

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

2015 NOV -3 A 9:59

In re Order to Show Cause

AJB HOLDINGS, LLC
KWSA(FM), PRICE, UT
Licensed on Channel 261A, Application for
Channel 261C3 Pending

VALLEYDALE BROADCASTING, LLC
KPVO(FM), FOUNTAIN GREEN, UT
Licensed on Channel 260A, Application for
Channel 260C1 Pending

)
)
) FCC File No. BPH-20150902ADY
) FCC File No. BLH-20150902ADW
) FCC Facility ID No. 15528
)
)

) FCC File No. BPH-20150821ABK
) FCC File No. BLH-20150820CNF
) FCC Facility ID No. 190393
)
)

Accepted / Filed

To: Office of the Secretary
Attn: The Chief, Audio Division, Media Bureau

OCT 30 2015

Federal Communications Commission
Office of the Secretary

RESPONSE TO ORDER TO SHOW CAUSE

AJB HOLDINGS, LLC

Womble Carlyle Sandridge & Rice,
LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036
(202) 857-4455

October 30, 2015

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SUMMARY

As shown in a currently filed Informal Objection, the KPVO Application seeking an upgrade to Channel 260C1 from Channel 260A is unacceptable for filing, and cannot be filed, for one year from the date of the grant of FCC File No. BLH-20150820CNF given Condition #2 contained within that license. Further, the KPVO Application is an inconsistent and conflicting application in violation of Section 73.3518 of the Commission's rules. In addition, KWSA has filed an application for Class C3 facilities prior to the FCC's September 30, 2015 Order to Show Cause which negates the possibility of moving KWSA to Channel 280 and makes that move contrary to the public interest.

Further, the KPVO application fails to state any public interest reasons why the FCC should on its own motion under Section 1.87 order a change in the KWSA channel. The forced KWSA channel change should be, pursuant to Section 1.87(b) of the Commission's rules, evaluated using the same procedures used for notices of proposed rule making. Any change of channel to Channel 280 is of questionable validity given that a licensed station remains on Channel 280 more than a decade after another FCC ordered channel change and a subsequent change now based upon that unconsummated channel change would not be in the public interest. It is contrary to the public interest to allow for multiple amendments to applications seeking the forced modification of a license on the motion of the Commission. Finally, KPVO already had one opportunity to effectuate a move of KWSA to a different channel and it refused to abide by its *Circleville* commitments to reimburse KWSA. Therefore, its *Circleville* commitment now made in the current Application cannot be believed and a forced modification of the KWSA license based upon such unfulfilled commitments would be contrary to the public interest.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Order to Show Cause)	
)	
AJB HOLDINGS, LLC)	FCC File No. BPH-20150902ADY
KWSA(FM), PRICE, UT)	FCC File No. BLH-20150902ADW
Licensed on Channel 261A, Application for)	FCC Facility ID No. 15528
Channel 261C3 Pending)	
)	
VALLEYDALE BROADCASTING, LLC)	FCC File No. BPH-20150821ABK
KPVO(FM), FOUNTAIN GREEN, UT)	FCC File No. BLH-20150820CNF
Licensed on Channel 260A, Application for)	FCC Facility ID No. 190393
Channel 260C1 Pending)	
)	
 To: Office of the Secretary		
Attn: The Chief, Audio Division, Media Bureau		

RESPONSE TO ORDER TO SHOW CAUSE

AJB Holdings, LLC, the licensee of KWSA(FM), Price, Utah ("KWSA"), by its attorneys, pursuant to Section 316(a) of the Communications Act of 1934, as amended, and Section 1.87 of the FCC rules, hereby responds to the September 30, 2015 letter from the Federal Communications Commission (the "Order to Show Cause") to KWSA to show cause why its license should not be modified for a second time pursuant to a request by Valleydale Broadcasting, LLC, the licensee of KPVO(FM), Fountain Green, UT ("KPVO") in response to the application of KPVO to once again request an upgrade to Channel 260C1 in FCC File No. BPH-20150821ABK (the "KPVO Application"), after previously being granted such an upgrade and then a subsequent downgrade to Channel 260A. As shown below, in addition to the KPVO Application being defective and unacceptable for filing, there are no public interest benefits to

the requested modification. Therefore, the KWSA license should not be modified in accord with the KPVO proposal.

AS SHOWN IN THE INFORMAL OBJECTION, THE UNDERLYING KPVO APPLICATION IS UNACCEPTABLE FOR FILING AND THEREFORE THIS FORCED CHANNEL CHANGE IS CONTRARY TO THE PUBLIC INTEREST

1. This same day KWSA is filing an informal objection (the “Informal Objection”) to the acceptance for filing of the KPVO application. In that Informal Objection, it is shown that the KPVO application is unacceptable for filing under a condition attached to the recently granted KPVO license (FCC File No. BLH- 20150820CNF).

2. Further, the KPVO Application is fatally inconsistent making it unacceptable for filing, unable to be cured and it must be dismissed for its violation of Section 73.3518 of the Commission’s rules. Finally, KWSA filed an application for Class C3 facilities prior to the FCC’s September 30, 2015 Order to Show Cause which negates the possibility of an involuntary move of KWSA to Channel 280. For each of these reasons, the KPVO application must be dismissed. Therefore requested move of KWSA to Channel 280 is without public interest benefits.

SECTION 73.3573(a)(iii) OF THE COMMISSION’S RULES DOES NOT AUTHORIZE THE CHANNEL MODIFICATION

3. The Federal Communications Commission is bound to follow its rules as written, despite what previous staff or Commission practice may be. For the lack of a comma, Section 73.3573(a)(iii) of the Commission’s rules, as published at 47 C.F.R. Section 73.3573(a)(iii), does not authorize the requested channel substitution for KWSA as a minor change. Section 73.3573(a)(iii) states in defining major and minor change applications (taken directly from the printed Code of Federal Regulations):

nel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

(i) A change in community of license which complies with the requirements of paragraph (g) of this section;

(ii) A change to a higher or lower class co-channel, first-, second-, or third-adjacent channel, or intermediate frequency;

(iii) A change to a same-class first-, second-, or third-adjacent channel, or intermediate frequency;

(iv) A channel substitution, subject to the provisions of Section 316 of the Communications Act for involuntary channel substitutions.

The text of the rule, as printed in the official Code of Federal Regulations, only allows for a minor change for “[a] change to a same class first-, second-, or third-adjacent channel, or intermediate frequency.” The requested KWSA change from Channel 261A to Channel 280A is none of those. Had a comma been inserted between the words “same-class” and “first”, then the rule would cover the change. There is no comma and the rule has been in place for years now without correction. The FCC is bound to follow the rule as written.

THE KPVO APPLICATION FAILS TO STATE ANY PUBLIC INTEREST REASONS WHY PURSUANT TO SECTION 316 OF THE COMMUNICATIONS ACT THE KWSA LICENSE SHOULD BE MODIFIED

4. Section 316 of the Communications Act of 1934, as amended, states that a license may be modified if “such action will promote the public interest, convenience and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with”. The Order to Show Cause, citing Section 1.87 which is based upon Section

316, stated in a rote fashion without citing any factual support that “[w]e find that the [KPVO] application has sufficient public interest benefits to justify the issuance of a show cause order”. In fact, there are no public interest benefits stated in the KPVO Application whatsoever.

