

**WHBU (“STATION”) AND <http://1240whbu.com> (“WEBSITE”)
TERMS OF USE**

Last updated: February 26, 2009

Welcome to <http://1240whbu.com>! This site is owned by WHBU. WHBU provides this Website and related services for your personal non-commercial use only, and subject to your compliance with this Terms of Use Agreement (the “Agreement”). Before using this website, please carefully read this Agreement, as well as the current Website Privacy Policy (the “Privacy Policy”), which is incorporated by reference. Your use of this Website constitutes your acceptance to be bound by this Agreement and the Privacy Policy without limitation, qualification or change. If at any time you determine that you do not accept all the terms and conditions of this Agreement and the Privacy Policy, you must immediately discontinue use of this Website.

Certain products or services offered by this Website (each a “WHBU Internet Service”, and collectively “WHBU Internet Services”), and certain areas within this Website may be governed by additional terms (“Additional Terms”) presented in conjunction with those products or services. You must agree to these Additional Terms before using those areas or WHBU Internet Services. The Additional Terms and this Agreement shall apply equally. In the event of an irreconcilable inconsistency between the Additional Terms and this Agreement, the Additional Terms shall control.

YOU MAY NOT USE THIS WEBSITE OR ANY BACKYARD BROADCASTING HOLDINGS WEBSITE FOR ANY PURPOSE THAT IS UNLAWFUL OR PROHIBITED BY THIS AGREEMENT THE PRIVACY POLICY, AND/OR ANY APPLICABLE ADDITIONAL TERMS. YOUR ACCESS TO ANY WHBU WEB SITE MAY BE TERMINATED IMMEDIATELY IN WHBU’S SOLE DISCRETION, WITH OR WITHOUT NOTICE, IF YOU FAIL TO COMPLY WITH ANY PROVISIONS OF THIS AGREEMENT AND/OR ADDITIONAL TERMS, OR FOR ANY OTHER REASON, OR FOR NO REASON.

Some parts of this Website may contain adult content intended for people who are at least 18 years old. By viewing this adult content, you are representing that you are at least 18 years old and that the content is acceptable to you. Filtering software is commercially available which can be used to exclude content that is not acceptable to you. This software may prevent the display of all or portions of the Website content.

Changes to this Agreement, the Privacy Policy, and/or Applicable Additional Terms

WHBU reserves the right, in its sole discretion, to modify, alter, or otherwise change this Agreement, any Additional Terms, and/or the Privacy Policy at any time. If we make any substantial changes to this Agreement, any Additional Terms, and/or the Privacy Policy, we may notify you by posting a prominent announcement on the Website. However, we encourage you to check this Agreement, any Additional Terms, and the Privacy Policy often for updates. Your continued use of this Website after the date of

any changes to the Agreement, any Additional Terms, and/or the Privacy Policy (which will appear at the top of the respective documents) will constitute your acceptance and agreement to be bound by those changes without limitation, qualification or change. If at any time you determine that you do not accept these changes, you must immediately discontinue use of this Website and/or the WHBU Internet Service to which the changes apply.

Privacy, Children's Privacy, and Protection of Personal Information

WHBU has developed a Privacy Policy in order to inform you of its practices with respect to the collection, use, and disclosure of personal information. You can find this Policy by clicking [here](#)

Neither this Website nor any WHBU Internet Service is directed to children younger than 13 years old, nor does WHBU knowingly collect any personal information from such children. It is the policy of WHBU to delete immediately any personal information concerning a child upon discovery. When a user discloses personal information on the Website or with respect to any WHBU Internet Service, he or she is representing his or her age as at least 13 years.

Consistent with the Privacy Policy, WHBU reserves the right to disclose personal information as required or authorized by applicable law.

