

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

In the Matter of)	
)	
San Tan Educational Media)	File Nos.: BLL-20170710AAT
)	BPL-20170911ADI
For License, Modification of License, Transfer of)	BTCL-20171004AAB
Control, and Special Temporary Authority for)	BPL-20180117ACV
)	BLESTA-20180514ACA
Station KFXV-LP, Mesa, Arizona)	EB-IHD-17-00025521
)	
)	Acct. No.: 201932080014
)	FRN: 0024208670
)	Facility ID No. 192016
)	

ORDER

Adopted: September 4, 2019

Released: September 5, 2019

By the Chiefs, Media Bureau and Enforcement Bureau:

I. INTRODUCTION

1. The Media Bureau (MB) and the Enforcement Bureau (EB) of the Federal Communications Commission (Commission) have entered into a Consent Decree to resolve pending matters concerning San Tan Educational Media (San Tan), licensee of low power FM (LPFM) Station KFXV-LP, Mesa, Arizona (Station). Specifically, the Consent Decree resolves: (1) MB's investigation into several San Tan applications and objections thereto, with MB's procedural disposition of those matters addressed in a separate MB letter decision,¹ and (2) EB's investigation into whether San Tan violated the Commission's underwriting laws by broadcasting announcements that promoted the products, services, or businesses of its financial contributors. To settle these matters, San Tan agrees to implement a compliance plan and pay a \$1,500 civil penalty.

II. DISCUSSION

2. **Licensing Matters.** San Tan has, in the Consent Decree, admitted to the following licensing-related violations of the Commission's rules (Rules) and of the Communications Act of 1934, as amended (Act): (a) violation of section 73.865(e) of the Rules by undergoing a sudden change of its entire governing board without timely filing an application for Commission consent on FCC Form 316; (b) violation of section 301 of the Act and section 73.1350 of the Rules by constructing a tower and antenna that were each of a lower height than authorized by the Commission and by operating those nonconforming facilities continuously for approximately four months without Commission consent; and (c) violation of section 1.17 of the Rules by falsely certifying to have constructed in accordance with its permit, under the signature of a person who was then no longer affiliated with San Tan, as a result of carelessness or negligence but without any intent to deceive. MB addressed each of these matters in the

¹ See Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau to Ryan Greig, President, San Tan, Letter Order (MB Aug. XX, 2018) (MB Letter Order).

(continued....)

separate MB Letter Order and concluded that none of the violations affects San Tan's basic qualifications to be a Commission licensee.²

3. **Underwriting.** LPFM radio broadcasters are licensed to provide noncommercial, locally oriented programming for their communities. LPFM licensees benefit from being exempt from regulatory fees and from having fewer requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. That flexibility, however, is not unlimited, and the Rules applicable to LPFM licensees specifically incorporate the same restrictions prohibiting the airing of commercial advertising applicable to noncommercial educational (NCE) FM broadcast licensees.³ These restrictions "protect the public's use and enjoyment of commercial-free broadcasts" and "provide a level playing field for the noncommercial broadcasters that obey the law and for the commercial broadcasters that are entitled to seek revenue from advertising."⁴ The Commission acts when necessary to enforce the laws prohibiting LPFM stations from airing announcements that promote for-profit advertisers.

4. Although an LPFM licensee may broadcast underwriting announcements identifying entities that donate to the station by name, such announcements may not promote an entity's businesses, products, or services.⁵ In addition, such announcements may not contain comparative or qualitative descriptions; price information (sales or discounts); calls to action; inducements to buy, sell, rent, or lease; and excessively detailed "menu listings" of services offered by the entity.⁶ The Commission has not adopted any quantitative guidelines on underwriting announcements, but it has found that the longer the announcement, the more likely it is to contain material that is inconsistent with their "identification only" purpose.⁷ At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter.⁸ Consequently, the Commission expects that licensees exercise reasonable "good faith" judgment in this area and affords some latitude to the judgments of licensees who do so.⁹

5. In this case, EB investigated a complaint alleging that the Station broadcast announcements that violated the underwriting laws. San Tan admits that these broadcasts violated the Commission's underwriting laws and will pay a civil penalty. San Tan also will implement a five-year compliance plan to avoid future violations of the Commission's underwriting laws.