5. The KPVO Application, in addition to the standard certifications which are irrelevant to any forced channel change of another station, consists of eight different exhibits, some with accompanying attachments, and none mentioning much less stating any public interest benefits accruing from the KPVO Application. Here are the eight exhibits:

Exhibit 1:

Exhibit 1

Description: PURPOSE OF THE AMENDMENT

THE PURPOSE OF THE INSTANT AMENDMENT IS TO OFFER A NEW CHANNEL FOR USE BY KWSA. CHANNEL 280A IS AVAILABLE FOR USE BY KWSA AS A RESULT OF THE REPORT AND ORDER ADOPTED JUNE 8, 2004 (MB DOCKET 02-292). CHANNEL 280C AT NEPHI, UTAH WAS DELETED IN THAT PROCEEDING, THUS MAKING CHANNEL 280A AVAILABLE FOR USE BY KWSA AT PRICE, UTAH AT ITS CURRENT LICENSED SITE. A CHANNEL STUDY IS PROVIDED IN THE ENGINEERING EXHIBITS.

CHANNEL 280A AT PRICE WILL ALLEVIATE ANY POSSIBLE CONFLICT WITH CHANNEL 224A AT PRICE AND CHANNEL 225C2 AT MONA, UTAH (KPUT).

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 1 to the Application.

Exhibit 5:

Exhibit 5

Description: MULTIPLE OWNERSHIP STATEMENT

NEITHER THE APPLICANT NOR ANY OF ITS PRINCIPALS OWN A STATION OR PERMIT WHICH OVERLAP THE FACILITIES PROPOSED IN THIS APPLICATION.

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 5 to the Application.

Exhibit 27:

Exhibit 27

Description: ENGINEERING EXHIBITS

THE INSTANT APPLICATION USES USGS 3-ARC SECOND TERRAIN DATA INSTEAD OF 30-SECOND TERRAIN.

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 27 to the Application. There is an Attachment 27 titled "Engineering Exhibits" which consists solely of maps and engineering studies bereft of any public interest justifications.

Exhibits 28, 29, 30 & 34:

Exhibit 28

Description: COMMUNITY OF LICENSE COVERAGE

SEE THE ATTACHED MAP IN EXHIBIT 27.

Attachment 28

Exhibit 29

Description: MAIN STUDIO LOCATION

THE MAIN STUDIO LOCATION COMPLIES WITH 47 C.F.R. SECTION 73.1125.

Attachment 29

Exhibit 30

Description: SEPARATION REQUIREMENTS

VALLEYDALE PROPOSES TO CHANGE KWSA'S CHANNEL TO 280A INSTEAD OF THE PREVIOUS PROPOSAL TO CHANGE THE CHANNEL TO 224A. A CHANNEL STUDY SHOWING THAT 280A COMPLIES WITH SECTION 73.207 IS ATTACHED. VALLEYDALE ASKS THE MEDIA BUREAU TO ISSUE AN ORDER TO SHOW CAUSE TO STATION KWSA FOR THIS PURPOSE. VALLEYDALE STATES IT WILL REIMBURSE STATION KWSA FOR ITS REASONABLE COSTS FOR THE CHANNEL CHANGE IN ACCORDANCE WITH THE POLICIES SET FORTH IN CIRCLEVILLE, OHIO, 8 FCC 2D 159 (1967). A COPY OF THIS AMENDMENT IS BEING SERVED ON THE LICENSEE OF STATION KWSA AND ITS COUNSEL.

Exhibit 34

Description: CONTOUR PROTECTION VIA SECTION 73.215

THE PROPOSED FACILITY WILL PROTECT KEKB, CHANNEL 260C0 AT FRUITA, COLORADO, VIA 73.215. SEE THE ATTACHED MAP IN SECTION 27.

There is no public interest justification to the forced KWSA channel substitution stated in any of these Exhibits 28, 29, 30 and 34 to the Application. Rather, these exhibits simply show adherence to the requirements of the FCC's application rules. There is an Attachment 30 which

inexplicably contains a copy of the FCC's letter dated August 24, 2012 to the KWSA licensee in which KWSA was previously ordered to Channel 224A at the behest of KWSA but as shown below, KPVO never abided by its stated *Circleville, Ohio* reimbursement commitment.

Exhibit 35:

Exhibit 35

Description: ENVIRONMENTAL PROTECTION ACT

HUMAN EXPOSURE TO RADIOFREQUENCY RADIATION

ACCORDING TO THE HUMAN EXPOSURE STUDY INCLUDED IN THE KBJF APPLICATION (BMPED-20110808ABC), THE WORST-CASE COMBINATION OF THE KBJF AND THE KUDE ANTENNA PRODUCES AN OCCUPATIONAL (CONTROLLED) FIELD THAT IS 5.3% OF THE AMOUNT ALLOWED BY THE FCC. THE COMBINATION OF THE TWO STATIONS PRODUCE A FIELD THAT IS 26.8% OF THE AMOUNT ALLOWABLE FOR GENERAL (UNCONTROLLED) ACCESS TO THE SITE.

RF WORKSHEET #1A IS USED TO CALCULATE THE CONTRIBUTION BY THE PROPOSED FACILITY TO THE RADIOFREQUENCY RADIATION LEVELS AT GROUND LEVEL. THE WORST-CASE FIELD (ACCORDING TO THE WORKSHEET) IS 11.6% OF THE CONTROLLED LIMIT OR 58.0% OF THE UNCONTROLLED ACCESS VALUE ALLOWED BY THE FCC.

IF THE WORST-CASE VALUE FOR THE PROPOSED FACILITY IS ADDED TO THE SUM OF THE WORST-CASE VALUES FOR KBJF(FM) AND KUDE(FM), THEN THE VALUE OF THE COMBINATION OF ALL THREE STATIONS IS 16.9% OF THE CONTROLLED LIMIT AND 84.8% OF THE UNCONTROLLED LIMIT. THESE VALUES ARE WITHIN FCC LIMITS FOR HUMAN EXPOSURE TO RADIOFREQUENCY RADIATION.

SEE THE ATTACHED EXHIBIT.

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 35 to the Application. Rather, the exhibit simply shows compliance with the FCC's RFR requirements which is part of the essential showing for any facility modification application.

6. In the absence of any public interest showing, there is no occasion for any involuntary modification of the KWSA facility to be proposed. Therefore, the FCC Letter was in error in finding that the KPVO application had sufficient public interest benefits as none whatsoever were shown. Further, in the absence of any public interest justifications for the KPVO Application, the application is unacceptable for filing as it conflicts with both the licensed KWSA facilities on Channel 261A and the applied-for KWSA facilities on Channel 261C3.

SECTION 1.87(b) OF THE COMMISSION'S RULES CONTEMPLATES MODIFICATIONS BY PROCEDURES USED FOR NOTICES OF PROPOSED RULE MAKING

7. Section 1.87(b) of the Commission's rules is explicit in that, under the order to show cause procedures set forth in Section 1.87(a) of the Commission's rules based upon Section 316 of the Communications Act, it is to be initiated by "a notice of proposed rule making".

While the Commission as a procedural matter may have expanded the reach of this rule section to cover the filing of applications, that does not change the required Section 1.87(b) rule making aspect of a request to the Commission to involuntarily change the channel of an unrelated station.

8. Here, in response to the KPVO Application, KWSA filed with the FCC an application for its licensed facility on Channel 261C3. That application is conflicting with and is in effect a counter-proposal to the KPVO application. KWSA as a Class C3 facility cannot be moved to Channel 280. Therefore, at best, the KPVO Application is a proposal that must be compared with previous failure of KPVO to abide by its reimbursement commitment to KWSA (see below) with the public interest benefits of KWSA serving a greater population from an upgrade from Channel 261A to Channel 261C3.

9. At the time the FCC issued its Order to Show Cause, KWSA had applied for a Class C3 facility on Channel 261C3 (see FCC File No. BPH-20150902ADY). That Class C3 facility application is grantable upon the dismissal as unacceptable for filing of the KPVO Application. Given that, as shown in the Informal Objection, the KPVO Application is otherwise unacceptable for filing, it should be dismissed, the KWSA upgrade application granted, and the public interest served.

