

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

In re Applications of
ATLANTIC CITY BOARD OF EDUCATION
For Renewal of License for Station WAJM(FM),
Atlantic City, New Jersey
and
For Minor Modification of the Licensed Facilities of
Station WAJM(FM), Atlantic City, New Jersey
and
PRESS COMMUNICATIONS, LLC
For Minor Modification of the Licensed Facilities of
Station WBHX(FM), Tuckerton, New Jersey
NAL/Acct. No. MB201541410031
FRN: 0020207858
Facility I.D. No. 3123
File No. BRED-20100921AAN
File No. BRED-20140128ABC
File No. BPED-20120215AAW
Facility ID No. 56233
File No. BPH-20100827ABW

ORDER

Adopted: October 8, 2015

Released: October 9, 2015

By the Chief, Media Bureau:

1. The Media Bureau ("Bureau") has before it: (1) the applications ("2010 Renewal Application" and "2014 Renewal Application") of Atlantic City Board of Education ("Licensee" or "Board") for renewal of license for expired Station WAJM(FM), Atlantic City, New Jersey ("Station"); and (2) a Petition to Deny ("Petition")¹ the 2010 Renewal Application filed on December 22, 2010, by Press Communications, LLC ("Press"). We also have before us the application by the Board for modification of the licensed facilities of the Station ("Modification Application") filed on February 15, 2012. Finally, we have before us the application by Press for modification of the licensed facilities for its Station WBHX(FM), Tuckerton, New Jersey ("Press Application").²

2. In a 2013 Policy Statement,³ the Bureau announced that certain student-run NCE radio

1 On January 28, 2011, the Board filed an Opposition, to which Press replied on February 17, 2011.

2 On September 29, 2010, William Hawkes, Jr., filed a Petition to Deny the Press Application, which Press opposed on October 18, 2010. On October 5, 2010, the Board filed an Informal Objection to the Press Application, which Press opposed on October 27, 2010; the Board replied on November 8, 2010. On October 12, 2010, Equity Communications, L.P. ("Equity"), filed an Informal Objection to the Press Application, which Press opposed on October 27, 2010; Equity replied on November 8, 2010. Because we are dismissing the Press Application in this action, we need not consider these pleadings.

3 See William Penn University, Policy Statement and Order, 28 FCC Rcd 6932 (MB 2013) ("Policy Statement").

stations that committed first-time violations of certain documentation requirements of the Rules would be afforded the opportunity to negotiate a consent decree with a reduced payment amount.⁴ The *Policy Statement* limited the policy to “violations of rules that require the submission of reports and other materials or public notice of information”⁵ Additionally, it stated that all other violations of Rules were not included and would be processed under current procedures applicable to all licensees.⁶

3. In this Order, we adopt the attached Consent Decree and Compliance Plan entered into by the Bureau and Licensee. The Consent Decree and Compliance Plan resolve issues relating to the tardily filed 2010 Renewal Application and the Petition filed against that application. For this reason, and as discussed below, we also deny the Petition.⁷ The Consent Decree also requires that the Board adhere to a Compliance Plan as set forth in the Appendix to the Consent Decree and pay a specified civil penalty. The Consent Decree stipulates that Licensee violated Section 73.3539 of the Commission’s Rules (“Rules”) by failing to file a timely renewal application for the Station; Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired;⁸ Section 73.3527 of the Rules by failing to retain all required documentation in the Station’s public inspection file;⁹ and Section 73.1350(a) of the Rules by operating the Station with an antenna at variance with its licensed parameters.¹⁰ With respect to the late-filing and Public File Rule violation, the Board has shown that, at the time of the violations, the Station was a

⁴ *Id.*, 28 FCC Rcd at 6932 ¶ 2 (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 will pay a reduced civil penalty and agree to a compliance plan. In negotiating the amount, 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.”).

⁵ *Id.*, 28 FCC Rcd at 6936 - 6937 ¶ 11. Covered violations include the failure to “(a) file the required materials with the Commission, such as the Ownership Reporting Rule, (b) place the required materials in a file, such as in the station’s public inspection file pursuant to the Public File Rule, or (c) publish a notice in a local newspaper or broadcast as an announcement on the station pursuant to Section 73.3580 of the Rules.”

