

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

In the Matter of
Reclassification of License of
Class A Television Station
WHDO-CA, Orlando, Florida
Facility ID No. 10521

ORDER TO SHOW CAUSE

Adopted: March 26, 2012

Released: March 29, 2012

By the Chief, Video Division, Media Bureau:

1. This is with respect to station WHDO-CA, Orlando, Florida, licensed to Digital TV of Orlando, LLC ("Digital"). 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 WHDO-CA went silent on September 17, 2010. In its request for silent authority, Digital stated that it intended to file a minor modification application to relocate and upgrade the station's facilities and that "suspending operations in the meantime will preserve the licensee's resources and facilitate the removal and relocation of the station's equipment once the necessary authorization is received."¹¹ Digital, however, did not file a modification application over the following 12 months. WHDO-CA purportedly resumed operations on September 13, 2011, shortly before the station's license would automatically expire pursuant to Section 312(g) of the Communications Act of 1934, as amended,¹² but then went silent on September 21, 2011, repeating the same justification set forth in the previous STA request.¹³ Thus, during the past 18 months, WHDO-CA has been on the air for one week. In addition, given WHDO-CA's operating schedule during this time, it is highly unlikely that Digital adequately maintained a main studio consistent with out rules.

7. We conclude that under these circumstances, Digital should have notified the Commission of its inability to meet the ongoing Class A eligibility requirements and requested a change

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 File No. BLSTA-20100917AAS.

¹² 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 . . ."

¹³ File No. BLSTA-20110922AAU. Digital did not file an application to relocate the station until March 19, 2012. File No. BDFCDTA-20120319ADV.

in its station's status from Class A to low power television station pursuant to Section 73.6001 of the Commission's Rules.¹⁴ 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,¹⁵ the record now before us does not present such a case. WHDO-CA has been off the air almost continuously since September 17, 2010, and the record clearly indicates that this was due to Digital's business decision to keep the station silent to conserve its financial resources until such time as it could apply for and construct its preferred facilities.

8. IT IS THEREFORE ORDERED, That Digital TV of Orlando, LLC show cause why its authorization for Class A television station WHDO-CA, Orlando, Florida, 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, Digital TV of Orlando, LLC may, no later than May 1, 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 May 1, 2012, Digital TV of Orlando, LLC 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 Digital TV of Orlando, LLC and its counsel as indicated below:

Digital TV of Orlando, LLC
180 W. Michigan Avenue, Suite 702
Jackson, Michigan 49210

Brendan Holland, Esq.
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006

11. 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

¹⁴ 47 C.F.R. § 73.6001(d).

¹⁵ *MO & O on Recon*, 16 FCC Rcd at 8257, n.76.