

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

In the Matter of the)	
)	
OTA Broadcasting (SFO), LLC)	
(Assignor))	
)	
and)	
)	
TV-49, Inc.)	
(Assignee))	
)	
Application for Consent to Assignment)	File No. BAL-20171026ABS
of License of Class A Television Station)	Facility ID No. 37689
KAXT-CD, San Francisco-San Jose, CA)	
)	
Applications for Consent to Assignment)	File No. BALCDT-20171101ACJ
of License of Station KTLN-TV, Novato,)	Facility ID No. 49153
CA)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 2018

Released: September 18, 2018

By the Chief, Video Division, Media Bureau:

1. The Video Division (Division) has before it the above-captioned applications for consent to assign the licenses of stations KAXT-CD, San Francisco-San Jose, California, and KTLN-TV, Novato, CA (collectively, Stations), from OTA Broadcasting (SFO), LLC (OTA) to TV-49, Inc. (TV-49) (collectively, the Applications). Nalini, Rishi, and Ravi Kapur (collectively, the Kapurs) have filed a Petition to Deny the KAXT application, which we will treat as an informal objection, as well as an Informal Objection to the KTLN application (Objections).¹ The Kapurs requested that the Division deny the Applications on the basis that the Applications “raise a number of basic qualifying issues.”² For the reasons below, we deny the Objections and grant the Applications.

I. BACKGROUND

2. The issues raised by the Kapurs are largely a reprise of an ongoing dispute stemming from their challenge to the original assignment of station KAXT-CD’s license from KAXT, LLC, to OTA in 2013 (KAXT Assignment Application),

¹ We are evaluating the petition to deny the assignment application as an informal objection under Section 73.3587 of the Commission’s rules. 47 C.F.R. § 73.3597, because the pleading was not supported by an affidavit asserting standing. 47 U.S.C. § 309(d)(1).

² KTLN Informal Objection by Nalini Kapur, Rishi Kapur, and Ravi Kapur (filed Dec. 6, 2017) (2017 KTLN Objection); KAXT Petition to Deny by Nalini Kapur, Rishi Kapur, and Ravi Kapur (filed Nov. 30, 2017) (2017 KAXT Objection).

which was granted in July 2014.³ On November 3, 2017, the Commission upheld a staff decision both denying a Petition for Further Reconsideration of the staff's original grant of the KAXT Assignment Application and a Petition for Reconsideration of the staff's grant of KAXT's renewal.⁴

3. The Kapurs re-assert arguments made below: that OTA threatened to "saddle the Kapurs with crippling litigation" in a letter from OTA's counsel (OTA Counsel Letter);⁵ that OTA has continued to omit pending character allegations in its applications even after a March 2015 admonishment by staff;⁶ that OTA actively collaborated with the controlling members of KAXT, LLC, against the Kapurs during arbitration of a contractual dispute;⁷ that OTA misrepresented to the Commission by not certifying "Yes" as to whether a felon is a party to the assignor's portion of the Application;⁸ and that Lawyer, the alleged felon, was not properly insulated.⁹

4. On January 18, 2017, the Media Bureau entered into a consent decree with OTA to resolve an investigation into OTA's political file practices.¹⁰ The Kapurs argue that the Media Bureau in issuing the *2017 Consent Decree* did not consider certain missing documentation pertaining to political broadcasting aired prior to the elections in 2016.¹¹ Specifically, the Kapurs identified examples of political candidate and issue advertisements aired by the KAXT during the same period of time covered by the *2017 Consent Decree*¹² that OTA neither disclosed in KAXT's Political File nor divulged to the Commission.¹³ The Kapurs further allege that as a result of this new evidence, the protections given to OTA by the *2017*

³ See e.g. *KAXT, LLC (Assignor and OTA Broadcasting (SFO), LLC (Assignee) for Consent to Assign the License of Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, 29 FCC Rcd 8266 (Vid. Div. 2014) (July 2014 MO&O).

⁴ *In the Matter of KAXT, LLC (Assignor) and OTA Broadcasting (SFO), LLC (Assignee) For Consent to Assign the License of Class A Television Station KAXT-CD, San Francisco-San Jose, California*, Memorandum Opinion and Order, 32 FCC Rcd 9638 (2017) (*Commission Order*). In addition to the pleadings addressed herein, the Kapurs have filed a petition for reconsideration of the *Commission Order*, which will be addressed in a separate decision. The *Commission Order*, and prior staff decisions involving this dispute, comprehensively discuss the factual background and procedural history. We need not revisit the procedural background in this order.

⁵ 2017 KAXT Objection at 2.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *In the Matter of Investigation into the Political File Practices of OTA Broadcasting (SFO), LLC*, Order and Consent Decree, 32 FCC Rcd 795 (2017) (*2017 Consent Decree*) (paying \$32,000 and implementing a compliance plan for failure to place paid political advertisements in its political file). See 47 U.S.C. § 305(e); 47 C.F.R. § 73.1943 (requiring maintenance of a Political File for certain types of political advertisements and setting forth the information to be included in the Political File).

¹¹ 2017 KAXT Objection at 5.