⁶ *Id.*, 28 FCC Rcd at 6937 ¶ 11. Specifically, the *Policy Statement* noted “that substantive operational violations, e.g. broadcast of indecent/obscene/profane material, commercial announcements, illegal contests, underwriting, news distortion and other programming-related violations, violations of the Commission’s technical, public safety, tower/transmitter site construction and maintenance rules, etc., as well as recurring or subsequent violations of any kind will continue to be handled under current procedures, with no reduction or relief for student-run stations, apart from those potentially available to all licensees under current procedures in appropriate circumstances.”

⁷ The Petition also references the Enforcement Bureau’s Official Notice of Violation, Ref. EB-01-PA-115 (rel. EB May 11, 2001) (“NOV”). *See id.* at 6. The NOV found that the Board had violated Sections 73.1870(c)(3)(logging requirements); 73.3527(e)(3)-(4)-(7)-(8) (contour map; ownership report; “The Public and Broadcasting” manual; and quarterly issues/programs lists requirements, respectively); 11.52(d); 11.61(a)(1)(v) (EAS requirements); 11.35 (operational readiness testing); 73.267(c)(3) (transmitter efficiency factor); 73.1225(a) and (e) (transmitter inspection availability and provision of local phone number, respectively); 73.1840(a) (retention of station logs); 73.1590(d) (equipment performance measurements); and 73.1350(c)(2) (calibration of monitoring equipment) of the Rules. On June 25, 2001, the Board filed a response addressing its progress in correcting each of the rule violations cited in the NOV. *See Letter to John E. Rahtes, District Director, FCC Enforcement Bureau, from Cary Tepper, Esq.*, filed June 25, 2001 (“*Licensee Response*”) at Attachment (“Declaration of Al Horner, Engineer for WAJM(FM)”). Upon receipt of the *Licensee Response*, the Enforcement Bureau closed its investigation.

⁸ *See* 47 C.F.R. § 73.3539 and 47 U.S.C. § 301.

⁹ 47 C.F.R. § 73.3527.

¹⁰ 47 C.F.R. § 73.1350(a).

student-run NCE FM station 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. For these violations, the Board will pay a civil penalty to the United States Treasury in the amount of one thousand five hundred dollars (\$1,500). Regarding the unauthorized operation and operation at variance from the Station's authorization, these are substantive violations that are not covered by special processing as set forth in the *Policy Statement*. For these violations, the Board has agreed to pay a civil penalty to the United States Treasury in the amount of four thousand seven hundred and fifty dollars (\$4,750). Thus, The Board has agreed to pay a total civil penalty of six thousand two hundred fifty dollars (\$6,250). A copy of the Consent Decree is attached hereto and incorporated by reference.

4. Based upon our review of the record before us, we conclude that the 2010 and 2014 Renewal Applications should be granted, subject to satisfaction of certain conditions set forth in the Consent Decree, but only for a term of two (2) years from the grant of the latter application.¹¹

5. *Press Application*. On August 27, 2010, Press filed its application to move to a new frequency¹² and new location for its Station WBHX(FM), Tuckerton, New Jersey. The Press Application's proposed involuntary channel substitution of Station WZBZ(FM), licensed to Equity, from Channel 257A to Channel 259A was not fully spaced to the allegedly expired Station license. Press argues in its Petition that there is no rule violation because "the WAJM license to broadcast . . . had already expired," and the Board failed to timely file the 2010 Renewal Application.¹³ The staff evaluated the Press Application and, on June 20, 2014, sent Press a letter providing it with 30 days to cure several listed defects.¹⁴ Press responded to the *Staff Letter* on July 18, 2014, but did not correct the identified defects.¹⁵

6. We reject Press' primary contention that the Station's license cannot be renewed because it expired before the 2010 Renewal Application was filed. The Commission and the Bureau have considered and addressed this issue many times.¹⁶ Accordingly, we find that we may process the late-filed 2010 Renewal Application and timely 2014 Renewal Application. To the extent Press argues that acceptance of the 2010 Renewal Application would constitute an unjustified waiver of the filing deadline, again, the Commission has addressed that issue and found that, in the case of late-filed license renewal applications, waivers of these rules are warranted in the instant circumstances for the limited purpose of

¹¹ See 47 U.S.C. § 309(k) (permitting the Commission to grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted").

