

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

In the Matter of	)	
	)	
<b>Cesar Chavez Foundation</b>	)	NAL/Account No.: MB-201641410015
	)	FRN: 0006911408
Licensee of Station KUFW(FM), Woodlake, California	)	File No. BRED-20130723ABI
	)	Facility ID No.: 21210

**ORDER**

**Adopted: July 27, 2016**

**Released: July 28, 2016**

By the Chief, Media Bureau:

1. We have before us an application (Renewal Application) filed by Cesar Chavez Foundation (CCF) to renew the license of its noncommercial educational radio station, KUFW(FM), Woodlake, California (Station). Also before us is a Petition to Deny (Petition) filed by Gerawan Farming Inc. (Gerawan) on October 31, 2013.<sup>1</sup> Gerawan alleges that CCF has violated Section 399B of the Communications Act of 1934, as amended, and Section 73.503(d) of the Commission's rules (Rules) by airing commercial announcements on the Station.<sup>2</sup>

2. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and CCF. The Consent Decree resolves issues related to CCF's violation of the law and rules governing underwriting announcements. The Consent Decree requires that CCF pay a civil penalty.<sup>3</sup> The Consent Decree stipulates that CCF violated Section 399B of the Act and Section 73.503(d) of the Rules by airing commercials. For these violations, CCF will pay a civil penalty to the United States Treasury of twelve thousand five hundred dollars (\$12,500).

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<sup>1</sup> CCF filed an Opposition to Petition to Deny (Opposition) on December 2, 2013. Gerawan filed a Reply on December 23, 2013, and supplements—accompanied by motions to accept—on September 19, 2014, February 29, 2016, April 7, 2016, April 29, 2016, and May 24, 2016. Given our adoption of a consent decree herein, we need not reach the question of whether to grant Gerawan's motions and accept its supplements.

<sup>2</sup> 47 U.S.C. § 399b; 47 CFR § 73.503(d). Gerawan also alleges that CCF violated Section 73.3580 of the Rules, 47 CFR § 73.3580, by failing to air an announcement regarding the Renewal Application on October 1, 2013. To support this claim, Gerawan points to the transcript it submitted of the Station's broadcasts from 1:30 to 3:30 p.m. on that date, which includes an announcement for another CCF station but not one for the Station. Petition at 11 and Appx 15. In response, CCF indicates that it aired the required announcement but outside of the times covered by the transcript. Opposition at 9. CCF submits station logs showing that the announcement aired at 9:29 a.m., 2:59 p.m., and 6:59 p.m. and also reflecting the airing of an announcement for the other CCF station at the time indicated by Gerawan. Opposition at Exh. 6. We find CCF has adequately rebutted Gerawan's allegation and that no violation of Section 73.3580 of the Rules occurred on October 1, 2013.

<sup>3</sup> While normally we also would require CCF to adhere to a Compliance Plan, we find it unnecessary in this case. CCF recently agreed to assign the Station to Educational Media Foundation (EMF) as part of a station swap in which it will acquire the license to KVPW(FM), Kingsburg, California, a radio station operating in the same geographic area. While KVPW(FM) is licensed to operate on a channel in the non-reserved portion of the FM band, EMF operates it as a noncommercial station. CCF indicates it plans to operate KVPW(FM) as a commercial station, which will not be subject to the law and rules involving underwriting announcements.

3. We conclude that nothing in the record before us creates a substantial or material question of fact whether CCF possesses the basic qualifications to be a Commission licensee. After reviewing the terms of the Consent Decree, we find that the public interest would be served by its approval and by terminating the Bureau's investigation of CCF's violations of the Act and Rules in connection with the Renewal Application and granting the Renewal Application, subject to the terms of the Consent Decree. We note that, given CCF's acknowledgment that it did – as Gerawan alleges – violate the law and rules governing underwriting announcements, we grant the Petition in part. As provided in the Consent Decree,<sup>4</sup> however, we otherwise deny the Petition.

4. Accordingly, IT IS ORDERED that the Petition to Deny filed by Gerawan Farming Inc. on October 31, 2013, IS GRANTED IN PART and otherwise DENIED.

5. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>5</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,<sup>6</sup> 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 and Certified Mail, Return Receipt Requested, to Cesar Chavez Foundation, 29700 Woodford Tehachapi Road, P.O. Box 62, Keene, CA 93531, its counsel, George Borsari, Jr., Esq., Borsari & Paxson, 5335 Wisconsin Avenue, N.W., Suite 440, Washington, DC 20015, and counsel for Gerawan Farming Inc., Scott Woodworth, Esq., Edinger Associates PLLC, 1875 I Street, N.W., Suite 500, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief  
Media Bureau

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<sup>4</sup> See Consent Decree at paras. 8 and 10.

<sup>5</sup> 47 U.S.C. §§ 154(i).

<sup>6</sup> 47 CFR §§ 0.61, 0.283.

