

## CONSENT DECREE

### **I. Introduction**

1. This Consent Decree is entered into by: (a) the Media Bureau of the Federal Communications Commission; (b) Philip E. Kuhlman and Ellen N. Kuhlman (“the Kuhlman’s”), joint licensees and proposed assignors of Station WYAC-FM (“the Station”), Christiansted, Virgin Islands; and (c) The Rain Broadcasting, Inc. (“Rain”), proposed assignee of the Station.

### **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) “Assignment Application” means the FCC Form 314 application filed by the Kuhlman’s and Rain for approval of the assignment of the license for the Station (File No. BALH-20061206ACT);

(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 compliance plan provided in the Appendix hereto;

(f) “Effective Date” means the date on which the Bureau releases the Order;

(g) “Final Order” means the status of the Order after the period for administrative and judicial review has lapsed;

(h) “Investigation” means the Bureau’s investigation of the allegations contained in the Objections, including the letter of inquiry from the Bureau to the Kuhlman’s, dated June 11, 2007;

(i) The “Kuhlman’s” means Philip E. Kuhlman and Ellen N. Kuhlman, joint licensees and proposed assignors of Station WYAC-FM, Christiansted, Virgin Islands;

(j) “Objections” mean the third-party objections received by the Bureau as of the Effective Date, alleging one or more violations of the Act and/or the Rules by the Kuhlman’s and/or Rain, which objections are set out in the following documents, some of which are referenced in the letter of inquiry from the Bureau to the Kuhlman’s dated June 11, 2007;

(i) a “Petition to Deny Transfer,” filed with respect to the Assignment Application on January 11, 2007, filed by five Senators from the Legislature of the Virgin Islands (the “Senators”);

(ii) a “Reply to Joint Opposition to Informal Objections; Supplement to Informal Objection,” filed on February 20, 2007, by the Senators;

(iii) a “Reply to Response to Supplement to Informal Objection; Comments on March 13, 2007 Amendment to Asset Purchase Agreement,” filed May 1, 2007, by the Senators; and

(iv) “Comments on the Kuhlman’s July 11, 2007 Letter Responding to the Commission’s June 11, 2007 Request for Information,” filed July 24, 2007, by the Senators;

(k) “Order” means an order of the Bureau adopting this Consent Decree;

(l) “Parties” means the Kuhlman’s, Rain and the Bureau;

(m) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;

(n) “Station” means Station WYAC-FM, Christiansted, Virgin Islands (Facility ID No. 62114), licensed to the Kuhlman’s.

### **III. Background**

3. On December 6, 2006, the Kuhlman’s and Rain submitted the Assignment Application seeking consent to the assignment of the Station’s license to Rain. The Objections were filed with respect to the Assignment Application, and the Bureau thereafter commenced the Investigation to determine whether the Kuhlman’s and/or Rain had violated the Act and/or the Rules, as alleged.

4. The Kuhlman’s and Rain acknowledge that, while their agreements (copies of which have been submitted to the Commission in connection with the Assignment Application) reflect their intent to comply with the Rules and policies (including Rules and policies requiring retention of control of a broadcast station by its licensee), in the implementation of those agreements, the Kuhlman’s may have failed to exercise such control to the degree required by the Commission and Rain may have exercised a greater level of control than is permitted by the Commission. Specifically, the Kuhlman’s acknowledge that they may not have maintained control over the Station’s finances to the extent required by the Rules and policies and that they may have ceded control of those finances to Rain. Rain acknowledges that it willingly exercised the control so ceded. Additionally, the Kuhlman’s acknowledge that the level of their day-to-day involvement in the supervision of the Station – involvement which included routine monitoring of Station operations but which did not include consistent daily full-time presence at the Station’s studios by at least two representatives of the Kuhlman’s – may not have been consistent with the FCC’s requirements for main studio staffing. Rain acknowledges that it took no action to assure compliance with that policy. The Kuhlman’s and Rain have each represented that, upon grant of the Assignment Application, the Kuhlman’s and Rain will consummate the assignment of the Station from the Kuhlman’s to Rain in accordance with the terms of their agreements, after which the Kuhlman’s will hold no attributable broadcast interests and will have no involvement in or responsibility for the operation of the Station. Rain has committed to implement and adhere to the Compliance Plan, which is incorporated by reference into this Consent Decree.

5. The Bureau, the Kuhlman, and Rain acknowledge that any proceeding that might result from the Investigation will be time-consuming and will require the expenditure of public and private resources. In order to conserve such resources and to promote future compliance by Rain with the Act and the Rules, the Bureau, the Kuhlman, and Rain are entering into this Consent Decree in consideration of the mutual commitments made herein.

#### **IV. Agreement**

6. The Kuhlman, Rain, and the Bureau agree to be legally bound by the terms and conditions of this Consent Decree. The Kuhlman, Rain, and the Bureau each represents and warrants that its signatory is duly authorized to enter into this Consent Decree on its behalf. The Kuhlman and Rain agree that the Commission has jurisdiction over the matters contained in this Consent Decree.

7. 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 Order.

8. The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Order and this Consent Decree shall have the same force and effect as any other order of the Bureau and any violation of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau or the Commission to exercise any rights and remedies attendant to the enforcement of a Bureau order.

9. As part of the Order, the Bureau shall terminate the Investigation and deny in part and dismiss with prejudice in part, the Objections. Additionally, the Bureau shall grant the Assignment Application after the Effective Date, provided that the following conditions have been met: (1) the Kuhlman and Rain have fully and timely satisfied their respective obligations to make the voluntary contributions in the manner specified in Paragraph 14 below; and (2) there are no issues that would preclude grant of the Assignment Application. In the event that there are issues that would preclude the grant of the Assignment Application, the Assignment Application will remain pending.

10. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against the Kuhlman, Rain, or the Station, based in whole or in part on (i) the Investigation, (ii) the Objections, (iii) any other similar complaints (by whomever made) alleging that violations alleged in the Objections occurred prior to the Effective Date, or (iv) the allegations contained in any of the foregoing. The Bureau agrees that, in the absence of material new evidence, it will not, on its own motion, initiate or recommend to the Commission, any new proceeding, formal or informal, regarding the matters discussed in Paragraphs 3 and 4, above, with regard to any violations of the Act, the Rules, or Commission policy, that occurred prior to the Effective Date. The Bureau further agrees that, in the absence of material new evidence, it will not use the facts developed in the Investigation prior to the Effective Date to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion against the Kuhlman and/or Rain with respect to their respective basic qualifications to be or remain a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against the Kuhlman and/or Rain, in the event of any alleged future misconduct, for violation of this Consent Decree, or for violation of the Act or the Rules, consistent with the provisions of this Consent Decree.

11. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or a determination regarding compliance or noncompliance with the requirements of the Act or the Commission's Rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that, by entering into this Consent Decree, neither the Kuhlman nor Rain admits or denies liability for violating any statute, Rule, or policy in connection with the matters that are the subject of this Consent Decree.

12. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning the Bureau's Investigation of the matters discussed in Paragraphs 3 and 4, above.

13. In consideration of the Bureau's termination of its Investigation into these matters, the Kuhlman and Rain agree to the terms set forth herein.

14. Within ten (10) business days of the release of the Order:

(a) the Kuhlman shall make a voluntary contribution to the United States Treasury, without protest or recourse, by wire or by mailing a check or similar instrument drawn to the order of the Federal Communications Commission, in the amount of Fifteen Thousand Dollars (\$15,000.00); and

(b) Rain shall make a voluntary contribution to the United States Treasury, without protest or recourse, by wire or by mailing a check or similar instrument drawn to the order of the Federal Communications Commission, in the amount of Eight Thousand Dollars (\$8,000.00).

(c) The checks, wire transfers or money orders by which the two payments described above shall be made shall refer to NAL/Acct. No. MB200741410384 and FRN No. 0003780128 (with respect to the Kuhlman's payment) and NAL/Acct. No. MB200741410390 and FRN No. 0017086810 (with respect to Rain's payment). Payment by check or money order shall be sent to the attention of the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois, 60673-7482. 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.

15. Rain represents that it has adopted, and is currently in the process of implementing, a company-wide compliance plan for the purpose of preventing future violations of the Act and of the Rules. A summary of the plan is set forth in the Appendix. Rain agrees, to the extent that it has not already done so, to implement the Compliance Plan upon consummation of the assignment of the Station license to it and to keep such Compliance Plan in effect for three (3) years thereafter.

16. Rain 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 Rain fails to satisfy any condition, in the absence of Bureau alteration of the condition, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, designation of the matter for hearing, letters of admonishment, or forfeitures.

17. The Kuhlman and Rain waive any and all rights that either party 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, provided that the Order adopts the Consent Decree without change, addition or modification.

18. The Kuhlman and Rain waive any claims that either 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.

19. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Order, none of the Parties shall contest the continuing validity of the Consent Decree or the Order. The Kuhlman, Rain, and the Bureau further agree that they 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 that they will consent to a judgment incorporating the terms of this Consent Decree.

20. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

21. 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

\_\_\_\_\_  
Monica Shah Desai, Chief

\_\_\_\_\_  
Date

PHILIP E. KUHLMAN

\_\_\_\_\_  
Date

ELLEN N. KUHLMAN

\_\_\_\_\_  
Date

THE RAIN BROADCASTING, INC.

\_\_\_\_\_  
By: Roger Morgan, President

\_\_\_\_\_  
Date

## APPENDIX

### **COMPLIANCE PLAN FOR STATION WYAC-FM**

The Rain Broadcasting, Inc. will institute the following procedures with regard to Station WYAC-FM to ensure compliance with the Commission's Rules and the Communications Act of 1934, as amended. Unless otherwise provided, all terms defined in the Consent Decree apply to this Compliance Plan.

1. Rain will conduct training for all Station employees on compliance with FCC Rules applicable to station operations. To augment this training, outside counsel, or other comparable professionals, will conduct an on-site workshop for all Station employees. Rain will videotape this workshop and use it as refresher training for staff and management at least every twelve (12) months, and to train any new Station employee within five (5) days of commencement of his or her duties at the Station.
2. Rain shall engage FCC counsel on an ongoing basis to provide guidance to Rain on FCC compliance issues, to provide regular updates and notices on developments in communications law applicable to Rain, and to review Rain's applications and reports prior to filing with the FCC. In regard to the last matter, Rain 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.
3. Rain shall maintain sole control of the programming, personnel, and finances of the Station and shall provide an affidavit or declaration to the Bureau, signed by Rain's President, certifying that, since the commencement of this Compliance Plan or the filing of its last such report, if any, Rain has maintained and is maintaining such control and is in compliance with the Act, the Rules, and FCC policy, on or before December 31 (but no earlier than December 1 of each such year) of each year of the three-year term of this Compliance Plan as provided in Section IV, Paragraph 15, of the accompanying Consent Decree. In the event that Rain is unable to so certify, it will disclose the reasons therefore and indicate what steps it has taken to render its operation of the Station in compliance with the Act, the Rules, and FCC policy.