¹² WBHX(FM) currently operates on Channel 259A (99.7 MHz). It proposes to "swap" frequencies with Station WZBZ(FM), Pleasantville, New Jersey, which currently operates on Channel 257A (99.3 MHz).

¹³ See Petition at 3; Press Application at Exhibit 29.

¹⁴ See *Letter to Press Communications, LLC*, Ref. 1800B3 (MB rel. Jun. 20, 2014) ("*Staff Letter*").

¹⁵ See Press "Response to June 20, 2014, Letter," filed on July 18, 2014, to which the Board and Equity jointly responded by letter on August 11, 2014. Press responded to the joint Board and Equity August 11, 2014, letter on August 21, 2014.

¹⁶ See, e.g., *Discussion Radio Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (licensee sanctioned for untimely renewal filing and unauthorized operation, renewal application granted) ("*Discussion Radio*"); *Superior Communications*, Letter, 22 FCC Rcd 16634, 16635-6 (MB 2007) (rejecting argument that late-filed renewal application should be put in a queue behind objector's application and finding that, although a license term may not exceed eight years, the Act does not forbid the Commission from accepting a renewal application filed after the station's license has expired).

accepting and acting on the station's license renewal application.¹⁷ Because longstanding and clear Commission precedent dictates that we are to process the 2010 and 2014 Renewal Applications, the technical proposal in the Press Application was required to protect the Station's licensed facilities under Section 73.207 of the Rules.¹⁸ As discussed above, the Press Application does not do so with respect to the Station. The fact that Press alleges that it must relocate WBHX(FM) is not material to our application of these well-settled licensing policies. Press states that it is moving because the city of Beach Haven, New Jersey, where WBHX(FM)'s transmission facilities are located on a leased tower, requested that Press move from its existing site.¹⁹ Press also claims that Beach Haven will not allow Press to construct a broadcast tower, and that distance separation requirements substantially limit siting alternatives.²⁰ Press observes that moving its Station WBHX(FM) to Tuckerton, New Jersey, is its "only viable option" for relocating that station.²¹

7. Although the short-spacing to the Station renders the Press Application unacceptable, we briefly address the short-spacing to Station WJBR-FM. The *Staff Letter* indicated that, although WZBZ(FM) has a grandfathered short-spacing to WJBR-FM on its currently licensed Channel 257 and would remain equally short-spaced on the proposed Channel 259A,²² Press had failed to cite any precedent for permitting the processing of an involuntary channel substitution under the grandfathering provisions of Section 73.213(c).²³ In its Response to the *Staff Letter*, Press cites three allocation cases which differ significantly from the proposed situation.²⁴ In each case, the rule making proponent proposed a short-spaced allocation and, unlike Press, requested a waiver of Section 73.207 of the Rules at that time, and provided an adequate justification for the waiver. In this instance, Press fails even to request a waiver of the spacing rules. Thus, Press has failed to cite any precedent for *involuntarily* changing one station's short-spaced channel to another short-spaced channel absent a waiver of the Commission's spacing rules.

8. The *Staff Letter* indicated that, pursuant to Section 73.3522 of the Rules, ". . . an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff."²⁵ Additionally, Section 73.3564 of the Rules states that, "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity

¹⁷ See *Discussion Radio, supra*, 19 FCC Rcd at 7437.

¹⁸ 47 C.F.R. § 73.207.

¹⁹ Petition at 1-2.

²⁰ *Id.*

²¹ Press Reply 2,8.

²² See *Staff Letter* at n.3. The required spacing between WZBZ(FM) and first-adjacent channel Station WJBR-FM is 113 kilometers, while the actual spacing proposed in the Press Application is 105 kilometers. *Staff Letter* at 1.

²³ See *Staff Letter* at n.3.

²⁴ Press cites *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, Report and Order, 6 FCC Rcd 6580 (MMB 1991); *Newnan and Peachtree City, Georgia*, Report and Order, 7 FCC Rcd 6307 (MMB 1992), and *Grants, New Mexico et al.*, Report and Order, 16 FCC Rcd 20323(MMB 2001)

²⁵ *Staff Letter* at 2, citing 47 C.F.R. § 73.3522

for corrective amendment."²⁶ In accordance with these provisions, because the Press Application was not amended to correct all deficiencies, we will dismiss it.

