

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	Acct. No. MB-201741410002
Investigation into the Political File Practices of)	
)	File No. 161107
OTA BROADCASTING (SFO), LLC)	FRN No. 0021186788
)	
Licensee of Station KAXT-CD, San Francisco --)	Facility ID No. 37689
San Jose, CA.)	
)	

ORDER

Adopted: January 18, 2017

Released: January 18, 2017

By the Chief, Media Bureau:

1. The Media Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve an investigation into the political file practices of OTA Broadcasting (SFO), LLC (OTA Broadcasting), licensee of Station KAXT-CD, San Francisco, CA. Section 315(e) of the Communications Act of 1934,¹ as amended, and Section 73.1943 of the Commission’s Rules,² require licensees to maintain political files for public inspection that contain specific information about certain types of political advertisements.

2. In November 2016, the Bureau opened an investigation into whether OTA Broadcasting had failed to place required information into Station KAXT-CD’s political file for paid political advertisements by or on behalf of legally qualified candidates for the California State Assembly. The investigation revealed a number of omissions. To settle this matter, OTA Broadcasting has agreed to establish a program among all of the broadcast stations of which it is the licensee to ensure their future compliance with the political file disclosure obligations of Section 315 of the Act and Section 73.1943 of the Commission’s Rules. In addition, OTA has agreed to pay a civil penalty in the amount of \$32,000 for its past misconduct.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding OTA Broadcasting’s compliance with Sections 315 and 73.1943.

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act³ and the authority delegated by Sections 0.61(e) and 0.283 of the Commission’s Rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms thereof are incorporated by reference herein.

5. **IT IS FURTHER ORDERED** that the attached Consent Decree is effective as of the date on which it was fully executed by and on behalf of the Media Bureau and OTA Broadcasting.

¹ 47 U.S.C. § 315(e).

² 47 C.F.R. § 73.1943.

³ 47 U.S.C. § 154(i).

⁴ 47 CFR §§ 0.61(e), 0.283.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail to: Patricia M. Chuh, Esq., Wilkinson Barker Knauer, LLP, 1800 M Street, N.W., Suite 800N, Washington, DC 20036, counsel for OTA Broadcasting.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief
Media Bureau

Station KAXT-CD, and includes all subsidiaries, affiliates, and successors-in-interest thereof.

- (j) “Parties” means OTA Broadcasting and the Bureau, each of which is a “Party.”
- (k) “Political File” or “Political Files” means the files and the information therein that are required to be maintained for public inspection pursuant to Section 315(e) of the Act, and Section 73.1943 of the Rules.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Station KAXT-CD” means Station KAXT-CD, San Francisco -- San Jose, CA, Facility ID No. 37689, of which OTA Broadcasting is the licensee.

II. BACKGROUND

3. Station KAXT-CD is a Class A, commercial television station in the San Francisco-Oakland-San Jose, California Designated Market Area. By letter, dated November 2, 2016, a complaint was filed by Ash Kalra, a legally qualified candidate for the California State Assembly, District 27, against OTA Broadcasting.¹ Mr. Kalra alleged, among other things, that on or about November 1, 2016, he examined Station’s KAXT-CD’s Political Files and found no records of any advertisements sponsored by or on behalf of Ms. Madison Nguyen, also a legally qualified candidate for the office of California State Assembly, District 27, despite his understanding that Station KAXT-CD had broadcast numerous political messages promoting her candidacy and opposing his. On the basis of Mr. Kalra’s complaint, the Bureau commenced its Investigation of OTA Broadcasting’s Political File practices.

4. Section 315(e) of the Act requires licensees to maintain Political Files for certain types of advertisements. Specifically, pursuant to Section 315(e)(1) of the Act:

A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that –

- (A) is made by or on behalf of a legally qualified candidate for public office; or
- (B) communicates a message relating to any political matter of national importance, including –
 - (i) a legally qualified candidate;
 - (ii) any election to Federal office; or
 - (iii) a national legislative issue of public importance.

