

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

In the Matter of)	NAL/Acct. No. MB201241410032
)	FRN: 0010699056
University of San Francisco (Assignor))	
)	
and)	File No. BALED-20110125ACE
)	
Classical Public Radio Network LLC (Assignee))	
)	
For Consent to Assignment of License Station KUSF(FM), San Francisco, CA)	Facility ID No. 69143
)	

ORDER

Adopted: June 7, 2012

Released: June 7, 2012

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (the "Bureau"), the University of San Francisco ("USF"), and Classical Public Radio Network LLC ("CPRN"). The Consent Decree resolves issues arising from the Bureau's review of the captioned application for consent to the proposed assignment of license for Station KUSF(FM), San Francisco, CA (the "Station") from USF to CPRN. In particular, the Consent Decree resolves the Bureau's investigation of the applicants' compliance with Sections 1.17 and 73.503(c) of the Commission's Rules, 47 C.F.R. §§1.17, 73.503(c) (the "Rules").¹

2. The Consent Decree stipulates that both USF and CPRN violated Section 1.17 of the Rules and that USF violated Section 73.503(c) of the Rules, and provides, among other things, that USF and CPRN will collectively make a \$50,000 voluntary contribution to the United States Treasury. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating the Bureau's investigation of potential violations of the Rules in connection with the captioned application and granting that application.

4. Based on the record before us, we conclude that nothing in that record creates a substantial or material question of fact whether either USF or CPRN possesses the basic qualifications to be a Commission licensee.

¹ 47 C.F.R. §§ 1.17, 73.530(c).

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² and by the authority delegated by Sections 0.61 and 0.283 of the Rules,³ the Consent Decree attached hereto IS ADOPTED.

6. IT IS FURTHER ORDERED that the investigation by the Media Bureau of the matters noted above IS TERMINATED.

7. IT IS FURTHER ORDERED that copies of this Order shall be sent, by first class mail and certified mail, return receipt requested, to the University of San Francisco, 2130 Fulton Street, San Francisco, CA 94117-1080, and its counsel, Dawn M. Sciarrino, Esq., Sciarrino & Shubert, PLLC, 5425 Tree Line Drive, Centreville, VA 20120, and to Classical Public Radio Network LLC, 1149 S. Hill, Suite H-100, Los Angeles, CA 90015, and its counsel, Lawrence Bernstein, Esq., 3510 Springland Lane N.W., Washington, DC 20008, and John E. Fiorini III, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington DC 20006.

FEDERAL COMMUNICATIONS COMMISSION



William T. Lake
Chief, Media Bureau

² 47 U.S.C. § 4(i).

³ 47 C.F.R. §§ 0.61, 0.283.

CONSENT DECREE**I. Introduction**

1. This Consent Decree is entered into by and between the Media Bureau of the Federal Communications Commission, the University of San Francisco and Classical Public Radio Network LLC, by their respective authorized representatives, for the purpose of terminating the Bureau's Investigation of the parties' compliance with Sections 1.17 and 73.503(c) of the Commission's Rules, 47 C.F.R. §§1.17, 73.503(c).

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) "Application" means the application filed with the Commission for consent to assign the license for the Station from USF to CPRN (FCC file no. BALED-20110125ACE);
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "CPRN" means Classical Public Radio Network LLC;
 - (e) "Commission" or "FCC" means the Federal Communications Commission;
 - (f) "Effective Date" means the date on which the Bureau releases the Order;
 - (g) "Investigation" means the investigation commenced by the FCC in 2011, which culminated in the Bureau's Letter of Inquiry dated June 28, 2011 (as amended by letter dated July 27, 2011), regarding the PSOA;
 - (h) "Order" means an order of the Bureau adopting this Consent Decree;
 - (i) "PSOA" means the Public Service Operating Agreement executed by USF and CPRN on January 12, 2011, and amended on July 25, 2011;
 - (j) "Parties" means the Bureau, USF and CPRN;
 - (k) "Rules" means the Commission's Rules, found in Title 47 of the Code of Federal Regulations;
 - (l) "Station" means KUSF(FM), San Francisco, CA (Fac. ID 69143);
 - (m) "USF" means the University of San Francisco; and
 - (n) "Violations" means the payments received by USF pursuant to the PSOA in violation of Section 73.503(c) of the Rules; the certification by USF in Section II, Item 3c of the Application that the agreements between USF and CPRN,

including the PSOA, “comply fully with the Commission’s rules and policies;” and the certification by CPRN in Section III, Item 3b of the Application that the agreements between USF and CPRN “comply fully with the Commission’s rules and policies.”

