

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

In the Matter of)	File Nos.: EB-IHD-14-00016645,
)	EB-11-IH-1033
BORDER MEDIA BUSINESS TRUST)	
)	NAL/Acct. No.: 201432080038
Parent of Former Licensee of Station KBDR(FM),)	
Mirando City, Texas)	FRN: 0019504133
)	
)	Facility ID No.: 906

ORDER

Adopted: August 11, 2014

Released: August 11, 2014

By the Deputy Chief, Enforcement Bureau:

1. In this Order and Consent Decree, the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) settles allegations that radio station KBDR(FM), Mirando City, Texas (Station) violated the indecency laws. The indecency laws generally prohibit the broadcast of indecent material between 6:00 a.m. and 10:00 p.m. In this case, the Commission received a complaint that language used by the Station's disc jockey during morning programming broadcast on the Station violated the indecency laws. For purposes of the settlement, Border Media Business Trust (Border Media), parent of the former licensee of the Station, admits that the Station's broadcast violated the indecency laws and will pay \$37,500 to resolve the allegations.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and Border Media. At the time of the allegations specified in the complaint, BMP 100.5 FM, LP (BMP) was the licensee of the Station. Border Media, parent of BMP, assumed liability for the outcome of the indecency complaints against the Station.¹ Border Media has filed an application to assign its radio station to an unrelated party,² and if that assignment is granted and consummated, then Border Media will no longer hold any interests in broadcast licenses. The Consent Decree resolves and terminates the Bureau's investigation into whether BMP violated Section 1464 of Title 18, United States Code, and Section 73.3999 of the Commission's rules (Rules)³ by broadcasting indecent, profane, or obscene material on the Station.

3. The Bureau and Border Media have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by adopting the Consent Decree and terminating the investigation.

¹In an Agreement Regarding Assignment Application between BMP, Border Media, and the Commission fully executed on November 20, 2012, Border Media agreed to accept liability for potential violations of the indecency laws resulting from complaints, including the complaint at issue here, that were pending against the Station at that time. BMP is not currently a Commission broadcast licensee.

² See Application for Consent to Assignment of Broadcast Station License (FCC Form 314), File No. BALH - 20131022ACZ (Oct. 22, 2013).

³ 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

5. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Border Media possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,⁴ and Sections 0.111 and 0.311 of the Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that any third-party complaints and allegations against the Station and/or Border Media and/or BMP related to the above-captioned investigation that are currently pending before the Bureau as of the date of this Consent Decree **ARE DISMISSED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both First Class U.S. Mail and Certified Mail to Border Media Business Trust, c/o BMP San Antonio License Company, L.P., 3526 Lakeview Parkway, Suite B152, Rowlett, Texas 75088, and to its counsel, Dawn Sciarrino, Esquire, Sciarrino & Shubert, PLLC, 5425 Tree Line Drive, Centreville, Virginia 20120.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief, Enforcement Bureau

⁴ See 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁵ See 47 C.F.R. §§ 0.111, 0.311.

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BORDER MEDIA BUSINESS TRUST)	
)	NAL/Acct. No.: 201432080038
Parent of Former Licensee of Station KBDR(FM),)	
Mirando City, Texas)	FRN: 0019504133
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)	Facility ID No.: 906

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) and Border Media Business Trust (Border Media), parent of former licensee BMP 100.5 FM, LP (BMP), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether BMP violated Section 1464 of Title 18, United States Code, and Section 73.3999 of the Commission's rules (Rules),¹ by broadcasting indecent, profane, or obscene material over the above-captioned station.²

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 the Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "BMP" means "BMP 100.5 FM, LP," former licensee of the above-captioned station.
 - (d) "Border Media" means "Border Media Business Trust," the parent of BMP.
 - (e) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (f) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (g) "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 it being a Commission licensee.
 - (h) "Complaint" means the third-party Complaint received by, or in the possession of, the Bureau and alleging violations of Section 1464 of Title 18, United States

¹ 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

² In an Agreement Regarding Assignment Application between BMP, Border Media, and the Commission fully executed on November 20, 2012, Border Media agreed to accept liability for potential violations of the indecency laws resulting from complaints, including the complaint at issue here, that were pending against the station at that time. BMP is not currently a Commission broadcast licensee. Border Media has filed an application to assign the only remaining station it owns or controls (KHHL(FM), Karnes City, Texas) to an unrelated entity. *See* Application for Consent to Assignment of Broadcast Station License (FCC Form 314), File No. BALH - 20131022ACZ (Oct. 22, 2013). After KHHL(FM) is assigned, Border Media will no longer hold any broadcast interests.

