



Federal Communications Commission  
Washington, D.C. 20554

October 8, 2014

**DA 14-1461**

**Released: October 8, 2014**

International Communications Network, Inc.  
160 Thorn Street  
Suite 200  
San Diego, California 92103

Re: Class A License Conversion Application  
KSDY-LD, San Diego, California  
File No. BLDTA-20140725ABQ  
Facility ID No. 56830

Dear Applicant:

This is in regard to the above captioned application filed by International Communications Network, Inc. ("ICN") to convert low power television ("LPTV") station KSDY-LD, San Diego, California (formerly K61GH, National City, California) to Class A status. For the reasons set forth below, ICN's application is dismissed.

On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA) was signed into law.<sup>1</sup> The CBPA provided certain qualifying LPTV licensees an opportunity to convert their secondary status to the new Class A primary status, provided that they satisfied certain statutorily established criteria. Under the CBPA, licensees intending to seek Class A designation were required to file a "certification of eligibility based on the qualification requirements [of the Act]" with the Commission within 60 days after the date of enactment of the Act, i.e., no later than January 28, 2000.<sup>2</sup> Pursuant to the CBPA, an LPTV licensee submitting a certification of eligibility could qualify for Class A status if, during the 90-day period ending November 28, 1999, its station: (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 or by a group of commonly-controlled low power television stations; and (3) was in compliance with the Commission's requirements for LPTV stations.<sup>3</sup>

Our records indicate that the former licensee of the station, TV-61 San Diego, Inc. ("TV-61"), filed a timely statement of eligibility for then station K61GH in 2000.<sup>4</sup> However, TV-61 did not certify full compliance with the above statutory programming standards, but rather requested that the Commission treat the station as eligible for Class A status because of the nature of its program service. In implementing the CBPA, however, the Commission declined to consider a station's type of program service in determining Class A status eligibility.<sup>5</sup> Accordingly, TV-61's certification of eligibility for

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

<sup>2</sup> 47 U.S.C. § 336(f)(1)(B)

<sup>3</sup> 47 U.S.C. § 336(f)(2)(A).

<sup>4</sup> ICN acquired control of the station in 2004 (FCC File No. BTCTTL-20031219ATN).

<sup>5</sup> *Establishment of Class A Television Service*, MM Docket No. 00-10, 15 FCC Rcd 6355, 6369, para. 34 (2000) (*Class A R&O*).

K61GH was dismissed.<sup>6</sup> TV-61 did not file a petition for reconsideration of the dismissal and accordingly, that action is final.

In its July 25, 2014 application to convert KSDY-LD to Class A status, ICN acknowledges that TV-61's certification of eligibility was dismissed in 2000, but asserts that "unusual and unique circumstances dictate that Class A status be granted . . . ." In this regard, ICN states that it was not able to obtain a construction permit for an in-core channel until 2010, which it licensed in 2011,<sup>7</sup> that it is operating in compliance with the Class A statutory requirements, and that it is minority-owned and meets the needs of audiences not adequately served by other stations. We do not find these arguments persuasive. The CBPA "was designed to permit a one-time conversion of a single pool of LPTV licensees where licensees (1) met specific criteria before the statute was enacted, and (2) filed a 'certification of eligibility' on or before the statutory deadline, establishing that they met these criteria."<sup>8</sup> In implementing the CBPA, the Commission stated that because "the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A stations . . . we will not accept applications from LPTV stations that did not meet the statutory criteria and did not file a certification of eligibility by the statutory deadline, absent compelling circumstances."<sup>9</sup> ICN has not presented any compelling or extraordinary circumstances which would justify our extending Class A eligibility almost 15 years after passage of the CBPA where a certification of eligibility for the station was never granted and the licensee of the station during the relevant statutory time period did not appeal its dismissal.

In view of the foregoing, the above-referenced application filed by International Communications Network, Inc. to convert low power television station KSDY-LD to Class A status IS HEREBY DISMISSED.

Sincerely,

Barbara Kreisman  
Chief, Video Division  
Video Division

cc: Peter Tannenwald, Esq.

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<sup>6</sup> *Dismissal of LPTV Licensee Certificates of Eligibility for Class A Television Station Status*, Public Notice, 15 FCC Rcd 9761 (MMB 2000).

<sup>7</sup> Although the CBPA prohibited the Commission from granting Class A status to LPTV stations operating on out-of-core channels, it provided out-of-core Class A-eligible LPTV stations an opportunity to achieve Class A status on an in-core channel. See 47 U.S.C. § 336(f)(6)(A); *Class A R&O*, 15 FCC Rcd at 6396-97, para. 103.

<sup>8</sup> *The Atlanta Channel, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 14541, 14543, para. 6 (2012), *recon. denied*, Order on Reconsideration, DA 14-1460 (rel. Oct. 7, 2014 MB).

<sup>9</sup> *Class A R&O*, 15 FCC Rcd at 6361, para. 11.