**CONSENT DECREE****I. INTRODUCTION**

1. This Consent Decree is entered into by and between the Bureau and Licensee, by their respective authorized representatives, for the purpose of resolving certain issues related to whether Licensee violated Section 399B of the Act and Section 73.503(d) of the Rules with regard to 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.<sup>1</sup>
  - (b) “Bureau” means the Media Bureau of the Federal Communications Commission.
  - (c) “Commission” or “FCC” means the Federal Communications Commission.
  - (d) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which each Commission licensee is subject by virtue of its being a Commission licensee, including but not limited to the Underwriting Laws.
  - (e) “Effective Date” means the date on which the Bureau releases the Order.
  - (f) “Execution Date” means the date on which this Consent Decree is executed by the last of the Parties to do so.
  - (g) “Licensee” means Cesar Chavez Foundation.
  - (h) “Order” means the Order of the Bureau adopting this Consent Decree.
  - (i) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
  - (j) “Petition” means the Petition to Deny filed by Gerawan Farming Inc. on October 31, 2013, alleging violations of the Underwriting Laws.
  - (k) “Renewal Application” means the pending application for the renewal of the Station’s license (File No. BRED-20130723ABI).
  - (l) “Rules” means the Commission’s rules, found in Title 47 of the Code of Federal Regulations.
  - (m) “Station” means noncommercial educational station KUFW(FM), Woodlake, California (Facility ID 21210).
  - (n) “Underwriting Laws” means, individually or collectively, Section 399B of the Act, Section 73.503(d) of the Rules,<sup>2</sup> and the decisions and orders of the Commission interpreting these provisions.
  - (o) “Violations” means violations of the Underwriting Laws related to the Station’s broadcast of many, but not all, of the underwriting announcements identified in the Petition.

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<sup>1</sup> 47 U.S.C. § 151 *et seq.*

<sup>2</sup> 47 U.S.C. § 399b; 47 CFR § 73.503(d).

### III. BACKGROUND

3. The Underwriting Laws define advertisements as program material broadcast “in exchange for any remuneration” and intended to “promote any service, facility, or product,” of for-profit entities.<sup>3</sup> Section 399B(b)(2) of the Act specifically provides that noncommercial educational stations may not broadcast advertisements.<sup>4</sup> Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only, and must not promote the contributors’ products, services, or businesses.<sup>5</sup> Specifically, such announcements must not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent, or lease.<sup>6</sup>

4. On July 23, 2013, Licensee filed the Renewal Application for the Station. The Petition was filed against the Renewal Application on October 31, 2013. It alleges Licensee violated the Underwriting Laws by airing advertisements on the Station. Upon investigation of these allegations, the Bureau determined that Licensee violated the Underwriting Laws when it aired many of the announcements identified in the Petition. In light of this compliance issue, the Parties have agreed to enter into this Consent Decree, by which both Licensee and the Bureau intend to be legally bound.

### IV. AGREEMENT

5. The Parties acknowledge that any proceeding that might result from the Bureau’s investigation of Licensee’s violation of the Underwriting Laws could be time-consuming and require substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote Licensee’s compliance with the Underwriting Laws, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Both Licensee and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. Licensee agrees that the Bureau has jurisdiction over it and the matters contained in the Consent Decree.

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Licensee and the Bureau concerning the 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 Licensee, provided that Licensee satisfies all of its obligations under this Consent Decree. In the event that 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 the Violations, and or the violation of this Consent Decree.

9. As part of the Order, the Bureau shall terminate its investigation of the Violations and grant the Petition in part and deny it in all other respects.

10. Licensee stipulates that it broadcast advertisements on the Station in violation of the Underwriting Laws.

11. In light of its significant violations of the Underwriting Laws during the subject license

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<sup>3</sup> 47 U.S.C. § 399B(a).

<sup>4</sup> 47 U.S.C. § 399B(b)(2).

<sup>5</sup> See *Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 51 Fed. Reg. 21800 (June 16, 1986), reprinted at 7 FCC Rcd 827 (1992) (“1986 Public Notice”).

<sup>6</sup> See *id.*; see also *Xavier Univ.*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990), citing 1986 Public Notice.

term, Licensee agrees to pay a civil penalty to the United States Treasury in the amount of twelve thousand five hundred dollars (\$12,500) within thirty (30) calendar days after the Effective Date. Licensee will also send electronic notification of payment to Heather.Dixon@fcc.gov on the date said payment is made. Such payment will be made without further protest or recourse to a *trial de novo*, by a check or similar instrument, wire transfer or credit card and must include the Account Number and FRN referenced in the caption to the Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC 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). Below are additional instructions that should be followed based on the form of payment selected.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed FCC Form 159) must be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank -- Government Lockbox # 979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank: TREAS NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed FCC Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the FCC Form 159 to authorize the credit card payment. The completed FCC Form 159 must then be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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

13. Licensee represents that it has reached an agreement with Educational Media Foundation to swap the Station for KVPW(FM), Kingsburg, California, a commercial station operating in the same geographic area. Subject to receiving any necessary prior Commission approval (which Licensee agrees to use its best efforts to obtain), Licensee agrees to assign the Station's license to Educational Media Foundation or otherwise divest the Station no later than six (6) months after the Effective Date.

14. 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 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 this Consent Decree, designation of the matter for hearing, letters of admonishment and/or forfeitures.

15. The Consent Decree will be binding on Licensee's successors-in-interest and assigns. Licensee agrees that any future application to assign or transfer control of the Station will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties set forth in this Consent Decree with regard to the Station.

16. 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. 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 CFR Section 1.1501 et seq., relating to the matters discussed in this Consent Decree.

18. Licensee and the Bureau agree that if Licensee, 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, neither Licensee nor the Commission will contest the validity of the Consent Decree or Order, and Licensee 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.

19. Licensee and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

20. 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.

FEDERAL COMMUNICATIONS COMMISSION

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William T. Lake, Chief  
Media Bureau

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Date

CESAR CHAVEZ FOUNDATION

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Paul Park, Secretary and General Counsel  
Cesar Chavez Foundation

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Date