

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

In the Matter of)
)
KSQA, LLC, Licensee of Station) NAL/Acct. No: 201641420007
KSQA, Topeka, Kansas) FRN: 19020957
) Facility No. 166546

ORDER

Adopted: August 1, 2019

Released: August 1, 2019

By the Video Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Video Division, Media Bureau of the Federal Communications Commission (Commission) and KSQA, LLC (KSQA). The Consent Decree resolves the forfeiture proceeding against KSQA, LLC, for its failure to comply with Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission’s Rules.¹

2. After reviewing its terms, we find that adoption of the attached Consent Decree would serve the public interest. Termination of the forfeiture proceeding² shall be conditioned upon execution of the Consent Decree and KSQA’s timely satisfaction of its obligation to pay the U.S. Treasury Three Thousand Dollars (\$3,000), as specified in paragraph 14 of the Consent Decree. KSQA also agrees, as specified in paragraphs 16 and 17 of the Consent Decree, to undertake specific efforts help ensure future compliance with the Commission’s rules.

3. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ the attached Consent Decree IS ADOPTED, and its terms incorporated by reference.

4. IT IS FURTHER ORDERED that the Division’s forfeiture proceeding related to the matters discussed above IS TERMINATED conditioned on execution of the Consent Decree and as conditioned herein.

5. IT IS FURTHER ORDERED that a copy of this Order and Consent Decree shall be sent by both First-Class mail and Certified Mail, Return Receipt Requested to KSQA, LLC, 7305 S. Constance, Chica, IL 60649 and to its counsel James L. Winston, Rubin, Winston, Diercks, Harris & Cooke, LLP, 1201 Connecticut Avenue, NW, Suite 200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹ 47 CFR §§ 73.3526(e)(11)(iii) and 73.3514(a).

² See KSQA, LLC, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 3437 (Vid. Div. 2016); KSQA, LLC, Forfeiture Order, 31 FCC Rcd 6904 (Vid. Div. 2016); KSQA, LLC, Memorandum Opinion and Order, 33 FCC Rcd 226 (Vid. Div. 2018).

³ 47 U.S.C. §§ 154(i).

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CONSENT DECREE

1. The Video Division, Media Bureau of the Federal Communications Commission and KSQA, LLC, licensee of KSQA(DT), Topeka, Kansas, hereby enter into this Consent Decree for the purpose of: (i) resolving the Forfeiture Proceeding against KSQA, LLC for its failure to comply with Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's Rules.¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - b) "Adopting Order" means the Order of the Division adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - c) "Bureau" or "Media Bureau" means the Media Bureau of the Federal Communications Commission.
 - d) "Children's Television Programming Reports" or "Reports" means the report (FCC Form 398) required to be filed with the Commission under 47 CFR § 73.3526(e)(11)(iii) of the Rules.
 - e) "Children's Television Programming Rules" mean the provisions of 47 CFR §§ 73.671 and 73.3526(e)(11)(iii) and the Commission's published orders, policies, guidelines, and associated filing requirements.
 - f) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
 - g) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission including but not limited to the Children's Television Programming Rules.
 - h) "Division" means the Video Division of the Media Bureau.
 - i) "Effective Date" means the date on which the Division releases the Adopting Order.
 - j) "Forfeiture Proceeding" means the Division's forfeiture proceeding against KSQA for its failure to comply with the Children's Television Programming Rules and the disclosure requirements of Section 73.3514(a) of the Rules. *See KSQA, LLC, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 3437 (Vid. Div. 2016); KSQA, LLC, Forfeiture Order, 31 FCC Rcd 6904 (Vid. Div. 2016); KSQA, LLC, Memorandum Opinion and Order, 33 FCC Rcd 226 (Vid. Div. 2018).*

¹ 47 CFR §§ 73.3526(e)(11)(iii) and 73.3514(a).

- k) “KSQA” or “Licensees” means KSQA, LLC and all subsidiaries, affiliates, successors, assigns, and/or transferees, collectively, and/or any entity under common control.
- l) “License Renewal Application” means the license renewal application of digital television station KSQA(DT), Topeka, Kansas.
- m) “Parties” means KSQA and the Bureau, each of which is a “Party.”
- n) “Public File” refers to the documents that a commercial broadcast station is required to maintain as part of its local public inspection file, as required by 47 CFR § 73.3526.
- o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- p) “Station” means broadcast television station KSQA(DT), Topeka, Kansas.