Accounts, Security, Passwords

If the Website or WHBU Internet Service requires you to open an account, you must complete the specified registration process by providing us with current, complete and accurate information as requested by the applicable online registration form. The completeness and accuracy of your registration data is your responsibility, and any loss caused by your failure to ensure the completeness and accuracy of this information is your responsibility. After you have fully completed the registration form, you may be asked to choose a password and a user name. It is entirely your responsibility to maintain the confidentiality of your password and account and any loss caused by your failure to do so is your responsibility. Additionally, you are entirely responsible for any and all activities that occur under your account. You agree to notify WHBU immediately of any unauthorized use of your account. WHBU is not liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge. You may cancel your account by delivering notice in the manner provided in the Privacy Policy or the Additional Terms governing the particular WHBU Internet Service, as applicable.

Fees

Except where otherwise provided herein or in the Privacy Policy, access to and use of this Website and the WHBU Internet Services offered through this site are currently available without charge. WHBU reserves the right to charge a fee for access to or use of this Website, or any WHBU Internet Service available on this Website, at any time in

the future. Your access to or use of this Website before such time does not entitle you to use of this Website without charge in the future.

Use of Intellectual Property

The Website, and all of its contents, including but not limited to articles, other text, photographs, images, illustrations, graphics, video material, audio material, including musical compositions and sound recordings, software, WHBU logos, titles, characters, names, graphics and button icons (collectively "Intellectual Property"), are protected by copyright, trademark and other laws of the United States, as well as international conventions and the laws of other countries. The Intellectual Property is owned or controlled by WHBU or by other parties that have provided rights thereto to WHBU.

You may not, and agree that you will not, except for personal, non-commercial purposes, reproduce, download, license, publish, enter into a database, display, modify, create derivative works from, transmit, post, distribute or perform publicly by any means, method, or process now known or later developed, decompile, reverse engineer, disassemble, use on another computer-related environment, transfer or sell any Intellectual Property, information, software or products obtained from or through this Website, in whole or in part, without the express written permission of WHBU.

Other trademarks, service marks, product names and company names or logos appearing on this Website that are not owned by WHBU may not be used without express permission from their owners.

Additionally, unless otherwise expressly permitted, websites may not hyperlink to or frame this Website, or any web page or material herein, nor may any entity include a hyperlink to any aspect of the Website in an e-mail for commercial purposes, without the express written permission of WHBU.

Procedure for Making Claims of Copyright Infringement

WHBU respects the intellectual property rights of third parties, and complies with the terms of the Digital Millennium Copyright Act ("DMCA") regarding such rights. By submitting any material to this WHBU Website, you are granting permission to have this material posted on this WHBU Website, and you are representing that you are the rightful owner of the submitted material and that no one else may claim rights to this material. WHBU reserves the right to remove access to infringing material. Such actions do not affect or modify any other rights WHBU may have under law or contract. You can find our procedures for providing notice of alleged copyright infringement at the bottom of this page. If you believe that this Website is providing access to infringing material, please use this link to contact us.

Disclaimer of Warranties

YOUR USE OF, AND RELIANCE ON, ANY ADVICE OR INFORMATION OBTAINED FROM OR THROUGH THE WHBU WEB SITE AND/OR ANY WHBU INTERNET SERVICE IS AT YOUR OWN RISK. ALL CONTENT, INCLUDING SOFTWARE, PRODUCTS, SERVICES, INFORMATION, TEXT AND RELATED GRAPHICS CONTAINED WITHIN OR AVAILABLE THROUGH THIS WHBU WEB SITE OR ANY WHBU INTERNET SERVICE, ARE PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WHBU DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, INFORMATIONAL CONTENT, TITLE, OR NON-INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES. WHBU DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS THAT THIS WHBU WEB SITE WILL OPERATE ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS WHBU WEB SITE AND/OR ITS SERVER WILL BE FREE OF VIRUSES AND/OR OTHER HARMFUL COMPONENTS. WHBU DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING SUITABILITY, AVAILABILITY, ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF ANY MATERIAL OF ANY KIND CONTAINED WITHIN THIS WHBU WEB SITE FOR ANY PURPOSE, INCLUDING SOFTWARE, PRODUCTS, SERVICES, INFORMATION, TEXT AND RELATED GRAPHICS CONTAINED.

