

CONSENT DECREE

I. Introduction

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission, and Ruth Pollack, Executrix of the Estate of Chester P. Coleman, for the purpose of resolving certain issues regarding compliance with the Public File Rule, as defined below, that have arisen during the Media Bureau's review of the pending applications for the renewal of the licenses for Stations KAXX(AM), Eagle River, Alaska, and KZND-FM, Houston, Alaska.

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) "Applications" or, any one, an "Application" means the pending applications for the renewal of the licenses for Station KAXX(AM), Eagle River, Alaska (File Nos. BR-19980706WA and BR-20050930AJJ) and for Station KZND-FM, Houston, Alaska (File No. BRH-20050930AJR);
- (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 Public File Rule at the Stations, 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) "Licensee" refers to Ruth Pollack, Executrix of the Estate of Chester P. Coleman;
- (i) "Order" means the order of the Bureau adopting this Consent Decree;
- (j) "Parties" means the Bureau and the Licensee;
- (k) "Public File Rule" means Section 73.3526 of the Commission's Rules, 47 C.F.R. § 73.3526;
- (l) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
- (m) "Stations" or, either, a "Station," means Stations KAXX(AM), Eagle River, Alaska, Facility ID No. 53491, and KZND-FM, Houston, Alaska, Facility ID No. 10770; and
- (n) "Violations" means the violations of the Public File Rule at the Stations.

III. Background

3. On July 6, 1998, the then-licensee of the Stations, Chester P. Coleman (“Coleman”), filed an application for renewal of his license for Station KAXX(AM) more than 9 months after the application was due to be filed under the Rules. That application remains pending before the Bureau. On September 30, 2005, Coleman filed a second application for renewal of his license for Station KAXX(AM) and an application for renewal of his license for Station KZND-FM (collectively, the “2005 Applications”). The 2005 Applications disclosed to the Commission that each of the Stations had not fully complied with the Commission’s Public File Rule. In March 2006, Coleman passed away. In response to inquiries from the Bureau’s staff relating to the compliance issues raised by the disclosures in the 2005 Applications, the Licensee, as Executrix for the Coleman estate, attempted to provide the requested information concerning the Stations’ Public File Rule compliance, but the materials that she was able to gather from the Stations’ files were insufficient to resolve the issues raised by the disclosures in the 2005 Applications.

4. Additionally, there are three *Forfeiture Orders* issued to Coleman or to American Radio Brokers, Inc. (“ARB”), a company that he solely owned, by the Commission’s Enforcement Bureau that are unpaid (collectively, the “Forfeiture Orders”): (a) an October 13, 2000, Forfeiture Order, to ARB, in the amount of \$4,000 for violation of Section 1.89(b) of the Rules by failing to respond to a written Notice of Violation concerning Station KAXX(AM) (File No. EB-00-AN-033, NAL/Acct No. X3278001);¹ (b) a March 11, 2005, Forfeiture Order, to Coleman with regard to the Stations, in the amount of \$24,000 for failure to maintain main studios and a local or toll free number and to adhere to minimum operating schedules and unauthorized discontinuance of authorized operations (File Nos. EB-03-AN-091 and EB-03-AN-092, NAL/Acct. No. 200532780003);² and (c) a March 11, 2005, Forfeiture Order, to ARB, as the registrant of the antenna structure used by the Stations, in the amount of \$13,000 for failure to comply with lighting requirements and to notify an office or flight service station of the Federal Aviation Administration regarding light outages (File No. EB-04-AN-028, NAL/Acct. No. 200532780002).³ As Executrix of Coleman’s estate, the Licensee has agreed to satisfy the forfeiture obligations imposed by the Forfeiture Orders as a component of this Consent Decree.

5. Because of the compliance issues raised by the representations concerning the Stations’ compliance with the Public File Rule in the 2005 Applications, and the above-noted outstanding forfeitures, 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

6. The Parties acknowledge that any proceedings that might result from the Public File Rule compliance issues referred to in Paragraph 3 above and the outstanding forfeitures referred to in Paragraph 4 above would be time consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve these matters 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.