II. BACKGROUND

3. The issues raised in the Forfeiture Proceeding stem from the Division’s review of the Station’s License Renewal Application for the 2012-2015 license renewal cycle.² After a thorough examination of the record, the Division issued a \$15,000 *Notice of Apparent Liability* against KSQA for its willful and/or repeated violations of: (1) Section 73.3526(e)(11)(iii) of the Commission’s rules (Rules) by failing to timely-file its Children’s Television Programming Reports for thirteen quarters; and (2) Section 73.3514(a) of the Rules by failing to report those late-filings in its renewal application.³ KSQA did not contest the violations.⁴ Instead, KSQA requested that the Division defer its collection action until after the conclusion of the broadcast television incentive auction.⁵

4. On June 16, 2016, the Division rejected KSQA’s requested deferment of collection action and issued a *Forfeiture Order* finding KSQA liable in the amount of \$15,000 for the above-listed violations.⁶ KSQA subsequently filed a Petition for Reconsideration maintaining that it was unable to pay the assessed forfeiture due to financial hardship and requested that the Division cancel or substantially reduce of the forfeiture amount.⁷ Although KSQA provided three years of tax returns and financial statements, the Division denied the Petition for Reconsideration on the basis that KSQA failed to provide convincing evidence as to variances in the returns and the financial statements to warrant a cancellation or reduction of the forfeiture amount.⁸

5. Children’s Television Programming Reporting Deficiencies. Pursuant to Section 73.3526(e)(11)(iii) of the Rules, each Class A and commercial broadcast licensee must prepare and place in its Public File a Children’s Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. Licensees must file these Reports with the Commission and must also place them in their Public

² File No. BRCDDT-20140129ACP.

³ *KSQA, LLC*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 3437,3439, paras. 6 and 7 (Vid. Div. 2016).

⁴ Response to Notice of Apparent Liability for Forfeiture of KSQA, LLC (filed Apr. 21, 2016).

⁵ *Id*; See *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016, Public Notice*, Public Notice, 30 FCC Rcd 11034 (2015).

⁶ *KSQA, LLC*, Forfeiture Order, 31 FCC Rcd 6904, 6907, para. 9 (Vid. Div. 2016).

⁷ See Response to Forfeiture Order of KSQA, LLC (filed July 18, 2016); Supplement to Response to Forfeiture Order filed by KSQA, LLC (dated May 16, 2017); Second Supplement to Response to Forfeiture Order of KSQA, LLC (filed June 15, 2017).

⁸ *KSQA, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 226, 227-28, paras. 5-8 (Vid. Div. 2018).

File by the tenth day of the succeeding calendar quarter.⁹ Copies of these Reports must be retained until final action has been taken on the station's next license renewal application.¹⁰ Here, although KSQA filed the required Children's Television Programming Reports they were late-failed for multiple quarters.

6. Application for Renewal of Broadcast Station License Disclosure Requirements. Section 73.3514(a) of the Rules requires each applicant to include all information called for by a particular application. Relating to this proceeding, the Application for Renewal of Broadcast Station License (FCC Form 303-S) requires licensees to make various certifications with regards to its compliance with the Act and Rules during the preceding license term. Specifically, Section IV, Question 3 of FCC Form 303-S requires the licensee to certify that it has placed the documents required by Section 73.3526 of the Rules into the Station's public file at the appropriate times.¹¹ Here, KSQA erroneously answered the aforementioned certification question in the affirmative despite its failure to timely-file its Children's Television Programming Reports for multiple quarters.

7. Conclusion. The Division and KSQA have negotiated the terms of the Consent Decree which resolves the Forfeiture Proceeding. As part of the Consent Decree, KSQA has agreed to pay a Civil Penalty in the amount of Three Thousand Dollars (\$3,000) to the U.S. Treasury and maintain a Compliance Plan designed to ensure its future compliance with the Children's Television Programming Rules and disclosure requirements.

III. TERMS OF THE AGREEMENT

8. Adopting Order. The provisions of this Consent Decree shall be incorporated in an Adopting Order without change, addition, deletion, or modification.

9. Jurisdiction. KSQA agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree, and that the Division has the authority to enter into and adopt this Consent Decree.

10. Effective Date. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other Commission order.

11. Violations. The Parties agree that any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission or its delegated authority to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. Termination of Forfeiture Proceeding. In express reliance on the covenants and representations in this Consent Decree, and to avoid further expenditure of public resources, the Commission agrees to terminate the Forfeiture Proceeding and shall take no further action in pursuit of collection of the forfeiture conditioned on full payment of the Civil Penalty set forth in Paragraph 14. In consideration and for purposes of settling the matters in this proceeding, KSQA agrees to the terms and conditions contained herein. The Commission also agrees, in the absence of new material evidence, that it will not use the facts developed, in whole or in part, from the Forfeiture Proceeding through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take action in response to any petition to deny, complaint, or objection against KSQA with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or to hold a Commission license or authorization.

⁹ We note that broadcast television licensees are required to file all Children's Television Programming Reports in the Commission's Licensing and Management System. The Commission automatically links all Reports to the Station's Public File. 47 CFR § 73.3526(b)(4)(i).