¹² *Id.*

¹³ *Id.*

Consent Decree dissolve and that all of OTA's admissions therein must be considered by the FCC. In a supplement to their petition, the Kapurs allege that it took OTA fourteen months to upload a copy of an email in response to the Political File investigation, and failed to post documents such as the 2016 Kalra complaint, in the Online Public Inspection File without receiving an exemption from the Commission, thus allegedly violating 47 C.F.R. § 73.3526(e)(10).¹⁴ Also, the Kapurs allege that OTA knew that the parties providing programming on the station's multicast channels could not be relied on to assist OTA with fulfilling its statutory and regulatory political file responsibilities.¹⁵

5. OTA dismisses the Kapurs' allegations as another part of the Kapurs' "guerilla campaign against OTA" arising from the prior sale of the Stations to OTA.¹⁶ OTA also asserts that the Kapurs are simply repeating allegations that have already been dismissed by the Commission.¹⁷ Finally, OTA states that it addressed the Kapurs' concern regarding the additional potential violation of the Political File rules in an October 26, 2017, compliance report filed in connection with the 2017 *Consent Decree*.¹⁸

II. DISCUSSION

6. The Commission applies a two-step analysis when evaluating an informal objection under the public interest standard.¹⁹ First, the Commission must determine whether the informal objection contains specific allegations of fact sufficient to show that granting the application "would be *prima facie* inconsistent with public interest, convenience, and necessity."²⁰ If an objection meets this first step, then the Commission must determine "whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry."²¹ If no such question is raised, the Commission will deny the objection and proceed to determine whether the grant of the application otherwise serves the public interest, convenience, and necessity.²²

7. As noted above, with the exception of the allegations discussed below, all of the allegations raised in the Objections have been raised before the Media Bureau and the Commission and have been rejected. Nothing in the record would

¹⁴ KAXT Supplement by Nalini Kapur, Rishi Kapur, and Ravi Kapur, File No. BAL-20171026ABS at 2 (filed Feb. 9, 2017); KTLN Supplement by Nalini Kapur, Rishi Kapur, and Ravi Kapur, File No. BALCDT-20171101ACJ at 2 (filed Feb. 9, 2017) (collectively, Supplements); 47 C.F.R. § 73.3526(e)(10).

¹⁵ Supplement at 4.

¹⁶ KAXT Opposition to Petition to Deny filed by OTA Broadcasting (SFO), LLC (filed December 13, 2017); KTLN Response to Informal Objection filed by OTA Broadcasting (SFO), LLC (filed December 13, 2017) (Oppositions). at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 4.

¹⁹ 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

²⁰ 47 U.S.C. §§309(d)(1) and 310(d); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

²¹ See *e.g.*, *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

²² 47 U.S.C. §§ 309(d)(2) and 310(d).

cause us to alter the conclusions reached by the full Commission, or would otherwise raise a substantial and material question of fact justifying further inquiry. The Commission also found that OTA did not attempt to conceal the facts of Todd Lawyer's felony because it filed the insulation letter multiple times, and that the insulation letter was publicly available in Commission files as early as March 11, 2013, before the petition opposing the original sale of station KAXT-CD to OTA was filed.²³ To the extent OTA failed to disclose the conviction in any application, we find no intent to deceive as the Kapurs have acknowledged the insulation letter was publicly available.²⁴ In addition, OTA has claimed that Lawyer no longer works at OTA, making the issue moot.²⁵

8. The Media Bureau settled all matters related to OTA's Political File practices prior to receipt of the November 2, 2016, Ash Kalra complaint as part of the *2017 Consent Decree*.²⁶ By its terms, the *2017 Consent Decree*, included a settlement of the alleged "new material" violations. The Bureau's determination to resolve these issues pursuant to the terms of the *2017 Consent Decree* amounts to a decision not to pursue an enforcement action that is generally committed to an agency's absolute discretion.²⁷ The alleged misconduct cited by the Kapurs took place prior to the adoption and release of the 2017 Consent Decree, and the consent decree therefore captures those purported violations. Any challenge to the *2017 Consent Decree* itself in the context of this separate proceeding constitutes an impermissible collateral attack.²⁸ The Bureau has reviewed the allegation that OTA subsequently committed a separate violation of Section 73.3526(e)(10) of the rules by failing to place in KAXT-CD's public inspection files certain emails related to the investigation, and do not find that such failure raises a substantial and material question of fact as to character.

9. After reviewing the record, we find that the Applicants possess the necessary qualifications to hold a Commission license and that the proposed transaction does not violate the Act, the Rules, or Commission policies. Pursuant to Section 310(d) of the Act, we find it in the public interest, convenience, and necessity to grant the applications for consent to assign the Stations from the OTA to TV-49, Inc.

²³ *Commission Order* at 9647, para. 19.

²⁴ *Id.*

²⁵ BRDTA-20140731ANH, OTA Opposition to Application for Review at 10 (filed Jan. 28, 2016).

²⁶ See *2017 Consent Decree*, 32 FCC Rcd at 797 (definition of "Investigation"). We agree that, to the extent character issues have been raised, the Kapurs have inadequately demonstrated how such alleged misconduct would bear on the operation of station KTLN-TV. See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1123-25, ¶¶ 92-95 (1986).

²⁷ *New York State Dep't of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993); accord, *NTCH, Inc. v. FCC*, 841 F.3d 497, 503 (D.C. Cir. 2016). See also *SEC v. Citigroup Global Markets Inc.*, 673 F.3d 158, 163 (2d Cir. 2012) ("... the scope of a court's authority to second-guess an agency's discretionary and policy-based decision to settle is at best minimal").

²⁸ *In the Matter of Verizon Communications Inc. and Straight Path Communications, Inc. For Consent to Transfer Control of Local Multipoint Distribution Service, 39 GHz, Common Carrier Point-to-Point Microwave, and 3650-3700 MHz Service Licenses*, Memorandum Opinion and Order, FCC 18-85 (July 2, 2018).

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, that the Petition to Deny and the Informal Objection to the above-captioned applications **ARE DISMISSED** to the extent set forth above, and **DENIED** in all other respects.

11. **IT IS FURTHER ORDERED** that the applications for consent to assign the license of station KAXT-CD, San Francisco-San Jose, California, File No. BAL-20171026ABS, and KTLN-TV, Novato, CA, File No. BALCDT-20171101ACJ, **ARE GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
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Media Bureau