CHANNEL 280 IS AN UNUSABLE CHANNEL FROM A PUBLIC INTEREST STANDPOINT

10. Even if there is a consideration of the benefits of moving KWSA to Channel 280A in lieu of its pending upgrade to Channel 261C3, Channel 280A is currently occupied by the licensed operations of KUDE(FM) (formerly KMDG), Nephi, Utah. KUDE was ordered some eleven years ago in MB Docket No. 02-290 (*Dinosaur and Rangely, Colorado*, Report and Order, DA-04-1650, released June 10, 2004) to move to Channel 256C. An initial construction permit for Channel 256C (FCC File No. BPH-20040623ABX) was cancelled in 2008. A subsequent construction permit for Channel 256C (FCC File No. BPH-20101220ABB) remains unbuilt and tolled for a failure of a condition precedent.

11. Simply put, some eleven years later, there does not appear to be any timely prospect for KUDE to move to Channel 256C. Therefore, the public interest consideration becomes whether it is more in the public interest to initiate immediate upgraded service from KWSA on Channel 261C3, or is it more in the public interest to wait perhaps years or decades more for KWSA to eventually be able to move to Channel 280A upon a vacation of Channel 280C by KUDE. The answer is apparent. It is more in the public interest for there to be a Channel 261C3 upgrade by KWSA.

IT IS CONTRARY TO THE PUBLIC INTEREST TO ALLOW FOR MULTIPLE AMENDMENTS TO APPLICATIONS SEEKING FORCED CHANNEL CHANGES

12. Section 1.87 of the Commission's rules is permissive. It provides for a modification of a license on motion of the Commission and only then if the public interest is served under Section 316 of the Communications Act of 1934, as amended. A licensee coming before the Commission seeking the Commission's order on its own motion of an involuntary change of another station's license should file *ab initio* an acceptable application.

13. KPVO did not file an acceptable Application. Its Application filed on August 21, 2015 was based upon the previous modification of the KWSA license to Channel 224. Some days later, KPVO apparently realized its error in that KWSA was licensed on Channel 261A and amended its Application to again request an involuntary move of KWSA to Channel 224A. Once again, the KPVO Application was unacceptable because a fully-spaced site for KWSA on Channel 224A was not specified. Finally, in a third filing, KPVO once again amended its Application to seek the Commission's good graces in ordering on its own motion KWSA to Channel 280A.

14. The FCC should not countenance and encourage such multiple defective filings. Here, the FCC has an opportunity to do something about such filings. Any Section 1.87 modification is undertaken upon the motion of the Commission and only for sufficient public interest reasons.

15. The multiple amendments filed here in which KPVO lurched to and fro, and wasted Commission resources, should not be rewarded with an improvement to the KPVO facility on the Commission's own motion. Rather, the requested forced modification of the KWSA license should be denied as contrary to the public interest due to the multiple KPVO filings, and the Commission should require and expect any licensee coming before it to submit a correct and technically-acceptable application as filed, not as later amended through multiple additional submissions.

KPVO HAS HAD ONE BITE AT THE APPLE OF INVOLUNTARILY MOVING KWSA – IT IS CONTRARY TO THE PUBLIC INTEREST FOR KPVO TO HAVE TWO BITES

16. Finally, there are significant public interest reasons why the Commission should not entertain another KPVO request to move KWSA. On August 24, 2012, the FCC in a letter to

KWSA ordered KWSA to file an FCC Form 301 application to modify the KWSA facilities to Channel 224A.

17. KWSA abided by that order and filed FCC File No. BPH- 20120924AIU to modify the KWSA facilities to Channel 224A, and requested that KPVO pay the required FCC Filing Fee for that application pursuant to *Circleville, Ohio*, 8 FCC 2d 159 (1967). KPVO refused to pay that FCC Filing Fee and the KWSA application was never accepted for filing.

18. KWSA made repeated requests of KPVO pursuant to *Circleville* for a reimbursement of its expenses. On September 18, 2012, KWSA wrote to KPVO giving an itemized listing of its expenses and requested payment of the FCC Filing Fee and its expenses (See Attachment A – Letter dated September 18, 2012 to Mark N. Lipp, Esq., counsel of record for KPVO). Mr. Lipp on behalf of KPVO responded on September 26, 2012 that it would not pay anything until KWSA “provide[d] proof of payment of the filing fee” (See Attachment B – Letter dated September 26, 2012 to John F. Garziglia, Esq.). On October 1, 2012, KWSA responded that it was “unaware of any FCC rule or case law precedent that requires AJB Holdings, LLC to expend funds without payment which in effect advances funds to your client without any substantive assurance of reimbursement” (See Attachment C – Letter dated October 1, 2012 to Mark N. Lipp, Esq.). KWSA noted that the “FCC Form 301 application is filed and is awaiting the payment of the FCC filing fee” and stated an amount of funds KWSA had already expended to date, requesting reimbursement. On October 3, 2012, Mr. Lipp responded that it would not pay anything until “proof of payment of the filing fee” was submitted, along with proffering arguments and objections to many of the expenses already incurred by KWSA (See Attachment D – Letter dated October 3, 2012 to John F. Garziglia, Esq.).

19. It was apparent to KWSA that it would never, absent possibly having to pursue KPVO in a private legal action with attendant expenses, be reimbursed for its legitimate and prudent expenses for its involuntary move. KWSA, seeing that KPVO was unwilling to abide by its *Circleville, Ohio* obligations, did not further respond.

20. Thus, KPVO does not file its Application at issue here with clean hands. Rather, KPVO files it having already once sought the involuntary KWSA channel change and having failed to fulfill its obligations to KWSA for reimbursement of its expenses under *Circleville*. KWSA should not be forced twice by the FCC to expend even more resources and out-of-pocket expense in evaluating a channel move, responding to KPVO applications which, as demonstrated above, are unacceptable for filing, and playing reimbursement tag with an FCC applicant that is unwilling to abide by its *Circleville* obligations. KWSA clearly stated in its September 18, 2012 letter to KPVO its expenses to that date and its estimate expenses for the involuntary facility change. KPVO's ambivalent and argumentative response in which no money was delivered speaks volumes. It is evident that KPVO never had an intention to reimburse KWSA for its expenses, and does not have such an intention going forward.

CONCLUSION

21. As shown in the Informal Objection, the KPVO Application seeking an upgrade to Channel 260C1 from Channel 260A is unacceptable for filing, and cannot be filed, for one year from the date of the grant of FCC File No. BLH-20150820CNF given Condition #2 contained within that license. Further, the KPVO Application is an inconsistent and conflicting application in violation of Section 73.3518 of the Commission's rules. In addition, KWSA has filed an application for Class C3 facilities prior to the FCC's September 30, 2015 Order to Show

Cause which negates the possibility of moving KWSA to Channel 280 and makes that move contrary to the public interest.


22. Further, the KPVO application fails to state any public interest reasons why the FCC should on its own motion under Section 1.87 order a change in the KWSA channel. Any change of channel to Channel 280 is of questionable validity given that a licensed station remains on Channel 280 more than a decade after another FCC ordered channel change and a subsequent change now based upon that unconsummated channel change would not be in the public interest. It is contrary to the public interest to allow for multiple amendments to applications seeking the forced modification of a license on the motion of the Commission. Finally, KPVO already had one opportunity to effectuate a move of KWSA to a different channel and it refused to abide by its *Circleville* commitments to reimburse KWSA. Therefore, its *Circleville* commitment now made in the current Application cannot be believed and a forced modification of the KWSA license based upon such unfulfilled commitments would be contrary to the public interest.