Code, and/or Section 73.3999 of the Rules, as described in this Consent Decree at paragraph 4.³

- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Indecency Laws” means, individually or collectively, Section 1464 of Title 18, United States Code, Section 73.3999 of the Rules, and the decisions and orders of the Commission interpreting these provisions.
- (k) “Investigation” means the investigation commenced by the Bureau regarding whether BMP violated the Indecency Laws in connection with the Complaint.
- (l) “Parties” means Border Media and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “Station” means Station KBDR(FM), Mirando City, Texas (Facility ID No. 906).

II. BACKGROUND

3. Section 1464 of Title 18 of the United States Code prohibits the utterance of “any obscene, indecent, or profane language by means of radio communication.”⁴ In addition, Section 73.3999 of the Rules provides that radio and television stations shall not broadcast obscene material at any time⁵ and, consistent with a subsequent statute and court case, shall not broadcast indecent material between 6:00 a.m. and 10:00 p.m.⁶ These provisions are primarily intended to minimize the risk that children will be exposed to indecent material.

4. The Bureau received a Complaint alleging that, on May 18, 2011, during the morning program “Danny Boy” broadcast on the Station, the disc jockey Danny Boy used “language talking about profane issues, with disregard to children.”⁷ Specifically, the Complaint alleges that the disc jockey said: “what do you have to do to a woman in order to get a blowjob from her?” and other “sexual related vulgar language.”⁸

5. In a letter to the Bureau dated January 7, 2014, Border Media stated that it could not admit or deny the allegations specified in the Complaint because Danny Boy’s employment with the Station was terminated on June 7, 2011, and it was unable to locate any tapes of the broadcast identified in the Complaint.⁹ Border Media also explained that Station personnel have no knowledge of the content

³ See Complaint, No. 11-WB14745010 (May 18, 2011) (on file in EB-11-IH-1033 and EB-IHD-14-00016645) (Complaint).

⁴ 18 U.S.C. § 1464.

⁵ 47 C.F.R. § 73.3999.

⁶ See *id.*; Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992) (setting the safe harbor of 10:00 p.m. to 6:00 a.m. for the broadcast of indecent material); *Action for Children’s Television v. FCC*, 58 F.3d 654, 656 (D.C. Cir. 1995) (*en banc*) (affirming restrictions prohibiting the broadcast of indecent material between the hours of 6:00 a.m. and 10:00 p.m.), *cert. denied*, 516 U.S. 1072 (1996).

⁷ Complaint, *supra* note 3.

⁸ *Id.*

⁹ See Letter from Dawn M. Sciarrino and Christine McLaughlin, Counsel to Border Media Business Trust and BMP San Antonio License Company, LP, to Anjali Singh, Assistant Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at 3 (Jan. 7, 2014) (on file in EB-11-IH-1033 and EB-IHD-14-00016645) (Letter). The Letter is supported by a sworn statement of Joan Leonard, CFO of BMP San

(continued....)

of the programming specified in the Complaint.¹⁰ Border Media, however, agreed to “stipulate to an indecency violation.”¹¹

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.

7. **Jurisdiction.** Border Media agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau 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 Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission 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 the Investigation. In consideration for the termination of the Investigation, Border Media 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, 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 Border Media concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, 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 Border Media with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

10. **Civil Penalty.** Border Media agrees that it will make a payment to the United States Treasury in the amount of thirty-seven thousand five hundred dollars (\$37,500) within thirty (30) calendar days after the Effective Date. Border Media shall also send electronic notification of payment to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Anjali.Singh@fcc.gov, and Melissa.Marshall@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹² 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

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Antonio License Company, LP, identified as an affiliate of the former licensee of the Station. According to the Letter, Ms. Leonard was actively involved in the management of its affiliates. *See id.* at Exhibit 2.

¹⁰ *See id.*

¹¹ *Id.* at 3.

¹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

additional instructions you should follow based on the form of payment you select:¹³

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to 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.
- 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 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 Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to 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.

11. **Admission of Liability.** Border Media admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that its actions with respect to the May 18, 2011, broadcast of the program referenced in paragraph 4 of this Consent Decree violated the Commission's Indecency Laws.

12. **Indecency Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating a complaint filed against Border Media or its affiliates for alleged violations of the Indecency Laws, the Act, the Rules, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely upon the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Border Media with the Communications Laws.

13. **Waivers.** Border Media 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 Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Border Media shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Border Media nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Border Media shall waive any statutory right to a trial *de novo*. Border Media hereby agrees to waive any claims it may 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. **Invalidity.** In the event that this Consent Decree in its entirety 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.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order

¹³ If Border Media has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at ARINQUIRIES@fcc.gov.

specifically intended to revise the terms of this Consent Decree to which Border Media does not expressly consent) that provision will be superseded by such Rule or Commission order.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of all 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 Parties that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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.

FEDERAL COMMUNICATIONS COMMISSION

Theresa Z. Cavanaugh
Chief, Investigations and Hearings Division,
Enforcement Bureau

Date

BORDER MEDIA BUSINESS TRUST

Joan Leonard
Chief Financial Officer

Date