

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

In the Matter of
Reclassification of License of
Class A Television Station KVER-CA,
Indio, California
Facility ID No. 69753

ORDER TO SHOW CAUSE

Adopted: November 4, 2014

Released: November 4, 2014

By the Chief, Video Division, Media Bureau:

1. This is with respect to station KVER-CA, Indio, California, licensed to Entravision Holdings, LLC (Entravision). This station is currently licensed as a Class A television station, which are accorded primary spectrum use status pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA").

2. In order to qualify for Class A status, the CBPA provides that, during the 90 days preceding enactment of the statute, a low power television station must have: (1) broadcast a minimum of 18 hours per day; (2) broadcast an average of at least three hours per week of programming produced within the market area served by the station; and (3) been in compliance with the Commission's rules for low power television stations. Class A licensees must continue to meet these eligibility criteria in order to retain Class A status.

3. In addition, beginning on the date of its application for a Class A license and thereafter, the CBPA requires that a station must also be "in compliance with the Commission's operating rules for full-power television stations." In implementing the CBPA and establishing the Class A television service, the Commission applied to Class A licensees all Part 73 regulations except for those that could not apply for technical or other reasons. Among the Part 73 requirements that apply to Class A licensees are the Commission's main studio requirements; rules governing informational and educational children's programming and the limits on commercialization during children's programming; the requirement to identify a children's programming liaison at the station and to provide information regarding "core" educational and informational programming aired by the station to publishers of television program guides; the public inspection file rule, including preparing and placing in the public inspection file on a quarterly basis an issues/programs list and the station's quarterly-filed FCC Form 398 (Children's

1 Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336.

2 47 U.S.C. § 336(f)(2)(A)(i).

3 47 U.S.C. § 336(f)(1)(A)(ii); 47 C.F.R. § 73.6001(b).

4 47 U.S.C. § 336(f)(2)(A)(ii).

5 In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000) ("R & O"), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8254-56 (2001) ("MO & O on Recon").

Television Programming Report; the political programming rules; station identification requirements; and the Emergency Alert System (EAS) rules.⁶

4. Class A television licensees are also subject to the regulations regarding fines and penalties applicable to full power television stations, and are subject to loss of Class A status if they fail to meet these ongoing program service and operating requirements.⁷ In addition, as the Commission explained in the *Class A Memorandum Opinion and Order on Reconsideration*:

Although Class A licensees will not be subject to loss of license for failure to continue to comply with the eligibility requirements in section (f)(2)(A) of the CPBA [including that they be in compliance with the Commission's rules for full-power stations after they file for a Class A license], they are subject to loss of Class A status if they fail to meet these ongoing obligations. . . . We [have] also adopted a rule stating that "Licensees unable to continue to meet the minimum operating requirements for Class A television stations . . . shall promptly notify the Commission in writing, and request a change in status [to low power]."⁸

5. Section 316(a) of the Communications Act, as amended, permits the Commission to modify an authorization if such action is in the public interest.⁹ Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and to afford the licensee at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's Rules.¹⁰

6. Commission records show that station KVER-CA was silent from October 19, 2010 to August 23, 2011¹¹; from September 2, 2011 to August 15, 2012¹²; from August 27, 2012 to June 28, 2013¹³; from July 2, 2013 to June 23, 2014.¹⁴ However, on June 23, 2014, KVER-CA did not resume operations on its Class A station, but on its digital companion station KVER-LD, while its Class A station remains off the air.¹⁵ Therefore, except for nominal periods of time, KVER-CA has been off the air since 2010. In its requests for special temporary authority (STA), Entravision has given various reasons to justify remaining silent. In 2010, it stated that "KVER-CA has gone silent in order to remove the antenna and a pipe from the tower so that repairs to the transmission system can be undertaken and promptly completed."¹⁶ After almost a year of remaining silent, Entravision next stated that "This station is silent as the licensee prepares its facility for displacement to digital operation pursuant to its digital displacement application in File No. BDISDTA-20190922ABX, which would allow the station to operate in the digital mode on Channel 40. The licensee is ready, willing and able to undertake digital operation

⁶ *R & O*, 15 FCC Rcd at 6366.