WHEREFORE, for the reasons above, there are insufficient public interest reasons for the forced modification of the KWSA license and the KPVO Application should be denied.

Respectfully submitted,

AJB HOLDINGS, LLC

By: _____


John R. Garziglia
Its Attorneys

Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036
(202) 857-4455

October 30, 2015

ATTACHMENT A

**Letter dated September 18, 2012 to Mark N. Lipp, Esq.,
Counsel of Record for KPVO**

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP



1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

Telephone: (202) 467-6900
Fax: (202) 467-6910
www.wcsr.com

John F. Garziglia
Direct Dial: (202) 857-4455
Direct Fax: (202) 261-0055
E-mail: jgarziglia@wcsr.com

September 18, 2012

Via Email & USPS Mail - mlipp@wileyrein.com

Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Re: FCC Involuntary Channel Change of KWSA(FM), Price, Utah

Dear Mr. Lipp:

I am writing to you on behalf of AJB Holdings, LLC, the licensee of KWSA(FM), Price Utah.

This letter is with respect to the FCC ordered channel change of KWSA(FM) from Channel 261A to Channel 224A. You are counsel of record for Valleydale Broadcasting, LLC, the permittee of the new applicant for Fountain Green Utah for whose benefit this channel change is ordered. Valleydale Broadcasting, LLC has an obligation to reimburse AJB Holdings, LLC for its reasonable costs incurred in connection with the KWSA(FM) involuntary change in channels.

AJB Holdings, LLC will be ready to file its FCC Form 301 specifying FM Channel 224A by September 24, 2012 as ordered in the August 24, 2012 letter from Edna V. Prado, Supervisory Engineer, Audio Division, Media Bureau, Federal Communications Commission (the "FCC Letter"), conditioned upon its receipt of a full reimbursement of its reasonable expenses.

The reasonable expenses of AJB Holdings, LLC incurred to date and expected to be incurred, in compliance with the guidelines set forth in *Circleville, Ohio*, 8 FCC 2d 159 (1967) are as follows:

LEGAL	\$23,761.06
ENGINEERING	7,236.00
ADVERTISING: SIGNS, BANNERS, VEHICLE WRAP ETC	5,160.00
PRODUCTION COSTS	2,155.00
PRINTABLE MATERIAL	500.00
PROMOTIONAL MATERIAL: BAGS, SHIRTS ETC	4,000.00

EQUIPMENT TO CHANGE OVER	23,630.00
INSTALLATION OF EQUIPMENT	1,800.00
ADMINISTRATION HOURS	3,000.00
FCC FILING FEES	\$1,170.00
 TOTAL	 \$72,412.06

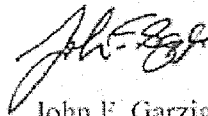
Please deliver to undersigned counsel a certified check in the amount of \$72,412.06 made payable to AJB Holdings, LLC by September 24, 2012. AJB Holdings, LLC will then proceed with the filing of its FCC Form 301 application and payment of the FCC Filing Fee for that application.

Should a certified check for the full amount of reimbursement not be delivered by September 24, 2012, AJB Holdings, LLC will proceed with the filing of its FCC Form 301 application as ordered in the FCC Letter, but delay a payment of the FCC Filing Fee until receipt of the certified check in the full amount of the reimbursement from Valleydale Broadcasting, LLC.

If a check in the full amount of the reimbursement is not received by the time that the FCC Form 301 Filing Fee is due, AJB Holdings, LLC will consider that Valleydale Broadcasting, LLC does not wish to carry through with its reimbursement commitment and will so notify the FCC that its Form 301 application was filed in compliance with the FCC Letter but that Valleydale Broadcasting, LLC failed to fulfill its reimbursement commitment.

If, by chance, Valleydale Broadcasting, LLC is not prepared to move forward with its reimbursement commitment, we ask that Valleydale Broadcasting, LLC so notify the FCC of the withdrawal of its reimbursement commitment and requested channel change for KWSA(FM) so that AJB Holdings, LLC is not required to needlessly file its Form 301 application.

Sincerely,



John F. Garziglia

ATTACHMENT B

Letter dated September 26, 2012 to John F. Garziglia, Esq.

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SUMMARY

As shown in a currently filed Informal Objection, the KPVO Application seeking an upgrade to Channel 260C1 from Channel 260A is unacceptable for filing, and cannot be filed, for one year from the date of the grant of FCC File No. BLH-20150820CNF given Condition #2 contained within that license. Further, the KPVO Application is an inconsistent and conflicting application in violation of Section 73.3518 of the Commission's rules. In addition, KWSA has filed an application for Class C3 facilities prior to the FCC's September 30, 2015 Order to Show Cause which negates the possibility of moving KWSA to Channel 280 and makes that move contrary to the public interest.

Further, the KPVO application fails to state any public interest reasons why the FCC should on its own motion under Section 1.87 order a change in the KWSA channel. The forced KWSA channel change should be, pursuant to Section 1.87(b) of the Commission's rules, evaluated using the same procedures used for notices of proposed rule making. Any change of channel to Channel 280 is of questionable validity given that a licensed station remains on Channel 280 more than a decade after another FCC ordered channel change and a subsequent change now based upon that unconsummated channel change would not be in the public interest. It is contrary to the public interest to allow for multiple amendments to applications seeking the forced modification of a license on the motion of the Commission. Finally, KPVO already had one opportunity to effectuate a move of KWSA to a different channel and it refused to abide by its *Circleville* commitments to reimburse KWSA. Therefore, its *Circleville* commitment now made in the current Application cannot be believed and a forced modification of the KWSA license based upon such unfulfilled commitments would be contrary to the public interest.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Order to Show Cause)	
)	
AJB HOLDINGS, LLC)	FCC File No. BPH-20150902ADY
KWSA(FM), PRICE, UT)	FCC File No. BLH-20150902ADW
Licensed on Channel 261A, Application for)	FCC Facility ID No. 15528
Channel 261C3 Pending)	
)	
VALLEYDALE BROADCASTING, LLC)	FCC File No. BPH-20150821ABK
KPVO(FM), FOUNTAIN GREEN, UT)	FCC File No. BLH-20150820CNF
Licensed on Channel 260A, Application for)	FCC Facility ID No. 190393
Channel 260C1 Pending)	
)	
To: Office of the Secretary		
Attn: The Chief, Audio Division, Media Bureau		

RESPONSE TO ORDER TO SHOW CAUSE

AJB Holdings, LLC, the licensee of KWSA(FM), Price, Utah (“KWSA”), by its attorneys, pursuant to Section 316(a) of the Communications Act of 1934, as amended, and Section 1.87 of the FCC rules, hereby responds to the September 30, 2015 letter from the Federal Communications Commission (the “Order to Show Cause”) to KWSA to show cause why its license should not be modified for a second time pursuant to a request by Valleydale Broadcasting, LLC, the licensee of KPVO(FM), Fountain Green, UT (“KPVO”) in response to the application of KPVO to once again request an upgrade to Channel 260C1 in FCC File No. BPH-20150821ABK (the “KPVO Application”), after previously being granted such an upgrade and then a subsequent downgrade to Channel 260A. As shown below, in addition to the KPVO Application being defective and unacceptable for filing, there are no public interest benefits to

the requested modification. Therefore, the KWSA license should not be modified in accord with the KPVO proposal.

AS SHOWN IN THE INFORMAL OBJECTION, THE UNDERLYING KPVO APPLICATION IS UNACCEPTABLE FOR FILING AND THEREFORE THIS FORCED CHANNEL CHANGE IS CONTRARY TO THE PUBLIC INTEREST

1. This same day KWSA is filing an informal objection (the “Informal Objection”) to the acceptance for filing of the KPVO application. In that Informal Objection, it is shown that the KPVO application is unacceptable for filing under a condition attached to the recently granted KPVO license (FCC File No. BLH- 20150820CNF).