Limitations on Liability

In no event shall WHBU, its subsidiaries, affiliates, parent companies, distributors, suppliers, licensors, agents or others involved in creating, sponsoring, promoting, or otherwise making available the Website and its contents, be liable to any person or entity whatsoever for any direct, indirect, incidental, special, compensatory, consequential, or punitive damages or any damages whatsoever, including but not limited to: (i) loss of goodwill, profits, business interruption, data or other intangible losses; (ii) your inability to use, unauthorized use of, performance or non-performance of the Website; (iii) unauthorized access to or tampering with your personal information or transmissions; (iv) the provision or failure to provide any service; (v) errors or inaccuracies contained on the Website or any information, software, products, services, and related graphics obtained through the Website; (vi) any transactions entered into through this Website; (vii) any property damage including damage to your computer or computer system caused by viruses or other harmful components, during or on account of access to or use of this Website or any site to which it provides hyperlinks; or (viii) damages otherwise arising out of the use of the Website and WHBU Internet Services. The limitations of liability shall apply regardless of the form of action, whether based on contract, tort, negligence, strict liability or otherwise, even if WHBU has been advised of the possibility of damages.

Links

This Website may contain links to websites operated by third parties. WHBU does not monitor or control the linked sites and makes no representations regarding, and is not liable or responsible for the accuracy, completeness, timeliness, reliability or availability of any of the content uploaded, displayed or distributed, or products, or services available at these sites. If you choose to access any third party site, you do so at your own risk. The presence of a link to a third party site does not constitute or imply WHBU's endorsement, sponsorship, or recommendation of the third party or of the content, products or services contained on, or available through, the site.

Software Available Through Website

Any software that is made available to view and/or download in connection with a WHBU Internet Service ("Software") is owned or controlled by WHBU and/or its licensors, affiliates and suppliers and is protected by copyright laws and international treaty provisions. Your use of the Software is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software. WHBU accepts no responsibility or liability in connection with any Software owned or controlled by third parties.

Third Party Merchants

This Website may permit you to order and receive products, information and services from businesses which are not owned or operated by WHBU. The purchase, payment, warranty, guarantee, delivery, maintenance and all other matters concerning the merchandise, services or information, opinion or advice ordered or received from such businesses are solely between you and such businesses. WHBU does not endorse, warrant or guarantee such products, information or services and is not liable for the accuracy, completeness or usefulness of such information, opinion or advice or the quality or availability of such products or services. WHBU will not be a party to or in any way be responsible for monitoring any transaction between you and third-party providers of products, services or information, or for ensuring the confidentiality of your credit card information. Any separate charges or obligations you incur in your dealings with these third parties are your responsibility and are not part of the fee, if any, charged for the WHBU Internet Service.

Modification/Termination by WHBU

WHBU reserves the right, in its sole discretion, to modify, suspend, or terminate this Website and/or any portion thereof, including any WHBU Internet Service, and/or your account, password, or use of any WHBU Internet Service, or any portion thereof, at any time for any reason, or no reason, with or without notice to you.

Any termination of your account for a WHBU Internet Service removes your authorization to use the WHBU Internet Service. In the event of termination, you will still be bound by your obligations under this Agreement and any Additional Terms, including

the warranties made by you, and by the disclaimers and limitations of liability. Additionally, WHBU shall not be liable to you or any third-party for any termination of your access to a WHBU Internet Service.

Indemnification

You agree to indemnify, defend, and hold harmless WHBU, its subsidiaries, agents, parent companies, distributors and affiliates, and their officers, directors and employees from and against any and all claims, actions, demands, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees, resulting from your breach of any provision of this Agreement, the Additional Terms, or any warranty you provide herein, or otherwise arising in any way out of your use of this Website and any related WHBU Internet Service and/or Software. WHBU reserves the right to take exclusive control and defense of any such claim otherwise subject to indemnification by you, in which event you will cooperate fully with WHBU in asserting any available defenses.

International Use/U.S. Export Controls

Accessing the materials on this Website by certain persons in certain countries may not be lawful, and WHBU makes no representation that materials on this Website are appropriate or available for use in locations outside the United States. If you choose to access this Website from outside the United States, you do so at your own risk and initiative, and are responsible for compliance with any applicable local laws.