9. *Conclusion/Actions.* Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact whether Licensee possesses the basic qualifications to be a Commission licensee. 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 2010 Renewal Application and granting the 2010 and 2014 Renewal Applications, subject to the terms of the Consent Decree.

11. ACCORDINGLY, IT IS ORDERED, that the December 22, 2010, Petition to Deny filed by Press Communications, LLC, IS DENIED.

12. IT IS FURTHER ORDERED that the Application of the Atlantic City Board of Education for minor modification of the facilities of Station WAJM(FM), Atlantic City, New Jersey, (File No. BPED-20100215AAW) IS GRANTED.

13. IT IS FURTHER ORDERED that the Application of Press Communications, LLC, for minor modification of the facilities of Station WBHX(FM), Tuckerton, New Jersey (File No. BPH-20100827ABW) IS DISMISSED. IT IS FURTHER ORDERED that the September 29, 2010, Petition to Deny filed by William Hawkes, Jr.; the October 5, 2010, Informal Objection filed by the Atlantic City Board of Education; and the October 12, 2010, Informal Objection filed by Equity Communications, L.P., ARE DISMISSED as moot.

14. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,²⁷ and by the authority delegated by Sections 0.61 and 0.283 of the Rules,²⁸ the Consent Decree attached hereto IS ADOPTED.

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

²⁶ *Staff Letter* at 2, citing 47 C.F.R. § 73.3564; see also Appendix B in the *Report and Order* in MM Docket No. 91-347, 57 FR 34872 (Aug. 7, 1992).

²⁷ 47 U.S.C. § 154(i).

²⁸ 47 C.F.R. §§ 0.61, 0.283.

16. IT IS FURTHER ORDERED, that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to the Atlantic City Board of Education, 1300 Atlantic Ave., Fifth Floor, Atlantic City, NJ 08401, and to its counsel, Matthew Murchison, Esq., Latham & Watkins, LLP, 555 11th St., N.W., Suite 1000, Washington, DC 20004, and to Press Communications, LLC, 1329 Campus Parkway, Neptune, NJ 07753, and to its counsel, Michelle A. McClure, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th St., 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and the Atlantic City Board of Education, by their respective authorized representatives, for the purpose of resolving certain issues regarding an inspection of the Station by the Commission's Enforcement Bureau staff as well as compliance with the Filing Date Rule, Public File Rule, Ownership Report Rule, Transmission System Operation Rule, and Unauthorized Operation Rule, as defined below, with regard to noncommercial educational station WAJM(FM), Atlantic City, New Jersey.

II. Definitions

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "2010 Application" and "2014 Application" mean the pending applications for the renewal of the license for Station WAJM(FM), Atlantic City, New Jersey (File Nos. BRED-20100921AAN and BRED-20140128ABC, respectively);
 - (b) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "Commission" or "FCC" means the Federal Communications Commission;
 - (e) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Filing Date Rule, Public File Rule, Ownership Report Rule, Transmission System Operation Rule, and Unauthorized Operation Rule at the Station, as summarized in the Appendix hereto;
 - (f) "Effective Date" means the date on which the Bureau releases the Order;
 - (g) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (h) "Filing Date Rule" means [Section 73.3539](#) of the Commission's Rules, [47 C.F.R. § 73.3539](#);
 - (i) "Licensee" or "Board" means the Atlantic City Board of Education;
 - (j) "Modification Application" is the application, File No. BPH-20100827ABW, filed by the Board to correct the Station's authorized operating parameters;
 - (k) "NOV" means the Enforcement Bureau's Official Notice of Violation citing the Board's violation of Sections 73.1870(c)(3)(logging requirements); 73.3527(e)(3)-(4)-(7)-(8) (contour map; ownership report; "The Public and Broadcasting" manual; and quarterly issues/programs lists requirements, respectively); 11.52(d); 11.61(a)(1)(v) (EAS requirements); 11.35 (operational readiness testing); 73.267(c)(3) (transmitter efficiency factor); 73.1225(a) and (e) (transmitter inspection availability and provision of local phone number,

respectively); 73.1840(a) (retention of station logs); 73.1590(d) (equipment performance measurements); and 73.1350(c)(2) (calibration of monitoring equipment) of the Rules. *See* Official Notice of Violation, Ref. EB-01-PA-115 (EB rel. May 11, 2001);