2. Further, the KPVO Application is fatally inconsistent making it unacceptable for filing, unable to be cured and it must be dismissed for its violation of Section 73.3518 of the Commission’s rules. Finally, KWSA filed an application for Class C3 facilities prior to the FCC’s September 30, 2015 Order to Show Cause which negates the possibility of an involuntary move of KWSA to Channel 280. For each of these reasons, the KPVO application must be dismissed. Therefore requested move of KWSA to Channel 280 is without public interest benefits.

SECTION 73.3573(a)(iii) OF THE COMMISSION’S RULES DOES NOT AUTHORIZE THE CHANNEL MODIFICATION

3. The Federal Communications Commission is bound to follow its rules as written, despite what previous staff or Commission practice may be. For the lack of a comma, Section 73.3573(a)(iii) of the Commission’s rules, as published at 47 C.F.R. Section 73.3573(a)(iii), does not authorize the requested channel substitution for KWSA as a minor change. Section 73.3573(a)(iii) states in defining major and minor change applications (taken directly from the printed Code of Federal Regulations):

nel. A major facility change for a commercial or a noncommercial educational full service FM station, a winning auction bidder, or a tentative selectee authorized or determined under this part is any change in frequency or community of license which is not in accord with its current assignment, except for the following:

(i) A change in community of license which complies with the requirements of paragraph (g) of this section;

(ii) A change to a higher or lower class co-channel, first-, second-, or third-adjacent channel, or intermediate frequency;

(iii) A change to a same-class first-, second-, or third-adjacent channel, or intermediate frequency;

(iv) A channel substitution, subject to the provisions of Section 316 of the Communications Act for involuntary channel substitutions.

The text of the rule, as printed in the official Code of Federal Regulations, only allows for a minor change for “[a] change to a same class first-, second-, or third-adjacent channel, or intermediate frequency.” The requested KWSA change from Channel 261A to Channel 280A is none of those. Had a comma been inserted between the words “same-class” and “first”, then the rule would cover the change. There is no comma and the rule has been in place for years now without correction. The FCC is bound to follow the rule as written.

THE KPVO APPLICATION FAILS TO STATE ANY PUBLIC INTEREST REASONS WHY PURSUANT TO SECTION 316 OF THE COMMUNICATIONS ACT THE KWSA LICENSE SHOULD BE MODIFIED

4. Section 316 of the Communications Act of 1934, as amended, states that a license may be modified if “such action will promote the public interest, convenience and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with”. The Order to Show Cause, citing Section 1.87 which is based upon Section

316, stated in a rote fashion without citing any factual support that “[w]e find that the [KPVO] application has sufficient public interest benefits to justify the issuance of a show cause order”. In fact, there are no public interest benefits stated in the KPVO Application whatsoever.

5. The KPVO Application, in addition to the standard certifications which are irrelevant to any forced channel change of another station, consists of eight different exhibits, some with accompanying attachments, and none mentioning much less stating any public interest benefits accruing from the KPVO Application. Here are the eight exhibits:

Exhibit 1:

Exhibit 1

Description: PURPOSE OF THE AMENDMENT

THE PURPOSE OF THE INSTANT AMENDMENT IS TO OFFER A NEW CHANNEL FOR USE BY KWSA. CHANNEL 280A IS AVAILABLE FOR USE BY KWSA AS A RESULT OF THE REPORT AND ORDER ADOPTED JUNE 8, 2004 (MB DOCKET 02-292). CHANNEL 280C AT NEPHI, UTAH WAS DELETED IN THAT PROCEEDING, THUS MAKING CHANNEL 280A AVAILABLE FOR USE BY KWSA AT PRICE, UTAH AT ITS CURRENT LICENSED SITE. A CHANNEL STUDY IS PROVIDED IN THE ENGINEERING EXHIBITS.

CHANNEL 280A AT PRICE WILL ALLEVIATE ANY POSSIBLE CONFLICT WITH CHANNEL 224A AT PRICE AND CHANNEL 225C2 AT MONA, UTAH (KPUT).

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 1 to the Application.

Exhibit 5:

Exhibit 5

Description: MULTIPLE OWNERSHIP STATEMENT

NEITHER THE APPLICANT NOR ANY OF ITS PRINCIPALS OWN A STATION OR PERMIT WHICH OVERLAP THE FACILITIES PROPOSED IN THIS APPLICATION.

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 5 to the Application.

Exhibit 27:

Exhibit 27

Description: ENGINEERING EXHIBITS

THE INSTANT APPLICATION USES USGS 3-ARC SECOND TERRAIN DATA INSTEAD OF 30-SECOND TERRAIN.

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 27 to the Application. There is an Attachment 27 titled "Engineering Exhibits" which consists solely of maps and engineering studies bereft of any public interest justifications.

Exhibits 28, 29, 30 & 34:

Exhibit 28

Description: COMMUNITY OF LICENSE COVERAGE

SEE THE ATTACHED MAP IN EXHIBIT 27.

Attachment 28

Exhibit 29

Description: MAIN STUDIO LOCATION

THE MAIN STUDIO LOCATION COMPLIES WITH 47 C.F.R. SECTION 73.1125.

Attachment 29

Exhibit 30

Description: SEPARATION REQUIREMENTS

VALLEYDALE PROPOSES TO CHANGE KWSA'S CHANNEL TO 280A INSTEAD OF THE PREVIOUS PROPOSAL TO CHANGE THE CHANNEL TO 224A. A CHANNEL STUDY SHOWING THAT 280A COMPLIES WITH SECTION 73.207 IS ATTACHED. VALLEYDALE ASKS THE MEDIA BUREAU TO ISSUE AN ORDER TO SHOW CAUSE TO STATION KWSA FOR THIS PURPOSE. VALLEYDALE STATES IT WILL REIMBURSE STATION KWSA FOR ITS REASONABLE COSTS FOR THE CHANNEL CHANGE IN ACCORDANCE WITH THE POLICIES SET FORTH IN CIRCLEVILLE, OHIO, 8 FCC 2D 159 (1967). A COPY OF THIS AMENDMENT IS BEING SERVED ON THE LICENSEE OF STATION KWSA AND ITS COUNSEL.

Exhibit 34

Description: CONTOUR PROTECTION VIA SECTION 73.215

THE PROPOSED FACILITY WILL PROTECT KEKB, CHANNEL 260C0 AT FRUITA, COLORADO, VIA 73.215. SEE THE ATTACHED MAP IN SECTION 27.

There is no public interest justification to the forced KWSA channel substitution stated in any of these Exhibits 28, 29, 30 and 34 to the Application. Rather, these exhibits simply show adherence to the requirements of the FCC's application rules. There is an Attachment 30 which

inexplicably contains a copy of the FCC's letter dated August 24, 2012 to the KWSA licensee in which KWSA was previously ordered to Channel 224A at the behest of KWSA but as shown below, KPVO never abided by its stated *Circleville, Ohio* reimbursement commitment.

Exhibit 35:

Exhibit 35

Description: ENVIRONMENTAL PROTECTION ACT

HUMAN EXPOSURE TO RADIOFREQUENCY RADIATION

ACCORDING TO THE HUMAN EXPOSURE STUDY INCLUDED IN THE KBJF APPLICATION (BMPED-20110808ABC), THE WORST-CASE COMBINATION OF THE KBJF AND THE KUDE ANTENNA PRODUCES AN OCCUPATIONAL (CONTROLLED) FIELD THAT IS 5.3% OF THE AMOUNT ALLOWED BY THE FCC. THE COMBINATION OF THE TWO STATIONS PRODUCE A FIELD THAT IS 26.8% OF THE AMOUNT ALLOWABLE FOR GENERAL (UNCONTROLLED) ACCESS TO THE SITE.