As to each such request, Section 315(e)(2) of the Act requires broadcast licensees to place in their Political Files the following information:

- (A) whether the request to purchase broadcast time is accepted or rejected by the licensee;
- (B) the rate charged for the broadcast time;
- (C) the date and time on which the communication is aired;
- (D) the class of time that is purchased;
- (E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);
- (F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such

¹ See Letter from Ash Kalra to William Tolpegin, President, OTA Broadcasting (SFO), LLC, with copy to Robert L. Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, dated November 2, 2016

- committee; and
- (G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

In addition, Section 73.1943 of the Rules states:

- (a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The “disposition” includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.
- (b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.
- (c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.
- (d) *Location of the file.* A licensee or applicant must post all of the contents added to its political file after the effective date of this paragraph in the political file component of its online public file hosted by the Commission. A station must retain in its political file maintained at the station, at the location specified in §73.3526(b) or §73.3527(b), all material required to be included in the political file and added to the file prior to the effective date of this paragraph, unless the station elects voluntarily to place these materials in the Commission's online public file. The online political file must be updated in the same manner as paragraph (c) of this section.

5. The Investigation confirmed that OTA Broadcasting had failed to place any information required by Sections 315(e) of the Act and 73.1943 of the Rules in Station KAXT-CD's political file for a total of eight requests for the purchase of broadcast time made by or on behalf of legally qualified candidates for public office between September 6, 2016, and November 8, 2016.

6. OTA Broadcasting and the Bureau have engaged in settlement negotiations regarding all facets of the Investigation. The Bureau and OTA Broadcasting agree to the following terms and conditions of settlement, and hereby enter into this Consent Decree as provided herein.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** OTA Broadcasting agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, OTA Broadcasting agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new

proceeding, formal or informal, or take any action on its own motion against OTA Broadcasting concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or to set for hearing the question of OTA Broadcasting's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.

11. **Admission of Liability.** OTA Broadcasting admits, for the purpose of this Consent Decree and for Commission civil enforcement purposes, that it willfully and repeatedly violated Sections 315(e) of the Act, 47 U.S.C. § 315(e), and 73.1943 of the Rules, 47 C.F.R. § 73.1943, by failing to maintain in its Political Files for public inspection any records for eight requests to purchase broadcast time on Station KAXT-CD by or on behalf of legally qualified candidates for public office between September 6, 2016, and November 8, 2016.

12. **Compliance Officer.** OTA Broadcasting agrees that within thirty (30) calendar days of the Effective Date, it shall designate a corporate manager with the requisite authority to serve as Compliance Officer. The Compliance Officer shall be responsible for developing, implementing, administering, and filing, as applicable, the Compliance Plan, Training Program, and Compliance Reports described below and otherwise ensuring that OTA Broadcasting complies with the Political File disclosure obligations contained in Sections 315(e) of the Act and 73.1943 of the Rules.

13. **Compliance Plan.** OTA Broadcasting agrees that within sixty (60) calendar days of the Effective Date, it shall develop and implement a comprehensive plan to ensure the future compliance, by all of the broadcast stations of which OTA Broadcasting is the licensee, with the Political File disclosure obligations contained in Sections 315(e) of the Act and 73.1943 of the Rules.

14. **Covered Employees.** OTA Broadcasting agrees that, as part of the Compliance Plan, it shall designate at each of the broadcast stations of which it is the licensee at least one Covered Employee.

15. **Training Program.** OTA Broadcasting agrees that, as part of the Compliance Plan, it shall establish and implement a Training Program for Covered Employees at each of the broadcast stations of which it is the licensee. The Training Program shall be intended to ensure that every Covered Employee is thoroughly familiar with the Political File disclosure obligations contained in Sections 315(e) of the Act and 73.1943 of the Rules to which OTA Broadcasting is subject. The training provided under the Training Program shall be given to all current Covered Employees within sixty (60) calendar days of the Effective Date and to each new Covered Employees within sixty (60) calendar days after he or she becomes a Covered Employee. Training for all Covered Employees shall be provided at least once annually in a manner and at a time determined by OTA Broadcasting until such time as this Consent Decree has terminated.