III. Background

3. Section 73.503(c) of the Rules provides that:

A noncommercial educational FM broadcast station may broadcast programs produced by, or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee. The payment of line charges by another station network, or someone other than the licensee on a noncommercial educational FM broadcast station, or general contributions to the operating costs of a station, shall not be considered as being prohibited by this paragraph.¹

4. Under the terms of the PSOA, executed on January 12, 2011 (with an effective date of January 18, 2011), USF agreed to make the Station’s facilities available to air programming supplied by CPRN “for up to 24 hours a day, seven days per week” for the term of the agreement.² In consideration for making Station airtime available to CPRN, the PSOA provides that CPRN will reimburse USF for any expenses incurred in connection with delivering and broadcasting CPRN programming, including the cost of broadband or other circuits used for delivery and reception of the programming, electrical power to the transmitter site, regulatory fees, insurance rider, and telephone expenses incurred at the transmitter site.³ Additionally, CPRN agreed to pay USF: (1) \$5,000 per month for the first 120 days during which the PSOA is in effect; and (2) \$7,000 per month for the remainder of the first year of the PSOA term.⁴ Documentation provided by USF shows that USF collected over \$38,000 in PSOA fees from CPRN, plus nearly \$10,000 in tower cost reimbursement, from January through July 2011. The PSOA fees were ended by an amendment to the PSOA after the Bureau sent its Letter of Inquiry to USF and CPRN.⁵

5. USF submitted a copy of the PSOA with the Application. In the Application, USF and CPRN each certified affirmatively that the agreements between the parties, including the PSOA, “comply fully with the Commission’s rules and policies.”⁶ Since 1998, the Commission’s policy on mass media applications has been that it will rely on application certifications as to compliance with the

¹ 47 C.F.R. § 73.503(c).

² PSOA, Section 2. The agreement is to terminate upon the earlier of: (1) consummation of the assignment; (2) 30 days following termination of the Asset Purchase Agreement; (3) the fifth anniversary of the PSOA’s effective date (subject to certain renewability provisions); (4) on April 1, 2011, if the effective date had not occurred; or (5) the termination of the PSOA upon a specified default of either party. *Id.*, Section 1.

³ PSOA, Exhibit C.

⁴ PSOA, Section 6. The payment was to increase for each ensuing year to a monthly amount equal to \$7,000 plus the greater of: 1) 5 %; and 2) the Consumer Price Index plus 2%. *Id.* CPRN would receive a *pro rata* credit against the compensation due for any portion of the time during which the Station did not broadcast CPRN’s programming. *Id.*

⁵ Declaration of Charles Cross, Vice-President for the Division of Business & Finance and Chief Financial Officer of USF, dated July 27, 2011.

⁶ Application, Section II, Item 3c, and Section III, Item 3b.

Commission's rules and policies and that it will not routinely review contracts submitted with assignment of license applications.⁷ Parties have also been on notice since 1998 that reliance on a prior Commission action with respect to a contract term or rule interpretation "would be appropriate only where a decision disposing of the prior application plainly considered and found acceptable the pertinent contract term or rule interpretation."⁸ In their response to the Bureau's Letter of Inquiry, USF and CPRN pointed out a number of instances in which parties submitted agreements with terms similar to the payment terms of the PSOA, and contended that they relied on those submissions in certifying their compliance with the Commission's Rules and policies. However, USF and CPRN did not point out any instance in which the Bureau or the Commission issued a decision in which it considered and found such payment terms to be compliant with Section 73.503(c) of the Rules, because no such decision exists. In light of the foregoing, the Bureau finds that the terms of the PSOA as originally submitted violated Section 73.503(c) and that the certifications by USF and CPRN that the PSOA complied with the Commission's Rules and policies were incorrect. The Bureau does not, however, find that USF or CPRN made misrepresentations or lacked candor.