⁷ *MO & O on Recon*, 16 FCC Rcd at 8257.

⁸ *Id.*

⁹ 47 U.S.C. § 316(a).

¹⁰ 47 C.F.R. § 1.87.

¹¹ Resumption of Operations, KVER-CA, Filed August 23, 2011.

¹² Resumption of Operations, KVER-CA, Filed August 15, 2012.

¹³ Resumption of Operations, KVER-CA, Filed June 28, 2013.

¹⁴ Resumptions of Operations, KVER-CA, Filed June 23, 2014.

¹⁵ *Id.*

¹⁶ Request for Silent STA, KVER-CA, File No. BLSTA-2010025AAM.

on channel 40. It is awaiting Commission authorization to do so.”¹⁷ Entravision made the identical statement the following year.¹⁸ In 2013, Entravision stated that “KREV-CA has gone silent in order to prepare for the commencement of operations in the digital mode, on the digital companion channel authorized to the station’s licensee.”¹⁹

7. Class A television stations are required to broadcast a minimum of 18 hours per day and an average of at least three hours per week of programming produced within the market area served by the station. Station KVER-CA has met this requirement for nominal periods of time since 2010. We conclude that under these circumstances, Entravision should have notified the Commission of its inability to meet the ongoing Class A eligibility requirements and requested a change in station status from Class A to low power television station pursuant to Section 73.6001 of the Commission’s Rules.²⁰ While the Commission has acknowledged that “in appropriately compelling circumstances involving a temporary inability to comply,” a licensee can apply for an STA to operate at variance with the CBPA’s operational and programming requirements without affecting its Class A status,²¹ the record now before us does not present such a case. Instead, it appears that Entravision made a business decision to cease operation of KVER-CA, rather than to attempt to meet its Class A obligations and simultaneously prepare for its digital transition and the station has been off-the-air almost continuously since June 22, 2010.

8. IT IS THEREFORE ORDERED, That, Entravision Holdings LLC show cause why its authorization for Class A television station KVER-CA, Indio, California, Texas should not be modified to specify the station as a low power television station.

9. Pursuant to Section 1.87 of the Commission’s Rules, Entravision Holdings LLC may, no later than December 8, 2014, file a written statement why the above-captioned license should not be modified as proposed herein. The written statement, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attention: Barbara A. Kreisman, Chief, Video Division, Media Bureau. An electronic copy should also be sent to David Brown, Deputy Chief, Video Division at the e-mail address listed below. Upon review of the statement and/or additional information, the Commission may grant the modification, deny the modification, or set the matter for hearing. If no written statement is filed by May 7, 2012, the licensee will be deemed to have consented to the modification of its license from Class A television status to low power television status, and the modification proposed in this *Order to Show Cause* will be deemed to serve the public interest.

10. IT IS FURTHER ORDERED, That a copy of this *Order to Show Cause* shall be sent by Certified Mail, Return Receipt Requested, to Entravision Holdings, LLC and to its counsel, as indicated below:

Entravision Holdings, LLC
Suite 6000 West
2425 Olympic Boulevard
Santa Monica, California 90404

Barry A. Friedman, Esq.

¹⁷ Request for Silent STA, KVER-CA, File No. BLSTA-2011011AEG.

¹⁸ Request for Silent STA, KVER-CA, File No. BLSTA-20120904AAD.

¹⁹ Request for Silent STA, KVER-CA, File No. BLSTA-20130703AAA.

²⁰ 47 C.F.R. § 73.6001(d).

²¹ *M O & O on Recon*, 16 FCC Rcd at 8257, n.76.

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11. For further information concerning the proceeding, contact David J. Brown, Deputy Chief, Video Division, Media Bureau, at David.Brown@fcc.gov or (202) 418-1645.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau