

## CONSENT DECREE

### **I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Broadcast Towers, Inc., by their respective authorized representatives, for the purpose of terminating the Bureau's Investigation into potential violations of the Act and Rules by BTI in the course of its migration of the Translators from the Florida Keys to the Miami, Florida area.

### **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) "Bureau" means the Media Bureau of the Federal Communications Commission;
  - (c) "BTI" means Broadcast Towers, Inc.;
  - (d) "Commission" or "FCC" means the Federal Communications Commission;
  - (e) "Effective Date" means the date on which the Bureau releases the Order;
  - (f) "Investigation" means the investigation commenced by the FCC in July 2009, which culminated in the Bureau's September 28, 2009, Letter of Inquiry regarding whether BTI had reasonable assurance of site availability at the sites specified in various applications for the Translators filed between 2007 and 2009; whether the Translators were silent for any period of thirty or more days; and whether the Translators posted the information required by Section 74.1265(b) of the Rules;
  - (g) "Lacy" means William R. Lacy, the sole proprietor of BTI;
  - (h) "Order" means an order of the Bureau adopting this Consent Decree;
  - (i) "Other Florida Applications" means all applications filed by BTI and pending on the Effective Date, which are related to broadcast stations, other than the Translators, and which propose communities of license located in the State of Florida. This term includes, but is not limited to, the applications filed by BTI for construction permits for new FM translator stations at Naples, Florida (Facility ID No. 141122) (Application File No. BNPFT-20030310BCD); Sarasota, Florida (Facility ID No. 141126) (Application File No. BNPFT-20030310BCE); Punta Gorda, Florida (Facility ID No. 141127) (Application File No. BNPFT-20030310BCH); and Venice, Florida (Facility ID No. 152216) (Application File No. BNPFT-20030317CWC).
  - (j) "Parties" means the Bureau and BTI;
  - (k) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;

- (l) "Translators" means the following FM translator stations: W237CI, Miami Beach, Florida (Facility ID No. 139223); W237DK, Leisure City, Florida (Facility ID No. 139053); W258BQ, Homestead, Florida (Facility ID No. 139054); DW224BW, Key Largo, Florida (Facility ID No. 139051); and W296BP, Coral Gables, Florida (Facility ID No. 141053); and
- (m) "Violations" means the failure of BTI to provide "dependable service" and "avoid unwarranted interruptions" to service in violation of Section 74.1263 of the Rules; the failure of BTI to notify the Commission that it discontinued operations at W237DK for more than 30 days in violation of Section 74.1263(c) of the Rules; the failure of BTI to obtain reasonable assurance of the availability of the transmitter sites specified for the Translators as required by the Commission; the failure of BTI to post all of the information required by Section 74.1265(b) of the Rules at the transmitter sites; and the abuse of Commission processes committed by BTI as it migrated the Translators north to Miami.

### **III. Background**

3. BTI is the licensee of the Translators, which are licensed to various communities throughout the Florida Keys. BTI acquired the original construction permits for the Translators during the FM Translator filing window that the Commission opened in March 2003. Beginning in 2007, BTI filed a series of applications designed to move each Translator's community of license north toward Miami to "take advantage of the larger populations located there."<sup>1</sup>

4. For each Translator, BTI initially filed an application to make a minor modification to the Translator's construction permit. The application specified a roadside location for the Translator's transmitter. Upon grant of this application, Lacy drove out to the location, parked his vehicle, and operated the Translator for two to five hours using a telescoping antenna and portable generator. Lacy then discontinued operations, disassembled the equipment, loaded it back up into his vehicle, and drove away.

5. BTI then filed an application for a license to cover the Translator's operations from this roadside location. Upon grant of the license application, BTI repeated the process, filing an application to make minor changes to the licensed facilities of the Translator that specified a transmitter location closer to Miami. While an application was pending, Lacy would drive out to the currently authorized location for the Translator, park his vehicle and operate the Translator for two to five hours once every thirty days. This ensured that BTI did not need to seek Commission approval for the time the Translator was off air.

6. BTI's conduct was brought to our attention when Clear Channel Broadcasting Licenses, Inc., and WXDJ Licensing, Inc. (collectively, "Movants"), filed a joint Motion for Cancellation of FM Translator Authorizations ("Motion") on June 8, 2009. Movants alleged that BTI abused the Commission's processes and failed to comply with various Commission requirements, including those related to provision of "dependable service," notification to the Commission of "intent to discontinue operations for 30 or more consecutive days," posting of certain station information, and unattended operation. In addition, Movants claimed that, in at least some instances, BTI lacked reasonable assurance of site availability.

