

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

)	File No. EB-07-IH-5252
In the Matter of)	
)	NAL/Acct. No. 200932080015
Bay Television, Inc.)	
Licensee of Station WTTA(TV))	FRN No. 0002157337
St. Petersburg, Florida)	

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and Bay Television, Inc. (“Bay”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Bay, licensee of Station WTTA(TV), St. Petersburg, Florida, violated Section 73.670 of the Commission’s Rules regarding commercial limits in children’s programs.

I. 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) “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bay Television, Inc.” or “Bay” means Bay Television, Inc. and its predecessors-in-interest and successors-in-interest.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Children’s Programming Commercial Limits” means the requirements contained in 47 C.F.R. § 73.670.
 - (f) “Commercial Matter” and “Children’s Programming” have the respective definitions contained in 47 C.F.R. § 73.670.
 - (g) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (h) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
 - (i) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (j) “Investigation” means the above-captioned investigation by the Bureau regarding whether Bay violated Section 73.670 of the Commission’s Rules regarding commercial limits in children’s programs.¹

¹ See 47 C.F.R. § 73.670.

- (k) “Parties” means Bay and the Bureau.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Station” means WTTA(TV), St. Petersburg, Florida (Facility ID 4108).

II. BACKGROUND

3. In the Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children’s programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a “program-length commercial”).²

4. The Investigation was opened after the Bureau received a letter dated May 21, 2007 from Bay informing the Commission of certain violations of the Children’s Programming Commercial Limits during programming aired by the Station.³ Specifically, Bay reported that the Station exceeded the Children’s Programming Commercial Limits on 24 occasions between late 2006 and early 2007.⁴ Of these overages, three were 15 seconds in duration, one was 30 seconds in duration, 19 were 45 seconds in duration, and one was 1 minute, 15 seconds in duration.⁵ Bay attributed the overages to inadvertent errors by Station personnel related to moving the subject program from a weekday to weekend day and a misunderstanding of pro-rating the clock hour.⁶ In its May 21 letter, Bay described corrective measures taken by the Station to prevent future overages.⁷

5. The Parties acknowledge that a consent decree to address Bay’s possible violations of the Commission’s Rules regarding Children’s Programming Commercial Limits is in the public interest. The Parties agree that any forfeiture proceeding that might result from a formal Bureau investigation into Bay’s compliance with the Children’s Programming Commercial Limits will be time-consuming and will require substantial expenditure of public and private resources. To conserve such resources, to resolve the Investigation, and to ensure continued compliance by Bay with the Children’s Programming Commercial Limits, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

² *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

³ See Letter from Kathryn R. Schmeltzer, Pillsbury Winthrop Shaw Pittman LLP, to Barbara Kreisman, Chief, Video Division, Federal Communications Commission, dated May 21, 2007.

⁴ See *id.* at 1.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.* at Attachment (Memorandum).

III. TERMS OF AGREEMENT

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

7. **Jurisdiction.** Bay agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

9. **Termination of Investigation.** 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. In consideration for the termination of said Investigation, Bay agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Bay concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Bay with respect to Bay's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Bay agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- a. Bay will conduct formal training on the Children's Programming Commercial Limits for all master control, traffic, and programming employees at the Station who materially participate in scheduling commercials during Children's Programming. Such training will be provided to all such employees no later than thirty (30) days after the Effective Date of this Consent Decree, and on an annual basis thereafter while this Compliance Plan remains in effect. Training will also be provided to each and any new employee promptly after he or she commences his or her employment. Such training shall include, but not be limited to, instruction relating to the fixed time limits on Commercial Matter during Children's Programming, as well as program-length commercial issues arising from tie-ins between program content and characters, and host-selling. After completing the training, each employee shall sign a form acknowledging that he or she has received such training and understands Children's Programming Commercial Limits and the Station's policies and procedures with respect thereto.
- b. Before Children's Programming airs on the Station, Station staff will review the content of any commercial within each instance of Children's Programming to ensure compliance with the Children's Programming Commercial Limits. In particular, when any Children's Programming scheduled to air on the Station on a weekday is then re-scheduled to air on the Station on a weekend day, Station staff will carefully check any Commercial Matter within

- such Children's Programming prior to its airing to ensure that applicable time limits are met. Any Commercial Matter aired during Children's Programming will be manually counted. Station staff will prepare a daily inspection checklist (the "Checklist") specifying the Commercial Matter during Children's Programming that day. At least two staff members will review and sign the Checklist each day and then submit it to the Station's General Manager for review by the next business day morning.
- c. Bay will maintain an FCC Station Compliance Policy Manual (the "Manual") which includes information regarding the Children's Programming Commercial Limits. During the first two weeks of each quarter, the Station's General Manager and his or her staff will update the Manual, as appropriate, and then all department heads and supervisors at the Station will review it by the end of the two-week period.
 - d. The Station's General Sales Manager and Chief Engineer will conduct random inspections, at least once every six (6) months, of Commercial Matter aired during Children's Programming. Each inspection will consist of reviewing, in the official program logs of the Station, all Commercial Matter aired during Children's Programming over the Station during a randomly selected two-week period during the preceding month. Within thirty (30) days of the completion of each such inspection, Bay will report in writing to the Bureau any violations of the Children's Programming Commercial Limits discovered during the period reviewed and the remedial steps taken to ensure future compliance with the Children's Programming Commercial Limits.
 - e. Unless stated otherwise, the compliance requirements of this Compliance Plan will expire two (2) years after the Effective Date.

11. **Compliance Reports.** Bay will file compliance reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and two years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Bay, stating that the officer has personal knowledge that Bay has established and is maintaining operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

12. **Voluntary Contribution.** Bay agrees that it will make a voluntary contribution to the United States Treasury in the amount of eight thousand dollars (\$8,000). The payment will be made within 10 calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Bay will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, and Melissa.Marshall@fcc.gov.

13. **Waivers.** Bay waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Bay shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Bay nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Bay shall waive any statutory right to a trial *de novo*. Bay hereby agrees to waive any claims 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 addressed in this Consent Decree.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Bay does not expressly consent) that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns.** Bay agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

David D. Smith
President
Bay Television, Inc.

Date