

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

In the Matter of )  
 )  
Reclassification of License of )  
Class A Television Station KXLK-CA ) Facility ID No. 48836  
Austin, Texas )  
 )

ORDER TO SHOW CAUSE

Adopted: March 21, 2012

Released: March 23, 2012

By the Chief, Video Division, Media Bureau:

1. This is with respect to station KXLK-CA, Austin, Texas, licensed to CASA of Austin, L.P. (CASA). 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”).<sup>1</sup>

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.<sup>2</sup> Class A licensees must continue to meet these eligibility criteria in order to retain Class A status.<sup>3</sup>

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.”<sup>4</sup> In implementing the CBPA and establishing the Class A television service,<sup>5</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 47 U.S.C. § 336(f)(2)(A)(i).

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

<sup>4</sup> 47 U.S.C. § 336(f)(2)(A)(ii). CASA filed its application for a Class A license on July 12, 2001, and was granted Class A status on August 13, 2001.

<sup>5</sup> *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.<sup>6</sup>

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.<sup>7</sup> 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]."<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

6. Commission records show that, on November 10, 2007, station KXLK-CA went silent pursuant to special temporary authority (STA), citing "financial constraints," and stating that it was "actively working to develop a strategic plan for the optimal use of the Station's resources in order to resolve the situation so that the station may resume its broadcast service at the earliest practicable date."<sup>11</sup> CASA represented that the station briefly resumed broadcasts on November 6, 2008, to avoid automatic expiration of the license pursuant to Section 312(g) of the Communications Act of 1934,<sup>12</sup> but went silent again the next day because of "financial hardship."<sup>13</sup> The station remained silent until November 4, 2009, but again went dark on November 13, 2009 because of "financial difficulties."<sup>14</sup> Station KXLK-CA purportedly resumed operations briefly at a new site<sup>15</sup> on November 11, 2010, but went silent on January 19, 2011, "due to continuing financial difficulties, including the bankruptcy of the Licensee's General Partner."<sup>16</sup> The station again briefly resumed broadcasting for short periods from March 18,

<sup>6</sup> *R & O*, 15 FCC Rcd at 6366.

<sup>7</sup> *MO & O on Recon*, 16 FCC Rcd at 8257.

<sup>8</sup> *Id.*

<sup>9</sup> 47 U.S.C. § 316(a).

<sup>10</sup> 47 C.F.R. § 1.87.

<sup>11</sup> File No. BLSTA-20071207AAN.

<sup>12</sup> 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 . . ."

<sup>13</sup> File Nos. BLSTA-20081112AJN and BLESTA-20090501ABI.

<sup>14</sup> File No. BLSTA-20091123AAF and BLESTA-20100507ACV.

<sup>15</sup> File No. BSTA-20101104ACI, granted November 9, 2010.

<sup>16</sup> File No. BLSTA-20110120ABL.

2011 through April 1, 2011,<sup>17</sup> and from March 14, 2012 through March 17, 2012.<sup>18</sup> In short, station KXLK-CA has been on the air for less than four of the preceding 52 months.

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. Based on Commission records, station KXLK-CA clearly failed to meet these statutory requirements for slightly more than 3 of the last 52 months. We conclude that under these circumstances, CASA 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.<sup>19</sup> 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,<sup>20</sup> the record now before us does not present such a case. Instead, the record indicates that CASA made a business decision to cease operations for financial reasons, and the station has been off-the-air almost continuously since November 10, 2007.

8. IT IS THEREFORE ORDERED, That, CASA of Austin, L.P show cause why its authorization for Class A television station KXLK-CA, Austin, 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, CASA of Austin, L.P. may, no later than April 27, 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 12<sup>th</sup> 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, Associate 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 April 27, 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 CASA of Austin, L.P. and to its counsel, as indicated below:

CASA of Austin, L.P.  
823 West Center Avenue  
Visalia, CA 93291

Kathleen Victory, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

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<sup>17</sup> File No. BLSTA-20110404AGI.

<sup>18</sup> File No. BLSTA-20120319AHO.

<sup>19</sup> 47 C.F.R. § 73.6001(d).

<sup>20</sup> *MO & O on Recon*, 16 FCC Rcd at 8257, n.76.

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

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau