responsibilities, but also to who establishes the policies governing those three areas”); *Choctaw Broadcasting Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997) (“[A] licensee involved in an LMA is not relieved of its responsibility to retain ultimate control.”).

⁸ See Summary of Initial Oral Understanding, submitted in Exhibit 13 to the Application.

airtime⁹ was between \$10,000 and \$20,000 per month, exceeding Hoosier's specified operating expenses by \$5,000 - \$15,000 per month.¹⁰ The agreement was extended for 72 months on March 1, 2007, with consideration of \$18,000 per month from March 2007 through February of 2010 and \$20,000/month from March 1, 2010, through February of 2012, and 20,000 per month plus 7 percent interest.¹¹ The agreement was subsequently extended effective January 1, 2014, after the full purchase price had been paid by IMI but prior to grant of the Application, to reduce the consideration for IMI's purchase of airtime on the Station to a monthly operating fee of \$1,000/month plus reimbursement of "certain operating expenses" up to a maximum of \$2,000 per month.¹²

5. Hoosier submitted a copy of the TBA with the Application. In the Application, Hoosier and IMI each certified affirmatively that the agreements between the parties, including the TBA, "comply fully with the Commission's rules and policies."¹³ Since 1998, the Commission's policy on mass media applications has been that it will rely on application certifications as to compliance with the Commission's rules and policies and that it will not routinely review contracts submitted with assignment of license applications.¹⁴ Parties have also been on notice since 1998 that reliance on a prior Commission action with respect to a contract term or rule interpretation "would be appropriate only where a decision disposing of the prior application plainly considered and found acceptable the pertinent contract term or rule interpretation."¹⁵ Hoosier and IMI do not point out any instance in which the Bureau or the Commission issued a decision in which it considered and found such payment terms – payments in excess of "line charges" or operating costs – to be compliant with Section 73.503(c) of the Rules, because no such decision exists. In light of the foregoing, the Bureau finds that the terms of the TBA as originally submitted violated Section 73.503(c) and that the certifications by Hoosier and IFI that the TBA complied with the Commission's Rules and policies were incorrect. The Bureau does not, however, find that Hoosier or IFI made misrepresentations or lacked candor.

6. Additionally, in response to a staff inquiry, the parties indicated that, although Hoosier had retained title to (and responsibility for maintenance of) all station equipment, furniture, fixtures, and transmitters and made the lease payments on the transmission tower and has both produced its own public affairs programming and has two employees (including its President) monitor the programming aired by IMI on a daily basis; however, with respect to personnel, the parties indicated only that a "trouble-shooting" memorandum is posted at the Station and directs IMI to contact Hoosier's engineer if the station goes off the air. The TBA did not at that time require Hoosier to maintain any sort of staff

⁹ IMI was to broadcast its programs on the Station 24 hours per day, 7 days per week with the exception of two hours per week between 6:00 a.m. and 6:00 p.m. for public affairs programming to be supplied by Hoosier.

¹⁰ See Initial Agreement, submitted in Exhibit 13 of the Application.

¹¹ In the extended Agreement, Hoosier also reserved 30 second announcements "to ascertain community needs and promote public affairs programming, as long as inventory is available. " At the end of 36 months, IMI was to pay Hoosier a cash payment of \$250,000, was granted an option to purchase the station at that time at a price computed based on the original Option price of \$2,250,000 less all monthly payments made to date. It also granted IMI the option to pay the final purchase price over a three-year period with monthly payments of \$20,000 for 12 months and \$20,000 plus 7 percent interest for the final 12 months.

¹² See Extended Agreement, submitted in Exhibit 13 of the Application.

¹³ Application, Section II, Item 3c, and Section III, Item 3b.

¹⁴ See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Report and Order, 13 FCC Rcd 23056, 23074-6 (1998).

¹⁵ *Id.*, 13 FCC Rcd at 23076.

presence at the station's studio.¹⁶

7. Because of the compliance issues identified in the Bureau's investigation, the Parties have agreed to enter into this Consent Decree to which Hoosier, IMI, and the Bureau intend to be legally bound.

IV. Agreement

8. The Parties acknowledge that any proceeding 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, to resolve the matter, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

9. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Each of Hoosier, IMI, and the Bureau represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. Hoosier and IMI 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.

10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement among Hoosier, IMI, and the Bureau concerning the Violations, as discussed herein.

11. 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 its Investigation into the Violations. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action on its own motion against Hoosier or IMI concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or take any action against Hoosier or IMI with respect to either party's basic qualifications, including character qualifications, to be a licensee. In the event that either Hoosier or IMI fails to satisfy any of its obligations under this Consent Decree, however, Hoosier and IMI each acknowledges that 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.

12. The Parties stipulate the following:

(a) Hoosier violated Section 73.503(c) of the Rules by accepting the LMA fees from May 29, 2003 through January 1, 2014;

(b) Hoosier violated Section 1.17 of the Rules by submitting the false certification in the Application that the sale agreements complied with the Commission's Rules and policies; and

¹⁶ 47 C.F.R. § 73.1125, as interpreted by *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 2615 (1991), clarified, Memorandum Opinion and Order, 7 FCC Rcd 6800 (1992), requires that the licensee staff its main studio with at least two employees, one of whom is a management-level employee. This is so even when the station is operated pursuant to a TBA. See, e.g., *KRLI, Malta Bend, Missouri*, Letter, 14 FCC 17731, 17734 (MMB 1999).

