FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 05-2356
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Sunbelt Television, Inc.
c/o Kenneth E. Satten, Esquire
Wilkinson, Barker, Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Costa de Oro Television, Inc.
c/o K. Eric Adair, Esquire
Knott & Glazier LLP
601 South Figueroa Street
Suite 1950
Los Angeles, CA 90071

Rancho Palos Verdes Broadcasters, Inc.
c/o Barry A. Friedman, Esquire
Thompson Hine LLP
1920 N Street, NW
Suite 800
Washington, DC 20036

TVPlus, LLC
c/o Howard A. Topel
Leventhal Senter & Lerman LLC
2000 K Street
Suite 600
Washington, DC 20006

Re: KXLA (TV), Rancho Palos Verdes, CA
Facility ID No. 55083
BPCT-20010131ABS
BSTATV-20010223ABB

KSGA-LP, San Bernardino, CA
Facility ID No. 5342
BMPTTL-19960516LY
BSTA-20011226ABA
BLTTL-20020806AAB

Gentlemen:

This is with regard to: (1) a Motion to Dismiss an Application for Review filed by Sunbelt Television, Inc. (Sunbelt) of the grant of the above-captioned applications filed by Rancho Palos Verdes Broadcasters, Inc. (RPVB), licensee of KXLA(TV), Rancho Palos Verdes, California, for: a construction permit to modify the licensed facilities of KXLA(TV), and for Special Temporary Authority to operate KXLA; and (2) a Motion to Dismiss Objections filed by Sunbelt of the grant of the above-captioned applications filed by Costa de Oro Television, Inc. (Costa), for: a construction permit to modify the licensed facilities of KSGA-LP, San Bernardino, for Special Temporary Authority to operate KSGA-LP, and for a license to cover construction for KSGA-LP.

You advise that the motions to dismiss arise from a Settlement Agreement and Mutual Release entered into between Sunbelt, Costa and other parties. The parties have filed a copy of the Settlement Agreement pursuant to Section 73.3588 of the Commission's Rules. However, the parties maintain that the agreement contains "sensitive commercial information" that falls within Exemption 4 of the Freedom of Information Act,[1] and ask that the entire agreement be afforded confidential treatment and not be placed in the Commission's public records.

You state that the Settlement Agreement resolves an outstanding commercial dispute that arose out of an attempt by Costa to purchase control of Sunbelt. The dispute between Costa and Sunbelt led to the filing of litigation in the state courts of California that remains on-going. You state that the dismissal of Sunbelt's pleadings at the Commission will facilitate a settlement reached between the parties regarding the private litigation between them. In addition, you state that Sunbelt and the licensees of KXLA and KSGA-LP have made mutually binding promises for the election of non-mutually exclusive DTV channels for permanent operation of their respective digital facilities and to forbear filing oppositions thereto, "unless such oppositions are made in good faith and in reliance on violations of the FCC's rules and regulations."

Finally, you state that Sunbelt will receive no cash consideration for the dismissal of its opposition pleadings, and that the non-cash consideration to be received by Sunbelt is part of the overall settlement agreement. Thus, Sunbelt states, neither it nor its principals will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal of its objections. Costa states that it is not paying any consideration to Sunbelt for the requested dismissal of its pleadings directed against KXLA and KSGA-LP. Rather, Sunbelt is paying consideration (involving cash and the requested dismissal) to Costa for dismissal of the state litigation brought by Costa against Sunbelt.

We will grant your requests to dismiss the pleadings filed by Sunbelt against KXLA and KSGA-LP. The parties have submitted the documentation required by Section 73.3588(a) of the Commission's Rules, and we do not believe that the DTV channel election agreement is the type of non-financial concessions that would fall within the purview of that rule. In addition, review of the matters raised in those proceedings, consistent with our obligation to determine whether the public interest, convenience and necessity will be served by their dismissal as requested, does not appear to raise a question warranting further Commission action.[2]

We deny, however, your request for confidentiality to keep the entire settlement agreement from public view. You allege the agreement contains "trade secrets and commercial or financial information obtained from a person and [is] privileged and

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[1] *See* 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905. *See also* Section 0.457 of the Commission's Rules, 47 C.F.R. § 0.457.

[2] *See, e.g., Booth American Co.,* 58 FCC 2d 553, 554 (1976).

confidential" and is "information of a type which would customarily not be released to the public by the person from who it is obtained, and would cause substantial harm to the competitive position of the person from who the information was obtained." Such conclusory assertions, however, are lacking the specificity required by Section 0.459 of the Commission's Rules to warrant nondisclosure. Moreover, examination of that agreement indicates that it does not contain the type of proprietary or business practice information of the type normally protected from public examination, but merely sets forth the terms of the settlement agreement without reference to general or specific business practices and concerns of the parties involved. We discern no basis to shield that agreement, as it provides the basis for the actions requested by Sunbelt. In accordance with Section 0.459 (c) of the Commission's Rules, no further consideration of the parties' confidentiality request is warranted.

Accordingly, Sunbelt's requests to dismiss its Application for Review of the grant of the above-captioned applications filed on behalf of KXLA, and its objections filed against KSGA-LP ARE GRANTED, and those pleadings ARE DISMISSED, pursuant to Section 73.3588 of the Commission's Rules.

Sincerely,

Clay C. Pendarvis
Assistant Chief, Video Division
Media Bureau