16. **Compliance Reports.** OTA Broadcasting agrees that, as part of the Compliance Plan, it shall file a Compliance Report with the Bureau annually until such time as this Consent Decree has terminated. Each Compliance Report shall identify, with respect to all of the broadcast stations of which OTA Broadcasting is the licensee:

- (a) the steps taken by OTA Broadcasting to implement this Consent Decree; and
- (b) any instances in which OTA Broadcasting has failed to comply with the Political File disclosure obligations contained in Sections 315(e) of the Act or 73.1943 of the Rules and any omissions of required disclosures from the Political Files of any station of which it is the licensee.

during the preceding one-year reporting period. Each Compliance Report shall be received by the Bureau no later than the first business day that is ten (10) calendar days after the one-year reporting period has concluded. The first such one-year reporting period shall commence on the Effective Date. In the event that OTA Broadcasting files an application for Commission consent to the assignment or transfer of control of a broadcast station to a third party, OTA Broadcasting shall submit a Compliance Report to the

Bureau for that subject station at the time it files such application. Each Compliance Report shall include a statement by the Compliance Officer attesting to the truthfulness of the representations therein. All Compliance Reports shall be directed in hard copy to Robert L. Baker, Assistant Chief, Policy Division, Media Bureau Federal Communications Commission, Room 3-A832, 445 12th Street, SW, Washington, DC 20554, with copies submitted electronically to Robert.Baker@fcc.gov and to Gary Schonman, Special Counsel, Policy Division, Media Bureau, Federal Communications Commission, at Gary.Schonman@fcc.gov.

17. **Termination Date.** Unless otherwise extended by the Bureau in its sole discretion, the requirements set forth in this Consent Decree shall expire twenty-four (24) months after the Effective Date.

18. **Civil Penalty.** OTA Broadcasting agrees to pay a civil penalty to the United States Treasury in the amount of thirty-two thousand dollars (\$32,000). Payment in the full amount shall be made within thirty (30) calendar days of the Effective Date. OTA Broadcasting acknowledges and agrees that, upon execution of this Consent Decree, the Settlement Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).² In the event of a Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated.

19. OTA Broadcasting shall send electronic notification of payment to Robert.Baker@fcc.gov and to Gary.Schonman@fcc.gov on the date the payment is made. The payment shall be made by check or similar instrument, wire transfer, or credit card, and shall include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If OTA Broadcasting has questions regarding payment procedures, it may contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Event of Default.** OTA Broadcasting agrees that a Default shall occur upon the failure

² Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

by OTA Broadcasting to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree. If a Default occurs, the then-unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Default plus 4.75 percent, from the date of the Default until payment is made in full. Upon a Default, the unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by OTA Broadcasting.

21. **Waivers.** As of the Effective Date, OTA Broadcasting waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree. OTA Broadcasting shall retain the right to challenge Commission interpretation of this Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither OTA Broadcasting nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and OTA Broadcasting shall waive any statutory right to a trial *de novo*. OTA Broadcasting hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act⁴ relating to the matters addressed in this Consent Decree.

22. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

23. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

24. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which OTA Broadcasting does not expressly consent) that provision will be superseded by such Rule or Commission Order.

25. **Successors and Assigns.** OTA Broadcasting agrees that the provisions of this Consent Decree shall apply to OTA Broadcasting and be binding on its officers, employees, agents, successors, assigns, merged or acquired entities, wholly owned subsidiaries, and all other persons or entities acting in concert or participation with any of them.

26. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

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

29. **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.

⁴ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

30. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

FEDERAL COMMUNICATIONS COMMISSION

MEDIA BUREAU

By: _____
William T. Lake, Chief
Media Bureau
Federal Communications Commission

Date: _____

OTA BROADCASTING (SFO), LLC

By: _____
William Tolpegin, President

Date: _____