RF WORKSHEET #1A IS USED TO CALCULATE THE CONTRIBUTION BY THE PROPOSED FACILITY TO THE RADIOFREQUENCY RADIATION LEVELS AT GROUND LEVEL. THE WORST-CASE FIELD (ACCORDING TO THE WORKSHEET) IS 11.6% OF THE CONTROLLED LIMIT OR 58.0% OF THE UNCONTROLLED ACCESS VALUE ALLOWED BY THE FCC.

IF THE WORST-CASE VALUE FOR THE PROPOSED FACILITY IS ADDED TO THE SUM OF THE WORST-CASE VALUES FOR KBJF(FM) AND KUDE(FM), THEN THE VALUE OF THE COMBINATION OF ALL THREE STATIONS IS 16.9% OF THE CONTROLLED LIMIT AND 84.8% OF THE UNCONTROLLED LIMIT. THESE VALUES ARE WITHIN FCC LIMITS FOR HUMAN EXPOSURE TO RADIOFREQUENCY RADIATION.

SEE THE ATTACHED EXHIBIT.

There is no public interest justification to the forced KWSA channel substitution stated in this Exhibit 35 to the Application. Rather, the exhibit simply shows compliance with the FCC's RFR requirements which is part of the essential showing for any facility modification application.

6. In the absence of any public interest showing, there is no occasion for any involuntary modification of the KWSA facility to be proposed. Therefore, the FCC Letter was in error in finding that the KPVO application had sufficient public interest benefits as none whatsoever were shown. Further, in the absence of any public interest justifications for the KPVO Application, the application is unacceptable for filing as it conflicts with both the licensed KWSA facilities on Channel 261A and the applied-for KWSA facilities on Channel 261C3.

SECTION 1.87(b) OF THE COMMISSION'S RULES CONTEMPLATES MODIFICATIONS BY PROCEDURES USED FOR NOTICES OF PROPOSED RULE MAKING

7. Section 1.87(b) of the Commission's rules is explicit in that, under the order to show cause procedures set forth in Section 1.87(a) of the Commission's rules based upon Section 316 of the Communications Act, it is to be initiated by "a notice of proposed rule making".

While the Commission as a procedural matter may have expanded the reach of this rule section to cover the filing of applications, that does not change the required Section 1.87(b) rule making aspect of a request to the Commission to involuntarily change the channel of an unrelated station.

8. Here, in response to the KPVO Application, KWSA filed with the FCC an application for its licensed facility on Channel 261C3. That application is conflicting with and is in effect a counter-proposal to the KPVO application. KWSA as a Class C3 facility cannot be moved to Channel 280. Therefore, at best, the KPVO Application is a proposal that must be compared with previous failure of KPVO to abide by its reimbursement commitment to KWSA (see below) with the public interest benefits of KWSA serving a greater population from an upgrade from Channel 261A to Channel 261C3.

9. At the time the FCC issued its Order to Show Cause, KWSA had applied for a Class C3 facility on Channel 261C3 (see FCC File No. BPH-20150902ADY). That Class C3 facility application is grantable upon the dismissal as unacceptable for filing of the KPVO Application. Given that, as shown in the Informal Objection, the KPVO Application is otherwise unacceptable for filing, it should be dismissed, the KWSA upgrade application granted, and the public interest served.

CHANNEL 280 IS AN UNUSABLE CHANNEL FROM A PUBLIC INTEREST STANDPOINT

10. Even if there is a consideration of the benefits of moving KWSA to Channel 280A in lieu of its pending upgrade to Channel 261C3, Channel 280A is currently occupied by the licensed operations of KUDE(FM) (formerly KMDG), Nephi, Utah. KUDE was ordered some eleven years ago in MB Docket No. 02-290 (*Dinosaur and Rangely, Colorado*, Report and Order, DA-04-1650, released June 10, 2004) to move to Channel 256C. An initial construction permit for Channel 256C (FCC File No. BPH-20040623ABX) was cancelled in 2008. A subsequent construction permit for Channel 256C (FCC File No. BPH-20101220ABB) remains unbuilt and tolled for a failure of a condition precedent.

11. Simply put, some eleven years later, there does not appear to be any timely prospect for KUDE to move to Channel 256C. Therefore, the public interest consideration becomes whether it is more in the public interest to initiate immediate upgraded service from KWSA on Channel 261C3, or is it more in the public interest to wait perhaps years or decades more for KWSA to eventually be able to move to Channel 280A upon a vacation of Channel 280C by KUDE. The answer is apparent. It is more in the public interest for there to be a Channel 261C3 upgrade by KWSA.

IT IS CONTRARY TO THE PUBLIC INTEREST TO ALLOW FOR MULTIPLE AMENDMENTS TO APPLICATIONS SEEKING FORCED CHANNEL CHANGES

12. Section 1.87 of the Commission's rules is permissive. It provides for a modification of a license on motion of the Commission and only then if the public interest is served under Section 316 of the Communications Act of 1934, as amended. A licensee coming before the Commission seeking the Commission's order on its own motion of an involuntary change of another station's license should file *ab initio* an acceptable application.

13. KPVO did not file an acceptable Application. Its Application filed on August 21, 2015 was based upon the previous modification of the KWSA license to Channel 224. Some days later, KPVO apparently realized its error in that KWSA was licensed on Channel 261A and amended its Application to again request an involuntary move of KWSA to Channel 224A. Once again, the KPVO Application was unacceptable because a fully-spaced site for KWSA on Channel 224A was not specified. Finally, in a third filing, KPVO once again amended its Application to seek the Commission's good graces in ordering on its own motion KWSA to Channel 280A.

14. The FCC should not countenance and encourage such multiple defective filings. Here, the FCC has an opportunity to do something about such filings. Any Section 1.87 modification is undertaken upon the motion of the Commission and only for sufficient public interest reasons.

15. The multiple amendments filed here in which KPVO lurched to and fro, and wasted Commission resources, should not be rewarded with an improvement to the KPVO facility on the Commission's own motion. Rather, the requested forced modification of the KWSA license should be denied as contrary to the public interest due to the multiple KPVO filings, and the Commission should require and expect any licensee coming before it to submit a correct and technically-acceptable application as filed, not as later amended through multiple additional submissions.

KPVO HAS HAD ONE BITE AT THE APPLE OF INVOLUNTARILY MOVING KWSA – IT IS CONTRARY TO THE PUBLIC INTEREST FOR KPVO TO HAVE TWO BITES

16. Finally, there are significant public interest reasons why the Commission should not entertain another KPVO request to move KWSA. On August 24, 2012, the FCC in a letter to

KWSA ordered KWSA to file an FCC Form 301 application to modify the KWSA facilities to Channel 224A.

17. KWSA abided by that order and filed FCC File No. BPH- 20120924AIU to modify the KWSA facilities to Channel 224A, and requested that KPVO pay the required FCC Filing Fee for that application pursuant to *Circleville, Ohio*, 8 FCC 2d 159 (1967). KPVO refused to pay that FCC Filing Fee and the KWSA application was never accepted for filing.

18. KWSA made repeated requests of KPVO pursuant to *Circleville* for a reimbursement of its expenses. On September 18, 2012, KWSA wrote to KPVO giving an itemized listing of its expenses and requested payment of the FCC Filing Fee and its expenses (See Attachment A – Letter dated September 18, 2012 to Mark N. Lipp, Esq., counsel of record for KPVO). Mr. Lipp on behalf of KPVO responded on September 26, 2012 that it would not pay anything until KWSA “provide[d] proof of payment of the filing fee” (See Attachment B – Letter dated September 26, 2012 to John F. Garziglia, Esq.). On October 1, 2012, KWSA responded that it was “unaware of any FCC rule or case law precedent that requires AJB Holdings, LLC to expend funds without payment which in effect advances funds to your client without any substantive assurance of reimbursement” (See Attachment C – Letter dated October 1, 2012 to Mark N. Lipp, Esq.). KWSA noted that the “FCC Form 301 application is filed and is awaiting the payment of the FCC filing fee” and stated an amount of funds KWSA had already expended to date, requesting reimbursement. On October 3, 2012, Mr. Lipp responded that it would not pay anything until “proof of payment of the filing fee” was submitted, along with proffering arguments and objections to many of the expenses already incurred by KWSA (See Attachment D – Letter dated October 3, 2012 to John F. Garziglia, Esq.).

19. It was apparent to KWSA that it would never, absent possibly having to pursue KPVO in a private legal action with attendant expenses, be reimbursed for its legitimate and prudent expenses for its involuntary move. KWSA, seeing that KPVO was unwilling to abide by its *Circleville, Ohio* obligations, did not further respond.

20. Thus, KPVO does not file its Application at issue here with clean hands. Rather, KPVO files it having already once sought the involuntary KWSA channel change and having failed to fulfill its obligations to KWSA for reimbursement of its expenses under *Circleville*. KWSA should not be forced twice by the FCC to expend even more resources and out-of-pocket expense in evaluating a channel move, responding to KPVO applications which, as demonstrated above, are unacceptable for filing, and playing reimbursement tag with an FCC applicant that is unwilling to abide by its *Circleville* obligations. KWSA clearly stated in its September 18, 2012 letter to KPVO its expenses to that date and its estimate expenses for the involuntary facility change. KPVO's ambivalent and argumentative response in which no money was delivered speaks volumes. It is evident that KPVO never had an intention to reimburse KWSA for its expenses, and does not have such an intention going forward.

CONCLUSION

21. As shown in the Informal Objection, the KPVO Application seeking an upgrade to Channel 260C1 from Channel 260A is unacceptable for filing, and cannot be filed, for one year from the date of the grant of FCC File No. BLH-20150820CNF given Condition #2 contained within that license. Further, the KPVO Application is an inconsistent and conflicting application in violation of Section 73.3518 of the Commission's rules. In addition, KWSA has filed an application for Class C3 facilities prior to the FCC's September 30, 2015 Order to Show

Cause which negates the possibility of moving KWSA to Channel 280 and makes that move contrary to the public interest.


22. Further, the KPVO application fails to state any public interest reasons why the FCC should on its own motion under Section 1.87 order a change in the KWSA channel. Any change of channel to Channel 280 is of questionable validity given that a licensed station remains on Channel 280 more than a decade after another FCC ordered channel change and a subsequent change now based upon that unconsummated channel change would not be in the public interest. It is contrary to the public interest to allow for multiple amendments to applications seeking the forced modification of a license on the motion of the Commission. Finally, KPVO already had one opportunity to effectuate a move of KWSA to a different channel and it refused to abide by its *Circleville* commitments to reimburse KWSA. Therefore, its *Circleville* commitment now made in the current Application cannot be believed and a forced modification of the KWSA license based upon such unfulfilled commitments would be contrary to the public interest.

WHEREFORE, for the reasons above, there are insufficient public interest reasons for the forced modification of the KWSA license and the KPVO Application should be denied.

Respectfully submitted,

AJB HOLDINGS, LLC

By: _____


John R. Garziglia
Its Attorneys

Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036
(202) 857-4455

October 30, 2015

ATTACHMENT A

**Letter dated September 18, 2012 to Mark N. Lipp, Esq.,
Counsel of Record for KPVO**

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP



1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

Telephone: (202) 467-6900
Fax: (202) 467-6910
www.wcsr.com

John F. Garziglia
Direct Dial: (202) 857-4455
Direct Fax: (202) 261-0055
E-mail: jgarziglia@wcsr.com

September 18, 2012

Via Email & USPS Mail - mlipp@wileyrein.com

Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Re: FCC Involuntary Channel Change of KWSA(FM), Price, Utah

Dear Mr. Lipp:

I am writing to you on behalf of AJB Holdings, LLC, the licensee of KWSA(FM), Price Utah.

This letter is with respect to the FCC ordered channel change of KWSA(FM) from Channel 261A to Channel 224A. You are counsel of record for Valleydale Broadcasting, LLC, the permittee of the new applicant for Fountain Green Utah for whose benefit this channel change is ordered. Valleydale Broadcasting, LLC has an obligation to reimburse AJB Holdings, LLC for its reasonable costs incurred in connection with the KWSA(FM) involuntary change in channels.

AJB Holdings, LLC will be ready to file its FCC Form 301 specifying FM Channel 224A by September 24, 2012 as ordered in the August 24, 2012 letter from Edna V. Prado, Supervisory Engineer, Audio Division, Media Bureau, Federal Communications Commission (the "FCC Letter"), conditioned upon its receipt of a full reimbursement of its reasonable expenses.

The reasonable expenses of AJB Holdings, LLC incurred to date and expected to be incurred, in compliance with the guidelines set forth in *Circleville, Ohio*, 8 FCC 2d 159 (1967) are as follows:

LEGAL	\$23,761.06
ENGINEERING	7,236.00
ADVERTISING: SIGNS, BANNERS, VEHICLE WRAP ETC	5,160.00
PRODUCTION COSTS	2,155.00
PRINTABLE MATERIAL	500.00
PROMOTIONAL MATERIAL: BAGS, SHIRTS ETC	4,000.00

EQUIPMENT TO CHANGE OVER	23,630.00
INSTALLATION OF EQUIPMENT	1,800.00
ADMINISTRATION HOURS	3,000.00
FCC FILING FEES	\$1,170.00
 TOTAL	 \$72,412.06

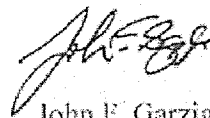
Please deliver to undersigned counsel a certified check in the amount of \$72,412.06 made payable to AJB Holdings, LLC by September 24, 2012. AJB Holdings, LLC will then proceed with the filing of its FCC Form 301 application and payment of the FCC Filing Fee for that application.

Should a certified check for the full amount of reimbursement not be delivered by September 24, 2012, AJB Holdings, LLC will proceed with the filing of its FCC Form 301 application as ordered in the FCC Letter, but delay a payment of the FCC Filing Fee until receipt of the certified check in the full amount of the reimbursement from Valleydale Broadcasting, LLC.

If a check in the full amount of the reimbursement is not received by the time that the FCC Form 301 Filing Fee is due, AJB Holdings, LLC will consider that Valleydale Broadcasting, LLC does not wish to carry through with its reimbursement commitment and will so notify the FCC that its Form 301 application was filed in compliance with the FCC Letter but that Valleydale Broadcasting, LLC failed to fulfill its reimbursement commitment.

If, by chance, Valleydale Broadcasting, LLC is not prepared to move forward with its reimbursement commitment, we ask that Valleydale Broadcasting, LLC so notify the FCC of the withdrawal of its reimbursement commitment and requested channel change for KWSA(FM) so that AJB Holdings, LLC is not required to needlessly file its Form 301 application.

Sincerely,



John F. Garziglia

ATTACHMENT B

Letter dated September 26, 2012 to John F. Garziglia, Esq.



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.505.2800
FAX 703.905.2820

www.wileyrein.com

September 26, 2012

Mark Lipp
202.719.7503
mlipp@wileyrein.com

VIA EMAIL AND REGULAR MAIL

John F. Garziglia, Esq.
Womble Carlyle Sandridge & Rice
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Re: Involuntary Channel Change of KWSA(FM), Price, Utah

Dear John:

On behalf of Valleydale Broadcasting, LLC, I am responding to your letter of September 18, 2012, in which you request reimbursement of expenses incurred to date and expected to be incurred for the channel change ordered for Station KWSA(FM), Price, Utah.