- (l) “Order” means the Order of the Bureau adopting this Consent Decree;
 - (m) “Ownership Report Rule” means [Section 73.3615](#) of the Commission's Rules, [47 C.F.R. Section 73.3615](#);
 - (n) “Parties” means the Bureau and the Licensee;“
 - (o) “Petition” means the Petition to Deny filed by Press Communications, LLC, on December 22, 2010, alleging one or more violations of the Act and/or the Rules by the Board;
 - (p) “Public File Rule” means Section 73.3527 of the Commission’s Rules, 47 C.F.R. § 73.3527;
 - (q) “Rules” means the Commission’s Rules, found in Title 47 of the Code of Federal Regulations;
 - (r) “STA” is the request for Special Temporary Authorization to continue Station operations pending consideration of the untimely WAJM(FM) 2010 Renewal Application, File No. BLSTA-20100921AAP, granted by the staff on September 29, 2010;
 - (s) “Station” means Station WAJM(FM), Atlantic City, New Jersey (Facility ID No. 3123);
 - (t) “Transmission System Operation Rule” means Section 73.1350(a) of the Commission’s Rules, 47 C.F.R. § 73.1350(a);
 - (u) “Unauthorized Operation Rule” means Section 301 of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 301;
- and
- (v) “Violations” means the violations of the Filing Date Rule, Public File Rule, Ownership Report Rule, Transmission System Operation Rule, and Unauthorized Operation Rule.

III. Background

3. On September 21, 2010, Licensee filed the 2010 Renewal Application for the Station, more than four years after the filing deadline, in violation of the Filing Date Rule.²⁹ In addition, Licensee

²⁹ The Station's application for renewal was due on or before February 1, 2006. No such application was filed, and the Station's license expired on June 1, 2006.

continued to operate the Station after the Station's license had expired in violation of [Section 301](#) of the Act.³⁰ Moreover, in the 2010 Renewal Application, Licensee disclosed violations of the Public File Rule and the Ownership Report Rule. The 2010 Renewal Application also disclosed: (1) that issues/programs lists during the eight-year period from the grant of the previous renewal application in September 1998 until the filing of the 2010 Renewal Application were missing from the Station's local public file, in violation of the Public File Rule;³¹ and (2) Licensee also indicates that it failed to file any biennial ownership reports with the Commission since the Station's last license renewal on September 23, 1998,³² in violation of the Ownership Report Rule.

4. Finally, in connection with a Petition to Deny the 2010 Renewal Application filed by Press Communications, LLC: (1) the Board disclosed that it had discovered that not all of the violations identified in the *NOV* were corrected; and (2) the Board acknowledged that the Station's antenna may have been mounted as much as 5 meters lower than authorized and may have been rotated as much as 3.5 degrees in azimuth, in violation of the Transmission System Operation Rule.³³ It subsequently filed the Modification Application to Application to correct the height of its transmitting antenna by 2.3 meters.³⁴

5. In light of the compliance issues raised in the 2010 Renewal Application, the *NOV*, and various pleadings in this proceeding regarding the late filing of the license renewal application, the unauthorized Station operations, and deficiencies in the public file related to issues/programs lists and ownership reports, the Parties have agreed to enter into this Consent Decree by which both Licensee and the Bureau intend to be legally bound.

IV. Agreement

6. The Parties acknowledge that any proceeding that might result from the Enforcement Bureau's Official Notice of Violation as well as the Licensee's compliance with the Ownership Report Rule, the Filing Date Rule, [Section 301](#) of the Act, the Public File Rule, and the Transmission System Operation Rule could 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 all pertinent Commission Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

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

³⁰ After its license had expired, the Station operated for more than four years. On the same day it filed the 2010 Renewal Application, Licensee filed the STA (Sept. 21, 2010). The staff granted the STA on September 29, 2010. The STA expired on March 29, 2011. Licensee timely sought an extension of the STA on March 17, 2011, which remains pending. See File No. BELSTA-20110317ACS.

³¹ 2010 Renewal Application, Exhibit 11.

³² *Id.*; see also *id.* at Exhibit 6.

³³ See the Board's January 28, 2011, Opposition to Petition to Deny at 12 and Attachment 8 (Larry H. Will, P.E., Engineering Exhibit in Support of Opposition to Petition to Deny).

³⁴ See Modification Application at Exhibit 18, Attachment 18. In the *Order* adopting this Consent Decree, the Bureau grants the Modification Application.

8. 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 the Station, as discussed herein.

9. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees that it will 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.

10. Licensee acknowledges that, since at least 2001, it has failed to operate the station with the diligence and attention required of Commission licensees. Licensee further acknowledges that it has both committed serious, and in some cases, repeated, violations at the Station and failed to correct those violations upon their discovery, even when admonished to do so by the Commission's Enforcement Bureau. Licensee further acknowledges that during this period it has demonstrated a reckless disregard of its responsibilities as a Commission licensee by failing to ensure that Station operations complied with Commission Rules, failing to correct known violations and failing to timely file required forms, lists and reports.

11. Specifically, Licensee hereby stipulates that, at least as of January 2011, the Board had not corrected all of the violations identified in the *NOV*.

12. Licensee also hereby stipulates that it violated the Filing Date Rule by failing to file a license renewal application for the Station on or before February 1, 2006, and that it violated [Section 301](#) of the Act by continuing Station operations after the Station's license had expired.

13. Licensee also hereby stipulates that the Station violated the Public File and Ownership Report Rules in the maintenance of the Station's public file during the entire 1998-2006 license term.

14. Licensee also hereby stipulates that the Station violated the Transmission System Operation Rule by operating the Station with an antenna at variance with its licensed parameters, necessitating Licensee's filing, on February 15, 2012, of an application for minor modification of licensed facilities to correct the problem.

15. As part of the Order, the Bureau shall terminate its investigation of the Violations and grant the Petition in part and deny it in all other respects.

16. In light of its significant Rule violations during the subject license term, Licensee agrees to pay a civil penalty to the United States Treasury in the amount of Six Thousand Two Hundred and Fifty Dollars (\$6,250). 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 order of the Federal Communications Commission. Payment by check or money order may be 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, SL-MO-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 "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Stephen.Svab@fcc.gov.

17. Because the Violations continued over the entire license term, the Bureau agrees to grant the 2010 and 2014 Renewal Applications, 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 15 of this Decree; and (2) there are no issues other than the Violations that would preclude grant of the renewal application. The forthcoming license term granted by such action will expire two (2) years after the grant of the 2014 Renewal Application.

18. 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 Commission's Rules. 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 two (2) years after the Effective Date.

19. The Licensee represents that, as of the Execution Date of this Consent Decree, the Station's public file fully complies with the Public File Rule and Ownership Report Rule and that, with the grant of the Modification Application, the Station also fully complies with the Transmission System Operation Rule. Licensee also represents that it is in full compliance with the Commission's EAS requirements.

20. 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 this Consent Decree, designation of the matter for hearing, letters of admonishment and/or forfeitures.

21. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. The Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

22. 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.

23. 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.

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

25. 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.

26. 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.

27. 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: _____

ATLANTIC CITY BOARD OF EDUCATION

By: _____
Donna Haye, Superintendent

Date: _____

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

The Atlantic City Board of Education, or its successor-in-interest, as appropriate will institute the following procedures to ensure compliance with the Commission's Rules. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