6. Because of the compliance issues identified in the Bureau's investigation, the Parties have agreed to enter into this Consent Decree to which USF, CPRN, and the Bureau intend to be legally bound.

IV. Agreement

7. The Parties acknowledge that any proceeding that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, to resolve the matter, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

8. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Each of USF, CPRN, and the Bureau represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. USF and CPRN agree that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

9. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between USF, CPRN, and the Bureau concerning the Violations, as discussed herein.

10. 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 into the Violations. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action on its own motion against USF or CPRN concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or take any action against USF or CPRN with respect to either party's basic qualifications, including character qualifications, to be a licensee. In the event that either USF or CPRN fails to satisfy any of its obligations under this Consent Decree, however, USF and CPRN each acknowledges that the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each

⁷ See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Report and Order, 13 FCC Rcd 23056, 23074-6 (1998).

⁸ *Id.*, 13 FCC Rcd at 23076.

Violation, and/or the violation of this Consent Decree.

11. The Parties stipulate the following:

(a) USF violated Section 73.503(c) of the Rules by accepting the PSOA fees from January through July, 2011;

(b) USF violated Section 1.17 of the Rules by submitting the unintentionally false certification that the PSOA as originally submitted complied with the Commission's Rules and policies; and

(c) CPRN violated Section 1.17 of the Rules by submitting the unintentionally false certification that the PSOA as originally submitted complied with the Commission's Rules and policies.

12. USF and CPRN hereby jointly agree to make a voluntary contribution to the United States Treasury in the amount of Fifty Thousand Dollars (\$50,000) within 15 days of the Effective Date.

13. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether USF or CPRN possesses the basic qualifications, including those relating to character, to hold or obtain a Commission license or authorization. Accordingly, the Bureau is granting the Application as of the Effective Date.

14. Payments hereunder must include the Account Number and FRN referenced in the caption to the Order. Payments by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payments by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Each party shall send electronic notification of its payment to Tom Hutton at tom.hutton@fcc.gov on the date its payment is made.

15. USF and CPRN each 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 either USF or CPRN 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 relief, designation of the matter for hearing, letters of admonishment, or forfeitures.

16. USF and CPRN each 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. USF and CPRN each agrees to waive any claims that 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 discussed in this Consent Decree.

18. USF, CPRN, and the Bureau agree that the effectiveness of this Consent Decree is

expressly contingent upon issuance of the Order, provided that the Order adopts the Consent Decree without change, addition or modification.

19. USF, CPRN, and the Bureau agree that, if USF, CPRN, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, no party will contest the validity of the Consent Decree or Order, and USF, CPRN, and the Commission 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 will consent to a judgment incorporating the terms of this Consent Decree.

20. USF, CPRN, and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it 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**

By: William T. Lake
William T. Lake, Chief

Date: JUN 07 2012

UNIVERSITY OF SAN FRANCISCO

By: _____
Charles E. Cross, Vice President, Business and
Finance

Date: _____

CLASSICAL PUBLIC RADIO NETWORK LLC

By: _____
Brenda Barnes, Managing Director

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS
COMMISSION**

By: _____
William T. Lake, Chief

Date: _____

UNIVERSITY OF SAN FRANCISCO

By: Charles E. Cross
Charles E. Cross, Vice President, Business and
Finance

Date: May 9, 2012

CLASSICAL PUBLIC RADIO NETWORK LLC

By: _____
Brenda Barnes, Managing Director

Date: _____

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**MEDIA BUREAU
FEDERAL COMMUNICATIONS
COMMISSION**

By: _____
William T. Lake, Chief

Date: _____

UNIVERSITY OF SAN FRANCISCO

By: _____
Charles E. Cross, Vice President, Business and
Finance

Date: _____

CLASSICAL PUBLIC RADIO NETWORK LLC

By: Brenda Barnes
Brenda Barnes, Managing Director

Date: 5-8-12