7. On July 6 and 7, 2009, the Commission's Miami Resident Agent Office conducted an investigation of the Translators. For each Translator, the agents found no evidence of any current or prior

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<sup>1</sup> Broadcast Towers, Inc., Opposition to Motion for Cancellation, Lacy Dec. at 1 (rec'd June 23, 2009) ("Opposition").

construction of FM translator stations at the latest and the previously authorized transmitter sites. Subsequently, on September 28, 2009, the Bureau issued a letter of inquiry ("LOI") to BTI. The LOI directed BTI to state whether it had reasonable assurance of site availability at the sites specified in the applications for the Translators; whether the Translators were silent for any period of thirty or more days and, if so, to explain why BTI failed to notify the Commission of such silence; and whether the Translators posted the information required by Section 74.1265(b) of the Rules.

8. BTI responded to the LOI on October 28, 2009. Lacy argued that BTI had reasonable assurance that all of the sites specified in the applications at issue would be available because, with one exception, the sites were public roads, parks or parking lots. Lacy indicated that, with one exception, BTI operated each station at least once every 30 days and pointed out that Section 74.1263 of the Rules does not specify a minimum operating schedule for FM translators. Finally, Lacy admitted that "no 'sign' displaying the station's call sign or contact information concerning the Translator's licensee was affixed to the structure supporting the antenna at any of the sites." BTI argued that it was in compliance with Section 74.1263 by virtue of Lacy's having been physically present at the sites while the Translators were in operation.

9. With respect to the issue of liability for the Commission rule violations that have occurred, BTI has claimed an inability to make a voluntary contribution and provided documentation to support this claim. The Bureau accepts BTI's financial showing as credible.

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

#### **IV. Agreement**

11. 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, and to promote BTI's compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

12. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Both BTI and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf, and BTI and Lacy agree that this Consent Decree shall be binding on their successors, assigns and transferees. BTI agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

13. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between BTI and the Bureau concerning the Violations, as discussed herein.

14. 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 BTI 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 BTI with respect to BTI's basic qualifications, including character qualifications, to be a licensee. In the event that BTI fails to satisfy any of its obligations under this Consent Decree, however, BTI 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. The Bureau agrees that BTI and Lacy need not disclose the

Violations in any pending or future application to which either is a party unless BTI or Lacy are found to have violated this Consent Decree.

15. BTI hereby stipulates that it failed to provide "dependable service" and "avoid unwarranted interruptions" to service from the Translators in violation of Section 74.1263(a) of the Rules. BTI also stipulates that it failed to notify the Commission that it had discontinued operations at W237DK for more than 30 days and that such failure violated Section 74.1263(c) of the Rules. Further, BTI stipulates that it failed to comply with the Commission's requirement that it obtain reasonable assurance of the availability of the transmitter sites specified in the applications BTI filed for the Translators between 2007 and 2009. In addition, BTI stipulates that it violated Section 74.1265(b) of the Rules by failing to post certain information at the transmitter sites specified in the applications BTI filed for the Translators between 2007 and 2009. Finally, BTI stipulates that it abused the Commission's processes in the course of its migration of the Translators north to Miami.

16. BTI agrees to the cancellation of the FCC authorizations for the Translators, and to the dismissal of all pending applications related to the Translators, immediately upon the issuance of the Order. In addition, BTI agrees to the dismissal of the Other Florida Applications, immediately upon issuance of the Order. Finally, BTI commits to divest itself of W285EH, Key West, Florida (Facility ID No. 139134), within one year after the release date of the Order and agrees that, if such divestiture has not occurred by this date, the FCC shall cancel the FCC authorization for W285EH and dismiss all pending applications related to W285EH.

17. BTI and Lacy further agree that henceforth they will: (a) ensure that any transmitter site specified in any application to which either is a party is available for continuous use; (b) obtain reasonable assurance for the proposed use of any transmitter site specified in any application to which either is a party; (c) provide "dependable service" (as described in Commission decisions involving FM and TV translators) on any FM translator station licensed to them or to any entity in which either BTI or Lacy hold an attributable interest and not discontinue operation except for reasons beyond their control; and (d) file minor change applications only as contemplated by Section 74.1233(a) of the Rules. BTI represents that, as of date of its execution of this Consent Decree, the information specified in Section 74.1265(b) of the Rules is posted at the transmitter site of all FM translators for which it holds an FCC authorization and hereby commits that it will ensure compliance with Section 74.1265(b) on a going forward basis.

18. BTI 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 BTI 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.

19. BTI 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.

20. BTI 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.

21. BTI 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.

22. BTI and the Bureau agree that, if BTI, 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 BTI nor the Commission will contest the validity of the Consent Decree or Order, and BTI 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.

23. BTI 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.

24. 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: \_\_\_\_\_

**BROADCAST TOWERS, INC.**

By: William R. Lacy  
William R. Lacy, President

Date: May 24, 2011