- I. The Board agrees to correct all violations identified in the *NOV* that can be retroactively corrected (Sections 73.3527(e)(3)-(4)-(7)-(8) (contour map; ownership report; "The Public and Broadcasting" manual; and quarterly issues/programs lists requirements, respectively); 11.52(d); 11.61(a)(1)(v) (EAS requirements); 11.35 (operational readiness testing); 73.267(c)(3) (transmitter efficiency factor); 73.1225(a) and (e) (transmitter inspection availability and provision of local phone number, respectively); 73.1840(a) (retention of station logs); and 73.1350(c)(2) (calibration of monitoring equipment) immediately and in any event prior to the submission of the first quarterly report under Item IV, below.
- II.
 - A. The Board will conduct in-house training for all Station employees and management on compliance with FCC Rules applicable to station operations, particularly those related to the Station's public inspection file, operation and maintenance of the Station's Emergency Alert System, and monitoring that the Station is operating with its authorized facilities. This training will be completed within 30 days of the Effective Date. Licensee will designate a management-level employee as Compliance Officer responsible for responding to Station employees' questions and to consult with outside counsel familiar with Communications Law regarding compliance matters. To augment this training, outside counsel, or other comparable professionals, will conduct a live workshop for all Station employees and management, also within 30 days of the Effective Date. The Board will repeat this workshop and use it as refresher training for staff and management at least every twelve (12) months. The Board also will videotape this workshop and use it to train any new Station employee within five (5) days of commencement of his or her duties at the Station.
 - B. The Board shall engage FCC counsel on an ongoing basis to provide guidance to the Board on FCC compliance issues, to provide regular updates and notices on developments in communications law applicable to the Board, and to review all of Licensee's applications and reports prior to filing with the FCC. In regard to the last matter, Licensee 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.
 - C. The Station Manager and other appropriate staff of the Station will compile a daily log of all public affairs and public service programming broadcast by the Station. These daily logs of public affairs and other public service programming will be retained until the Station's next license renewal application has been granted, compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station.
 - D. All requisite quarterly issues/programs lists will be signed and dated by their preparer and by the Station Manager before they are placed in the public file.
 - E. Late-filed public file documents will be reviewed and signed by the Station Manager 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.

- F. The Station's management will train all employees, within five (5) days of commencement of his or her duties at the Station, concerning the absolute requirement to follow all Commission rules, regulations, and policies, specifically, fully explaining the obligations imposed by the Public File Rule to each employee charged with maintenance of the Station's public file. Should the Licensee or the Station's management learn that the Public File Rule has been violated, any employee responsible will be subject to appropriate disciplinary action, which may include suspension without pay or termination.
- III. For a period of two years from the Effective Date, the Licensee and/or any successor licensee, as appropriate, will conduct audits of the Station's public files as detailed below. The two-year period will terminate on the successful completion of the second annual public file audit pursuant to Item II(C). The second audit pursuant to Item II(C) will be due on the anniversary of the first audit. The audits of the public files shall be performed as follows:
- A. quarterly audits of the Station's public file, by telephone or facsimile, will be conducted by Licensee's FCC counsel or an authorized representative of the New Jersey Association of Broadcasters under the Alternative Broadcast Inspection Program;
- B. a semi-annual review of the Station's public file will be conducted by the Station's management; and
- C. annual, in-person or video conference, audits of the Station's public files will be conducted by an authorized representative of the New Jersey Association of Broadcasters under the Alternative Broadcast Inspection Program. The first such audit shall be completed not less than six (6) months following the Effective Date.
- IV. The Licensee shall submit reports to the FCC on a quarterly basis during the two-year term of this Compliance Plan. The reports shall include an affidavit or declaration to the Bureau certifying that since the commencement of the Compliance Plan or the filing of the last such report, the Station is in compliance with the Rules and is in compliance with the Consent Decree. The reports shall specifically address the Station's compliance with the Public File Rule and whether Licensee is operating with authorized facilities and is in full compliance with the Commission's record-keeping requirements for its technical facilities. The reports shall also include a summary of all actions related to operation and maintenance of the Station's Emergency Alert System.
- A. The reports shall be signed by: (1) the person supervising the Licensee's execution of the Compliance Plan (see VI, below); (2) the Station's Chief Engineer; and (3) the Station's FCC counsel, and shall contain the certification of each signatory that the representations in the Report are true.
- B. If the Licensee cannot truthfully make any of these certifications, it shall set forth in detail any public file deficiencies and describe any corrective measures taken. In regard to this last matter, Licensee 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 submission may disclose a violation of the Rules. A copy of these reports shall be served on Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission and e-mailed to him at peter.doyle@fcc.gov.

- V. Licensee agrees to submit to a full inspection by the Enforcement Bureau field staff subsequent to the filing of its next license renewal application.

- VI. The Compliance Plan, set forth above, will be under the direct supervision of the Atlantic City Board of Education's Superintendent Donna Haye, or by any member of the Atlantic City Board of Education designated by Ms. Haye, or in the event Ms. Haye is no longer with the Atlantic City Board of Education or if the license has been assigned, by her successor or her successor's designee at the Atlantic City Board of Education or successor Licensee's Board.