¹⁰ 47 CFR § 73.3526(e)(11)(iii).

¹¹ FCC Form 303-S available at: <http://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

13. Subsequent Forfeiture Proceedings. Except as expressly provided herein, this Consent Decree shall not prevent the Commission or its delegated authority from investigating new evidence of noncompliance by KSQA with the various Communications Laws. Except as expressly provided herein, nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints or other adjudicatory pleadings filed against KSQA for alleged violations of the Act or the Commission's rules or for any alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints or pleadings will be based solely on the record developed in subsequent proceedings.

14. Civil Penalty. KSQA agrees to make a total Civil Penalty payment in the amount of Three Thousand Dollars (\$3,000) to the U.S. Treasury. Within thirty (30) calendar days of the Effective Date, KSQA will make an initial payment to the U.S. Treasury in the amount of One Thousand Five Hundred Dollars (\$1,500). KSQA will make its final payment to the U.S. Treasury in the amount of One Thousand Five Hundred Dollars (\$1,500) no later than October 1, 2019. KSQA agrees that, upon execution of this Consent Decree, the Settlement Payment shall become a "Claim" or "Debt" owed to the United States as defined in 31 U.S.C. § 3701(b)(1).¹² KSQA also agrees that it will not treat any portion of the Civil Penalty as tax deductible for purposes of federal, state, or local law.¹³ KSQA shall send electronic notification of payment to Evan Morris, at evan.morris@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹⁴ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹⁵ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded. – and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits

¹² Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

¹³ See 26 U.S.C. § 162(f).

¹⁴ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

excluded -- and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

15. Waivers. As of the Effective Date, KSQA waives any and all rights it may have to seek administrative or judicial review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. KSQA shall retain the right to challenge the Commission's interpretation of the Consent Decree or any terms contained herein or any future reinvestigation, inquiry or proceeding or order emanating therefrom. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither KSQA nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and KSQA shall waive any statutory right to a trial *de novo*. KSQA hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 CFR § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree. Notwithstanding any provision of this Consent Decree or the Adopting Order, the Commission may consider this Consent Decree void and of no further force if the payment condition specified in Paragraph 14 is not fully and timely satisfied by KSQA.

16. Compliance. KSQA agrees to maintain the following Compliance Plan for a period of one year. To help ensure future compliance with the Children's Television Programming Rules and the disclosure requirements required by Section 73.3514(a) of the Rules, KSQA shall within twenty (20) days of the Effective Date submit to the Commission a certification that it has designated a person as a "Compliance Officer" whose duties include responding to inquiries concerning compliance with the Children's Television Programming Rules; and, reviewing all Children's Television Programming Reports prior to filing with the Commission. Such certification shall include a provision that the Compliance Officer has been adequately trained as to the requirements of the commission Rules concerning Children's Television Programming.

17. Within twenty (20) business days of the Effective Date, KSQA shall publish the name and contact information (mailing address, and e-mail and/or phone number) of the Compliance Officer by placing a document containing such information in the Station's Public File under the folder entitled "FCC Forfeiture Proceedings or Complaints," and shall send a letter containing such information to the Chief of the Video Division, Media Bureau. KSQA must update its Public File within twenty (20) business days of any changes to the Compliance Officer or the Compliance Officer's contact information.

18. Severability. The Parties agree that, if any court of competent jurisdiction rules that a provision of the Consent Decree is unenforceable, then that provision alone will become unenforceable and the entire Consent Decree shall be construed as if that unenforceable provision did not exist and the rights and obligations of the Parties shall be construed and enforced accordingly.

19. Invalidity. The Parties agree that, in the event a court of competent jurisdiction renders the Consent Decree invalid in its entirety, then the Consent Decree shall become null and void and may not be used in any manner for any legal proceeding.

20. Subsequent Rule or Order. The Parties agree that, if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission then that provision will be superseded by such rule or Commission order. In this regard, the Parties agree that, if the Commission adopts an order changing the Children's Television Programming Rules or other children's television programming obligations of broadcasters, KSQA's obligations under the Compliance Plan are hereby amended consistent with the revised Rules/obligations.

21. Final Settlement. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Forfeiture Proceeding.

22. Modifications. This Consent Decree cannot be modified without the advance written consent of all Parties.

23. Paragraph Headings. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

24. Authorized Representative. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

25. Counterparts. This Consent Decree may be signed in any number of counterparts, each of which, when executed and delivered (including by pdf or facsimile), shall be an original, and all counterparts together shall constitute one and the same fully executed instrument.

Federal Communications Commission

By:

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Date

KSQA, LLC
By:

Gregory Talley
Member-Station Manager, KSQA, LLC

Date