

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

In the Matter of
Reclassification of License of
Class A Television Station KPAL-LP
Palmdale, California
Facility ID No. 22179

ORDER TO SHOW CAUSE

Adopted: March 9, 2012

Released: March 12, 2012

By the Chief, Video Division, Media Bureau:

1. This is with respect to station KPAL-LP, Palmdale, California, licensed to KPAL Television, Inc. ("KPAL"). 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. By letters dated March 24, 2011 and August 3, 2011, the Video Division of the Media Bureau requested information from KPAL regarding its apparent failure to make the required filing of quarterly FCC Form 398 (Children's Television Programming Report) for the station. As the March 24, 2011 letter set forth, 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

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). KPAL filed its application for a Class A license on June 20, 2001, and was granted Class A status on July 9, 2001.

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").

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 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 of 1934, 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. By letter dated September 2, 2011, KPAL responded to the staff's inquiry and admitted that it failed to file the Children's Television Programming Reports for the quarters identified in the staff's previous letters, and to place such reports in the station's public file. Typically, a licensee's failure to file its Children's Television Programming Reports with the Commission, and place them in its public file, would result in the issuance of a Notice Of Apparent Liability imposing a forfeiture amount.¹¹ In this case, however, it appears that KPAL has failed to comply with most, if not all, of the ongoing Class A eligibility requirements for an extended period of time.

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 See *In the Matter of Sage Broadcasting Corporation*, 23 FCC Rcd 8160 (Vid. Div. 2008).

7. As noted above, Class A Television stations are required to maintain a main studio. In order to qualify as a main studio, the designated location must house production equipment and station staff.¹² In its September 2, 2011 letter response, KPAL submitted a declaration, under penalty of perjury, from the former chief operator of the station, stating that he and another person were employed at the station from June 15, 2006 until June 15, 2010, when the station went silent. He further states that during this four year period, the station's public file had been maintained at the KPAL-LP studio at 118 West Avenue I in Lancaster, California. It is his understanding, however, that the public file was then moved to the Palmdale Public Library at 700 East Palmdale Boulevard.¹³ Thus, it appears that KPAL-LP no longer has a main studio with production facilities or employees.

8. Class A television stations are also 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. KPAL-LP has failed to meet these statutory requirements for over 18 months. Commission records show that KPAL notified the Commission on June 23, 2010 that the station had gone silent on June 15, 2010. In its notification, KPAL represented that "The station is unable to operate profitably in the current economic climate. The licensee has made arrangements for the antenna to remain at the authorized site and is hopeful that operations can resume once the economy picks up." On June 13, 2011, three days before the KPAL-LP license would automatically expire pursuant to Section 312(g) of the Communications Act,¹⁴ KPAL filed a request for an engineering STA to operate at a variance from its authorized facility. That request stated that "the authorized antenna has been taken off the tower and is no longer available for use," and requested "an immediate grant of this STA so that the station can resume operation before June 15, 2011."¹⁵ KPAL notified the Commission on June 15, 2011 that the station resumed operations on that date, and filed an application to assign the license for KPAL-LP the following day.¹⁶ A few days later, KPAL filed a request for silent authority, representing that the station had gone silent on June 17, 2011 because "The licensee has found it impossible to operate profitably in the current economic climate."¹⁷ The station currently remains silent.

9. We conclude that under these circumstances, KPAL 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.¹⁸ While the Commission has acknowledged that "in appropriately compelling

¹² See *Local One Texas, Ltd.*, 20 FCC Rcd 13251, nn. 4 and 5 (Med. Bur. 2005), citing *Jones Eastern of the Outerbanks, Inc.*, 7 FCC Rcd 6800 (1992), *Clarification of the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 3 FCC Rcd 5024, 5026 (1988), and Instruction II.F to FCC Form 302-CA.

¹³ A commercial station must maintain a local public inspection file at the main studio of the station. 47 C.F.R. § 73.3526(b).

¹⁴ 47 U.S.C. § 312(g). This section of the Act provides, in pertinent part, that "If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of the period, notwithstanding any provision, term, or condition of the license to the contrary"

¹⁵ FCC File No. BSTA-20110613ACZ.

¹⁶ FCC File No. BALTTA-20110613ACZ. This application remains pending.

¹⁷ FCC File No. BLSTA-20110622AAK.

¹⁸ 47 C.F.R. § 73.6001(d).

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,¹⁹ the record now before us does not present such a case. Instead, the record indicates that KPAL made a business decision to cease operations for financial reasons, and the station has been off-the-air almost continuously since June 15, 2010. While KPAL-LP resumed operations on June 15, 2011, it did so only to circumvent the automatic cancellation provision of Section 312(g) of the Act, and went silent again on June 17, 2011. The station antenna has been removed from the tower and is no longer available to KPAL, the station’s main studio in Lancaster apparently closed and the station’s employees terminated.

10. IT IS THEREFORE ORDERED, That, KPAL Television, Inc. show cause why its authorization for Class A television station KPAL-LP, Palmdale, California, should not be modified to specify the station as a low power television station.

11. Pursuant to Section 1.87 of the Commission’s Rules, KPAL Television, Inc. may, no later than April 16, 2012, 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, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau. An electronic copy should also be sent to joyce.bernstein@fcc.gov. 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 April 16, 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.

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

KPAL Television, Inc.
308 Dunwoody Drive
Raleigh, North Carolina 27615

Anne Thomas Paxson, Esq.
5335 Wisconsin Avenue, N.W.
Suite 440
Washington, D.C. 20015

13. For further information concerning the proceeding, contact Joyce L. Bernstein, Video Division, Media Bureau, at Joyce.Bernstein@fcc.gov or (202) 418-1647.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁹ *MO & O on Recon*, 16 FCC Rcd at 8257, n.76.