² See MB Letter Order at 5.

³ 47 U.S.C. § 399b(b)(2). In addition, section 73.503, including the prohibitions against NCE licensees broadcasting commercial announcements on behalf of for-profit entities, has been incorporated into the rules applicable to the LPFM service. 47 CFR § 73.801.

⁴ *Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015).

⁵ 47 U.S.C. § 399b(a); Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992) (*Enhanced Underwriting Policy*).

⁶ *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Hispanic Broadcast System, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2411, 2415, para. 9 (EB 2005), *aff'd with reduced forfeiture*, Forfeiture Order, 20 FCC Rcd 12008 (EB 2005); *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4920-21, paras. 3, 6 (1990) (*Xavier*).

⁷ *Enhanced Underwriting Policy*; cf. *Board of Education of New York (WNYE-TV)*, Letter of Caution, 7 FCC Rcd 6864 (MMB 1992).

⁸ *Xavier*, 5 FCC Rcd at 4921, para. 6 (citing *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Memorandum Opinion and Order, 90 FCC 2d 895, 911 (1982) (subsequent history omitted)).

⁹ *Id.*

6. **Consent Decree.** As part of this Order we are adopting a Consent Decree between MB, EB, and San Tan. The Consent Decree resolves issues related to San Tan's violation of the law and rules governing underwriting announcements, construction and operation at variance from its authorization, false certification of construction as authorized, and failure to timely file an FCC Form 316 for Commission consent to a transfer of control. The Consent Decree stipulates that San Tan violated sections 301 and 399B of the Act and sections 1.117, 73.801, 73.503(d), 73.865(e), and 73.1350 of the Rules. San Tan submitted financial documentation to MB and EB, including profit/loss statements for 2016-2018, to support a reduction of the Consent Decree's civil penalty based upon San Tan's inability to pay. The \$1,500 civil penalty set forth in the Consent Decree reflects consideration of San Tan's documented inability to pay. In addition to paying the civil penalty, San Tan will implement a compliance plan to avoid future violations.

7. We conclude that nothing in the record before us creates a substantial or material question of fact whether San Tan possesses the basic qualifications to be a Commission licensee. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating MB's and EB's referenced investigations.

8. In the absence of material new evidence relating to this matter, we do not set for hearing the question of San Tan's basic qualifications to hold or obtain any Commission license or authorization.¹⁰

III. CONCLUSION/ACTIONS

9. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act¹¹ and the authority delegated by sections 0.61, 0.111, 0.283, and 0.311 of the Rules,¹² the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

10. **IT IS FURTHER ORDERED** that the above-captioned matter before the Enforcement Bureau **IS TERMINATED**.

11. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against San Tan and/or its station(s) related to the above-captioned investigation that are pending before the Enforcement Bureau as of the date of this Consent Decree **ARE DISMISSED**.

12. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Ryan Greig, President, San Tan Educational Media, 550 W. Baseline Rd., Suite 102-116, Mesa, AZ 85210.

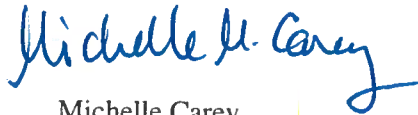
¹⁰ See 47 CFR § 1.93(b).

¹¹ 47 U.S.C. § 154(i).

¹² 47 CFR §§ 0.61, 0.111, 0.283, 0.311.

13. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail to John S. Neely, Esq., Counsel to 1TV.com, Inc., Miller & Neely, P.C., 3750 University Blvd. W., Suite 203, Kensington, Maryland 20895 and to Len Novin, 1318 N. 104th St., Mesa, AZ 85207.

FEDERAL COMMUNICATIONS COMMISSION



Michelle Carey
Chief
Media Bureau



Rosemary C. Harold
Chief
Enforcement Bureau