¹ *American Radio Brokers, Inc.*, Forfeiture Order, 15 FCC Rcd 19712 (EB 2000), *recon. denied*, Memorandum Opinion and Order, 16 FCC Rcd 7543 (EB 2001), *rev. denied*, Memorandum Opinion and Order, 16 FCC Rcd 15024 (2001).

² *Chester P. Coleman c/o American Radio Brokers, Inc.*, Forfeiture Order, 20 FCC Rcd 5147 (EB 2005).

³ *American Radio Brokers, Inc.*, Forfeiture Order, 20 FCC Rcd 5165 (EB 2005).

7. The Licensee and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. Each represents and warrants to the other 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 and the authority to enter into and adopt this Consent Decree.

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 Stations, 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 her obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of her obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each of the Violations, and/or the violation of this Consent Decree.

10. The Licensee hereby stipulates that the Stations each violated the Public File Rule in the maintenance of the Stations' public files during their current license terms.

11. The Licensee agrees to make a voluntary contribution to the United States Treasury in the amount of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days of the Effective Date. 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 drawn to the order of the Federal Communications Commission. The payment must include FRN No. 0006533046 and NAL Account No. MB200741410023. Any payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Any payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and Account Number 911-6106, pursuant to Commission procedures for wire transfers.

12. The Licensee also agrees to pay in full the forfeiture amounts specified in the three outstanding Forfeiture Orders described in Paragraph 4, above within thirty (30) days of the Effective Date. Such payment will be made, without further protest or recourse to a *trial de novo*, by three separate checks or similar instrument, wire transfers or money orders drawn to the order of the Federal Communications Commission. Each payment must reference the respective FRN No. and NAL Account No. and be in the amount as follows: (a) FRN No. 0010287019, NAL Account No. X3278001, in the amount of \$4,000.00; (b) FRN No. 0005037585, NAL Account No. 200532780003, in the amount of \$24,000.00; and (c) FRN No. 0010287019, NAL Account No. 200532780002, in the amount of \$13,000.00. Any payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Any payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and Account Number 911-6106, pursuant to Commission procedures for wire transfers.

13. The Bureau agrees to grant the Applications after the Effective Date, provided that the following conditions have been met: (1) the Licensee has fully and timely satisfied her obligation to make the voluntary contribution in the manner specified in Paragraph 11 above; (2) the Licensee has fully and timely paid the forfeitures imposed by the Forfeiture Orders in the manner specified in Paragraph 12 above; and (3) there are no issues other than the Violations that would preclude grant of the Applications. In the event that there are issues that would preclude the grant of any of the Applications regarding a

Station, such application(s) will remain pending, but such a state of affairs will not preclude the grant of the application(s) for the other Station, provided that it has no such outstanding issues, and the above conditions have been satisfied with regard to that Station.

14. The Licensee represents that, in addition to the existing policies and procedures, she 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. The Licensee agrees, to the extent that she has not already done so, to implement this Compliance Plan at each of the Stations no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years thereafter.

15. The Licensee represents that, as of the Execution Date of this Consent Decree, the Stations' public files fully comply with the Public File Rule.

16. The Licensee agrees that she 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, provision of the Act, or Commission Rule, in the absence of Commission alteration of the condition or Rule, the Licensee 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.

17. The Consent Decree will be binding on the Licensee's successors-in-interest and assigns. To this end, any application for consent to assign either or both of the Stations' licenses shall include a statement executed by an authorized officer of the proposed assignee consenting to assumption by the assignee of the responsibilities and duties regarding the Stations(s) subject to the application set forth in this Consent Decree, including, but not limited to, the continued operation of the Compliance Plan with regard to such Station(s).

18. The Licensee waives any and all rights she 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 that the Order adopts the Consent Decree without change, addition or modification.