The United States controls the export of any software downloadable from this Website. No software or any other materials associated with this Website may be downloaded or otherwise exported or re-exported to countries or persons prohibited under export control laws, including but not limited to countries against which the United States has embargoed goods, or to anyone on the U.S. Treasury Department list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. You are responsible for compliance with the laws of your local jurisdiction regarding the import, export, or re-export of any such materials. By using and/or downloading any such materials from a Website, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country to which such import, export, or re-export is prohibited or are not a person or entity to which such export is prohibited.

General Information

This Agreement, any Additional Terms, and the Privacy Policy shall be governed by, construed and enforced in accordance with the laws of the State of Indiana, as it is applied to agreements entered into and to be performed entirely within such state, without regard to conflict of law principles. You agree that any cause of action you or WHBU brings to enforce this Agreement, any Additional Terms, and/or the Privacy Policy, or in connection with any matters related to this Website and/or a WHBU Internet Service, shall be brought only in either the state or Federal courts located in Jacksonville, Florida. You agree to submit to the personal jurisdiction of the courts of the State of Florida for any cause of action arising out of this Agreement, any Additional Terms, and/or the Privacy Policy, or in connection with any matters related to this Website and/or a WHBU Internet Service, You agree to file any cause of action with respect to this Agreement, any Additional Terms, and/or the Privacy Policy, or in connection with any matters related to this Website and/or a WHBU Internet Service, within one year after the cause of action arises. You agree that a cause of action filed after this date is barred.

If any provision of this Agreement, any Additional Terms, and/or the Privacy Policy, or the application thereof to any person or circumstances, is held invalid or for any reason unenforceable including, but not limited to, the warranty disclaimers and liability limitations, then such provision shall be deemed superseded by a valid, enforceable provision that matches, as closely as possible, the original provision, and the other provisions of this Agreement, the Additional Terms, and/or the Privacy Policy shall remain in full force and effect. The failure of either party to insist upon strict performance of any provision of this Agreement, the Additional Terms, and/or the Privacy Policy shall not be construed as a waiver of any provision or right. Unless expressly provided otherwise, this Agreement, any Additional Terms, and the Privacy Policy constitute the entire agreement between you and WHBU with respect to the use of this Website and shall not be modified except in writing, signed by an authorized representative of WHBU.

Contact

If you have questions concerning this Agreement, any Additional Terms, the Privacy Policy, and/or the Website, you may send them by e-mail to steve.lindell@bybradio.com. You must send any official correspondence via postal mail to: Web Administrator

Steve Lindell

800 East 29th Street

Muncie, IN 47302

Procedure for Making Claim of Copyright Infringement

If you believe that your work has been copied in a way that constitutes copyright infringement, you should send written notification thereof to our Designated Agent, Robin A Smith, who can be reached as follows:

By mail: Backyard Broadcasting LLC, 4237 Salisbury Rd. Suite 225, Jacksonville, FL 32216

By Telephone: 904-674-0260, ext 102

By Facsimile: 904-854-4596

By Email: rsmith@bybradio.com

Pursuant to 17 U.S.C. §512(c), to be effective, the Notification must include the following:

- 1) The physical or electronic signature of the owner, or a person authorized to act on behalf of the owner, of an exclusive right that is allegedly infringed;
- 2) A description of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site, and a description of the infringing activity;
- 3) Identification of the specific location on this Website where the material claimed to be infringing is located, described sufficiently to allow WHBU to find the material;
- 4) Identification of the specific location where the original or an authorized copy of the copyrighted work exists;
- 5) Information reasonably sufficient to permit WHBU to contact you, such as your name, address, telephone number, and if available, an electronic mail address;
- 6) A statement by you that you have a good faith belief that use of the material in the manner described in the Notification is not authorized by the copyright owner, its agent, or the law; and
- 7) A statement by you, under penalty of perjury, that the information in the Notification is accurate, that you are the copyright owner or are authorized to act on behalf of the owner of the copyright that is allegedly infringed.

This process only relates to reporting a claim of copyright infringement. Messages related to other matters will not receive a response through this process.