

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission and Capitol Broadcasting Association, Inc., by their respective authorized representatives, 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 application for the renewal of the license for Station KMFA(FM), Austin, Texas.

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) "Application" means the pending application for the renewal of the license for Station KMFA(FM), Austin, Texas (File No.BRED-20050331ABD);
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "CBA" means Capitol Broadcasting Association, Inc., licensee of Station KMFA(FM);
 - (e) "Commission" or "FCC" means the Federal Communications Commission;
 - (f) "Compliance Plan" means the processes and procedures developed by the Licensee in an effort to ensure compliance with the Public File Rule at the Station, as summarized in the Appendix hereto;
 - (g) "Effective Date" means the date on which the Bureau releases the Order;
 - (h) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so;
 - (i) "Licensee" refers to CBA;
 - (j) "Order" means the Order of the Bureau adopting this Consent Decree;
 - (k) "Parties" means the Bureau and the Licensee;
 - (l) "Public File Rule" means Section 73.3527 of the Commission's Rules, 47 C.F.R. § 73.3527;
 - (m) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;

- (n) “Station” means Station KMFA(FM), Austin, Texas (Facility ID No. 8685); and
- (o) “Violations” means the violations of the Public File Rule at the Station.

III. Background

3. On March 31, 2005, CBA filed the Application to renew its license for the Station. In the Application, the Licensee disclosed to the Commission that Station had not fully complied with the Public File Rule.

4. Because of the compliance issues raised by the representations concerning the Station’s compliance with the Public File Rule, 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

5. The Parties acknowledge that any proceeding that might result from the Public File Rule compliance issues referred to in Paragraph 3 above would be time consuming and require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, 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.

6. 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.

7. 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 Station, as discussed herein.

8. 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 its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, 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.

9. The Licensee hereby stipulates that the Station violated the Public File Rule in the maintenance of the Station’s public file of the Station during the current license term.

10. The Licensee agrees to make a voluntary contribution to the United States Treasury in the amount of Ten Thousand Dollars (\$10,000.00) 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 the NAL/Acct. No. MB200641410132. 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.

11. The Bureau agrees to grant the Application after the Effective Date, provided that the following conditions have been met: 1) the Licensee has fully and timely satisfied its obligation to make the voluntary contribution referenced in paragraph 10 of this Consent Decree; and 2) there are no issues other than the Violations that would preclude the grant of the of the renewal application.

12. The Licensee represents that, in addition to the existing policies and procedures, it 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 it has not already done so, to implement this Compliance Plan at the Station no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect for three (3) years after the Effective Date.

13. The Licensee represents that, as of the Execution Date of this Consent Decree, the Station's public file fully complies with the Public File Rule.

14. The Licensee 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 the Licensee 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 the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures.

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

16. The Licensee 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.

17. The Licensee agrees to waive any claims it 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 Order.

18. 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.

19. 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.

20. 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.

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**

By: _____
Monica Shah Desai, Chief

Date: _____

CAPITOL BROADCASTING ASSOCIATION, INC.

By: _____
Steven Moore, Chairman of the Board

Date: _____

APPENDIX**COMPLIANCE PLAN FOR STATION KMFA(FM)**

Capitol Broadcasting Association, Inc., or its successor-in-interest as licensee of the Station, 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 the Station will log all broadcasts of public affairs and public service programming broadcast by the Station. The logs of public affairs and other public service programming will be compiled into quarterly issues/programs lists and will be timely placed in the public file of the Station.
 - B. All such quarterly issues/programs lists will be signed and dated by their preparer before they are placed in the public file.
 - C. Any late-filed lists will be reviewed and signed by the Station's management and accompanied in the Station's public file with a statement indicating the nature of the document, the date placed in the public file, and the reason for the late filing.
 - D. The Station's 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 Station's public file. Should the Licensee or the Station's 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/or any successor licensee, as appropriate, will conduct in-house audits of the Station's public file as detailed below. The three-year period will terminate on the successful completion of the third annual public file 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 file shall be performed as follows:
 - A. quarterly audits of the Station's public file, by telephone or facsimile, will be conducted by FCC counsel or an authorized representative of the Texas Association of Broadcasters under the Alternative Broadcast Inspection Program;
 - B. a semi-annual review of the Station's public file will be conducted by the Station's management; and
 - C. annual, in-person, audits of the Station's public file will be conducted by an authorized representative of the Texas Association of Broadcasters 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 Station's public inspection file fully complies with the Public File Rule. If the Licensee cannot truthfully make this certification, it 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 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 Steven Moore, CBA's Chairman of the Board, as the Licensee or in the event Mr. Moore is no longer with the Licensee or the license has been assigned, by his successor licensee or his designee.