19. The Licensee agrees to waive any claims she 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. If the Commission, or the United States on its behalf, brings a judicial action to enforce the terms of the Order or this Consent Decree, or both, the Licensee will not contest the validity of this Consent Decree or Order, and will waive any statutory right to a *trial de novo*. If the Licensee brings a judicial action to enforce the terms of the Order or this Consent Decree, or both, the Commission will not contest the validity of this Consent Decree or the Order.

20. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau by incorporation of such provisions by reference in the Order adopting this Consent Decree without change, addition or modification.

21. The Parties agree that this Consent decree shall become effective on the date on which the Bureau releases the Order. Upon release, the Order and this Consent Decree shall have the same force and effect as any other orders of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

22. 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.

23. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed and delivered, the counterparts, taken together, will constitute one and the same legally binding and enforceable instrument.

**MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
Monica Shah Desai, Chief

Date: _____

**RUTH POLLACK, EXECUTRIX OF THE ESTATE
OF CHESTER P. COLEMAN**

Date: _____

APPENDIX

COMPLIANCE PLAN FOR STATIONS KAXX(AM) AND KZND-FM

Ruth Pollack, Executrix of the Estate of Chester P. Coleman, or her successors-in-interest as licensee of either or both of the Stations, 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 Station Manager and other appropriate staff of each Station will log all broadcasts of public affairs and public service programming broadcast by the Station. Additionally, the Licensee shall require Tati Broadcasting, LLC ("Tati"), which currently presents programming over the Stations pursuant to a Time Brokerage Agreement on file with the Commission (the "TBA"), strictly to comply with its obligations under the TBA to timely provide the Licensee "with information concerning public affairs programming and public service announcements included in [Tati's] programming for inclusion, as [Licensee] sees fit, in Licensee's quarterly public file issues and programs lists." The logs of public affairs and other public service programming produced by the Licensee's staff and the information provided to the Licensee concerning public affairs programming and public service announcements included in programming presented on the Stations by Tati during the term of the TBA will be compiled into quarterly issues/programs lists and will be timely placed in the public file of each of the Stations.
 - B. All such quarterly issues/programs lists will be signed and dated by their preparer before they are placed in their respective public files.
 - C. Any late-filed list will be reviewed and signed by the Stations' management and accompanied in the Station public file with a statement indicating the nature of the document, the date placed in the file, and the reason for the late filing.
 - D. The Stations' management will train all employees 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 Stations' public files. Should the Licensee or the Stations' or management learn that the Public File Rule has been violated, any employee responsible will be subject to appropriate disciplinary action, including suspension without pay and termination.
- II. For a period of three years from the Effective Date, the Licensee and any successor licensee, as appropriate, will conduct in-house audits of the Stations' public files as detailed below. The three-year period will terminate on the successful completion of the third annual audit pursuant to Item II(C). The second and third audits 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 Stations' public files, by telephone or facsimile, will be conducted by FCC counsel or an authorized representative of the Alaska Broadcasters Association under the Alternative Broadcast Inspection Program;

- B. a semi-annual review of the Stations' public files will be conducted by the Stations' management; and
 - C. annual, in-person, audits of the Stations' public files will be conducted by an authorized representative of the Alaska Broadcasters Association under the Alternative Broadcast Inspection Program. The first annual audit shall be completed not less than six (6) months and not more than nine (9) months following the Effective Date.
- III. The Licensee shall annually submit a sworn certification to the Commission, signed by the Licensee, that the Stations' public inspection files fully comply with the Public File Rule. If the Licensee cannot truthfully make this certification, the Licensee 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 audit pursuant to Item II(C) above, and on that date yearly thereafter during each year of the each Station 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 Ruth Pollack, Executrix of the Estate of Chester P. Coleman, as the Licensee or, in the event Ms. Pollack is no longer the Licensee or the license has been assigned, by her successor licensee(s) or its designee.