(c) IMI violated Section 1.17 of the Rules by submitting the false certification in the Application that the sale agreements complied with the Commission's Rules and policies.

(d) the Bureau finds that the violations of Section 1.17 by Hoosier and IMI were willful but not intended to deceive the Commission because the sale agreements were submitted with the Application.

(e) Hoosier and IMI violated Section 310(d) of the Act and Section 73.3540 of the Rules by allowing IMI to assume control of the Station without prior Commission authorization.

13. Hoosier and IMI hereby jointly agree to pay a civil penalty to the United States Treasury in the amount of Fifty Thousand Dollars (\$50,000) within 15 days of the Effective Date.

14. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Hoosier or IMI possesses the basic qualifications, including those relating to character, to hold or obtain a Commission license or authorization. Accordingly, the Bureau will grant the Application after the Effective Date, provided that the following conditions have been met: (1) the licensee has fully and timely satisfied its obligation to pay the civil penalty referenced in Paragraph 13 of this Decree; and (2) there are no issues other than the Violations that would preclude grant of the Application.

15. Payments hereunder must include the Account Number and FRN referenced in the caption to the Order. Payments by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payments by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the 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). Each party shall send electronic notification of its payment to Michael Wagner at michael.wagner@fcc.gov on the date its payment is made.

16. Hoosier and IMI each 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 either Hoosier or IMI 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 relief, designation of the matter for hearing, letters of admonishment, or forfeitures.

17. Hoosier and IMI each 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.

18. Hoosier and IMI each agrees to waive any claims that it may otherwise 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 discussed in this Consent Decree.

19. Hoosier, IMI, 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.

20. Hoosier, IMI, and the Bureau agree that, if Hoosier, IMI, 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, no party will contest the validity of the Consent Decree or Order, and Hoosier, IMI, 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.

21. Hoosier, IMI, and the Bureau agree that, in the event that this Consent Decree 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.

22. 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: 1-8-15

HOOSIER BROADCASTING CORPORATION

By: _____
Date: _____

INTER MIRIFICA, INC.

By: _____
Date: _____

without change, addition or modification.

20. Hoosier, IMI, and the Bureau agree that, if Hoosier, IMI, 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, no party will contest the validity of the Consent Decree or Order, and Hoosier, IMI, 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.

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MEDIA BUREAU
FEDERAL COMMUNICATIONS
COMMISSION

By: _____
William T. Lake, Chief

Date: _____

HOOSIER BROADCASTING CORPORATION

By: _____

Date: _____

INTER MIRIFICA, INC.

By: Robert C. Taylor

Date: 12/9/2014

without change, addition or modification.

20. Hoosier, IMI, and the Bureau agree that, if Hoosier, IMI, 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, no party will contest the validity of the Consent Decree or Order, and Hoosier, IMI, 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.

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22. 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: _____

HOOSIER BROADCASTING CORPORATION

By: William S. Boorna
Date: 12/20/14

INTER MIRIFICA, INC.

By: _____

Date: _____

APPENDIX**COMPLIANCE PLAN FOR STATION WSPM(FM)**

Immediately upon consummation of the transaction proposed in the Application, Inter Mirifica, Inc. will institute the following procedures with regard to Station WSPM(FM) to ensure compliance with the Commission's Rules and the Communications Act of 1934, as amended. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

1. Inter Mirifica will conduct training for all Station employees on compliance with FCC Rules applicable to station operations. This training, among other material matters, shall specifically cover the Commission's policy on programming agreements for noncommercial educational radio stations and the necessity of staffing the Station's main studio with at least one management-level and one staff-level employee. To augment this training, outside counsel, or other comparable professionals, will conduct a live workshop for all Station employees. Inter Mirifica will videotape this workshop and use it as refresher training for staff and management at least every twelve (12) months, and to train any new Station employee within five (5) days of commencement of his or her duties at the Station.
2. Inter Mirifica shall engage FCC counsel on an ongoing basis to provide guidance to Inter Mirifica on FCC compliance issues, to provide regular updates and notices on developments in communications law applicable to Inter Mirifica, and to review Inter Mirifica's applications and reports prior to filing with the FCC. In regard to the last matter, Inter Mirifica recognizes and acknowledges that any and all information provided to the FCC must completely and candidly set forth all relevant facts and circumstances, regardless of whether such a submission may disclose a violation of the Act or the Rules.
3. Inter Mirifica shall maintain sole control of the programming, personnel, and finances of the Station and shall provide an affidavit or declaration to the Bureau, signed by Inter Mirifica's President, certifying that, since the commencement of this Compliance Plan or the filing of its last such report, if any, Inter Mirifica has maintained and is maintaining such control and is in compliance with the Act, the Rules, and FCC policy, on or before December 31 (but no earlier than December 1 of each such year) of each year of the three-year term of this Compliance Plan as provided in Section IV, Paragraph 15, of the accompanying Consent Decree. In the event that Inter Mirifica is unable to so certify, it will disclose the reasons therefore and indicate what steps it has taken to render its operation of the Station in compliance with the Act, the Rules, and FCC policy.