You indicate in the letter that you are ready to file the application and have since stated in a subsequent email that the application has been filed but the filing fee will not be paid until your client has received full reimbursement of its reasonable expenses.

In accordance with Commission policy, Valleydale is prepared to reimburse your client for the application filing fee and for the reasonable legal and engineering expenses in preparing the application. Valleydale expects that you will provide a billing statement for those expenses. However any other expenses will only be paid as they are incurred and with an itemization accounting for those expenses.

As you know, AJB Holdings, LLC has been ordered to file its application to change channels. I am not aware of any cases which state that unless the reimbursing party pays estimated expenses in advance, the party ordered to submit the application is justified in failing to file.

If you will provide proof of payment of the filing fee and billing statements for the preparation of the application, Valleydale will promptly reimburse those expenses.

Sincerely,


Mark Lipp

ATTACHMENT C

Letter dated October 1, 2012 to Mark N. Lipp, Esq.

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP



1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

Telephone: (202) 467-6900
Fax: (202) 467-6910
WWW.WCSE.COM

John F. Garziglia
Direct Dial: (202) 857-4455
Direct Fax: (202) 261-0055
E-mail: jgarziglia@wcsr.com

October 1, 2012

Via Email & USPS Mail - mlipp@wilevrein.com

Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Re: FCC Involuntary Channel Change of KWSA(FM), Price, Utah

Dear Mark:

Thank you for your letter dated September 26, 2012 on behalf of your client Valleydale Broadcasting, LLC.

As you correctly note, AJB Holdings, LLC has been ordered to involuntarily change its channels for KWSA as a result of the actions of Valleydale Broadcasting, LLC. As you further correctly note, AJB Holdings, LLC has filed its FCC Form 301 application as ordered by the FCC. That application is FCC File No. BPH-20120924A1U. The required payment of the FCC filing fee due as a result of the filing of that application is awaiting your client's required payment.

Your client currently has in my September 18, 2012 letter the listing of the reasonable expenses that have been incurred, and will be incurred, in the involuntary KWSA channel change. As this is an involuntary channel change being undertaken solely and only for the benefit of your client, AJB Holdings, LLC will not now be expending any additional funds by taking actions in advance of being paid for its incurred and anticipated expenses. I am not aware of any FCC rule or case law precedent that requires AJB Holdings, LLC to expend funds without payment which in effect advances funds to your client without any substantive assurance of reimbursement.

The FCC Form 301 application is filed and is awaiting the payment of the FCC filing fee. As you are aware, the FCC requires that such filing fee be submitted within a certain time period after the filing of the Form 301 application. Your client already has the statement for the expenses already incurred, and to be incurred, in my September 18, 2012 letter. If Valleydale Broadcasting, LLC is not at this point prepared to move forward with construction of its facility and instituting program test authority, in that case AJB Holdings, LLC will accept a reimbursement of its expenses to date which consists of the following:

LEGAL	\$19,761.06
ENGINEERING	7,236.00
FCC FILING FEES	1,170.00
 TOTAL DUE NOW	 \$28,167.06

The amount in my September 18, 2012 letter included an estimated additional \$4,000 for legal expenses in going forward in prosecuting the FCC Form 301 application, preparation and filing of the FCC Form 302-FM application, and additional legal work that was expected to be incurred as of a reluctance of your client to abide by its reimbursement obligations. To the extent that your client now delivers either the total payment, or delivers the payment above and later when it is prepared to build its facility submits the remainder of the payment due below without further complications, that \$4,000 below for legal expenses may be reduced accordingly and your client will benefit from that reduction. Conversely, your client drawing out the negotiations on what will be paid when will increase that eventual reimbursement amount.

LEGAL	\$4,000.00
ADVERTISING: SIGNS, BANNERS, VEHICLE WRAP ETC	5,160.00
PRODUCTION COSTS	2,155.00
PRINTABLE MATERIAL	500.00
PROMOTIONAL MATERIAL: BAGS, SHIRTS ETC	4,000.00
EQUIPMENT TO CHANGE OVER	23,630.00
INSTALLATION OF EQUIPMENT	1,800.00
ADMINISTRATION HOURS	3,000.00
 TOTAL REMAINING DUE	 \$44,245.00

As the FCC filing fee for FCC File No. BPH-20120924AIU must be paid in the next several days, please advise Valleydale Broadcasting, LLC to deliver at least the amount of \$28,167.06 in a certified check to my office by the deadline date for submitting the FCC filing fee. I will be out of the office from October 6 – 12, 2012 and cannot assure that a payment received by my office during that time period will enable AIB Holdings, LLC to timely submit the FCC filing fee payment. Accordingly, the payment in the form of a certified check of either \$28,167.06 or the total amount of \$72, 412.06 must be received by my office no later than 12:00 noon Eastern Time this Friday, October 5, 2012.

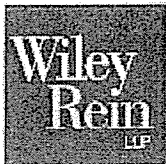
Sincerely,



John F. Garziglia

ATTACHMENT D

Letter dated October 3, 2012 to John F. Garziglia, Esq.



1774 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

October 3, 2012

Mark Lipp
202.719.7503
mlipp@wileyrein.com

VIA EMAIL AND REGULAR MAIL

John F. Garziglia, Esq.
Womble Carlyle Sandridge & Rice
1200 Nineteenth Street, NW, Suite 500
Washington, DC 20036

Re: Involuntary Channel Change of KWSA(FM), Price, Utah

Dear John:

On behalf of Valleydale Broadcasting, LLC, I am responding to your letter of October 1, 2012, in which you now request reimbursement of expenses incurred to date in the amount of \$28,167.06 which includes the filing fee for the KWSA application. You further state that your client will not expend any additional funds until the rest of the anticipated expenses are paid.

In the previous letter, Valleydale stated that it was prepared to reimburse your client for the application filing fee and for the reasonable legal and engineering expenses in preparing the application to date. However, Valleydale expected that you would provide a billing statement or some other type of accounting for those expenses. You did not respond to that request.

The amount of the legal and engineering expenses for preparing the application appear to be excessive and Valleydale can only conclude that these charges relate to the earlier filings by your client in opposition to the grant of Valleydale's original Fountain Green, Utah, application. Valleydale understands that your client's participation in this proceeding is not voluntary but you cannot expect Valleydale to pay for your client's decision to oppose its application. There is certainly no precedent for such a request under the Circleville decision or its progeny. That is a decision made by your client without any realistic expectation that Valleydale would be paying for its legal and engineering fees.

The FCC's Order requiring your client to change channels was issued on August 24, 2012. Any expenses prior to that date are not subject to reimbursement. In fact, only the expenses incurred after that date which are designed to comply with the Order are indeed reimbursable. Valleydale will not pay for your client's legal fees while you continue to write letters demanding payments in advance of compliance with the Commission's Order rather than providing the billing



John F. Garziglia, Esq.
October 3, 2012
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statements or other itemized justification for the amounts requested for reimbursement.

As Valleydale indicated in its previous letter, if you will provide proof of payment of the filing fee and billing statements for the preparation of the application, Valleydale will promptly reimburse those expenses. The FCC will expect that your client file the application and comply with the Order to change channels.

Sincerely,


Mark Lipp

rlp

CERTIFICATE OF SERVICE

I, John F. Garziglia, an attorney at the law firm of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a true copy of the foregoing "Response to Order to Show Cause" was sent this 30th day of October, 2015 via USPS mail, postage prepaid, to the following:

Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006



John F. Garziglia