



Federal Communications Commission  
Washington, D.C. 20554

June 25, 2014

Duhamel Broadcasting Enterprises  
518 St. Joseph Street  
Rapid City, South Dakota 57701-2717

Re: K09YH-D, Scottsbluff, Nebraska  
Facility ID No. 167559

Dear Licensee:

This is in regard to the pending license renewal application of the above-captioned station.<sup>1</sup> Pursuant to Section 1.88 of the Commission's Rules,<sup>2</sup> we write to update you on our pending investigation of the station and to invite you to submit a statement to the staff setting forth the Licensee's views regarding the investigation.

The Community Broadcasters Protection Act of 1999 ("CBPA") directed the Commission to "establish a class A television license to be available to licensees of qualifying low-power television stations."<sup>3</sup> To establish itself as a qualifying low-power television station, a station was required to certify that it broadcast a minimum of 18 hours per day and an average of at least 3 hours per week of locally produced programming.<sup>4</sup> The CBPA further provided that "each such class A licensee shall be accorded primary status as a television broadcaster as long as the station *continues* to meet the requirements for a qualifying low-power station."<sup>5</sup>

The Commission underscored the inherently conditional nature of Class A status in the *Class A MO&O*:

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 CBPA [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.<sup>6</sup>

In its implementation of the CBPA, the Commission determined that the statutory broadcast criteria constitute minimum operating requirements for Class A licensees.<sup>7</sup> It also applied to Class A licensees all Part 73 regulations but those that could not apply for technical or

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<sup>1</sup> File No. BRDVA-20140203TX.

<sup>2</sup> 47 C.F.R. § 1.88

<sup>3</sup> 47 U.S.C. § 336(f)(1)(A).

<sup>4</sup> 47 U.S.C. § 336(f)(2)(A)(i)(I-II).

<sup>5</sup> 47 U.S.C. § 336(f)(1)(A)(ii).

<sup>6</sup> *Establishment of a Class A Service*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8257 (2001) ("*Class A MO&O*") (emphasis added).

<sup>7</sup> *In the Matter of Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6366 (2000) (*Class A R&O*), *Class A MO&O*, 16 FCC Rcd at 8254-56 (2001); 47 C.F.R. § 73.6001.

other reasons. These include, *inter alia*, the requirement to maintain a main studio; the rules governing informational and educational children's programming and limits on commercialization during children's programming; and the rules concerning the station's public inspection file. The public inspection file rules include (i) preparing, placing in the file, and filing electronically with the Commission on a quarterly basis the FCC Form 398 (Children's Television Programming Report)<sup>8</sup> and (ii) preparing, placing in the file, and filing electronically with the Commission on a quarterly basis a "list of programs that have provided the station's most significant treatment of community issues during the preceding three month period."<sup>9</sup>

You were granted Class A license status for K09YH-D based in part on your certification that the station does, and will continue to, broadcast: (a) a minimum of 18 hours per day; and (b) an average of at least 3 hours per week of programming each quarter produced within the market area served by the station.

On February 3, 2014, you submitted the license renewal application.<sup>10</sup> Based on our investigation, we have identified potential violations of our Rules and request further information from the Licensee:

### **1. Locally Produced Programming**

In the renewal application, you stated that, "between the second quarter of 2012 and the third quarter of 2013, the station was technically unable to insert locally originated programming into the programming stream, following a change in programming format and source designed to provide diverse programming to the community."<sup>11</sup> You do not explain what technical issue prevented the station from providing local programming or how any technical issue excused compliance with Section 73.6001 of the Commission's rules.

### **2. Incorrect Certifications**

In statements of continuing Class A eligibility filed for each quarter in 2012 and 2013, the Licensee certified that the station "continued to meet the requirements set forth in Section 73.6001 of the Commission's rules during the preceding quarter."<sup>12</sup> This certification appears to contradict the admission provided in the license renewal application.

In order for the Commission to evaluate further the license renewal applications, we request that Licensee provide the following information:

- 1) Amendments to all incorrect certifications in the station's online public file, accompanied by a declaration under penalty of perjury providing an explanation for the incorrect certifications; and
- 2) Any explanation for and/or rebuttal to the apparent violations of Section 73.6001 admitted in the license renewal application; and

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

<sup>9</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>10</sup> File No. BRDVA-20140203ATX.

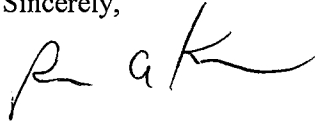
<sup>11</sup> *Id.*, Exhibit 29.

<sup>12</sup> See, e.g., K09YH-D Class A TV Continuing Eligibility Statement, Third Quarter of 2012.

- 3) A detailed explanation, with cites to Commission rules, guidance, and case precedent, as to why, given these violations of Section 73.6001, the Licensee should retain its Class A license.

Your submission must be filed with the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Peter Saharko, Attorney Advisor, Video Division, Media Bureau, within 30 days of the date of this letter. An electronic copy should also be sent to [peter.saharko@fcc.gov](mailto:peter.saharko@fcc.gov). **Failure to provide the requested information or to request a change in status within 30 days from the date of the letter will result in further action, including potential loss of Class A television status.**

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc:

Lauren Lynch Flick  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street NW  
Washington, D.C. 20037-1128